FOUO

Army Report Documents

Communications Electronics Command
Life Cycle Management Command (CECOM LCMC)
Rapid Response (R2 Project)
Fort Monmouth, New Jersey

Office of Special Counsel File Number DI-11-0119

March 13, 2013

(Redacted)

FOUO

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
MANPOWER AND RESERVE AFFAIRS
111 ARMY PENTAGON
WASHINGTON, DC 20310-0111

March 13, 2013

PM4:22

USOSC HQ DC '13MAR14

Special Counsel Carolyn N. Lerner
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505

RE: Whistleblower Investigation-Communication Electronics Command Life Cycle Management Command (CECOM LCMC) Rapid Response (R2) Project, Fort Monmouth, New Jersey (Office of Special Counsel File Number Dl-11-0119)

Dear Ms. Lerner:

In accordance with Title 5, United States Code (USC), Section 1213(c) and (d), the enclosed report is submitted in response to your referral of information requesting an investigation of allegations and a report of findings in the above referenced case.

The Secretary of the Army (SA), as agency head, has delegated to me his authority to review, sign, and submit to you the report required by Title 5, USC, Section 1213(c) and (d). [TAB A].

The Department of the Army (DA) encloses two versions of its report. The first version contains the names and duty titles of military service members and civilian employees of the DA associated with the investigation of the allegations in this matter. This version is for your official use only, as specified in Title 5, USC, Section 1213(e); we understand that, as required by that law, you will provide a copy of this first version of the report to the whistleblower in this case, as well as to the President of the United States and the Senate and House Armed Services Committees. Other releases of the first version of the DA report may result in violations of the Privacy Act[1] and breaches of personal privacy interests.

The second version of the report has been crafted to eliminate references to privacy-protected information. We request that only the second version of the report be made available on your

[1] The Privacy Act of 1974, Title 5, USC Section 552a.

web-site, in your public library or in any other forum in which it will be accessible to persons not expressly entitled by law to a copy of the report.

INFORMATION INITIATING THE INVESTIGATION

By Letter dated November 30, 2010, the Office of Special Counsel (OSC) referred to the Secretary of the Army allegations submitted by an anonymous whistleblower at Fort Monmouth, New Jersey (Hereafter Fort Monmouth), a Department of the Army installation located in Tinton Falls, New Jersey. The OSC had concluded there existed a likelihood that information provided by the whistleblower revealed that employees of the Department of the Army Communications-Electronics Command (CECOM) Life Cycle Management Command (LCMC), Rapid Response (R2) Project Office (hereinafter R2 Project Office) at Fort Monmouth had violated a law, rule or regulation and engaged in gross mismanagement.

The anonymous whistleblower identified the following allegations:

OSC-Referred Allegation 1. The R2 Project office does not return to customers any unused portions of its fee as required by the Economy Act (15 U.S. C. 1535). The whistleblower stated that although the Economy Act permits a federal agency to pay to another agency in advance for goods and services, there is a requirement that the proper adjustment of amounts paid in advance shall be made on the basis of the actual cost of goods or services provided. Because the R2 Project Office does not track individual customer expenses, it is unable to determine the actual cost of the goods or service provided to each client individually and as a result is unable to return unused customer funds as required by the Economy Act.

OSC-Referred Allegation 2. The R2 Project Office's failure to return unused client fees constitutes an improper augmentation of its own budget. Allegedly, in FY 2007, the R2 Project Office collected or carried over fees from previous years' fees totaling nearly $21.47 million but only had expenses of $13.78 million. Further, this nearly $8 million surplus grew to an estimated $10 – $14 million in 2008. Instead of returning the surplus to clients as required by the Economy Act, the excess funds remain in the R2 Office operating account and are available to be used during subsequent fiscal years. As a result, the R2 Project Office is impermissibly augmenting its budget in violation of Federal appropriations law.

OSC-Referred Allegation 3. A memorandum purportedly written in 2008 by Mr. CECOM G8 (Retired), the CECOM LCMC G8 Officer, acknowledging the need to track individual customer expenses to ensure compliance with the Economy Act, was provided by the whistleblower to OSC. No action has been taken to implement such a tracking system.[2]

OSC-Referred Allegation 4. The R2 Project Office's failure to track individual customer expenses or implement a tracking system for customer expenses constitutes a failure to comply with the Economy Act and gross mismanagement on the part of CECOM LCMC.

OSC-Referred Allegation 5. Mr. Director CECOM IRAC Office, the Head of the CECOM LCMC Internal Review office, has not officially issued the Draft Report 4-A-08 which would have revealed the Economy Act violations and expense tracking problems within the R2 Project Office.

---

[2] In its 30 November 2010 transmittal to the Secretary, OSC provided a copy of U.S. Army CECOM Life Cycle Management Command, Draft Report 4-A-08, 7 May 2008, by CECOM IRAC Evaluator and CECOM IR Lead Evaluator, and Draft Response, by CECOM G8 (Retired), G-8. [TAB B].

OSC-Referred Allegation 6. The R2 Project Office leases contract specialists and other support staff from CECOM LCMC to support its operations and reimburses CECOM LCMC for the salaries and other costs attributable to these employees. However, the leased staff supported both the R2 Project Office and other unrelated CECOM LCMC activities. Because the employees do no track the amount of time spent supporting each office, the R2 Project Office is not credited for the time the employees spend on CECOM LCMC tasks. The R2 Project Office reimburses CECOM LCMC for the entire cost of these employees despite the fact that they perform tasks for both the R2 Project Office and CECOM LCMC. As a result, this constitutes a violation of the Economy Act, an augmentation of CECOM LCMC's budget in violation of Federal appropriations law, and gross mismanagement for failing to provide adequate oversight and tracking of federal agencies that provide payments to the R2 Project Office.

CONDUCT OF THE INVESTIGATION

On 2 December 2010 the Secretary of the Army forwarded the OSC referral to the Commander, U. S. Army Materiel Command (AMC) and directed her to conduct an investigation into the anonymous whistleblower's allegations and, as appropriate, to initiate any corrective action deemed necessary. This referral was appropriate because CECOM is a major subordinate command under AMC command jurisdiction.[3]

On 21 December 2010, the Commander, AMC forwarded the referral to the Commander, CECOM LCMC, Former MG Commanding, for action. Former MG Commanding appointed the initial Investigating Officer, CECOM 15 – 6 IO (1), [TAB C] under the provisions of Army Regulation (AR) 15 – 6, *Procedures For Investigating Officers and Board of Officers* with a mandate to investigate the allegations forwarded by the OSC. [TAB D]. On 3 February 2011, Former MG Commanding relieved IO CECOM 15 -6 IO(1)from her duties and responsibilities under that appointment due to family medical concerns, and appointed CECOM 15 – 6 IO(2)CECOM 15-6 IO (2)as the new IO (IO-2). [TAB E].

IO CECOM 15-6 IO (2) conducted an extensive investigation into the four allegations referred by OSC to the Army. All witnesses germane to the investigation were interviewed by the IO and follow on interviews were also conducted ad appropriate for further development of

---

[3] CECOM was headquartered and physically located at Fort Monmouth, New Jersey. However, as a result of the 2005 Base Closure and Realignment Commission (BRAC) recommendation, many of the command, control, and administration functions were transferred to Aberdeen Proving Grounds beginning in early 2009 as part of the transition for Fort Monmouth's closure and movement of many of CECOM's responsibilities to Aberdeen Proving Ground (APG), Maryland. The BRAC recommendation had to be completed by September 2011 pursuant to the BRAC recommendation and statute. Over 7,000 employees were impacted by the CECOM BRAC closure. As typically occurred with BRAC "moves", the R2 Project Office was operating under a split office concept as some office personnel were working from the Fort Monmouth office location while others had formed the advance team and were working from the new APG site. At the time in question, Mr. Director CECOM IRAC Officewas located at APG while Mr. CECOM IRAC Lead Evaluator and Mr. CECOM IRAC Evaluator were located at Fort Monmouth. Mr. Director CECOM IRAC Office, Director, CECOM Internal Review Office, changed his duty station from Fort Monmouth, New Jersey to APG, Maryland on 27 April 2009. Mr. CECOM IRAC Lead Evaluator, Lead Evaluator, CECOM Internal Review Office, left CECOM/the Army effective 16 July 2011. Mr. CECOM IRAC Evaluator, Evaluator, CECOM Internal Review Office, resigned from his position with CECOM Internal Review Office and left CECOM effective 14 July 2012.

the facts. The investigation was underway and was nearing completion when an Army Criminal Investigation Division Command (CID) Special Agent advised the Army Office of the General Counsel (OGC) in April 2011 that in response to a Department of Defense Office of Inspector General (DoD IG) Hotline complaint made by an anonymous complainant, a criminal investigation had been initiated by CID, Philadelphia Fraud Resident Agency, Media, Pennsylvania on similar allegations as the OSC referred allegations. Upon the advice of OSC, the completion of the Army's AR 15-6 investigation was put into abeyance pending completion of the criminal investigation and any aftermath that may result from the criminal investigation. Further, OGC instructed the AR 15-6 investigation to temporarily stop and have the work product from that effort be shared with the CID agent for his use and await the completion of the Army CID investigation. The CID Special Agent was provided the draft AR 15-6 Report of Investigation (ROI) with accompanying documents to review and use as appropriate in furtherance of the CID investigation into allegations of criminal wrongdoing. This review would entail a determination if the ROI contained sufficient details upon which to evaluate if any criminal activity had occurred and the need for CID to pursue its investigation into any additional matters.

Upon the CID's final review of the AR 15-6 ROI, it determined that the AR 15-6 ROI had advanced far enough to provide sufficient facts which addressed its concerns, particularly with respect to whether any criminal wrongdoing had occurred. As it was in these final stages of determining what additional investigative steps were necessary at that point based on what has been done by the AR 15-6 IO and what additional activity the CID may need to take and completed or revisit, OGC conducted a teleconference with representatives from the CID, the Army Audit Agency (AAA), as well as the local Army field counsel to discuss the status of the CID investigation. As a result of this teleconference, the CIDC concluded that it was in a position to determine the final outcome of its investigation including whether it was ready to close its investigation and issue a final report which would ultimately conclude whether there was any criminal wrongdoing uncovered based on the allegations at issue.

On 16 August 2012, the CID closed its investigation and issued its final report concluding that its investigation determined that "the Violations of the Anti-Deficiency Act and the Economy Act did not happen as initially alleged, as no evidence was established during the course of the investigation which substantiated or corroborated the source's claims." Further, the CID final report stated that "this investigation has uncovered no criminality and any issues which may arise from further investigation would likely be of a fiscal nature, the best course of action would be that this office close our investigation" and refer it to CECOM for completion of their AR 15-6 and "a further review by OGC."

On 21 September 2012, the Army re-opened the subject AR 15-6 investigation to pursue some additional lines of inquiry that were left outstanding based on the OGC review of the initial draft AR 15-6 ROI as well as the discussions held during the 12 June 2012 teleconference reference above. Because the initial AR 15-6 investigator had since retired, a new investigator, CECOM 15 – 6 IO (3)CECOM 15-6 IO (3),[4] was appointed to undertake the additional efforts needed to conduct the supplemental investigation. [TAB F]. The new investigator reviewed the

[4] Mr. CECOM 15-6 IO (3) is the Deputy Director of Communications-Electronics Research, Development and Engineering Center.

draft ROI and began his efforts in furtherance of the supplemental investigation. Unfortunately, initially, the investigator had some difficulty in interviewing many of the witnesses since most had left the government and one was on long term training. The IO submitted his draft ROI for OGC review on 7 November 2012. Upon review of that draft ROI and its accompanying exhibits, OGC held a series of teleconferences during November and December 2012 (the latest being on 14 December 2012) with the supporting attorneys from the CECOM and HQ AMC legal offices during which additional issues of concern were discussed which needed further investigation/inquiry to include additional more in depth interviews with some of the witnesses. On 13 February 2013, the IO completed his supplemental investigative effort.

BACKGROUND

To facilitate a better understanding of the facts and circumstances associated with the anonymous whistleblower's allegations to the OSC and to permit a more informed assessment of the testimonial and documentary evidence collected in this matter, it is important to understand CECOM's mission and functions and the role and responsibilities of the R2 Project Office.

U.S. Army Materiel Command (AMC) Mission

The AMC mission is to develop, deliver, and sustain materiel to ensure a dominant joint force for the U.S. and its allies. As the Army's Lead Materiel Integrator (LMI), AMC manages and distributes the right equipment in the right quantity when and where Soldiers need it. AMC also designs and develops sophisticated innovations for combat weapons systems to improve survivability and lethality. AMC depots and arsenals refurbish, repair and overhaul every type of major weapon system in Army inventory.

AMC unifies and synchronizes all of the materiel life cycle functions nested with Major Subordinate Commands providing Capability Based Solutions: Research, Development, acquisition, testing, distribution, supply, maintenance, industrial base options and disposal. AMC is the Army's premier provider of materiel readiness – technology, acquisition support, materiel development, logistics power projection, and sustainment – to the total force, across the spectrum of joint military operations. If a Soldier shoots it, drives it, flies it, wears it, eats it or communicates with it, AMC provides it.

AMC is headquartered at Redstone Arsenal, Alabama, and impacts or has a presence in all 50 states and 150 countries. Manning these organizations is a work force of more than 70,000 dedicated military and civilian employees, many with highly developed specialties in weapons development, manufacturing and logistics.

U.S. Communications-Electronic Command (CECOM) Mission

CECOM's mission is to develop, provide, integrate, and sustain the logistics and readiness of C4ISR[5] systems and mission command capabilities for joint, interagency and multi-national

[5] Army Team C4ISR is comprised of the commands listed as follows: U.S. Army CECOM Life Cycle Management Command (CECOM LCMC); Program Executive Office Command, Control and Communications – Tactical; Program Executive Office Intelligence, Electronic Warfare and Sensors; and U.S. Army Communications Electronics Research, Development and Engineering Center. They were part of the BRAC move prcipated by the

forces worldwide. CECOM's function is the Warfighter's "one-stop-shop" for life-cycle support of the communications-electronics systems and equipment they carry. Designated a life-cycle management command, CECOM conducts training missions; provides field support for equipment and systems modifications and upgrades; and provides logistical expertise to ensure the on-time delivery of equipment, services and capabilities to the Warfighter.

From setting up headquarters and command and tactical operations centers in remote areas to installing and maintaining communications systems in vehicles and aircraft, CECOM supports warfighters across the globe through training activities; field support for modifications and software upgrades; logistical expertise; information and software assurance; joint network capabilities and interoperability and certification functions to ensure the right equipment is in the right place at the right time.

CECOM is comprised of approximately 13,000 military, civilian and contract personnel across five CECOM organizations.

• Central Technical Support Facility (CTSF), Fort Hood, Texas: CTSF is the Army's premier test, integration and certification testing facility for the Army LandWarNet/Battle command systems.
• Logistics and Readiness Center (LRC), Aberdeen Proving Ground, Maryland: LRC provides a global logistics support for C4ISR systems and equipment through rapid acquisition, maintenance, production, fielding, new equipment training, operations and sustainment to meet the Army's Reset and Readiness goals in support of Army and coalition forces.
• Software Engineering Center (SEC), Aberdeen Proving Ground, Maryland: SEC provides software expertise to support C4ISR, as well as logistics, business and enterprise systems in the modern digital environment through life-cycle software solutions that enable warfighting superiority and information dominance across the enterprise.
• Tobyhanna Army Depot (TYAD), Tobyhanna, Pennsylvania: TYAD is the Army's premier depot providing maintenance, manufacturing, integration and fielded repair to C4ISR Systems worldwide, including more than 80 forward repair activities.
• U.S. Army Information Systems Engineering Command (USAISEC), Fort Huachuca, Arizona: USAISEC provides systems engineering services, installation, integration, implementation and evaluation support for communications and IT systems in support of the Warfighter.

Rapid Response (R2) Project Office

The Rapid Response project office was established in 1998 under the Command and Control Directorate within the CECOM Research, Development and Engineering Center (CERDEC). Operational control of the R2 Project transitioned to CECOM LCMC Logistics and Readiness Center (LRC) in 2003. The R2 project is chartered by the Deputy to the Commanding General (DCG), CECOM LCMC, to execute a unique, competitive and streamlined business process that allows the Army, Department of Defense (DoD) and other federal government agencies to rapidly acquire contractor provided equipment and services. The R2 Project Office managed multiple indefinite delivery /indefinite Quantity (ID/IQ) performance based service contracts representing multiple capabilities. The R2 contract vehicle is a multiple award task order

---

closing of Fort Monmouth and moving CECOM assets to Aberdeen Proving Ground.

contract that consists of eight separate Indefinite Delivery/Indefinite Quantity (IDIQ) contracts and can be used by any Government agency that uses federal funds for a broad range of services. The aggregate ceiling value of the eight prime contracts over an eight year period of performance which began in January, 2003 was $23 billion.

The R23G Project Office is a CECOM organization chartered by the CECOM DCG to manage the R2 suite of contracts. In order to manage the large number of customer requirements and awarded task orders, the R2 Electronic Contract Business System (R2ECBS) was developed. The tool provided the ability to: 1) Monitor and maintain all contract actions and task order requirements; 2) Serve as a repository for all documentation pertaining to contractual actions as well as internal office documentation; 3) Store and monitor Program Office financial matters through a budget application; and 4) Execute reports on all aspects of the organization. The tool was developed to expedite the task award process and ensure visibility of all contract actions. The first generation of the R2 ECBS was developed in Domino[6] by EDS (contractor) in 1998 for the first generation R2 Contracts. In 2003, the second version was built in Domino by EDS for the second generation of R2 Contracts. In 2006, work began on the second generation system to convert the application from Domino to SQL[7] and SharePoint. This conversion was performed by a contractor, Banc3. In 2008, the third revision of the R2ECBS started development in anticipation of the R2 third generation contracts.

In 2008, the third revision was brought on line with known issues and the Banc3 contact was not renewed. In 2009, development and remediation was transferred to Viatech contractors under a CECOM Software Engineering Center (SEC) contract and in 2010 further transferred to CECOM SEC Government employees matrixed to the Rapid Response Project Office. This Government team is now conducting sustainment of the existing R2 ECBS system. Sustainment includes addressing issues with the system as they arise and performing security and performance updates as mandated to meet DoD requirements. The R2ECBS web application is used by the R23G Project Office, Army Contracting Command-APG, CECOM Legal, R23G Prime Contractors, and all customers.

Today, the current R2 ECBS tool provides the office with the ability to view complete task history including all documentation, correspondence, and budget information. It integrates contractual actions with budget information and documentation, ensuring that all funding documents are accounted for and tracked to their respective task order/modification. It also maintains and associates task documentation to each contract action. Files associated with specific actions are held and accounted for per action, enabling streamlined tracking and efficient document retrieval when necessary.

The tool also includes the R2 budget application which tracks the R23G internal budget. The tool tracks incoming reimbursable fee down to each individual funding document and also tracks all outgoing expenses. Expenses paid from fees are linked to the fee received allowing for full accountability of funds from receipt as fee to payment towards an expense. The budget application also provides detailed reporting capabilities.

---

[6] Domino is a LOTUS Notes computer programming language

[7] SQL is a Microsoft software application used for configuring, managing, and administering data processing using both script editors and graphical tools.

In 2003, the total number of (Task Orders) was 187 for the total year with costs at $552 Million. By FY 2007 that number grew to 272 separate Task Order with a cost over $4.389 Billion dollars. The R2 office was concurrently managing over 2500 separate JOANs which made it impractical to track the costs and expenses associated with each individual JOAN. In August 2007, the R2 Project Office initiated a Fee Model study to ultimately assist them with customer pricing and to improve overall management of business operations. The fee model was in the process of being developed by a SEC contractor and funded through R2's SEC Functional Support Agreement. The fee model encompassed the analyses of many of R2's historical business records that include grouping cost elements, itemizing task order functions and estimating future workloads. The fee model also assessed different customer types and considers size by dollar value of contract obligations. The end state was to end up with a standard customer pricing model for like R2 work categories in the pre-award, award and post-award process of R2 business operations. The R2 fee model should have been ready for pilot testing in the April 2008 timeframe and expected to be implemented in FY 2009. The R2 Office did not accept new work beginning in January 2009 in anticipation of new ID/IQ contracts. However, protests and pending litigation prevented the office from conducting business and thus collecting fees. The resolution for the follow on contracts was delayed until July 2010. At the time of the complaint and subsequent investigation, the current business of the R2 Office had significantly diminished.

SUMMARY OF THE EVIDENCE OBTAINED FROM THE INVESTIGATION

The AR 15-6 IO conducted an exhaustive investigation of the six allegations referred by OSC to the Army. All of the witnesses germane to the allegations were interviewed by the IO. Each witness interviewed in the context of the AR 15-6 investigation was asked to respond to a set of questions developed by the IO to solicit specific information relevant to the whistleblower's allegations as well as the additional lines of inquiry requested by OGC. When required for completeness or clarity, some of the witnesses were interviewed several times. A summary of each witness's testimony relevant to the six OSC referred allegations and a discussion of each of the six OSC referred allegations in light of relevant testimonial and documentary evidence gathered during the investigation follow.

Director LRC(Retired), CECOM LRC Director (now SES Retired)

In his 19 February 2011 statement, Mr. Director LRC (Retired) testified that in 2008, he had requested that the G8 review the R2 project office fee collection and administration process as a management control initiative to ensure compliance with governing regulations. He stated that the G8 had indicated to him that the IR office would be better suited to review the areas of the process for setting rates, accounting of funds and accounting of operating expenses. He received the initial draft report [TAB G-1] from the CECOM LCMC IR office which indicated that the R2 project office was in compliance with guidance but that the CECOM G8 office did not agree with those findings, that the G8did not concur with the findings of the IR Office report and especially had issues with the issue of actual cost versus estimated costs. Further, the G8 had expressed the concern that:

"the cost management process of he R2 Office did not adequately track costs to actual customer accounts. The process the R2 Office had been following since its inception had always been adjustment on a quarterly basis. In order to satisfy the G8 concern we needed to track actual time versus each individual order. At this time, summer 2008, we were beginning the 're-compete' of the next generation of R2 contracts. Our focus in the R2 office was the recomplete and the "Time Tracking System" we had to invest in, in order to meet the G8's requirement for accounting to actual was put on the back burner. In 2009, we were not executing new delivery orders and our income bec[ame] constrained which eventually reduced the size of the office from 60 plus employees to approximately 25." However, in spite of the G8 concerns, Mr. Director LRC(Retired) testified that he believed the R2 Project was in compliance with the regulations, but felt the office "could always refine the business processes which was always our intent."

CECOM G8 (Retired), Director, CECOM G8, Resource Management (now Retired)
Mr. CECOM G8 (Retired) was the Director of Resource Management (G8) from 2005 until his retirement in 2011. Mr. CECOM G8 (Retired) provided two statements to the IO, dated 15 February 2011 and 9 October 2012. Mr. CECOM G8 (Retired) testified that the CECOM G8 office was charged with oversight of the reimbursable rate development process for CECOM entities which included the R2 Project Office under the LRC.

In his 15 February 2011 statement, Mr. CECOM G8 (Retired testified that as the G8 for CECOM LCMC, he advised the R2 Project Office that the fees they received were subject to the Economy Act. Thus, they could only keep expiring year customer funds to the degree that they actually performed the work and earned the order. If they could not fully earn the customer order by the end of the FY, they had to advise the customer of that fact and return any unearned funds. Consequently, Mr. CECOM G8 (Retired) stated the following:

> "[r]ecognizing the difficulties the R2 Office encounters in tracking billable hours, I have counseled them to determine a service level versus a flat fee. The service level would reflect the estimated level of effort required to execute and manage the delivery orders. I advised the R2 Office management that they must determine the cost of doing business to properly quantify their operating budget. They require a cost management system/process to track customer orders to the level of effort and bill their customers accordingly. At no point were they advised to establish a flat fee and charge their customers an unsubstantiated amount."
>
> When the IO asked Mr. CECOM G8 (Retired) specifically about what he knew about whether the fees collected by the R2 Office in FY 2007 were carried over to FY 2008, Mr. CECOM G8 (Retired) testified that he had "no direct knowledge of fees collected by the R2 Office being carried over" from FY 2007 to 2008. However, Mr. CECOM G8 (Retired) testified that the Army Audit Agency Report dated 23 February 2009 did find that "the R2 Office did return excess monies to their customers."

Mr. CECOM G8 (Retired) also testified that to the best of his knowledge, the R2 Project Office reimbursed for whole work years from the Acquisition Center and the Legal Office, both offices dedicating individuals "to work R2 efforts exclusively. They did not acquire DCSRM support." In his October 9, 2012 statement, Mr. CECOM G8 (Retired) stated that "[t]he typical CECOM reimbursable business model was based upon man years of services provided to specific customers, usually of an enduring nature e.g. logistic support, software support, PM matrix

support. The R2 office did not fit this typical [Army business] model" for providing logistics support, software support, and PM matrix support based upon man years of service provided to specific customers. Mr. CECOM G8 (Retired) stated that as a result, the R2 office compared its total operating budget to the anticipated customer orders it (the R2 program) projected to receive, which resulted in a percentage based rate. Further, he stated that for internal purposes, this rate/metric was then compared to other government agencies that operated a similar or comparable business enterprise. Additionally, this process did not authorize the R2 office to charge a flat rate fee based upon a broad budget projection. However, after the CECOM IR office assessment, the R2 Project Office requested G8 assistance in the development and execution of their budget. An Integrated Process team was set up to work within the unique R2 project issues.

Mr. CECOM G8 (Retired) also testified that his office reviewed the specific operational activities of the R2 Project Office to assist with providing recommendations which were provided to the R2 Office for consideration. Mr. CECOM G8 (Retired) pointed out that the R2 office collected funds from customer orders that provided reimbursable orders through the program and that the office had internal labor charges, contract labor charges for the supporting contracting center, legal support, and Information Technology refresh. However, Mr. CECOM G8 (Retired) stated that based on his office's review of the R2 operations, his main recommendation was focused on addressing carry over funds, an issue he discussed in greater length in his earlier 15 February 2011statement where he acknowledged that he had "no direct knowledge of fees collected by the R2 Office being carried over" from FY 2007 to 2008 and that the Army Audit Agency Report dated 23 February 2009 did find that "the R2 Office did return excess monies to their customers."

Lastly, Mr. CECOM G8 (Retired) discussed his perceptions of the CECOM LCMC Internal Review Report 4-A-08 in both of his statements. In his 15 February 2011 statement, Mr. CECOM G8 (Retired) stated that some of the draft recommendation of the IR Report were not accepted by the G8 specifically citing that the flat fee for service business process was not accepted and that the G8 recommendation was that the level of effort should be factored into the fee for service determination. In his October 9, 2012 statement, Mr. CECOM G8 (Retired) further elaborated on this point by testifying that, in his opinion, the draft IR Report 4-A-08 was not put in final because the G8 office disagreed with some of the CECOM IR office recommendations, and as a result, the IPT was created to address and reconcile those issues. However, Mr. CECOM G8 (Retired) stated that in his view, the Economy Act was the "driving document" which authorizes federal agencies to order goods and services from other federal agencies and to pay the cost he performing agency incurs to provide those goods or services, and to that end, his opinion was that the level of effort of the work provided should be factored into the fee for service.

Former Project Manager, R2 Project Office, Program Manager/Project Officer, Rapid Response Project Office

In two statements dated 22 February 2011 and 26 October 2012, Ms. Former Project Manager, R2 Project Office testified in detail regarding the R2 Project Office's fund management process. In her statement of 22 February 2011, Ms. Former Project Manager, R2 Project Office stated that the R2 Project Office had an established process to track customer expenses and "always ensured

that we had the documented approval in hand. The Economy Act allowed the R2 Office to charge for services provided we did not collect fees in excess of our actual expenses, or in other words, make a profit." She stated that her office accepted funding in two ways, as direct cite and reimbursable and were generally provided by separate funding documents or through the Military Interdepartmental Purchase Request (MIPR) process. Ms. Former Project Manager, R2 Project Office stated that the direct cite funds were obligated on contract and the reimbursable funds were used to pay for the services provided by the office of the customer. Each MIPR was properly annotated by the customer providing the funds with the required Economy Act Statement. Upon receipt, the R2 Project Office assigned a Job Order Account Number (JOAN) which would enable the office to track costs associated with that funding document. The reimbursable JOANs were only used to cover the expenses of the R2 Office for "the cost of doing business" or providing the service while the direct cite JOANs were obligated on contract to acquire the product or services requested by a particular customer. Ms. Former Project Manager, R2 Project Office also stated that pursuant to CECOM G8 guidance, at "[e]ach quarter during the fiscal year, we reconciled the actual workload versus the actual expenses and adjusted our fees accordingly...with a memorandum for record."

On this mode of payment matter, Ms. Former Project Manager, R2 Project Office further elaborated on how her office accepted payments in her 26 October 2012 statement where she testified as to where she received funding for the level of effort reimbursed for those who provided support services to the R2 Office:

> "The contractor support was moved to a FFP[8] contract by the Acquisition Center in 2006 or 2007. Since it is a FFP contract, there is no method by which to determine costs per man year for the contractor support...The work was based upon historical estimates. For the support we received from the other government organizations – from legal we were reimbursed two to two and half GS-14 lawyers, I believe. From the AC [Acquisition Center], we had three contracting officers (GS-13s), a branch chief (GS-14) and their teams which were a mixture of GS-7s thru 12s and 1 or 2 SCEPS.[9] I am not exactly sure of the breakout, but it would be on the SLAs...[10].All direct cite money was placed on an R2 contract to support the customer's mission. All fees was collected and put into a reimbursable account. The reimbursable account paid all the R2 expenses. Some of the reimbursable JOANS were used for Government payroll and some were placed onto the R2 support contract (using a reimbursable JOAN) for the contractor support....We had a SLA with each organization each FY, that outlined the type of services and level of effort that was to be provided and the associated cost. This was negotiated each year based on projections and historical levels of efforts."

Ms. Former Project Manager, R2 Project Office also stated that there was never a concern with keeping separate the workload being funded by reimbursable funded versus appropriated funded sources. She stated that "[w]e had tremendous oversight and transparency into all of our process and strict controls regarding the money," and that the R2 program covered its expenses only and its costs "were always minimized to keep the fee low." She further stated the following:

---

[8] "FFP contract" is a "firm fixed rice contract."
[9] "SCEPS" is the "Student College Education Program students."
[10] "SLA" is "Student Learning Agreements."

"The most critical aspect of the R2 Office was the Integrated Data Environment (IDE). The IDE was the pulse of the organization. It contained different modules to t rack the work of the various areas—business development, pre-award, post-award, closeout and budget. The budget module was one of the last modules to be implemented, but was extremely effective. The IDE was able to track the MIPR number, the JOAN number, date, amount and what task order the direct cite work was placed on and what the JOAN was used against. For each of these areas, there were SOPs, a to-do list with appeared for each employee and clean up reports to check on date integrity. The IDE was used 24/7 by our customers and the R2 staff. It was the key to efficient management of such a large program. In addition, the R2 Project Office spent a lot of time developing, documenting and improving its business practices. During my time, there were approximately 3 green belt projects and 1 black belt project to improve the efficiencies of the internal processes...There was a contact effort to improve all of our systems and there were ongoing improvements in all areas of the IDE There is no doubt in my mind that the system was the best tool available. My perspective is that it was sufficient to meet the requirements of the Economy Act and gave appropriate control and also appropriate insight into the expenditures of the program. The IDE was a tremendous tool that allowed us to track all the financial information and all of the contracting actions."

In her 22 February 2011 statement, Ms. Former Project Manager, R2 Project Office stated that with respect to the CEOCM LCMC Internal Review Office review of the R2 Office business practices, Ms. Former Project Manager, R2 Project Office testified that she was pleased with the review and that her office's effectiveness was enhanced with follow up actions as a result of the Internal Review Office review, wherein she testified in greater detail:

> "The review went well. We provided comments to the report. Mr. Director LRC(Retired) was briefed on the results of the review. As a result of the review we learned there was a difference of opinion between the G8 and the legal office as to what satisfied the intent and spirit of the Economy Act with regard to actual costs. The G8 interpretation was that time tracking was necessary for each element of expense versus each individual JOAN, of which there were hundreds. The legal opinion was based on case law and GAO findings established that there is some flexibility in applying the actual cost standard as long as there is reasonable assurance that the performing activity is not augmenting its appropriation. As the R2 Office was a 100% reimbursable organization, we clearly were not augmenting our appropriation. However, we did establish an IPT to resolve the G8 issues and provide them the assurance that the office was in full compliance."

Lastly, Ms. Former Project Manager, R2 Project Office at the end of each fiscal year, unused expiring year funding was returned to the customer and followed the G8 advice with regard to the carryover of other multi-year appropriations. With that precise accounting methods utilized by the R2 Office, Ms. Former Project Manager, R2 Project Office reflected that there were specific signed functional support agreements in place with the Acquisition Center and the CECOM Legal office to provide dedicated support. Moreover, the support agreements had the dedicated support personnel identified by name.

(Former) Team Lead Program Analyst R2 office, Program Analyst Team Leader, Rapid Response Project Office

Ms. (Former) Team Lead Program Analyst R2 office provided testimony in her 19 January 2011 statement. She testified that her program analyst team received all incoming funds and assigns JOANS for the reimbursable funds. The direct cite funds were applied to the contract. In performing this duty, the team adhered to the DoD Financial Management Regulation (FMR), Volume 11A, Chapter 3, regarding Economy Act Orders, to ensure that each MIPR was correctly completed by the customer including the Economy Act statement, and to ensure compliance with expiration dates on the documents they received.

Ms. (Former) Team Lead Program Analyst R2 also testified that all customers were charged according to her office's actual expenses, with a quarterly fee adjustment based on the amount of business versus actual expense. Further, each quarter, her office would send each customer a memo notifying them of the revised fee each quarter. Ms. (Former) Team Lead Program Analyst R2 office further elaborated that her office had agreements with various elements of the CECOM LCMC and the Acquisition Center. With respect to the Acquisition Center, their support agreement covered 21 people who were dedicated 100% of their time to the R2 Office work which at time, included overtime work if it was necessary due to the workload. The funding document specified that the money was to be used "exclusively to support R2 work." Lastly, Ms. (Former) Team Lead Program Analyst R2 office testified that she was aware that the CECOM Internal Review Office conducted a review of the R2 Office which was in the process of trying to develop a fee collecting model based on man-hours. She stated that neither G8 nor the Internal Review Office was able to provide a solution which resulted in a review being requested by Mr. Director LRC(Retired) to address this matter. Further, Mr. Director LRC(Retired) was briefed on the results of the Internal Review's efforts in an exit briefing b the Internal Review Office.

CECOM ATTORNEY, CEOCM Legal Office,

Mr. CECOM ATTORNEY supported the lead CECOM Attorney for the R2 Project office. Mr. CECOM ATTORNEY provided a statement dated 4 October 2012. He stated that he did not work full time on the R2 Project Office effort and would only work on the project if the primary/lead attorney was not available. Mr. CECOM ATTORNEY testified at length of the concept referred to by some CECOM employees as a "flat fee." At the outset of his interview, Mr. CECOM ATTORNEY stated that the use of the "flat fee" term was "not the best term to use. Rather, R2 used a fee structure." He further explained that R2 had historically used a percentage of the issued task orders to recoup program costs and the percentage was adjusted periodically. In that manner, they would "use historical data, based on past experience, to forecast the actual cost/fee to be charged for certain services." Mr. CECOM ATTORNEY described n detail the efforts undertaken by the R2 Office to develop a Software Engineering Center software tool to track each person's time/effort on a specific order. When the R2 office was putting in place a process to move away from the percentage based fee structure it had used in the past, the Internal Review and legal offices had meetings He stated that the CECOM legal office gave what could

be best considered as "guidance" and not a legal opinion as to "how GAO interpreted the 'actual cost' phrase of the Economy Act."

Mr. CECOM ATTORNEY stated that he was asked by Ms. Former Project Manager, R2 Project Office via an email dated March 6, 2008 to "update a legal position" that had been issued by a previous CECOM Chief Counsel, Former CECOM Chief Counsel(undated). Mr. CECOM ATTORNEY did advise Ms. Former Project Manager, R2 Project Office that the FORMER CECOM CHIEF COUNSEL written position was still "valid from a legal perspective" and that the "Economy Act has not changed, you can charge actual costs (direct/indirect) (reasonably estimated), but you cannot use these reimbursements to augment the Agency's appropriations." Mr. CECOM ATTORNEY testified that afterwards, that his legal position transmitted back to Ms. Former Project Manager, R2 Project Office by email resulted in a subsequent written validation in a memorandum signed by Mr. FORMER SPECIAL ASSISTANT TO CECOM CHIEF COUNSEL but authored by Mr. CECOM ATTORNEY which included updated case law. In his interview with the IO for the instant AR 15-6 investigation, Mr. CECOM ATTORNEY stated that the updated legal position which was issued by Mr. FORMER SPECIAL ASSISTANT TO CECOM CHIEF COUNSEL(dated 31 March 2009) contained case law was still current as of the time of his interview with the AR 15-6 IO. Further, with respect to the 31 March 2009 legal office memorandum, Mr. CECOM ATTORNEY stated that he did consult with the CECOM Legal Office Fiscal Law expert, Ms. FORMER CECOM ATTORNEY to assist him in formulating the legal office position. However, Mr. CECOM ATTORNEY made clear that the CECOM Legal office has never been asked to render a formal opinion on whether any transactions involving the R2 Office were in violation of the Economy Act or the Anti-deficiency Act.

With respect to the Economy Act and its application to business enterprises such as the R2 Office, Mr. CECOM ATTORNEY commented that "[t]he Economy Act doesn't require exact precision in the calculation of actual costs for each task order. The GAO Red Book supports not requiring such precision, although the calculation needs to e a reasonable approximation, based on valid data, and you must ensure agencies are not augmenting their appropriation."
Lastly, the IO asked Mr. CECOM ATTORNEY to address the merits of the Internal Review Office review effort to review the R2 Project Office's business practices with respect to the fees. Mr. CECOM ATTORNEY was familiar with that effort. Again, he emphasized that the use of "flat fee" was not the best term to use for fees for the "fees were to be set up to recoup actual costs based on types of work and historical data." Though he acknowledged that the G8 position was that the Economy Act had been violated by the R2 Office, the G8 Office failed to cite to any specific law, regulation or policy for its position and for non-concurring with the CECOM Internal Review findings and recommendations. On the other hand, Mr. CECOM ATTORNEY commented that the legal positions issued by the CECOM Legal Office were based on a discussion of the Economy Act and supporting case law reviewed by the Legal Office. Based on those authorities, he opined that:

> "using a historical basis for determining actual costs/fees is an allowable practice under the Economy Act. The fees need to be closely connected and based on the historical data. The R2 Office did not have a good handle on the charging of actual costs because all orders were charged the same percentage fee, but R2 was moving to remedy this. I cannot

comment specifically on past practices and any violations, but they were trying to figure a better way to do this."

CECOM IRAC Lead Evaluator, Lead Evaluator, CECOM Internal Review Office

Mr. CECOM IRAC Lead Evaluator provided two statements during the investigation dated 19 January 2011 and May 25, 2011. [TABS H-1, 9 January 2011; and H-2, 25 May 2011]. Mr. CECOM IRAC Lead Evaluator was the lead investigator within the CECOM Internal Review Office who worked with Mr. CECOM IRAC Evaluator on the R2 Project office review. The audit review was based on the guidelines and objectives from Director LRC(Retired), the CECOM LRC Director, and Former Project Manager, R2 Project Office, Program Manager/Project Officer, R2 Project Office, who were working with the R2 Project. Mr. CECOM IRAC Lead Evaluator stated that "Dan and I got together some audit objectives and then we had an entrance conference with at the time I believe it was Sandy Former Project Manager, R2 Project Office and Deputy R2 Project Officer. And they gave us a little background on the R2 operations. I was completely unfamiliar with the operations to that point. Other than just some basic knowledge about it."

In his 19 January 2011 statement, Mr. CECOM IRAC Lead Evaluator stated the following: "CECOM IR Evaluator and I, I have to say in the context of reviews; it was a great review. We were all over it. We solved the review. The only disappointment was that I couldn't ever get it fixed. That was my big disappointment. I couldn't ultimately fix the situation.. . .What happened was, we concluded at the end of the review and based on an opinion from CECOM G8 (Retired) and input from Legal that indicated the R2 office was operating in violation of the Economy Act. I looked at it, Sect 1535 of the Economy Act. Originally what we were saying in this report was to review the rate quarterly and adjust accordingly. Then we asked both legal and G8 CECOM G8 (Retired) if they were fine with that. We got a non-concurrence from George telling us that it is in violation of the Economy Act. We went and we looked and sure enough it was. It was a violation of the Economy Act. At that point, what we did was where it was a violation was that R2 was not properly reconciling their customer orders on an individual basis, hence they were not properly accounting for customer funds. You know we did quite a bit of work and they were properly accounting for everything they just were not in compliance with the Economy Act. There wasn't anything funny with that all the money was there and it was all being accounted for in SOMARDS. The issue was that they weren't tracking it on a customer to customer basis. And that is what is required in the Economy Act. And . . . well let me just step back. What they would do is a customer would come to them and request their services. R2 would say Ok it's going to cost you a million dollars for this type of services and by the way we are also charging you a 2, 3, or 4, I think the range went as high as 7% in some cases. We did a statistical sample and the highest was I want to say 7%. So anyway the customer would usually say fine and issue R2 MIPRS and they would get it on contract. The way it is supposed to work is there is supposed to be accounting similar to what I would call a legal arrangement for the costs outside of the contract costs meaning the costs associated with the R2 office where it is on a fee basis. In other words you have to charge your hours out to each job. And they weren't doing that at R2. Everything went into a big pool. And they used their expenses according to the color of money that it was. In other words if the money was getting set to expire, they would utilize those funds first. For ongoing operations and then if they had money that was 2- or 3-year

money they would leave that money on the books because there wasn't an urgency to spend it. Ok so that's where they got fouled up because what they are supposed to do is they are supposed to track it one-on-one by customer and then at the end do a reconciliation . . ., they can charge a fee, there is nothing wrong with that as far as I know, but what they've got to do, they've got to track it on a customer-by-customer basis and at the end have a reconciliation process and say OK customer, we're done with you, you owe us X or here is X back. And that's what they didn't do. And that's the violation of the Economy Act."

Mr. CECOM IRAC Lead Evaluator further testified that when MIPRS are issued, they are supposed to be stamped or annotated as being in compliance with the Economy Act. The sender stamped the MIPR and the receiver had to stamp it accepting the request. All of the MIPRS that were reviewed in the R2 Project office audit were stamped as Economy Act Compliant. Mr. CECOM IRAC Lead Evaluator stated that the appropriate tracking by customer-by-customer basis was never corrected because Mr. Director CECOM IRAC Office, the CECOM IR Director, and, , the Senior IR evaluator for Reviews, decided not to issue the report and "essentially they looked the other way and allowed R2 to operate in violation of the Economy Act. In hindsight I believe they may have done this for personal gain." Mr. CECOM IRAC Lead Evaluator believed that there was "an inappropriate relationship" between the two individuals. Further, Mr. CECOM IRAC Lead Evaluator stated that both Mr. Director CECOM IRAC Office and Mr. Senior IR Evaluator for Reviews received promotions just as he (Mr. CECOM IRAC Lead Evaluator) was pressing to issue the report stating that the R2 Project was operating in violation of the Economy Act. Mr. CECOM IRAC Lead Evaluator was frustrated because it seemed that his superiors were thwarting his attempts to either fix the problem or report it to AMC to bring pressure on the CECOM Leadership to fix the problem.

Mr. CECOM IRAC Lead Evaluator stated that an "ad hoc" group of individuals led by the G8 to resolve the matter but he felt that it was not a serious effort. Mr. CECOM G8 (Retired) and the head of the Legal office were involved and at one point Mr. Director LRC(Retired) was outbriefed but the outbrief did not "have all the information," and Mr. Director CECOM IRAC Office "opted to not inform anyone of the Economy Act violations" because he "was more concerned with the BRAC move" to Aberdeen Proving Ground, MD, selling his New Jersey residence, and applying for the BRAC Housing Assistance Program rather than doing what Mr. CECOM IRAC Lead Evaluator felt was the right thing to do.

Mr. CECOM IRAC Lead Evaluator also testified that he believes he received a poor annual performance rating and a reduced performance award as a result of his voicing his concerns. Further, when Mr. Director CECOM IRAC Office failed to issue a final report, Mr. CECOM IRAC Lead Evaluator sent an e-mail to the CECOM Chief of Staff in July of 2010 outlining his dissatisfaction with the failure to issue the R2 project office report. He felt that this was in violation of AR 11-7 and that he had "fiduciary responsibility" to disclose anything illegal or if you suspect something is illegal or involves fraud, then you must disclose it or issue a report and "indicate that the violation was a command material weakness. It would then have to go to the Command General." In August, Mr. Director CECOM IRAC Office, came to Fort Monmouth from Aberdeen Proving Ground and gave Mr. CECOM IRAC Lead Evaluator a disciplinary and performance write-up as to Mr. CECOM IRAC Lead Evaluator's perceived shortcomings. In October, Mr. CECOM IRAC Lead Evaluator received a "3" for his TAPES performance rating

but he believed that he should have received a '1'[11] rating. At the time Mr. CECOM IRAC Lead Evaluator stated he was pursuing redress on this issue through the personnel channels. Mr. CECOM IRAC Lead Evaluator also stated that even though there was a reimbursement "Functional Support Agreements" between the R2 Office and the Acquisition and Legal offices, R2 never accounted for the true work being done by those offices and "they never accounted for that stuff." What they were doing essentially is augmenting CECOM's budget. So CECOM didn't have to seek funding for 40 contracting officers and I think it was 3 or 4 man-years of legal....That's part of the violation. You can't do that."

In a supplemental statement dated 25 May 2011 [TAB H-2, 25 May 2011], Mr. CECOM IRAC Lead Evaluator also stated that about the time the R2 review was occurring, the AAA had requested to include the R2 Office as a candidate for review under its audit procedures. AAA had scheduled this audit and was seeking to make arrangements to come to CECOM to conduct their fieldwork. Mr. CECOM IRAC Lead Evaluator testified that Mr. Director CECOM IRAC Office sent AMC IR and AAA a request "persuading them not to look at" the R2 Project as a part of their review because the CECOM IR office had the R2 Project "under control and that everything was fine in R2 that they were returning monies to their customers, etc.," further asserting that the statements Mr. Director CECOM IRAC Office provided were "inaccurate and misleading." Mr. CECOM IRAC Lead Evaluator further asserted that:
"Director, CECOM IRAC Office received a copy of the draft report from AAA in September 2008 soliciting comments on the accuracy of the draft report. This is clearly after we knew that R2 was operating illegally and in violation of the economy act as outlined in the July 2008 opinion we received from G8. I assume Director, CECOM IRAC Office didn't provide any comments to the draft report because the inaccuracies he initialed provided to AAA were in the final public report. So there is e-mail from Director, CECOM IRAC Office persuading AAA to not review R2 fees and providing false or misleading information to AAA about the R2 operations. Then there is e-mail to Director, CECOM IRAC Office via AAA draft report soliciting comments as to the accuracy of the R2 operations. Then you have a final AAA public report in print clearly inaccurate as to the R2 operations. This is very disturbing?" [TAB H-2, 25 May 2011].

CECOM IRAC Evaluator, Evaluator, CECOM Internal Review Office

Mr. CECOM IRAC Evaluator, along with Mr. CECOM IRAC Lead Evaluator, was one of the two investigators on the CECOM IR review team of the R2 Project Office. He provided a statement dated19 January 2011. [TAB I, 19 January 2011]. The objectives for the review were set by the requestor in this case it was the CECOM G8 office. As the review progressed it was apparent that the R2 office used a reimbursable method that was outside the G8 approved method, using a percentage of contract obligations as its "means of charging a fee for services." Mr. CECOM IRAC Evaluator testified that he "determined that R2 carried over approximately $8 million in fee money from the prior year. We sought G8's and legal's advice to determine how much carryover was allowed. It was this questioning that brought us to the Economy Act and the differing interpretations of it." The G8 office believed this reimbursement method was inaccurate and disagreed with the CECOM legal opinion which stated that R2 could continue to

[11] Under the rating system for performance evaluations in operation at the time, the Army performance program was knows as the "Total Army Performance Evaluation System" or "TAPES". The "top block" is the number "1" with lesser overall ratings being progressively lower to the bottom rating of "5"..

operate in its current manner. An IPT was formed by the G8 to review the issue and the IR office participated in that review process which included a contractor to develop a pricing model. Mr. CECOM IRAC Evaluator testified that he eventually moved on to the next audit and lost track of the R2 initiatives. Additionally, Mr. CECOM IRAC Evaluator testified that the objectives of the review are usually set by the customer, who in the instant case regarding the R2 review; it was the G-8 who asked the CECOM IR Office to look at the reimbursable rate process used by the R2 Project Office. He participated in drafting the original report but was also aware that the final report was not issued. He stated that the normal process for issuing a report is that they issue a report whether the report is "good, bad or indifferent." Mr. CECOM IRAC Evaluator stated that the IR office develops findings relative to the objectives of the audit and makes recommendations. The entities involved are given a copy and permitted to concur or non-concur and comment on the findings.

Lastly, he was aware that the AAA had issued a report on appropriate fee schedules which was the same subject as the CECOM IR report involving the R2 Office. He agreed with the AAA report that stated that the use of percentage fees was not an appropriate way to conduct business. However, he was also aware that his office informed AAA that they were evaluating R2 and that it was not necessary for the AAA to come to CECOM to review the R2 Project Office fee schedule. Nevertheless, he asserted that his office should have issued a report "to tell the story and have the situation rectified" especially since the R2 Office was "collecting a significantly greater amount of money than it needed to operate."

Director CECOM IRAC Office, Director, CECOM Internal Review Office

Mr. Director CECOM IRAC Office provided four lengthy statements in testimony to the IO. His testimony is very detailed and provides a complete and comprehensive discussion of the issues that surrounded his office's review of the R2 Project Office fee system. Given each statement's length, I have included his complete statements as exhibits to this Report [TABS J-1,13 January 2011; J-2, 25 March 2011; J-3, 4 October 2012; and J-4, 9 January 2013] but have only highlighted below portions of his testimony that are representative of the numerous issues that he addressed in his statements.

At the time of the Audit review of the R2 project, Mr. Director CECOM IRAC Office was the Director of the CECOM IR office. He still holds that position. The Senior Executive Service Director for the Logistics and Readiness Center, Director LRC(Retired) had asked the G8 to review the R2 Office reimbursable rates. Mr. Director CECOM IRAC Office explained that: "Before proceeding there were discussions between G8 and IRand CECOM G8 (Retired) (Chief of G8) thought the review would be better suited in the IR Office and turned it over to us. Dave Director LRC(Retired) then came forward with an official request to have my office look at how the R2 Office set its reimbursable rates. The R2 Office is like a contract administration office. At the time they had eight service contracts in place good for a period of five years. If someone comes to R2 and requests these contractual services and or equipment, they had the ability to award contracts within 21 days. The Contracting Officers and Specialists working for the R2 office were from what is now the CECOM Contracting Center. Their labor is totally reimbursable and they were dedicated to R2 full time." [TAB J-1, 13 January 2011]. Mr. Director LRC(Retired) requested the CECOM IR review of R2 Office reimbursable rates on 2 January 2008. Mr. CECOM IRAC Lead Evaluator and Mr. CECOM IRAC Evaluator were

tasked to perform the review.[12] Mr. Senior IR Evaluator for Reviews took over as the team lead towards the end of the field work portion of the review. This was a regular review pursuant to AR 11-7 guidelines. All the fieldwork was completed by the IR team. The review was never terminated. After his office issued the draft report, an IPT was formed because there was a question as to the best way to account for the R2 Office fee charges. Mr. Director CECOM IRAC Office suggested that what was needed was "a real good time keeping system. I don't think ATAAPS can handle that but I'm sure there is some kind of software out there on the open market that records time keeping. We have something in our office in Internal Review called IRMS (Internal Review Management System). We have to keep track of all our time that is charged to a particular review." [TAB J-1, 13 January 2011].

An exit briefing was provided to Mr. Director LRC(Retired) in March 2008, including the results of the IR Review, and recommendations to the LRC directors and the CECOM G8. The G8 non-concurred with the IR recommendations. The G8 felt that it was necessary for the R2 office to document actual expenses incurred for each customer and charge each customer accordingly. Mr. Director CECOM IRAC Office stated that because of the IPT's efforts, he never issued a "formal" final report. However, he stated that the e-mail he sent to Mr. Director LRC(Retired) on 21 August 2008 became the "informal" final report to Mr. Director LRC(Retired), the customer. Mr. Director CECOM IRAC Office stated that he did not think that Mr. Director LRC(Retired) "liked my answer (I had reiterated what CECOM G8 (Retired) had provided me with his response to our recommendations). But at least Mr. Director LRC(Retired) knew what his R2 Office had to do to be in compliance with the Economy Act." Mr. CECOM G8 (Retired) had been concerned with the calculations of the fees being charged to the customer which Mr. CECOM G8 (Retired) thought was fine to estimate how much to charge a customer in the beginning but you would still have to calculate how much it cost you to do the work for a particular contract and then go back to the customer and reconcile the final fee. Mr. Director CECOM IRAC Office thought would be solved by introducing a new software system to determine those calculations. AR 11-7 indicates that a final report can be released through informal communications and Mr. Director CECOM IRAC Office considered the e-mail traffic to constitute sufficient informal means of transmitting the final report. Also, Mr. Director CECOM IRAC Office stated that it is not unusual for his office not to issue final reports and just issue draft reports.

Mr. Director CECOM IRAC Office stated that regarding the "informal" final report that he issued to Mr. Director LRC(Retired), Mr. CECOM IRAC Lead Evaluator:

> "probably never realized that the email served as our final report. Also, it was or policy (from my previous director) that all reports would be issued to the customer who requested the review. It never went any higher unless there were major issues. I didn't feel that the results of our review were major. Paragraph 5-2 of AR 11-7 (dated Oct 2007) states 'Different forms of reports include formal written reports, memorandum, briefing slides, or other presentation materials' while paragraph 5-2b states 'The purpose of review reports are to (1) Communicate the results of reviews to those charged with governance, the appropriate officials of the review entity, and the appropriate oversight

[12] Mr. Director CECOM IRAC Office pointed out that his office staff are not auditors. They are classified as Accountants (Internal Review Evaluators), a distinction made by the Army relative to the personnel in the Internal Review Offices versus auditors who are in the AAA.

officials.' Mr. Director LRC(Retired) was the appropriate official of the reviewed activity while Mr. CECOM G8 (Retired) was the appropriate oversight official when it came to funding polices. Periodic updates from May 2008 through July 2009 were provided to CECOM Chief of Staff, who was the CECOM Chief of Staff at the time of the review. Also, I informed , the AMC IR Director that my office had been working on a review of the R2 Office. In hindsight, if we were to do this review again, I would make sure that I and the IR team met with the Director of G8 during the fieldwork phase of the review and get her viewpoints/decisions when it came to charging a flat percentage fee. I would also research other audits that covered the same subject to determine if there were any precedents already established." [TAB J-3, 4 October 2012].

Mr. Director CECOM IRAC Office testified in detail as to the role of the AAA and his office's review of the R2 Office fee charges. He stated that at no point did he mislead of provide incorrect information to AMC, or the Army Audit Agency. Mr. Director CECOM IRAC Office detailed what happened when the AAA contacted his office regarding the R2 fees and return of funds by the R2 Project Office. Mr. Director CECOM IRAC Office was particularly focused on what Mr. CECOM IRAC Lead Evaluator included in this draft report on this matter. Mr. Director CECOM IRAC Office emphasized that:

"As the Director of the Internal Review Office, I rely heavily on my evaluators' assessments and information that they gather during their reviews I did not know anything about R2 returning funds until Messrs CECOM IRAC Lead Evaluator and CECOM IRAC Evaluator told me. Mr. CECOM IRAC Lead Evaluator used his professional judgment when he didn't include the returning of funds into drafting the audit report. Paragraph 3.33 of the GAO Yellow Book Standards (dated July 2007) states "Using the auditors' professional knowledge, skills and experience to diligently perform, in good faith and with integrity, the gathering of information and the objective evaluation of the sufficiency and appropriateness of evidence is a critical component of audits. Professional judgment and competence are interrelated because judgments made are dependent upon the auditors' competence." If the allegation is that the information was erroneous, then I would question Mr. CECOM IRAC Lead Evaluator's professional judgment and competence. Chapter 3 of AR 11-7 also deals with "Professional Judgment" and states that "Professional judgment includes exercising reasonable care and professional skepticism. Reasonable care concerns acting diligently in accordance with applicable professional standards and ethical principles, Professional skepticism is an attitude that includes a questioning mind and a critical assessment of evidence. Professional skepticism includes a mindset in which evaluators assume neither that management is dishonest nor of unquestioned honesty. Believing that management is honest is not a reason to accept less than sufficient appropriate evidence: If R2 management (I believe Ms. Former Project Manager, R2 Project Office made a similar statement in her testimony) had stated that they return funds to their customers, I, as an evaluator having professional skepticism, would have asked for documentary evidence of funds returned. I reviewed the workpapers that we have on file for our Review of the R2 Office; I could not find any file with such evidence (e.g., a Military Interdepartmental Purchase Request (MIPR)). I did find one workpaper that contained a spreadsheet that mentioned that funds were returned but no additional documentation to support that comment. In June 2008, I received a telephone call from Mr. AAA Auditor, AAA, about

the AAA Audit. I told Mr. AAA Auditor, that my office had spent the last three months looking at R2's reimbursable rate and whether *it* was appropriate. The review was requested by Mr. Director LRC(Retired), an SES and the Director of the CECOM LRC. The LRC has overall responsibility of the R2 Office. Mr. Director LRC(Retired) had wanted to make sure that the R2 Office was charging their reimbursable rate per appropriate regulations/statutes. We had determined that the rate is based on R2's forecasted income and expenses over the course of a fiscal year and the best way that they could charge the customers were through a flat rate. We also recommended that the R2 Office review their income and expenses on a quarterly basis and adjust their rate if appropriate and have it approved by the G8 Office. To do another review in this area would duplicate what my office had done plus affect the R2's workload in having to deal with another audit agency audit I suggested to Mr. AAA Auditor that AAA can come and look at our workpapers or we could send our entire set of workpapers to them since they were paperless. I sent an email message on 2 June 2008 to Messrs. Director LRC(Retired) and CECOM G8 (Retired) about my conversation with AAA. In the email message I mentioned that I sent a separate email message to, the HQ AMC IR Director (at the time) with the same information. It was during my telephone conversation with Mr. AAA Auditor that I mentioned about R2 returning some of the funds back to their customers. Although I offered to provide our workpapers on our review of the R2 Office, AAA never contacted me for them. AAA did include in their audit report that they had contacted my office and that we bad done a review of the R2 Office's rates. From my discussion with Mr. AAA Auditor, it was revealed to me that AAA was trying to determine what activities arid how many activities were charging flat fees and the applicable statutes that governed the flat fees I conveyed my discussion with Mr. AAA Auditor to the IR team (Messrs. CECOM IRAC Lead Evaluator and CECOM IRAC Evaluator) performing the review of the R2 Office." [TAB J-4, 9 January 2013].

Also, Mr. Director CECOM IRAC Office discussed the issue of whether or not the R2 Office was refunding costs in 2007 and 2008 as well as what the CECOM IR review team's findings were and what actions were taken by the R2 Office to address the concern with the Economy Act or Ant-deficiency Act. Mr. Director CECOM IRAC Office provided the following comments on this matter with respect to the issue of the R2 Office returning funds to their customers:

"The information (returning funds) originated from an informal discussion that I had with Messrs. CECOM IRAC Lead Evaluator and CECOM IRAC Evaluator during their review of the R2 Office. As the director of the Internal Review Office, I rely heavily on my evaluators' assessments and information that they gather during their reviews. Information gathered during the review phase is often discussed with me in a formal setting, as well as, an informal setting. When we start any review, we research the appropriate statutes, regulation and local policies that pertain to the area that we are reviewing. In the case of the R2 Office charging fees, there are local and Army regulations, as well as, the Economy Act. The local reimbursable rate policy includes the same and other regulations such as the Economy Act. So when did we know about the Economy Act? We should have realized that the Economy Act would be applicable to our review at the onset of our review (approximately mid January 2008). In addition, Mr. CECOM IRAC Lead Evaluator received an email (on 20 March 2008) from Ms Former Project Manager, R2 Project Office which stated "Here is the re-validation from

.legal on the Economy Act." Attached to the email me sage was the legal opinion covering "Fee for Service Charges". Mr. CECOM IRAC Lead Evaluator prepared the initial version of the draft report. There was no mention of the Economy Act because Mr. CECOM IRAC Lead Evaluator did not consider it to be an issue with the R2 Office. Otherwise, he would have written a paragraph on how the R2 Office was violating the Economy Act. And I would have seen it in the report when I reviewed the draft report. In addition, Mr. CECOM IRAC Lead Evaluator wrote in his initial version of the draft report (Results paragraph of Objective B) "In addition, we examined the R2 legal and acquisition expenses paid during FY 2007 and were also able to accurately identify those expenses in SOMARDS. As a result, we are confident the R2." In the subparagraph titled "'FY 2007 Contract Obligation", Mr. CECOM IRAC Lead Evaluator wrote "The R2 Project Office also provided us with documentation to verify that R2 and G8 personnel were conducting joint reviews and reconciliations of open contract obligations on a quarterly basis. Based on our analyses and support documentation obtained we determined that the R2 office is properly accounting for all customer contract obligations and their associated reimbursable fees." In the subparagraph titled "FY 2007 Operating Expenses", Mr. CECOM IRAC Lead Evaluator wrote "Based on our analyses and documentation received we determined the R2 office is properly accounting for their operating expenses."

In the subparagraph titled "FY 2006 Carryover Fees", Mr. CECOM IRAC Lead Evaluator wrote "Although R2's $8.4 million carryover in FY 2007 is in excess of two quarters, personnel told us the excess carryover was due to prior year fourth quarter expenses that didn't occur. The R2 Project Office is operating in a dynamic business environment that doesn't always allow for immediate management of income and expenses during a given period. In our opinion, R2 personnel are actively and effectively managing their business operations given the climate in which they operate. Guidance regarding the amount of funds reimbursable activities can carry over from fiscal year to fiscal year is generally vague." In an email message (dated 29 April 2009) from Mr. R2 ADMIN SUPPORT COST IPT Leadk (G8 Office), he states "In the attached memo R2 has indicated that G8 has answered all of its questions and understands G8's requirements. Therefore, temporarily this IPT does not have to continue meeting. As you can see from the attached memo R2 is in the process of updating its fee estimation model and ordering new software. This process is estimated to take approximately 9 months. When complete the R2/G8 IPT team will reconvene and review the R2 progress. I wanted to take a moment to thank all of you who worked on this R2/G8 action. This was quite a challenging effort, one that included input from the LCMC Legal Department, Acquisition Center, Internal Review, R2 and G8." [TAB J-4, 9 January 2013].

Lastly, Mr. Director CECOM IRAC Office was very apologetic as to the fact that had anyone approached him to explain or justify the results of his office's review of the R2 Project Office fees issue and the IPT effort that was established to address the review's concerns, then the subject AR 15-6 may have been avoided with his opening up the office's files on this review. Mr. Director CECOM IRAC Office testified that he believed that with respect to the subject AR 15-6 investigation, the following could have occurred:

"It is my opinion that the AR 15-6 investigation could have been avoided if the 'whistleblower' contacted me, Mr. CECOM IRAC Lead Evaluator or other members of

my office staff to obtain any and all relevant documentation that was processed during our Review of the R2 Office plus whatever e-mail that I kept as part of my own personal records. The 'whistleblower' would have realized that the R2 Office had made plans to go to an actual expense record by customer by using the SEC developed database. In addition, the 'whistleblower" would have been privy to the 21 August 2008 e-mail that I sent to Mr. Director LRC(Retired) and Mr. CECOM G8 (Retired) where I provided an 'informal' final report to both directors. As the IR Director, I have the latitude and flexibility to issue a 'formal or informal' final report.

In addition, Mr. CECOM IRAC Lead Evaluator in his composition of the draft report on the Review of the R2 Office revealed no major problems with the R2 charging a flat fee or carrying over $8.4 million form one fiscal year to the next fiscal year. In fact, on 8 May 2008, Mr. CECOM IRAC Lead Evaluator released the draft report via an e-mail message to the R2 Office and G8 Office. Mr. CECOM IRAC Lead Evaluator stated in his email message:

> 'We really believe the fee percentage is the most accurate method to base the R2 reimbursable rate." By contacting me or my office, the 'whistleblower' would have discovered that Mr. CECOM IRAC Lead Evaluator, the lead evaluator on the Review of the R2 Office, with corroboration of the team members, prepared the draft report. The reviews (team leader and I) ensured that the contents and conclusions of the draft report were properly supported through work papers that are maintained in the permanent file. Anyone who reads the contents of the draft report, along with the supporting emails, would conclude that: (i) the IR team felt that the R2 Office was operating properly; (ii) the R2 Office was told they needed to capture actual costs by customer;(iii) the R2 Office was in the process of establishing the actual costs by customer; (iv) the IR Director properly notified the LRC Director about the results of the review; (v) the LRC Director requested the creation of an In Process Team (to include members form the R2, G8 and IR Offices; and (vi) the LRC Director directed the R2 Office to follow the guidance provided by the G8. Lastly, once we received the formal response from Mr. CECOM G8 (Retired) that he non-concurred with our recommendations to charge a flat percentage fee to each customer and the proper carryover of funds from one fiscal year to the next fiscal year, I, as Director of the IR Office, felt that my IR team had not exercised due diligence during the review. Although the IR team had met and questioned the G8 staff on their thoughts about charging a flat fee, they did not seek any communication with Mr. CECOM G8 (Retired) who has the final say on funding policies."[TAB J-3, 4 October 2012].

Mr. Director CECOM IRAC Office's testimony made clear that as the Director of the Internal Review Office, he should be able to rely on his evaluators' work to identify issues and staff them with the appropriate stakeholders to resolve any concerns. This is exactly what Mr. Director CECOM IRAC Office did, relying on Mr. CECOM IRAC Lead Evaluator's work product given the following:

> "As evaluators performed their reviews, they usually gave me verbal updates during the reviews. I entrusted my staff to perform their reviews per AR 11-7 and DA Internal Review Evaluator-: Standards. I felt no need to distrust my staff to go out and seek answers in order to answer our objectives. I gave guidance and questioned whether the evaluators had obtained the necessary information from the audited activities. The

evaluators then prepared the draft report since they were intimately involved in the review. I reviewed the report for its accuracy and its clarity (from a writing style). If questions arose, I would look at the documentation in the files. I concurred and my feedback did not affect the evaluators' findings and recommendations as evidenced when Mr. CECOM IRAC Lead Evaluator released the draft report to the R2 Office and G8 Office." [TAB J-3, 4 October 2012].

Mr. Director CECOM IRAC Office further elaborated on his reasonable expectation to rely on the work product of his subordinates when he observed that "Mr. CECOM IRAC Lead Evaluator in his composition of the draft report on the Review of the R2 Office revealed no major problems with the R2 charging a flat fee or carrying over $8.4 million from one fiscal year to the next fiscal year. In fact, on 8 May 2008, Mr. CECOM IRAC Lead Evaluator released the draft report via an e-mail message to the R2 Office and G8 Office. Mr. CECOM IRAC Lead Evaluator stated in his email message 'We really believe the fee percentage is the most accurate method to base the R2 reimbursable rate." [TAB J-3, 4 October 2012]. Further, Mr. Director CECOM IRAC Office reflected that any follow up actions to his office's release of the draft report were addressed by the IPT members to everyone's satisfaction.

Current Director, LRC, Director, CECOM Logistic and Readiness Center

Mr. Current Director, LRC succeeded Mr. Director LRC(Retired) as the current Director, CECOM Logistics and Readiness Center in July 2011. The IO interviewed him to determine if the issues that had surrounded the R2 fee issue had been corrected since the time the IR draft final report was issued and the IPT had completed its efforts. Mr. Current Director, LRC testified in his 10 October 2012 statement that today, the R2 Project Office received reimbursable support from the APG-Army Contracting Center, the CECOM SEC, CECOM G-2, and CECOM Legal, all located at APG, Maryland after the completion of the BRAC move from Fort Monmouth, New Jersey to APG.

The IO inquired whether since Mr. Current Director, LRC assumed the responsibilities as the Director, did he have any concerns with the workload funding mix creating issues with respect to the appropriated funded versus the reimbursable funding portions of the R2 Office, particularly with respect to the Economy Act or Anti-Deficiency Act. Mr. Current Director, LRC testified that since assuming those responsibilities, he reviews the expenses across the LRC as a whole to include the R2 Office. Further, he testified that "I've reviewed the structure and have reduced manning over the past year to be consistent with forecasted business. Additionally, I review program status to include finances on a weekly basis as part of my senior leader update. The data for the R2 Office is captured from the R2 Integrated Date Environment and summarized for my review."

AAA Auditor, Auditor, Army Audit Agency

Mr. AAA Auditor was interviewed on 3 October 2012. He testified as to the circumstances surrounding the AAA's interest in including references to the CECOM IR Office's review of the R2 reimbursable rate process issue in the AAA report that studied that matter across the Army during the 2007-2008 timeframe. Mr. AAA Auditor testified that the AAA was directed by the Under Secretary of the Army to stud Flat Fee for Contracting and Contract Management Services. He contacted Mr. John Reilly, the CECOM IR point of contact, by email and also

discussed the AAA effort with Mr. Director CECOM IRAC Office. The AAA was kept apprised of the CECOM IR effort which had been underway before the AAA effort was initiated. Though Mr. AAA Auditor could not attest to the methods used by the CECOM IR in its review, Mr. AAA Auditor asserted that their:

> "findings seem sound and reasonable based on the e-mails received. We never received a copy of the CECOM IR draft or final report. I believe our field work and drafted report was completed before CECOM IR finished their field work. Yes it is reasonable to use the work of others when conducting audits. It's done all the time to gain knowledge on a program. It helps with shaping our efforts."

Further, Mr. AAA Auditor stated that the AAA report Number A-2009-047-ALC, 23 February 2009, was published and included a reference that the AAA report acknowledged that the CECOM IR "was a standalone effort. No CECOM IR information was used in our report. Although other works are used we don't use other organizations findings and recommendations. We would use their information to inform, conduct our field work, and develop our own findings and recommendations. We would have to validate any recommendation from outside organizations."

R2 ADMIN SUPPORT COST IPT Leadk, Operations Research Analyst, Cost Analysis Division, G8, Directorate of Resource Management

Mr. R2 ADMIN SUPPORT COST IPT Lead provided a statement on 17 February 2011. He testified that he was the IPT coordinator but not the initial coordinator when the IPT was established. Mr. R2 ADMIN SUPPORT COST IPT Lead commented that the when he first assumed his IPT responsibilities, the relations between the G8 and the R2 Project Office "were strained. The various issues concerned charging fees versus accounting for expenses and billing of customers for actual expenses. It was a very difficult problem to solve especially in light of obligation life of various types of appropriations utilized and the year end funding status."

Mr. R2 ADMIN SUPPORT COST IPT Lead stated that he "gathered experts in different field to solve the problem" and during the IPT was active, "significant piece of information surfaced. A legal opinion was found concerning "Fee for Service Charges which stated the following: 'The servicing agency is permitted to charge a fee for the actual cost, or estimated cost if the actual cost is unknown, of entering into and administering the contract and subsequent delivery orders." This was a critical piece of information since it provided a solution to the confusion regarding the Economy Act."

Mr. R2 ADMIN SUPPORT COST IPT Leadk provided the following summary of the IPT's deliberations and the G8's position at the end of the IPT:

> "The IPT prepared a presentation to the G8 outlining an approach that would satisfy the G8 concerns stemming from their interpretation of the Economy Act. The presentation captured the issues, proposed solutions and inquiries. This was prepared and presented during the Fall of 2008. The G8 responded to the IPT at the end of March 2009 providing answers to all the questions. A key element of the response was the recommendation that the R2 Office continue to pursue with the SEC the development of time tracking software. The IPT, which included tR2, G8, and Legal, continued to meet a few more

times to develop milestones for implementation f the G8 recommendations. The timelines developed was for 10 months to a year. Once the milestones schedule was established the meetings were no longer necessary. After 10 months R2 was contacted by G8 and was told that G8's assistance was no longer required."

CURRENT R2 PROJECT OFFICER, R2 Project Office, R2 Project Office

Mr. CURRENT R2 PROJECT OFFICER became the new R2 Project Officer after Ms. Former Project Manager, R2 Project Office left CECOM. Mr. CURRENT R2 PROJECT OFFICER testified on March 1, 2011. Mr. CURRENT R2 PROJECT OFFICER stated that he was aware of the IR Office review of the 2 Project Office business processes and how the R2 Office was reimbursed by its customers for its operating costs. Mr. CURRENT R2 PROJECT OFFICER stated that the "initial conclusions indicated that there was nothing wrong with our operation, but recommended we develop a tracking system to better serve our customers. The review did acknowledge that we had a process for reconciliation and we did return excess funding to the customer."

Further, Mr. CURRENT R2 PROJECT OFFICER testified that the "recommendation to develop a tracking tool was acted upon by the R2 Office. We identified a tool but because of the delay in the award of the new contracts our business was limited and our operating budget was severely reduced. The new contracts were not awarded until July 2010 after about an 18 month delay. There were other business processes we changed. We are doing functional support agreements with our customers as opposed to a fee based reimbursable model."

Deputy Director ACC APG, Deputy Director, Army Contracting Command/APG-C4ISR

Mr. Deputy Director ACC APG testified on 25 February 2011. He stated that his office, previously known as the CECOM LCMC Acquisition Center, had personnel that were solely dedicated to the R2 Project Office, which had been that way since the inception of the R2 Project Office. When the original contract was in place, his office had an entire branch dedicated to awarding and managing the R2 Project Office delivery orders. Mr. Deputy Director ACC APG stated that those employees did no other work but support the R2 Office and that there "was a tremendous workload associated with the R2 Project Office. The dedicated employees had no time for other efforts."

APPLICABLE RULES AND REGULATIONS
RELEVANT FISCAL AUTHORITIES

1. The Economy Act, 15 U.S.C. §1535

31 U.S.C. § 1535. Agency agreements

(a) The head of an agency or major organizational unit within an agency may place an order with a major organizational unit within the same agency or another agency for goods or services if--

(1) amounts are available;

(2) the head of the ordering agency or unit decides the order is in the best interest of the United States Government;

(3) the agency or unit to fill the order is able to provide or get by contract the ordered goods or services; and

(4) the head of the agency decides ordered goods or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise.
(b) Payment shall be made promptly by check on the written request of the agency or unit filling the order. Payment may be in advance or on providing the goods or services ordered and shall be for any part of the estimated or actual cost as determined by the agency or unit filling the order. A bill submitted or a request for payment is not subject to audit or certification in advance of payment. Proper adjustment of amounts paid in advance shall be made as agreed to by the heads of the agencies or units on the basis of the actual cost of goods or services provided.
(c) A condition or limitation applicable to amounts for procurement of an agency or unit placing an order or making a contract under this section applies to the placing of the order or the making of the contract.
(d) An order placed or agreement made under this section obligates an appropriation of the ordering agency or unit. The amount obligated is deobligated to the extent that the agency or unit filling the order has not incurred obligations, before the end of the period of availability of the appropriation, in--
(1) providing goods or services; or
(2) making an authorized contract with another person to provide the requested goods or services.
(e) This section does not--
(1) authorize orders to be placed for goods or services to be provided by convict labor; or
(2) affect other laws about working funds.

2. 48 C.F.R. 15.502-3; Federal Acquisition Regulations (FAR) 17.502-2
17.502-2 The Economy Act.
(a) The Economy Act (31 U.S.C. 1535) authorizes agencies to enter into agreements to obtain supplies or services from another agency. The FAR applies when one agency uses another agency's contract to obtain supplies or services. If the interagency business transaction does not result in a contract or an order, then the FAR does not apply. The Economy Act also provides authority for placement of orders between major organizational units within an agency; procedures for such intra-agency transactions are addressed in agency regulations.
(b) The Economy Act applies when more specific statutory authority does not exist. Examples of more specific authority are 40 U.S.C. 501 for the Federal Supply Schedules (subpart 8.4), and 40 U.S.C. 11302(e) for Government wide acquisition contracts (GWACs).
(c) Requirements for determinations and findings.
(1) Each Economy Act order to obtain supplies or services by interagency acquisition shall be supported by a determination and findings (D&F). The D&F shall—
(i) State that use of an interagency acquisition is in the best interest of the Government;
(ii) State that the supplies or services cannot be obtained as conveniently or economically by contracting directly with a private source; and
(iii) Include a statement that at least one of the following circumstances applies:
(A) The acquisition will appropriately be made under an existing contract of the servicing agency, entered into before placement of the order, to meet the requirements of the servicing agency for the same or similar supplies or services.
(B) The servicing agency has the capability or expertise to enter into a contract for such supplies or services that is not available within the requesting agency.

(C) The servicing agency is specifically authorized by law or regulation to purchase such supplies or services on behalf of other agencies.
(2) The D&F shall be approved by a contracting officer of the requesting agency with authority to contract for the supplies or services to be ordered, or by another official designated by the agency head, except that, if the servicing agency is not covered by the FAR, approval of the D&F may not be delegated below the senior procurement executive of the requesting agency.
(3) The requesting agency shall furnish a copy of the D&F to the servicing agency with the request for order.
(d) Payment.
(1) *The servicing agency may ask the* requesting agency, in writing, for advance payment for all or part of the estimated cost of furnishing the supplies or services. Adjustment on the basis of actual costs shall be made as agreed to by the agencies.
(2) If approved by the servicing agency, payment for actual costs may be made by the requesting agency after the supplies or services have been furnished.
(3) Bills rendered or requests for advance payment shall not be subject to audit or certification in advance of payment.
(4) In no event shall the servicing agency require, or the requesting agency pay, any fee or charge in excess of the actual cost (or estimated cost if the actual cost is not known) of entering into and administering the contract or other agreement under which the order is filled.

3. Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 217.5, Interagency Acquisitions

217.500 Scope of subpart.

(a) Unless more specific statutory authority exists, the procedures in FAR Subpart 17.5, this subpart, and DoDI 4000.19 apply to all purchases, except micro-purchases, made for DoD by another agency. This includes orders under a task or delivery order contract entered into by the other agency. (Pub. L. 105-261, section 814.)

217.503 Ordering procedures.

(d) When the requesting agency is within DoD, a copy of the executed determination and findings required by FAR 17.502-2 shall be furnished to the servicing agency as an attachment to the order. When a DoD contracting office is acting as the servicing agency, a copy of the executed determination and findings shall be obtained from the requesting agency and placed in the contract file for the Economy Act order.

4. Department of Defense Instruction (DoDI) Number 4000.19, SUBJECT: Interservice and Intergovernmental Support, August 9, 1995.

DoDI 4000.19, Section 4.6.3, Payment.
4.6.3. Payment. Reimbursements for support provided via a support agreement must be executed with a funds transfer instrument (e.g., Military Interdepartmental Purchase Request, Job Order) in accordance with Chapter 26 of the DoD Accounting Manual (reference (k)) and Volume 11B of the DoD FinancialManagement Regulation (reference (l)). Bills and requests for payment associated with support provided in accordance with a support agreement are not subject to audit or certification in advance of payment. Support agreements entered into with non-DoD Federal

activities obligate an appropriation of the ordering activity, andpayment may be required in advance -- adjustment of estimated amounts paid in advance shall be made, as agreed, on the basis of the actual support provided. Fees charged for intragovernmental support provided via contract may not exceed the actual cost or, if the actual cost is not known, the estimated cost of entering into and administering the contract.

5. Principles of Federal Appropriations Law, Third Edition, Volumes I, II, and III.

Principles of Federal Appropriations Law, 3rd. Ed., Vol. II, Chapter 6, The Augmentation Concept

As a general proposition, an agency may not augment its appropriations from outside sources without specific statutory authority. When Congress makes an appropriation, it also is establishing an authorized program level. In other words, it is telling the agency that it cannot operate beyond the level that it can finance under its appropriation. To permit an agency to operate beyond this level with funds derived from some other source without specific congressional sanction would amount to a usurpation of the congressional prerogative. Restated, the objective of the rule against augmentation of appropriations is to prevent a government agency from undercutting the congressional power of the purse by circuitously exceeding the amount Congress has appropriated for that activity. As one recent decision put it:

"When Congress establishes a new program or activity, it also must decide how to finance it. Typically it does this by appropriating funds from the U.S. Treasury. In addition to providing necessary funds, a congressional appropriation establishes a maximum authorized program level, meaning that an agency cannot, absent statutory authorization, operate beyond the level that can be paid for by its appropriations. An agency may not circumvent these limitations by augmenting its appropriations from sources outside the government. One of the objectives of these limitations is to prevent agencies from avoiding or usurping Congress' 'power of the purse."
B-300248, Jan. 15, 2004 (citations omitted).

There is no statute which, in those precise terms, prohibits the augmentation of appropriated funds. The concept does nevertheless have an adequate statutory basis, although it must be derived from several separate enactments. Specifically:

- 31 U.S.C. § 3302(b), the "miscellaneous receipts" statute.
- 31 U.S.C. § 1301(a), restricting the use of appropriated funds to their intended purposes.

Early Comptroller of the Treasury decisions often based the augmentation prohibition on the combined effect of 31 U.S.C. §§ 3302(b) and 1301(a). *See, e.g.,* 17 Comp. Dec. 712 (1911); 9 Comp. Dec. 174 (1902).

- 18 U.S.C. § 209, which prohibits the payment of, contribution to, or supplementation of the salary of a government officer or employee as compensation for his or her official duties from any source other than the government of the United States.

Principles of Federal Appropriations Law, 3rd. Ed., Chapter 12(B) Interagency Acquisitions

(2)"Actual cost": meaning and application

Payment under the Economy Act, whether by advance with subsequent adjustment or by reimbursement, must be based on "the actual cost of goods or services provided." 31 U.S.C. § 1535(b). This applies to both intra- and interagency transactions under the Act. 57 Comp. Gen. 674, 684 (1978). Unfortunately, as the decisions have pointed out, neither the statute nor its legislative history address the meaning of the term "actual cost." *Id.* at 681.

In setting out an analytical framework, it is useful to start by recalling that agencies using the Economy Act must avoid the unauthorized augmentation of their appropriations. B-250377, Jan. 28, 1993. Charging too much augments the appropriations of the performing agency. B-45108, B-48124, Feb. 3, 1955; B-101911-O.M., Apr. 4, 1951. Charging too little augments the appropriations of the ordering agency. 57 Comp. Gen. at 682. In connection with this latter proposition, GAO quickly recognized that the Economy Act legislatively abolished the prior decisional rule that limited the performing agency's recovery to additional costs. 12 Comp. Gen. 442 (1932).28 Once this is accepted, the approach then becomes a matter of seeking to apply the concept of actual cost consistent with the statutory objectives and such guidance as the legislative history does provide.

The following passage from 57 Comp. Gen. at 681, describes this approach:

> "While the law and its legislative history are silent as to what was meant by the term 'actual cost' . . . the legislative history does indicate that . . . Congress intended to effect savings for the Government as a whole by: (1) generally authorizing the performance of work or services or the furnishing of materials pursuant to inter- and intra-agency orders by an agency of Government in a position to perform the work or service; (2) diminishing the reluctance of other Government agencies to accept such orders by removing the limitation upon reimbursements imposed by prior [GAO] decisions [footnote omitted]; and (3) authorizing inter- and intra-departmental orders only when the work could be as cheaply or more conveniently performed within the Government as by a private source. Thus in determining the elements of actual cost under the Economy Act, it would seem that the only elements of cost that the Act requires to be included in computing reimbursements are those which accomplish these identified congressional goals. Whether any additional elements of cost should be included would depend upon the circumstances surrounding the transaction."

Thus, the universe of costs may be divided into required costs and what we may term "situational" costs.

Required costs consist in large measure of direct costs—expenditures incurred by the performing agency which are specifically identifiable and attributable to performing the transaction in question. As stated in 57 Comp. Gen. at 682: "The Economy Act clearly requires the inclusion as actual cost of all direct costs attributable to the performance of a service or the furnishing of materials, regardless of whether expenditures by the performing agency were thereby increased." One element of direct cost is the salary of employees engaged in doing the work. 12 Comp. Gen. 442 (1932). This means gross compensation. 14 Comp. Gen. 452 (1934). It includes, for example, the accrual of annual leave. 32 Comp. Gen. 521 (1953); 17 Comp. Gen. 571 (1938). Another common element is the cost of materials or equipment furnished to the ordering agency or consumed in the course of performance. Actual cost in this context means historical cost and not current replacement or production cost. B-130007, Dec. 7, 1956. *See also* 58 Comp. Gen. 9, 14 (1978). This does not necessarily have to be the original acquisition cost, however, but may

be the most recent acquisition cost of the specific kind of item provided to the requesting agency. B-250377, Jan. 28, 1993. Related transportation costs are another reimbursable direct cost item. *Id.*

Not every identifiable direct cost is reimbursable under the actual cost formulation. An illustration is 39 Comp. Gen. 650 (1960). The Maritime Administration was activating several tankers for use by the Navy. In the course of performing this activity, an employee of the Maritime Administration's contractor was injured, sued the United States under the Suits in Admiralty Act, and recovered a judgment which the Maritime Administration paid from an available revolving fund. While certainly a very real cost actually incurred in the course of performance, the judgment was not "necessary or required in order to condition the tanker for use by the Navy" (*id.* at 653), and therefore was properly payable as a judgment and not as a reimbursable cost which could be billed to Navy.

In addition to direct costs, it has long been recognized that actual cost for Economy Act purposes includes as well certain indirect costs (overhead) proportionately allocable to the transaction. *E.g.,* B-301714, Jan. 30, 2004; 22 Comp. Gen. 74 (1942). Indirect costs are "items which commonly are recognized as elements of cost notwithstanding such items may not have resulted in direct expenditures." 56 Comp. Gen. 275 (1977); 22 Comp. Gen. 74. Indirect costs which (1) are funded out of currently available appropriations, and (2) bear a significant relationship to the service or work performed or the materials furnished, are recoverable in an Economy Act transaction the same as direct costs. 56 Comp. Gen. 275 (1977), *as modified by* 57 Comp. Gen. 674 (1978), *as modified in turn by* B-211953, Dec. 7, 1984. Examples of indirect costs include administrative overhead applicable to supervision (56 Comp. Gen. 275); billable time not directly chargeable to any particular customer (B-257823, Jan. 22, 1998); and rent paid to the General Services Administration attributable to space used in the course of performing Economy Act work (B-211953, Dec. 7, 1984).

The costs discussed thus far are those which the Economy Act can fairly be said to require. In addition, there may be others, so-called situational costs. The discussion in 57 Comp. Gen. 674 goes on to say:

Id. at 683, 685. For example, under the rules stated above, depreciation is normally not recoverable, however, because it is not funded out of "[The Economy Act] is not so rigid and inflexible as to require a blanket rule for costing throughout the Government . . . . Certainly neither the language of the Economy Act nor its legislative history requires uniform costing beyond what is practicable under the circumstances. This is not to say that costing is expected to be different in a substantial number of circumstances. We are merely recognizing that in some circumstances, other competing congressional goals, policies or interests might require recoveries beyond that necessary to effectuate the purposes of the Economy Act. * * * * * * * * * "[T]he term ['actual costs'] has a flexible meaning and recognizes distinctions or differences in the nature of the performing agency, and the purposes or goals intended to be accomplished." *Id.* at 683, 685. For example, under the rules stated above, depreciation is normally not recoverable, however, because it is not funded out of currently available appropriations. 72 Comp. Gen. 159, 162 (1993); 57 Comp. Gen. 674.30 However, in 57 Comp. Gen. 674, in view of the congressionally established goal that the performing agency (the government entity which operated Washington National and Dulles International Airports) be self-sustaining and recover its operating costs and a fair return on the government's investment, it was appropriate to include depreciation and interest as indirect costs. The performing agency chose to deposit the amounts so recovered in the general fund of the Treasury as miscellaneous receipts. *Id.* at 685–86.

Another example of permissible situational costs is where the performing agency is funded by a statutorily authorized stock, industrial, or similar fund which provides for full cost recovery, that is, beyond what the Economy Act would otherwise require, and the fund's Economy Act work is an insignificant portion of its overall work. In such a situation, there might be sound reasons for charging all customers alike. B-250377, Jan. 28, 1993.
While particular circumstances might authorize some indirect costs beyond what the Economy Act requires, their inclusion in the performing agency's charges is not required but is discretionary. Failure to recover them is not legally objectionable, except in the unlikely event it could be shown to be an abuse of discretion. B-198531, Sept. 25, 1980.
The Economy Act was intended to promote interagency cooperation, not interagency bickering over billings. Hence, the statutory scheme emphasizes the role of agreement. It contemplates that application of the actual cost standard in a given case should be "primarily for administrative consideration, to be determined by agreement between the agencies concerned." 22 Comp. Gen. 74, 78 (1942). In the interest of intragovernmental harmony, it has been held that the Economy Act does not require the ordering agency to conduct an audit or certification in advance of payment. 39 Comp. Gen. 548, 549–50 (1960); 32 Comp. Gen. 479 (1953). Nor does it require the performing agency to provide a detailed breakdown unless the agreement provides otherwise. B-116194, Oct. 5, 1953. Payment is authorized "at rates established by the servicing agencyso long as they are reported to be based upon the cost of rendition of the service and do not appear to be excessive." 32 Comp. Gen. at 481.

While at times actual cost can be computed with precision, the Economy Act does not require that the determination be an exact science. Cases on reimbursable work even before the Economy Act recognized the acceptability of a reasonable and appropriate methodology over "absolutely accurate ascertainment" which might entail considerable burden and expense. 3 Comp. Gen. 974 (1924). As stated in B-133913, Jan. 21, 1958, "[a]s long as the amount agreed upon results from a *bona fide* attempt to determine the actual cost and, in fact, reasonably approximates the actual cost," the Economy Act is satisfied. One methodology GAO has found to be reasonable and "consistent with the minimum legal requirements of the Economy Act" is billing on the basis of standard costs derived from documented costs of the last acquisition or production. B-250377, Jan. 28, 1993 (containing a detailed discussion); GAO, *Iran Arms Sales: DOD's Transfer of Arms to the Central Intelligence Agency,* GAO/NSIAD-87-114 (Washington, D.C.: Mar. 13, 1987), at 8.

There are limits, however, and the "methodology" cannot be totally divorced from the determination or reasonable approximation of actual costs. Thus, a cost allocation in which some customers are paying excessive amounts and effectively subsidizing others is improper. 70 Comp. Gen. 592 (1991). So is an allocation based on the availability of appropriations (B-114821-O.M., Nov. 12, 1958), or a *per capita* funding arrangement not related to the goods or services actually received (67 Comp. Gen. 254, 258 (1988)).

Agencies may waive the recovery of small amounts where processing would be uneconomical. An agency wishing to do this should set a minimum billing figure based on a cost study. B-156022, Apr. 28, 1966. The case for waiver is even stronger when the account to be credited with the payment is no longer available for obligation. *See* B-120978-O.M., Oct. 19, 1954.

AGENCY DISCUSSION

Summarized Army Findings

After review and analysis of all available evidence pertinent to the six OSC referred allegations, the Army determined the merits of these allegations as detailed below. Note, that Allegations and 1 and 2 as well as Allegations 3 and 4 are paired, respectively, given that the evidence is applicable to both allegations but is presented once for each of the paired allegations in order to avoid duplication of essentially the same discussion under each allegation.

OSC-Referred Allegation 1. The R2 Project office does not return to customers any unused portions of its fee as required by the Economy Act (15 U.S. C. 1535). The whistleblower stated that although the Economy Act permits a federal agency to pay to another agency in advance for goods and services, there is a requirement that the proper adjustment of amounts paid in advance shall be made on the basis of the actual cost of goods or services provided. Because the R2 Project Office does not track individual customer expenses, it is unable to determine the actual cost of the goods or service provided to each client individually and as a result is unable to return unused customer funds as required by the Economy Act.

OSC-Referred Allegation 2. The R2 Project Office's failure to return unused client fees constitutes an improper augmentation of its own budget. Allegedly, in FY 2007, the R2 Project Office collected or carried over fees from previous years' fees totaling nearly $21.47 million but only had expenses of $13.78 million. Further, this nearly $8 million surplus grew to an estimated $10 – $14 million in 2008. Instead of returning the surplus to clients as required by the Economy Act, the excess funds remain in the R2 Office operating account and are available to be used during subsequent fiscal years. As a result, the R2 Project Office is impermissibly augmenting its budget in violation of Federal appropriations law.

Both Allegations 1 and 2 were unsubstantiated.

The allegations posed above relate to the subject of Reimbursable Order Processes. The IO found that this allegation was not supported by any evidence, and was in fact contradicted by the evidence presented. As the evidence bears out, the R2 Office was entirely financed by customer fees. The R2 Project Office, as a service organization, was funded as a reimbursable entity (i.e., the R2 Office was not appropriated funding directly by Congress.) The CECOM Life Cycle Management Command had published a Memorandum for Record, dated 14 December 2004, which summarized existing statutory and regulatory guidance and discussed proper procedures for reimbursable relationships [TAB K]. This Memorandum was prepared by the CECOM Deputy Chief of Staff for Resource Management Office (G-8) and signed by the CECOM Chief of Staff. The Memorandum discusses existing policy, augmentation, and proper reimbursable procedures. Under paragraph 4, Proper Reimbursable Procedure [TAB K, page 3], guidelines are provided for the acceptance of funds, management of funds, transfer of charges, notification of funding needs, and return of excess funds as required.

Under an appropriation bill or continuing resolution authority (CRA), prior year appropriations may be carried over into the new Fiscal Year (FY) as long as that appropriation is not expiring. Research, Development, Test and Evaluation (RDT&E) and Other Procurement, Army (OPA) are multiple year appropriations. Operations and Maintenance, Army (OMA) funds are one year

appropriations requiring the funds to be expended in the year of execution. OMA funded customers are required to provide new (current year) funds to performing agencies each fiscal year for services performed in that FY. The IO found that the R2 Office used carry-over funds to cover costs for the following FY requirements.

In order to determine if the R2 Office appropriately carried over client fees, an order by order audit should have been requested and conducted. The CECOM IR conducted a *review (not an inquiry or audit)* of a random sample of R2 FY 2007 contract obligations. The CECOM IR reviewed the associated R2 Office reimbursable rates by evaluating fees and services provided by the CECOM Legal and Acquisition Offices in support to the R2 Office. The CECOM IR review stated:

> "We randomly sampled ten FY 2007 contract obligations and their associated reimbursable rate fees from the R2 database totaling about $39 million and were able to identify all of those obligations and fees in the Army Standard Operations and Maintenance Army Research and Development Systems (SOMARDS) (accounting) or Mechanization of Contract Administration Services (MOCAS) systems. In addition, we examined the R2 legal and acquisition expenses paid during FY 2007 and were also able to accurately identify those expenses in SOMARDS. As a result, we are confident the R2 Project Office is accurately accounting for incoming funds and operating expenses." [TAB G-1, page 4].

Therefore, the IO concluded that in his professional judgment, the approach taken by the CECOM IR to review a sample of customer orders from FY 2007 was a reasonable approach for their review.

The supporting evidence reviewed as part of this investigation substantiates the R2 Office had appropriate mechanisms in place to understand their workload and operating expenses and used appropriate accounting principles to mitigate the risk of a violation occurring. However, though an inquiry or complete audit has not been performed, I find that the use of a random sample for a review is a sound and reasonable approach. Nevertheless, the IO commented that "[i]f a point of criticism could be levied, the CECOM IR, understanding the full breadth of appropriations the R2 Office dealt with, should have ensured their random sample contained at least one sample of each appropriation type for their review. The CECOM IR report should have amplified the types of appropriations reviewed in the results paragraph to give the independent reader a more complete understanding of the review effort." Though I agree with the IO's assessment, I, find that the random review conducted was reasonable and adequate upon which to base a conclusion that the appropriate accounting principles were in place.

Therefore, the evidence reflected that the R2 Office returned unused client fees for expiring appropriations. Client fees reimbursed by multi-year appropriations were carried over to pay for services that continued into the next fiscal year such as contract administration. Funds were managed in accordance with Army Regulation 37-100 as testified to by (Former) Team Lead Program Analyst R2 office. Funds received by the R2 Office were accepted either as direct cite or reimbursable. Direct Cite funds were obligated on contract. The reimbursable funds were utilized to pay for services rendered by the R2 Office. Incoming customer reimbursable orders were independently reviewed by the CECOM LCMC Resource Management Directorate,

Management Accounting Branch. Personnel in the Management Accounting Branch established the Job Order Accounting Number (JOAN) in SOMARDS, the Army's financial accounting system. The expiration date of the incoming customer order determined the expiration date of the JOAN as dictated by the obligation life of the appropriation. A separate JOAN was established each incoming reimbursable order. At times, the R2 Office managed over 2000 JOANs.

Lastly, I am in agreement with a conclusion reached by IO CECOM 15-6 IO (3), and I, too believe there is no need for the Army to have conducted an *audit by the Army Audit Agency* or other body even for a single fiscal year. Since up this point in time, there have been three assessments into the R2 Project Office procedures the (Initial AR 15-6 investigation undertaken by IO CECOM 15-6 IO (2), the Army CID, and the investigation undertaken by IO CECOM 15-6 IO (3)), each leading to the conclusion that no violations of the Economy or Anti-deficient Act occurred, the usefulness of this exercise is highly questionable.

OSC-Referred Allegation 3. A memorandum purportedly written in 2008 by Mr. CECOM G8 (Retired)CECOM G8 (Retired), the CECOM LCMC G8 Officer, acknowledging the need to track individual customer expenses to ensure compliance with the Economy Act, was provided by the whistleblower to OSC. No action has been taken to implement such a tracking system.[13]
OSC-Referred Allegation 4. The R2 Project Office's failure to track individual customer expenses or implement a tracking system for customer expenses constitutes a failure to comply with the Economy Act and gross mismanagement on the part of CECOM LCMC.

Both Allegations 3 and 4 were unsubstantiated.

In order to address the merits of the above related allegation, it is important to note that we must rely on those with the most direct knowledge of the R2 Project Office processes to provide a factual basis to determine whether these allegations have been substantiated. In the instant case, both Ms. Former Project Manager, R2 Project Office and Ms. (Former) Team Lead Program Analyst R2 office and not Mr. CECOM G8 (Retired) are the subject matter experts on this issue. However, the IO interviewed all three individuals.

In 2008, Mr. CECOM G8 (Retired) was the CECOM LCMC G8 Director.[14] In that position, his job was to advise on overall fiscal for all of CECOM. He did not work with individual contracts or programs as his role addressed individual budgetary impacts and policies for the entire Command. His statement that there was a need to track individual customer expenses to ensure compliance with the Economy Act does not reflect knowledge of the R2 Program office or administration of the R2 Program costs. At that time, Mr. CECOM G8 (Retired) was not in the best position to be aware of the specific cost tracking mechanisms that were implemented at the time on the R2 contract. Mr. CECOM G8 (Retired)'s statement that R2 cost tracking systems did not exist at the time reflects his lack of awareness and knowledge on the R2 program. It was

---

[13] In its 30 November 2010 transmittal to the Secretary, OSC provided a copy of U.S. Army CECOM Life Cycle Management Command, Draft Report 4-A-08, May 7, 2008, by. CECOM IRAC Evaluator and CECOM IR Lead Evaluator, and Draft Response, by CECOM G8 (Retired), G-8. [TAB B].
[14] Though CECOM G8(Retired)retired from Government service in 2009, he was interviewed by the IO on 15 February 2011 and 9 October 2012.

not Mr. CECOM G8 (Retired)'s responsibility to have any level of detail in this area on the R2 program.

On the other hand, in 2008, Ms. Former Project Manager, R2 Project Office was the R2 Program Manager. She was in the best position to have personal knowledge of the cost tracking systems in place to track reimbursable funding coming into the R2 office as well as hours associated with performance of the administrative functions on the contract. In her position, she would be aware of all implementing systems and be able to best explain their function. The level of detail she provided to the IO with respect to IDS and the use of SOMARDS reflects knowledge of these systems and rebuts any statements made by others outside the program inferring that cost tracking systems did not exist. A discussion of these details follows.

The sworn statements of Former Project Manager, R2 Project Office and Ms. (Former) Team Lead Program Analyst R2 office of the R2 Project Office coupled with the work conducted by the CECOM Internal Review demonstrates that the R2 Project Office did in fact have an established process to track individual customer expenses that ensured compliance with the Economy Act. Ms. Former Project Manager, R2 Project Office and (Former) Team Lead, Program Analyst R2 Office statements show that the Project Office accepted funding through the Military Interdepartmental Purchase Request (MIPR) process and that each MIPR was properly annotated by the customer providing the funds with the required Economy Act statement. The IO noted that "Funds received were categorized as Direct Cite or Reimbursable and as stated in Ms. Former Project Manager, R2 Project Office's testimony was generally provided by separate funding documents. Upon receipt, the Project Office assigned a Job Order Account Number (JOAN). The reimbursable JOANs were used to cover the expenses of the R2 Office for providing the service while the Direct Cite JOANs were obligated on contract to acquire the product or services requested by a particular customer."

The IO commented that based on the gathered evidence, he recognized that a critical aspect of the R2 Office is Electronic Contract Business System (ECBS) also referred to as the Integrated Data Environment (IDE). The ECBS is a Business Intelligence tool containing different modules to track the work of the various areas – business development, pre-award, post-award, closeout and budget. The ECBS was able to track the MIPR number, the JOAN number, date, amount and what task order the direct cite work was placed on and what the JOAN was used against. The IO was impressed by Ms. Former Project Manager, R2 Project Office's testimony that "The IDE was the pulse of the organization. It contained different modules to track the work of the various areas-business development, pre-award, post-award, closeout and budget...For each of these areas, there were SOPs, a to-do list which appeared for each employee, and clean up reports to check on data integrity. The IDE was used 24/7 by our customers and the R2 staff. It was the key to efficient management of such a large program." Further, Ms. Former Project Manager, R2 Project Office went on to state that during her time in the R2 Project Office there were approximately 3 green belt projects and 1 black belt project to improve the efficiencies of the internal processes.[15]

[15] Green Belt projects and Black Belt projects refers to the Army's Lean Six Sigma program analysis designed to increase productivity or reduce errors which was in effect at the time in question.

Ms. Former Project Manager, R2 Project Office further stated to the IO that "The IDE was used to track all of our expenses. The IDE allowed the budget team to track the MIPRs when they came in. It identified which task order the money would be placed on (direct cite) and what R2 expense the money was allocated against (reimbursable JOAN)." As illustrative of Ms. Former Project Manager, R2 Project Office's detailed knowledge of the workings of the R2 Office, Ms. Former Project Manager, R2 Project Office provided the IO with an information paper reciting the history of the R2 ECBS. That information paper is quoted below:

> The R23G Project Office is a CEOCM organization chartered by the CECOM DCG to manage the R2 suite of contracts. In order to manage the large number of customer requirements and warded task orders the R2 Electronic Contract Business System (R2ECBS) was developed. The tool provides the ability to: 1) Monitor and maintain all contract actions and task order requirements; 2) Serve as a repository of all documentation pertaining to contractual actions as well as internal office documentation; 3) Store and monitor Program Office financial matters through a budget application; and 4) Execute reports on all aspects of the organization. The tool was developed to expedite the task award process and ensure visibility of all contract actions.
>
> The first generation of the R2ECBS was developed in Domino by EDS (contractor) in 1998 for the first generation R2 Contracts.
>
> In 2003, the second version was built in Domino by EDS for the second generation of R2 Contracts. In 2006 work began on the second generation system to convert the application from Domino to SQL and SharePoint. This conversion was performed by a contractor, Banc3.
>
> In 2008, the third revision of the R2ECBS started development in anticipation of the R2 third generation contracts. In 2008 the third revision was brought on line with known issues and the Banc3 contact was not renewed. In 2009, development and remediation was transferred to Viatech contractors under a CECOM Software Engineering Center (SEC) contract and in 2010 further transferred to CECOM SEC Government employees matrixed to the Rapid Response Project Office. This Government team is now conducting sustainment of the existing R2ECBS system.
>
> Sustainment includes addressing issues with the system as they arise and performing security and performance updates as mandated to meet DoD requirements. The R2ECBS web application is used by the R23G Project Office, Army Contracting Command-APG, CECOM Legal, R23G Prime Contractors, and all customers.

The current R2ECBS tool provides the office with the ability to view complete task history including all documentation, correspondence, and budget information. It integrates contractual actions with budget information and documentation, ensuring that all funding documents are accounted for and tracked to their respective task order/modification. It also maintains and associates task documentation to each contract action. Files associated with specific actions are held and accounted for per action, enabling streamlined tracking and efficient document retrieval when necessary.

The tool also includes the R2 budget application which tracks the R23G internal budget. The tool tracks incoming reimbursable fee down to each individual funding document and also tracks all outgoing expenses. Expenses paid from R2 Office fee is linked to the fee received allowing

for full accountability of funds from receipt as fee to payment towards an expense. The budget application also provides detailed reporting capabilities."

To put the above comments into perspective, the IO stated that he was particularly impressed with Ms. Former Project Manager, R2 Project Office's testimony that from her perspective, "There is no doubt in my mind that the system was the best tool available. My perspective is that it was sufficient to meet the requirements of the Economy Act and gave appropriate control and also appropriate insight into the expenditures of the program. The IDE was a tremendous tool that allowed us to tract all the financial information and all of the contracting actions."

Ms. Former Project Manager, R2 Project Office further explained to the IO that the IDE was used to track all expenses and MIPRs. The IDE also identified which task order the money would be placed on and what R2 expense the money was allocated against (reimbursable JOAN). The IDE met the requirements of the Economy Act and gave appropriate control and insight into the expenditures of the program. Thus, the IO appropriately concluded in his investigation that a process to track incoming funds was in place and adhered to in terms of setting up individual accounts. Moreover, the R2 Office was conscious of FY carry over and adjusted their operating principles based upon input from the CECOM G-8.

The IO found that the R2 Project Office tracked and reported expenses on a quarterly basis. On 7 July 2008, a Memorandum for Record was published to the R2 Project Office regarding 4th Quarter Administrative Support Costs. [TAB L]. The memorandum states in paragraph 2: "As a result of the 4th Quarter review of the R2 Project Office overhead, the amount of fee to be collected will be reduced. As of this notice, but no later than, 7 July 2008, please begin collecting .5% on all new tasks and existing contracts for the remainder of the fiscal year." The memorandum also goes on to address expiring funds in paragraph 5. The evidence here shows the R2 Office was concerned with FY carry over and would adjust their operating principles based upon input from the CECOM G-8.

Further, the IO cited that the CECOM IR draft report under Paragraph B, Results, states "We randomly sampled ten FY 2007 contract obligations and their associated reimbursable rate fees from the R2 database totaling about $39 million and were able to identify all of those obligations and fees in the Army Standard Operations and Maintenance Army Research and Development Systems (SOMARDS) (accounting) or Mechanization of Contract Administration Services (MOCAS) systems. In addition, we examined the R2 legal and acquisition expenses paid during FY 2007 and were also able to accurately identify those expenses in SOMARDS. As a result, we are confident the R2 Project Office is accurately accounting for incoming funds and operating expenses." It is noteworthy to state that given that the IO is also CERDEC's Deputy Director, he was ideally suited to be the IO in the instant investigation and provided some insight into his expert knowledge on the day to day workings of the R2 Office when he described the mechanics of the SOMARDS/MOCAS systems in his ROI. Briefly, he explained that SOMARDS is a comprehensive accounting system designed to serve as the standard system for all Army Material Command major subordinate commands, including CECOM. On the other hand, under the MOCAS Data Sharing Initiative, contractors are provided with data extracts twice a month. The data is in an electronic format and reflects contract deliveries, payments, obligations,

modifications, and similar data. MOCAS is a disbursing system.[16] The IO concluded by stating that "[c]learly, a process to track incoming funds was in place and adhered to in terms of setting up individual accounts."

Based on the above evidence, the IO concluded in his report that:

"The R2 Project Office was able to track workflow of the office and had an appropriate tool to assist with the management of the office. The supporting evidence reviewed as part of this investigation substantiates the R2 Office had appropriate mechanisms in place to understand their workload and operating expenses and used appropriate accounting principles to mitigate the risk of a violation occurring. Based on the randomly sampled ten FY 2007 contract obligations and their associated reimbursable rate fees...it is my professional judgment that no violation of the Economy Act occurred."

The IO also concluded that based on the randomly sampled ten FY 2007 contract obligations and their associated reimbursable rate fees , it was his professional judgment that the "approach taken by the CECOM IR to review a sample of customer orders from FY 2007 was a reasonable approach for their review" and there was no violation of the Economy Act.

As reflected by these witnesses' testimony as well as the other documentary evidence gathered during the investigation, the IO found it persuasive and abundantly evident that the R2 Office had appropriate mechanisms in place to understand and track their workload and accurately account for incoming funds and operating expenses. Moreover, the R2 Project Office used appropriate accounting principles to mitigate the risk of a fiscal violation. Lastly, the IO concluded that a random sample of ten FY 2007 contract obligations and their associated reimbursable rate fees showed that no fiscal violations occurred. In summary, the IO found that the R2 Project Office had an established process to track individual customer expenses that ensured compliance with the Economy Act.

Based on the above evidence in toto, I agree with the IO that the R2 Project Office was able to track workflow of the office and had an appropriate tool to assist with the management of the office. The supporting evidence reviewed as part of this investigation substantiates the R2

---

[16] The IO further explained that "SOMARDS is a comprehensive accounting system designed to serve as the standard system for all Army Material Command major subordinate commands. The system is used to account for appropriated funds, such as Operations Maintenance Army (OMA), Research and Development (R&D), Procurement and other miscellaneous types of funding. SOMARDS allows for the electronic input of documentation into the accounting system for committing and obligating funding. Various transaction codes allow for the processing of commitments and obligations into the accounting system. Data can be extracted electronically and reflects execution of funding at various levels. Execution data; to include commitments, obligations, expenses, and disbursements can be extracted at the document level detail as well as Element of Resource (EOR). The Element of Resource (EOR) is a four-digit code, which identifies the type of resource being employed or consumed (such as military personnel, civilian personnel, travel of personnel, utilities and rents, and communication). This information is used for the liquidation or close out of each document within the accounting system. Data can also be extracted at the army management structure (AMS) code level to determine whether or not there are any reporting issues such as over obligations and over disbursements. Under the MOCAS Data Sharing Initiative, contractors are provided with data extracts twice a month. The data is in an electronic format and reflects contract deliveries, payments, obligations, modifications, and similar data. Contractors can use this data in several ways to improve the payment process and to expedite contract closeout. MOCAS is a disbursing system."

Office had appropriate mechanisms in place to understand their workload and operating expenses and used appropriate accounting principles to mitigate the risk of a violation occurring. I find that based on the randomly sampled ten FY 2007 contract obligations and their associated reimbursable rate fees, there was no violation of the Economy Act.

OSC-Referred Allegation 5. Mr. Director CECOM IRAC Office, the Head of the CECOM LCMC Internal Review office, has not officially issued the Draft Report 4-A-08 which would have revealed the Economy Act violations and expense tracking problems within the R2 Project Office.

This allegation is only partially substantiated in that Mr. Director CECOM IRAC Office did not publish a "final" or "formal" report. However, he issued what he and others considered to be an "informal" final report to the customer, thus, he was in compliance with the governing regulatory requirement of AR 11-7.

An exit briefing was provided to Mr. Director LRC(Retired) in March 2008, including the results of the IR Review, and recommendations to the LRC directors and the CECOM G8. The G8 non-concurred with the IR recommendations. The G8 felt that it was necessary for the R2 office to document actual expenses incurred for each customer and charge each customer accordingly. Mr. Director CECOM IRAC Office stated that because of the IPT's efforts, he never issued a "formal" final report. However, he stated that the e-mail he sent to Mr. Director LRC(Retired) on 21 August 2008 became the "informal" final report to Mr. Director LRC(Retired), the customer. Director CECOM IRAC Office stated that he did not think that Mr. Director LRC(Retired) "liked my answer (I had reiterated what CECOM G8 (Retired) had provided me with his response to our recommendations). But at least Mr. Director LRC(Retired) knew what his R2 Office had to do to be in compliance with the Economy Act." Mr. CECOM G8 (Retired) had been concerned with the calculations of the fees being charged to the customer which Mr. CECOM G8 (Retired) thought was fine to estimate how much to charge a customer in the beginning but you would still have to calculate how much it cost you to do the work for a particular contract and then go back to the customer and reconcile the final fee. Mr. Director CECOM IRAC Office thought would be solved by introducing a new software system to determine those calculations. AR 11-7 indicates that a final report can be released through informal communications and Mr. Director CECOM IRAC Office considered the e-mail traffic to constitute sufficient informal means of transmitting the final report. Also, Mr. Director CECOM IRAC Office stated that it is not unusual for his office not to issue final reports and just issue draft reports.

Mr. Director CECOM IRAC Office stated that regarding the "informal" final report that he issued to Mr. Director LRC(Retired), Mr. CECOM IRAC Lead Evaluator:

> "probably never realized that the email served as our final report. Also, it was or policy (from my previous director) that all reports would be issued to the customer who requested the review. It never went any higher unless there were major issues. I didn't feel that the results of our review were major. Paragraph 5-2 of AR 11-7 (dated Oct 2007) states 'Different forms of reports include formal written reports, memorandum, briefing slides, or other presentation materials' while paragraph 5-2b states 'The purpose of review reports are to (1) Communicate the results of reviews to those charged with governance, the appropriate officials of the review entity, and the appropriate oversight

officials.' Mr. Director LRC(Retired) was the appropriate official of the reviewed activity while Mr. CECOM G8 (Retired) was the appropriate oversight official when it came to funding polices. Periodic updates from May 2008 through July 2009 were provided to the CECOM Chief of Staff at the time of the review. Also, I informed, the AMC IR Director that my office had been working on a review of the R2 Office. In hindsight, if we were to do this review again, I would make sure that I and the IR team met with the Director of G8 during the fieldwork phase of the review and get her viewpoints/decisions when it came to charging a flat percentage fee. I would also research other audits that covered the same subject to determine if there were any precedents already established." [4 October 2012].

However, given the above events, though the IO determined that the IR office did not issue a final report, based on all of documentary and testimonial evidence gathered during his investigation and as detailed below in the discussion that follows, I agree with the IO's conclusion and recommendation that given the issues which surfaced during the Internal Review's review of the R2 Project Office business processes and the subsequent work undertaken by the affected stakeholders who comprised the Internal Process Team (IPT) (the R2 Project Office, CECOM G-8, CECOM Legal, CECOM Acquisition Center, and CECOM Software Engineering Center) to "earnestly" work to address those issues , they used as their foundation the recommendations by the CECOM Internal Review and CECOM G-8 to improve the R2's calculations of actual costs. Therefore, I adopt the IO's conclusion and recommendation that "the intended outcomes of the Internal Review's Draft Report findings and recommendations were being acted upon and the Draft Report with G-8 comment should stand as the final report."

The CECOM IR Office conducted neither *an inquiry* nor *audit*. The CECOM IR was asked to conduct a *review* of the R2 Project Office focusing on R2's methodology and compliance with setting reimbursable rates and how incoming funds for the R2 Office are allocated against costs. The *review* was initiated at the request of Director LRC(Retired), Director of the CECOM Logistics and Readiness Center (LRC) at that time. The objectives of the review were provided by Mr. Director LRC(Retired) through Ms. Sandra S. Former Project Manager, R2 Project Office, Chief of the R2 Project Office, for communication with the CECOM IR Office and set the conditions in terms of the *review's* objectives [TAB M].

This Draft Report did not indicate at any time that the R2 office was in violation of the Economy Act with its process for reimbursable costs. This is further substantiated in the Exit Briefing, the draft CECOM IR Final Report, and the Army Audit Agency (AAA) Report on Flat Fees for Contracting and Contract Management Services. Each document referenced reinforces that the CECOM IR was conducting a *review*. This is stated on the Background slide [TAB N] of the Exit Briefing [TAB N]; under the Authority, Background, Objectives, and Scope and Methodology paragraphs, paragraphs 1, 2, 3, and 4 respectively, on page 2 of the draft Final Report [TAB G-1], and the Executive Summary of the AAA Report [TAB O].
As there was no inquiry or audit, there are no findings within the evidence which suggests there was a violation of the Economy Act or the Anti-Deficiency Act. Two specific results were summarized in the Exit Briefing: (1) R2 is in compliance with current CECOM LCMC SOP (emphasis added: Standard Operating Procedures)/Guidance; and (2) The R2 Project Office is

properly accounting for all incoming funds and operating expenses. These results are stated on pages 6 and 7 respectively of TAB N. Evidence within the draft Final Report substantiates this further. Paragraph 5.B results state: "We determined that the R2 Project is properly accounting for all of its incoming funds and operating expenses." [Page 4 of TAB G-1]. Additionally, the report had four recommendations contained in the exit briefing to Mr. Director LRC(Retired), (4 April 2008) [TAB N] which are discussed below.

The IO discussed in detail the internal review processes applicable to IR reviews and found that the Internal Review Office fully complied with those regulatory requirements. Generally, in accordance with Army Regulation (AR) 11-7, *Army Internal Review Program*, [TAB P], the Internal Review Office must issue reports communicating the results of completed reviews. The written draft report and the exit briefing both communicated the findings to the concerned parties.

The CECOM Internal Review Office complied with AR 11-7 dated October 26, 2007.[17] [TAB P]. The CECOM IR review was not terminated at any point in time other than at the close or conclusion of the effort. AR 11-7 sets the conditions regarding planning the review; supervising the staff; obtaining sufficient, competent, and relevant evidence; and preparing review documentation. The review was initiated at the request of Director LRC(Retired), Director of the CECOM Logistics and Readiness Center (LRC) at that time. The objectives of the review were provided by Mr. Director LRC(Retired) through Ms. Former Project Manager, R2 Project Office Chief of the R2 Project Office, for communication with the CECOM IR Office and set the conditions in terms of the review's objectives. The IR evaluators assigned were Mr. Michael J. CECOM IRAC Lead Evaluator and Mr. Daniel T. CECOM IRAC Evaluator. Messrs. CECOM IRAC Lead Evaluator and CECOM IRAC Evaluator conducted their field work between January 22, 2008 and March 18 2008. On March 28, 2008, an Exit Briefing (***emphasis added***: an Exit Conference by AR 11-7 standards) was conducted with Mr. Director LRC(Retired), the initiator of the study effort. The Exit Briefing covered: Background; Guidance; Methodology; Objective; Results; and Recommendations.
Four Recommendations were offered for consideration:

a. Recommendation #1 – Obtain DCSRM (***emphasis added***: Deputy Chief of Staff, Resource Management) approval in writing for the R2's customer reimbursable rate;
b. Recommendation #2 – Obtain CECOM LCMC (***emphasis added***: Life Cycle Management Command) Legal opinion to support R2's use of percentage rate;
c. Recommendation #3 – Obtain CECOM LCMC Legal opinion on the amount of funds R2 can carryover from FY to FY;
d. Recommendation #4 – Consider discontinuing the SEC (***emphasis added***: Software Engineering Center) R2 fee model study.

In addition to the Exit Briefing, the CECOM IR stated a Final Report would be published in the April 2008 timeframe. A draft final report was released 7 May 2008 authored by Mr. CECOM IRAC Lead Evaluator and Mr. CECOM IRAC Evaluator for review and comment. Several versions of the draft report were written beginning with a report which effectively was a summarization of the CECOM IR effort in outline form (dated 22 February 2008.) [TAB G-2].

[17] The October 26, 2007 version was the version operative during the time of the review in question. AR 1107 has since been revised and was superseded by versions dated July 15, 2001 and its current version dated June 22, 2011.

This initial draft was reviewed by Mr. Director CECOM IRAC Office and recommendations for improvement were suggested in terms of information depth, suggested actions, grammatical and format structure over several draft reports in succession (18 March, 20 March and 27 March) [TAB G-3, G-4, and G-5] leading up to the release of the final draft report. Review of these documents suggests Mr. Director CECOM IRAC Office's did not influence the writers' perspective on their findings nor was there any indication/documentation discovered that would indicate the authors had issues/concerns with the recommended changes. [TAB J-3, 4 October 2012]. The evidence suggests no issues or non-concurrences were identified with the initial review objectives, scope and methodology of the review, nor the results presented. The issues at play are the Suggested Actions (specific recommendations) for the CECOM G-8.
With respect to the CECOM IR Report titled "Review of the Rapid Response Project Office Reimbursable Rate Process", Report 4-A-08, dated 7 May 2008 [TAB G-1], it was authored by Mr. CECOM IRAC Evaluator, Internal Review Evaluator, and, Mr. CECOM IRAC Lead Evaluator, Senior Internal Review Evaluator. The report approver would be Mr. Director CECOM IRAC Office, Director Internal Review Office. The CECOM IR review was focused on two objectives: (1) Determine R2's process for setting customer reimbursable rates; and (2) Evaluate R2's accounting of its incoming funds and operating expenses. The results can be found on pages 3 and 4 of TAB G-1. Summarizing, the CECOM IR found that beginning in the second quarter of FY 2007 the R2 Project Office switched to charging its customers a 0.5% reimbursable rate. The result of the switch was based on an internal R2 audit that determined the R2 Office may have excess funds compared to their planned financial requirements. In conclusion the CECOM IR agreed with the R2 Project Office charging a percentage rate. Regarding the accounting of funds and operating expenses, the CECOM IR determined the R2 Office was properly accounting for all of its incoming funds and operating expenses.

It is interesting to note that both Mr. CECOM IRAC Lead Evaluator and Mr. CECOM IRAC Evaluator raised concerns regarding potential Economy Act violations in their sworn statements, both of which were dated 19 January 2011. [TABS H-1 and I, respectively]. No references to other violations, Anti-Deficiency Act in particular, were raised in Mr. CECOM IRAC Lead Evaluator's or Mr. CECOM IRAC Evaluator's statements. Mr. Director CECOM IRAC Office also raised concerns regarding potential Economy Act violations in his Sworn Statement dated 13 January 2011. As such, the evidence reviewed suggests no difference of opinion between the principle reviewers, Messrs. CECOM IRAC Lead Evaluator and CECOM IRAC Evaluator and their supervisor .

The evidence reviewed suggests at the time of the Internal Review draft Final report, there were no concerns with Economy Act violations based on the review of the sample data. Furthermore, the follow-on efforts of the Integrated Product Team and actions put in place to account for the R2 Project Office don't indicate concerns either. There is no evidence presented which addresses the obvious question to ask which is why in 2011 could sworn statements raise concern with Economy Act violations if all the IPT members, and in particular the CECOM IR, concluded in 2008 that there were none?"

Nonetheless, AR 11-7, paragraph 5-12a states "Providing a draft report with findings for review and comment by responsible officials of the reviewed entity and others helps the evaluators develop a report that is fair, complete, and objective." Paragraph 5-12e goes on to

state "When the reviewed entity's comments are inconsistent or in conflict with the report's findings, conclusions, or recommendations or when planned corrective actions do not adequately address the evaluators recommendations, the evaluators should evaluate the validity of the reviewed entity's comments. If the evaluators disagree with the comments, they should explain in the report their reasons for disagreement. Conversely, the evaluators should modify their report as necessary if they find the comments valid and supported with sufficient, appropriate evidence. [TAB P].

The IO grappled with the concerns that had been expressed by the CECOM G-8 with respect to the draft report's comments findings and conclusions and carefully analyzed what the G-8 had provided by way of feedback to the IR Office and how CECOM G-8 attempted to reconcile its concerns with the position taken by the CECOM Legal Office. To that end, the IO focused on the G-8's comments to the IR draft Final Report. The following is extracted from the draft Final Report and provides the G-8's position relative to the draft Final report's concluding portion entitled "Suggested Action for the G-8":
"Suggested Action for the G8:

Action 7A: Approve in writing the R2 Project Office charging their customers a percentage as a reimbursable rate. This methodology is based on actual and real time workload which is a more exact methodology than any other fee reimbursement scenario that has been reviewed. The R2 Office should conduct quarterly reviews of their financial posture and determine if a rate adjustment is deemed necessary. The quarterly review process would bring both the R2 Project Office and the G-8 in compliance with the intent of the CECOM LCMC SOP on reimbursable rates.

Command Comments and Action Taken:

G-8 non-concurs on Action 7A.

The Economy Act (31 U.S.C. Sec. 1553 (b)) states that agencies are required to recover the actual cost of goods and services provided. The level of effort should be specifically identifiable to the customer order. While the Economy Act requires the recovering of the actual costs, it provides some flexibility on how costs should be recovered. Whether the estimating method is per hour or percentage of sales, actual costs must be recovered. The method used would not require written approval from the G8.

A review of the financial posture and a rate adjustment would not be necessary since the orders should be adjusted to the actual cost of the customer order when completed. If collections were more than the actual costs, the excess should be returned to the customer; if the reverse were true, the customer should be contacted to obtain more funding.

The G8 would recommend the SEC Fee Model Study be continued with the idea of tracking actual costs of the customer to the fees being charged. With the development of such a model, it should serve to minimize the effect of any additional workload requirements and provide a tool to monitor and support future admin support charge computations."

The IO provided the following assessment of the G-8's position relative to the draft Final report's concluding portion entitled "Suggested Action for the G-8":
"It is reasonable to conclude the G8 non-concurrence was based on mandating a method in writing for the R2 Office to use. Professional judgment comes into play. Professional judgment represents the application of the collective knowledge, skills, and experiences of all personnel involved in this case, the CECOM G8, CECOM IR, CECOM Legal, and the R2 Project Office. Various methodologies or techniques exist in cost estimating.

No matter what the estimating technique, the program manager in this case the R2 Project Office, must ensure the cost estimate completely defines the program or services to be provided and is technically sound and reasonable. The cost estimate must be defensible with well-reasoned analysis. A program manager who is totally familiar with the program's cost estimate, including the rationale for the method(s) used to develop that estimate, generally has a greater chance of maintaining control of the cost of that program.

It is reasonable to conclude that Action 7A could not have been addressed by the CECOM G8. While the G-8 provides statutory and regulatory guidance and discusses proper procedures regarding reimbursable rates, the R2 Project Office was in the best position to determine the cost methodology to be used based on their professional judgment and firsthand knowledge of the scope and complexity of the services to be performed."

I agree with the IO's astute observation which was a reasonable assessment based on all of the evidence gathered on the issue of issuance of a draft Final Report versus the actual Final report. Nevertheless, the IO further elaborated in great detail on the significance of how the IR Office proceeded to resolve the disagreement between the IR draft report and the G-8's position. The IO stated that in order to appease the concerns of the G-8/Comptroller, an IPT (In Progress Team) was established with membership from all interested parties. The IO was impressed that the IPT consisted of principals from the R2 Project Office, CECOM G-8, CECOM IR, CECOM Legal and the CECOM Acquisition Center. The team was assembled with appropriate representatives to address the issues of R2 Office Fee Capture. Clearly, the issue with the R2 Fee Administration is one that primarily required the specific expertise of the CECOM G-8 (fee estimation and collection) and CECOM Legal (Economy Act and other statutory financial management input reviews). Therefore, based on the traditional workings of an IPT it is reasonable to conclude that each stakeholder had a say in the process and the proposed way forward was accepted.

The CECOM IR Office properly issued a draft report containing specific recommendations which were provided to the R2 Project Office, CECOM G-8, and CECOM Legal for comment. [TAB G-1]. On 9 January 2008, a kick off meeting was held to begin the R2 Fee Study. [TAB Q]. The IPT was formed to: Gather cost parameters for all R2 Cost Centers; create initial models for categorizing Task Orders and segmenting customers; refine the model for categorizing Task Orders; develop a pricing model for Task Orders based on the cost data and the segmentation; and validate the proposed Task Order and Pricing Models using the collected examples. As the IPT progressed challenges were raised regarding implementation strategies.

The CECOM G-8 was tasked to assess the R2 Administrative Support Costs for compliance with the Economy Act. The planned execution strategy created by the R2 Administrative Cost IPT created additional burdens within the R2 Office for which the CECOM G-8 was asked to craft recommended solutions to the identified challenges and provide responses. On 26 March 2009, CECOM G8 Employee, CECOM G-8, briefed a series of proposed solutions to the R2 Support Cost challenges. [TAB R].

Of particular import is the Economy Act issue that needed to be addressed by two offices represented in the IPT. Both CECOM Legal and G-8 opined on 31 U.S.C. §1535, commonly known as the Economy Act, and on the permitted charge of a fee for actual costs. A review of the evidence could not detect a difference of opinion between CECOM Legal and G-8.

CECOM Legal in their Memorandum to Mr. CECOM G8 (Retired) CECOM LCMC G-8, provided an overview of the Economy Act, discussed Public Law 103-355 (the Federal Acquisition Streamline Act of 1994), the Federal Acquisition Regulation, Subpart 17.5 (Interagency Acquisitions) and their relationship to rendering an opinion on the charge of a fee stating: "Clearly then, by implication, the servicing agency **is** permitted to charge a fee for the actual cost, or estimated cost if the actual cost is unknown, or entering into and administering the contract and subsequent delivery orders." [Paragraph 6, page 1 of TAB S]. The legal opinion also referenced Government Accountability Office (GAO) decisions and the language GAO employed to describe the parameters of the Economy Act:

"Agencies possess some flexibility in applying the Act's 'actual cost' standard to specific situations, so long as there is reasonable assurance that the performing agency is reimbursed for its cost without the ordering or the performing agency augmenting its appropriations. Thus, we have not objected to the use of a standard cost for items provided out of inventory, or to a standard level user cost for the use of storage space. From a fiscal law perspective, our concern is whether reimbursements are based on reasonable standard cost determinations that do not augment appropriations or otherwise run afoul of the Economy Act." [Paragraph 8, page 2, TAB S].

The CECOM LCMC SOP/Guidance for Reimbursable Order Process stated in paragraph c.(1) [page 2 of TAB K]:

"(1) The Economy Act, 32 U.S.C. §1535 (2004). This authorizes interagency and intra-agency orders and allows activities to retain funds without depositing those funds in the United States Treasury. The ordering agency must reimburse the performing agency for the actual costs of supplying goods and services, CE-LCMC organizations will use their established reimbursable rates as the actual cost for "performing activity" work year charges. An Economy Act order citing an annual or multiyear appropriation must serve a bona fide need arising, or existing in, the fiscal years for which the appropriation is available for obligation. The work to be performed under Economy Act orders shall be expected to begin within a reasonable time after us acceptance by the servicing activity. The requesting activity should ensure in advance of placing an order that such capability exists. The term "Economy Act" should be referenced on the order, and the reimbursable work year rate and total cost should be annotated separately from any contract or other type costs included on incoming and outgoing orders."

On the other hand, Mr. CECOM G8 (Retired) former CECOM G-8, in his statement dated 9 October 2012 stated: "The CECOM G-8 was charged with overseeing the Reimbursable Rate development process for all CECOM entities to include R2. The typical CECOM reimbursable business model was based upon man years of service provided to specific customers, usually of an enduring nature e.g. logistic support, software support, PM matrix support. The R2 office did not fit this typical model. As a result the R2 office compared its total proposed operating budget to the anticipated customer orders it projected to receive. This resulted in a percentage rate. For briefing and internal purposes this rate/metric was then compared to other government agencies that operated a similar or comparable business enterprise. The process did not authorize the R2 office to charge a flat rate fee based upon a broad based budget projection."

Further, with respect to the CECOM Legal Office position, the evidence reviewed [TABS S, T-1 and T-2] and the sworn statement of Mr. CECOM ATTORNEY, CECOM Legal captured clearly state the CECOM Legal did not undertake a determination of whether or not the R2 Project Office procedures were in violation of the Economy Act. In a follow-up statement, Mr. CECOM ATTORNEY reiterated the CECOM Legal Office was not directly tasked to render an opinion on whether the R2 Project Office encountered Economy Act or Anti-Deficiency Act violations stating furthermore CECOM Legal Office would not be in any position or have the expertise to do a financial review or audit of the R2 Project Office. Rather, as stated above, CECOM Legal, in their Memorandum to Mr. CECOM G8 (Retired) CECOM LCMC G-8, provided an overview of the Economy Act, discussed Public Law 103-355 (the Federal Acquisition Streamline Act of 1994), the Federal Acquisition Regulation, Subpart 17.5 (Interagency Acquisitions) and their relationship to rendering an opinion on the charge of a fee.

It should be noted that in the two above referenced instances, the CECOM Legal Office provided, on a third separate occasion, advice and assistance to CECOM officials regarding R2 processes and the Economy Act. The third instance was the initial pronouncement rendered in an unsigned legal opinion of Ms. Former CECOM Chief Counsel[TAB T]. Again, all three issuances provided the same consistent legal analysis of the Economy Act principles, albeit each subsequent issuance merely "updated" the legal authorities based on the most current case law on the issue as of the date of its issuance.[18]

On 21 April 2009, Contractor Employee, a contractor in the Software Engineering Center supporting the R2 Project Office communicated with Mr. R2 ADMIN SUPPORT COST IPT Lead, CECOM G-8, that the R2 Project Office was in the process of completing the action of instituting their integrated data environment. [Exhibit O]. The communiqué went on to state the implementation timeline for the new tool and suggested that a meeting with the CECOM G-8 be scheduled at the completion of the installation and data collection period which was anticipated to be approximately 9 months after receipt of the software tool. This would have been approximately the February 2010 timeframe. In Contractor Employee's-mail to Mr. R2 ADMIN SUPPORT COST IPT Lead, she suggested the IPT meeting conclude as they have addressed specific questions posed and understood the G-8's requirements as identified in the 26 March 2009 briefing.

[18] Given the time frame when was the CECOM Chief Counsel, her unsigned opinion was issued on/about 2004.

Mr. R2 ADMIN SUPPORT COST IPT Lead, CECOM G-8, in his e-mail response dated 29 April 2009 [Exhibit P], stated to the IPT members (which included representatives from the R2 Project Office, CECOM IR, CECOM Legal, and the CECOM Acquisition Center) the IPT would temporarily suspend continuing meeting until such time as the new software tool was put in place. Once accomplished, the IPT would reconvene and review the R2 progress. The IO stated that based on his professional judgment, "the IPT drew to a close because specific courses of actions developed by the IPT members were agreed to and acted upon by the R2 Project Office, therefore, the IPT served its purposes and was no longer required." I agree with the IO's conclusion on this matter which is reasonable and well supported by the evidence.

Thus, the IPT reached a conclusion via the G8 response to the R2 Presentation on 26 March 2009 [TAB R]. Based on the testimony of Mr. Director CECOM IRAC Office , [TABS J-2, 25 March 2011; and J-4, (9 January 2013], Internal Review Office Director, the Army Audit Agency contacted the IR Office in June 2008 regarding a pending audit of Army activities that charge a flat fee for contracting and contract management services. The IR Office advised the AAA of its review results which was reflected in the AAA report [TAB O]. Because of the similarities of the review objectives, the AAA did not do a complete review of the R2 Project Office.[19]

In conclusion, the CECOM IR provided a draft report with specific actions, recommendations, and comments from the principal organizations, the R2 Project Office and the CECOM G-8, to the initiator of the review effort, Mr. Director LRC(Retired). Given the issues surrounding the R2 Project Office were thoroughly addressed by all the appropriate stakeholder parties (R2 Project Office, CECOM G-8, CECOM Legal, CECOM Acquisition Center, and CECOM Software Engineering Center), as recommended by the CECOM IR and CECOM G-8, I am satisfied with the IO's conclusion that "the intended outcomes of the findings and recommendations were being acted upon and the draft report with G-8 comment should stand as the final report. Thus, I find that the CECOM IR conducted its review in accordance with AR 11-7, and that the review was not terminated at any point in time other than at the close of the effort.

To conclude otherwise it would have meant that the CECOM IR Office would have had to keep this review open for approximately 2 years after the initial publication of the draft report in order to present a final conclusion regarding the results to the findings and recommendations portrayed in the draft report. It is reasonable to assume these timelines were unforeseeable at the time of the publication of the draft report.

Finally, these conclusions are further bolstered by the following piece of evidence gathered by the IO that reflects the R2's compliance with all applicable statutory and regulatory requirements. The IO observed that based on his analysis of all of the evidence gathered during his investigation, AR 11-7 requires the establishment of an internal quality control program. The program includes formal annual self-evaluations and an external review not less that once every three years. Further, such reviews evaluate organization and staffing, program management, review planning, review process, audit compliance and liaison, and consulting and other advisory

[19] A more complete discussion of the role of the AAA in addressing the issue of R2's use of a "flat fee," see the section entitled "Ancillary Issue" that follows at pages 53-55.

services. In regards to the totality of the inference that can be gleaned by all of the anonymous whistleblower allegations concerning the CECOM IR office and the R2 Project office, the IO was impressed that the CECOM IR Office was reviewed by CECOM's higher headquarter, the Army Material Command (AMC) Internal Review Office, on 13-17 September 2010. This is coincidentally a fairly short time before the OSC referred the whistleblower allegations to the Secretary of the Army (the OSC referral is dated November 30, 2010). Based on the AMC IR Office review of the CECOM IR Office, the IR Office's overall rating in 2010 was 90% and was deemed to be in compliance with professional standards, policies and practices. It should be specifically noted that Audit Compliance and Liaison received an overall rating of 92%. [TAB W]. At no point during the AMC IR Office review was there any mention of issues pertaining to the conduct of business by the CECOM IR or its leadership ever brought to the attention of the AMC IR Office reviewing personnel. Nor did the AMC IR review indicate any errors or problems that were associated with the CECOM IR Office.

OSC-Referred Allegation 6. The R2 Project Office leases contract specialists and other support staff from CECOM LCMC to support its operations and reimburses CECOM LCMC for the salaries and other costs attributable to these employees. However, the leased staff support both the R2 Project Office and other unrelated CECOM LCMC activities. Because the employees do not track the amount of time spent supporting each office, the R2 Project Office is not credited for the time the employees spend on CECOM LCMC tasks. The R2 Project Office reimburses CECOM LCMC for the entire cost of these employees despite the fact that they perform tasks for both the R2 Project Office and CECOM LCMC. As a result, this constitutes a violation of the Economy Act, an augmentation of CECOM LCMC's budget in violation of Federal appropriations law, and gross mismanagement for failing to provide adequate oversight and tracking of federal agencies that provide payments to the R2 Project Office.

Allegation 6 was unsubstantiated.

The IO found that the R2 Office did not reimburse CECOM for the entire costs associated with the support staff but only for that portion of their work hours attributed to R2 Office related work. As indicated by the Memorandum of Agreement (MOA) and the testimony of Ms. Former Project Manager, R2 Project Office and -(Former) Team Lead Program Analyst R2 office, the evidence shows that within the CECOM LCMC Acquisition Center, there was a dedicated cell of employees whose only function was to work on R2 projects. The cost of the dedicated cell was reimbursed by the R2 Office as outlined in a functional support agreement. Further, as reflected in the testimony provided byDeputy Director ACC APG, the support cell within the Acquisition Center was exclusive to the R2 Office [TABS G-1, L, and T]. Also, the Office of the CECOM Chief Counsel dedicated 2.5 man years labor as was documented in a functional support agreement. CECOM developed the S3 contracts and directed the C4ISR Community to utilize S3 contracting process to specifically avoid any augmentation issues.

The evidence reviewed suggests the R2 Project Office and CECOM were not in violation of the Economy Act or any other federal laws. The CECOM Memorandum on Reimbursable Order Process defines Augmentation as: "This is an action by an agency that increases the effective amount of funds available in an agency's appropriation. This generally results in expenditures by an agency in excess of the amount originally appropriated by Congress. Generally, an agency may not augment its appropriations from outside sources without statutory authority. An Anti-

deficiency Act violation may occur if an agency retains and spends funds received from outside sources, absent statutory authority." [TAB K]. The R2 Project Office and the CECOM LCMC Acquisition Center entered into a Memorandum of Agreement for the purposes of establishing a framework for reimbursable services to be provided by the CECOM LCMC Acquisition Center. [TAB L]. The Scope of the Assistance clearly states the CECOM LCMC Acquisition Center will establish a separate group of acquisition specialists located within the Acquisition Center which would be funded by the R2 Office. Specific knowledge, skills and abilities required to be provided were defined and number of personnel identified. In addition to manpower, travel, overtime, and office supplies required by this cell of employees would also be funded by the R2 Office. Additionally, a Functional Support Agreement existed between the R2 Project Office and the CECOM Legal Office for similar services. The CECOM Internal Review (IR) concluded within their draft Final Report: "We determined that the R2 Project is properly accounting for all of its incoming funds and operating expenses." [Page 4 of TAB G-1]. Additionally, a piece of evidence that was not available until 16 August 2012 also supports the conclusion that charges of Economy Act violations or violations of the Anti-Deficiency Act are unfounded regarding processes employed within the R2 Project Office. The U.S. Army CID initiated an investigation on 26 January 2011 in response to a Department of Defense Office of the Inspector General (DoD-IG) Hotline Complaint. Many pieces of evidence which were gathered as part of the first AR 15-6 investigation conducted by the initial IO, Ms. CECOM 15-6 IO (2), was provided to the CID investigators. The combination of evidence and sworn testimony with the Hotline source led the CID investigators to determine that violations of the Anti-Deficiency Act and the Economy Act did not happen as initially alleged, as no evidence was established during the course of their investigation which substantiated or corroborated the source's claim. Thus, the CID investigation was closed and recommended that CECOM complete its AR 15-6 investigation.

ANCILLARY ISSUE

As part of the IO's investigation, the IO gathered testimonial and documentary evidence that addressed a matter that was raised by Mr. CECOM IRAC Lead Evaluator in his testimony dated 25 May 2011. Essentially, Mr. CECOM IRAC Lead Evaluator asserted that Mr. Director CECOM IRAC Office intentionally misled and gave inaccurate information to the AAA regarding the R2 Office refunding costs. He stated the following:

"AAA had identified the R2 Project Office as an audit candidate and was scheduled to come to CECOM and conduct their fieldwork. At the time we were in the process of doing our Internal Review of the R2 Project Office. At that time Director, CECOM IRAC Office sent AMC IR and AAA a request and persuading them to not look at R2 Project Office that they accepted, and relied upon the comments Director, CECOM IRAC Office provided to include in their report to justify AAA not looking at the R2 fees. He informed them that our I R shop had it under control and that everything was fine in R2 -that they were returning monies to their customers etc...(the comments he provided were inaccurate and misleading). Director, CECOM IRAC Office received a copy of the draft report from AAA in September 2008 soliciting comments on the accuracy of the draft report. This is clearly after we knew that R2 was operating illegally and in violation of the economy act as outlined in the July 2008 opinion we received from G8. I assume Director, CECOM IRAC Office didn't provide any comments to the draft report because the inaccuracies he initialed provided to AAA were in the final public report. So there is e-mail from Director,

CECOM IRAC Office persuading AAA to not review R2 fees and providing false or misleading information to AAA about the R2 operations. Then there is e-mail to Director, CECOM IRAC Office via AAA draft report soliciting comments as to the accuracy of the R2 operations. Then you have a final AAA public report in print clearly inaccurate as to the R2 operations. This is very disturbing?" [TAB H-2, 25 May 2011].

However, all of the evidence gathered as part of the IO's investigative effort reflected otherwise in that Mr. Director CECOM IRAC Office was very upfront and assistive with the AAA in advising them exactly what his office had been tasked to do and the results of his office's efforts as were captured in Mr. CECOM IRAC Lead Evaluator and Mr. CECOM IRAC Evaluator's work product, the draft Final Report.

The role of the Army Audit Agency (AAA) report, Audit Report A-2009-0047-ALC issued 23 February 2009 [TAB O], had no bearing on the assessment conducted by the CECOM Internal Review Office as there were no recommendations stated in the report (reference DA Letter to the Under Secretary of the Army signed by Mr. Patrick J. Fitzgerald, The Auditor General, dated 23 February 2009 [included as part of TAB O]. The AAA was directed by the Under Secretary of the Army to Study Flat Fee for Contracting and Contract Management Services by interviewing key resource management and acquisition personnel and reviewed selected Army acquisition plans, databases, and memorandums of agreement to determine whether any Army activities charged a flat fee for contracting or contract management services without specific authority to do so. During their initial audit research, the AAA became aware of the R2 contract and its fee structure.

A request to establish an entrance meeting was initiated by Mr. AAA Auditor, e-mail dated 23 June 2008. [TAB X]. Mr. Director CECOM IRAC Office, as the CECOM IR, telephonically discussed and followed-up with an e-mail (24 June 2008) the on-going effort undertaken by CECOM IR. [TAB X] Summarizing Mr. Director CECOM IRAC Office's conversations, the discussion included an overview of the objectives and results to date. Based on CECOM IR's efforts, the AAA elected not to review the R2 Project Office. The AAA report in the Executive Summary acknowledged that the R2 Project Office charged a flat fee for its contracting services and that the CECOM IR on-going review included the propriety of fees charged by the project office. Further, the Executive Summary stated "We found the Rapid Response Project Office charges a flat fee for its contracting services much the same as HRsPO (HRsolutions Program Office). However, unlike HRSPO, the office periodically adjusts the rate it charges for reflect annual costs and returns excess amounts collected back to its customers." Additionally, the AAA commented in the Conclusion Section of the Report, page 5 of Exhibit D, "At the time we completed our review in August 2008, the U.S. Army CECOM Life Cycle Management Command (CECOM) Internal Review Office had an ongoing audit of the Rapid Response Project Office". Furthermore the AAA stated: "Accordingly, we don't address the propriety of the Rapid Response Project Office's fee structure in this report."

As stated above, Mr. CECOM IRAC Lead Evaluator alleged in his sworn statement [TAB H-2, 25 Mary 2011] that Mr. Director CECOM IRAC Office provided the AAA inaccurate or misleading information about refunding costs, which led the AAA to draw an erroneous conclusion with regard to the R2 Project Office. As stated in above, the AAA clearly identifies

CECOM IR's review as a standalone effort and that no CECOM IR information was used in their report to draw any conclusion. This also highlights the willingness of the CECOM IR to provide their working papers to the AAA. Based on the above recitation of the facts, the IO concluded that "the plausibility of Mr. CECOM IRAC Lead Evaluator's statement regarding Mr. Director CECOM IRAC Office providing the AAA inaccurate or misleading information comes into question." Further, the IO noted that on 14 October 2008, Headquarters, DA and command personnel agreed with the facts and conclusions in the AAA report, and that agreement established the Army's official position.

In consideration of the above evidence, I agree with the IO's analysis in his ROI that the AAA did not rely on a draft IR report and did not go back to CECOM's IR for a copy of the final IR report. The genesis of the AAA effort was when the AAA was directed by the Under Secretary of the Army to Study Flat Fee for Contracting and Contract Management Services. CECOM IR received an e-mail, dated 3 September 2008, from Mr. AAA Auditor, Auditor-in Charge of the AAA Audit on Flat Fee for Contracting and Contract Management Services, requesting concurrence from CECOM IR that a prepared statement be added into the AAA report [TAB X]. The AAA requested that they would like to state in their report "the results of your audit would be available if the Under Secretary wanted a copy." Furthermore, the AAA stated "We are not obligating the CECOM IR to issue a report to him (*emphasis added:* the Under Secretary) or his office." In response to the query, Mr.CECOM IR Evaluator (2), CECOM IR, responded in his e-mail dated 4 September 2008, CECOM IR's willingness to have the AAA acknowledge that CECOM IR completed an internal review at the local level [TAB X]. Army Audit Agency (AAA) report, Audit Report A-2009-0047-ALC issued 23 February 2009 [TAB O] acknowledged the ongoing CECOM IR review. Sworn Statements by Mr. AAA Auditor collected 03 October 2012 substantiate this further. Of particular importance is Mr. AAA Auditor's statement regarding the use of others' work. Mr. AAA Auditor's statements clearly identify CECOM IR's review as" a standalone effort" and that "no CECOM IR information was used in our report." As an aside, Mr. AAA Auditor further elaborated by stating that "It is reasonable to use the works of others when conducting audits. It's done all the time to gain knowledge on a program. It helps with shaping our efforts." Thus, Mr. AAA Auditor's illuminating comments reflect that from the AAA perspective, the results of other evaluator's work may be useful sources of information for planning and performing a review. Further, he stated that evaluators may be able to rely on the work of the other evaluators to support findings or conclusions for their review thereby avoiding duplication of effort. Mr. AAA Auditor also stated in his Sworn Statement that "Although other works are used we don't use other organizations findings and recommendations. We would use their information to inform, conduct our field work, and develop our own findings and recommendations. We would have to validate any recommendations from outside organizations."

Thus, since the CECOM IR had an effort ongoing, the AAA elected not to review the R2 Office, rather simply acknowledging the ongoing CECOM IR effort in their final report. Mr. Director CECOM IRAC Office in his sworn statements, taken 4 October 2012, and, again on 9 January 2013 [J-3, 4 October 2012; and J-4, 9 January 2013, respectively], confirm the statements of Mr. AAA Auditor. The sworn statement of Mr. Director CECOM IRAC Office further states that the CECOM IR Office was willing to provide the AAA with the working files of Messrs. CECOM IRAC Lead Evaluator and CECOM IRAC Evaluator in support of the AAA

effort. However, the AAA did not follow-up on this offer. Again, I agree with the IO's conclusion that "[b]ased on the CECOM IR Office willingness to provide their working papers to the AAA, the plausibility of Mr. CECOM IRAC Lead Evaluator's statement regarding Mr. Director CECOM IRAC Office providing the AAA inaccurate or misleading information comes into question."

SUMMATION

A critical aspect of the R2 Office is Electronic Contract Business System (ECBS) also referred to as the Integrated Data Environment (IDE). The ECBS was able to track the MIPR number, the JOAN number, date, amount and what task order the direct cite work was placed on and what the JOAN was used against. Ms. Former Project Manager, R2 Project Office testified that "For each of these areas, there were SOPs, a to-do list which appeared for each employee, and clean up reports to check on data integrity. The IDE was used 24/7 by our customers and the R2 staff. It was the key to efficient management of such a large program." Ms. Former Project Manager, R2 Project Office went on to state that during her time in the R2 Project Office, there were approximately 3 green belt projects and 1 black belt project to improve the efficiencies of the internal processes.

Ms. Former Project Manager, R2 Project Office further stated that "The IDE was used to track all of our expenses. The IDE allowed the budget team to track the MIPRs when they came in. It identified which task order the money would be placed on (direct cite) and what R2 expense the money was allocated against (reimbursable JOAN)." Ms. Former Project Manager, R2 Project Office states from her perspective: "There is no doubt in my mind that the system was the best tool available. My perspective is that it was sufficient to meet the requirements of the Economy Act and gave appropriate control and also appropriate insight into the expenditures of the program. The IDE was a tremendous tool that allowed us to tract all the financial information and all of the contracting actions."

The R2 Office tracked and reported expenses on a quarterly basis. On 7 July 2008, a Memorandum for Record was published to the R2 Project Office regarding 4th Quarter Administrative Support Costs. [TAB Y]. The memorandum states in paragraph 2: "As a result of the 4th Quarter review of the R2 Project Office overhead, the amount of fee to be collected will be reduced. As of this notice, but no later than, 7 July 2008, please begin collecting .5% on all new tasks and existing contracts for the remainder of the fiscal year." The memorandum also goes on to address expiring funds in paragraph 5. The evidence here shows the R2 Office was concerned with FY carry over and would adjust their operating principles based upon input from the CECOM G-8.

Further, the CECOM IR draft report under Paragraph B, Results, states "We randomly sampled ten FY 2007 contract obligations and their associated reimbursable rate fees from the R2 database totaling about $39 million and were able to identify all of those obligations and fees in the Army Standard Operations and Maintenance Army Research and Development Systems

(SOMARDS) (accounting) or Mechanization of Contract Administration Services (MOCAS) systems. [Page 4, TAB G-1] . Contractors can use this data in several ways to improve the payment process and to expedite contract closeout. MOCAS is a disbursing system. Clearly, a process to track incoming funds was in place and adhered to in terms of setting up individual accounts.

The R2 Project Office was able to track workflow of the office and had an appropriate tool to assist with the management of the office.
The CECOM LCMC SOP/Guidance for Reimbursable Order Process stated in paragraph c.(1) [page 2 of TAB K]:

> "(1) The Economy Act, 32 U.S.C. §1535 (2004). This authorizes interagency and intra-agency orders and allows activities to retain funds without depositing those funds in the United States Treasury. The ordering agency must reimburse the performing agency for the actual costs of supplying goods and services, CE-LCMC organizations will use their established reimbursable rates as the actual cost for "performing activity" work year charges. An Economy Act order citing an annual or multiyear appropriation must serve a bona fide need arising, or existing in, the fiscal years for which the appropriation is available for obligation. The work to be performed under Economy Act orders shall be expected to begin within a reasonable time after us acceptance by the servicing activity. The requesting activity should ensure in advance of placing an order that such capability exists. The term "Economy Act" should be referenced on the order, and the reimbursable work year rate and total cost should be annotated separately from any contract or other type costs included on incoming and outgoing orders."

Lastly, Mr. CECOM G8 (Retired) former CECOM G-8, in his Sworn Statement taken 9 October 2012 stated: "The CECOM G-8 was charged with overseeing the Reimbursable Rate development process for all CECOM entities to include R2. The typical CECOM reimbursable business model was based upon man years of service provided to specific customers, usually of an enduring nature e.g. logistic support, software support, PM matrix support. The R2 office did not fit this typical model. As a result the R2 office compared its total proposed operating budget to the anticipated customer orders it projected to receive. This resulted in a percentage rate. For briefing and internal purposes this rate/metric was then compared to other government agencies that operated a similar or comparable business enterprise. The process did not authorize the R2 office to charge a flat rate fee based upon a broad based budget projection."

VIOLATIONS or APPARENT VIOLATIONS OF LAW, RULE, or REGULATION

The Investigations of the six allegations referred by OSC to the Secretary of the Army revealed no substantiating evidence of the violation of any established standard. The U.S. Army Criminal Investigation Command (CID) initiated an investigation on 26 January 2011 in response to a Department of Defense Office of the Inspector General (DoD-IG) Hotline Complaint. Many pieces of evidence referenced in the first AR 15-6 investigation conducted and used within the framework of this initial AR 15-6 investigation were provided to the CID investigators. The combination of the initial AR 15-6 evidence and the sworn testimony provided by the DoD IG Hotline source led the CID investigators to determine that there were no

violations of the Anti-Deficiency Act and the Economy Act as alleged b the Do D IG Hotline source, as no evidence was established during the course of the CID investigation which substantiated or corroborated the source's claims

CORRECTIVE ACTIONS

The result of this investigation has not uncovered any systemic issues which need to be corrected. The responses to the six OSC referred allegations reflect that the R2 Project Office and CECOM applied the appropriate management emphasis to the R2 Office fee issue. Once the issue was identified b the IR review process, an appropriate team from across the Command (CECOM Senior Management, G-8, Legal, IR, and R2 Project Office) was brought together to analyze the problem and develop agreed upon solutions from a way ahead perspective. Management documentation from the R2 Project Office from 1 August 2011 through 12 October 2012 was obtained for analysis [TAB Z] and an interview with the Mr. Current Director, LRC, Director of the CECOM Logistics and Readiness Center, was conducted to ensure the appropriate management controls recommended as a result of the earlier CECOM team efforts have remained in place. During this period, on a weekly basis, the R2 Project Office has been reporting status on contract actions on an individual basis or summary basis (Contract #, Forecasted Award Date and Amount), top concerns/issues the office was dealing with, and finances (required fee, projected fee to be received and actual fee received). The evidence shows the R2 Project Office and the CECOM Command continue to apply the appropriate management tools and oversight regarding the R2 Project Office operations.

Neither several administrative investigations, nor a criminal investigation by experienced agents of the CID uncovered any credible evidence which supports the allegations of the whistleblower and the need to initiate any corrective actions.

Therefore, I agree with the IO's Recommendation #1: "The operating procedures of the Rapid Response (R2) Project Office have undergone multiple reviews and inquiries. The evidence collected and reviewed suggests the Rapid Response (R2) Project Office and Communications-Electronics Command (CECOM) were not in violation of the Economy Act or any other federal laws therefore the recommendation is the investigation be closed."

Further, I agree with the IO's Recommendation #2: " The CECOM Internal Review Draft Report be considered as the Final Report. As documented in the findings, the CECOM IR Office would have had to keep their review open for approximately 2 years after the initial publication of the draft report in order to present a final conclusion regarding the results to the findings and recommendations portrayed in the draft report. It is reasonable to assume these timelines were unforeseeable at the time of the publication of the draft report. Given the issues surrounding the R2 Project Office were being worked earnestly by all the appropriate parties (R2 Project Office, CECOM G-8, CECOM Legal, CECOM Acquisition Center, CECOM Software Engineering Center) as recommended by the CECOM IR and CECOM G-8 it is my professional judgment that the intended outcomes of the findings and recommendations were being acted upon and the draft report with G-8 comment should stand as the final report."

With the issuance of this Report, I will advise the appropriate authority to implement the IO's Recommendation #2.

CONCLUSION

The DA takes very seriously its responsibility to address, in a timely and thorough fashion, matters referred by OSC. In this case, the Army conducted a thorough and comprehensive investigation in response to the OSC's referral of allegations submitted by an anonymous whistleblower. Although the Army's investigation revealed that none of the whistleblower's 6 allegations were substantiated, one was only partially substantiated (*i.e.*, that though the IO determined that the IR office did not issue a final report, based on all of documentary and testimonial evidence gathered during his investigation including the subsequent work undertaken by the affected stakeholders who comprised the Internal Process Team to "earnestly" work to address the issues raised during the IR review, the Army regulation did not require that a formal final report had to be issued. Rather an informal report was issued by the Director, of the IR Office. Nevertheless, I agree with the IO's conclusion and recommendation that "the intended outcomes of the Internal Review's Draft Report findings and recommendations were being acted upon and the Draft Report with G-8 comment should stand as the final report."

I am satisfied that this is the correct outcome in this matter. Accordingly, the Army has made no referral of the alleged criminal violation to the Attorney General pursuant to Title 5, U.S.C. § 1213(d)(5)(d).

This letter, with enclosures, is submitted in satisfaction of my responsibilities under Title 5, USC, Sections 1213(c) and (d). Please direct any further questions you may have concerning this matter to [redacted]

Sincerely,

Thomas R. Lamont
Assistant Secretary of the Army
(Manpower and Reserve Affairs)

Army Report Documents
Communications Electronics Command
Life Cycle Management Command (CECOM LCMC)
Rapid Response (R2 Project)
Fort Monmouth, New Jersey
Office of Special Counsel File Number DI-11-0119

Tab/Exhibit	Description
A	Secretary of the Army (SA) delegation to the Assistant Secretary of the Army (Manpower & Reserve Affairs) his authority, as agency head, to review, sign, and submit to Office of Special Counsel the report required by Title 5, USC, Sections 1213(b), (c), and (d), dated March 18, 2011
B	Attachments from November 30, 2010 Office of Special Counsel transmission to Secretary of the Army
C	Appointment of AR 15-6 Investigating Officer, Memoranda for Ms.CECOM 15 - 6 IO (1), from Appointing Authority Major General CECOM Commander
D	Army Regulation (AR) 15-6, *Procedures for Investigating Officers and Boards of Officers,* dated October 2, 2006
E	Appointment of AR 15-6 Investigating Officer, Memoranda for Ms. CECOM 15 - 6 IO (2), dated February 3, 2011, from Appointing Authority Major General CECOM COMMANDER
F	Appointment of AR 15-6 Investigating Officer, Memoranda for Mr. CECOM 15-6 IO (3), dated September 21, 2012, from Appointing Authority Major General CECOM COMMANDER(2)
G	G-1 -- CECOM LCMC Internal Review Office Draft Report 4-A-08, 7 May 2008, Review of the Rapid Response Project Office Reimbursable Rate Process
	G-2 -- Report XX-A-08, 22 FEB 2008
	G-3 -- Report XX-A-08, 20 March 2008
	G-4 -- Report XX-A-08, 18 March 2008
	G-5 -- Report 4-A-08, 27 March 2008

H	H-1 -- Statement dated 9 January 2012 of CECOM IRAC OFFICE Senior Evaluator, GS 12 Evaluator, CECOM IR Office
	H-2 -- Statement of CECOM IRAC OFFICE Senior Evaluator dated 25 May 2011
I	Statement of CECOM IRAC OFFICE Evaluator, GS 11 Evaluator, CECOM IR Office, dated 19 January 2011
J	J-1 -- Statement of CECOM IRAC Office Director, GS 14, Director, CECOM LCMC IR Office dated 13 January 2011
	J-2 -- Statement of CECOM IRAC Office Director, GS 14, Director, CECOM LCMC IR Office dated 25 May 2011
	J-3 -- Statement of CECOM IRAC Office Director, GS 14, Director, CECOM LCMC IR Office dated 4 October 2012
	J-4 -- Statement of CECOM IRAC Office Director, GS 14, Director, CECOM LCMC IR Office dated 9 January 2012
K	Headquarters U.S. Army CECOM LCMC PEO C3T, Fort Monmouth, New Jersey, dated 14 December 2004, Subject: Reimbursable Order Process, COLONEL , Chief of Staff
L	Memorandum of Agreement between the Rapid Response Project Office and the CECOM LCMC Acquisition Center establishing framework for reimbursable services by CECOM LCMC to Rapid Response Project Office
M	E-MAIL From CECOM IRAC Office Director dated 5 October 2012 forwarding e-mail string from LRC Director Retired, Director, CECOM LCMC LRC, Requesting CECOM LCMC IR Review of R2 Methodology and Compliance with Setting Reimbursable Rates, dated 3 January 2008
N	CECOM Internal Review Office Exit Briefing for Mr. LRC Director Retired, Subject: Review of Rapid Response (R2) Project Office Reimbursable Rate Process, dated 28 March 2008
O	U.S. Army Audit Agency Audit Report A-2009-0047-ALC, Flat Fees for Contracting and Contracting Management Services, 23 February 2009
P	Army Regulation 11-7, *Army Programs, Internal Review Program*, 26 October 2007
Q	Powerpoint slide show presentation, R2 Fee Study Kick Off Meeting, 9 January 2008
R	Powerpoint slide show presentation, G8 Response to R2 Presentation, 26 March 2009, CECOM G8 Employee, Command Analysis Office CECOM LCMC G8

S	Memorandum For CECOM G8 Retired, Comptroller, CECOM Life Cycle Management Command G8, Subject: Fee for Service Charges, from Vincent Buonocore CECOM Chief Counsel, dated 31 March 2009
T	T-1 -- Memorandum For (then CECOM LCMC Deputy to the Commanding General), Subject: Fee for Service Charges, from , CECOM LCMC Chief Counsel
	T-2 – E-mail from CECOM ATTORNEY to R2 Project Manager, Subject: FW: Fee Memo, dated 20 March 2008
U	E-mail from Contractor Employee to IPT Lead, Subject: R2 Fee Estimation IPT – Milestone Status (Note: basis of e-mail is to request disbanding of IPT because R2 Project office is ordering New Software which will require at minimum 3 months installing, configuring train and implement, and an additional 6 months to collect data), dated 21 April 2009
V	E-mail dated 5 October 2012, with e-mail string dated 29 April 2009 from IPT Lead disbanding the IPT because R2 Project Office was in the process of updating its fee estimation model and ordering new software
W	AMC IR Office Memorandum for Chief of Staff, CECOM Life Cycle Management Command, Subject: Internal Review and Audit Compliance Office (IRACO) Quality Assurance and Assistance (QA2) Visit report (13 – 17 September 2010), undated
X	X-1 -- Email between CECOM IRAC Office Director and AAA Auditor, Subject: FW: Army Audit CECOM field work, dated 24 June 2008 (email summarized results of the IR review of the R2 reimbursable rate)
	X-2 -- Email between , CECOM IRAC Office Director and AAA Auditor Subject: RE: AAA Report on Flat Fees for Contracting Services, dated 4 September 2008 (email summarized to AAA the results of the IR Review of the R2 Flat Fee reimbursable rate stating: "AAA Auditor, you may report that we (CECOM IR) completed an internal review at the local level but we suggest you leave it at that rather than including a statement that DA can request a copy of the report because it was requested by local management.")
Y	Memorandum For Record For R2 Project Office by R2 Project Manager, Subject: 4th Quarter Administrative Support Cost, dated 7 July 2008
Z	R2 Third Generation PowerPoint Slideshow Capturing data from contracting services under the R2 Program
AA	Witness Listing for Army Report – DI-11-0119 ***(copy only in unredacted Army Report version)***

A

SECRETARY OF THE ARMY
WASHINGTON

MAR 18 2011

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY
(MANPOWER AND RESERVE AFFAIRS)

SUBJECT: Delegation of Certain Authority Under Title 5, United States Code, Section 1213

In accordance with Title 10, United States Code, Section 3013(f), I hereby delegate to you certain authority conferred upon me as the head of the Department of the Army by Title 5, United States Code, Section 1213. Specifically, you are authorized to review, sign and submit written reports setting forth the findings of investigations into information and any related matters transmitted to me by The Special Counsel in accordance with Title 5, United States Code, Sections 1213. This authority may not be further delegated.

Although not a limitation on your authority to act in my behalf, in those cases in which your proposed decisions or actions represent a change in precedent or policy; are of significant White House, Congressional, Department or public interest; or have been, or should be, of interest or concern to me, for any reason, you will brief me prior to decision or action, unless precluded by the exigencies of the situation.

This delegation shall remain in effect for three years from the date of its execution, unless earlier rescinded in writing by me.

John M. McHugh

CF:
Office of the Army General Counsel

TAB A

B

U.S. ARMY
CECOM LIFE CYCLE MANAGEMENT COMMAND

Draft Report

REPORT 4-A-08 7 May 2008

REVIEW OF THE RAPID RESPONSE PROJECT OFFICE

REIMBURSABLE RATE PROCESS

INTERNAL REVIEW OFFICE

INTERNAL REVIEW OFFICE
U.S. ARMY CECOM LIFE CYCLE MANAGEMENT COMMAND
FORT MONMOUTH, NEW JERSEY

Report No. 4-A-08 **7 May 2008**

1. **Authority.** The Internal Review (IR) Office performed a review of the Rapid Response (R2) Project Office Reimbursable Rate Process at the request of [redacted], Director, CECOM LCMC Logistics and Readiness Center (LRC). IR evaluators [redacted] and [redacted] conducted the review from 22 January 2008 through 18 March 2008 and followed DA IR Evaluator Standards. This report was prepared in accordance with AR 11-7 and AR 11-2.

2. **Background.** The R2 Project Office was established in 1998 under the Command and Control Directorate within the CECOM Research, Development and Engineering Center (RDEC) and operational control transitioned to CECOM LCMC LRC in 2003. The R2 Project Office is chartered by the Deputy to the Commanding General, CECOM LCMC, to execute a unique, competitive and streamlined business process that allows the Army, DoD and other federal government agencies to rapidly acquire contractor-provided equipment and services.

3. **Objectives.** The objectives of this review were to:

a. Determine R2's process for setting customer reimbursable rates.
b. Evaluate R2's accounting of incoming funds and operating expenses.

4. **Scope and Methodology.** The scope of this review included examining and analyzing R2's Fiscal Year (FY) 2007 accounting records and related support documentation. In addition, we performed tests and calculations for accuracy on R2's FY 2007 incoming reimbursable funds, operating expenses, customer contract obligations and other R2 financial related information.

Our methodology included reviewing DoD and Army guidance, regulations and local Standard Operating Procedures (SOP's) on reimbursable rates. We also interviewed key management personnel at the R2 Project Office and at CECOM LCMC G8 Office. Ten customer contract obligations totaling about $39 million were randomly sample tested to determine the actual reimbursable rate charged and to verify dollar amounts were consistent between internal R2 records and official Army records. We also reviewed several Functional Support Agreements (FSA's) to ensure their validity. In addition, we verified that R2 and G8 were conducting joint reviews of open obligations and documenting them in a timely manner. All of the documentation reviewed, personnel interviews, and analyses were performed in the context of answering the review objectives.

5. Results.

A. Objective: Determine R2's process for setting customer reimbursable rates.

Results. We found that beginning in the second quarter of FY 2007 the R2 Project Office switched to charging its customers a 0.5% reimbursable rate for services provided, based on calculating a rate of actual costs versus incoming workload. The move to a percentage rate was the result of an R2 internal audit that determined that R2 may have excess funds compared to their planned financial requirements for FY 2007. Accordingly, as a reimbursable non-profit organization, a 0.5% reimbursable rate was set as a means to better align incoming fees with operating expenses. In addition, R2 indicated the move to a rate fee was also to comply with statutory and regulatory guidance. The 0.5% rate remained in effect until January 2008 at which time the rate was increased to 1%. We agree with the R2 Project Office charging a percentage rate.

CECOM LCMC SOP: The most recent CECOM LCMC SOP on reimbursable rates states that any CECOM LCMC organization will not charge any fees either as a standard percentage rate or a dollar amount outside of CECOM LCMC internal established reimbursable rates to any ordering activity without DCSRM review and approval. We contacted G8 personnel and they informed us they met with R2 personnel prior to R2 changing to a percentage rate and agreed and approved of R2 setting their new rate at 0.5% beginning in the second quarter of FY 2007. Although G8 personnel said they approved of R2 changing to a percentage rate in FY 2007, other G8 personnel told us that they disagreed in principle with the R2 Project Office charging a percentage rate.

CECOM LCMC Reimbursable Work Year Rate: Prior to the R2 Project Office converting to a percentage rate they utilized the standard CECOM LCMC reimbursable work year rate that was developed during the annual CECOM LCMC G8 formulation of work year rates process. Although the R2 office isn't utilizing the formulation rate developed, they have continued to participate in the annual CECOM LCMC G8 work year rate process. G8 personnel told us that the reason they required the R2 Project Office to submit the work year rates was for year-to-year comparison purposes and for comparison with other CECOM LCMC activities.

R2 Fee Model Initiative: In August 2007, the R2 Project Office initiated a Fee Model study to ultimately assist them with customer pricing and to improve overall management of business operations. The fee model is being developed by a Software Engineering Center (SEC) contractor and funded through R2's SEC Functional Support Agreement. The fee model encompasses analyses of many of R2's historical business records that include grouping cost elements, itemizing task order functions and estimating future workloads. It also factors different customer types and considers size by dollar value of contract obligations. The goal is to end up with a standard customer pricing model for like R2 work categories in the pre-award, award and post-award process of R2 business operations. The R2 fee model should be ready for pilot testing in the April 2008 timeframe and expected to be implemented in FY 2009.

B. Objective: Evaluate R2's accounting of its incoming funds and operating expenses.

Results. We determined that the R2 Project Office is properly accounting for all of its incoming funds and operating expenses. We randomly sampled ten FY 2007 contract obligations and their associated reimbursable rate fees from the R2 database totaling about $39 million and were able to identify all of those obligations and fees in the Army Standard Operation and Maintenance Army Research and Development System (SOMARDS) (accounting) or Mechanization of Contract Administration Services (MOCAS) systems. In addition, we examined the R2 legal and acquisition expenses paid during FY 2007 and were also able to accurately identify those expenses in SOMARDS. As a result, we are confident the R2 Project Office is accurately accounting for incoming funds and operating expenses.

FY 2007 Contract Obligations: Over the past several years the R2 Project Office has seen their business increase exponentially generating about $2.8 billion in contract obligations in FY 2007. This is an astounding growth rate from the time control transitioned to CECOM LCMC LRC in FY 2003. The R2 Project Office provided us with spreadsheets generated from their database and we were able to validate the $2.8 billion in contract obligations in FY 2007. In addition, we randomly selected ten contract obligations and their associated reimbursable fees totaling about $39 million to validate their authenticity and R2's accounting procedures. The sample items consisted of contract obligations from all of DoD services and 1 non-DoD obligation. For all ten sample obligations we were able to obtain adequate support documentation, as well as, validate the transactions in the Army SOMARDS or MOCAS accounting systems. The R2 Project Office also provided us with documentation to verify that R2 and G8 personnel were conducting joint reviews and reconciliations of open contract obligations on a quarterly basis. Based on our analyses and support documentation obtained we determined that the R2 office is properly accounting for all customer contract obligations and their associated reimbursable fees.

FY 2007 Operating Expenses: During FY 2007, the R2 Project Office generated about $13 million in customer reimbursable fees compared to about $13.8 million in operating expenses. We reviewed about $2.1 million of the R2 operating expenses and were able to validate their authenticity and existence in the R2 database and the Army SOMARDS accounting system. In addition, R2 personnel were able to provide us with adequate documentation to support the expenses. Based on our analyses and documentation received we determined the R2 office is properly accounting for their operating expenses.

FY 2006 Carryover Fees: In FY 2007, the R2 Project Office had carryover reimbursable fees from prior FY's of about $8.4 million. R2 personnel told us that generally they try to carry over approximately one to two quarters of operating expenses into the next fiscal year to mitigate for uncertainties and finance the beginning of the next fiscal year or until such time the current DoD budget is approved. Recent fiscal year experiences have shown that often federal agencies are required to operate under a continuing resolution early in the fiscal year as a result reimbursable activities like R2 have a bona fide need to retain and carryover prior year fees. Although R2's $8.4 million carryover in FY 2007 is in excess of two quarters, personnel told us the excess carryover was due to prior year fourth quarter expenses that didn't occur. The R2 Project Office is operating in a dynamic business environment that doesn't always allow for immediate management of income and expenses during a given period. In our opinion, R2 personnel are actively and effectively managing their business operations given the climate in which they operate. Guidance regarding the amount of funds reimbursable activities can carry over from fiscal year to fiscal year is generally vague.

6. **Suggested Actions for the Director, CECOM LCMC LRC:**

A. Direct the R2 Project Officer to obtain a CECOM LCMC legal opinion as to whether R2 can charge their customers a percentage rate such as 0.5% for their services. The opinion should address any/all applicable statutory, regulatory or fiscal guidance for reimbursable activities.

B. Have the R2 Project Officer formally submit a proposal to the G8 office to approve in writing R2 charging their customers a percentage as a reimbursable rate. This methodology is based on actual and real time workload which is a more exact methodology than any other reimbursement scenario that has been reviewed. The R2 office should conduct quarterly reviews of their financial posture and determine if a rate adjustment is deemed necessary. The quarterly review process would bring both the R2 Project Office and G8 in compliance with the intent of the CECOM LCMC SOP on reimbursable rates.

C. Direct the R2 Project Officer to obtain an opinion from the G8 Office regarding amount of funds reimbursable activities can carryover from fiscal year to fiscal year. The opinion should address any/all applicable statutory, regulatory or fiscal guidance for reimbursable activities.

D. Direct the R2 Project Officer to consider discontinuing the SEC R2 fee model study. If the R2 Project Office desires to set or review their reimbursable rate based on analyses of their financial posture and approval from the G8 office then there is no reason to continue the SEC fee model effort. The funds being spent on the fee model effort could be redirected into other R2 efforts and considered savings or funds put to better use.

E. Determine the amount of savings related to discontinuing the SEC R2 fee model study.

7. **Suggested Actions for the G8.**

A. Approve in writing the R2 Project Office charging their customers a percentage as a reimbursable rate. This methodology is based on actual and real time workload which is a more exact methodology than any other fee reimbursement scenario that has been reviewed. The R2 office should conduct quarterly reviews of their financial posture and determine if a rate adjustment is deemed necessary. The quarterly review process would bring both the R2 Project Office and G8 in compliance with the intent of the CECOM LCMC SOP on reimbursable rates.

B. Advise the R2 Project Office regarding the amount of funds reimbursable activities can carryover from fiscal year to fiscal year. The opinion should address any/all applicable statutory, regulatory or fiscal guidance for reimbursable activities.

8. **POC** for this matter is [redacted], who can be reached on extension (732) 427-4112, DSN 987 or at [redacted]

9. **General Comments**: Thanks to all of the R2 staff for their assistance and cooperation during this effort. We look forward to assisting R2 and the LRC in the future on any Internal Review services they desire or require.

One Vision, One Mission - The Warfighter.

Internal Review Evaluator

Senior Internal Review Evaluator

Approved By:

Director
Internal Review Office

SUGGESTED ACTIONS FOR THE G8:

Action 7A. Approve in writing the R2 Project Office charging their customers a percentage as a reimbursable rate. This methodology is based on actual and real time workload which is a more exact methodology than any other fee reimbursement scenario that has been reviewed. The R2 office should conduct quarterly reviews of their financial posture and determine if a rate adjustment is deemed necessary. The quarterly review process would bring both the R2 Project Office and G8 in compliance with the intent of the CECOM LCMC SOP on reimbursable rates.

COMMAND COMMENTS AND ACTION TAKEN

G8 non-concurs on Action 7A.

The Economy Act (31 U.S.C. Sec. 1535 (b)) states that agencies are required to recover the actual cost of goods and services provided. The level of effort should be specifically identifiable to the customer order. While the Economy Act requires the recovering of the actual costs, it provides some flexibility on how costs should be recovered. Whether the estimating method is per hour or percentage of sales, actual costs must be recovered. The method used would not require written approval from the G8.

A review of the financial posture and a rate adjustment would not be necessary since the orders should be adjusted to the actual cost of the customer order when completed. If collections were more than the actual costs, the excess should be returned to the customer; if the reverse was true, the customer should be contacted to obtain more funding.

The G8 would recommend the SEC Fee Model Study be continued with the idea of tracking actual costs of the customer to the fees being charged. With the development of such a model, it should serve to minimize the effect of any additional workload requirements and provide a tool to monitor and support future admin support charge computations.

SUGGESTED ACTIONS FOR THE G8:

Action 7B. Advise the R2 Project Office regarding the amount of funds reimbursable activities can carryover from fiscal year to fiscal year. The opinion should address any/all applicable statutory, regulatory or fiscal guidance for reimbursable activities.

COMMAND COMMENTS AND ACTION TAKEN

A critical consideration in identifying carryover funds is the type of funds. Carryover can exist if (1) the funds will not expire and (2) it is attributed to work efforts not completed but will be completed in the subsequent fiscal year. If funds expire at the end of the fiscal year, then obligations must occur prior to the end of the fiscal year. **Non-expired funds would have to be obtained for costs incurred in the next fiscal year. Example: Subsequent contract administration or technical support occurring in FY 09 for an OMA contract awarded in FY08 (expiring appropriation), would require FY 09 OMA.**

According to 31 U.S.C. Sec. 1502 (a) funding must be related to a bona fide need for that specific fiscal year and can not be used for a requirement in the following fiscal year.

Another consideration is the type of funds being used to pay the work efforts. Under 31 U.S.C. Sec. 1301 (a) "appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law." Work efforts need to be associated to the proper appropriated funds.

C

DEPARTMENT OF THE ARMY
HEADQUARTERS, U.S. ARMY COMMUNICATIONS-ELECTRONICS COMMAND
6002 COMBAT DRIVE
ABERDEEN PROVING GROUND, MARYLAND 21005-1845

AMSEL-CG

MEMORANDUM FOR INVESTIGATING OFFICER (1), HQ, RDECOM CERDEC AMSRD-CER-TSP, Myer Center Room 2C118A, Fort Monmouth, New Jersey, 07703

SUBJECT: Appointment as an Investigating Officer Pursuant to AR 15-6

1. You are hereby appointed as an investigating officer pursuant to AR 15-6, Procedures for Investigating Officers and Boards of Officers, to conduct an informal investigation regarding allegations of inappropriate conduct on the part employees of the Communications Electronics Command Life Cycle Management Command (CECOM LCMC) Rapid Response (R2) project mishandling money earned as fees charged by the R2 Project Office in violation of the Economy Act of 1933 (Economy Act).

2. The purpose of your investigation is to determine the validity of the whistleblower's allegations and make findings concerning whether any wrongdoing occurred, and if so, by whom, and whether adequate policies and procedures are in place to preclude any recurrence of any improprieties, irregularities, or misconduct disclosed during your inquiry.

3. In conducting your investigation, you will consider the evidence of witnesses, the materials contained in the reference (enclosed), and any other materials that you consider relevant. At a minimum, you are to make detailed findings and recommendations regarding the following:

a. Whether the R2 Project Office has established a process to properly track individual customer expenses to ensure compliance with the Economy Act.

b. Whether the R2 Project Office failed to properly return unused client fees and improperly carried over fees collected from 2007 to present in violation of the Economy Act.

c. Whether the R2 Project Office reimbursed CECOM for the entire cost of contract specialists and support staff when these employees were performing tasks for both the R2 Project Office and CECOM LCMC in violation of the Economy Act and/or Federal appropriations laws.

d. Whether the CECOM LCMC Internal Review Office knowingly failed to properly issue a draft or final Report 4-A-08, which would have revealed the Economy Act violations and tracking problems within the R2 Project Office.

See the attached Office of Special Counsel memorandum dated 30 November 2010 for additional information regarding the alleged violations.

TAB C

4. In your investigation you are not limited to the issues and questions listed above. You will investigate any relevant and related matters that you may discover that fall under the areas for investigation described above. You are advised not to investigate matters that do not fall within the areas for investigation described above. If you are in doubt about the relevance of a matter, you will consult your legal advisor CECOM LEGAL ADVISOR at (732) 532-4445, Office of the Staff Judge Advocate (OSJA) CECOM Legal Office.

5. Your investigation will use informal procedures under AR 15-6. To the fullest extent possible, all witness statements will be sworn and reduced to writing. You will interview all witnesses in person, if practical. You should contact those witnesses you consider relevant during the course of your investigation. You will utilize DA Form 2823 for all sworn statements. Caution all individuals that they must not discuss the subject matter of the investigation with anyone other than a properly detailed investigator.

6. If, in the course of your investigation, you suspect wrongdoing or neglect on the part of a person senior to you, inform me so that a new investigating officer may be appointed. As an Investigating Officer, you may not, absent military exigency, investigate someone senior to you.

7. From the evidence, you will make findings as to the above issues and recommendations that are based upon your findings. Reference your analysis and findings to the specific evidence upon which you rely. Recommend remedial measures, to include any corrective and personnel or disciplinary actions you deem appropriate, if any. You may also recommend any necessary management actions to preclude a recurrence of any founded misconduct or identified systemic problems. If certain evidence conflicts with other evidence, state what you believe to be in conflict and why. If any question asked solicits an answer that requires a follow up question and answer, ensure that you have pursued those questions in order to further develop the record evidence.

8. If, during the course of your investigation, you come to suspect that a person subject to the Uniform Code of Military Justice (UCMJ) has violated the UCMJ or some other criminal law; you will advise that person of his or her rights under Article 31, UCMJ or the Fifth Amendment of the United States Constitution, as appropriate. Additionally, you may have to provide certain witnesses Privacy Act statements before soliciting personal information.

9. In your investigation, you will make such findings as are relevant and supported by the facts. You will also make such recommendations as are appropriate and are supported by the facts. In compiling your report of investigation, consider carefully that information contained therein will be subject to public disclosure and release.

10. You may find it necessary to interview civilian employees at some stage in your investigation. **Federal civilian employees have certain representational rights that active-duty personnel do not have.** Generally speaking, civilian employees are required to cooperate with official investigations. There are some exceptions:

a. Civilian employees who are members of a bargaining unit have a right to union representation at any interview with management if they "reasonably believe" that the interview could result in a disciplinary action against them. You must observe appropriate union notice requirements prior to interviewing any bargaining unit employees. Should a bargaining unit employee seek to invoke this right, you have no obligation to arrange representation for the employee, only an obligation to permit the employee the opportunity to secure representation. **That witness is entitled to union representation, and you must either stop questioning or allow the union to attend.** Once you have scheduled any bargaining unit employees for an interview, contact your legal advisor for guidance in notifying the appropriate union representative. The Civilian Personnel Office can tell you whether any particular employee you wish to interview is a member of the bargaining unit.

b. If you are interviewing a civilian witness about *somebody else*, before initiating questioning you must: (1) inform the interviewee why you are questioning him/her about someone else and who that person is (by name), and (2) assure the employee that no reprisal will take place if he/she refuses to answer, but that adverse action could be initiated based on their refusal to cooperate in a properly authorized investigation or inquiry. If the employee refuses to answer your questions, suspend the interview and contact your legal advisor.

c. Civilian employees who reasonably believe that information they provide during an official investigation may be used against them in a criminal prosecution cannot be required to cooperate without a grant of immunity. Should any civilian employee you attempt to interview decline to cooperate for any reason, suspend the interview and seek guidance from your legal advisor on how to precede.

d. If the matter you are investigating involves a grievance, a personnel practice, or policy or other conditions of employment, you may be required to notify the union of any interviews you have scheduled with bargaining unit employees and afford the union the opportunity to be present. Check with your legal advisor to determine if this rule applies to your case and how to proceed if it does.

e. You have no authority to compel the cooperation of contractor employees. If you find it necessary to interview contractor employees, you must contact the contracting officer's representative for the applicable contract to request cooperation.

11. This investigation has been directed by the Office of Special Counsel (OSC) pursuant to a whistleblower complaint. Because this is a whistleblower investigation, the whistleblower has certain rights. Pursuant to OSC policy, you normally must interview the whistleblower. Specifically, he must be interviewed and afforded a meaningful opportunity to provide his oral testimony and to provide written documentation, if any, in support of his allegations. However, in this case, the whistleblower requested to remain anonymous. If at any time during the investigation, an individual comes forward and advises you that they are the whistleblower, please forward this information to your legal advisor. In turn, this information will be conveyed to the Army Office of the General Counsel for further guidance.

12. Submit your findings and recommendations on a DA Form 1574 (Report of Proceedings by Investigating Officer/Board of Officers), with all administrative enclosures and evidentiary exhibits tabbed and indexed. Make clear, concise, and specific findings of fact. The evidence contained in your investigation must directly support each finding you make, and you should specifically refer to each exhibit that supports that particular finding. Your recommendations must be consistent with your findings. Submit your findings and recommendations by 7 January 2011.

13. You will submit your completed investigation on a DA Form 1574 with a table of contents and enclosures. The enclosures will include all documentary materials considered by you. Make two copies of your report of investigation (ROI). Provide an index and clearly tab the original ROI, to include your findings and recommendations on DA Form 1574, with appropriate enclosures and forward the entire package to me, through the CECOM/AMC Legal Offices. Before beginning your investigation, you will receive a legal briefing from your legal advisor, CECOM LEGAL ADVISOR. You may consult the legal advisor at any time during the investigation and you will consult the legal advisor before warning any witness as a suspect and before putting your report in final form. Additionally, along with your report of investigation, you will submit a draft final agency response describing any actions taken to address the allegations.

14. This duty takes precedence over your normal duties, TDY, and leave. You are directed to begin your investigation as soon as practicable.

MG, USA
Commanding

D

Army Regulation 15–6

Boards, Commissions, and Committees

Procedures for Investigating Officers and Boards of Officers

Headquarters
Department of the Army
Washington, DC
2 October 2006

UNCLASSIFIED

TAB D

SUMMARY of CHANGE

AR 15-6
Procedures for Investigating Officers and Boards of Officers

This rapid action revision, dated 2 October 2006--

- Clarifies the distinction between levels of appointing authorities for hostile fire death investigations and friendly fire death investigations (para 2-1a(3)).

- Permits the general court-martial convening authority to delegate appointing authority to the special court-martial convening authority in hostile fire death investigations (para 2-1a(3)).

This regulation, dated 30 September 1996--

- Is a complete revision of the earlier regulation dated 24 August 1977.

- Updates policies and procedures concerning the procedures for investigating officers and boards of officers.

Headquarters
Department of the Army
Washington, DC
2 October 2006

*Army Regulation 15–6

Effective 2 November 2006

Boards, Commissions, and Committees

Procedures for Investigating Officers and Boards of Officers

By Order of the Secretary of the Army:

PETER J. SCHOOMAKER
General, United States Army
Chief of Staff

Official:

JOYCE E. MORROW
Administrative Assistant to the
Secretary of the Army

History. This publication is a rapid action revision. The portions affected by this rapid action revision are listed in the summary of change.

Summary. This regulation establishes procedures for investigations and boards of officers not specifically authorized by any other directive.

Applicability. This regulation applies to the Active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve, unless otherwise stated. During mobilization, chapters and policies contained in this regulation may be modified by the proponent.

Proponent and exception authority. The proponent of this regulation is The Judge Advocate General. The Judge Advocate General has the authority to approve exceptions or waivers to this regulation that are consistent with controlling law and regulations. The Judge Advocate General may delegate this approval authority, in writing, to a division chief within the proponent agency or its direct reporting unit or field operating agency in the grade of colonel or the civilian equivalent. Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and must include formal review by the activity's senior legal officer. All waiver requests will be endorsed by the commander or senior leader of the requesting activity and forwarded through higher headquarters to the policy proponent. Refer to AR 25-30 for specific guidance.

Army management control process. This regulation does not contain management control provisions.

Supplementation. Supplementation of this regulation and establishment of command and local forms are prohibited without prior approval from HQDA (DAJA–AL), Washington, DC 20310–2212.

Suggested improvements. The proponent agency of this regulation is the Office of The Judge Advocate General. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to HQDA (DAJA–AL), Washington, DC 20310–2212.

Distribution. This publication is available in electronic media only and is intended for command level A for the Active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve.

Contents (Listed by paragraph and page number)

Chapter 1
Introduction, *page 1*
Purpose • 1–1, *page 1*
References • 1–2, *page 1*
Explanation of abbreviations and terms • 1–3, *page 1*
Responsibilities • 1–4, *page 1*
Types of investigations and boards • 1–5, *page 1*
Function of investigations and boards • 1–6, *page 1*
Interested persons • 1–7, *page 2*
Respondents • 1–8, *page 2*
Use of results of investigations in adverse administrative actions • 1–9, *page 2*

*This regulation supersedes AR 15–6 dated 30 September 1996.

UNCLASSIFIED

Contents—Continued

Chapter 2
Responsibilities of the Appointing Authority, *page 2*
Appointment • 2–1, *page 2*
Administrative support • 2–2, *page 6*
Action of the appointing authority • 2–3, *page 7*

Chapter 3
General Guidance for Investigating Officers and Boards, *page 8*

Section I
Conduct of the Investigation, page 8
Preliminary responsibilities • 3–1, *page 8*
Oaths • 3–2, *page 8*
Challenges • 3–3, *page 8*
Counsel • 3–4, *page 8*
Decisions • 3–5, *page 8*
Presence of the public and recording of proceedings • 3–6, *page 8*
Rules of evidence and proof of facts • 3–7, *page 13*
Witnesses • 3–8, *page 14*
Communications with the appointing authority • 3–9, *page 15*

Section II
Findings and Recommendations, page 15
Findings • 3–10, *page 15*
Recommendations • 3–11, *page 15*
Deliberation • 3–12, *page 16*
Voting • 3–13, *page 16*

Section III
Report of Proceedings, page 16
Format • 3–14, *page 16*
Enclosures • 3–15, *page 16*
Exhibits • 3–16, *page 16*
Authentication • 3–17, *page 17*
Safeguarding a written report • 3–18, *page 17*
Submission • 3–19, *page 17*
Action of the appointing authority • 3–20, *page 17*

Chapter 4
Informal Investigations and Boards of Officers, *page 17*
Composition • 4–1, *page 17*
Procedure • 4–2, *page 17*
Interested persons • 4–3, *page 17*

Chapter 5
Formal Boards of Officers, *page 18*

Section I
General, page 18
Members • 5–1, *page 18*
Attendance of members • 5–2, *page 19*
Duties of recorder • 5–3, *page 19*

Section II
Respondents, page 20
Designation • 5–4, *page 20*

Contents—Continued

Notice • 5–5, *page 20*
Counsel • 5–6, *page 20*
Challenges for cause • 5–7, *page 21*
Presentation of evidence • 5–8, *page 21*
Argument • 5–9, *page 22*
After the hearing • 5–10, *page 22*

Appendixes

A. References, *page 23*

B. Guidance for Preparing Privacy Act Statements, *page 24*

Glossary

Index

Chapter 1
Introduction

1–1. Purpose

This regulation establishes procedures for investigations and boards of officers not specifically authorized by any other directive. This regulation or any part of it may be made applicable to investigations or boards that are authorized by another directive, but only by specific provision in that directive or in the memorandum of appointment. In case of a conflict between the provisions of this regulation, when made applicable, and the provisions of the specific directive authorizing the investigation or board, the latter will govern. Even when not specifically made applicable, this regulation may be used as a general guide for investigations or boards authorized by another directive, but in that case its provisions are not mandatory.

1–2. References

Required and related publications and prescribed and referenced forms are listed in appendix A.

1–3. Explanation of abbreviations and terms

Abbreviations and special terms used in this regulation are explained in the glossary.

1–4. Responsibilities

Responsibilities are listed in chapter 2.

1–5. Types of investigations and boards

a. General. An administrative fact-finding procedure under this regulation may be designated an investigation or a board of officers. The proceedings may be informal (chap 4) or formal (chap 5). Proceedings that involve a single investigating officer using informal procedures are designated investigations. Proceedings that involve more than one investigating officer using formal or informal procedures or a single investigating officer using formal procedures are designated a board of officers.

b. Selection of procedure.

(1) In determining whether to use informal or formal procedures, the appointing authority will consider these among other factors:

(a) Purpose of the inquiry.

(b) Seriousness of the subject matter.

(c) Complexity of issues involved.

(d) Need for documentation.

(e) Desirability of providing a comprehensive hearing for persons whose conduct or performance of duty is being investigated. (See paras 1–8, 4–3, and 5–4*a*.)

(2) Regardless of the purpose of the investigation, even if it is to inquire into the conduct or performance of a particular individual, formal procedures are not mandatory unless required by other applicable regulations or directed by higher authority.

(3) Unless formal procedures are expressly required, either by the directive authorizing the board or by the memorandum of appointment, all cases to which this regulation applies will use informal procedures.

(4) In determining which procedures to use, the appointing authority will seek the advice of the servicing judge advocate (JA).

(5) Before opening an investigation involving allegations against general officers or senior executive service civilians, the requirements of Army Regulation (AR) 20–1, subparagraph 8–3*i*(3) must be met.

c. Preliminary investigations. Even when formal procedures are contemplated, a preliminary informal investigation may be advisable to ascertain the magnitude of the problem, to identify and interview witnesses, and to summarize or record their statements. The formal board may then draw upon the results of the preliminary investigation.

d. Concurrent investigations. An administrative fact finding procedure under this regulation, whether designated as an investigation or a board of officers, may be conducted before, concurrently with, or after an investigation into the same or related matters by another command or agency, consistent with subparagraph *b*(5) above. Appointing authorities, investigating officers, and boards of officers will ensure that procedures under this regulation do not hinder or interfere with a concurrent investigation directed by higher headquarters, a counterintelligence investigation or an investigation being conducted by a criminal investigative. In cases of concurrent or subsequent investigations, coordinatins, coordination with the other command or agency will be made to avoid duplication of investigative effort, where possible.

1–6. Function of investigations and boards

The primary function of any investigation or board of officers is to ascertain facts and to report them to the appointing authority. It is the duty of the investigating officer or board to ascertain and consider the evidence on all sides of each

issue, thoroughly and impartially, and to make findings and recommendations that are warranted by the facts and that comply with the instructions of the appointing authority.

1–7. Interested persons

Appointing authorities have a right to use investigations and boards to obtain information necessary or useful in carrying out their official responsibilities. The fact that an individual may have an interest in the matter under investigation or that the information may reflect adversely on that individual does not require that the proceedings constitute a hearing for that individual.

1–8. Respondents

In formal investigations the appointing authority may designate one or more persons as respondents in the investigation. Such a designation has significant procedural implications. (See chap 5, sec II, in general, and para 5–4*a*, in particular.) Respondents may not be designated in informal investigations.

1–9. Use of results of investigations in adverse administrative actions

a. This regulation does not require that an investigation be conducted before adverse administrative action, such as relief for cause, can be taken against an individual. However, if an investigation is conducted using the procedures of this regulation, the information obtained, including findings and recommendations, may be used in any administrative action against an individual, whether or not that individual was designated a respondent, and whether formal or informal procedures were used, subject to the limitations of *b* and *c* below.

b. The Office of Personnel Management and Army Regulations establish rules for adverse actions against Army civilian personnel and establish the procedural safeguards. In every case involving contemplated formal disciplinary action against civilian employees, the servicing civilian personnel office and labor counselor will be consulted before the employee is notified of the contemplated adverse action.

c. Except as provided in *d* below, when adverse administrative action is contemplated against an individual (other than a civilian employee, see *b* above), including an individual designated as a respondent, based upon information obtained as a result of an investigation or board conducted pursuant to this regulation, the appropriate military authority must observe the following minimum safeguards before taking final action against the individual:

(1) Notify the person in writing of the proposed adverse action and provide a copy, if not previously provided, of that part of the findings and recommendations of the investigation or board and the supporting evidence on which the proposed adverse action is based.

(2) Give the person a reasonable opportunity to reply in writing and to submit relevant rebuttal material.

(3) Review and evaluate the person's response.

d. There is no requirement to refer the investigation to the individual if the adverse action contemplated is prescribed in regulations or other directives that provide procedural safeguards, such as notice to the individual and opportunity to respond. For example, there is no requirement to refer an investigation conducted under this regulation to a soldier prior to giving the soldier an adverse evaluation report based upon the investigation because the regulations governing evaluation reports provide the necessary procedural safeguards.

e. When the investigation or board is conducted pursuant to this regulation but the contemplated administrative action is prescribed by a different regulation or directive with more stringent procedural safeguards than those in *c* above, the more stringent safeguards must be observed.

Chapter 2
Responsibilities of the Appointing Authority

2–1. Appointment

a. Authority to appoint. The following people may appoint investigations or boards to inquire into matters within their areas of responsibility.

(1) Except as noted in subparagraph 2–1*a*(3) below, the following individuals may appoint a formal investigation or board (chap 5) after consultation with the servicing judge advocate (JA) or legal advisor (LA):

(a) Any general court–martial (GCM) or special court–martial convening authority, including those who exercise that authority for administrative purposes only.

(b) Any general officer.

(c) Any commander or principal staff officer in the grade of colonel or above at the installation, activity, or unit level.

(d) Any State adjutant general.

(e) A Department of the Army civilian supervisor permanently assigned to a position graded as a general schedule

(GS)/general management, grade 14 or above and who is assigned as the head of an Army agency or activity or as a division or department chief.

(2) Except as noted in subparagraph 2–1*a*(3), the following individuals may appoint an informal investigation or board (chap 4):

(a) Any officer authorized to appoint a formal board.

(b) A commander at any level.

(c) A principal staff officer or supervisor in the grade of major or above.

(3) Only a general court–martial convening authority may appoint a formal investigation or board (chap 5) or an informal investigation or board (chap 4) for incidents resulting in property damage of $1,000,000 or more, the loss or destruction of an Army aircraft or missile, an injury and/or illness resulting in, or likely to result in, permanent total disability, the death of one or more persons, and the death of one or more persons by fratricide/friendly fire.

(a) For investigations of a death or deaths involving a deployed force(s), from what is believed to be hostile fire, the general court-martial convening authority may delegate, in writing, appointing/approval authority to a subordinate commander exercising special court-martial convening authority. This authority may not be further delegated.

(b) If evidence is discovered during a hostile fire investigation that indicates that the death(s) may have been the result of fratricide/friendly fire, the investigating officer will immediately suspend the investigation and inform the appointing authority and legal advisor. At this time the general court-martial convening authority will appoint a new investigation into the fratricide/friendly fire incident. Any evidence from the hostile fire investigation may be provided to the investigating officer or board conducting the fratricide/friendly fire investigation.

(4) Appointing authorities who are general officers may delegate the selection of board members to members of their staffs.

(5) When more than one appointing authority has an interest in the matter requiring investigation, a single investigation or board will be conducted whenever practicable. In case of doubt or disagreement as to who will appoint the investigation or board, the first common superior of all organizations concerned will resolve the issue.

(6) Appointing authorities may request, through channels, that persons from outside their organizations serve on boards or conduct investigations under their jurisdictions.

b. Method of appointment. Informal investigations and boards may be appointed orally or in writing. Formal boards will be appointed in writing but, when necessary, may be appointed orally and later confirmed in writing. Any written appointment will be in the form of a memorandum of appointment. (See figs 2–1 through 2–5.) Whether oral or written, the appointment will specify clearly the purpose and scope of the investigation or board and the nature of the findings and recommendations required. If the appointment is made under a specific directive, that directive will be cited. If the procedures of this regulation are intended to apply, the appointment will cite this regulation and, in the case of a board, specify whether it is to be informal or formal. (Refer to chaps 4 and 5.) Any special instructions (for example, requirement for verbatim record or designation of respondents in formal investigations) will be included.

c. Who may be appointed. Investigating officers and board members shall be those persons who, in the opinion of the appointing authority, are best qualified for the duty by reason of their education, training, experience, length of service and temperament.

(1) Except as provided in paragraph 5–1*e*, only commissioned officers, warrant officers, or Department of the Army civilian employees permanently assigned to a position graded as a GS–13 or above will be appointed as investigating officers or voting members of boards.

(2) Recorders, legal advisors, and persons with special technical knowledge may be appointed to formal boards in a nonvoting capacity. (See para 5–1.)

(3) An investigating officer or voting member of a board will be senior to any person whose conduct or performance of duty may be investigated, or against whom adverse findings or recommendations that may be made, except when the appointing authority determines that it is impracticable because of military exigencies. Inconvenience in obtaining an investigating officer or the unavailability of senior persons within the appointing authority's organization would not normally be considered military exigencies.

(a) The investigating officer or board president will, subject to the approval of the appointing authority, determine the relative senority of military and civilian personnel. Actual superior/subordinate relationships, relative duty requirements, and other sources may be used as guidance. Except where a material adverse effect on an individual's substantial rights results, the appointing authority's determination of senority shall be final (see para 2–3*c*).

(b) An investigating officer or voting member of a board who, during the proceedings, discovers that the completion thereof requires examining the conduct or performance of duty of, or may result in findings or recommendations adverse, to, a person senior to him or her will report this fact to the board president or the appointing authority. The appointing authority will then appoint another person, senior to the person affected, who will either replace the investigating officer or member, or conduct a separate inquiry into the matters pertaining to that person. Where necessary, the new investigating officer or board may be furnished any evidence properly considered by the previous investigating officer or board.

(c) If the appointing authority determines that military exigencies make these alternatives impracticable, the appointing authority may direct the investigating officer or member to continue. In formal proceedings, this direction will be

written and will be an enclosure to the report of proceedings. If the appointing authority does not become aware of the problem until the results of the investigation are presented for review and action, the case will be returned for new or supplemental investigation only where specific prejudice is found to exist.

(4) Specific regulations may require that investigating officers or board members be military officers, be professionally certified, or possess an appropriate security clearance.

(Appropriate letterhead)

OFFICE SYMBOL DATE

MEMORANDUM FOR: *(President)*

SUBJECT: Appointment of Board of Officers

1. A board of officers is hereby appointed pursuant to AR 735–5 and AR 15–6 to investigate the circumstances connected with the loss, damage, or destruction of the property listed on reports of survey referred to the board and to determine responsibility for the loss, damage, or destruction of such property.

2. The following members are appointed to the board:

MAJ Robert A. Jones, HHC, 3d Bn, 1st Inf Bde, 20th Inf Div, Ft Blank, WD 88888 Member (President)

CPT Paul R. Wisniewski, Co A, 2d Bn, 3d Inf Bde, 20th Inf Div, Ft Blank, WD 88888 Member

CPT David B. Braun, Co C, 1st Bn, 3d Inf Bde, 20th Inf Div, Ft Blank, WD 88888 Member

CPT John C. Solomon, HHC, 2d S & T Bn, DISCOM 20th Inf Div, Ft Blank, WD 88888 Alternate member (see AR 15–6, para 5–2c)

1LT Steven T. Jefferson, Co B, 2d Bn, 2d Inf Bde, 20th Inf Div, Ft Blank, WD 88888 Recorder (without vote)

3. The board will meet at the call of the President. It will use the procedures set forth in AR 735–5 and AR 15–6 applicable to formal boards with respondents. Respondents will be referred to the board by separate correspondence.

4. Reports of proceedings will be summarized (the findings and recommendations will be verbatim) and submitted to this headquarters, ATTN: ABCD–AG–PA. Reports will be submitted within 3 working days of the conclusion of each case. The Adjutant General's office will furnish necessary administrative support for the board. Legal advice will be obtained, as needed, from the Staff Judge Advocate's office.

5. The board will serve until further notice.

(Authority Line)

(Signature block)

CF: *(Provide copy to board personnel)*

Figure 2–1. Sample memorandum for appointment of a standing board of officers using formal procedures

---

(Appropriate letterhead)

OFFICE SYMBOL DATE

MEMORANDUM FOR: *(President of standing board)*

SUBJECT: Referral of Respondent

1. Reference memorandum, this headquarters, dated *(day–month–year)*, subject: Appointment of Board of Officers.

2. *(Enter rank, name, SSN, and unit)* is hereby designated a respondent before the board appointed by the referenced memorandum. The board will consider whether *(enter name of respondent)* should be held pecuniarily liable for the loss, damage, or destruction of the property listed on the attached report of survey. The correspondence and supporting documentation recommending referral to a board of officers are enclosed.

3. *(Enter rank, name, branch, and unit)* is designated counsel for *(enter name of respondent)*.

4. For the consideration of this case only, *(enter rank, name, and unit)* is designated a voting member of the board, vice *(enter rank, name, and unit)*.

(Authority line)
Encl

(Signature block)

CF: *(Provide copy to board personnel, counsel, and respondent)*

Figure 2–2. Sample memorandum for referral of a respondent to a standing board

(Appropriate letterhead)

OFFICE SYMBOL DATE

MEMORANDUM FOR: *(Officer concerned)*

SUBJECT: Appointment as a Board of Officers to Investigate Alleged Corruption and Mismanagement

1. You are hereby appointed a board of officers, pursuant to AR 15–6, to investigate allegations of *(enter subject matter to be investigated, such as corruption and mismanagement in the office of the Fort Blank Provost Marshal)*. The scope of your investigation will include *(mention specific matters to be investigated, such as whether military police personnel are properly processing traffic tickets, whether supervisory personnel are receiving money or other personal favors from subordinate personnel in return for tolerating the improper processing of traffic tickets, and so forth)*. Enclosed herewith is a report of proceedings of an earlier informal investigation into alleged improper processing of traffic tickets that was discontinued when it appeared that supervisory personnel may have been involved.

2. As the board, you will use formal procedures under AR 15–6.*(Enter duty positions, ranks, and names)* are designated respondents. Additional respondents may be designated based on your recommendations during the course of the investigation. Counsel for each respondent, if requested, will be designated by subsequent correspondence.

3. *(Enter rank, name, branch, and unit)* will serve as legal advisor to you, the board. *(Enter rank, name, duty position, and unit)*, with the concurrence of *(his)(her)* commander, will serve as an advisory member of the board. The office of the adjutant general, this headquarters, will provide necessary administrative support. The Fort Blank Resident Office, Criminal Investigation Division Command (CIDC), will provide technical support, including preserving physical evidence, if needed.

4. Prepare the report of proceedings on DA Form 1574 and submit it to me within 60 days.

(Signature of appointing authority)

CF: *(Provide copy to all parties concerned)*

Figure 2–3. Sample memorandum for appointment of a single officer as a board of officers, with legal advisor and advisory member, using formal procedures

(Appropriate letterhead)

OFFICE SYMBOL DATE

MEMORANDUM FOR: *(Officer concerned)*

SUBJECT: Appointment of Investigating Officer

1. You are hereby appointed an investigating officer pursuant to AR 15–6 and AR 210–7, paragraph 4–3, to conduct an informal investigation into complaints that sales representatives of the Fly–By–Night Sales Company have been conducting door–to–door solicitation in the River Bend family housing area in violation of AR 210–7. Details pertaining to the reported violations are in the enclosed file prepared by the Commercial Solicitation Branch, Office of the Adjutant General, this headquarters (Encl).

2. In your investigation, all witness statements will be sworn. From the evidence, you will make findings whether the Fly–By–Night Sales Company has violated AR 210–7 and recommend whether to initiate a show cause hearing pursuant to AR 210–7, paragraph 4–5, and whether to temporarily suspend the company's or individual agents' solicitation privileges pending completion of the show cause hearing.

3. Submit your findings and recommendations in four copies on DA Form 1574 to this headquarters, ATTN: ABCD–AG, within 7 days.

(Authority line)

Encl

(Signature block)

Figure 2–4. Sample memorandum for appointment of an investigating officer under AR 15–6 and other directives

(Appropriate letterhead)

OFFICE SYMBOL DATE

MEMORANDUM FOR: *(Officer concerned)*

SUBJECT: Appointment as Investigating Officer

1. You are hereby appointed an investigating officer pursuant to AR 15–6 and AR 380–5, paragraph 10–8, to investigate the circumstances surrounding the discovery of a CONFIDENTIAL document in a trash can in the office of the 3d Battalion S–3 on 31 August 1987. A preliminary inquiry into the incident proved inconclusive (see enclosed report).

2. In your investigation, use informal procedures under AR 15–6. You will make findings as to whether security compromise has occurred, who was responsible for any security violation, and whether existing security procedures are adequate.

3. This incident has no known suspects at this time. If in the course of your investigation you come to suspect that certain people may be responsible for the security violation, you must advise them of their rights under the UCMJ, Article 31, or the Fifth Amendment, as appropriate. In addition, you must provide them a Privacy Act statement before you solicit any (further) personal information. You may obtain assistance with these legal matters from the office of the Staff Judge Advocate.

4. Submit your findings and recommendations on DA Form 1574 to the Brigade S–2 within 10 days.

(Authority line)

(Signature block)

Figure 2–5. Sample memorandum for appointment of an investigating officer in a case with potential Privacy Act implications

2–2. Administrative support

The appointing authority will arrange necessary facilities, clerical assistance, and other administrative support for investigating officers and boards of officers. If not required by another directive, a verbatim transcript of the proceedings may be authorized only by The Judge Advocate General (TJAG) or the GCM convening authority in his or her sole discretion. However, before authorization, the GCM convening authority will consult the staff judge advocate (SJA). A contract reporter may be employed only for a formal board and only if authorized by the specific directive under which the board is appointed. A contract reporter will not be employed if a military or Department of the Army

(DA) civilian employee reporter is reasonably available. The servicing JA will determine the availability of a military or DA civilian employee reporter.

2–3. Action of the appointing authority

a. Basis of decision. Unless otherwise provided by another directive, the appointing authority is neither bound nor limited by the findings or recommendations of an investigation or board. Therefore, the appointing authority may take action less favorable than that recommended with regard to a respondent or other individual, unless the specific directive under which the investigation or board is appointed provides otherwise. The appointing authority may consider any relevant information in making a decision to take adverse action against an individual, even information that was not considered at the investigation or board (see para 1–9*c* and *d*). In all investigations involoving fratricide/friendly fire incidents (see AR 385–40), the appointing authority, after taking action on the investigation, will forward a copy of the completed investgation to the next higher Army headquarters for review.

b. Legal review. Other directives that authorize investigations or boards may require the appointing authority to refer the report of proceedings to the servicing JA for legal review. The appointing authority will also seek legal review of all cases involving serious or complex matters, such as where the incident being investigated has resulted in death or serious bodily injury, or where the findings and recommendations may result in adverse administrative action (see para 1–9), or will be relied upon in actions by higher headquarters. The JA's review will determine—

(1) Whether the proceedings comply with legal requirements.

(2) What effects any errors would have.

(3) Whether sufficient evidence supports the findings of the investigation or board or those substituted or added by the appointing authority (see para 3–10*b*).

(4) Whether the recommendations are consistent with the findings.

c. Effect of errors. Generally, procedural errors or irregularities in an investigation or board do not invalidate the proceeding or any action based on it.

(1) *Harmless errors.* Harmless errors are defects in the procedures or proceedings that do not have a material adverse effect on an individual's substantial rights. If the appointing authority notes a harmless error, he or she may still take final action on the investigation.

(2) *Appointing errors.* Where an investigation is convened or directed by an official without the authority to do so (see para 2–1*a*), the proceedings are a nullity, unless an official with the authority to appoint such an investigation or board subsequently ratifies the appointment. Where a formal board is convened by an official authorized to convene an informal investigation or board but not authorized to convene formal investigations, any action not requiring a formal investigation may be taken, consistent with paragraph 1–9 and this paragraph.

(3) *Substantial errors.*

(a) Substantial errors are those that have a material adverse effect on an individual's substantial rights. Examples are the failure to meet requirements as to composition of the board or denial of a respondent's right to counsel.

(b) When such errors can be corrected without substantial prejudice to the individual concerned, the appointing authority may return the case to the same investigating officer or board for corrective action. Individuals or respondents who are affected by such a return will be notified of the error, of the proposed correction, and of their rights to comment on both.

(c) If the error cannot be corrected, or cannot be corrected without substantial prejudice to the individual concerned, the appointing authority may not use the affected part of that investigation or board as the basis for adverse action against that person. However, evidence considered by the investigation or board may be used in connection with any action under the Uniform Code of Military Justice (UCMJ), civilian personnel regulations, AR 600–37, or any other directive that contains its own procedural safeguards.

(d) In case of an error that cannot be corrected otherwise, the appointing authority may set aside all findings and recommendations and refer the entire case to a new investigating officer or board composed entirely of new voting members. Alternatively, the appointing authority may take action on findings and recommendations not affected by the error, set aside the affected findings and recommendations, and refer the affected portion of the case to a new investigating officer or board. In either case, the new investigating officer or board may be furnished any evidence properly considered by the previous one. The new investigating officer or board may also consider additional evidence. If the directive under which a board is appointed provides that the appointing authority may not take less favorable action than the board recommends, the appointing authority's action is limited by the original recommendations even though the case subsequently is referred to a new board which recommends less favorable action.

(4) *Failure to object.* No error is substantial within the meaning of this paragraph if there is a failure to object or otherwise bring the error to the attention of the legal advisor or the president of the board at the appropriate point in the proceedings. Accordingly, errors described in (3) above may be treated as harmless if the respondent fails to point them out.

Chapter 3
General Guidance for Investigating Officers and Boards

Section I
Conduct of the Investigation

3–1. Preliminary responsibilities
Before beginning an informal investigation, an investigating officer shall review all written materials provided by the appointing authority and consult with the servicing staff or command judge advocate to obtain appropriate legal guidance.

3–2. Oaths
a. Requirement. Unless required by the specific directive under which appointed, investigating officers or board members need not be sworn. Reporters, interpreters, and witnesses appearing before a formal board will be sworn. Witnesses in an informal investigation or board may be sworn at the discretion of the investigating officer or president. The memorandum of appointment may require the swearing of witnesses or board members.

b. Administering oaths. An investigating officer, recorder (or assistant recorder), or board member is authorized to administer oaths in the performance of such duties, under UCMJ, Art. 136 (for military personnel administering oaths) and Section 303, Title 5, United States Code (5 USC 303) (for civilian personnel administering oaths) (see fig 3–1 for the format for oaths).

3–3. Challenges
Neither an investigating officer nor any member of a board is subject to challenge, except in a formal board as provided in paragraph 5–7. However, any person who is aware of facts indicating a lack of impartiality or other qualification on the part of an investigating officer or board member will present the facts to the appointing authority.

3–4. Counsel
Only a respondent is entitled to be represented by counsel (see para 5–6). Other interested parties may obtain counsel, at no expense to the Government, who may attend but not participate in proceedings of the investigation or board which are open to the public. The proceedings will not be unduly interrupted to allow the person to consult with counsel. When a civilian employee is a member of an appropriate bargaining unit, the exclusive representative of the unit has the right to be present whenever the employee is a respondent or witness during the proceedings if requested by the employee and if the employee reasonably believes that the inquiry could lead to disciplinary action against him or her (see para 3–8).

3–5. Decisions
A board composed of more than one member arrives at findings and recommendations as provided in section II of this chapter. A formal board decides challenges by a respondent as provided in paragraph 5–7. The investigating officer or president decides administrative matters, such as time of sessions, uniform, and recess. The legal advisor or, if none, the investigating officer or president decides evidentiary and procedural matters, such as motions, acceptance of evidence, and continuances. The legal advisor's decisions are final. Unless a voting member objects to the president's decision on an evidentiary or procedural matter at the time of the decision, it too is final. If there is such an objection, a vote will be taken in closed session, and the president's decision may be reversed by a majority vote of the voting members present.

3–6. Presence of the public and recording of proceedings
a. The public. Proceedings of an investigation or board are normally open to the public only if there is a respondent. However, if a question arises, the determination will be made based on the circumstances of the case. It may be appropriate to open proceedings to the public, even when there is no respondent, if the subject matter is of substantial public interest. It may be appropriate to exclude the public from at least some of the proceedings even though there is a respondent, if the subject matter is classified, inflammatory, or otherwise exceptionally sensitive. In any case, the appointing authority may specify whether the proceedings will be open or closed. If the appointing authority does not specify, the investigating officer or the president of the board decides. If there is a respondent, the servicing JA or the legal advisor, if any, will be consulted before deciding to exclude the public from any portion of the proceedings. Any proceedings that are open to the public will also be open to representatives of the news media.

b. Recording. Neither the public nor the news media will record, photograph, broadcast, or televise the board proceedings. A respondent may record proceedings only with the prior approval of the appointing authority.

Preliminary Matters

PRES: This hearing will come to order. This board of officers has been called to determine_____

*When RESP is without counsel:*_____

PRES:_____, you may, if you desire, obtain civilian counsel at no expense to the Government for this hearing. If you do not obtain civilian counsel, you are entitled to be represented by a military counsel designated by the appointing authority. Do you have counsel?

RESP: No (Yes).

If RESP has counsel, the RCDR should identify that counsel at this point for the record. If RESP does not have counsel, the PRES should ask this question:

PRES: Do you desire to have military counsel?

RESP: Yes (No).

If RESP answers "yes," the PRES should adjourn the hearing and ask the appointing authority to appoint counsel for RESP (see para 5–6b). If counsel is supplied, the RCDR should identify that counsel for the record when the board reconvenes.

A reporter and an interpreter, if used, should be sworn.

RCDR: The reporter will be sworn.

RCDR: Do you swear (or affirm) that you will faithfully perform the duties of reporter to this board, (so help you God)?

REPORTER: I do.

RCDR: The interpreter will be sworn.

RCDR: Do you swear (or affirm) that you will faithfully perform the duties of interpreter in the case now in hearing, (so help you God)?

INTERPRETER: I do.

RCDR: The board is appointed by Memorandum of Appointment, Headquarters,_____, dated_____ Have all members of the board read the memorandum of appointment? (If not, the memorandum of appointment is read aloud by RCDR or silently by any member who has not read it.)

When RESP has been designated by a separate memorandum of appointment, the same procedure applies to that memorandum of appointment.

RCDR: May the memorandum of appointment be attached to these proceedings as Enclosure 1?

PRES: The memorandum of appointment will be attached as requested.

RCDR: The following members of the board are present:

The following members are absent:

RCDR should account for all personnel of the board, including RESP and COUNSEL, if any, as present or absent at each session. RCDR should state the reason for any absence, if known, and whether the absence was authorized by the appointing authority.

PRES:_____, you may challenge any member of the board (or the legal advisor) for lack of impartiality. Do you desire to make a challenge?

Figure 3–1. Suggested procedure for board of officers with respondents

RESP (COUNSEL): No. (The respondent challenges_____.)

If RESP challenges for lack of impartiality, the LA, PRES, or next senior member, as appropriate, determines the challenge. See paragraph 5–7. If sustaining a challenge results in less than a quorum, the board should recess until additional members are added. See paragraph 5–2b.

RCDR swears board members, if required. PRES then swears RCDR, if required.

RCDR: The board will be sworn.

All persons in the room stand while RCDR administers the oath. Each voting member raises his or her right hand as RCDR calls his or her name in administering the following oath:

RCDR: Do you, Colonel_____, Lieutenant Colonel_____, Major_____, swear (affirm) that you will faithfully perform your duties as a member of this board; that you will impartially examine and inquire into the matter now before you according to the evidence, your conscience, and the laws and regulations provided; that you will make such findings of fact as are supported by the evidence of record; that, in determining those facts, you will use your professional knowledge, best judgment, and common sense; and that you will make such recommendations as are appropriate and warranted by your findings, according to the best of your understanding of the rules, regulations, policies, and customs of the service, guided by your concept of justice, both to the Government and to individuals concerned, (so help you God)?

MEMBERS: I do.

The board members lower their hands but remain standing while the oath is administered to LA and to RCDR, if required.

PRES: Do you,_____, swear (or affirm) that you will faithfully perform the duties of (legal advisor) (recorder) of this board, (so help you God)?

LA/RCDR: I do.

All personnel now resume their seats.

PRES may now give general advice concerning applicable rules for the hearing.

RCDR: The respondent was notified of this hearing on_____ 19____.

RCDR presents a copy of the memorandum of notification with a certification that the original was delivered (or dispatched) to RESP (para 5–5) and requests that it be attached to the proceedings as Enclosure____.

PRES: The copy of the memorandum of notification will be attached as requested.

Presentation of Evidence by the Recorder

RCDR may make an opening statement at this point to clarify the expected presentation of evidence.

RCDR then calls witnesses and presents other evidence relevant to the subject of the proceedings. RCDR should logically present the facts to help the board understand what happened. Except as otherwise directed by PRES, RCDR may determine the order of presentation of facts. The following examples are intended to serve as a guide to the manner of presentation, but not to the sequence.

RCDR: I request that this statement of (witness) be marked Exhibit____ and received in evidence. This witness will not appear in person because_____.

LA (PRES): The statement will (not) be accepted.

RCDR may read the statement to the board if it is accepted.

RCDR: I request that this (documentary or real evidence) be marked as Exhibit____ and received in evidence.

A foundation for the introduction of such evidence normally is established by a certificate or by testimony of a witness indicating its authenticity. LA (PRES) determines the adequacy of this foundation. If LA (PRES) has a reasonable basis to believe the evidence is what it purports to be, he or she may waive formal proof of authenticity.

Figure 3–1. Suggested procedure for board of officers with respondents—Continued

RCDR: The recorder and respondent have agreed to stipulate_____.

Before LA (PRES) accepts the stipulation, he or she should verify that RESP joins in the stipulation.

LA (PRES): The stipulation is accepted.

If the stipulation is in writing, it will be marked as an exhibit.

RCDR conducts direct examination of each witness called by RCDR or at the request of PRES or members. RESP or COUNSEL may then cross–examine the witness. PRES and members of the board may then question the witness, but PRES may control or limit questions by board members.

RCDR: The board calls_____ as a witness.

A military witness approaches and salutes PRES, then raises his or her right hand while RCDR administers the oath. A civilian witness does the same but without saluting. See MCM, Rules for Court–Martial 807, for further guidance with regard to oaths.

RCDR: Do you swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth, (so help you God)?

If the witness desires to affirm rather than swear, the words "so help you God" will be omitted.

WITNESS: I do.

The witness then takes the witness chair. RCDR asks every witness the following question no matter who called the witness.

RCDR: What is your full name (grade, branch of service, organization, and station) (and address)?

Whenever it appears appropriate and advisable to do so, the board should explain the rights of a witness under Article 31 of the UCMJ or the Fifth Amendment to the Constitution. See paragraph 3–6c(5).

If the report of proceedings will be filed in a system of records under the witness's name, the board must advise that witness in accordance with the Privacy Act. See paragraph 3–7e. Normally, this requirement applies only to RESP.

RCDR then asks questions to develop the matter under consideration.

RCDR: The recorder has no further questions.

RESP (COUNSEL) may cross–examine the witness. RCDR may then conduct a redirect examination.

RCDR: Does the board have any questions?

Any board member wishing to question the witness should first secure the permission of PRES.

If RCDR and RESP (COUNSEL) wish to ask further questions after the board has examined the witness, they should seek permission from the PRES. PRES should normally grant such requests unless the questions are repetitive or go beyond the scope of questions asked by the board.

When all questioning has ended, PRES announces:

PRES: The witness is excused.

PRES may advise the witness as follows:

PRES: Do not discuss your testimony in this case with anyone other than the recorder, the respondent, or his or her counsel. If anyone else attempts to talk with you about your testimony, you should tell the person who originally called you as a witness.

Verbatim proceedings should indicate that the witness (except RESP) withdrew from the room.

Unless expressly excused from further attendance during the hearing, all witnesses remain subject to recall until the proceedings have ended. When a witness is recalled, the RCDR reminds such witness, after he or she has taken the witness stand:

RCDR: You are still under oath.

The procedure in the case of a witness called by the board is the same as outlined above for a witness called by RCDR.

Figure 3–1. Suggested procedure for board of officers with respondents—Continued

RCDR: I have nothing further to offer relating to the matter under consideration.

Presentation of Respondent's Evidence

RESP (COUNSEL): The respondent has (an) (no) opening statement.

RESP presents his or her stipulations, witnesses, and other evidence in the same manner as did RCDR. RCDR administers oath to all witnesses and asks the first question to identify the witness.

Should the RESP be called to the stand as a witness, the RCDR will administer the oath and ask the following preliminary questions, after which the procedure is the same as for other witnesses:

RCDR: What is your name, (grade, branch of service, organization, and station) (address, position, and place of employment)?

RESP:_____.

RCDR: Are you the respondent in this case?

RESP: Yes.

The board may advise RESP of his or her rights under Article 31 of the UCMJ, or the Fifth Amendment of the Constitution. See paragraph 3–6c(5).

If the report of proceedings will be filed in a system of records under RESP's name, the board must advise RESP in accordance with the Privacy Act. See paragraph 3–7e.

When RESP has concluded his or her case, RESP announces:

RESP (COUNSEL): The respondent rests.

RCDR: The recorder has no further evidence to offer in this hearing. Does the board wish to have any witnesses called or recalled?

PRES: It does (not).

Closing Arguments and Deliberations

PRES: You may proceed with closing arguments. RCDR: The recorder (has no) (will make an) opening argument.

RCDR may make the opening argument and, if any argument is made on behalf of RESP, the rebuttal argument. Arguments are not required (see para 5–9). If no argument is made, RESP or RCDR may say:

RESP (COUNSEL)/RCDR: The (respondent) (recorder) submits the case without argument.

PRES: The hearing is adjourned.

Adjourning the hearing does not end the duties of the board. It must arrive at findings based on the evidence and make recommendations supported by those findings. See chapter 3, section II. Findings and recommendations need not be announced to RESP, but in certain proceedings, such as elimination actions, they customarily are. RCDR is responsible for compiling the report of proceedings and submitting properly authenticated copies thereof to the appointing authority. See chapter 3, section III.

Legend
PRES: President of the board of officers.
LA: Legal Advisor
LA(PRES): Legal Advisor, if one has been appointed; otherwise the board President.
RCDR: Recorder (junior member of the board if no recorder has been appointed). (If the board consists of only one member, that member has the responsibilities of both PRES and RCDR.)
RESP: Respondent.
RESP (COUNSEL): Respondent or respondent's counsel, if any.

Figure 3–1. Suggested procedure for board of officers with respondents—Continued

3–7. Rules of evidence and proof of facts

a. General. Proceedings under this regulation are administrative, not judicial. Therefore, an investigating officer or board of officers is not bound by the rules of evidence for trials by courts–martial or for court proceedings generally. Accordingly, subject only to the provisions of *c* below, anything that in the minds of reasonable persons is relevant and material to an issue may be accepted as evidence. For example, medical records, counseling statements, police reports, and other records may be considered regardless of whether the preparer of the record is available to give a statement or testify in person. All evidence will be given such weight as circumstances warrant. (See para 3–5 as to who decides whether to accept evidence.)

b. Official notice. Some facts are of such common knowledge that they need no specific evidence to prove them (for example, general facts and laws of nature, general facts of history, location of major elements of the Army, and organization of the Department of Defense (DOD) and its components), including matters of which judicial notice may be taken. (See Military Rules of Evidence (MRE) 201, sec II, part III, Manual for Courts-Martial, United States (MCM).)

c. Limitations. Administrative proceedings governed by this regulation generally are not subject to exclusionary or other evidentiary rules precluding the use of evidence. The following limitations, however, do apply:

(1) *Privileged communications.* MRE, section V, part III, MCM, concerning privileged communications between lawyer and client (MRE 502), privileged communications with clergy (MRE 503), and husband-wife privilege (MRE 504) apply. Present or former inspector general personnel will not be required to testify or provide evidence regarding information that they obtained while acting as inspectors general. They will not be required to disclose the contents of inspector general reports of investigations, inspections, inspector general action requests, or other memoranda, except as disclosure has been approved by the appropriate directing authority (an official authorized to direct that an inspector general investigation or inspection be conducted) or higher authority. (See AR 20–1, para 3–6.)

(2) *Polygraph tests.* No evidence of the results, taking, or refusal of a polygraph (lie detector) test will be considered without the consent of the person involved in such tests. In a formal board proceeding with a respondent, the agreement of the recorder and of any respondent affected is required before such evidence can be accepted.

(3) *"Off the record" statements.* Findings and recommendations of the investigating officer or board must be supported by evidence contained in the report. Accordingly, witnesses will not make statements "off the record" to board members in formal proceedings. Even in informal proceedings, such statements will not be considered for their substance, but only as help in finding additional evidence.

(4) *Statements regarding disease or injury.* A member of the Armed Forces will not be required to sign a statement relating to the origin, incurrence, or aggravation of a disease or injury that he or she has suffered. Any such statement against his or her interest is invalid (10 USC 1219) and may not be considered on the issue of the origin, incurrence, or aggravation of a disease or injury that the member concerned has suffered. A statement made and signed voluntarily by a soldier is not a statement that the soldier was "required to sign" within the meaning of this paragraph.

(5) *Ordering witnesses to testify.*

(a) No military witnesses or military respondents will be compelled to incriminate themselves, to answer any question the answer to which could incriminate them, or to make a statement or produce evidence that is not material to the issue and that might tend to degrade them (see UCMJ, Art. 31).

(b) No witnesses or respondents not subject to the UCMJ will be required to make a statement or produce evidence that would deprive them of rights against self-incrimination under the Fifth Amendment of the U.S. Constitution.

(c) A person refusing to provide information under (a) or (b) above must state specifically that the refusal is based on the protection afforded by UCMJ, Art. 31, or the Fifth Amendment. The investigating officer or board will, after consultation with the legal advisor or, if none has been appointed, the servicing JA, unless impractical to do so, decide whether the reason for refusal is well taken. If it is not, the witness may be ordered to answer.

(d) Whenever it appears appropriate and advisable, an investigating officer or board will explain their rights to witnesses or respondents. A soldier, for example, who is suspected of an offense under the UCMJ, such as dereliction of duty, will be advised of his or her rights under UCMJ, Art. 31, before being asked any questions concerning the suspected offense. The soldier will be given a reasonable amount of time to consult an attorney, if requested, before answering any such questions. No adverse inference will be drawn against soldiers who invoke that right under UCMJ, Art. 31. It is recommended that the procedure for explaining rights set forth on DA Form 3881 (Rights Warning Procedure/Waiver Certificate) be used.

(e) The right to invoke UCMJ, Art. 31, or the Fifth Amendment is personal. No one may assert the right for another person, and no one may assert it to protect anyone other than himself or herself. An answer tends to incriminate a person if it would make it appear that person is guilty of a crime.

(f) In certain cases the appropriate authority may provide a witness or respondent a grant of testimonial immunity

and require testimony notwithstanding UCMJ, Art. 31, or the Fifth Amendment. Grants of immunity will be made under the provisions of AR 27–10, chapter 2.

(6) *Involuntary admissions.* A confession or admission obtained by unlawful coercion or inducement likely to affect its truthfulness will not be accepted as evidence. The fact that a respondent was not advised of his or her rights under UCMJ, Art. 31, or the Fifth Amendment, or of his or her right to a lawyer does not, of itself, prevent acceptance of a confession or admission as evidence.

(7) *Bad faith unlawful searches.* If members of the Armed Forces acting in their official capacity (such as military police acting in furtherance of their official duties) conduct or direct a search that they know is unlawful under the Fourth Amendment of the U.S. Constitution, as applied to the military community, evidence obtained as a result of that search may not be accepted or considered against any respondent whose personal rights were violated by the search. Such evidence is acceptable only if it can reasonably be determined by the legal advisor or, if none, by the investigating officer or president that the evidence would inevitably have been discovered. In all other cases, evidence obtained as a result of any search or inspection may be accepted, even if it has been or would be ruled inadmissible in a criminal proceeding.

3–8. Witnesses

a. General.

(1) Investigating officers and boards generally do not have authority to subpoena witnesses to appear and testify. An appropriate commander or supervisor may, however, order military personnel and Federal civilian employees to appear and testify. Other civilians who agree to appear may be issued invitational travel orders in certain cases (see Joint Travel Regulations (JTR), vol 2, para C6000.11). The investigating officer or board president normally will inform witnesses of the nature of the investigation or board before taking their statements or testimony. The investigating officer or board president, assisted by the recorder and the legal advisor, if any, will protect every witness from improper questions, unnecessarily harsh or insulting treatment, and unnecessary inquiry into his or her private affairs. (See para 3–2 as to placing witnesses under oath.)

(2) During an investigation under this regulation, the exclusive representative of an appropriate bargaining unit has the right to be present whenever a civilian employee of the unit is a respondent or witness during the proceedings if requested by the employee and if the employee reasonably believes that the inquiry could lead to disciplinary action against him or her. Unless required by the collective bargaining agreement, there is no requirement to advise the employee of this right. If the employee requests the presence of the exclusive representative, a reasonable amount of time will be allowed to obtain him or her. The servicing civilian personnel office and labor counselor will be consulted before denying such a request.

b. Attendance as spectators. Witnesses other than respondents normally will not be present at the investigation or board proceedings except when they are testifying. In some cases, however, it is necessary to allow expert witnesses to hear evidence presented by other witnesses in order that they may be sufficiently advised of the facts to give informed testimony as to the technical aspects of the case. In such instances, the report of proceedings will indicate that the expert witnesses were present during the testimony of the other witnesses.

c. Taking testimony or statements.

(1) If a board is formal, or if the appointing authority has directed a verbatim record (see para 2–2), witnesses' statements will be elicited by questions and answers. However, narrative testimony may be used.

(2) In informal proceedings, statements of witnesses may be obtained at informal sessions in which they first relate their knowledge and then summarize those statements in writing. A tape recorder may be used to facilitate later preparation of written statements, but the witness will be informed if one is used. The investigating officer or board will assist the witness in preparing a written statement to avoid inclusion of irrelevant material or the omission of important facts and circumstances. However, care must be taken to ensure that the statement is phrased in the words of the witness. The interviewer must scrupulously avoid coaching the witness or suggesting the existence or nonexistence of material facts. The witness may be asked to read, correct, and sign the final statement.

(3) Whether the witness swears to the statement is within the discretion of the investigating officer or president. If the statement is to be sworn, use of DA Form 2823 (Sworn Statement) is recommended. If the witness is unavailable or refuses to sign, the person who took the statement will note, over his or her own signature, the reasons the witness has not signed and will certify that the statement is an accurate summary of what the witness said.

(4) Whether the proceeding is formal or informal, to save time and resources, witnesses may be asked to confirm written sworn or unsworn statements that have first been made exhibits. The witnesses remain subject to questioning on the substance of such statements.

(5) Although the direct testimony of witnesses is preferable, the investigating officer or board may use any previous statements of a witness as evidence on factual issues, whether or not the following conditions exist:

(a) Proceedings are formal or informal.

(b) Witness is determined to be unavailable.

(c) Witness testifies.

(d) Prior statements were sworn or unsworn.

(e) Prior statements were oral or written.

(f) Prior statements were taken during the course of the investigation.

d. Discussion of evidence. An investigating officer or board may direct witnesses who are subject to Army authority, and request other witnesses, not to discuss their statements or testimony with other witnesses or with persons who have no official interest in the proceedings until the investigation is complete. This precaution is appropriate to eliminate possible influence on the testimony of witnesses still to be heard. Witnesses may not be precluded from discussing any relevant matter with the recorder, a respondent, or counsel for a respondent.

e. Privacy Act statements.

(1) *When required.* A Privacy Act statement (AR 340–21) will be provided to a witness if the report of proceedings will be filed in a system of records from which it can be retrieved by reference to the name or other personal identifier of that witness. Unless otherwise informed by the appointing authority, an investigating officer or board may presume that the report of proceedings will be retrievable by the name of each person designated as a respondent, but that the report will not be retrievable by the name of any other witness. If any question arises as to the need for a Privacy Act statement, the investigating officer or board will consult the legal advisor, if any, or the servicing JA.

(2) *Method of providing statement.* Appendix B provides guidance for preparing Privacy Act statements. The statement may be written or oral, but it must be provided before taking the witness's testimony or statement. A written statement will be attached to the report of proceedings as an enclosure. An oral statement will be noted in the report either as part of a verbatim transcript or as an enclosure, in the form of a certificate by the officer who provided the Privacy Act statement.

(3) *Copy of the statement.* Anyone to whom this requirement applies is entitled to a copy of the Privacy Act statement in a form suitable for retention. Providing a respondent a copy of the part of the report of proceedings (see para 5–10) that includes the statement satisfies this requirement. Any other witness who is provided a Privacy Act statement will, on request, be furnished a copy of the statement in a form suitable for retention.

3–9. Communications with the appointing authority

If in the course of the investigation or board something happens that could cause the appointing authority to consider enlarging, restricting, or terminating the proceedings, altering the composition of the fact–finding body or otherwise modifying any instruction in the original appointment, the investigating officer or president of the board will report this situation to the appointing authority with recommendations.

Section II
Findings and Recommendations

3–10. Findings

a. General. A finding is a clear and concise statement of a fact that can be readily deduced from evidence in the record. It is directly established by evidence in the record or is a conclusion of fact by the investigating officer or board. Negative findings (for example, that the evidence does not establish a fact) are often appropriate. The number and nature of the findings required depend on the purpose of the investigation or board and on the instructions of the appointing authority. The investigating officer or board will normally not exceed the scope of findings indicated by the appointing authority. (See para 3–9.) The findings will be necessary and sufficient to support each recommendation.

b. Standard of proof. Unless another directive or an instruction of the appointing authority establishes a different standard, the findings of investigations and boards governed by this regulation must be supported by a greater weight of evidence than supports a contrary conclusion, that is, evidence which, after considering all evidence presented, points to a particular conclusion as being more credible and probable than any other conclusion. The weight of the evidence is not determined by the number of witnesses or volume of exhibits, but by considering all the evidence and evaluating such factors as the witness's demeanor, opportunity for knowledge, information possessed, ability to recall and relate events, and other indications of veracity.

c. Form. Findings will be stated to reflect clearly the relevant facts established by the evidence and the conclusions thereon of the investigating officer or board. If findings are required on only one subject, normally they will be stated in chronological order. If findings are required on several distinct subjects, they normally will be stated separately for each subject and chronologically within each one. If the investigation or board is authorized by a directive that establishes specific requirements for findings, those requirements must be satisfied.

3–11. Recommendations

The nature and extent of recommendations required also depend on the purpose of the investigation or board and on the instructions of the appointing authority. Each recommendation, even a negative one (for example, that no further action be taken) must be consistent with the findings. Investigating officers and boards will make their recommendations according to their understanding of the rules, regulations, policies, and customs of the service, guided by their concept of fairness both to the Government and to individuals.

3–12. Deliberation

After all the evidence has been received (and arguments heard, if there is a respondent), the investigating officer or board members will consider it carefully in light of any instructions contained in the original appointment and any supplemental instructions. These deliberations will (and if there is a respondent, must) be in closed session, that is, with only voting members present. Nonvoting members of the board do not participate in the board's deliberations but may be consulted. The respondent and the respondent's counsel, if any, will be afforded the opportunity to be present at such consultation. The board may request the legal advisor, if any, to assist in putting findings and recommendations in proper form after their substance has been adopted by the board. A respondent and counsel are not entitled to be present during such assistance.

3–13. Voting

A board composed of more than one voting member arrives at its findings and recommendations by voting. All voting members present must vote. After thoroughly considering and discussing all the evidence, the board will propose and vote on findings of fact. The board will next propose and vote on recommendations. If additional findings are necessary to support a proposed recommendation, the board will vote on such findings before voting on the related recommendation. Unless another directive or an instruction by the appointing authority establishes a different requirement, a majority vote of the voting members present determines questions before the board. In case of a tie vote, the president's vote is the determination of the board. Any member who does not agree with the findings or recommendations of the board may include a minority report in the report of proceedings, stating explicitly what part of the report he or she disagrees with and why. The minority report may include its own findings and/or recommendations.

Section III
Report of Proceedings

3–14. Format

a. Formal. If a verbatim record of the proceedings was directed, the transcript of those proceedings, with a completed DA Form 1574 (Report of Proceedings by Investigating Officer/Board of Officers) as an enclosure, and other enclosures and exhibits will constitute the report. In other formal boards, a completed DA Form 1574, with enclosures and exhibits, will constitute the report.

b. Informal. In an informal investigation or board, the report will be written unless the appointing authority has authorized an oral report. Written reports of informal investigations will use DA Form 1574; however, its use is not required unless specifically directed by the appointing authority. Every report—oral or written, on DA Form 1574 or not—will include findings and, unless the instructions of the appointing authority indicate otherwise, recommendations.

3–15. Enclosures

In written reports, all significant letters and other papers that relate to administrative aspects of the investigation or board and that are not evidence will be numbered consecutively with roman numerals and made enclosures, including such items as these:

a. The memorandum of appointment or, if the appointment was oral, a summary by the investigating officer or board including date of appointment, identification of the appointing authority and of all persons appointed, purpose of the investigation or board, and any special instructions.

b. Copies of the notice to any respondent (see para 5–5).

c. Copies of other correspondence with any respondent or counsel.

d. Written communications to or from the appointing authority (see para 3–8).

e. Privacy Act statements (see para 3–8*e*).

f. Explanation by the investigating officer or board of any unusual delays, difficulties, irregularities, or other problems encountered.

3–16. Exhibits

a. General. In written reports, every item of evidence offered to or received by the investigation or board will be marked as a separate exhibit. Unless a verbatim record was directed, statements or transcripts of testimony by witnesses will also be exhibits. Exhibits will be numbered consecutively as offered in evidence (even if not accepted), except that those submitted by each respondent will be lettered consecutively (and further identified by the name of the respondent, if more than one). Exhibits submitted but not admitted in evidence will be marked "Not admitted."

b. Real evidence. Because attaching real evidence (physical objects) to the report is usually impractical, clear and accurate descriptions (such as written statements) or depictions (such as photographs) authenticated by the investigating officer, recorder, or president may be substituted in the report. In any case, the real evidence itself will be preserved, including chain of custody, where appropriate, for use if further proceedings are necessary. The exhibit in the report will tell where the real evidence can be found. After final action has been taken in the case, the evidence will be disposed of as provided in AR 190–22, where applicable.

c. Documentary evidence. When the original of an official record or other document that must be returned is an exhibit, an accurate copy, authenticated by the investigating officer, recorder, or president, may be used in the written report. The exhibit in the report will tell where the original can be found.

d. Official notice. Matters of which the investigating officer or board took official notice (para 3–6*b*) normally need not be recorded in an exhibit. If, however, official notice is taken of a matter over the objection of a respondent or respondent's counsel, that fact will be noted in the written report of proceedings, and the investigating officer or board will include as an exhibit a statement of the matter of which official notice was taken.

e. Objections. In a formal board, if the respondent or counsel makes an objection during the proceedings, the objection and supporting reasons will be noted in the report of proceedings.

3–17. Authentication

Unless otherwise directed, a written report of proceedings will be authenticated by the signature of the investigating officer or of all voting members of the board and the recorder. Board members submitting a minority report (see para 3–13) may authenticate that report instead. If any voting member of the board or the recorder refuses or is unable to authenticate the report (for example, because of death, disability, or absence), the reason will be stated in the report where that authentication would otherwise appear.

3–18. Safeguarding a written report

a. When the report contains material that requires protection but does not have a security classification, the report will be marked "For Official Use Only" as provided by AR 25–55.

b. No one will disclose, release, or cause to be published any part of the report, except as required in the normal course of forwarding and staffing the report or as otherwise authorized by law or regulation, without the approval of the appointing authority.

3–19. Submission

A written report of proceedings will be submitted, in two complete copies, directly to the appointing authority or designee, unless the appointing authority or another directive provides otherwise. If there are respondents, an additional copy for each respondent will be submitted to the appointing authority.

3–20. Action of the appointing authority

The appointing authority will notify the investigating officer or president of the board if further action, such as taking further evidence or making additional findings or recommendations, is required. Such additional proceedings will be conducted under the provisions of the original appointing memorandum, including any modifications, and will be separately authenticated per paragraph 3–16. If applicable, the appointing authority will ensure that the provisions of paragraph 1–8 have been satisfied. (See para 2–3 for further guidance.)

Chapter 4
Informal Investigations and Boards of Officers

4–1. Composition

Informal procedures may be used by a single investigating officer or by a board of two or more members. (One officer is not designated a board unless procedures are formal.) All members are voting members. Appointment of advisory members or a legal advisor is unnecessary because persons with special expertise may be consulted informally whenever desired. The senior member present acts as president. There is no recorder. The president prescribes the duties of each member. A quorum is required only when voting on findings and recommendations. (See para 3–13.)

4–2. Procedure

An informal investigation or board may use whatever method it finds most efficient and effective for acquiring information. (See chap 3 for general guidance.) A board may divide witnesses, issues, or evidentiary aspects of the inquiry among its members for individual investigation and development, holding no collective meeting until ready to review all the information collected. Although witnesses may be called to present formal testimony, information also may be obtained by personal interview, correspondence, telephone inquiry, or other informal means.

4–3. Interested persons

Informal procedures are not intended to provide a hearing for persons who may have an interest in the subject of the investigation or board. No respondents will be designated and no one is entitled to the rights of a respondent. The

investigating officer or board may still make any relevant findings or recommendations, including those adverse to an individual or individuals.

Chapter 5
Formal Boards of Officers

Section I
General

5–1. Members

a. Voting members. All members of a formal board of officers are voting members except as provided elsewhere in this paragraph, in other applicable directives, or in the memorandum of appointment.

b. President. The senior voting member present acts as president. The senior voting member appointed will be at least a major, except where the appointing authority determines that such appointment is impracticable because of military exigencies. The president has the following responsibilities:

(1) *Administrative.* The president will—

(a) Preserve order.

(b) Determine time and uniform for sessions of the board.

(c) Recess or adjourn the board as necessary.

(d) Decide routine administrative matters necessary for efficient conduct of the business of the board.

(e) Supervise the recorder to ensure that all business of the board is properly conducted and that the report of proceedings is submitted promptly. If the board consists of only one member, that member has the responsibilities of both the president and the recorder.

(2) *Procedural.*

(a) When a legal advisor has been appointed, the legal advisor rules finally on matters set forth in paragraph *d* below.

(b) When a legal advisor has not been appointed, the president will rule on evidentiary and procedural matters. The ruling on any such matter (other than a challenge) may be reversed by majority vote of the voting members present. (See para 3–5.) If the president determines that he or she needs legal advice when ruling on evidentiary and procedural matters, he or she will contact the legal office that ordinarily provides legal advice to the appointing authority and ask that a JA or a civilian attorney who is a member of the Judge Advocate Legal Service be made available for legal consultation. When a respondent has been designated, the respondent and counsel will be afforded the opportunity to be present when the legal advice is provided.

c. Recorder. The memorandum of appointment may designate a commissioned or warrant officer as recorder. It may also designate assistant recorders, who may perform any duty the recorder may perform. A recorder or assistant recorder so designated is a nonvoting member of the board. If the memorandum of appointment does not designate a recorder, the junior member of the board acts as recorder and is a voting member.

d. Legal advisor.

(1) A legal advisor is a nonvoting member. He or she rules finally on challenges for cause made during the proceedings (except a challenge against the legal advisor (see para 5–7*c*)) and on all evidentiary and procedural matters (see para 3–5), but may not dismiss any question or issue before the board. In appropriate cases, the legal advisor may advise the board on legal and procedural matters. If a respondent has been designated, the respondent and counsel will be afforded the opportunity to be present when legal advice is provided to the board. If legal advice is not provided in person (for example, by telephone or in writing), the right to be "present" is satisfied by providing the opportunity to listen to or read the advice. The right to be present does not extend to general procedural advice given before the board initially convened, to legal advice provided before the respondent was designated, or to advice provided under paragraph 3–12.

(2) A JA or a civilian attorney who is a member of the Judge Advocate Legal Service may be appointed as legal advisor for a formal board of officers under the following circumstances:

(a) TJAG authorizes the appointment.

(b) Another directive applicable to the board requires the appointment.

(c) The appointing authority is a GCM convening authority.

(d) The appointing authority is other than a GCM convening authority, and a JA is assigned to his or her organization or a subordinate element thereof under an applicable table of organization and equipment or tables of distribution and allowances; or the appropriate GCM convening authority authorizes appointment of a legal adviser.

(3) Appointment of a legal advisor under this paragraph will occur only after consultation with the SJA of the GCM jurisdiction concerned. The SJA will then be responsible for providing or arranging for the legal advisor.

e. Members with special technical knowledge. Persons with special technical knowledge may be appointed as voting

members or, unless there is a respondent, as advisory members without vote. Such persons need not be commissioned or warrant officers. If appointed as advisory members, they need not participate in the board proceedings except as directed by the president. (See para 3–12 with regard to participation in the board's deliberations.) The report of proceedings will indicate the limited participation of an advisory member.

5–2. Attendance of members

a. General. Attendance at the proceedings of the board is the primary duty of each voting member and takes precedence over all other duties. A voting member must attend scheduled sessions of the board, if physically able, unless excused in advance by the appointing authority. If the appointing authority is a GCM convening authority or a commanding general with a legal advisor on his or her staff, the authority to excuse individual members before the first session of the board may be delegated to the SJA or legal advisor. The board may proceed even though a member is absent, provided the necessary quorum is present (see *d* below). If the recorder is absent, the assistant recorder, if any, or the junior member of the board will assume the duties of recorder. The board may then proceed at the discretion of the president.

b. Quorum. Unless another directive requires a larger number, a majority of the appointed voting members (other than nonparticipating alternate members) of a board constitutes a quorum and must be present at all sessions. If another directive prescribes specific qualifications for any voting member (for example, component, branch, or technical or professional qualifications), that member is essential to the quorum and must be present at all board sessions.

c. Alternate members. An unnecessarily large number of officers will not be appointed to a board of officers with the intention of using only those available at the time of the board's meeting. The memorandum of appointment may, however, designate alternate members to serve on the board, in the sequence listed, if necessary to constitute a quorum in the absence of a regular member. These alternate members may then be added to the board at the direction of the president without further consultation with the appointing authority. A member added thereby becomes a regular member with the same obligation to be present at all further proceedings of the board. (See subpara *a* above.)

d. Member not present at prior sessions. A member who has not been present at a prior session of the board, such as an absent member, an alternate member newly authorized to serve as a member, or a newly appointed member, may participate fully in all subsequent proceedings. The member must, however, become thoroughly familiar with the prior proceedings and the evidence. The report of proceedings will reflect how the member became familiar with the proceedings. Except as directed by the appointing authority, however, a member who was not available (because of having been excused or otherwise) for a substantial portion of the proceedings, as determined by the president, will no longer be considered a member of the board in that particular case, even if that member later becomes available to serve.

5–3. Duties of recorder

a. Before a session. The recorder is responsible for administrative preparation and support for the board and will perform the following duties before a session:

(1) Give timely notice of the time, place, and prescribed uniform for the session to all participants, including board members, witnesses, and, if any, legal advisor, respondent, counsel, reporter, and interpreter. Only the notice to a respondent required by paragraph 5–5 need be in writing. It is usually appropriate also to notify the commander or supervisor of each witness and respondent.

(2) Arrange for the presence of witnesses who are to testify in person, including attendance at Government expense of military personnel and civilian government employees ordered to appear and of other civilians voluntarily appearing pursuant to invitational travel orders. (See para 3–8*a*.)

(3) Ensure that the site for the session is adequate and in good order.

(4) Arrange for necessary personnel support (clerk, reporter, and interpreter), recording equipment, stationery, and other supplies.

(5) Arrange to have available all necessary Privacy Act statements and, with appropriate authentication, all required records, documents, and real evidence.

(6) Ensure, subject to security requirements, that all appropriate records and documents referred with the case are furnished to any respondent or counsel.

(7) Take whatever other action is necessary to ensure a prompt, full, and orderly presentation of the case.

b. During the session. The recorder will perform the following duties during the session:

(1) Read the memorandum of appointment at the initial session or determine that the participants have read it.

(2) Note for the record at the beginning of each session the presence or absence of the members of the board and, if any, the respondent and counsel.

(3) Administer oaths as necessary.

(4) Execute all orders of the board.

(5) Conduct the presentation of evidence and examination of witnesses to bring out all the facts.

c. After the proceedings. The recorder is responsible for the prompt and accurate preparation of the report of

proceedings, for the authentication of the completed report, and, whenever practicable, the hand–carried delivery of the report, including delivery to the appointing authority or designee.

Section II
Respondents

5–4. Designation

a. General. A respondent may be designated when the appointing authority desires to provide a hearing for a person with a direct interest in the proceedings. The mere fact that an adverse finding may be made or adverse action recommended against a person, however, does not mean that he or she will be designated a respondent. The appointing authority decides whether to designate a person as a respondent except where designation of a respondent is—

(1) Directed by authorities senior to the appointing authority; or

(2) Required by other regulations or directives or where procedural protections available only to a respondent under this regulation are mandated by other regulations or directives.

b. Before proceedings. When it is decided at the time a formal board is appointed that a person will be designated a respondent, the designation will be made in the memorandum of appointment.

c. During the proceedings.

(1) If, during formal board proceedings, the legal advisor or the president decides that it would be advisable to designate a respondent, a recommendation with supporting information will be presented to the appointing authority.

(2) The appointing authority may designate a respondent at any point in the proceedings. A respondent so designated will be allowed a reasonable time to obtain counsel (see para 5–6) and to prepare for subsequent sessions.

(3) If a respondent is designated during the investigation, the record of proceedings and all evidence received by the board to that point will be made available to the newly designated respondent and counsel. The respondent may request that witnesses who have previously testified be recalled for cross–examination. If circumstances do not permit recalling a witness, a written statement may be obtained. In the absence of compelling justification, the proceedings will not be delayed pending the obtaining of such statement. Any testimony given by a person as a witness may be considered even if that witness is subsequently designated a respondent.

5–5. Notice

The recorder will, at a reasonable time in advance of the first session of the board concerning a respondent (including a respondent designated during the proceedings), provide that respondent a copy of all unclassified documents in the case file and a letter of notification. In the absence of special circumstances or a different period established by the directive authorizing the board, a "reasonable time" is 5 working days. The letter of notification will include the following information:

a. The date, hour, and place of the session and the appropriate military uniform, if applicable.

b. The matter to be investigated, including specific allegations, in sufficient detail to enable the respondent to prepare.

c. The respondent's rights with regard to counsel. (See para 5–6.)

d. The name and address of each witness expected to be called.

e. The respondent's rights to be present, present evidence, and call witnesses. (See para 5–8*a*.)

f. (Only if the board involves classified matters.) The respondent and counsel may examine relevant classified materials on request and, if necessary, the recorder will assist in arranging clearance or access. (See AR 380–67.)

5–6. Counsel

a. Entitlement. A respondent is entitled to have counsel and, to the extent permitted by security classification, to be present with counsel at all open sessions of the board. Counsel may also be provided for the limited purpose of taking a witness's statement or testimony, if respondent has not yet obtained counsel. An appointed counsel will be furnished only to civilian employees or members of the military.

b. Who may act.

(1) *Civilian counsel.* Any respondent may be represented by civilian counsel not employed by and at no expense to the Government. A Government civilian employee may not act as counsel for compensation or if it would be inconsistent with faithful performance of regular duties. (See 18 USC 205.) In addition, a DA civilian employee may act as counsel only while on leave or outside normal hours of employment, except when acting as the exclusive representative of the bargaining unit pursuant to 5 USC 7114(a)(2)(B). (See para 3–4.)

(2) *Military counsel for military respondents.* A military respondent who does not retain a civilian counsel is entitled to be represented by a military counsel designated by the appointing authority. A respondent who declines the services of a qualified designated counsel is not entitled to have a different counsel designated.

(3) *Military counsel for civilian respondents.* In boards appointed under the authority of this regulation, Federal civilian employees, including those of nonappropriated fund instrumentalities, will be provided a military counsel under

the same conditions and procedures as if they were military respondents, unless they are entitled to be assisted by an exclusive representative of an appropriate bargaining unit.

c. Delay. Whenever practicable, the board proceedings will be held in abeyance pending respondent's reasonable and diligent efforts to obtain civilian counsel. However, the proceedings will not be delayed unduly to permit a respondent to obtain a particular counsel or to accommodate the schedule of such counsel.

d. Qualifications. Counsel will be sufficiently mature and experienced to be of genuine assistance to the respondent. Unless specified by the directive under which the board is appointed, counsel is not required to be a lawyer.

e. Independence. No counsel for a respondent will be censured, reprimanded, admonished, coerced, or rated less favorably as a result of the lawful and ethical performance of duties or the zeal with which he or she represents the respondent. Any question concerning the propriety of a counsel's conduct in the performance of his or her duty will be referred to the servicing JA.

5–7. Challenges for cause

a. Right of respondent. A respondent is entitled to have the matter at issue decided by a board composed of impartial members. A respondent may challenge for cause the legal advisor and any voting member of the board who does not meet that standard. Lack of impartiality is the only basis on which a challenge for cause may be made at the board proceedings. Any other matter affecting the qualification of a board member may be brought to the attention of the appointing authority. (See para 3–3.)

b. Making a challenge. A challenge will be made as soon as the respondent or counsel is aware that grounds exist; failure to do so normally will constitute a waiver. If possible, all challenges and grounds will be communicated to the appointing authority before the board convenes. When the board convenes, the respondent or counsel may question members of the board to determine whether to make a challenge. Such questions must relate directly to the issue of impartiality. Discretion will be used, however, to avoid revealing prejudicial matters to other members of the board; if a challenge is made after the board convenes, only the name of the challenged member will be indicated in open session, not the reason for believing the member is not impartial.

c. Deciding challenges. The appointing authority decides any challenge to a board of officers composed of a single member and may decide other challenges made before the board convenes. Otherwise, a challenge is decided by the legal advisor or, if none or if the legal advisor is challenged, by the president. If there is no legal advisor and the president is challenged, that challenge is decided by the next senior voting member.

d. Procedure. Challenges for lack of impartiality not decided by the appointing authority will be heard and decided at a session of the board attended by the legal advisor, the president or the next senior member who will decide the challenge, the member challenged, the respondent and his or her counsel, and the recorder. The respondent or counsel making the challenge may question the challenged member and present any other evidence to support the challenge. The recorder also may present evidence on the issue. The member who is to decide the challenge may question the challenged member and any other witness and may direct the recorder to present additional evidence. If more than one member is challenged at a time, each challenge will be decided independently, in descending order of the challenged members' ranks.

e. Sustained challenge. If the person deciding a challenge sustains it, he or she will excuse the challenged member from the board at once, and that person will no longer be a member of the board. If this excusal prevents a quorum (see para 5–2*b*), the board will adjourn to allow the addition of another member; otherwise, proceedings will continue.

5–8. Presentation of evidence

a. Rights of respondent. Except for good cause shown in the report of proceedings, a respondent is entitled to be present, with counsel, at all open sessions of the board that deal with any matter concerning the respondent. The respondent may—

(1) Examine and object to the introduction of real and documentary evidence, including written statements.

(2) Object to the testimony of witnesses and cross–examine witnesses other than the respondent's own.

(3) Call witnesses and otherwise introduce evidence.

(4) Testify as a witness; however, no adverse inference may be drawn from the exercise of the privilege against self–incrimination. (See para 3–7*c*(5).)

b. Assistance.

(1) Upon receipt of a timely written request, and except as provided in (4) below, the recorder will assist the respondent in obtaining documentary and real evidence in possession of the Government and in arranging for the presence of witnesses for the respondent.

(2) Except as provided in subparagraph (4) below, the respondent is entitled to compulsory attendance at Government expense of witnesses who are soldiers or Federal civilian employees, to authorized reimbursement of expenses of other civilian witnesses who voluntarily appear in response to invitational travel orders, and to official cooperation in obtaining access to evidence in possession of the Government, to the same extent as is the recorder on behalf of the Government. If the recorder, however, believes any witness's testimony or other evidence requested by the respondent is irrelevant or unnecessarily cumulative or that its significance is disproportionate to the delay, expense, or difficulty

in obtaining it, the recorder will submit the respondent's request to the legal advisor or president (see para 3–5), who will decide whether the recorder will comply with the request. Denial of the request does not preclude the respondent from obtaining the evidence or witness without the recorder's assistance and at no expense to the Government.

(3) Nothing in this paragraph relieves a respondent or counsel from the obligation to exercise due diligence in preparing and presenting his or her own case. The fact that any evidence or witness desired by the respondent is not reasonably available normally is not a basis for terminating or invalidating the proceedings.

(4) Evidence that is privileged within the meaning of paragraph 3–7*c*(1) will not be provided to a respondent or counsel unless the recorder intends to introduce such evidence to the board and has obtained approval to do so.

5–9. Argument

After all evidence has been received, the recorder and the respondent or counsel may make a final statement or argument. The recorder may make the opening argument and, if argument is made on behalf of a respondent, the closing argument in rebuttal.

5–10. After the hearing

Upon approval or other action on the report of proceedings by the appointing authority, the respondent or counsel will be provided a copy of the report, including all exhibits and enclosures that pertain to the respondent. Portions of the report, exhibits, and enclosures may be withheld from a respondent only as required by security classification or for other good cause determined by the appointing authority and explained to the respondent in writing.

Appendix A
References

Section I
Required Publications

Military Rules of Evidence are found in the Manual for Courts–Martial, United States.

AR 20–1
Inspector General Activities and Procedures. (Cited in paras 1–5 and 3–7.)

AR 25–55
The Department of the Army Freedom of Information Act Program. (Cited in para 3–18.)

AR 27–10
Military Justice. (Cited in para 3–7 and app B.)

AR 195–5
Evidence Procedures. (Cited in para 3–16.)

AR 340–21
The Army Privacy Program. (Cited in para 3–8 and app B.)

AR 380–67
The Department of the Army Personnel Security Program. (Cited in para 5–5.)

JTR, vol. 2
(Cited in para 3–7.) (Available at https://secureapp2.hqda.pentagon.mil/perdiem.)

MCM 2005
See Military Rules of Evidence contained therein. (Cited in para 3–7.)

MRE 201
Judicial notice of adjudicative facts.

MRE 502
Lawyer-client privilege.

MRE 503
Communications to clergy.

MRE 504
Husband-wife privilege.

UCMJ, Art. 31
Compulsory self-incrimination prohibited

UCMJ, Art. 136
Authority to administer oaths and act as notary. (Cited in paras 1–3, 2–3, 3–2, and 3–7.) (Available from www.army.mil/references/UCMJ.)

UCMJ, Art. 138
Complaints of wrongs

Section II
Related Publications

A related publication is a source of additional information. The user does not have to read it to understand this regulation. United States Code is found at www.gpoaccess.gov/uscode.

AR 210–7
Commercial Solicitation on Army Installations

AR 380–5
Department of the Army Information Security Program

AR 385–40
Accident Reporting and Records

AR 600–8–14
Identification Cards for M

AR 600–37
Unfavorable Information

AR 735–5
Policies and Procedures for Property Accountability

5 USC 303
Oaths to witnesses

5 USC 7114
Representation rights and duties

10 USC 933
Conduct unbecoming an officer and a gentleman

10 USC 1219
Statement of origin of disease or injury: limitations

10 USC 3012
Department of the Army: seal

18 USC 205
Activities of offices and employees in claims against and other matters affecting the Government

U.S. Constitution, amend. 5
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury. . . .

Section III
Prescribed Forms

The following forms are available on the APD Web site (www.apd.army.mil) unless otherwise stated.

DA Form 1574
Report of Proceedings by Investigating Officer/Board of Officers. (Cited in para 3–14.)

Section IV
Referenced Forms

DA Form 2823
Sworn Statement

DA Form 3881
Rights Warning Procedure/Waiver Certificate

Appendix B
Guidance for Preparing Privacy Act Statements

B–1. General

a. The Privacy Act requires that, whenever personal information is solicited from an individual and the information

will be filed so as to be retrievable by reference to the name or other personal identifier of the individual, he or she must be advised of the following information:

(1) The authority for soliciting the information.

(2) The principal purposes for which the information is intended to be used.

(3) The routine uses that may be made of the information.

(4) Whether disclosure is mandatory or voluntary.

(5) The effect on the individual of not providing all or part of the information.

b. Each Privacy Act statement must be tailored to the matter being investigated and to the person being asked to provide information. The servicing JA will be consulted for assistance in preparing Privacy Act statements, as necessary.

B–2. Content

a. Authority. If a specific statute or executive order authorizes collection of the information, or authorizes performance of a function that necessitates collection of the information, the Privacy Act statement will cite it as the authority for solicitation. For example, if a commander appoints an investigating officer to inquire into a UCMJ, Art. 138, complaint under the provisions of AR 27–10, the statutory authority for solicitation of the information would be 10 USC 938. Regulations will not be cited as the authority. If no specific statute or executive order can be found, the authority to cite is 10 USC 3012.

b. Principal purposes. The statement of principal purposes will consist of a short statement of the reason the investigation is being conducted. The following examples apply to particular types of investigations:

(1) Administrative elimination proceeding under AR 635–200: "The purpose for soliciting this information is to provide the commander a basis for a determination regarding your retention on active duty and, if a determination is made not to retain you on active duty, the type of discharge to award."

(2) Investigation of a UCMJ, Art. 138, complaint: "The purpose for soliciting this information is to obtain facts and make recommendations to assist the commander in determining what action to take with regard to (your) (complainant's) UCMJ, Art 138, complaint."

(3) Investigation of a security violation: "The purpose for soliciting this information is to determine whether the security violation under investigation resulted in a compromise of national defense information, to fix responsibility for the violation, and to determine whether to change existing security procedures."

(4) Flying evaluation board pursuant to AR 600–107: "The purpose for soliciting this information is to provide the commander a basis for a determination regarding your flying status."

c. Routine uses. In order to advise an individual of what routine uses may be made of solicited information, it is necessary to identify the system of records in which the report of proceedings will be filed. The routine uses will be summarized from the system notice and from the routine uses of general applicability in AR 340–21. The routine use statement may be introduced as follows: "Any information you provide is disclosable to members of the Department of Defense who have a need for the information in the performance of their duties. In addition, the information may be disclosed to Government agencies outside of the Department of Defense as follows: (list of routine uses external to the Department of Defense)."

d. Routine uses. Disclosure mandatory or voluntary; the effect of not providing information.
Providing information is voluntary unless the individual may be ordered to testify. The following statement can be used in most situations:

(1) Respondent or other individual warned of his or her rights under the UCMJ, Art. 31, or the Fifth Amendment: "Providing the information is voluntary. There will be no adverse effect on you for not furnishing the information other than that certain information might not otherwise be available to the commander for his or her decision in this matter."

(2) Individual who may be ordered to testify: "Providing the information is mandatory. Failure to provide information could result in disciplinary or other adverse action against you under (the UCMJ or Army regulations) (civilian personnel regulations)."

2. UCMJ, Art. 31 rights advisement. If during the proceeding it is determined to advise an individual of his or her rights under the UCMJ, Art. 31, or the Fifth Amendment, after he or she has been told it is mandatory to provide information, the advising official must be certain that the individual understands that such rights warning supersedes this portion of the Privacy Act statement.

Glossary

Section I
Abbreviations

AR
Army regulation

DA
Department of the Army

DOD
Department of Defense

GCM
general court-martial

GS
general schedule

JA
judge advocate

LA
legal advisor

MCM
Manual for Courts-Martial, United States, 2005

MRE
Military Rules of Evidence

SJA
staff judge advocate

TJAG
The Judge Advocate General

UCMJ
Uniform Code of Military Justice

USC
United States Code

Section II
Terms

Adverse administrative action
Adverse adction taken by appropriate military authority against an individual other than actions taken pursuant to the UCMJ or MCM.

Military exigency
An emergency situation requiring prompt or immediate action to obtain and record facts.

Section III
Special Abbreviations and Terms
This section contains no entries.

Index

This index is organized alphabetically by topics and subtopics. Topics and subtopics are identified by subsection or paragraph number.,

Administrative matters, 3–5, 5–1
Administrative support, 2–2, 5–3
Adverse actions,
against DA civilians, 1–9, 3–8
basis for, 1–7, 1–8, 2–1, 2–3
definition, 1–3
not basis for respondent designation,, 5–4
Appointing authority,
action,, 2–3, 3–20
communication with, 3–8
errors, 2–3
responsibilities, 2–1 through 2–3
submission of report to, 3–19
Argument, 5–9

Boards of officers,
advisory members, 5–1
alternate members, 5–2, 5–7
appointment to, 2–1
attendance, 5–2, 5–3
authorization, 1–1, 2–1
definition, 1–5
duties and functions, 1–6
guidance to, 3–2 through 3–20
members, 2–1, 5–1, 5–2
president, 3–9, 3–15, 3–20, 5–1, 5–8
purpose and scope, 2–1
recommendations, 2–3
voting, 5–1

See also **Judge advocate; Legal advisor,**

Challenges, 3–3, 3–5, 5–7
Civilian employees, DA,
as counsel, 5–6
as reporters, 2–2
as witnesses, 3–8, 5–3, 5–8
controlled by CPR, 1–9
counsel for, 3–4, 3–8, 5–6
Civilian Personnel Regulations (CPR), 2–3
Classified material, 5–5
Closed session, 3–12
Communication, 3–7, 3–9, 3–15
Confession, 3–7
Counsel,
communication with client, 3–7
entitlement to, 5–6
failure to cite errors, 2–3
for civilian employees, 3–4, 3–8, 5–6
present at consultation, 3–12, 5–1
records provided to, 5–3
right to, 2–3, 3–4, 5–6
types of, 5–6

Decisions, 2–3, 3–5

Deliberations, 3–11
Disciplinary action. ***See*** **Adverse actions,**
Disease or injury, 3–7

Enclosures, 3–14, 3–15, 5–10
Errors, 2–3
Evidence,
as exhibits, 3–16
discussion of, 3–8
documentary, 3–16, 5–8
introduction of, 5–8
presentation of, 5–3, 5–8
real (physical), 3–16, 5–3, 5–8
rules of, 3–7
weight of, 3–10
Exhibits, 3–8, 3–14, 3–16, 5–10

Federal Personnel Manual, 1–9
Findings,
affected by error, 2–3
definition, 3–10
evidence for, 3–10
form of, 3–10
required, 2–1
supporting recommendations, 3–10
use of, 1–9
Formal boards. ***See*** **Boards of officers,**
Formal procedures,
definition, 1–5
not mandatory, 1–5
use of, 1–5

General courts–martial (GCM), 2–2, 5–1, 5–2
General officers, 1–5, 2–1

Hearings, 5–10

Immunity, 3–7
Informal boards, 4–1 through 4–3
Informal investigations, 2–1, 4–1–4–3
Informal procedures, 1–5
Inspectors general, 3–7
Instructions, 1–1, 2–1, 3–11, 3–12
Interested persons, 1–7, 4–3
Investigations,
appointment to, 2–1
authorization, 1–1
boards for, 4–1
composition of, 4–1
conduct of, 3–1 through 3–9
duties during, 1–6
function of, 1–6
guidance for, 3–2 through 3–20
informal, 4–1–4–3
preliminary, 1–5
purpose and scope, 2–1
recommendations of, 2–3
results of, 1–9
types of, 1–5

Involuntary admission, 3–7

Judge advocate (JA),
advises on appointments, 2–1
advises on Privacy Act, 3–8
advises on procedure, 1–5, 2–1, 2–2
consulted, 5–1
determines public interest, 3–6
reviews counsel's conduct, 5–6
reviews reports, 2–3
rules on self–incrimination, 3–7

Legal advisor,
appointment to formal board, 2–1
civilians (JA) as, 5–1
decision making, 3–5
forming findings and recommendations, 3–12
functions, 5–1
protection of witnesses, 3–7, 3–8

See also **Judge advocate**

Legal review, 2–3
Letter of notification, 5–5

Memorandum of appointment,
appoints members, 2–1
as enclosure to report of proceedings, 3–15
defines findings and recommendations required, 2–1
designates recorders, 5–1
designates respondents, 5–4
provides authority, 1–1
read by recorder and participants, 5–3
specifies purpose and scope, 2–1
Military exigency, 1–3, 2–1, 5–1
Minority report, 3–13, 3–17
MRE (Military Rules of Evidence), 3–7

News media, 3–6
Notices to individuals,, 1–9, 3–15, 5–3

Oaths, 3–2, 5–3
Objections, 2–3, 3–5, 3–16
Official notice, 3–7, 3–16
Off the record, 3–7

Physical evidence, 3–16, 5–3, 5–8
Privacy Act, 3–8, 3–15, 5–3, appendix B
Privileged communications, 3–7, 5–8
Procedural matters, 3–5
Proceedings,
additional, 3–20
definition, 1–5
public presence at, 3–6
recording, 3–6

See also **Report of proceedings**

Proof of facts, 3–7. ***See also*****Standard of proof,**
Publicity, 3–6

Quorum, 5–2, 5–7

Real evidence. ***See*** **Physical evidence**
Recommendations,
affected by error, 2–3
nature and extent, 3–11
required, 2–1
supported by findings, 2–3, 3–10
Recorder,
as board member, 2–1, 5–1
authenticates report, 3–17
duties, 5–3
rules on relevance, 5–8
supervision of, 5–1
Reporters, 2–2
Report of proceedings,
action taken upon, 3–20
authentication of, 3–17
enclosures to, 3–15, 5–10
exhibits attached to, 3–16, 5–10
format, 3–14
minority, 3–13, 3–17
safeguarding of, 3–18
submission of, 3–19, 5–1, 5–3, 5–10
Respondents,
assistance to, 5–8
as witnesses, 5–8
challenges by, 5–7
counsel for, 5–6
designation of, 1–8, 1–8, 5–4
notice to, 5–5
recording of procedures, 3–6
records provided to, 5–3, 5–5
rights of, 5–8, 5–10
Rules of evidence, 3–7

Security classification, 3–18, 5–6, 5–10
Self–incrimination, 3–7
Senior Executive Service, 1–5
Standard of proof, 3–10. ***See also*** **Proof of facts**
State Adjutant General, 2–1
Statements,
as argument, 5–9
as exhibits, 3–16
examined by respondent, 5–8
off the record, 3–7
regarding disease or injury, 3–7
self–incriminating, 3–7
taken by counsel, 5–6
taking of, 3–8
written, 5–4

Technical knowledge, 5–1
Testimony. ***See*** **Statements**
Travel orders, 3–8, 5–3, 5–8

Uniform Code of Military Justice (UCMJ), 1–3, 2–3, 3–2, 3–7
United States Code, 5–6
Unlawful search, 3–7

Verbatim record, 2–1, 3–8, 3–16

Voting, 3–13, 4–1, 5–1

Warrant officers, 2–1, 5–1
Witnesses,
arranging presence of, 5–3
authority to subpoena, 3–8
civilian employees as, 3–8, 5–3, 5–8
examination of, 5–3
interviewed, 1–5
ordered to testify, 3–7
protection of, 3–7, 3–8
respondents as, 5–8
self-incriminating, 3–7

USAPD

ELECTRONIC PUBLISHING SYSTEM
OneCol FORMATTER WIN32 Version 235

PIN:	000419–000
DATE:	09-29-06
TIME:	15:17:19
PAGES SET:	35
DATA FILE:	C:\wincomp\r15-6.fil
DOCUMENT:	AR 15–6
SECURITY:	UNCLASSIFIED
DOC STATUS:	REVISION

E

DEPARTMENT OF THE ARMY
HEADQUARTERS, U.S. ARMY COMMUNICATIONS-ELECTRONICS COMMAND
6002 COMBAT DRIVE
ABERDEEN PROVING GROUND, MARYLAND 21005-1845

AMSEL-CG 3 February 2011

MEMORANDUM FOR Investigating Officer (2)
Command and Control Directorate, Fort Monmouth, New Jersey 07703

SUBJECT: Appointment as an Investigating Officer Pursuant to AR 15-6

1. Unfortunately, Investigating Officer (1) has been relieved as the AR 15-6 Investigating Officer assigned to this case . You are hereby appointed as an investigating officer pursuant to AR 15-6, Procedures for Investigating Officers and Boards of Officers, to conduct an informal investigation regarding allegations of inappropriate conduct on the part employees of the Communications Electronics Command Life Cycle Management Command (CECOM LCMC) Rapid Response (R2) project mishandling money earned as fees charged by the R2 Office in violation of the Economy Act of 1933 (Economy Act).

2. The purpose of your investigation is to determine the validity of the whistleblower's allegations and make findings concerning whether any wrongdoing occurred, and if so, by whom, and whether adequate policies and procedures are in place to preclude any recurrence of any improprieties, irregularities, or misconduct disclosed during your inquiry.

3. In conducting your investigation, you will consider the evidence of witnesses, the materials contained in the reference (enclosed), and any other materials that you consider relevant. At a minimum, you are to make detailed findings and recommendations regarding the following:

a. Whether the R2 project office has established a process to properly track individual customer expenses to ensure compliance with the Economy Act.

b. Whether the R2 project office failed to properly return unused client fees and improperly carried over fees collected from 2007 to present in violation of the Economy Act.

c. Whether the R2 office reimbursed CECOM for the entire cost of contract specialists and support staff when these employees were performing tasks for both the R2 Project Office and CECOM LCMC in violation of the Economy Act and/or Federal appropriations laws.

d. Whether the CECOM LCMC Internal Review Office knowingly failed to properly issue a draft or final Report 4-A-08, which would have revealed the Economy Act violations and tracking problems within the R2 Project Office.

See the attached Office of Special Counsel memorandum dated 30 November 2010 for additional information regarding the alleged violations.

2. Using the informal procedures of AR 15-6, Chapter 4, you will be required to interview witnesses, obtain statements, and obtain documentary evidence (e.g., letters, e-mails, investigative reports, etc.).

a. You must provide each witness a Privacy Act statement before you solicit personal information from them.

b. You must give an appropriate rights warning (Article 31, Weingarten, or 5th Amendment) if you suspect military or civilian personnel of violations of the Uniform Code of Military Justice, or Federal or state law. When interviewing a Federal civilian employee, you must first determine whether the employee is a member of a local union, in which case the employee may have the right to have a union representative present during the interview. The employee may waive this right.

c. All witness statements will be sworn and will be taken on DD Form 2823. Clarify any contradictory statements to the greatest extent possible. In the event that you are unable to obtain a sworn statement from a witness, you will prepare a detailed memorandum for record (MFR) memorializing the interview and explaining why a sworn statement was not obtained.

d. You should obtain original documents whenever possible. If originals are unavailable, ensure that accurate, legible copies are provided along with an MFR documenting where the original is maintained and why it was not obtained. Advise the respective custodian, in writing, of his or her obligation to safeguard and secure the documents pending final action in this investigation.

e. You may be required to obtain and secure physical evidence. If you are unable to obtain or secure the evidence, prepare a MFR documenting the evidence's relevance and where it is maintained. Advise the respective custodian, in writing, of his or her obligation to safeguard and secure the evidence pending final action in this investigation.

3. You will comply with all requirements set forth by the Secretary of the Army General Counsel Memorandum dated 2 December 2010, detailed in the informational packet provided to you with this letter. You will compose the initial draft AR 15-6 Report of Investigation (ROI).

4. If during your investigation you discover additional matters that you believe warrant investigation, discuss them with your legal advisor, who will advise me as to whether the investigation should be expanded.

5. In your investigation you are not limited to the issues and questions listed above. You will investigate any relevant and related matters that you may discover that fall under the areas for investigation described above. You are advised not to investigate matters that do not fall within the areas for investigation described above. If you are in doubt about the relevance of a matter, you will consult your legal advisor, at (732) 532-4445 or via e-mail,

@us.army.mil.

6. Your investigation will use informal procedures under AR 15-6. To the fullest extent possible, all witness statements will be sworn and reduced to writing. You will interview all witnesses in person, if practical. You should contact those witnesses you consider relevant during the course of your investigation. You will utilize DA Form 2823 for all sworn statements. Caution all individuals that they must not discuss the subject matter of the investigation with anyone other than a properly detailed investigator.

7. If, in the course of your investigation, you suspect wrongdoing or neglect on the part of a person senior to you, inform me so that a new investigating officer may be appointed. As an Investigating Officer, you may not, absent military exigency, investigate someone senior to you.

8. From the evidence, you will make findings as to the above issues and recommendations that are based upon your findings. Reference your analysis and findings to the specific evidence upon which you rely. Recommend remedial measures, to include any corrective and personnel or disciplinary actions you deem appropriate, if any. You may also recommend any necessary management actions to preclude a recurrence of any founded misconduct or identified systemic problems. If certain evidence conflicts with other evidence; state what you believe to be in conflict and why. If any question asked solicits an answer that requires a follow up question and answer, ensure that you have pursued those questions in order to further develop the record evidence.

9. If in the course of your investigation you come to suspect that a person subject to the Uniform Code of Military Justice (UCMJ) has violated the UCMJ or some other criminal law, you will advise that person of his or her rights under Article 31, UCMJ or the Fifth Amendment of the United States Constitution, as appropriate. Additionally, you may have to provide certain witnesses Privacy Act statements before soliciting personal information.

10. In your investigation, you will make such findings as are relevant and supported by the facts. You will also make such recommendations as are appropriate and are supported by the facts. In compiling your report of investigation, consider carefully that information contained therein will be subject to public disclosure and release.

11. During the course of your investigation, you may find it necessary to interview civilian employees. **Federal civilian employees have certain representational rights that active-duty personnel do not have.** Generally speaking, civilian employees are required to cooperate with official investigations. There are some exceptions:

a. Civilian employees who are members of a bargaining unit have a right to union representation at any interview with management if they "reasonably believe" that the interview could result in a disciplinary action against them. You must observe appropriate union notice requirements prior to interviewing any bargaining unit employees. Should a bargaining unit employee seek to invoke this right, you have no obligation to arrange representation for the

employee, only an obligation to permit the employee the opportunity to secure representation. **That witness is entitled to union representation, and you must either stop questioning or allow the union to attend.** Once you have scheduled any bargaining unit employees for an interview, contact your legal advisor for guidance in notifying the appropriate union representative. The Civilian Personnel Office can tell you whether any particular employee you wish to interview is a member of the bargaining unit.

b. If you are interviewing a civilian witness about *somebody else*, before initiating questioning you must: (1) inform the interviewee why you are questioning him/her about someone else and who that person is (by name), and (2) assure the employee that no reprisal will take place if he/she refuses to answer, but that adverse action could be initiated based on their refusal to cooperate in a properly authorized investigation or inquiry. If the employee refuses to answer your questions, suspend the interview and contact your legal advisor.

c. Civilian employees who reasonably believe that information they provide during an official investigation may be used against them in a criminal prosecution cannot be required to cooperate without a grant of immunity. Should any civilian employee you attempt to interview decline to cooperate for any reason, suspend the interview and seek guidance from your legal advisor on how to precede.

d. If the matter you are investigating involves a grievance, a personnel practice, or policy or other conditions of employment, you may be required to notify the union of any interviews you have scheduled with bargaining unit employees and afford the union the opportunity to be present. Check with your legal advisor to determine if this rule applies to your case and how to proceed if it does.

e. You have no authority to compel the cooperation of contractor employees. If you find it necessary to interview contractor employees, you must contact the contracting officer's representative for the applicable contract to request cooperation.

12. This investigation has been directed by the Office of Special Counsel (OSC) pursuant to a whistleblower complaint. Because this is a whistleblower investigation, the whistleblower has certain rights. Pursuant to OSC policy, you normally must interview the whistleblower. Specifically, he must be interviewed and afforded a meaningful opportunity to provide his oral testimony and to provide written documentation, if any, in support of his allegations. However, in this case, the whistleblower requested to remain anonymous. If at any time during the investigation, an individual comes forward and advises you that they are the whistleblower, please forward this information to your legal advisor. In turn, this information will be conveyed to the Army Office of the General Counsel for further guidance.

13. You will submit your completed investigation on a DA Form 1574 with a table of contents and enclosures. The enclosures will include all documentary materials considered by you. Make two copies of your report of investigation (ROI). Provide an index and clearly tab the original ROI, to include your findings and recommendations on DA Form 1574, with appropriate

enclosures and forward the entire package to me, through the Office of the Staff Judge Advocate/CECOM/AMC Legal Offices. Before beginning your investigation, you will receive a legal briefing from your legal advisor, . You may consult the legal advisor at any time during the investigation and you will consult the legal advisor before warning any witness as a suspect and before putting your report in final form.

14. This duty takes precedence over your normal duties, TDY, and leave.

15. You are directed to begin your investigation as soon as practicable.

MG, USA
Commanding

F

DEPARTMENT OF THE ARMY
HEADQUARTERS, U.S. ARMY COMMUNICATIONS-ELECTRONICS COMMAND
6002 COMBAT DRIVE
ABERDEEN PROVING GROUND, MARYLAND 21005-1845

AMSEL-CG 21 September 2012

MEMORANDUM FOR INVESTIGATING OFFICER HQ, CERDEC, RDECOM, Aberdeen Proving Grounds, Maryland 20115

SUBJECT: Appointment as an Investigating Officer Pursuant to AR 15-6

1. You are hereby appointed as an investigating officer pursuant to AR 15-6, Procedures for Investigating Officers and Boards of Officers, to conduct an informal investigation regarding allegations of inappropriate conduct on the part employees of the Communications Electronics Command Life Cycle Management Command (CECOM LCMC) Rapid Response (R2) project mishandling money earned as fees charged by the R2 Office in violation of the Economy Act of 1933 (Economy Act). As this investigation is directed by the Office of the Secretary of the Army this investigation will take precedence over any other matters.

2. The purpose of your investigation is to determine the validity of the whistleblower's allegations and make findings concerning whether any wrongdoing occurred, and if so, by whom, and whether adequate policies and procedures are in place to preclude any recurrence of any improprieties, irregularities, or misconduct disclosed during your inquiry. You will use as a basis for your investigation the Office of Special Counsel memorandum dated 30 November 2010 for additional information regarding the alleged violations, the Draft Report of investigation dated July 2011, and the U.S. Army Criminal Investigation Command Final Report of Investigation dated16 August 2012

3. In conducting your investigation, you will consider the evidence of witnesses, the materials contained in the reference (enclosed), and any other materials that you consider relevant. At a minimum, you are to make detailed findings and recommendations regarding the following:

a. What if any type of inquiry or audit Did the CECOM Internal Review office conduct into the Fee charging schedule utilized by the R2 project office; What were the results of that inquiry and if there were indications the R2 Project office fee charging schedule was a violation of either the Economy Act or the Anti-Deficiency Act what actions did the Internal Review Office take to make proper notifications to the Command of CECOM?

b. Did the CECOM Internal Review Office comply with AR 11-7? AR 11-7, Army Internal Review Program, Chapter 5, paragraph 5-2 requires evaluators to issue reports communicating the results of each completed review. If a review is terminated before it is completed and a review report is not issued, AR 11-7, paragraph 4-18 requires evaluators to document the work to date of termination and why the review was terminated. If no report was issued, what was the reason for termination of the review? If no report was issued, was the reason for termination of the review documented? If no report was issued, why was the

final report never issued? If no report was issued, who were the individuals involved in the decision to terminate the review?

c. Did the R2 project office have an established a process to properly track individual customer expenses to ensure compliance with the Economy Act. The draft AR 15-6 Finding concludes that no process was in place to track individual customer expenses, but further concludes that there were no Economy Act violations. Given that there was no process to track individual expenses, it is not clear how there can be a definitive finding that there was no violation of the Economy Act. This conclusion does not appear to be supported by the evidence. You should review and revise accordingly this Finding after you have gathered additional evidence to determine addressing whether there was no violation of the Economy Act.

d. The Finding at Section IV(b) addresses "Whether the R2 project office failed to properly return unused client fees and improperly carried over fees collected from 2007 to present in violation of the Economy Act?" The finding concludes "No. The R2 Office was entirely financed by customer fees." It is unclear why customer funding of the R2 Office is relevant to the question presented. The current Finding does not contain sufficient detail or references to contemporaneous documentation to support the conclusion. This needs to be explained and further addressed by gathering additional evidence that addresses this point. You should review and revise accordingly this Finding.

e. Did the R2 office reimburse CECOM for the entire cost of contract specialists and support staff when these employees were performing tasks for both the R2 Project Office and CECOM LCMC in violation of the Economy Act and/or Federal appropriations laws?

f. The Finding at Section IV(d) addresses "Whether the CECOM LCMC Internal Review Office knowingly failed to properly issue a draft or final Report 4-A-08, which would have revealed the Economy Act violations and tracking problems within the R2 Project Office." The Finding concludes that "The IR office did not fail to issue a draft or final report." The Finding details that a draft report was issued on 4 May 2008, and the Comptroller/G8 office formally responded to the draft report and non-concurred. In response to the non-concurrence an IIPT was formed and "reached a conclusion" on 26 March 2009. The Finding does not explain why it was necessary to form an IIPT or why the resolution reached by the IIPT was not incorporated in a revised draft or final report. Recommend that the IO determine whether the conclusion reached by the IIPT received legal review and was accepted by the IR evaluators, why was the IIPT disbanded and based on whose decision to do so, and why a final report incorporating the IIPT efforts was not issued.

g. The ROI discusses multiple legal opinions (some unsigned) that discuss general fiscal law principles related to fee for service charges and fiscal law principles and references Exhibits P, Q, and N. Was there ever a legal review of the specific activities of the R2 Project Office undertaken and a determination of whether their procedures were in violation of the Economy Act? Did CECOM Legal ever opine on the G-8's concerns with respect to the R2 procurement

processes and procedures? Were there any additional legal reviews conducted, as reflected in the testimony of witness If so, provide any copies of those documents.

h. Where possible you will attempt to determine each individual customer's charges, not the "average" rate but the exact fee charged.

i. Identify any systemic issues that need to be identified and collective actions to be taken to address them.

j. Determine why the AAA relied on a draft IR report and did not go back to CECOM's IR for a copy of the final IR report.

k. Discuss the role of the AAA report issued in February 2009.

l. Identify the author of the draft IR report. Identify and resolve inconsistency between content of draft IR report (Exhibit M) and testimony of versus testimony of Mr. and Mr. . If there was a disagreement between the Internal Review auditors and the Chief of the Internal Review office what steps were taken to resolve any disagreements or conflicts in the final report?

m. When there is a difference of opinion between CECOM Legal and G-8, which opinion is given greater weight?

4. This investigation has been directed by the Office of Special Counsel (OSC) pursuant to a whistleblower complaint. Because this is a whistleblower investigation, the whistleblower has certain rights. Pursuant to OSC policy, you normally must interview the whistleblower. Specifically, he must be interviewed and afforded a meaningful opportunity to provide his oral testimony and to provide written documentation, if any, in support of his allegations. However, in this case, the whistleblower requested to remain anonymous. If at any time during the investigation, an individual comes forward and advises you that they are the whistleblower, please forward this information to your legal advisor. In turn, this information will be conveyed to the Army Office of the General Counsel for further guidance.

5. Using the informal procedures of AR 15-6, Chapter 4, you will be required to interview witnesses, obtain statements, and obtain documentary evidence (e.g., letters, e-mails, investigative reports, etc.). To the fullest extent possible, all witness statements will be sworn and reduced to writing. You will interview all witnesses in person, if practical. You should contact those witnesses you consider relevant during the course of your investigation. Caution all individuals that they must not discuss the subject matter of the investigation with anyone other than a properly detailed investigator.

6. All witness statements will be sworn and will be taken on DD Form 2823. ***It is unnecessary and you are strongly encouraged not to obtain personal identifying information (Social Security Numbers) from the witnesses.*** Clarify any contradictory

statements to the greatest extent possible. In the event that you are unable to obtain a sworn statement from a witness, you will prepare a detailed memorandum for record (MFR) memorializing the interview and explaining why a sworn statement was not obtained.

7. If, in the course of your investigation, you suspect wrongdoing or neglect on the part of a person senior to you, inform me so that a new investigating officer may be appointed. As an Investigating Officer, you may not, absent military exigency, investigate someone senior to you.

8. From the evidence, you will make findings as to the above issues and recommendations that are based upon your findings. Reference your analysis and findings to the specific evidence upon which you rely. Recommend remedial measures, to include any corrective and personnel or disciplinary actions you deem appropriate, if any. You may also recommend any necessary management actions to preclude a recurrence of any founded misconduct or identified systemic problems. If certain evidence conflicts with other evidence, state what you believe to be in conflict and why. If any question asked solicits an answer that requires a follow up question and answer, ensure that you have pursued those questions in order to further develop the record evidence.

10. You must provide each witness a Privacy Act statement before you solicit personal information from them.

11. If in the course of your investigation you suspect that a military member or civilian employee has committed violations of the Uniform Code of Military Justice (UCMJ), another criminal law, or a Federal or State law, you will advise that person of his or her rights under Article 31, UCMJ or the Fifth Amendment of the United States Constitution, as appropriate. Additionally, when interviewing a Federal civilian employee, you must first determine whether the employee is a member of a local union, in which case the employee may have the right to have a union representative present during the interview. The employee may waive this right.

12. During the course of your investigation, you may find it necessary to interview civilian employees. Federal civilian employees have certain representational rights that active-duty personnel do not have. Generally speaking, civilian employees are required to cooperate with official investigations. There are some exceptions:

a. Civilian employees who are members of a bargaining unit have a right to union representation at any interview with management if they "reasonably believe" that the interview could result in a disciplinary action against them. You must observe appropriate union notice requirements prior to interviewing any bargaining unit employees. Should a bargaining unit employee seek to invoke this right, you have no obligation to arrange representation for the employee, only an obligation to permit the employee the opportunity to secure representation. That witness is entitled to union representation, and you must either stop questioning or allow the union to attend. Once you have scheduled any bargaining unit employees for an interview, contact your legal advisor for guidance in notifying the appropriate union representative. The Civilian Personnel Office can tell you

whether any particular employee you wish to interview is a member of the bargaining unit.

b. If you are interviewing a civilian witness about *somebody else*, before initiating questioning you must: (1) inform the interviewee why you are questioning him/her about someone else and who that person is (by name), and (2) assure the employee that no reprisal will take place if he/she refuses to answer, but that adverse action could be initiated based on their refusal to cooperate in a properly authorized investigation or inquiry. If the employee refuses to answer your questions, suspend the interview and contact your legal advisor.

c. Civilian employees who reasonably believe that information they provide during an official investigation may be used against them in a criminal prosecution cannot be required to cooperate without a grant of immunity. Should any civilian employee you attempt to interview decline to cooperate for any reason, suspend the interview and seek guidance from your legal advisor on how to precede.

d. If the matter you are investigating involves a grievance, a personnel practice, or policy or other conditions of employment, you may be required to notify the union of any interviews you have scheduled with bargaining unit employees and afford the union the opportunity to be present. Check with your legal advisor to determine if this rule applies to your case and how to proceed if it does.

e. You have no authority to compel the cooperation of contractor employees. If you find it necessary to interview contractor employees, you must contact the contracting officer's representative for the applicable contract to request cooperation.

13. You should obtain original documents whenever possible. If originals are unavailable, ensure that accurate, legible copies are provided along with an MFR documenting where the original is maintained and why it was not obtained. Advise the respective custodian, in writing, of his or her obligation to safeguard and secure the documents pending final action in this investigation.

14. You may be required to obtain and secure physical evidence. If you are unable to obtain or secure the evidence, prepare a MFR documenting the evidence's relevance and where it is maintained. Advise the respective custodian, in writing, of his or her obligation to safeguard and secure the evidence pending final action in this investigation.

15. You will comply with all requirements set forth by the Secretary of the Army General Counsel Memorandum dated 2 December 2010, detailed in the informational packet provided to you with this letter.

16. In your investigation you are not limited to the issues and questions listed above. You will investigate any relevant and related matters that you may discover that fall under the

areas for investigation described above. You are advised not to investigate matters that do not fall within the areas for investigation described above. If you are in doubt about the relevance of a matter, you will consult your legal advisor. If during your investigation you discover additional matters that you believe warrant investigation, discuss them with your legal advisor, who will advise me as to whether the investigation should be expanded.

17. You will make non-binding but specific recommendations based on your findings. These recommendations should include; whether any local regulations or policies should be changed, whether any additional training is required, and whether any adverse personnel or disciplinary actions should be taken against a member of this command. Submit your findings and recommendations on DA Form 1574 to the Legal Office for review within 21 working days from the date of this appointment memorandum. As soon as it becomes apparent that you may require an extension of time to complete your investigation or to prepare the draft submission of the Army's final report to the OSC, please provide a written summary of the actions you have taken in the case to date, together with your justification for extension of the suspense to Cassandra Johnson, Office of the Army General Counsel, thru the Office of the Staff Judge Advocate. Ms. Johnson will petition the OSC for an extension. The grant of extension from OSC is never guaranteed, so it is strongly recommended that you begin your investigation immediately and employ the appropriate resources to ensure its timely completion.

18. In your investigation, you will make such findings as are relevant and supported by the facts. You will also make such recommendations as are appropriate and are supported by the facts. In compiling your report of investigation, consider carefully that information contained therein will be subject to public disclosure and release.

19. In support of your findings and recommendations recorded on a DA Form 1574 (Report of Proceedings by Investigating Officer/Board of Officers), you must include all administrative enclosures and evidentiary exhibits and other materials which you considered. They must be tabbed and indexed with a table of contents and enclosures. Make clear, concise, and specific findings of fact. The evidence contained in your investigation must directly support each finding you make, and you should specifically refer to each exhibit that supports that particular finding. Your recommendations must be consistent with your findings. Submit your entire package of findings and recommendations with appropriate enclosures to me, through the CECOM Legal Office.

20. Make two copies of your report of investigation (ROI).

21. Before beginning your investigation, you will receive a legal briefing from your legal advisor, CECOM Office of the Chief Counsel. You may consult the legal advisor at any time during the investigation. Further, you will consult with him on all aspects of this investigation, including the development of an investigation plan, determining whether witnesses must be advised of their rights, preparing your findings and recommendations, and before putting your report in final form.

22. This duty takes precedence over your normal duties, TDY, and leave.

23. You are directed to begin your investigation immediately.

MG, USA
Commanding

DEPARTMENT OF THE ARMY
HEADQUARTERS, U.S. ARMY COMMUNICATIONS-ELECTRONICS COMMAND
6002 COMBAT DRIVE
ABERDEEN PROVING GROUND, MARYLAND 21005-1845

AMSEL-CG 21 September 2012

MEMORANDUM FOR Mr. Robert Zanzalari, HQ, CERDEC, RDECOM, Aberdeen Proving Grounds, Maryland 20115

SUBJECT: Appointment as an Investigating Officer Pursuant to AR 15-6

1. You are hereby appointed as an investigating officer pursuant to AR 15-6, Procedures for Investigating Officers and Boards of Officers, to conduct an informal investigation regarding allegations of inappropriate conduct on the part employees of the Communications Electronics Command Life Cycle Management Command (CECOM LCMC) Rapid Response (R2) project mishandling money earned as fees charged by the R2 Office in violation of the Economy Act of 1933 (Economy Act). As this investigation is directed by the Office of the Secretary of the Army this investigation will take precedence over any other matters.

2. The purpose of your investigation is to determine the validity of the whistleblower's allegations and make findings concerning whether any wrongdoing occurred, and if so, by whom, and whether adequate policies and procedures are in place to preclude any recurrence of any improprieties, irregularities, or misconduct disclosed during your inquiry. You will use as a basis for your investigation the Office of Special Counsel memorandum dated 30 November 2010 for additional information regarding the alleged violations, the Draft Report of investigation dated July 2011, and the U.S. Army Criminal Investigation Command Final Report of Investigation dated16 August 2012

3. In conducting your investigation, you will consider the evidence of witnesses, the materials contained in the reference (enclosed), and any other materials that you consider relevant. At a minimum, you are to make detailed findings and recommendations regarding the following:

a. What if any type of inquiry or audit Did the CECOM Internal Review office conduct into the Fee charging schedule utilized by the R2 project office; What were the results of that inquiry and if there were indications the R2 Project office fee charging schedule was a violation of either the Economy Act or the Anti-Deficiency Act what actions did the Internal Review Office take to make proper notifications to the Command of CECOM?

b. Did the CECOM Internal Review Office comply with AR 11-7? AR 11-7, Army Internal Review Program, Chapter 5, paragraph 5-2 requires evaluators to issue reports communicating the results of each completed review. If a review is terminated before it is completed and a review report is not issued, AR 11-7, paragraph 4-18 requires evaluators to document the work to date of termination and why the review was terminated. If no report was issued, what was the reason for termination of the review? If no report was issued, was the reason for termination of the review documented? If no report was issued, why was the

final report never issued? If no report was issued, who were the individuals involved in the decision to terminate the review?

c. Did the R2 project office have an established a process to properly track individual customer expenses to ensure compliance with the Economy Act. The draft AR 15-6 Finding concludes that no process was in place to track individual customer expenses, but further concludes that there were no Economy Act violations. Given that there was no process to track individual expenses, it is not clear how there can be a definitive finding that there was no violation of the Economy Act. This conclusion does not appear to be supported by the evidence. You should review and revise accordingly this Finding after you have gathered additional evidence to determine addressing whether there was no violation of the Economy Act.

d. The Finding at Section IV(b) addresses "Whether the R2 project office failed to properly return unused client fees and improperly carried over fees collected from 2007 to present in violation of the Economy Act?" The finding concludes "No. The R2 Office was entirely financed by customer fees." It is unclear why customer funding of the R2 Office is relevant to the question presented. The current Finding does not contain sufficient detail or references to contemporaneous documentation to support the conclusion. This needs to be explained and further addressed by gathering additional evidence that addresses this point. You should review and revise accordingly this Finding.

e. Did the R2 office reimburse CECOM for the entire cost of contract specialists and support staff when these employees were performing tasks for both the R2 Project Office and CECOM LCMC in violation of the Economy Act and/or Federal appropriations laws?

f. The Finding at Section IV(d) addresses "Whether the CECOM LCMC Internal Review Office knowingly failed to properly issue a draft or final Report 4-A-08, which would have revealed the Economy Act violations and tracking problems within the R2 Project Office." The Finding concludes that "The IR office did not fail to issue a draft or final report." The Finding details that a draft report was issued on 4 May 2008, and the Comptroller/G8 office formally responded to the draft report and non-concurred. In response to the non-concurrence an IIPT was formed and "reached a conclusion" on 26 March 2009. The Finding does not explain why it was necessary to form an IIPT or why the resolution reached by the IIPT was not incorporated in a revised draft or final report. Recommend that the IO determine whether the conclusion reached by the IIPT received legal review and was accepted by the IR evaluators, why was the IIPT disbanded and based on whose decision to do so, and why a final report incorporating the IIPT efforts was not issued.

g. The ROI discusses multiple legal opinions (some unsigned) that discuss general fiscal law principles related to fee for service charges and fiscal law principles and references Exhibits P, Q, and N. Was there ever a legal review of the specific activities of the R2 Project Office undertaken and a determination of whether their procedures were in violation of the Economy Act? Did CECOM Legal ever opine on the G-8's concerns with respect to the R2 procurement

processes and procedures? Were there any additional legal reviews conducted, as reflected in the testimony of witness Mr. Paul Novick. If so, provide any copies of those documents.

h. Where possible you will attempt to determine each individual customer's charges, not the "average" rate but the exact fee charged.

i. Identify any systemic issues that need to be identified and collective actions to be taken to address them.

j. Determine why the AAA relied on a draft IR report and did not go back to CECOM's IR for a copy of the final IR report.

k. Discuss the role of the AAA report issued in February 2009.

l. Identify the author of the draft IR report. Identify and resolve inconsistency between content of draft IR report (Exhibit M) and testimony of Mr. Dominic versus testimony of Mr. Nielsen and Mr. Kelsey. If there was a disagreement between the Internal Review auditors and the Chief of the Internal Review office what steps were taken to resolve any disagreements or conflicts in the final report?

m. When there is a difference of opinion between CECOM Legal and G-8, which opinion is given greater weight?

4. This investigation has been directed by the Office of Special Counsel (OSC) pursuant to a whistleblower complaint. Because this is a whistleblower investigation, the whistleblower has certain rights. Pursuant to OSC policy, you normally must interview the whistleblower. Specifically, he must be interviewed and afforded a meaningful opportunity to provide his oral testimony and to provide written documentation, if any, in support of his allegations. However, in this case, the whistleblower requested to remain anonymous. If at any time during the investigation, an individual comes forward and advises you that they are the whistleblower, please forward this information to your legal advisor. In turn, this information will be conveyed to the Army Office of the General Counsel for further guidance.

5. Using the informal procedures of AR 15-6, Chapter 4, you will be required to interview witnesses, obtain statements, and obtain documentary evidence (e.g., letters, e-mails, investigative reports, etc.). To the fullest extent possible, all witness statements will be sworn and reduced to writing. You will interview all witnesses in person, if practical. You should contact those witnesses you consider relevant during the course of your investigation. Caution all individuals that they must not discuss the subject matter of the investigation with anyone other than a properly detailed investigator.

6. All witness statements will be sworn and will be taken on DD Form 2823. ***It is unnecessary and you are strongly encouraged not to obtain personal identifying information (Social Security Numbers) from the witnesses.*** Clarify any contradictory

statements to the greatest extent possible. In the event that you are unable to obtain a sworn statement from a witness, you will prepare a detailed memorandum for record (MFR) memorializing the interview and explaining why a sworn statement was not obtained.

7. If, in the course of your investigation, you suspect wrongdoing or neglect on the part of a person senior to you, inform me so that a new investigating officer may be appointed. As an Investigating Officer, you may not, absent military exigency, investigate someone senior to you.

8. From the evidence, you will make findings as to the above issues and recommendations that are based upon your findings. Reference your analysis and findings to the specific evidence upon which you rely. Recommend remedial measures, to include any corrective and personnel or disciplinary actions you deem appropriate, if any. You may also recommend any necessary management actions to preclude a recurrence of any founded misconduct or identified systemic problems. If certain evidence conflicts with other evidence, state what you believe to be in conflict and why. If any question asked solicits an answer that requires a follow up question and answer, ensure that you have pursued those questions in order to further develop the record evidence.

10. You must provide each witness a Privacy Act statement before you solicit personal information from them.

11. If in the course of your investigation you suspect that a military member or civilian employee has committed violations of the Uniform Code of Military Justice (UCMJ), another criminal law, or a Federal or State law, you will advise that person of his or her rights under Article 31, UCMJ or the Fifth Amendment of the United States Constitution, as appropriate. Additionally, when interviewing a Federal civilian employee, you must first determine whether the employee is a member of a local union, in which case the employee may have the right to have a union representative present during the interview. The employee may waive this right.

12. During the course of your investigation, you may find it necessary to interview civilian employees. Federal civilian employees have certain representational rights that active-duty personnel do not have. Generally speaking, civilian employees are required to cooperate with official investigations. There are some exceptions:

a. Civilian employees who are members of a bargaining unit have a right to union representation at any interview with management if they "reasonably believe" that the interview could result in a disciplinary action against them. You must observe appropriate union notice requirements prior to interviewing any bargaining unit employees. Should a bargaining unit employee seek to invoke this right, you have no obligation to arrange representation for the employee, only an obligation to permit the employee the opportunity to secure representation. That witness is entitled to union representation, and you must either stop questioning or allow the union to attend. Once you have scheduled any bargaining unit employees for an interview, contact your legal advisor for guidance in notifying the appropriate union representative. The Civilian Personnel Office can tell you

whether any particular employee you wish to interview is a member of the bargaining unit.

b. If you are interviewing a civilian witness about *somebody else*, before initiating questioning you must: (1) inform the interviewee why you are questioning him/her about someone else and who that person is (by name), and (2) assure the employee that no reprisal will take place if he/she refuses to answer, but that adverse action could be initiated based on their refusal to cooperate in a properly authorized investigation or inquiry. If the employee refuses to answer your questions, suspend the interview and contact your legal advisor.

c. Civilian employees who reasonably believe that information they provide during an official investigation may be used against them in a criminal prosecution cannot be required to cooperate without a grant of immunity. Should any civilian employee you attempt to interview decline to cooperate for any reason, suspend the interview and seek guidance from your legal advisor on how to precede.

d. If the matter you are investigating involves a grievance, a personnel practice, or policy or other conditions of employment, you may be required to notify the union of any interviews you have scheduled with bargaining unit employees and afford the union the opportunity to be present. Check with your legal advisor to determine if this rule applies to your case and how to proceed if it does.

e. You have no authority to compel the cooperation of contractor employees. If you find it necessary to interview contractor employees, you must contact the contracting officer's representative for the applicable contract to request cooperation.

13. You should obtain original documents whenever possible. If originals are unavailable, ensure that accurate, legible copies are provided along with an MFR documenting where the original is maintained and why it was not obtained. Advise the respective custodian, in writing, of his or her obligation to safeguard and secure the documents pending final action in this investigation.

14. You may be required to obtain and secure physical evidence. If you are unable to obtain or secure the evidence, prepare a MFR documenting the evidence's relevance and where it is maintained. Advise the respective custodian, in writing, of his or her obligation to safeguard and secure the evidence pending final action in this investigation.

15. You will comply with all requirements set forth by the Secretary of the Army General Counsel Memorandum dated 2 December 2010, detailed in the informational packet provided to you with this letter.

16. In your investigation you are not limited to the issues and questions listed above. You will investigate any relevant and related matters that you may discover that fall under the

areas for investigation described above. You are advised not to investigate matters that do not fall within the areas for investigation described above. If you are in doubt about the relevance of a matter, you will consult your legal advisor. If during your investigation you discover additional matters that you believe warrant investigation, discuss them with your legal advisor, who will advise me as to whether the investigation should be expanded.

17. You will make non-binding but specific recommendations based on your findings. These recommendations should include; whether any local regulations or policies should be changed, whether any additional training is required, and whether any adverse personnel or disciplinary actions should be taken against a member of this command. Submit your findings and recommendations on DA Form 1574 to the Legal Office for review within 21 working days from the date of this appointment memorandum. As soon as it becomes apparent that you may require an extension of time to complete your investigation or to prepare the draft submission of the Army's final report to the OSC, please provide a written summary of the actions you have taken in the case to date, together with your justification for extension of the suspense to Cassandra Johnson, Office of the Army General Counsel, thru the Office of the Staff Judge Advocate. Ms. Johnson will petition the OSC for an extension. The grant of extension from OSC is never guaranteed, so it is strongly recommended that you begin your investigation immediately and employ the appropriate resources to ensure its timely completion.

18. In your investigation, you will make such findings as are relevant and supported by the facts. You will also make such recommendations as are appropriate and are supported by the facts. In compiling your report of investigation, consider carefully that information contained therein will be subject to public disclosure and release.

19. In support of your findings and recommendations recorded on a DA Form 1574 (Report of Proceedings by Investigating Officer/Board of Officers), you must include all administrative enclosures and evidentiary exhibits and other materials which you considered. They must be tabbed and indexed with a table of contents and enclosures. Make clear, concise, and specific findings of fact. The evidence contained in your investigation must directly support each finding you make, and you should specifically refer to each exhibit that supports that particular finding. Your recommendations must be consistent with your findings. Submit your entire package of findings and recommendations with appropriate enclosures to me, through the CECOM Legal Office.

20. Make two copies of your report of investigation (ROI).

21. Before beginning your investigation, you will receive a legal briefing from your legal advisor, Michael Hoyle at (443) 861-5262, CECOM Office of the Chief Counsel. You may consult the legal advisor at any time during the investigation. Further, you will consult with him on all aspects of this investigation, including the development of an investigation plan, determining whether witnesses must be advised of their rights, preparing your findings and recommendations, and before putting your report in final form.

22. This duty takes precedence over your normal duties, TDY, and leave.

23. You are directed to begin your investigation immediately.

for Gary P Hart

ROBERT S. FERRELL
MG, USA
Commanding

G

U.S. ARMY
CECOM LIFE CYCLE
MANAGEMENT COMMAND

Draft Report

REPORT 4-A-08 7 May 2008

REVIEW OF THE RAPID RESPONSE PROJECT OFFICE

REIMBURSABLE RATE PROCESS

INTERNAL REVIEW OFFICE

INTERNAL REVIEW OFFICE
U.S. ARMY CECOM LIFE CYCLE MANAGEMENT COMMAND
FORT MONMOUTH, NEW JERSEY

Report No. 4-A-08 **7 May 2008**

1. **Authority.** The Internal Review (IR) Office performed a review of the Rapid Response (R2) Project Office Reimbursable Rate Process at the request of [redacted], Director, CECOM LCMC Logistics and Readiness Center (LRC). IR evaluators [redacted] and [redacted] conducted the review from 22 January 2008 through 18 March 2008 and followed DA IR Evaluator Standards. This report was prepared in accordance with AR 11-7 and AR 11-2.

2. **Background.** The R2 Project Office was established in 1998 under the Command and Control Directorate within the CECOM Research, Development and Engineering Center (RDEC) and operational control transitioned to CECOM LCMC LRC in 2003. The R2 Project Office is chartered by the Deputy to the Commanding General, CECOM LCMC, to execute a unique, competitive and streamlined business process that allows the Army, DoD and other federal government agencies to rapidly acquire contractor-provided equipment and services.

3. **Objectives.** The objectives of this review were to:

a. Determine R2's process for setting customer reimbursable rates.
b. Evaluate R2's accounting of incoming funds and operating expenses.

4. **Scope and Methodology.** The scope of this review included examining and analyzing R2's Fiscal Year (FY) 2007 accounting records and related support documentation. In addition, we performed tests and calculations for accuracy on R2's FY 2007 incoming reimbursable funds, operating expenses, customer contract obligations and other R2 financial related information.

Our methodology included reviewing DoD and Army guidance, regulations and local Standard Operating Procedures (SOP's) on reimbursable rates. We also interviewed key management personnel at the R2 Project Office and at CECOM LCMC G8 Office. Ten customer contract obligations totaling about $39 million were randomly sample tested to determine the actual reimbursable rate charged and to verify dollar amounts were consistent between internal R2 records and official Army records. We also reviewed several Functional Support Agreements (FSA's) to ensure their validity. In addition, we verified that R2 and G8 were conducting joint reviews of open obligations and documenting them in a timely manner. All of the documentation reviewed, personnel interviews, and analyses were performed in the context of answering the review objectives.

5. Results.

A. Objective: Determine R2's process for setting customer reimbursable rates.

Results. We found that beginning in the second quarter of FY 2007 the R2 Project Office switched to charging its customers a 0.5% reimbursable rate for services provided, based on calculating a rate of actual costs versus incoming workload. The move to a percentage rate was the result of an R2 internal audit that determined that R2 may have excess funds compared to their planned financial requirements for FY 2007. Accordingly, as a reimbursable non-profit organization, a 0.5% reimbursable rate was set as a means to better align incoming fees with operating expenses. In addition, R2 indicated the move to a rate fee was also to comply with statutory and regulatory guidance. The 0.5% rate remained in effect until January 2008 at which time the rate was increased to 1%. We agree with the R2 Project Office charging a percentage rate.

CECOM LCMC SOP: The most recent CECOM LCMC SOP on reimbursable rates states that any CECOM LCMC organization will not charge any fees either as a standard percentage rate or a dollar amount outside of CECOM LCMC internal established reimbursable rates to any ordering activity without DCSRM review and approval. We contacted G8 personnel and they informed us they met with R2 personnel prior to R2 changing to a percentage rate and agreed and approved of R2 setting their new rate at 0.5% beginning in the second quarter of FY 2007. Although G8 personnel said they approved of R2 changing to a percentage rate in FY 2007, other G8 personnel told us that they disagreed in principle with the R2 Project Office charging a percentage rate.

CECOM LCMC Reimbursable Work Year Rate: Prior to the R2 Project Office converting to a percentage rate they utilized the standard CECOM LCMC reimbursable work year rate that was developed during the annual CECOM LCMC G8 formulation of work year rates process. Although the R2 office isn't utilizing the formulation rate developed, they have continued to participate in the annual CECOM LCMC G8 work year rate process. G8 personnel told us that the reason they required the R2 Project Office to submit the work year rates was for year-to-year comparison purposes and for comparison with other CECOM LCMC activities.

R2 Fee Model Initiative: In August 2007, the R2 Project Office initiated a Fee Model study to ultimately assist them with customer pricing and to improve overall management of business operations. The fee model is being developed by a Software Engineering Center (SEC) contractor and funded through R2's SEC Functional Support Agreement. The fee model encompasses analyses of many of R2's historical business records that include grouping cost elements, itemizing task order functions and estimating future workloads. It also factors different customer types and considers size by dollar value of contract obligations. The goal is to end up with a standard customer pricing model for like R2 work categories in the pre-award, award and post-award process of R2 business operations. The R2 fee model should be ready for pilot testing in the April 2008 timeframe and expected to be implemented in FY 2009.

B. Objective: Evaluate R2's accounting of its incoming funds and operating expenses.

Results. We determined that the R2 Project Office is properly accounting for all of its incoming funds and operating expenses. We randomly sampled ten FY 2007 contract obligations and their associated reimbursable rate fees from the R2 database totaling about $39 million and were able to identify all of those obligations and fees in the Army Standard Operation and Maintenance Army Research and Development System (SOMARDS) (accounting) or Mechanization of Contract Administration Services (MOCAS) systems. In addition, we examined the R2 legal and acquisition expenses paid during FY 2007 and were also able to accurately identify those expenses in SOMARDS. As a result, we are confident the R2 Project Office is accurately accounting for incoming funds and operating expenses.

FY 2007 Contract Obligations: Over the past several years the R2 Project Office has seen their business increase exponentially generating about $2.8 billion in contract obligations in FY 2007. This is an astounding growth rate from the time control transitioned to CECOM LCMC LRC in FY 2003. The R2 Project Office provided us with spreadsheets generated from their database and we were able to validate the $2.8 billion in contract obligations in FY 2007. In addition, we randomly selected ten contract obligations and their associated reimbursable fees totaling about $39 million to validate their authenticity and R2's accounting procedures. The sample items consisted of contract obligations from all of DoD services and 1 non-DoD obligation. For all ten sample obligations we were able to obtain adequate support documentation, as well as, validate the transactions in the Army SOMARDS or MOCAS accounting systems. The R2 Project Office also provided us with documentation to verify that R2 and G8 personnel were conducting joint reviews and reconciliations of open contract obligations on a quarterly basis. Based on our analyses and support documentation obtained we determined that the R2 office is properly accounting for all customer contract obligations and their associated reimbursable fees.

FY 2007 Operating Expenses: During FY 2007, the R2 Project Office generated about $13 million in customer reimbursable fees compared to about $13.8 million in operating expenses. We reviewed about $2.1 million of the R2 operating expenses and were able to validate their authenticity and existence in the R2 database and the Army SOMARDS accounting system. In addition, R2 personnel were able to provide us with adequate documentation to support the expenses. Based on our analyses and documentation received we determined the R2 office is properly accounting for their operating expenses.

FY 2006 Carryover Fees: In FY 2007, the R2 Project Office had carryover reimbursable fees from prior FY's of about $8.4 million. R2 personnel told us that generally they try to carry over approximately one to two quarters of operating expenses into the next fiscal year to mitigate for uncertainties and finance the beginning of the next fiscal year or until such time the current DoD budget is approved. Recent fiscal year experiences have shown that often federal agencies are required to operate under a continuing resolution early in the fiscal year as a result reimbursable activities like R2 have a bona fide need to retain and carryover prior year fees. Although R2's $8.4 million carryover in FY 2007 is in excess of two quarters, personnel told us the excess carryover was due to prior year fourth quarter expenses that didn't occur. The R2 Project Office is operating in a dynamic business environment that doesn't always allow for immediate management of income and expenses during a given period. In our opinion, R2 personnel are actively and effectively managing their business operations given the climate in which they operate. Guidance regarding the amount of funds reimbursable activities can carry over from fiscal year to fiscal year is generally vague.

6. **Suggested Actions for the Director, CECOM LCMC LRC:**

A. Direct the R2 Project Officer to obtain a CECOM LCMC legal opinion as to whether R2 can charge their customers a percentage rate such as 0.5% for their services. The opinion should address any/all applicable statutory, regulatory or fiscal guidance for reimbursable activities.

B. Have the R2 Project Officer formally submit a proposal to the G8 office to approve in writing R2 charging their customers a percentage as a reimbursable rate. This methodology is based on actual and real time workload which is a more exact methodology than any other reimbursement scenario that has been reviewed. The R2 office should conduct quarterly reviews of their financial posture and determine if a rate adjustment is deemed necessary. The quarterly review process would bring both the R2 Project Office and G8 in compliance with the intent of the CECOM LCMC SOP on reimbursable rates.

C. Direct the R2 Project Officer to obtain an opinion from the G8 Office regarding amount of funds reimbursable activities can carryover from fiscal year to fiscal year. The opinion should address any/all applicable statutory, regulatory or fiscal guidance for reimbursable activities.

D. Direct the R2 Project Officer to consider discontinuing the SEC R2 fee model study. If the R2 Project Office desires to set or review their reimbursable rate based on analyses of their financial posture and approval from the G8 office then there is no reason to continue the SEC fee model effort. The funds being spent on the fee model effort could be redirected into other R2 efforts and considered savings or funds put to better use.

E. Determine the amount of savings related to discontinuing the SEC R2 fee model study.

7. **Suggested Actions for the G8.**

A. Approve in writing the R2 Project Office charging their customers a percentage as a reimbursable rate. This methodology is based on actual and real time workload which is a more exact methodology than any other fee reimbursement scenario that has been reviewed. The R2 office should conduct quarterly reviews of their financial posture and determine if a rate adjustment is deemed necessary. The quarterly review process would bring both the R2 Project Office and G8 in compliance with the intent of the CECOM LCMC SOP on reimbursable rates.

B. Advise the R2 Project Office regarding the amount of funds reimbursable activities can carryover from fiscal year to fiscal year. The opinion should address any/all applicable statutory, regulatory or fiscal guidance for reimbursable activities.

8. **POC** for this matter is [redacted], who can be reached on extension (732) 427-4112, DSN 987 or at [redacted]

9. **General Comments**: Thanks to all of the R2 staff for their assistance and cooperation during this effort. We look forward to assisting R2 and the LRC in the future on any Internal Review services they desire or require.

One Vision, One Mission - The Warfighter.

Internal Review Evaluator

Senior Internal Review Evaluator

Approved By:

Director
Internal Review Office

SUGGESTED ACTIONS FOR THE G8:

Action 7A. Approve in writing the R2 Project Office charging their customers a percentage as a reimbursable rate. This methodology is based on actual and real time workload which is a more exact methodology than any other fee reimbursement scenario that has been reviewed. The R2 office should conduct quarterly reviews of their financial posture and determine if a rate adjustment is deemed necessary. The quarterly review process would bring both the R2 Project Office and G8 in compliance with the intent of the CECOM LCMC SOP on reimbursable rates.

COMMAND COMMENTS AND ACTION TAKEN

G8 non-concurs on Action 7A.

The Economy Act (31 U.S.C. Sec. 1535 (b)) states that agencies are required to recover the actual cost of goods and services provided. The level of effort should be specifically identifiable to the customer order. While the Economy Act requires the recovering of the actual costs, it provides some flexibility on how costs should be recovered. Whether the estimating method is per hour or percentage of sales, actual costs must be recovered. The method used would not require written approval from the G8.

A review of the financial posture and a rate adjustment would not be necessary since the orders should be adjusted to the actual cost of the customer order when completed. If collections were more than the actual costs, the excess should be returned to the customer; if the reverse was true, the customer should be contacted to obtain more funding.

The G8 would recommend the SEC Fee Model Study be continued with the idea of tracking actual costs of the customer to the fees being charged. With the development of such a model, it should serve to minimize the effect of any additional workload requirements and provide a tool to monitor and support future admin support charge computations.

SUGGESTED ACTIONS FOR THE G8:

Action 7B. Advise the R2 Project Office regarding the amount of funds reimbursable activities can carryover from fiscal year to fiscal year. The opinion should address any/all applicable statutory, regulatory or fiscal guidance for reimbursable activities.

COMMAND COMMENTS AND ACTION TAKEN

A critical consideration in identifying carryover funds is the type of funds. Carryover can exist if (1) the funds will not expire and (2) it is attributed to work efforts not completed but will be completed in the subsequent fiscal year. If funds expire at the end of the fiscal year, then obligations must occur prior to the end of the fiscal year. **Non-expired funds would have to be obtained for costs incurred in the next fiscal year. Example: Subsequent contract administration or technical support occurring in FY 09 for an OMA contract awarded in FY08 (expiring appropriation), would require FY 09 OMA.**

According to 31 U.S.C. Sec. 1502 (a) funding must be related to a bona fide need for that specific fiscal year and can not be used for a requirement in the following fiscal year.

Another consideration is the type of funds being used to pay the work efforts. Under 31 U.S.C. Sec. 1301 (a) "appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law." Work efforts need to be associated to the proper appropriated funds.

U.S. ARMY
CECOM LIFE CYCLE
MANAGEMENT COMMAND

Draft Report

REPORT xx-A-08 **22 February 2008**

REVIEW OF RAPID RESPONSE PROJECT OFFICE

INTERNAL REVIEW OFFICE

INTERNAL REVIEW OFFICE

U.S.ARMY CECOM
LIFE CYCLE MANAGEMENT COMMAND
FORT MONMOUTH, NEW JERSEY

Report No. XX-A-08 **13 March 2008**

1. **Authority:** The Internal Review (IR) Office performed a review of the Rapid Response Project Office (R2) reimbursable rate process IAW DA Internal Review Evaluator Standards, AR 11-7, and AR 11-2 between 22 January 2008 and 14 March 2008.

2. **Background:** The R2 Project Office is a completely reimbursable contracting operation organizationally aligned with CECOM LCMC Logistic Readiness Center. A review of its reimbursable rate process was requested by [redacted] Director, CECOM-LCMC Logistics Readiness Center.

3. **Scope:** FY 07 R2 accounting records, total income generated, total expenses incurred, and total contract obligations awarded.

4. **Methodology.**

- Review DOD, Army, and CECOM LCMC guidance and regulations on reimbursable operations.
- Interview and/or consult with CECOM LCMC R2 personnel, CECOM LCMC DCSRM personnel, and other parties as the review merits.
- Obtain and Analyze FY 07 R2 income and expense records and all FY 07 contract obligations listed in the R2 internal database.
- Develop transaction sample from R2 records and validate against SOMARDS and MOCAS
- Obtain and analyze FY 07 R2 reimbursable man-year rate documents
- Determine R2 joint reconciliation procedures and obtain FY 07 R2 joint reconciliation documentation.

5. **Objectives.**

a. Determine Rapid Response Project Office (R2) process for setting reimbursable rates.
b. Evaluate R2's accounting of its incoming funds and operating expenses.

6. **Results.**

a. Objective: Determine Rapid Response Project Office (R2) process for setting Reimbursable rates.

Results
IR met with and determined that DCSRM develops CECOM LCMC man-year rates on an annual basis. The rate development process takes place during the course of the year, it is done in intervals, and it culminates with publication of agreed upon approved rates. DCSRM does not validate information contained in budget package submissions unless a year to year anomaly is noted.

IR determined the FY 07 R2 reimbursable rate developed by DCSRM was used in early FY 07 by R2 to recoup its costs. IR also determined that in Feb 07 R2 sought and received DCSRM approval to use a flat percentage method as a means of recouping its costs.

An IR sample of 10 transactions reflects different reimbursement schemes were used by R2 during FY 07 as a means of recouping its costs.

b. Objective: Evaluate R2's accounting of its incoming funds and operating expenses.

Results
IR developed a sample of 10 transactions from the income, expense, and contract obligation data R2 provided by matching a fee collected entry to a contract obligation entry. IR collected the funding documents for the 10 transactions and validated the fee collected and contract obligation entries from the R2 records against SOMARDS and MOCAS records.

IR validated R2 records indicating income producing transactions of $1.5M generated from customer agreements against SOMARDS records. IR obtained supporting documents to validate R2 performs periodic reconciliation procedures with CECOM LCMC DCSRM.

IR examined the R2 legal expense records and compared them to the pre year estimate and noted the estimate to actual was nearly exact. This was pointed out to R2 management and they explained legal bills are delivered and paid but it appears the bills are not scrutinized. The legal expense was paid on ten separate MIPR's over the course of the year. The transactions were tracked in SOMARDS.

IR noted that on the MIPR for one of its 10 sample items "fee" money was provided with instruction to place on contract. This may require further explanation.

IR is confident R2 is accurately accounting for incoming funds and operating expenses as reflected by the sample transactions tracked thru SOMARDS and MOCAS.

7. **Conclusion**

R2 needs assurance from legal and DCSRM that a quarterly reimbursable rate evaluation methodology allows it to operate within the confines of relevant and or applicable appropriation law, local policy, guidance, etc. The stated goal of the organization is to operate at cost. R2 presently accomplishes this goal by actively monitoring income and expense values retained in it internal database program.

R2 has established a business model that essentially works much like a brokerage bringing buyers and sellers together in a common marketplace. R2 is able to book a sale and establish the need for reimbursement when a contract award is made. R2 has no role in awarding the contract they simply arrange the meeting, the CECOM LCMC Acquisition Center Contracting Officer and the R2 customer are responsible for awarding the contract.

R2 earns its reimbursement by performing established tasks on both the front (facilitation) and back end (contract management) of the contract award. The performances of these tasks are the two primary cost drivers in the R2 business model. In FY 07 R2 facilitated approximately $ 2.7B in contract awards, incurred expenses of approximately $13.9M, generated income of approximately $12.9M, and carried forward fees of approximately $8.4M.

The R2 reimbursable rate procedure should enable R2 to maintain adequate cash reserves, hold income in line with expense, and provide pricing transparency to its customer base. A rate evaluation methodology, performed on a quarterly basis and under the auspices of DCSRM, would provide R2 the opportunity to adjust for circumstances typical of the dynamic environment in which they operate and manage their operation at or near cost.

9. Suggested Actions:

1. Convene top level discussions between DCSRM, Legal, and R2 to reach agreement on the particulars of a quarterly reimbursable rate evaluation methodology. Discussions should focus on establishing parameters of how such a methodology would be implemented, types of items that will be needed to validate rate adjustments, documentation requirements for audit purposes, and notification procedures to keep customers informed.

2. Make a decision on viability of SEC pricing model sooner rather than later. Abandoning this effort will provide a savings to R2 so long as the quarterly rate adjustment scheme is deemed feasible.

8. POC for this matter is [redacted], who can be reached on extension (732) 427-4112, DSN 987 or at [redacted]

9. General Comments: Thanks to all of the R2 staff for their assistance and cooperation during this effort, we look forward to assisting R2 in the future on any Internal Review services they require.

10. One Vision, One Mission - The Warfighter. *Army Strong*

[redacted]
Internal Review Evaluator

[redacted]
Senior Internal Review Evaluator

U.S. ARMY
CECOM LIFE CYCLE
MANAGEMENT COMMAND

Draft Report

REPORT XX-A-08 **20 March 2008**

REVIEW OF THE RAPID RESPONSE PROJECT OFFICE

INTERNAL REVIEW OFFICE

INTERNAL REVIEW OFFICE
U.S. ARMY CECOM
LIFE CYCLE MANAGEMENT COMMAND
FORT MONMOUTH, NEW JERSEY

Report No. XX-A-08 **20 March 2008**

1. Authority. The Internal Review (IR) Office performed a review of the Rapid Response Project Office (R2) reimbursable rate process at the request of [redacted], Director CECOM LCMC Logistics Readiness Center (LRC). IR evaluators [redacted] and [redacted] conducted the review from 22 January 2008 through 18 March 2008 and followed DA IR Evaluator Standards. This report was prepared in accordance with AR 11-7 and AR 11-2.

2. Background. The R2 Project Office was established in 1998 under the Command and Control Directorate within the CECOM RDEC and operational control transitioned to CECOM LCMC LRC in 2003. The R2 Project Office is chartered by the Deputy to the Commanding General, CECOM LCMC, to execute a unique, competitive and streamlined business process that allows the Army, DoD and other federal government agencies to rapidly acquire contractor-provided equipment and services.

3. Objectives. The objectives of this review were to:

a. Determine R2's process for setting customer reimbursable rates.
b. Evaluate R2's accounting of incoming funds and operating expenses.

4. Scope and Methodology. The scope of this review included examining and analyzing R2's Fiscal Year (FY) 2007 accounting records and related support documentation. In addition, we performed tests and calculations for accuracy on R2's FY 2007 incoming reimbursable funds, operating expenses, customer contract obligations and other R2 financial related information.

Our methodology included reviewing DoD and Army guidance, regulations and local Standard Operating Procedures (SOP's) on reimbursable rates. We also interviewed key management personnel at the R2 Project Office and at CECOM LCMC DCSRM. Ten customer contract obligations totaling about $39 million were randomly sample tested to determine the actual reimbursable rate charged and to verify dollar amounts were consistent between internal R2 records and official Army records. We also reviewed several Functional Support Agreements (FSA's) to ensure their validity. In addition, we verified that R2 and DCSRM were conducting joint reviews of open obligations and documenting them in a timely manner. All of the documentation reviewed, personnel interviews, and analyses were performed in the context of answering the review objectives.

5. Results.

A. Objective: Determine R2's process for setting customer reimbursable rates.

Results.
We found that beginning in the second quarter of FY 2007 the R2 Project Office switched to charging its customers a flat 0.5% reimbursable rate. The move to a flat percentage rate was the result of an

R2 internal audit that determined that R2 may have excess funds compared to their planned financial requirements for FY 2007. Accordingly as a reimbursable non-profit organization a 0.5% reimbursable rate was set as a means to better align incoming fees with operating expenses. In addition, R2 indicated the move to a flat rate fee was also to comply with statutory and regulatory guidance. The 0.5% rate remained in effect until January 2008 at which time the rate was increased to 1%. We agree with the R2 project office charging a flat percentage rate.

CECOM LCMC SOP: The most recent CECOM LCMC SOP on reimbursable rates states that any CECOM LCMC organization will not charge any fees either as a standard percentage rate or a dollar amount outside of CECOM LCMC internal established reimbursable rates to any ordering activity without DCSRM review and approval. We contacted DCSRM personnel and they informed us they met with R2 personnel prior to R2 changing to a flat percentage rate and agreed and approved of R2 setting their new rate at 0.5% beginning in the second quarter of FY 2007. Although DCSRM personnel said they approved of R2 changing to a flat percentage rate in FY 2007, other DCSRM personnel told us that they disagreed in principle with the R2 Project Office charging a flat percentage rate.

CECOM LCMC Reimbursable Work Year Rate: Prior to the R2 Project Office converting to a flat percentage rate they utilized the standard CECOM LCMC reimbursable work year rate that was developed during the annual CECOM LCMC DCSRM formulation of work year rates process. Although the R2 office isn't utilizing the formulation rate developed, they have continued to participate in the annual CECOM LCMC DCSRM work year process. DCSRM personnel told us that the reason they required the R2 Project Office to submit the work year rates was for year to year comparison purposes and for comparison with other CECOM LCMC activities.

R2 Fee Model Initiative: In FY 2008 the R2 Project Office initiated a Fee Model study to ultimately assist them with customer pricing or determining their reimbursable rate and to improve management of business operations. The fee model is being developed by a SEC contractor and funded through R2's SEC Functional Support Agreement. The fee model encompasses analyses of many of R2's historical business records that include grouping cost elements, itemizing task order functions and estimating future workloads. It also factors different customer types and considers size by dollar value of contract obligations. The goal is to end up with a standard customer pricing model for like R2 work categories in the pre-award, award and post-award process of R2 business operations. The R2 fee model should be ready for pilot testing in the April 2008 timeframe and expected to be implemented in FY 2009.

B. Objective: Evaluate R2's accounting of its incoming funds and operating expenses.

Results

We determined that the R2 project office is properly accounting for all of its incoming funds and operating expenses. We randomly sampled ten FY 2007 contract obligations and their associated reimbursable rate fees from the R2 database totaling about $39 million and were able to identify all of those obligations and fees in the Army SOMARDS or MOCAS accounting systems. In addition we examined the R2 legal and acquisition expenses paid during FY 2007 and were also able to accurately identify those expenses in SOMARDS. As a result, we are confident the R2 Project Office is accurately accounting for incoming funds and operating expenses.

FY 2007 Contract Obligations: Over the past several years the R2 Project Office has seen their

business increase exponentially generating about $2.8 billion in contract obligations in FY 2007. This is an astounding growth rate from the time control transitioned to CECOM LCMC LRC in FY 2003. The R2 Project Office provided us with spreadsheets generated from their database and we were able to validate the $2.8 billion in contract obligations in FY 2007. In addition, we randomly selected ten contract obligations and their associated reimbursable fees totaling about $39 million to validate their authenticity and R2's accounting procedures. The sample items consisted of contract obligations from all of DoD services and 1 non-DoD obligation. For all ten sample obligations we were successfully able to obtain adequate support documentation, as well as, validate the transactions in the Army SOMARDS or MOCAS accounting systems. The R2 Project Office also provided us with documentation to verify that R2 and DCSRM personnel were conducting joint reviews and reconciliations of open contract obligations on a quarterly basis. Based on our analyses and support documentation obtained we determined that the R2 office is properly accounting for all customer contract obligations and their associated reimbursable fees.

FY 2007 Operating Expenses: During FY 2007, the R2 Project Office generated about $13 million in customer reimbursable fees compared to about $13.8 million in operating expenses. We reviewed about $2.1 million of the R2 operating expenses and were able to validate their authenticity and existence in the R2 database and the Army SOMARDS accounting systems. In addition, R2 personnel were able to provide us with adequate documentation to support the expenses. Based on our analyses and documentation received we determined the R2 office is properly accounting for their operating expenses.

FY 2006 Carryover Fees: In FY 2007 the R2 Project Office had carryover reimbursable fees from prior FY's of about $8.4 million. R2 personnel told us that generally they try to carry over approximately one to two quarters of operating expenses into the next fiscal year to mitigate for uncertainties and finance the beginning of the next fiscal year or until such time the current DoD budget is approved. Recent fiscal year experiences have shown that often federal agencies are required to operate under a continuing resolution early in the fiscal year as a result reimbursable activities like R2 have a bona fide need to retain and carryover prior year fees. Although R2's $8.4 million carryover in FY 2007 is in excess of two quarters, personnel told us the excess carryover was due to prior year fourth quarter expenses that didn't occur. The R2 Project Office is operating in a dynamic business environment that doesn't always allow for immediate management of income and expenses during a given period. In our opinion, R2 personnel are actively and effectively managing their business operations given the climate in which they operate. Guidance regarding the amount of funds reimbursable activities can carry over from fiscal year to fiscal year is generally vague.

6. Suggested Actions for the Director of CECOM LCMC LRC:

1. Direct the R2 Project Officer to obtain a CECOM LCMC legal opinion as to whether R2 can charge their customers a flat percentage rate such as 0.5% for their services. The opinion should address any/all applicable statutory, regulatory or fiscal guidance for reimbursable activities.

2. Direct the R2 Project Officer to begin obtaining written approval from the DCSRM for the reimbursable fee they charge their customers. Although past practice DCSRM personnel have reviewed and approved the R2 reimbursable rate; it isn't in writing or documented anywhere. The R2 office should conduct quarterly reviews of their financial posture and determine if a rate adjustment is deemed necessary. The quarterly review process would bring both the R2 Project Office and DCSRM in compliance with the intent of the CECOM LCMC SOP on reimbursable rates.

3. Direct the R2 Project Officer to obtain a CECOM LCMC legal opinion regarding amount of funds reimbursable activities can carryover from fiscal year to fiscal year. The opinion should address any/all applicable statutory, regulatory or fiscal guidance for reimbursable activities.

4. Direct the R2 Project Officer to consider discontinuing the SEC R2 fee model study. If the R2 Project Office desires to set or review their reimbursable rate based on analyses of their financial posture and approval from the DCSRM then there is no reason to continue the SEC fee model effort. The funds being spent on the fee model effort could be redirected into other R2 efforts and considered savings or funds put to better use.

7. POC for this matter is [redacted], who can be reached on extension (732) 427-4112, DSN 987 or at [redacted]

8. General Comments: Thanks to all of the R2 staff for their assistance and cooperation during this effort. We look forward to assisting R2 and the LRC in the future on any Internal Review services they desire or require.

One Vision, One Mission - The Warfighter.

Army Strong.

[redacted]
Internal Review Evaluator

[redacted]
Senior Internal Review Evaluator

U.S. ARMY
CECOM LIFE CYCLE
MANAGEMENT COMMAND

Draft Report

REPORT XX-A-08 **18 March 2008**

REVIEW OF THE RAPID RESPONSE PROJECT OFFICE

INTERNAL REVIEW OFFICE

INTERNAL REVIEW OFFICE
U.S. ARMY CECOM
LIFE CYCLE MANAGEMENT COMMAND
FORT MONMOUTH, NEW JERSEY

Report No. XX-A-08 **18 March 2008**

1. Authority: The Internal Review (IR) Office performed a review of the Rapid Response Project Office (R2) reimbursable rate process at the request of [redacted], Director CECOM LCMC Logistics Readiness Center (LRC). IR evaluators [redacted] and [redacted] conducted the review from 22 January 2008 through 18 March 2008 and followed DA IR Evaluator Standards. This report was prepared in accordance with AR 11-7 and AR 11-2.

2. Background: The R2 Project Office was established in 1998 under the Command and Control Directorate within the CECOM RDEC and operational control transitioned to CECOM LCMC LRC in 2003. The R2 Project Office is chartered by the Deputy to the Commanding General, CECOM LCMC, to execute a unique, competitive and streamlined business process that allows the Army, DOD and other federal government agencies to rapidly acquire contractor-provided equipment and services.

3. Objectives. The objectives of this review were to:

a. Determine R2's process for setting customer reimbursable rates.
b. Evaluate R2's accounting of incoming funds and operating expenses.

4. Scope and Methodology: The scope of this review included examining and analyzing R2's fiscal year (FY) 2007 accounting records and related support documentation. In addition we performed tests and calculations for accuracy on R2's FY 2007 incoming reimbursable funds, operating expenses, customer contract obligations and other R2 financial related information.

Our methodology included reviewing DoD and Army guidance, regulations and local Standard Operating Procedures (SOP's) on reimbursable rates. We also interviewed key management personnel at the R2 project office and at CECOM LCMC DCSRM. Ten customer contract obligations totaling about $39 million were randomly sample tested to determine the actual reimbursable rate charged and to verify dollar amounts were consistent between internal R2 records and official Army records. We also reviewed several Functional Support Agreements (FSA's) to ensure their validity. In addition we verified that R2 and DCSRM were conducting joint reviews of open obligations and documenting them in a timely manner. All of the documentation reviewed, personnel interviews, and analyses were performed in the context of answering the review objectives.

5. Results.

A. Objective: Determine R2's process for setting customer reimbursable rates.

Results
We found that beginning in the second quarter of FY 2007 the R2 project office used a standard percentage rate of 0.5% to charge its' customers for reimbursement. The 0.5% rate remained in

effect until January 2008 at which time the rate was increased to 1%. The move to a standard percentage rate was the result of an R2 initiated internal audit. The audit determined R2 was generating more funds than it needed as compared to its FY 2007 planned requirements. The 0.5% reimbursable rate was established to better align income with expense.

This belongs under recommendations

We agree with R2's use of a standard percentage as a means of balancing income with expense. However, due to the technical and overlapping nature of statutory regulations and appropriation law we recommend R2 obtain a legal opinion regarding the viability of charging customers a standard percentage. We further address this subject as item (1) in the "Suggested Actions" section of this report.

CECOM LCMC SOP: The most recent CECOM LCMC SOP on reimbursable rates states CECOM LCMC organizations not asses fees, such as a standard percentage rate or fixed dollar amount, outside of the CECOM LCMC established reimbursable rate process without DCSRM review and approval.

We contacted DCSRM personnel and they informed us they met with R2 to discuss its desire to switch to the percentage rate method. As a result of that meeting DCSRM agreed and approved R2's use of a 0.5% rate beginning in the second quarter of FY 2007.

Although DCSRM personnel said they approved of R2 changing to a standard percentage rate in FY 2007 it is our understanding DCSRM views this fix as a temporary solution because DCSRM personnel stated they disagree in principle with R2 charging a standard percentage.

belongs under recommendations

In light of the different DCSRM opinions we recommend R2 obtain from DCSRM a formal written approval regarding its reimbursable rate method and how it is to be implemented. We further address this subject as item (2) in the "Suggested Actions" section of this report.

CECOM LCMC Reimbursable Work Year Rate: The CECOM LCMC DCSRM work year rate is developed on an annual basis. R2 used CECOM LCMC DCSRM reimbursable work year rates to establish its FY 07 Functional Support Agreements (FSA's). R2 used these agreements for both income and expense related transactions.

In FY 07 R2 generated about $13M in reimbursable fees predominately from a percentage rate method. Of this $13M in reimbursable fees R2 generated, $1.5M was derived from FSA related transactions. We estimated R2 FY 07 expenses from FSA related transactions to be about $ 2.5M.

R2 does not have a periodic reconciliation process in place to match actual FSA costs against the estimate. R2 should establish a process to match FSA costs against its estimates; we further address this subject as item (4) in the suggested actions section of this report.

belongs under recommendations

B. Objective: Evaluate R2's accounting of its incoming funds and operating expenses.

Results

We determined R2 is properly accounting for incoming funds and operating expenses. We randomly selected from the R2 database ten FY 07 contract obligation transactions totaling about $39M and associated reimbursable rate fee transactions totaling about 491$K. We validated that the obligation and fee transactions were reflected in Army SOMARDS and/or MOCAS accounting systems.

U.S. ARMY
CECOM LIFE CYCLE
MANAGEMENT COMMAND

Draft Report

REPORT 4-A-08 **27 March 2008**

REVIEW OF THE RAPID RESPONSE PROJECT OFFICE

REIMBURSABLE RATE PROCESS

INTERNAL REVIEW OFFICE

INTERNAL REVIEW OFFICE
U.S. ARMY CECOM LIFE CYCLE MANAGEMENT COMMAND
FORT MONMOUTH, NEW JERSEY

Report No. 4-A-08 **27 March 2008**

1. Authority. The Internal Review (IR) Office performed a review of the Rapid Response (R2) Project Office Reimbursable Rate Process at the request of [redacted], Director, CECOM LCMC Logistics and Readiness Center (LRC). IR evaluators [redacted] and [redacted] conducted the review from 22 January 2008 through 18 March 2008 and followed DA IR Evaluator Standards. This report was prepared in accordance with AR 11-7 and AR 11-2.

2. Background. The R2 Project Office was established in 1998 under the Command and Control Directorate within the CECOM Research, Development and Engineering Center (RDEC) and operational control transitioned to CECOM LCMC LRC in 2003. The R2 Project Office is chartered by the Deputy to the Commanding General, CECOM LCMC, to execute a unique, competitive and streamlined business process that allows the Army, DoD and other federal government agencies to rapidly acquire contractor-provided equipment and services.

3. Objectives. The objectives of this review were to:

a. Determine R2's process for setting customer reimbursable rates.
b. Evaluate R2's accounting of incoming funds and operating expenses.

4. Scope and Methodology. The scope of this review included examining and analyzing R2's Fiscal Year (FY) 2007 accounting records and related support documentation. In addition, we performed tests and calculations for accuracy on R2's FY 2007 incoming reimbursable funds, operating expenses, customer contract obligations and other R2 financial related information.

Our methodology included reviewing DoD and Army guidance, regulations and local Standard Operating Procedures (SOP's) on reimbursable rates. We also interviewed key management personnel at the R2 Project Office and at CECOM LCMC Deputy Chief of Staff for Resource Management (DCSRM). Ten customer contract obligations totaling about $39 million were randomly sample tested to determine the actual reimbursable rate charged and to verify dollar amounts were consistent between internal R2 records and official Army records. We also reviewed several Functional Support Agreements (FSA's) to ensure their validity. In addition, we verified that R2 and DCSRM were conducting joint reviews of open obligations and documenting them in a timely manner. All of the documentation reviewed, personnel interviews, and analyses were performed in the context of answering the review objectives.

5. **Results.**

A. Objective: Determine R2's process for setting customer reimbursable rates.

Results. We found that beginning in the second quarter of FY 2007 the R2 Project Office switched to charging its customers a 0.5% reimbursable rate for services provided, based on calculating a rate of actual costs versus incoming workload. The move to a percentage rate was the result of an R2 internal audit that determined that R2 may have excess funds compared to their planned financial requirements for FY 2007. Accordingly, as a reimbursable non-profit organization, a 0.5% reimbursable rate was set as a means to better align incoming fees with operating expenses. In addition, R2 indicated the move to a rate fee was also to comply with statutory and regulatory guidance. The 0.5% rate remained in effect until January 2008 at which time the rate was increased to 1%. We agree with the R2 Project Office charging a percentage rate.

CECOM LCMC SOP: The most recent CECOM LCMC SOP on reimbursable rates states that any CECOM LCMC organization will not charge any fees either as a standard percentage rate or a dollar amount outside of CECOM LCMC internal established reimbursable rates to any ordering activity without DCSRM review and approval. We contacted DCSRM personnel and they informed us they met with R2 personnel prior to R2 changing to a percentage rate and agreed and approved of R2 setting their new rate at 0.5% beginning in the second quarter of FY 2007. Although DCSRM personnel said they approved of R2 changing to a percentage rate in FY 2007, other DCSRM personnel told us that they disagreed in principle with the R2 Project Office charging a percentage rate.

CECOM LCMC Reimbursable Work Year Rate: Prior to the R2 Project Office converting to a percentage rate they utilized the standard CECOM LCMC reimbursable work year rate that was developed during the annual CECOM LCMC DCSRM formulation of work year rates process. Although the R2 office isn't utilizing the formulation rate developed, they have continued to participate in the annual CECOM LCMC DCSRM work year rate process. DCSRM personnel told us that the reason they required the R2 Project Office to submit the work year rates was for year-to-year comparison purposes and for comparison with other CECOM LCMC activities.

R2 Fee Model Initiative: In August 2007, the R2 Project Office initiated a Fee Model study to ultimately assist them with customer pricing and to improve overall management of business operations. The fee model is being developed by a Software Engineering Center (SEC) contractor and funded through R2's SEC Functional Support Agreement. The fee model encompasses analyses of many of R2's historical business records that include grouping cost elements, itemizing task order functions and estimating future workloads. It also factors different customer types and considers size by dollar value of contract obligations. The goal is to end up with a standard customer pricing model for like R2 work categories in the pre-award, award and post-award process of R2 business operations. The R2 fee model should be ready for pilot testing in the April 2008 timeframe and expected to be implemented in FY 2009.

B. Objective: Evaluate R2's accounting of its incoming funds and operating expenses.

Results. We determined that the R2 Project Office is properly accounting for all of its incoming funds and operating expenses. We randomly sampled ten FY 2007 contract obligations and their associated reimbursable rate fees from the R2 database totaling about $39 million and were able to identify all of those obligations and fees in the Army Standard Operation and Maintenance Army Research and Development System (SOMARDS) (accounting) or Mechanization of Contract Administration Services (MOCAS) systems. In addition, we examined the R2 legal and acquisition expenses paid during FY 2007 and were also able to accurately identify those expenses in SOMARDS. As a result, we are confident the R2 Project Office is accurately accounting for incoming funds and operating expenses.

FY 2007 Contract Obligations: Over the past several years the R2 Project Office has seen their business increase exponentially generating about $2.8 billion in contract obligations in FY 2007. This is an astounding growth rate from the time control transitioned to CECOM LCMC LRC in FY 2003. The R2 Project Office provided us with spreadsheets generated from their database and we were able to validate the $2.8 billion in contract obligations in FY 2007. In addition, we randomly selected ten contract obligations and their associated reimbursable fees totaling about $39 million to validate their authenticity and R2's accounting procedures. The sample items consisted of contract obligations from all of DoD services and 1 non-DoD obligation. For all ten sample obligations we were able to obtain adequate support documentation, as well as, validate the transactions in the Army SOMARDS or MOCAS accounting systems. The R2 Project Office also provided us with documentation to verify that R2 and DCSRM personnel were conducting joint reviews and reconciliations of open contract obligations on a quarterly basis. Based on our analyses and support documentation obtained we determined that the R2 office is properly accounting for all customer contract obligations and their associated reimbursable fees.

FY 2007 Operating Expenses: During FY 2007, the R2 Project Office generated about $13 million in customer reimbursable fees compared to about $13.8 million in operating expenses. We reviewed about $2.1 million of the R2 operating expenses and were able to validate their authenticity and existence in the R2 database and the Army SOMARDS accounting system. In addition, R2 personnel were able to provide us with adequate documentation to support the expenses. Based on our analyses and documentation received we determined the R2 office is properly accounting for their operating expenses.

FY 2006 Carryover Fees: In FY 2007, the R2 Project Office had carryover reimbursable fees from prior FY's of about $8.4 million. R2 personnel told us that generally they try to carry over approximately one to two quarters of operating expenses into the next fiscal year to mitigate for uncertainties and finance the beginning of the next fiscal year or until such time the current DoD budget is approved. Recent fiscal year experiences have shown that often federal agencies are required to operate under a continuing resolution early in the fiscal year as a result reimbursable activities like R2 have a bona fide need to retain and carryover prior year fees. Although R2's $8.4 million carryover in FY 2007 is in excess of two quarters, personnel told us the excess carryover was due to prior year fourth quarter expenses that didn't occur. The R2 Project Office is operating in a dynamic business environment that doesn't always allow for immediate management of income and expenses during a given period. In our opinion, R2 personnel are actively and effectively managing their business operations given the climate in which they operate. Guidance regarding the amount of funds reimbursable activities can carry over from fiscal year to fiscal year is generally vague.

6. **Suggested Actions for the Director, CECOM LCMC LRC:**

1. Direct the R2 Project Officer to obtain a CECOM LCMC legal opinion as to whether R2 can charge their customers a percentage rate such as 0.5% for their services. The opinion should address any/all applicable statutory, regulatory or fiscal guidance for reimbursable activities.

2. Have the R2 Project Officer formally submit a proposal to DSCRM to have them approve R2's proposed rate of a percentage of actual dollars coming in versus actual expenses. This methodology is based on actual and real time workload which is a more exact methodology than any other fee reimbursement scenario that has been reviewed. The R2 office should conduct quarterly reviews of their financial posture and determine if a rate adjustment is deemed necessary. The quarterly review process would bring both the R2 Project Office and DCSRM in compliance with the intent of the CECOM LCMC SOP on reimbursable rates.

3. Direct the R2 Project Officer to obtain a CECOM LCMC legal opinion regarding amount of funds reimbursable activities can carryover from fiscal year to fiscal year. The opinion should address any/all applicable statutory, regulatory or fiscal guidance for reimbursable activities.

4. Direct the R2 Project Officer to consider discontinuing the SEC R2 fee model study. If the R2 Project Office desires to set or review their reimbursable rate based on analyses of their financial posture and approval from the DCSRM then there is no reason to continue the SEC fee model effort. The funds being spent on the fee model effort could be redirected into other R2 efforts and considered savings or funds put to better use.

7. **POC** for this matter is [redacted], who can be reached on extension (732) 427-4112, DSN 987 or at [redacted]@conus.army.mil.

8. **General Comments**: Thanks to all of the R2 staff for their assistance and cooperation during this effort. We look forward to assisting R2 and the LRC in the future on any Internal Review services they desire or require.

One Vision, One Mission - The Warfighter.

[redacted]
Internal Review Evaluator

[redacted]
Senior Internal Review Evaluator

Approved By:

[redacted]
Director
Internal Review Office

H

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is PMG.

PRIVACY ACT STATEMENT

AUTHORITY: Title 10, USC Section 301; Title 5, USC Section 2951; E.O. 9397 Social Security Number (SSN).

PRINCIPAL PURPOSE: To document potential criminal activity involving the U.S. Army, and to allow Army officials to maintain discipline, law and order through investigation of complaints and incidents.

ROUTINE USES: Information provided may be further disclosed to federal, state, local, and foreign government law enforcement agencies, prosecutors, courts, child protective services, victims, witnesses, the Department of Veterans Affairs, and the Office of Personnel Management. Information provided may be used for determinations regarding judicial or non-judicial punishment, other administrative disciplinary actions, security clearances, recruitment, retention, placement, and other personnel actions.

DISCLOSURE: Disclosure of your SSN and other information is voluntary.

1. LOCATION	2. DATE (YYYYMMDD)	3. TIME	4. FILE NUMBER
Fort Monmouth, New Jersey	2011/01/19		

5. LAST NAME, FIRST NAME, MIDDLE NAME	6. SSN	7. GRADE/STATUS
[redacted]		GS-12

8. ORGANIZATION OR ADDRESS

CECOM LCMC, Bldg 826, Fort Monmouth, NJ 07703

9.

I, [redacted], WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

Q.: What was your position within CECOM when your office took a look at the R2 Project Office's Reimbursible Rate process in the 2007-08 time frame?

A.: I was the lead evaluator on the R2 review with [redacted] working for me. [redacted] and I had some objectives. This was a requested effort by [redacted]. I believe he initially requested [redacted] to look at it. But [redacted] e deferred to our office and that is how we got involved with the review. So [redacted], our Director at the time, he appointed me and [redacted] to do the work. So [redacted] and I got together some audit objectives and then we had an entrance conference with at the time I believe it was [redacted] and [redacted] And they gave us a little background on the R2 operations. I was completely unfamiliar with the operations to that point. Other than just some basic knowledge about it. Anyway, we did the review. [redacted] and I, I have to say in the context of reviews; it was a great review. We were all over it. We solved the review. The only disappointment was that I couldn't ever get it fixed. That was my big disappointment. I couldn't ultimately fix the situation.. . .What happened was, we concluded at the end of the review and based on an opinion from [redacted] and input from Legal that indicated the R2 office was operating in violation of the Economy Act. I looked at it, Sect 1535 of the Economy Act. Originally what we were saying in this report was to review the rate quarterly and adjust accordingly. Then we asked both legal and G8 [redacted] if they were fine with that. We got a non-concurrence from [redacted] telling us that it is in violation of the Economy Act. We went and we looked and sure enough it was. It was a violation of the Economy Act. At that point, what we did was where it was a violation was that R2 was not properly reconciling their customer orders on an individual basis, hence they were not properly accounting for customer funds. You know we did quite a bit of work and they were properly accounting for everything they just were not in compliance with the Economy Act. There wasn't anything funny with that all the money was there and it was all being accounted for in SOMARDS. The issue was that they weren't tracking it on a customer to customer basis. And that is what is required in the Economy Act. And . . . well let me just step back. What they would do is a customer would come to them and request their services. R2 would say Ok it's going to cost you a million dollars for this type of services and by the way we are also charging you a 2, 3,or 4, I think the range went as high as 7% in some cases. We did a statistical sample and the highest was I want to say 7%. So anyway the customer would usually say fine and issue R2 MIPRS and they would get it on contract. The way it is supposed to work is there is supposed to be accounting similar to what I would call a legal arrangement for the costs outside of the contract costs meaning the costs associated with the R2 office where it is on a fee basis. In other words you have to charge your hours out to each job. And they weren't doing that at R2. Everything went into a big pool. And they used their expenses according to the color of money that it was. In other words if the money was getting set to expire, they would utilize those funds first. For ongoing operations and then if they had money that was 2 - or 3-year money they would leave that money on the books because there wasn't an urgency to spend it. Ok so that's where they got fouled up because what they are supposed to do is they are supposed to track it one-on-one by customer and then at the end do a reconciliation . . ., they can charge a fee, there is nothing wrong with that as far as I know, but what they've got to do, they've got to track it on a customer-by-customer basis and at the end have a reconciliation process and say OK customer, we're done with you, you owe us X or here is X back. And that's what they didn't do. And that's the violation of the Economy Act. In my opinion

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT	PAGE 1 OF 7 PAGES
	[redacted]	

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF _____ TAKEN AT _____ DATED _____

THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

STATEMENT OF [redacted] TAKEN AT Ft. Monmout, NJ DATED 2011/01/19

9. STATEMENT *(Continued)*

the reason this didn't get fixed is because [redacted] (IR Director) and [redacted] (Senior IR Evaluator for Reviews) decided to not issue our report essentially they looked the other way and allowed R2 to continue to operate in violation of the Economy Act. In hindsight I believe they may have done this for personal gain. I believe there was/is an inappropriate relationship between [redacted] and [redacted] and have a boatload of documentation to support that allegation. Right at the time I was pressing them to issue the report they would knock me down and coincidently at that same time both [redacted] and [redacted] got promotions.

Q.: And they didn't do that because . . . ?

A.: They didn't do it because first of all I guess my initial take is [redacted] and [redacted] are contracting people. They weren't familiar with this. [redacted] and [redacted] were genuinely trying to get the right answer. They were constantly in contact with G8 asking them and G8 was famous for at the time, telling them what they couldn't do, but they always wanted to know what they could do. How can we do this? So anyway, when we issued this draft report, so all that came out. And we issued this draft report and what we did was formed a little group to try and figure out a way that they could properly account for money; the customers money on a one-by-one basis. And it was too much work for them. They didn't want to hear it at that point. The business environment was too dynamic at that point. They were expanding by leaps and bounds. And then shortly thereafter [redacted] and [redacted] both left. Frankly I think they were quite frustrated with the whole thing. So and then what happened was, that little work group that we had would try to find a resolution just sort of fell by the wayside. And that was it. And I wasn't able to fix the problem. I was constantly bugging [redacted] to issue a final report to force the Command to deal with the violations or get it to the next level. We talked about going directly to AMC IR CHIEF at AMC HQ and we were saying that if this project office was so important to the command and the Army then they should direct fund them as opposed to being a reimbursible activity. And I ran that by [redacted] and [redacted] said, "Get out of here they're never going to fund that." You know because it was a lot of positions. At the time I think there was between 80 and 100 people in that group. Not one of those people, bear in mind, were on the CECOM payroll. Strictly all reimbursable. So, again, that fell to the wayside and the final report never got issued. In addition to the violations of the Economy Act I was very concerned about some other funding issues in R2. At the time I concluded that R2 was also augmenting CECOMs budget by contracting for about 30 CECOM Contracting Officers and a couple of Man Years of Legal staff through FSAs and not properly accounting for it. In my opinion these were appropriations violations and quite possible ADAs. These too became sore points between [redacted] and myself because I felt we all had a professional and ethical obligation to report these issues, however they really didn't seem to care and here we are today.

Q.: So you had the group together. Was that led by [redacted] or the G8 or was it a communal effort?

A.: It was kind of an ad hoc group. But I think G8 did have the lead. He went about setting up most of the meetings. I forget who it was over there [redacted] and [redacted] I forget his name. He had other meetings but they became . . . it wasn't a serious effort.

Q.: How high up did it get?

A.: It went to all the players. It went to [redacted] and to the head of Legal. It went to [redacted] and we even out-briefed [redacted] at one point. But at that point that we out briefed [redacted], we didn't have all the information. So I don't think he was directly in tune with the violation of the Economy Act. When we finally found out about the violations [redacted] opted not to inform any of the interested parties. In my opinion he was more concerned about his personal move to APG selling his home finding a new one applying for HAP, etc... then he was about what was in the best interest of the Command. I confronted him on about this and he admitted to me that he has to take care of number one, he said he did this with any thought or care of his staff and what was in the best interest of completing our IR mission.

Q.: Normally when a report goes final, what happens to it?

A.: Basically it would go into the CECOM public domain. Actually, in this case, because it was a requested effort, it would be more close-hold than that. It would go to the General and go to the Chief of Staff and then go to [redacted] anybody that had an interest in it would go to. And then what would happen is if somebody requested a copy of it we would have to defer to [redacted] since he requested it. And say you would have to take that up with him. It's sort of like, I think they call it an attestation. Like a consulting memo for somebody specific.

Q.: So as far as you know, it got to [redacted] or some semblance of it but he wasn't asking about the Economy Act. He was asking about the fee setting and the rest came to light.

A.: Yes.

Q.: Did [redacted] provide the G8 services to the office or did R2 office have their own budget people? And policy also? They knew they needed to track this or at least they found out as a result of your review?

They had their own budget people. I don't think initially that R2 had any idea that they were supposed to do that. It only came to light that's why I said I was very proud of this because we figured it out for them. We ultimately figured it out. They kept asking [how to fix it] yeah and that's all we were saying that [redacted] has now told us what we can do and we have to do it and that's where

INITIALS OF PERSON MAKING STATEMENT [redacted] PAGE 2 OF 7 PAGES

USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

STATEMENT OF [redacted] TAKEN AT FT MONMOUTH, NJ DATED 2011/01/19

9. STATEMENT *(Continued)*

[that SEC model came in. They sent money to SEC to help them figure this out.] Absolutely but basically it all went to the wayside because [redacted]c and [redacted] decided to squash the report.
Q.: It's like you said, this is the way lawyers bill, you would think there would be commercial software available.
A.: There is. We actually solicited with a lady. [redacted] had a lady on the horn from the private sector who had a program who was going to come down here and give us a demonstration to everybody and like I said it sort of just fell to the wayside. Not because we wanted it to.
Q.: Normally with a draft report you go out for command comments. You received comments from G8. Did the R2 have an opportunity also? They responded in an email. Is that correct?
A.: But they weren't right at the time. The recommendations that are in here do not address the Economy Act because we weren't familiar with it at the time. We only became familiar with it after [redacted]commented.
Q.: Let me go back to the SEC model. That was in the basic report right? Not after the fact?
A.: Yeah.
Q.: So they had already started to work with SEC?
A.: Uh-huh.
Q.: Do you know if they ever got delivery of that software?
A.: No.
Q.: You have a normal process for issuing reports. Was there a reason why that process wasn't followed for this report?
A.: I don't know why but it has been a bone of contention between me and [redacted]for a number of years. Not just this. I've got four or five others in the pipeline not only does he pick and choose what he wants to issue but for those that he doesn't issue he doesn't follow the GAO yellow book standards or AR 11-7.I informed [redacted] and the COS that [redacted] has a double standard as far as work product in the office. He holds me and others for certain things yet he and [redacted] get a free pass. Our workpapers and files are loaded with examples of this. As a result he has caused a hostile work environment.
Q.: Was it unusual that the report was never issued as final?
A.: This particular one I would say, "Yes." Simply because he knew the ramifications of what the outcome would be. And then in addition to that, this is what we do. He has an obligation to bring that type of stuff forward. I don't think it was such an egregious violation that to say you couldn't fix it. Just fix it and move on. Take your lumps and move on. And that's all we were trying to do. And I kept pressing him on it and saying, "Hey, look bring it public and that will force the issue . That will force the Command to act and fix it. It's that simple. Or fund them directly. Put them in a box. Make them make a decision.
Q.: Are there some other things that you think would be helpful to me about either why it wasn't issued?
A.: Well, like I said, the problem never got fixed; a. And to boot, internally we have a process. Our IR office operates under AR 11 -7. 11-7 has an entire process on documenting your work papers, cross-referencing; they also have a section for if you opt to not issue a report. You document the file a certain way. This report is not issued because of XXX. And then you can close the file. That was never done in this particular case or some of the other ones I have. But then in addition to that we've got like, I want to say, almost a fiduciary responsibility. There's a whole section devoted in 11-7 to if we uncover something illegal, or you suspect is illegal, or fraud, we have a whole notification process that has to go through. And that was never followed. Had it been . . . My ultimate suggestion for this was to issue this report, and indicate that the violation was a command material weakness. It would then have to go before the Commanding General. So if that simple process had been done, it would have fleshed itself out. It probably would have been fixed. But again, that never got done. Now some of the other things which I really don't know about but there was a whole host of things and questions about the R2 office and a couple of those things were for instance whether it was ever chartered correctly. Why was a contracting office working out of the LRC?
Q.: Well I guess the office started out of the CERDEC.
A.: It did. It started in CERDEC. But you know, why? We have a contracting office; a Command contracting office. Why do we have this contracting cell? Now there were some questions about the competitiveness of the 8 contracts at the time; whether or not it was a Full and Open competition. So there was some follow-up questions. There was also the reimbursable aspect. The R2 office was paying for 30-40 something contracting officers in addition to all of their own staff. They had these Functional Support Agreements with both legal and the acquisition center to fund . . . and that was the other thing . . . they never accounted for that stuff. What they were doing essentially is augmenting CECOM's budget. So CECOM didn't have to seek funding for 40 contracting officers and I think it was 3 or 4 man-years of legal. They would set up . . .they would cut in the beginning of the year what they call a Functional Support Agreement and they would say, "OK we're going to pay you ." and then they would move them on over to the Contracting Center and the Legal Center. That's part of the violation. You can't do that.

INITIALS OF PERSON MAKING STATEMENT [redacted]

USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

STATEMENT OF [redacted] TAKEN AT FT MONMOUTH, NJ DATED 2011/01/19

9. STATEMENT *(Continued)*

Q.: And they didn't track that?
A.: And they didn't keep track of that either. So there were a bunch of problems. And like I said .my disappointment was that I wasn't able to fix it in this particular case. And I had the answer. That's what hurt yet for what again in my opinion were very selfish reason for [redacted] and [redacted]
Q.: You would think the G8 would be the hammer.
A.: I don't know why. We brought it up to them. We had conferences over there and kicked around a bunch of ideas. I think [redacted] genuinely tried to fix it but there wasn't an easy solution. People are busy and things go on and again it was over in our court. I had often thought to go outside and raise it to the Chief of Staff. In fact I did. I raised this to the Chief of Staff in a memo with a whole bunch of other stuff in there. The other reports that [redacted] didn't issue. We had some other issues with the MWR activities and money was missing. And then we had DOIM wireless devices and the I2WD issue. And all these things are still just hanging there. It's funny because when I brought these things up to try and resolve them in the best interest of it was the right thing to do, [redacted] unfortunately took it the wrong way. I think I wrote the Chief in July of last year. I gave [redacted] one final try. He was up here and we had a discussion. I said, [redacted], [redacted] was in the meeting with us, [redacted] I said "You want to do something good for the Command? Issue that R2 report. That's the only illegal thing that we're aware of at this point that is going on." When it fell by the wayside I wrote the email to the Chief in July and the Chief said he would appoint someone to look at it. And [redacted] and I went back and forth and [redacted] was there and [redacted] And then what happened was in August [redacted] makes a special trip up here and again I am having what I consider a banner year as far as auditing is concerned and I really was having a good year we had just come back from making CHARCS down in Ft. Belvoir. We had a review for BG [redacted]. And we found a finding. . . it was $5, $6million in savings. And it was real money – hard money that just needed to be de-obligated. They could reuse it. which was even more of an advantage. And they were looking for money at the time. And they had procured these parts that were over and above the authorized limit. They had 4000 they were allowed to and they bought 5000 so they had to reverse 1000. Anyway so like I said I was having a great year. Well then I wrote the email in July and in August [redacted] made a special trip up here. He gave me a 3.5 page disciplinary and performance write-up on how poor I was. And again, for this year I had been an outstanding, #1 all along and last year, two years ago, I had $8 or $9M in savings. It's part of what we get rated on. We always go by return-on-investment. . . . So this year it was a . . . so let me just step back a bit. So I get that 3.5 page write-up and I'm kind of shocked by it; pissed .
Q.: This is your performance review for the year?
A.: No. No this is just something separate that he came up on a special trip to deliver to me in part for, what I think was, the email that I wrote to the Chief. So then I said, "Alright I'm going to take this on the chin. I'm not even going to get too excited. I've got my annual coming up at the end of October. Let's play it out and see what happens." So then he calls me and gives me my annual. And he says, "I have you rated as a '3' this year." [in TAPES] And like I said, I've been '1' for like, you know, but not only that like last year when I was a '1' and the year before I had $2M, $3M. This year, I had $11M. And that on the surface . . . and not for anything but if I was anywhere else in the Army, in any other IR shop, just by virtue of that alone they kind of would look at that and say OK the guys in. And he says I rated you as a '3' and then he started going through all this stuff. I did not abide by AR 11-7 and he has these different areas like notating, evidence of documentation, and I say, "The nerve of the guy. He's got 4 or 5 of my reports in the pipeline and he's calling the kettle black." So anyway, I took the appraisal and signed it and then just recently last week we are in a staff meeting and [redacted] says there's a 15-6 investigation going on about the R2 report. And I'm like, "Oh My God. I can't believe this. There is a God." And so anyway, I went back and was re-reading this 3.5 page write-up and the thing is such a bogus pack of lies. And it's so counter to how you know it's like when I wrote to the Chief and said that I want somebody else to look at it to make sure I'm not crazy. So anyway that's where . . . so I wrote to the Chief and he said to get together with [redacted]. And I wrote [redacted] on Tuesday and she's out of the office until tomorrow. I got an "Out-of-office" from her so I'm going to meet with [redacted] and I'm going to show her, because I printed a lot of this stuff out, I'm going to show her these comments and say, "What's going on here?" She's the G1. Since then [redacted] got back to me and said there is nothing she can do its between the COS [redacted] and myself. What I did was I wrote to actually [redacted] and the Chief, COL [redacted] and I said if either of you two are in the Monmouth area, and want to come by, I'd like to show you and I said, if not, that's fine too cause I know you're down there but if you have somebody up here that you trust and that's when the Chief said to get with [redacted]y. So I'm going to get together with her. She was out of the office That's the whole thing. I don't have a personal beef with [redacted] All's I want to do is fix it. Let's fix the problem and move on. I don't care. You know, I make mistakes. I'm not perfect. Let's fix it and do the right thing. Especially in light of the Command. I mean the Command is exposed. I look at, we all look at, [redacted] job is to protect the Command. He knows about this and the buck stops with him. And why he chose not to do that? I don't know. It's been a question in my mind too whether or not people above [redacted] put the kabash on it. Whether he ran it by the Chief of Staff?

INITIALS OF PERSON MAKING STATEMENT [redacted]

USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

STATEMENT OF [redacted] TAKEN AT FT MONMOUTH, NJ DATED 2011/01/19

9. STATEMENT *(Continued)*

Whether he ran it by [redacted]? I mean all these people can't be blind to this.
Q.: I would think this would have come up in a staff meeting. You usually report on what reviews you are doing. I even think that [redacted] wouldn't want to stop this. I think he would want to make sure it was fixed.
A.: Absolutely, I would agree with you 100%. It's not that hard to fix. We have an internal called IRMS and we enter our time. I had to enter my time. So at the end of the R2 job, it's a software program, we know what to charge out, what to bill out, for that particular job. It took us X man-hours or man-days. Some jobs take us a month and some take us 2 months. But at the end of every day, if you do what you are supposed to do, you enter your time in IRMS. Periodically you'll forget a day and [redacted] or a guy down there will say, "Hey you forgot to enter your time for X." When you go in, you have a jobs listing and a job number. Our job numbers are report numbers. And you enter your time accordingly and they roll all that up at the end of the year and that's how we break out and account for our time throughout the year and what jobs we work on.
Q.: Is there anybody else that I should talk with?
A.: Did you talk to [redacted]? [No I didn't.] I know [redacted] on a couple of occasions tried to get [redacted] to issue the report. So he inquired with [redacted] and I know it wasn't just this report there was a few others, and I know he inquired about it. What would happen was [redacted] would get mad at us and he'd get really pissed off and eventually I just stopped asking about it. Because he would get all angry. And then [redacted] would ask and he'd be like, "[redacted] I know what I gotta get done." type thing. And then like I said it sort of died down for a little bit and then what happened was . . what I was waiting for they were in the process this year of re -competing the R2 contracts. The other one that was with this was expired. Anyway, so in July . . what happened was I had . . that's the last time, I think it was July or August, that I gave, the last time . . they awarded the contracts in July 2010. The new contracts for the R2. And I said, "[redacted]". . before that I was on him to say that we should expose this before the next contract gets awarded so it's one less headache that will have to be dealt with if it gets awarded. I think I brought it up to him when I hear about the protest. And it didn't work. And then again when he made that special trip up here he gave me that 3.5 page memo the following day we were in the back room with [redacted] and talking about PCSing and all this other stuff down at APG. And things had cooled down by then and we were talking about a lot of stuff and the R2 thing came up. Not in a bad way but it came up somehow we got on that subject and I gave him one last chance. I said, "[redacted] you know they just awarded that new contract. We have's an opportunity. If you really want to do something good, and then he and [redacted] got at it and he said he not ever issuing that report. And that was the other thing. In July when I wrote that email to the Chief, what I had done was I had looked at some of . . [redacted] I don't know what happened. In July, something happened from a performance perspective and he, all of a sudden started torching [redacted] work papers. What I mean by torching is going there and criticizing and he really started criticizing my writing style as well. He wrote me an email for example. [redacted] is a grammatic whiz. He was Catholic school, Philadelphia, nuns all that stuff. And [redacted] he wrote me an email and was dead-serious about it. He says, "[redacted], I have to ask you a question. Do you know the difference between were and we're?" He accused me of purposely doing that to antagonize him. I'm like I had no idea. I really didn't. I didn't even know what he was talking about. And so I'm just saying that's how . . and then he wouldn't give us . .he started to torch up our work papers. That had never been done before. Now all of a sudden we got all this red glaring out at us . .failed to put a DSN number. You know if you didn't include a DSN number from an interview . .get out of here. Any way he started coming down on our stuff and so I started looking at his and some of [redacted] stuff. And boy, that just set him off. None of his stuff is documented. My stuff, it has to be to the tee. There's none of his in any of those files and that's what I am going to show Patty. Again, back to 11-7 you have a process of supervisory review, and he is supposed to sign off on all work papers, cross-reference everything. None of that for him. So I was accusing him of having a double standard. You're telling us to do it but you guys aren't doing it yourself. And not only that, you're coming down on us for it. And so, he didn't like that so he said, "[redacted], I don't want to be looking. I don't want to be asking anybody. I don't want to be talking about any other job other than the job you are working on." And I said, "Fine." And so he put me on essentially a gag order. And I was saying to myself, "How is this going to work? I can't work like this." So then what happened was . . so after that he . .when I had my appraisal with him, my appraisal discussion, I waited and I never said a word and then I had my appraisal discussion in November 2010 (my rating period ends Oct 31). So I'm having my discussion about my performance and he tells me he rated me out as a "3". And I said, "[redacted]" we got into it a little bit, I said, "This is bull-crap. This is because I spoke out against you." You know I talked about the reports that he didn't issue. And I felt he was retaliating against me for telling the Chief on him. And he says, right away he got his back up, "That's not true. This is your performance. Look you don't document this stuff." And he goes over the examples of the subjective things that he picked out. He picked my performance apart. He was picking on me. And so anyway I said, "Well you know that's not true. I had $11M in savings. I said that in itself . . .I says you talk about return on investment. I was doing DoD IG which he claims is GS-13 work and I'm a 12. I says, "What about all the DoD IG stuff as a liaison officer? He says, "Oh, I gave you credit for that. That was part of the overall 3." He goes, "You were lower on some of the other ones, other performance standards but I gave you a higher credit because you were

INITIALS OF PERSON MAKING STATEMENT [redacted]

USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

STATEMENT OF [redacted] TAKEN AT FT MONMOUTH, NJ DATED 2011/01/19

9. STATEMENT *(Continued)*

doing the DoD IG." He has rated me for the past 3 years as a minimum. So I said, "This isn't fair."I said, "Anyway, I'll sign it." And that's when I wrote the Chief. So we had this discussion, right? This is my performance appraisal and I figured this is the proper forum to discuss my performance. That was a Friday. The following Monday, early in the morning, it was like 8:00 in the morning I get an email from him. And he says, "[redacted], last Friday we were in your annual performance discussion. You brought up subjects that I told you never to bring up again. You are in violation of my directive to you and there will be formal disciplinary action taken against you for bringing up those issues. I said, "What?" I called the guy right up and said, "Are you out of your mind? [redacted] this was my . . . we were talking about my performance. The only reason I brought these issues up I wasn't rehashing the old issues. I was bringing them up in the context of that's why he rated me the way he rated me. And so he's like, "It's a violation of my directive to you. I've consulted with G1 and Legal." He's telling me he's gotten legal advice and authority from G1. And I was like, "What are you out of your mind?" Oh, so at the very end, this is what really got me, so we are discussing this. He's telling me and explaining and showing me all these mistakes and then he says, "Oh by the way your performance award this year isn't going to be as high as it was last year. I was like, "What?"I was like, "Alright". I hung up the phone and I was like, "This guy is out of his mind. I'm getting a performance award after he tells me how poor my performance was and rating me out at a "3". What gives? So I don't know I just I didn't get it. And that's what I told the Chief like I said. I don't have a problem with him and I can handle myself. I'm a big boy. My interest is only to do what is in the best interest of the Command. Get on with Command stuff. We can leave our personalities at the door. But if we have to work together, let's work together and be amicable and be professional.

Q.: But even though now the Chief is aware of it now but it sounds like he has gone the G1 route for your personal and performance issues. There's no mention of Gee I'd like to see that report or let's surface this now.

A.: No but what I feel the defense could be is that it is in the context of the whole probably two page memo of things that I surfaced and this being just one of them on the report section. That one issue I mention I think that there were 5 or 6 reports and this was one of them that was only a paragraph.

Q.: You haven't had a chance to talk with him.

A.: No it was just the email. And I sent it to [redacted] too. I thought the two of them would have been all over it. I mean if I were in their position, I would have said let me just see if this guy knows what he's talking about.

Q.: So I should talk with [redacted] and . . . ?

A.: I think [redacted] would probably be it. I mean he was in there. His recollection may be a little fuzzy at this point in time too. I don't know. I was the lead on this. Not for anything, but this one stuck out to me as well. Only because of the exposure to the Command.

Q.: Through my research I've learned that when MIPRS are issued they are supposed to have notations on them that signify they are Economy Act orders. Did you find that on the R2 documents?

A.: Yes. They were all stamped as Economy Act.

Q.: Does the sender or the recipient stamp the MIPR?

A.: The sender stamps it that it's in compliance with the Economy Act and then what happens is the receiver has to stamp it accepting it. So there's a submission and a receipt. The receipt being the photocopy of the stamped acceptance of the MIPR. It's a two-sided coin. So this way you know they received it and acknowledges that.

Q.: Is there anything else I need to know?

A.: I think that is pretty much it. But I think the bottom line is that if [redacted] and [redacted] had just done their jobs none of this would be happening today and the R2 office would probably be in compliance with the Economy Act.

<<

STATEMENT OF SENIOR EVALUATOR CECOM IRAC OFFICE TAKEN AT FT. Monmouth, NJ DATED 2011/01/19

9. STATEMENT *(Continued)* SENIOR EVALUATOR CECOM IRAC OFFIC

<<<<<<<<<<<<<<<<<<<<<<<<<<<< THIS PAGE NOT USED>>>

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is PMG.

PRIVACY ACT STATEMENT

AUTHORITY: Title 10, USC Section 301; Title 5, USC Section 2951; E.O. 9397 Social Security Number (SSN).

PRINCIPAL PURPOSE: To document potential criminal activity involving the U.S. Army, and to allow Army officials to maintain discipline, law and order through investigation of complaints and incidents.

ROUTINE USES: Information provided may be further disclosed to federal, state, local, and foreign government law enforcement agencies, prosecutors, courts, child protective services, victims, witnesses, the Department of Veterans Affairs, and the Office of Personnel Management. Information provided may be used for determinations regarding judicial or non-judicial punishment, other administrative disciplinary actions, security clearances, recruitment, retention, placement, and other personnel actions.

DISCLOSURE: Disclosure of your SSN and other information is voluntary.

1. LOCATION	2. DATE (YYYYMMDD)	3. TIME	4. FILE NUMBER
Fort Monmouth, New Jersey	2011/05/25		

5. LAST NAME, FIRST NAME, MIDDLE NAME	6. SSN	7. GRADE/STATUS
[redacted]		GS-12

8. ORGANIZATION OR ADDRESS
CECOM LCMC, Bldg 826, Fort Monmouth, NJ 07703

9.

I, SENIOR EVALUATOR CECOM IRAC OFFICE [redacted], WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

I would like to add the following information to my witness statement on the R2 Project Office provided on January 19, 2011. The reason this information is being added is because I learned it after I provided my original statement and now. I feel it is very important to the overall investigation and would like it to be included.

In May of 2008 The Army Audit Agency sent CECOM a request for an Entrance Conference for the Audit of Flat Fees for Contracting a requested Audit by the Under Secretary of the Army. The Final report went public under AAA report number A-2009 -0047-ALC on 23 February 2009. AAA had identified the R2 Project Office as an audit candidate and was scheduled to come to CECOM and conduct their fieldwork. At the time we were in the process of doing our Internal Review of the R2 Project Office. At that time DIRECTOR CECOM sent AMC IR and AAA a request and persuading them to not look at R2 Project Office that they accepted, and relied upon the comments DIRECTOR CECOM provided to include in their report to justify AAA not looking at the R2 fees. He informed them that our IR shop had it under control and that everything was fine in R2 - that they were returning monies to their customers etc...(the comments he provided were inaccurate and misleading) DIRECTOR CECOM received a copy of the draft report from AAA in September 2008 soliciting comments on the accuracy of the draft report. This is clearly after we knew that R2 was operating illegally and in violation of the economy act as outlined in the July 2008 opinion we received from G8. I assume DIRECTOR CECOM didn't provide any comments to the draft report because the inaccuracies he initialed provided to AAA were in the final public report. So there is e-mail from DIRECTOR CECOM persuading AAA to not review R2 fees and providing false or misleading information to AAA about the R2 operations. Then there is e-mail to DIRECTOR CECOM via AAA draft report soliciting comments as to the accuracy of the R2 operations. Then you have a final AAA public report in print clearly inaccurate as to the R2 operations. This is very disturbing?
NOTHING ELSE FOLLOWS
>>
>>

10. EXHIBIT	11. SENIOR EVALUATOR CECOM IRAC OFFICE [redacted]	PAGE 1 OF 2 PAGES

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF ___ *TAKEN AT* ___ *DATED* ___

THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

STATEMENT OF [redacted] TAKEN AT FT MONMOUTH NJ DATED 2011/05/25

9. STATEMENT (C [redacted] >>>>

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is PMG.

PRIVACY ACT STATEMENT

AUTHORITY: Title 10, USC Section 301; Title 5, USC Section 2951; E.O. 9397 Social Security Number (SSN).

PRINCIPAL PURPOSE: To document potential criminal activity involving the U.S. Army, and to allow Army officials to maintain discipline, law and order through investigation of complaints and incidents.

ROUTINE USES: Information provided may be further disclosed to federal, state, local, and foreign government law enforcement agencies, prosecutors, courts, child protective services, victims, witnesses, the Department of Veterans Affairs, and the Office of Personnel Management. Information provided may be used for determinations regarding judicial or non-judicial punishment, other administrative disciplinary actions, security clearances, recruitment, retention, placement, and other personnel actions.

DISCLOSURE: Disclosure of your SSN and other information is voluntary.

1. LOCATION	2. DATE (YYYYMMDD)	3. TIME	4. FILE NUMBER
Fort Monmouth, NJ	2011/01/19		

5. LAST NAME, FIRST NAME, MIDDLE NAME	6. SSN	7. GRADE/STATUS
CECOM BRAC OFFICE EVALUATOR		GS-11

8. ORGANIZATION OR ADDRESS

CECOM, LCMC, Bldg 826, Fort Monmouth, NJ

9.

I, CECOM BRAC OFFICE EVALUATOR, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

Q.: You were an investigator or evaluator of how the R2 office set reimbursable rates. Correct?
A.: Yes.
Q.: Tell me about your office's look at the R2 Project Office's Reimbursible Rate process in the 2007-08 time frame?
A.: G8 asked us to look at how R2 reimbursable rates are established. [redacted] was our G8 POC for reimbursable operations. [redacted] (R2 Director) and [redacted] (R2 Deputy Director) were our POC's inside R2. When we started looking into the R2 process it became clear early on that R2 was using a reimbursable method that was outside of the G8 approved method. The R2 method employed a Percentage of contract obligations as its means of charging a fee for the services it provided to its customers. This was not in accordance with the process established by G8. We requested to see all of the income and expense records of the R2 operation so that we could determine for a defined period how much fee they received and how much cost they incurred. We determined that R2 carried over approximately $8M in fee money from the prior year. We sought G8's and legal's advice to determine how much carryover was allowed. It was this questioning that brought us to the Economy Act and the differing interpretations of it, R2 had a legal opinion stating they could continue operating the way they were, G8 disagreed. We developed a reimbursement method and presented it to G8 and R2 that would eliminate the carryover situation. We thought estimating costs were Ok and then making quarterly adjustments to the customer fee based on income and expense records in the aggregate would solve the problem. We asked G8 if that would work and G8 said, "No". R2 needs to reconcile each customers fee payment against the expenses associated with the work performed for that customer. R2 felt this was way too cumbersome given the volume of business that they engaged in. R2 commissioned an SEC contractor to develop a pricing model. This was a different solution to the carryover and reconciliation issue and it was ongoing prior to our involvement. Given G8's position on the solution we developed, R2, G8, and us all hoped that the model would help. The last we heard the model was going to be used at some point in the future but I do not know what became of that solution. An IPT was formed by G8 to continue looking at the problem and we participated in that IPT for a few months but eventually I moved on to the next audit and lost sight of the R2 situation. I did participate in crafting our report and was aware of the fact that it never was officially issued.
Q.: Who sets the objectives for the review?
A.: The objectives of the review are set by the customer, that is to say whoever comes to us and requests the review. In this case it was G8 who asked us to look at the reimbursable rate process used by the R2 project office.
Q.: What's the normal process when issuing a report?
A.: The normal process for issuing a report is that we issue a report, good bad or indifferent. We do our work, we document it, and we write a report which can be a formal narrative or simply briefing charts. In general we come up with findings relative to the objective and make recommendations as we see fit. The entities involved are given an opportunity to comment on our findings and recommendations and either concur or non-concur.
Q.: I see the G8 provided comments. Did the Director, LRC also comment on the report?
A.: Yes; R2 concurred with our recommendation of reconciling accounts on a quarterly basis.

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT	PAGE 1 OF 3 PAGES
	CECOM BRAC	

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF _____ TAKEN AT _____ DATED _____

THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

STATEMENT OF [redacted] TAKEN AT Fort Monmouth, NJ DATED 2011/01/19

9. STATEMENT *(Continued)*

Q.: Did the Economy Act come up before the G8 commented?
A.: Yes, the Economy Act came up early on in the review. The nuance of how the act is to be applied and used in the R2 circumstance was a subject of debate for some time during the course of the review. We found that CECOM Legal issued an opinion that R2 was using to justify its fee structure, however G8 did not agree with this interpretation.
Q.: Is it unusual that you have a draft report and not issue a final report?
A.: Yes, I found it unusual given the circumstances. The entity under review was collecting a significantly greater amount of money than it needed to operate. G8, the proponent for reimbursable operations, agreed that the entity needed to develop a solution to reconcile its income to expense. Additionally, Army Audit had recently issued a report on this very same subject and opined that the use of percentage fees was not an appropriate way to conduct business. Our office informed Army Audit that we were evaluating R2 and that it was not necessary for that to come in and mdo the same thing so yes, I believed we should have issued a report, we were obligated to tell the story and have the situation rectified. To me personally, it was frustrating in the sense that you do work; you should issue the report. That may be a side issue. You know it's like whatever the outcome is, put it out there. So it didn't get issued. Were there others? Probably there were others. And maybe there are reasons but the AR 11-7 says if you initiate a job, you need to conclude it some fashion, in this case it seemed appropriate to me to issue a report and let the chips fall where they may.
Q.: Is there anything else you think I should know?
A.: No, I was debating what I'm supposed to do over here. I think I covered everything. In the end we did the work and tried to solve the problem. We're not a big shop. It's six people. [redacted] is new or relatively new as the director. I worked under [redacted] prior. There was a little leeway in between when Command didn't want to hire a new director so the IR shop was somewhat rudderless. The Command it seemed was waiting to make a decision on IR and likely had much bigger issues to contend with since [redacted] departure was right after the BRAC decision in 2006. Between 06 and 08 [redacted] stood in as director and then [redacted] stood in. Command finally advertised for the job and [redacted] was selected in 2008. The whole split base ops added a different dynamic to this situation. [redacted] and [redacted] went down in 2009. They are the two senior members of the office. We have been operating split based since [redacted] and [redacted] went to Maryland and the lines of communication have been strained as a result. One can read e-mail and say, "What's that all about?" You don't have the same confidence in what is being communicated as you would by walking down the hall and saying, "What're you talking about?" Things get mis-read. It's been a difficult couple of years inside IR, we seemed to have lost our focus because of split based ops and the struggle to impose a new order. [redacted] and I believe we did the right thing, we dug deep into this issue and exposed things perhaps people did not want to address. It is my understanding that we are the honest brokers in this business, it's our job to collect the facts and report them, regardless.
Q.: What about at staff meetings? Do you go over the status of different audits or reviews? Is there a board with audits listed on it and this one is still up there three years later?
A.: No there is not a board per se. I know [redacted] has checked on the status [redacted] is senior to me and together he and I conducted all of the work on this job. We both felt this was an important issue.
Q.: Would you say that the issue was raised to the right people even though the report wasn't issued? [redacted] seemed to know about it. The R2 people seemed to know about it. Did it go beyond that where it would have made a difference?
A.: Yes, our work was briefed to [redacted], the LRC director who is responsible for R2. I wasn't involved in the out brief. During the course of our review G8, Legal, and R2 were all aware of the findings. All of these entities were still looking for a solution at the conclusion of our work. Perhaps folks were taking a wait and see approach in the hopes that the SEC pricing model would deliver a product that could be used to satisfy the requirements of the Economy Act. I sat in numerous meetings and all of the folks who needed to be aware of this situation were present at one time or another.
Q.: So it's not like you tried to keep it a secret. The fact that you formed the ITP. That the IPT was formed. The fact that somebody was trying to address it the issue.
A.: Right, they were trying to address it. I think all the right people were aware of it. It just dropped off of our radar screen. DTK

INITIALS OF PERSON MAKING STATEMENT [redacted]

STATEMENT OF CECOM IRAC OFFICE EVALUATOR TAKEN AT Fort Monmouth, NJ DATED 2011/01/19

9. STATEMENT *(Continued)*

Nothing follows.

AFFIDAVIT

I, CECOM IRAC OFFICE EVALUAT, HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 2. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUEN

CECOM IRAC OFFICE EVALUATOR

(Signature of Person Making Statement)

WITNESSES:

ORGANIZATION OR ADDRESS

ORGANIZATION OR ADDRESS

Subscribed and sworn to before me, a person authorized by law to administer oaths, this _____ day of _____, _____

at _____

(Signature of Person Administering Oath)

(Typed Name of Person Administering Oath)

(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT CECOM IRAC OFFICE EVA

J

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is PMG.

PRIVACY ACT STATEMENT

AUTHORITY: Title 10, USC Section 301; Title 5, USC Section 2951; E.O. 9397 Social Security Number (SSN).

PRINCIPAL PURPOSE: To document potential criminal activity involving the U.S. Army, and to allow Army officials to maintain discipline, law and order through investigation of complaints and incidents.

ROUTINE USES: Information provided may be further disclosed to federal, state, local, and foreign government law enforcement agencies, prosecutors, courts, child protective services, victims, witnesses, the Department of Veterans Affairs, and the Office of Personnel Management. Information provided may be used for determinations regarding judicial or non-judicial punishment, other administrative disciplinary actions, security clearances, recruitment, retention, placement, and other personnel actions.

DISCLOSURE: Disclosure of your SSN and other information is voluntary.

1. LOCATION	2. DATE (YYYYMMDD)	3. TIME	4. FILE NUMBER
Aberdeen Proving Ground, MD	2011/01/13		

5. LAST NAME, FIRST NAME, MIDDLE NAME	6. SSN	7. GRADE/STATUS
CECOM IRAC Office Director		GS-14

8. ORGANIZATION OR ADDRESS

CECOM, Internal Review Office, Bldg 6001, Aberdeen Proving Ground, MD

9. I, CECOM IRAC Office Director, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

Q.: What is your current position within CECOM and how long have you held that position?
A.: I am the Director of the CECOM Internal Review Office and have been since April of 2007.
Q.: Tell me about your office's look at the R2 Project Office's Reimbursable Rate process in the 2007-08 time frame?
A.: Directir LRC Retired Director of the LRC had asked G8 to take a look at the R2 Office and how they set their reimbursable rates. Before proceeding there were discussions between G8 and IR and George Chant (Chief of G8) thought the review would be better suited in the IR Office and turned it over to us. Directir LRC Retired then came forward with an official request to have my office look at how the R2 Office set its reimbursable rates. The R2 Office is like a contract administration office. At the time they had eight service contracts in place good for a period of five years. If someone comes to R2 and requests these contractual services and or equipment, they had the ability to award contracts within 21 days. The Contracting Officers and Specialists working for the R2 office were from what is now the CECOM Contracting Center. Their labor is totally reimbursable and they were dedicated to R2 full time.
Q.: Who sets the objectives for the review?
A.: A combination of Directir LRC Retired and George Chant set the objectives for this review.
Q.: What's the normal process when issuing a report?
A.: We get the objective of the review from the requestor of the review. We talk to all the folks we need to gather all the facts. In this case we spoke with people in the R2 and G8 offices. Some people in G-8 were satisfied with the way they were charging and others weren't too comfortable. That was one conflict. Second, later on we talked with George Chant's (G8) folks and they said it was alright for R2 to estimate how much to charge a customer in the beginning but you still have to calculate how much it cost you to do the work for this contract to put it together and then go back and reconcile with the customer. Let's say you say gave us $10K but it only cost us $5K, now we owe you $5K back or if it cost us $12K then we would have to go back to the customer for $2K more. One, they weren't doing that. And that's where the problem was. If you don't do that then it is a violation of the Economy Act.
Q.: I guess that showed up in the draft report in the G8 comments?
A.: After we issued the draft report, we put together an In-Process Team (IPT) with R2, G8 and IR personnel trying to figure out what's a good way of coming up with a result on how to correct it. In one of the meetings I recall George had talked about that and going back to calculate how much time devoted each quarter and the comments that came back from the R2 Director, Sandy Rogan, was that she had over 3000 JOANs. Sandy stated "I'm going to need 5 people to manage and make sure everybody records their time properly and charges to the right JOAN and need 5 people headed by a GS-14" and George rolled his eyes and I rolled my eyes. All you need is a real good time keeping system. I don't think ATAAPS can handle that but I'm sure there is some kind of software out there on the open market that records time keeping. We have something in our office in Internal Review called IRMS (Internal Review Management System). We have to keep track of all our time that is charged to a particular review. How much is charged to indirect portions which include training, leave, and admin duties. Every six months our time gets rolled up and

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT	PAGE 1 OF 5 PAGES

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF _____ TAKEN AT _____ DATED _____

THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

9. STATEMENT *(Continued)*

reported to AMC, DA and all the way up to Congress. Reason for that is that '78 Semi-annual IG Act. So we know how long it takes to do the review. All they need is something similar. They could put 3000 JOANs into the system and the people that work on them they're not going to be working on all 3000 JOANs every day. Anywhere from 4-8 I would gather and apply their time.
Q.: I see from the report that there was some system or a SEC software development action is that what they were trying to do?
A.: SEC was trying to develop a program for them where they could do that stuff. [They could have bought yours.] We recommended that they discontinue that because we felt that . . . then from even the IPT when we did the review we felt that charging a flat fee of 0.5%, to us, was good. A fee was easy. Just apply that against the potential amount but as we found out later G8 disagreed agree with us and they're the proponent for any financial regulation. They said no you have to account for your time otherwise you are augmenting . . . one activity is overpaying and another activity is underpaying augmenting the one that is underpaying and getting into that financial problem. So since they had to go back and account for their time and they concluded that what SEC is doing is probably a good thing because that would help them track their costs.
Q.: Out of Curiosity the software that your office uses - was that given to you by AMC? Was it directed that you buy it?
A.: It was actually developed by the National Guard Internal Review Office to be used by all IR offices within DA.
Q.: I guess GFEBS is supposed to fix all this when we get it.
A.: I guess I haven't really read up on GFEBS yet. But I know it was distributed throughout the IR community. They are looking to go to a web-based system.
[A description of IRMS ensues . . .]
Q.: I want to ask about the In-Process Team that had after the draft report came out. How often did the team get together?
A.: I think we got together 2-3 times. I remember one situation where George Chant told one of his staffers to do some research on if anyone else was charging a flat fee. We were waiting for a response from the individual. One week goes by, two weeks goes by, three weeks, four weeks. I finally sent George an email. We have audit coordinators in every activity so I sent our (George Chant's) coordinator an email that we haven't received a response from the individual. Can you find out what's going on? He contacts the individual and he says George never gave him any instructions. My coordinator was Ed Stensjo and he was at that meeting. Ed says to the individual "I sat next to Dominic and Dominic sat next to George and you (the individual) sat next to George on the other side and we remember George telling you directly to do that." The individual says, "Oh, no, he didn't do that." He must have been in outer space and we never got a response. After that I said I've had enough and I'm just going to leave it up to G8 and LRC. In the IPT we had Sandy Rogan, Joanne Frank and Debbie Tiggs from the R2 Office; from G8 we had George Chant, Ed Stensjo, John Waldron and Tom D'Aprile (who was the individual I was talking about) and maybe one other person. And then from my office I had my staff - Mike Nielsen, Dan Kelsey, Rich Albietz and myself. So we had a big group and we were there more from an advisory because it was our report. But it was up to G8 and LRC to solve this.
Q.: Normally you go out for Command comment I see that G8 gave you those comments where the Economy Act stuff surfaced. Did the LRC or R2 office also provide comment or did you just go right into the IPT?
A.: Yes and No. Yes we got comments from R2. They concurred with our recommendations. And then I went back to the audit coordinator and the person that responded was Brenda Haase. And I said, thanks for your comments but the recommendations are really for Dave Sharman. I really need his signature on the response. I don't think I ever got that. Because of the IPT, I never issued a "formal" final report. However, I did issue an informal final report back to Directir LRC Retiredin an email dated 22 Aug 2008. I don't believe Directir LRC Retiredliked my answer (I had reiterated what George Chant had provided me with his response to our recommendations). But at least Directir LRC Retired, knew what his R2 Office had to do to be in compliance with the Economy Act.
Q.: Is that because it fell by the wayside and you were waiting for that additional research?
A.: Yeah it was kind of old and if you look at our report everything looks good to us. Because G8 says I disagree with you; they're violating the Economy Act. As auditors I can't overrule G8 because they are the proponent of the financial regulations. In my personal opinion, I don't think we did a complete job. Even though we did check with G8 we should have checked with Mr. Chant to get his viewpoint on whether or not this was a problem. Talking to the staff folks they agree, they disagree. That's fine but George is the G8 and we should have made an appointment to go see him with our findings before we issued a draft report. That would have saved some of this. But that's in hind sight. By the time that got done it was 6-8 months down the road and my personal feeling is I'm not going to issue a report 6-8 months down the road. I may get criticized. Why'd you wait so long and then not only that we'd have to change the report.
Q.: How do you incorporate comments into a report?
A.: What we normally do is we issue a draft and ask for comments. Once we get the comments we put the recommendations and the comments in the final report. This way when they get the final they'll see here's our recommendation, here's what they stated, here's the response to the recommendations and we may even throw in a paragraph called IR comments that will say whether

9. STATEMENT *(Continued)*

we're OK with the response or if they answered it but didn't really answer it we may say "May not answer the question totally but we are ok with the response." Things like that we may put in there. If there is a real big issue then we try to raise it up to the Chief or CG. Here we have a difference of opinion with G8 and LRC.

Q.: Did the draft report come up in staff meetings? Did it get past and yourself and Directir LRC Retired?

A.: Because it was Directir LRC Retired that asked for the review normally what we do if the review was requested by a senior manager, when the report is finalized, even though in this case it wasn't, the results stay with that senior manager. I really don't send it up to the Chief or CG. Only if the review is self-initiated (by me or my office) does it go to the CG or if it is an installation-wide review with AMC or DA. That would sometimes require a response from the CG. Then he would get a copy of the report. Now as we move down to APG that is on my list to try to get more reports issued and to send review results to the Chief of Staff for his review so he is aware of it. We do have one that shouldn't be a problem as the activity has responded to the recommendations and I know that they are trying to coordinate the response and I know what they are going to come back with. I am waiting for the response to come back. It does involve two SESs and G8 so to trump the SESs I've got to go to the CG. It involves Internal Controls and the annual Statement of Assurance that is typically signed in March or February. One of the recommendations that I want to identify deals with ULOs. I think there is a problem. [Which is obviously related to this.] Exactly.

Q.: Do you have any other information you believe may be relevant to the investigation?

A.: At this point, no. I've scanned work papers and the report trying to refresh my memory because it was two years ago. This was on my back burner. I was going to report it to the G8 to say that we never did get any resolution to this. (new G8 replacing) did bring it up in a conversation I had with her last November. I was able to speak with her for about an hour after a meeting on all kinds of things. R2 came up in our conversation and it came up in my staff and I'm going back to Liz since it hasn't been resolved maybe it should be identified and reported especially as a violation of the Economy Act. I had a staff meeting on Tuesday and told them I was being called for this 15-6 interview. Initially I thought I was being called in the assistance mode rather than the interview mode. I've worked on four AR 15-6 cases always assisting the Investigating Officer. I've never been interviewed before. I told my staff, , and to expect a phone call from you. They did the review. and were the ones that actually did the field work. was involved but to a smaller extent. He was the Team Leader for a time and I was the Team Leader and Director for part of the time.

Q.: So you spoke with and this is on her radar screen as something she needs to address?

A.: Yeah I think she was trying to address that. I'm not sure from what capacity and I don't know when the allegations came forward. I know it takes time to appoint an IO it may have been from that I'm not sure.

Q.: So other than your audit team is there anybody else I should talk with. I had planned on starting with but he has been out due to a death in the family.

A.: From my staff that's it. There are the folks on the In-Process Team as I mentioned. I'll go back and see if I identified everybody at that meeting with R2 and G8. I think I got most of them if not all of them.

Q.: Were there minutes from that meeting/those meetings?

A.: I'll check. I do have one email dated around 8 Apr 2009 from G8 that stated the IPT was being disbanded because the R2 Office staff admitted they would be using the SEC model to come up with actual costs per customer.

Q.: Would you please go back and look to see if there were minutes?

A.: I will look. We may not have minutes per se but we do try to have an MFR of the meeting. We did our job as far as trying to identify it. If G8 says they violated the Economy Act then that is something that should have been discussed with Dave Sharman. You have the IR report even though it was a draft said you could charge a flat fee in the beginning but still have to reconcile at the end. A lot of resistance from R2. Just do it. Why are you complaining? Just do it. They have 60 people over there already. 40 at the time. I think they have 60 now or 65. Just do it. They were fighting tooth and nail. Now of course is gone from R2. is gone from R2. I think is still there. The top two folks are gone. I know part of the IO process is to talk to them but they are under no commitment to talk to you. [I was wondering about that. I have to track them down first.] Track them down? They are still around. are both working for the VA. So they are not far from Ft. Monmouth. That's where everybody is, VA. If they are not at APG they are at the VA. The draft report we got the responses from G8. There was the issue of the Economy act and that's why we had the Process Action team or future discussions that resulted from our draft report. After a while you get tired of trying to get an answer and finalizing it. And if it gets too old . . . I hate issuing a report when it gets too old just for the sake of issuing a report. I'll issue a final report, put in the work papers and say "It's there". I have other more important areas to go into.

Q.: Did you say that from the R2 office responded to the draft report. A.: She sent an email to me and my staff that she concurred with the recommendations. She was a long time audit coordinator with the Acquisition Center.

9. STATEMENT *(Continued)*

A.: I know the entire R2 office is reimbursable. One of our recommendations at the IPT meeting was because of the problems of charging of a flat fee and you can't really charge an indirect overhead rate that you would normally come up with in a FSA for a matrix employee because it really doesn't . . . It's really mixing apples and oranges basically. Tie the fee to the cost of the contract. The recommendation we had was that if this is such a problem why didn't G8 or R2 go back to AMC and ask for 60 direct -funded slots. Then they would get paid by a HQ Management account. That was unlikely to happen. Or ask for an additional 60 OMA slots. The R2 office was supposed to be entirely reimbursable. And that's why they were collecting a fee. As far as if the Contracting Officers were doing work for R2 and CECOM, I don't know. R2 could answer that question. I think our presumption was that they were dedicated to R2. And if there are 8 contractors and 8 contracts and 3000 JOANs which probably means 3000 customers coming in with all kinds of requirements that means and the KO constantly looking at this stuff and processing all this within a 20 day window as they advertised, I think they were dedicated to R2. I don't think they were splitting time. The concern I have from an auditor perspective is as long as they were identified as reimbursable in the TDA. The TDA will show whether they were direct, indirect or reimbursable. We have in the special staff offices we have a reimbursable person but they are paid out of AWCF. The agreement is the management of AWCF generates some overhead slots. What you are able to do is give a pay slot to special staffs. I have one, IG has one and EEO has one. We get money from LRC to pay salary, benefits, awards and training for in my case a GS-12. In the manpower reports we identify how many people each office has and whether they are direct or reimbursable. Whether that person is in a truly reimbursable slot we never checked any of that.

Q.: So I would be able to go back and ask them for their manpower or TDA back to that time?

A.: I think they are required to keep those records for 2-6 years. Whether the system keeps that or not, I don't know. Being the Budget Officer for IR, I get the CAM (Consolidated Activity Manpower) report that shows your 4 different breakdowns. One is your reshape TDA, current on-board, actual on-board and several different categories. Back then the Contracting Center was part of CECOM. If there is a time period you can let me know. I have some old files so I can look and see if I have anything. When we were looking at R2 they had 40-45 people and were looking to expand to 60 because of the extra work they were getting in. R2 was originally initiated out of CERDEC. Then in 2003, transferred it to the LRC. My personal feelings are it shouldn't be in the LRC. It should be in the Acquisition Center because it is a contract administration office. If it is contracts let the Contracting Center deal with it. If it is Logistics, let the LRC deal with it. It shouldn't be encroaching upon acquisition. That's an issue between , and I've mentioned it to . It would be nice to get those slots without paying for them. They are doing a great job and getting contractual actions in 21 days. was the one who made that decision way back. [That is when RDECOM came on the scene and we were divorcing from CECOM as it were.] I know the customers are mainly logistical rapid response to the warfighter but the Contracting Center is already responding probably because the Acquisition center's reputation precedes them as being too slow. And was probably aware of that and said let's put it in the LRC. They can handle that stuff.

But going back to the report, R2 was aware of it. We've had other reports where we issued drafts and never got responses from the activities and after awhile it gets delayed and in some cases OBE and it's like OK. So R2 is not the only one that didn't get issued. There have been a few others in my office. But none of them really has the possible implications as this one does because of the violations of the Economy Act. We haven't settled that and it is still a problem.

Q.: That's why I asked if the R2 and LRC commented because I was trying to find out if there is a later version of the report.

A.: That was the only version.

Q.: In my opinion, it sounds like all the right players were aware of the findings and recommendations of your report even though it wasn't issued as a final report.

A.: We even, I believe, outbriefed[Directir LRC Retired] normally we do the out-brief, it's actually a conference and then issue a report. I have to look and see. Do you have the report of findings? [I do] Can you go to the back and see if there is a paragraph that says exit conference? [Would that be before the signature? It goes from "Suggested Actions for the LRC" and "Suggested Actions for the G8". And then "thank you for participating" and then the last page is the command comments on the recommendations.] OK, but there's no command comments. [Just the G8 comments are there.] Ok so we probably issued that before . . . I have to look . . . What's the date of that? [May 7, 2008. I don't see anything that says you talked to[Directir LRC Re]] I have to look I think we did talk to him. I think we usually put that in the final report that we had an exit conference with all the activities. We did talk with Dave because the briefing charts I have (not with me) are dated late April 2008. And we showed our recommendations and I think the response we got back from R2 may have been after that. I have to look at the emails to get the right date. So like I said when we normally do the file we have a paragraph before we get to the general comments and after the general comments we have a paragraph called exit conference where we said we had an exit conference with Director LRC, R2 and G8. Since it's not in there . . . there was probably . . . at some point waiting for the final but it never came about.

STATEMENT OF CECOM IRAC Office Director TAKEN AT APG, MD DATED 2011/01/13

9. STATEMENT *(Continued)*

Q.: Do you know of any other persons who might have useful information that I should speak with?
A.: I suggest you speak with the audit team.
Q.: I appreciate your time.

AFFIDAVIT

I, CECOM IRAC Office Director, HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 5. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

(Signature of Person Making Statement)

WITNESSES:

ORGANIZATION OR ADDRESS

ORGANIZATION OR ADDRESS

Subscribed and sworn to before me, a person authorized by law to administer oaths, this _____ day of _____, _____ at _____

(Signature of Person Administering Oath)

(Typed Name of Person Administering Oath)

(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is PMG.

PRIVACY ACT STATEMENT

AUTHORITY: Title 10, USC Section 301; Title 5, USC Section 2951; E.O. 9397 Social Security Number (SSN).

PRINCIPAL PURPOSE: To document potential criminal activity involving the U.S. Army, and to allow Army officials to maintain discipline, law and order through investigation of complaints and incidents.

ROUTINE USES: Information provided may be further disclosed to federal, state, local, and foreign government law enforcement agencies, prosecutors, courts, child protective services, victims, witnesses, the Department of Veterans Affairs, and the Office of Personnel Management. Information provided may be used for determinations regarding judicial or non-judicial punishment, other administrative disciplinary actions, security clearances, recruitment, retention, placement, and other personnel actions.

DISCLOSURE: Disclosure of your SSN and other information is voluntary.

1. LOCATION	2. DATE (YYYYMMDD)	3. TIME	4. FILE NUMBER
Fort Monmouth, NJ ABERDEEN PROVING GROUND MD	2011/03/25	1000	

5. LAST NAME, FIRST NAME, MIDDLE NAME	6. SSN	7. GRADE/STATUS
CECOM IRAC Office Director		GS-14

8. ORGANIZATION OR ADDRESS

CECOM, ATTN: AMSEL-IR, Bldg. 6001, Suite C1110, Rm. C1109, Aberdeen Proving Ground, MD 21005-0001

9.

I, CECOM IRAC Office Director, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

Q. Tell me about the AAA request to review the R2 Office and its use of flat fees for contracting services.

A. On 2 June 2008, I was notified by AMC IR Office, of an audit by the AAA entitled "Audit of Flat Fees for Contracting and Contract Management Services." I notified that the CECOM IR Office was currently working on a review of the R2 Office charging a flat fee and it would be a duplication of effort if the AAA did another audit of R2's fees. I also notified SES Director for LRC, and G8, about the email I sent to supported my response to AMC.

On 10 June 2008, I notified Mr. , AMC IR Office, regarding the response to was on a lengthy TDY and all work was redirected to

On 23 June 2008 AAA, notified , Audit Liaison for the CECOM IR Office, about a request for an entrance conference on their audit. I replied to on 24 June with the results of the CECOM IR Office review of R2. The results I supplied were those in the draft report.

On 19 August 2008, I received an email from , G8 Office which included 's response to the CECOM IR recommendations to the IR Draft Report on R2. This was the first time we were notified that the G8 (i.e., took issue with the R2 fee collection process.

On 3 September 2008, , AAA, sent an email to that included a request from , SES Deputy Auditor General for AAA that they wanted to include in their report "results of the CECOM IR audit that would be available if the Under Secretary wanted a copy." On 4 September 2008, responded to David Petro indicating that IR completed an internal review at the local level and did not want to include the aforementioned statement because the review was requested by local management.

On 18 September 2008, AAA issued a draft report on "Flat Fees for Contracting Management Services." The Executive Summary of the draft report stated that the R2 Office periodically adjusts the rate it charges to reflect annual costs and returns excess funds collected back to its customers." The Executive Summary also included a reference that the CECOM IR Office had an on-going review of the R2 Office and that the IR staff had explained that the scope of their review included the propriety of fees charged by the project office and their report would address the findings and recommendations.

On 23 February 2009, the AAA issued their final report and reiterated the comments about the CECOM IR Office which were previously stated in their draft report.

Q. Is there anything else you wish to add that may be relevant to this investigation?

A. Yes for two different areas. The first area is in regards to AAA's request to review the R2 Office. When my office was notified in early June 2008 about the upcoming AAA audit of flat fees, I had not received a formal response from (the G8) in regards to our draft report on our Review of the R2 Office. Once I did receive a response from on 19 August 2008, I

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT	PAGE 1 OF 3 PAGES
	CECOM IRAC Office Director	

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF ____ TAKEN AT ____ DATED ____"

THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

TAB J-2

USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

STATEMENT OF CECOM IRAC Office Director TAKEN AT ~~Fort Monmouth, NJ~~ APG, MD (ABERDEEN PROVING GROUND, MD) DATED 2011/03/25

9. STATEMENT *(Continued)*

passed the information to (on 21 August 2008) who was our customer for the Review of the R2 Office. Being the Director of Internal Review, I have a moral and ethical responsibility to make sure that I protect the Command and PEOs. I have no responsibility to AAA unless they specifically request the information through their audits of command/PEO activities/programs. Also, we (R2, G8 and IR personnel) were resolving the issue in-house so that there was no need for outside interference. Since AAA had decided that they did not need to duplicate our efforts and conduct another audit of the R2 Office, I had no commitment to AAA on the above matter. In addition, when (AAA), notified (CECOM IR Office) on 3 Sep 2008, had not requested an updated status on the results of our review but merely wanted to add a statement in the draft report that our internal review report would be available.

The second area is in regards to the initiation and subsequent AR 15-6 investigation.

It is my opinion that the AR 15-6 investigation could have been avoided had the "whistleblower" contacted me or my office staff to obtain all of the relevant documentation that was obtained during our Review of the R2 Office plus whatever e-mails that I kept as part of my own personal records. The "whistleblower" would have realized that the R2 Office had made plans to go to an actual expense record by customer by using the SEC developed database. In addition, the "whistleblower" would have been privy to the 21 August 2008 e-mail from me to and where I provided an "informal" final report to both directors. As the IR Director, I have the latitude and flexibility to issue a "formal or informal" final report. In addition, my office's draft report on the Review of the R2 Office revealed no major problems with the R2 charging a flat fee or carrying over of $8.4 million from one fiscal year to the next fiscal year. In fact, my staff thought that charging a fee percentage was the most accurate method to base the R2 reimbursable rate.

By contacting me or my office, the "whistleblower" would have discovered that the lead evaluator on the Review of the R2 Office, with corroboration of the team members, prepared the draft report. The reviewer ensures that the contents and conclusions in the draft report are properly supported through workpapers that are maintained in the permanent file. On 8 May 2008, the draft report was issued via e-mail to the R2 Office and G8 Office. The e-mail stated "We really believe the fee percentage is the most accurate method to base the R2 reimbursable rate…" In addition, the draft report contained a paragraph on the R2 Office charging a percentage rate. In fact, the last sentence of that paragraph states "We agree with the R2 Project Office charging a percentage rate." Also, the draft report contains a paragraph titled FY 2006 Carryover Fees. This paragraph cites the fact that the R2 Office had carryover reimbursable fees from the prior fiscal year (2006) of about $8.4 million. The explanation that was given to the IR team was plausible and "was due to the prior fourth quarter expenses that didn't occur." Also, the draft report stated "The R2 Project Office is operating in a dynamic business environment that doesn't always allow for immediate management of income and expenses during a given period. In our opinion, R2 personnel are actively and effectively managing their business operations given the climate in which they operate."

Anyone who really reads the contents of the draft report, along with the other supporting emails, would conclude that the IR team felt that the R2 Office was operating properly, that the R2 Office was told they needed to capture actual costs by customer, that they were in the process of establishing the actual costs by customer, that the IR Director properly notified the LRC Director about the results of the review, that the LRC Director requested the creation of an In Process Team (to include members from the R2, G8 and IR Offices), and the LRC Director directed the R2 Office to follow the guidance provided by the G8.

Q. Is there anyone else that may have additional relevant information with whom I should speak?
A. No

CECOM IRAC Office Director

INITIALS OF PERSON MAKING STATEMENT

STATEMENT OF CECOM IRAC Office Director TAKEN AT ~~Fort Monmouth, NJ~~ APG, MD (ABERDEEN PROVING GROUND, MD) DATED 2011/03/25

CECOM IRAC Office Director

9. STATEMENT *(Continued)*

AFFIDAVIT

I CECOM IRAC Office Director, HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 2. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

CECOM IRAC Office Director

(Signature of Person Making Statement)

WITNESSES:

ORGANIZATION OR ADDRESS

ORGANIZATION OR ADDRESS

Subscribed and sworn to before me, a person authorized by law to administer oaths, this _____ day of _____, _____

at _____

(Signature of Person Administering Oath)

(Typed Name of Person Administering Oath)

(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT CECOM IRAC Office Director

SWORN STATEMENT

For use of this form. see AR 190-45; the proponent agency is PMG.

PRIVACY ACT STATEMENT

AUTHORITY: Title 10.USC Section 301; Title 5.USC Section 2951; E.O. 9397 Social Security Number (SSN).

PRINCIPAL PURPOSE: To document potentialcriminalactivity involving the U.S. Army, and to allow Army officials to maintain discipline. law and order through investigation of complaints and incidents.

ROUTINE USES: Information provided may be further disclosed to federal, state, local. and foreign government law enforcement agencies, prosecutors, courts, child protective services, victims, witnesses, the Department of Veterans Affairs, and the Office of PersonnelManagement. Information provided may be used for determinations regardi g judicialor non-judicial punishment, other administrative disciplinary actions, security clearances, recruitment, retention, placement, and other personnelactions.

DISCLOSURE: Disclosure of your SSN and other information is voluntary.

1. LOCATION	DATE (YYYYMMDD)	TIME	4. FILE NUMBER
Aberdeen Proving Ground, Maryland	2012/10/04	1330	
5. LAST NAME, FIRST NAME, MIDDLE NAME	6. SSN		7. GRADE/STATUS
CECOM IRAC Office Director			GS-14

8. ORGANIZATION OR ADDRESS

CECOM, ATTN: AMSEL-IR, Bldg. 6001, Suite C11O, Rm. C1109, Aberdeen Proving Ground, MD 21005-0001

9.

I. CECOM IRAC Office Director , WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

Q. What was your position within CECOM when the assessment of the Rapid Response (R2) Office in the 2007-2008 timeframe was conducted? What was your grade, job series, and how long had you held that position?
A. Director of the Internal Review Office; Grade GS-14; Job Series 0510; a little over one year (officially became Director on 1 Apr 2007)

Q. What was your office's role regarding the R2 Office's Reimbursable Rate Process Assessment in the 2007-2008 timeframe and how was that initiated?
A. CECOM LRC Director (RETIRED), SES Director of the Logistics and Readiness Center (LRC), had asked G8 to take a look at the R2 Office and how they set their reimbursable rates. Before proceeding there were discussions between G8 and IR and (G8 Director Retired) thought the review would be better suited in the IR Office and turned it over to us. Director LRC Retired then came forward on 2 Jan 2008 with an official request to have my office review the rates established by the R2 Office and the carryover of funds from one fiscal year to the next fiscal year were in accordance with regulations/statutes. Messrs. IRAC Office Senior Evaluator and IRAC Office evaluator were the field evaluators of the IR team assigned to perform the review. Mr. IRAC Senior Evaluator for Reviews took over as the team leader towards the end of the fieldwork portion of the review. The R2 Office is like a contract administration office. At the time they had eight service contracts in place for five years. If someone came to R2 and requested their contractual services and/or equipment, R2 personnel had the ability to award contracts within 21 days. The Contracting Officers and Specialists working for the R2 Office were from the former CECOM Contracting Center (now the Acquisition Contracting Center- APG). Their labor was totally reimbursable and they were dedicated to R2 full time.

Q. Was it a specific type of inquiry or audit?
A. It was a regular review. We are not considered to be auditors (under the eyes of the Army); therefore we do not perform audits. Since we are classified as Accountants (Internal Review Evaluators), we do reviews. Types of reviews are explained in AR 11-7.

Q. What is AR 11-7 and how does that AR govern your office?
A. AR 11-7, Internal Review Program, is basically our Bible, and contains policies for establishing and operating an internal review activity within an Army organization. The Oct 2007 edition was current at the time of our review.

Q. Do you believe the review was conducted in accordance with the provisions of AR 11-7? If not, which parts of AR 11-7 were not followed, what was the cause, and what was the impact on your findings and recommendations?
A. It is my opinion that the review was conducted IAW AR 11-7. All fieldwork was completed by the IR team. The review was never terminated. On 28 March 2008 we provided an exit briefing which included the results of our review to LRC Director Retired. We released a draft report with recommendations to the G8 and the LRC Directors. Responses were provided by both activities.

10. EXHIBIT 11. K RSON MAKING STATEMENT

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF _____ TAKEN AT _____ DATED

THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

STATEMENT OF CECOM IRAC Office Director TAKEN AT A PG; M D DATED 2012/10/04

I. STATEMENT *(Continued)*

In an email message dated 6 June 2008 and addressed to me, Mr IRAC Office Lead Evaluator, the lead evaluator on the review, stated "the r2 files/work papers are all complete, reviewed, sign-off'ed and draft report cross-referenced."CECOM G8 RETIRED had non-concurred with both of our recommendations that stated it was okay to charge a flat percentage and carryover funds depended on the type offunds. CECOM G8 Retired had stated that the R2 Office needed to document the actual expenses incurred for each customer and to charge each customer accordingly in order not to violate the Economy Act. Since 08 is the proponent for funding policies, he had the tinalword. I conveyed the comments from CECOM G8 Retired to Director LRC Retired in an email dated 21 Aug 2008. Other addressees in the email included Mr. CECOM IRAC Office Senior Lead Evaluator and the IR team members, R2 Office staff and an LRC Associate Director. Since Mr. Director LRC Retired requested my office to perform the review, he became my primary customer. My email dated 21 Aug 2008 served as my "informal" final report. Per AR 11-7, a final report can be released through informal communication (e.g., email). Mr. CECOM IRAC Office Senior Lead Evaluator probably never realized that the email served as our final report. Also, it was our policy (from my previous director) that all reports would be issued to the customer who requested the review. It never went any higher unless there were major issues. I didn't feel that the results of our review were major. Paragraph 5-2a of AR 11-7 (dated Oct 2007) states "Different forms of reports include formal written reports, memorandum, briefing slides, or other presentation materials" while paragraph 5-2b states "The purpose of review reports are to -(I) Communicate the results of reviews to those charged with governance, the appropriate officials of the reviewed entity, and the appropriate oversight officials. Mr. Director LRC Retired was the appropriate official of the reviewed activity while Mr. CECOM G8 Retired was the appropriate oversight official when it came to fund ing policies. Periodic updates from May 2008 through July 2009 were provided to , who was the CECOM Chiefof Staff at the time of the review. Also, I informedthe AMC IR Director that my office had been working on a review of the R2 Office. In hindsight, if we were to do this review again, I would make sure that I and the IR team met with the Director ofG8 during the fieldwork phase of the review and get her viewpoints/decisions when it came to charging a flat percentage fee. I would also research other audits that covered the same subject to determine if there were any precedents already established.

Q. Communicating with management throughout an assessment is important? Please describe the frequency and content of communication with this assessment. Where are these communications documented?
A. Pertinent communications, as documented via Memorandums for Record, are made part of our workpaper files which are stored his rationale for his response.

Q. What does the AR state regarding the distribution of reports? Is there guidance within the AR which governs release or non -release of the reports? If so, where is this stated within the AR? Did this guidance come into play? If so, what led to the conclusion to release or not release the final report? Although the report was not released as a final document, was the draft report to include reporting reviews of responsible officials ever made available to an internal or external audit tracking system? If so, which one? Are there any prohibitions in submitting a draft report to this system?
A. Chapter 5 of the October 2007 edition of AR 11-7 contains reporting standards. The official files are kept in SharePoint and are available to the IR Office staff. The older official files are also maintained on DVDs.

Q. Who in your chain of command received executive summaries, verbal updates, briefings, e-mails, or any other form of communication on the status and findings regarding this inquiry or audit?
A. I would discuss relevant issues involving my office during periodic meetings with, CECOM Chief of Staff and my immediate superior. I would send my proposed topics to in advance of the meetings. The Review of the R2 Office was discussed with on the following dates 14 May 2008, 8 July 2008, 25 August 2008, 28 October 2008, 22 December 2008, 6 January 2009, 6 March 2009, 14 April2009 and 13 July 2009. Also, in September 2009, I informed Director of AMC IR at the time, that we had been doing a Review of R2 chargi.ng flat fees and provided her a synopsis of what we found and what recommendations we made to the appropriate directors.

Q. This review covered the period of2007-2008 is that correct? In planning a review, evaluators will ask management of the reviewed entity to identify previous reviews, performance audits, or other studies that directly relate to the objectives of a review, including whether recommendations from previous assessments have been implemented. Was this discussed with the R2 Project Office? Were previous reviews identified? If so, what were the timeframes, the objective of the reviews, and the findings and recommendations?

USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED,PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

STATEMENT OF TAKEN AT APG, MD DATED 2012/10/04

9. STATEMENT *(Continued)*

A. During our Review of the R2 Office, we looked at funds carried over from FY 2006 to FY 2007. We looked at the entire FY 2007 receipt and distribution of funds. There were no other reviews/audits performed on the R2 Office and that was probably conveyed to the R2 Office participants during our formal entrance conference that included personnel from R2, G8 and IR Offices.

Q. It is customary that supervisory review of the documentation gathered and generated be completed before the review report is issued. Was this accomplished? What feedback did you give and how did this feedback affect the evaluator's initial findings and recommendations?

A. As eval uators performed their reviews, they usually gave me verbal updates during the reviews. I entrusted my staff to perform their reviews per AR 11-7 and DA Internal Review Evaluator Standards. I felt no need to distrust my staff to go out and seek answers in order to answer our objectives. I gave guidance and questioned whether the evaluators had obtained the necessary information from the audited activities. The evaluators then prepared the draft report since they were intimately involved in the review. I reviewed the report for its accuracy and its clarity (from a writing style). if questions arose, I would look at the documentation in the files. I concurred and my feedback did not affect the evaluators' findings and recommendations as evidenced when Mr. CECOM IRAC Office Senior Lead Evaluator released the draft report to the R2 Office and G8 Office. Mr. CECOM IRAC Office Senior Lead Evaluator stated in his 8 May 2008 email "We really believe the fee percentage is the most accurate method to base the R2 reimbursable rate." In addition, when Mr. CECOM IRAC Office Senior Lead Evaluator prepared the draft report, he wrote "We agree with the R2 Project Office charging a percentage rate." On 6 June 2008, Mr. CECOM IRAC Office Senior Lead Evaluator sent an email message to me stating "the r2 files/workpapers are all complete, reviewed, sign-off'ed and draft report cross referenced." After the email I then reviewed the files to verify Mr. CECOM IRAC Office Senior Lead Evaluator's statement. Since they were completed, I did not need to make any further statements/comments regarding the work papers. The draft report contains a paragraph titled FY 2006 Carryover Fees. This paragraph cites the fact that the R2 Office had carryover reimbursable fees from the prior fiscal year (2006) of about $8.4 million. The explanation that was given to Mr. CECOM IRAC Office Senior Lead Evaluator and the TR team was plausible and "was due to the prior fourth quarter (FY 2006) expenses that didn't occur." The draft report, which was initially composed by Mr. CECOM IRAC Office Senior Lead Evaluator, also stated "The R2 Project Office is operating in a dynamic business environment that doesn't always allow for immediate management of income and expenses during a given period. In our opinion, R2 personnel are actively and effectively managing their business operations given the climate in which they operate." There is no reference from Mr. CECOM IRAC Office Senior Lead Evaluator anywhere in the work papers, draft report, or emails that specifies finding any problems of how the R2 Office was operating by charging a percentage fee to be reimbursed for its operations or by carrying over too much funds from one fiscal year to the next fiscal year. I simply concurred with his statements.

Q. During the period of assessment, the Army Audit Agency was embarking on a similar assessment regarding the use of flat fee contracting services. Who was the Army Audit Agency Point of Contact and how may they be reached (telephonically or via e -mail)? Please describe the interaction between your office (or individuals within your office (Mr. John Riley)) and AAA personnel at this time. What was discussed, what was the outcome of the discussions, and what evidence exists which documents the course(s) of action taken?

A. On 2 June 2008, I was notified by , AMC IR Office, of an audit by the AAA entitled "Audit of Flat Fees for Contracting and Contract Management Services." I notified Mr. that the CECOM IR Office was currently working on a review of the R2 Office charging a flat fee and it would be a duplication of effort if AAA did another audit of R2's fees. I also notified Director LRC Retired and CECOM G8 Retired about the email I sent to Mr. Jio. Mr. Director LRC Retired supported my response to AMC. On 10 June 2008, I notified , AMC IR Office, regarding the response to who was on a lengthy TDY and all work was redirected to . On 23 June 2008, AAA, (Phone number 301-xxx-xxxx, email, .civ@mail.mil) notified Mr. , AAA Audit Liaison for the CECOM IR Office, about a request for an entrance conference on their audit. As the IR director and the person most familiar with the Review of the R2 Office, I contacted Mr. AAA Auditor on 24 June 2008 and provided the results of our Review of R2. The results I supplied were included in the draft report which did not contain any responses from LRC or G8. On 19 August 2008, I received an email from Mr. , G8 Office, which included CECOM G8 Retired's response to the CECOM IR recommendations to the I R Draft Report on R2. This was the first time we (my office) were notified that Mr. CECOM G8 Retired took issue with the R2 fee collection process and carryover of funds. On 21 August 2008 I passed the information to Mr. Director LRC Retired who was our customer for the Review of the R2 Office. Being the director of internal Review, I have a moral and ethical responsibility to make sure that I protect the Command and PEOs. I have no responsibility to AAA unless they specifically request the information through their audits of command!PEO activities/programs. Also, we (R2, G8 and IR personnel) were resolving the issue in-house so that there was no need for outside irnterference. Since AAA had decided that they did not need to duplicate our efforts and conduct another audit of the R2 Office, I had no commitment to AAA on the matter. In addition, when Mr. AAA AUditor (AAA) notified (CECOM IR Office) on 2 Sep 2008, AAA AUditor had not requested an updated

INITIALS OF PERSON

9. STATEMENT *(Continued)*

The email, that Mr. AAA AUDITOR sent M, included a request from Mr., SES Deputy Auditor General for AAA, who wanted to include in their report "results of the CECOM IR audit that would be available if the Under Secretary wanted a copy." On 4 September 2008, responded to AAA Auditor indicating that IR completed an internal review at the local level and did not want to include the aforementioned statement because the review was requested by local management. On 18 September 2008, AAA issued a draft report on "Flat Fees for Contracting Management Services." The Executive Summary of the draft report stated that the R2 Office periodically adjusts the rate it charges to reflect annual costs and returns excess funds collected back to its customers." The Executive Summary also included a reference that the CECOM IR Office had an on-going review of the R2 Office and that the IR staff had explained that the scope of their review included the propriety of fees charged by the project office and their report would address the findings and recommendations. On 23 February 2009, the AAA issued their final report and reiterated the comments about the CECOM IR Office which were previously stated in their draft report.

Q. Since the conclusion of this assessment, please describe the audit follow-up(s) that have occurred.
A. We have not performed any follow-ups of the R2 Office. Since an In Process Team had been established with members of R2, G8 and IR Offices, and we were working on a resolution to correct the problems, I felt that a follow-up was not needed. In addition, another IR Office within AMC would have had to do a follow-up since my staff members were part of the Team and if we did the follow-up, we would have a conflict of interest.

Q. Please explain what the Internal Review Management System is? Is this tool used by your office or do you employ an equivalent management system?
A. The Internal Review Management System is a timekeeping system used by all members of Internal Review Offices within the U.S. Army. From this system, we generate reports that identify how much of our work time (direct) is devoted to performing reviews and how much time is devoted to management and administrative (to include leave, training, TDY, etc) functions. We used to compile the reports on a semi-annual basis, report up to AMC and eventually would be reported to Congress (per the Inspector General Act of 1978). Somewhere along the way, we were told not to prepare/submit the reports. However, we still record our work time into the system since it is a good management system for me to use.

Q. When, by what organization, and who conducted the last external review of the IR Office? When and who conducted the annual self-evaluation during the period 2007-2008? Were issues of compliance identified in either assessment? If so, what corrective actions were taken? Have additional reviews substantiated the corrective actions are working? Please provide supporting documentation.
A. Ms Director of AMC Internal Review Office, performed a Quality Assurance (QA) review of our operations in September 2010. QA reviews are required every three years. The previous QA review was performed in September 2004. Due to staffing issues within AMC IR, change of directors within CECOM IR Office (previous director retired in August 2006, I became the director in April 2007), and my misunderstanding of the requirements (I was required to ask for a QA review) which I did not find out until July 2009, the QA review was not performed until September 2010. Since the QA review looked at files completed during FY 2010, the Review of the R2 Office was not included in the QA review. Issues of compliance were addressed and were not identified as a major problem as reviewed work paper files for completed reviews. QA results were submitted to me in June 2011 before she retired. The next QA review is scheduled for September 2013.

Q. Is there anyone else who might have useful information that I should talk with?
A. No recommendation.

For the record, I would like to make the following comments which are in regard this AR 15-6 investigation.

It is my opinion that the AR 15-6 investigation could have been avoided had the "whistleblower" contacted me, Mr. CECOM IRAC Office Senior Lead Evaluator or other members of my office staff to obtain all of the relevant documentation that was processed during our Review of the R2 Office plus whatever e-mails that I kept as part of my own personal records. The "whistleblower" would have realized that the R2 Office had made plans to go to an actual expense record by customer by using the SEC developed database. In addition, the "whistleblower" would have been privy to the 21 August 2008 e-mail that I sent to Mr. Director LRC Retired and Mr. CECOM G8 Retired where I provided an "informal" final report to both directors. As the IR Director, I have the latitude and flexibility to issue a "formal or informal" final report.

9. STATEMENT *(Continued)*

In addition, Mr. CECOM IRAC Office Senior Lead Evaluator in his composition of the draft report on the Review of the R2 Office revealed no major problems with the
R2 charging a flat fee or carrying over $8.4 million from one fiscal year to the next fiscal year. In fact, on 8 May 2008, Mr. CECOM IRAC Office Senior Lead Evaluator released the draft report via an e-mail message to the R2 Office and G8 Office. Mr. CECOM IRAC Office Senior Lead Evaluator stated in his email message "We really believe the fee percentage is the most accurate method to base the R2 reimbursable rate." By contacting me or my office, the "whistleblower" would have discovered that Mr. CECOM IRAC Office Senior Lead Evaluator, the lead evaluator on the Review of the R2 Office, with corroboration of the team members, prepared the draft report. The reviewers (team leader and I) ensured that the contents and conclusions in the draft report were properly supported through work papers that are maintained in the permanent file. Anyone who reads the contents of the draft report, along with the supporting emails, would conclude that: (i) theIR team felt that the R2 Office was operating properly; (ii) the R2 Office was told they needed to capture actual costs by customer; (iii) the R2 Office was in the process of establishing the actual costs by customer; (iv) the IR Director properly notified the LRC Director about the results of the review; (v) the LRC Director requested the creation of an In Process Team (to include members form the R2, G8 and IR Offices); and (vi) the LRC Director directed the R2 Office to follow the guidance provided by the G8.

Lastly, once we received the formal response from Mr. CECOM G8 Retired that he non-concurred with our recommendations to charge a flat percentage fee to each customer and the proper carryover of funds from one fiscal year to the next fiscal year, I, as Director of the IR Office, felt that my IR team had not exercised due diligence during the review. Although the IR team had met and questioned the G8 staff on their thoughts about charging a flat fee, they did not seek any communication with Mr. CECOM G8 Retired who has the final say on funding policies.

AFFIDAVIT

I, *CECOM IRAC OFFICE DIRECTOR.* HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE . I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY
THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR NLAW,fUL INDUCEMENT.

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this _____ day of
at _____

ORGANIZATION OR ADDRESS

(Signature of Person Administering Oath)

(Typed Name of Person Administering Oath)

ORGANIZATION OR ADDRESS

(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT

SWORN STATEMENT

For use of this form, see AR 190-45; the proponent agency is PMG.

PRIVACY ACT STATEMENT

AUTHORITY: Title 10, USC Section 301; Title 5, USC Section 2951; E.O. 9397 Social Security Number (SSN).

PRINCIPAL PURPOSE: To document potential criminal activity involving the U.S. Army, and to allow Army officials to maintain discipline, law and order through investigation of complaints and incidents.

ROUTINE USES: Information provided may be further disclosed to federal, state, local, and foreign government law enforcement agencies, prosecutors, courts, child protective services, victims, witnesses, the Department of Veterans Affairs, and the Office of Personnel Management. Information provided may be used for determinations regarding judicial or non-judicial punishment, other administrative disciplinary actions, security clearances, recruitment, retention, placement, and other personnel actions.

DISCLOSURE: Disclosure of your SSN and other information is voluntary.

1. LOCATION	2. DATE (YYYYMMDD)	3. TIME	4. FILE NUMBER
Aberdeen Proving Ground, Maryland	2013/01/09	1100	

5. LAST NAME, FIRST NAME, MIDDLE NAME	6. SSN	7. GRADE/STATUS
DIRECTOR CECOM IRAC OFFICE		GS-14

8. ORGANIZATION OR ADDRESS

CECOM, ATTN: AMSEL-IR, Bldg. 6001, Suite C1110, Rm. C1109, Aberdeen Proving Ground, MD 21005-0001

9.

I, DIRECTOR CECOM IRAC OFFICE, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

Q. In your previous sworn statement, you provided an overview of AR-11-7 and the process the CECOM IR Office followed with regard to conducting the Review of the R2 Project Office. I'd like to follow-up this statement. A draft final report was released for review and comment. Please explain why you believe this report met the requirements of AR 11-7 reporting and why you felt the draft report should be considered as the final report.

A. Chapter 5 of AR 11-7 (26 Oct 2007 edition) titled Reporting Standards, provides the requirements for reports. Paragraph 5-2a states "Evaluators must issue reports communicating the results of each completed review." We met this requirement when we issued our draft report that was in writing, communicated the results of our review and was provided to appropriate officials (LRC and G8 directors). Paragraph 5-3 of AR 11-7 states the review reports should contain: objectives, scope, methodology, review results (including findings, conclusions and recommendations), statement about the evaluators compliance with standards, and summary of views of responsible officials. All of the aforementioned was contained in our draft report and conveyed to appropriate officials via email. We made recommendations to G8 and LRC. We provided the responses from G8 to LRC and the responses from LRC to G8 in emails. A final report would cover all of those elements. I covered the entire contents of the reporting process through emails, albeit, piecemeal. DIRECTOR CECOM LRC was our customer since he had asked my office to do the review. I felt that I had answered DIRECTOR CECOM LRC concerns via draft report and emails. In hindsight, I probably should have finalized the report after my e-mails to DIRECTOR CECOM LRC. It is my opinion that the draft report plus the responses from both LRC and G8 directors and the email to DIRECTOR CECOM LRC constitute the final report. Also, in an email dated 6 June 2008, Mr SENIOR IRAC OFF wrote to Mr. D'Orazio and copied Messrs Albietz and CECOM IRAC OF, "Dom, the r2 files/workpapers are all complete, reviewed, sign-off'ed and draft report cross referenced. Mike P.S. Thanks Dan and Rich – another job well done." As you can see there was no mention that we had not received any responses nor did we finalize the report which both are required to have workpapers prepared, reviewed and cross -referenced. Based on the allegation that a final report was not issued, I would say that Mr. SENIOR IRAC OF lied when he stated that the files/workpapers were all complete. For Mr. SENIOR IRAC OFF to claim that the files/workpapers were all complete would indicate that he was not concerned that a final report was not issued. So are we in compliance with AR 11-7? I say that we are. The draft report, responses and the email (to DIRECTOR CECOM LRC constitute the final report.

Q. Mr. SENIOR IRAC OFF alleges that misinformation was provided to the Army Audit Agency (AAA) which at the time of the CECOM IR review was conducting a review of Flat Fees for Contracting and Contract Management Services. Please explain CECOM IR's interaction with the AAA to include what specific information was provided to the AAA which offered them the opportunity to render a position in regards to the CECOM IR effort. Was an offer made to AAA to provide access to the files of the CECOM IR effort? If so, were the files provided? If not, what was the rationale of the AAA to not use the files? During this period, what was the interaction between you and the CECOM IR review leads of the R2 review regarding the discussion with the AAA?

10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT	PAGE 1 OF 1 PAGES
	DIRECTOR CECOM IRAC OFFICE	

ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF _____ TAKEN AT _____ DATED _____

THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.

USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

STATEMENT OF DIRECTOR CECOM IRAC OFFICE TAKEN AT APG, MD DATED 2013/01/09

9. STATEMENT *(Continued)*

A. The alleged erroneous information given to the AAA auditors centered on the R2 Office returning some of the reimbursable funds back to their customers. I provided the information from the results of our review of the R2 Office (fieldwork was done from January through March 2008) to the AAA auditors for their audit of Flat Fees for Contracting and Contract Management Services. The information (returning funds) originated from an informal discussion that I had with Messrs. SENIOR IRAC OFF and CECOM IRAC O about their review of the R2 Office. As the director of the Internal Review Office, I rely heavily on my evaluators' assessments and information that they gather during their reviews. I did not know anything about R2 returning funds until Messrs. SENIOR IRAC n and CECOM IRAC O told me. Mr. SENIOR IRAC OFF used his professional judgment when he didn't include the returning of funds into drafting the audit report. Paragraph 3.33 of the GAO Yellow Book Standards (dated July 2007) states "Using the auditors' professional knowledge, skills and experience to diligently perform, in good faith and with integrity, the gathering of information and the objective evaluation of the sufficiency and appropriateness of evidence is a critical component of audits. Professional judgment and competence are interrelated because judgments made are dependent upon the auditors' competence." If the allegation is that the information was erroneous, then I would question Mr. SENIOR IRAC OFFIC professional judgment and competence. Chapter 3 of AR 11-7 also deals with "Professional Judgment" and states that "Professional judgment includes exercising reasonable care and professional skepticism. Reasonable care concerns acting diligently in accordance with applicable professional standards and ethical principles. Professional skepticism is an attitude that includes a questioning mind and a critical assessment of evidence. Professional skepticism includes a mindset in which evaluators assume neither that management is dishonest nor of unquestioned honesty. Believing that management is honest is not a reason to accept less than sufficient appropriate evidence." If R2 management (I believe R2 Project Office made a similar statement in her testimony) had stated that they return funds to their customers, I, as an evaluator having professional skepticism, would have asked for documentary evidence of funds returned. I reviewed the workpapers that we have on file for our Review of the R2 Office; I could not find any file with such evidence (e.g., a Military Interdepartmental Purchase Request (MIPR)). I did find one workpaper that contained a spreadsheet that mentioned that funds were returned but no additional documentation to support that comment. In June 2008, I received a telephone call from , AAA, about the AAA Audit. I told , that my office had spent the last three months looking at R2's reimbursable rate and whether it was appropriate. The review was requested by DIRECTOR CECOM LRC an SES and the Director of the CECOM LRC. The LRC has overall responsibility of the R2 Office. DIRECTOR CECOM LRC wanted to make sure that the R2 Office was charging their reimbursable rate per appropriate regulations/statutes. We had determined that the rate is based on R2's forecasted income and expenses over the course of a fiscal year and the best way that they could charge the customers were through a flat rate. We also recommended that the R2 Office review their income and expenses on a quarterly basis and adjust their rate if appropriate and have it approved by the G8 Office. To do another review in this area would duplicate what my office had done plus affect the R2's workload in having to deal with another audit agency audit. I suggested to that AAA can come and look at our workpapers or we could send our entire set of workpapers to them since they were paperless. I sent an email message on 2 June 2008 to Messrs. DIRECTOR CECOM LRC and DIRECTOR CECOM G8 about my conversation with AAA. In the email message I mentioned that I sent a separate email message to , the HQ AMC IR Director (at the time) with the same information. It was during my telephone conversation with that I mentioned about R2 returning some of the funds back to their customers. Although I offered to provide our workpapers on our review of the R2 Office, AAA never contacted me for them. AAA did include in their audit report that they had contacted my office and that we had done a review of the R2 Office's rates. From my discussion with , it was revealed to me that AAA was trying to determine what activities and how many activities were charging flat fees and the applicable statutes that governed the flat fees. I conveyed my discussion with to the IR team (Messrs. SENIOR IRAC n and CECOM IRAC OFF performing the review of the R2 Office.

Q. A critical point regarding the CECOM IR review is the issue regarding whether or not the R2 Project Office was refunding costs in 2007 and 2008. Please explain what the CECOM IR review team's findings were and what actions (to your knowledge) were taken by the R2 Office to address this concern of Economy Act or Anti-Deficiency Violations. When did this issue first come to light during the review?

A. As I stated previously, the issue of the R2 Office returning funds to their customers originated from an informal discussion that I had with Messrs. SENIOR IRAC OF and CECOM IRAC O during their review of the R2 Office. As the director of the Internal Review Office, I rely heavily on my evaluators' assessments and information that they gather during their reviews. Information gathered during the review phase is often discussed with me in a formal setting, as well as, an informal setting. When we start any review, we research the appropriate statutes, regulations and local policies that pertain to the area that we are reviewing. In the case of the R2 Office charging fees, there are local and Army regulations, as well as, the Economy Act.

INITIALS OF PERSON MAKING STATEMENT DIRECTOR CECOM IRAC OFFICE

STATEMENT OF DIRECTOR CECOM IRAC OFFICE TAKEN AT APG, MD DATED

9. STATEMENT *(Continued)*

The local reimbursable rate policy includes the same and other regulations such as the Economy Act. So when did we know about : Economy Act? We should have realized that the Economy Act would be applicable to our review at the onset of our review (approximately mid January 2008). In addition, CECOM IRAC SENIOR EVA received an email (on 20 March 2008) from R2 Project Officer which stated "Here is the re-validation from legal on the Economy Act." Attached to the email message was the legal opinion covering "Fee for Service Charges". CECOM IRAC SENIOR EVA prepared the initial version of the draft report. There was no mention of the Economy Act because CECOM IRAC SENIOR EVA did not consider it to be an issue with the R2 Office. Otherwise, he would have written a paragraph on how the R2 Office was violating the Economy Act. And I would have seen it in the report when I reviewed the draft report. In addition, CECOM wrote in his initial version of the draft report (Results paragraph of Objective B) "In addition, we examined the R2 legal and acquisition expenses paid during FY 2007 and were also able to accurately identify those expenses in SOMARDS. As a result, we are confident the R2 Project Office is accurately accounting for incoming funds and operating expenses. In the subparagraph titled "FY 2007 Contract Obligation", CECOM IRAC SENIOR EVA wrote "The R2 Project Office also provided us with documentation to verify that R2 and G8 personnel were conducting joint reviews and reconciliations of open contract obligations on a quarterly basis. Based on our analyses and support documentation obtained we determined that the R2 office is properly accounting for all customer contract obligations and their associated reimbursable fees." In the subparagraph titled "FY 2007 Operating Expenses", CECOM IRAC SENIOR EVA wrote "Based on our analyses and documentation received we determined the R2 office is properly accounting for their operating expenses." In the subparagraph titled "FY 2006 Carryover Fees", CECOM IRAC SENIOR EVA wrote "Although R2's $8.4 million carryover in FY 2007 is in excess of two quarters, personnel told us the excess carryover was due to prior year fourth quarter expenses that didn't occur. The R2 Project Office is operating in a dynamic business environment that doesn't always allow for immediate management of income and expenses during a given period. In our opinion, R2 personnel are actively and effectively managing their business operations given the climate in which they operate. Guidance regarding the amount of funds reimbursable activities can carry over from fiscal year to fiscal year is generally vague." In an email message (dated 29 April 2009) from CECOM G8 IPT Team Lead (G8 Office), he states "In the attached memo R2 has indicated that G8 has answered all of its questions and understands G8's requirements. Therefore, temporarily this IPT does not have to continue meeting. As you can see from the attached memo R2 is in the process of updating its fee estimation model and ordering new software. This process is estimated to take approximately 9 months. When complete the R2/G8 IPT team will reconvene and review the R2 progress. I wanted to take a moment to thank all of you who worked on this R2/G8 action. This was quite a challenging effort, one that included input from the LCMC Legal Department, Acquisition Center, Internal Review, R2 and G8."

AFFIDAVIT

I, DIRECTOR CECOM IRAC OFFICE, HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE _____. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUE

DIRECTOR CECOM IRAC OFFICE

(Signature of Person Making Statement)

WITNESSES:

ORGANIZATION OR ADDRESS

ORGANIZATION OR ADDRESS

Subscribed and sworn to before me, a person authorized by law to administer oaths, this _____ day of _____, _____ at _____

(Signature of Person Administering Oath)

(Typed Name of Person Administering Oath)

(Authority To Administer Oaths)

IALS OF PERSON MAKING STATEMENT

K

DEPARTMENT OF THE ARMY
HEADQUARTERS, U.S. ARMY COMMUNICATIONS-ELECTRONICS COMMAND,
PROGRAM EXECUTIVE OFFICE COMMAND, CONTROL AND COMMUNICATIONS TACTICAL
AND FORT MONMOUTH
FORT MONMOUTH, NEW JERSEY 07703-5000

REPLY TO
ATTENTION OF

AMSEL-CP 14 DEC 2004

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Reimbursable Order Process

1. Purpose. This memorandum establishes the Communications-Electronic Life Cycle Management Command (CE-LCMC) Reimbursable Process in accordance with statutory and Department of Defense (DoD) and Department of the Army (DA) policies, to ensure uniform and proper practices among command elements in charging reimbursable rates, and the associated transfer of charges. This memo summarizes existing statutory and regulatory guidance and discusses proper procedure regarding reimbursable relationships.

2. Existing Policy.

a. In accordance with governing laws and regulations, CE-LCMC activities will not augment appropriations with funding from outside sources without specific statutory authority.

b. CE-LCMC organizations will not charge any fees, administrative costs, overhead, direct cost, indirect costs, ordering fees, base support, contracting costs or any other category of charges either as a "standard" percentage rate or dollar amount outside of CE-LCMC established reimbursable rates to any ordering activity without DCSRM review and approval.

3. Augmentation. This is an action by an agency that increases the effective amount of funds available in an agency's appropriation. This generally results in expenditures by an agency in excess of the amount originally appropriated by Congress. Generally, an agency may not augment its appropriations from outside sources without statutory authority. An Antideficiency Act violation may occur if an agency retains and spends funds received from outside sources, absent statutory authority.

a. Augmentation normally violates one or more of the following provisions:

(1) The United States Constitution, Article I, Section 9, Clause 7: "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular

Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time."

(2) The "Purpose" Statute, 31 U.S.C. § 1301(a) (2004): "Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law."

(3) The "Miscellaneous Receipts" Statute, 31 U.S.C § 3302(b) (2004): "Except as otherwise...provided an official or agent of the government receiving money for the government from any source shall deposit the money in the Treasury as soon as practical without any deduction of any charge or claim."

b. Examples of Augmentation:

(1) Augmentation may occur when one appropriation is used to pay costs associated with the purposes of another appropriation. This would violate the Purpose Statute.

(2) Augmenting an appropriation by retaining government funds received from another outside source without depositing those funds in the Treasury. This would violate the Miscellaneous Receipts Statute.

c. The following are some of the most frequently used statutory exceptions to the Miscellaneous Receipts Statute:

(1) The Economy Act, 31 U.S.C. §1535 (2004). This authorizes interagency and intraagency orders and allows activities to retain funds without depositing those funds in the United States Treasury. The ordering agency must reimburse the performing agency for the actual costs of supplying the goods and services. CE-LCMC organizations will use their established reimbursable rates as the actual cost for "performing activity" workyear charges. An Economy Act order citing an annual or multiyear appropriation must serve a bona fide need arising, or existing in, the fiscal years for which the appropriation is available for obligation. The work to be performed under Economy Act orders shall be expected to begin within a reasonable time after its acceptance by the servicing activity. The requesting activity should ensure in advance of placing an order that such capability exists. The term "Economy Act" should be referenced on the order, and the reimbursable workyear rate and total cost should be annotated separately from any contract or other type costs included on incoming and outgoing orders.

(2) The Project Order Statute, 41 U.S.C. § 23 (2004). This statute applies to transactions between military departments and DOD government-owned-government operated (GOGO)

establishments for work related to military projects. These GOGO facilities include shipyards, arsenals, ordnance plants, manufacturing or processing plants or shops, equipment overhaul or maintenance shops, research and development laboratories, testing facilities and proving grounds which are owned and operated within DoD. Unlike Economy Act Orders, Project Orders cannot be used outside of DoD and may remain open until the work is done. Project Orders cannot be used instead of Economy Act Orders to extend the life of an appropriation. When placed with, and accepted, by a separately managed DoD establishment, the project order serves to obligate appropriations. The term "Project Order" should be referenced on the order, as well as an adequate description of the work to be performed. At time of acceptance, there must be evidence that the work will commence within a reasonable time. DoD has adopted the Army 90 day standard as reasonable time.

(3) Working Capital Funds, 10 U.S.C. § 2208 (2004). This authorizes the establishment of working capital funds to finance inventories of supply and provide working capital for the operation of certain activities. The receiving activity must reimburse the funds for the cost of goods or services when provided.

(4) Military Leases of Real or Personal Property, 10 U.S.C. § 2667(d)(1) (2004). Rentals received pursuant to leases entered into by a military department may be deposited in special accounts for the military department and used for construction of new facilities, facility maintenance, protection, alteration, repair, improvement or environmental restoration, lease of facilities and facilities operation support. All leases are managed and negotiated by the appropriate installation Garrison and Corp of Engineers proponents where CE-LCMC activities reside.

4. Proper Reimbursable Procedure.

a. Military Interdepartmental Purchase Requests (MIPRs), DD Form 1144, Support Agreements, or other agreed upon contractual formats for intragovernmental support, must have complete description to identify service ordered, quantities, unit prices, period of performance, and basis for order.

b. Customer orders must be received prior to work performed.

c. Timely transfer of charges is required in the accounting system to ensure customers' work is not financed with direct funds.

d. A tracking/feedback system must be in place to record work performed for each customer.

e. Where possible, administrative/management fees for contract administration should be consolidated to prevent burden and cost to the accounting system.

f. For the transfer of charges process, each pay period:

(1) Ensure dollars and hours of reimbursable effort are properly reported against direct and/or reimbursable JOAN(s).

(2) Complete transfer of charges based on actual labor costs reflected in the appropriate accounting system.

(3) Complete transfer of charges for other than labor costs (travel, supplies).

g. Performing activities will notify ordering activities when the value of the order exceeds funding needs prior to completion of orders.

h. Upon completion of orders or at the end of the period the appropriation is available for new obligations, **the performing activity will reduce orders accordingly and return excess funds to the ordering activity**.

i. Performing activities will review unexecuted balances of reimbursable orders as of 30 June, 31 July, and 31 August and **promptly return excess funds to the ordering activities.**

5. Applicable Financial References. Attached is a list of guidance and regulations offering more detailed information on the reimbursable process.

6. The point of contact is [redacted], Program Budget Division, Deputy Chief of Staff for Resource Management (DCSRM), telephone COMM (732) 532-0553 or DSN 992-0553, e-mail address: [redacted]@mail.1.monmouth.army.mil

7. One Vision, One Mission - The Warfighter.

[redacted]

Colonel, GS
Chief of Staff

Encl
Reimbursable References

DISTRIBUTION: M, O & R

REIMBURSABLE REFERENCES

General Reimbursable Information:

- CECOM Reimbursable Policy (99-17)

- CECOM Regulation (5-3), Command Agreements Program

- U.S. Army Publishing Agency Home Page
  AR 70-1 Army Acquisition Policy
  http://www.usapa.army.mil

- DFAS-IN-Regulation 37-1
  Finance & Accounting Policy Implementation
  - Chapter 12, Orders, Earnings, Billings

  http://www.odcsrm.hqusareur.army.mil/rmbud/Regs/Chap12.pdf

- DoD Financial Management Regulation:
  Volume 11 A:
  - Chapter 1, General Reimbursable Procedures and Supporting Documentation
  - Chapter 2, Project Orders

  Volume 11B:
  - Working Capital Funds

  http://www.dod.mil/comptroller/fmr/

- DODI.4000.19 Interservice and Intragovernmental Support

http://www.dtic.mil/whs/directives/corres/html/400019.htm

Economy Act Orders:

- 31 USC § 1535
  http://www4.law.cornell.edu/uscode/

- Federal Acquisition Regulation (FAR) 17.505(d)
  http://www.arnet.gov/far/current/html/Subpart_17_5.html

- DoD Financial Management Regulation:
  Volume 11A:
  - Chapter 3, Economy Act Orders

  http://www.dod.mil/comptroller/fmr/

L

MEMORANDUM OF AGREEMENT
BETWEEN THE
RAPID RESPONSE PROJECT OFFICE
AND THE
CECOM LCMC ACQUISITION CENTER

1. Purpose: The purpose of the Memorandum of Agreement (MOA) is to establish a framework for reimbursable services to be provided by the US CECOM LCMC Acquisition Center, Fort Monmouth to the Rapid Response Project Office, Fort Monmouth.

2. Authority: The CECOM LCMC Fort Monmouth Acquisition Center is authorized to enter into a reimbursable agreement with other US Government agencies under the Economy Act (31 USC 1535) and 10 USC 3036(d).

3. General Provisions: To the extent mutually agreed to by the parties, acquisition and contract administration assistance will be provided as requested and funded by the R2 Project Office. The CECOM LCMC Acquisition Center agrees to process contract acquisition, modification, and administration functions with diligence and dispatch. Nothing in this MOA shall be construed as to require the R2 Project Office to use the services, nor to require the CECOM LCMC Acquisition Center to accept the assignments of the R2 Project Office. However, both parties expect implementation of this MOA to result in acquisition and contract administration assistance to be rendered to the R2 Project Office by the CECOM LCMC Acquisition Center subject to existing personnel constraints.

4. Scope of Assistance:

a. Personnel: In addition to assistance provided from the CECOM LCMC Acquisition Center higher-level management resources, the CECOM LCMC Acquisition Center will establish an acquisition group located in the CECOM LCMC Acquisition Center, Fort Monmouth. The group, funded by the R2 Project Office, will consist of twenty-one (21) positions from the following job classifications: 1102 Contract Specialist (GS 12/11/09/07 and YC 02). The group will include an additional one (1) 1102 Contract Specialist funded by the LRC with AWCF and one (1) GS-1199-04 Fast Track Student. There will be a total of twenty-three (23) CECOM LCMC Acquisition Center employees supporting the R2 Program.

b. Services: Acquisition assistance shall be comprised of all those functions normally performed by the CECOM LCMC Acquisition Center in conducting procurements and administering contracts for the Department of the Army in accordance with its mission and function.

5. Funding: All designated reimbursable support managed, supervised or performed by the CECOM LCMC Acquisition Center for the R2 Project Office shall be funded by the

TAB L

R2 Project Office. Additionally, travel, overtime and office supplies required by the R2 CECOM LCMC Acquisition Center Team will be funded by the R2 Project Office. It is agreed that resources are to be funded on a yearly basis, and that the R2 Project Office will notify the CECOM LCMC Acquisition Center of any curtailment of the program, which may occur, and give the CECOM LCMC Acquisition Center 180 days notice if resource support is to be curtailed. The R2 Project Office will provide the CECOM LCMC Acquisition Center with a projected level of support required for the next fiscal year by the end of the third quarter of the proceeding fiscal year. The R2 Project Office will reimburse the CECOM LCMC Acquisition Center for the dedicate personnel in the amount of $2,319,345. The FY08 reimbursement will be sent to the servicing budget office within a reasonable time.

6. Terms of Agreement

a. Revisions: The terms for this agreement may be revised by the mutual agreement of the signatories or the successors. Such revisions shall be accomplished by written amendments hereto. This agreement may be terminated by written agreement or by either party giving 180 days written notice to the other. In the event of termination, the R2 Project Office shall be responsible for any termination costs associated with the contract demobilization of personnel, and any other facilities dedicated to support.

b. Effective Date: This MOA shall be effective upon signature by both parties and shall remain in effect until terminated. This MOA shall cover a period of six (6) years unless otherwise terminated in accordance with the provisions of paragraph 6. However, both parties will review the provisioning of this agreement annually. This will assure that it continues to reflect the appropriate understanding and procedures to recognize and provide for current needs.

[redacted]
Project Officer
Rapid Response Project Office

[redacted]
Chief, Warfighter Spt & Svcs Sector
CECOM LCMC Acquisition Center

Johnson, Cassandra T CIV (US)

From: Hoyle, Michael L CIV USARMY CECOM (US)
Sent: Thursday, March 14, 2013 3:15 PM
To: Johnson, Cassandra T CIV (US)
Subject: (UNCLASSIFIED)
Attachments: Exhibit K_Redacted (MOA for Reimbursable services between R2 office and CECOM Contracting Center).pdf

Classification: UNCLASSIFIED
Caveats: NONE

I hope this is what you wanted

Classification: UNCLASSIFIED
Caveats: NONE

M

Investigating Officer

From: Director IR AC OFFICE (US)
Sent: Friday, October 05, 2012 8:04 AM
To: Investigating Officer
Cc: Director IR AC OFFICE
Subject: FW: IRAC audit (UNCLASSIFIED)
Signed By: Director IR AC OFFICE

Classification: UNCLASSIFIED
Caveats: FOUO//PROTECTED BY PRIVACY ACT

Initial request from Director LRC requesting the review along with his expected areas to be reviewed.

Director IR AC OFFICE
Director
Internal Review Office
"Recognized, Trusted, Valued"

AMSEL-IR
CECOM
Bldg 6001, Suite C1110, Room C1109
Voice: DSN: 848-4325; locally: 861-4325; Commercial: 443-861-4325
Fax: DSN:848-4341; Commercial: 443-861-4341
Blackberry: 571-212-0117

Director IR AC OFFICE (**NEW DISA EMAIL ACCOUNT**)

Director IR AC OFFICE (old APC account)

-----Original Message-----
From: Director IR AC OFFICE USA AMC
Sent: Thursday, January 03, 2008 8:28 AM
To: CECOM IRAC Office Auditors
Subject: FW: IRAC audit

see msg from Director LRC .

Director IR AC OFFICE CGFM
Director

Internal Review Office
AMSEL-IR
HQ, C-E LCMC
Building 826
Fort Monmouth, NJ 07703
(Comm) 732-427-4113, DSN 987-4113
Fax: (Comm) 732-532-4918, DSN 992-4918
-----Original Message-----
From: Director LRC
Sent: Wednesday, January 02, 2008 5:28 PM
To: Project Director R2 ; Frank, Joanne E Mrs CIV USA AMC
Cc: Director LRC ; CECOM C8 Comptroller ; Director IR AC OFFICE

Director IR AC OFFICE
Subject: IRAC audit

Deputy Director, as we discussed, Director IR AC OFFICE folks in IRAC will conduct a review of R2's methodolgy and compliance with setting reimburseable rates and how incoming funds for the R2 office are allocated against costs. Understand we have a process approved by DCSRM which IRAC will validate we are following.

Director IRC

Classification: UNCLASSIFIED
Caveats: FOUO//PROTECTED BY PRIVACY ACT

N

Review of Rapid Response (R2) Project Office Reimbursable Rate Process

CECOM LCMC Internal Review
28 MAR 2008
Exit Briefing for Director CECOM LRC
Director, CECOM LCMC LRC

Background

- LRC Director requested IR review the R2 reimbursable rate process and provide an assessment of the accounting for incoming funds and operating expenses.

- IR will provide a formal report to the LRC Director with review results and any recommendations.

Guidance

- CE-LCMC 2004 Memo Reimbursable Order Process
- CECOM Reimbursable Policy 99-17
- AR 70-1: Army Acquisition Policy
- DFAS-IN 37-1: Chapter 12 Orders, Earnings, and Billings
- DOD FMR: Volume 11A, Reimbursable Operations, Policy and Procedures

Methodology

- Reviewed Guidance and Regulations
- Met with Key Personnel
- Collected and Evaluated R2 Financial Data and Supporting Documents

Objectives

- Determine R2's process for setting customer reimbursable rates.
- Evaluate R2's accounting of incoming funds and operating expenses.

Results – Objective One

- Determine R2's process for setting customer reimbursable rates.

  -- In FY 2007 R2 began charging customers a 0.5% reimbursable rate.

  -- DCSRM reviewed and approved use of the 0.5% reimbursable rate.

  -- R2 is in compliance with current CECOM LCMC SOP/Guidance

Results – Objective Two

- Evaluate R2's accounting of incoming funds and operating expenses.

  -- The R2 Project Office is properly accounting for all incoming funds and operating expenses.

  -- Sample Items

Recommendations

- **Recommendation One-** Obtain DCSRM Approval in Writing for R2's Customer Reimbursable Rate.
- **Recommendation Two** – Obtain CECOM LCMC Legal Opinion to Support R2's Use of Percentage Rate.

Recommendations (Continued)

- **Recommendation Three** – Obtain CECOM LCMC Legal opinion on the amount of funds R2 can carryover from FY to FY.
- **Recommendation Four-** Consider discontinuing the SEC R2 fee model study.

Milestones

- Entrance Conference: January 2008
- Fieldwork: February 2008
- Draft Report for Discussion: March 2008
- Final Report: April 2008

IR Staff

[redacted], Director (732) 427- 4113, DSN 987
[redacted]

[redacted] Lead IR Evaluator (732) 427- 4537, DSN 987
[redacted]

[redacted] IR Evaluator (732) 427- 4112, DSN 987
[redacted]

[redacted] IR Evaluator (732) 427- 4569, DSN 987
[redacted]

U.S. Army Audit Agency

Service • Ethics • Progress

Flat Fees for Contracting and Contract Management Services

Audit Report: A-2009-0047-ALC

23 February 2009

TAB B

Executive Summary

Audit Report A-2009-0047-ALC
23 February 2009

Flat Fees for Contracting and Contract Management Services

At the request of the Under Secretary of the Army, we interviewed key resource management and acquisition personnel and reviewed selected Army acquisition plans, databases, and memorandums of agreement to determine whether any Army activities charged a flat fee for contracting or contract management services without specific authority to do so. The Under Secretary's request followed an Office of General Counsel decision that the HRsolutions Program Office (HRsPO) inappropriately charged a flat fee to its customers in violation of the Economy Act. The Economy Act authorizes Federal agencies to charge a fee equal to the actual costs associated with providing services to other Federal agencies. Once the services are completed, any excess funds collected by the servicing agency must be returned to the requesting agency. The Office of General Counsel found the fees charged by the HRsPO weren't directly associated with actual costs.

We couldn't identify any Army activities, besides the HRsPO, that charged a flat fee for contracting and contract management services without proper authority. We did identify management controls in the Army Federal Acquisition Regulation Supplement, Subpart 5137.590 (Army Management and Oversight of the Acquisition of Services) which should make sure future acquisitions of services are sound and prevent charging flat fees. Specifically, this guidance established the Army Service Strategy Panel. This panel reviews and approves acquisition plans which should describe how the activity is to be funded and disclose any plans to charge fees—flat or otherwise—for service.

To identify Army activities potentially charging a flat fee for service, we:

- Conducted interviews with key personnel from the Offices of the Assistant Secretaries of the Army (Acquisition, Logistics and Technology) and (Financial Management and Comptroller) and the Assistant Chief of Staff for Installation Management; U.S. Army Installation Management Command; U.S. Army Materiel Command; U.S. Army Contracting Command; and U.S. Army Corps of Engineers.
- Obtained and reviewed Military Interdepartmental Purchase Requests (MIPRs) from the Operational Data Store for FY 06 and FY 07. Our review showed this data was incomplete. Consequently, because data fields identifying individual activities weren't populated and MIPRs lost their identity following acceptance by the receiving activity, these queries weren't useful in our search.
- Reviewed selected Memorandums of Agreement between Army and non-Army activities. However, since most of these agreements are approved and maintained at the installation level, we were unable to obtain a representative sample.
- Conducted Internet keyword searches. We found a 2003 Treasury Department list of Governmentwide Acquisition Contracts and Multi-Agency Contracts that listed flat fees charged by various Federal agencies. Of the four Army activities on the list, two were no longer in operation. The list also included the HRsPO, which has already been identified, and U.S. Army CECOM Life Cycle Management Command's Rapid Response Program Office.

We found the Rapid Response Project Office charges a flat fee for its contracting services much the same as HRsPO. However, unlike HRsPO, the office periodically adjusts the rate it charges to reflect annual costs and returns excess amounts collected back to its customers. At the time we completed our fieldwork, COMSEC Life Cycle Management Command's Internal Review Office had an ongoing review of the Rapid Response Project Office. The Internal Review staff explained the scope of their review included the propriety of fees charged by the project office and their report would address their findings and recommendations. Therefore, we didn't include a detailed review of Rapid Response Project Office operations and fees as part of our audit. Because we couldn't identify Army activities, other than HRsPO, that charged a flat fee for services, and we believe the Army Federal Acquisition Regulation Supplement, Subpart 5137.590 controls should prevent organizations from gaining approval for the acquisition of services involving flat fees, we didn't make any recommendations in the report.

This report contains no recommendations. On 14 October 2008, Headquarters, DA and command personnel agreed with the facts and conclusions in the report ,and that agreement established the Army's official position.

DEPARTMENT OF THE ARMY
U.S. ARMY AUDIT AGENCY
OFFICE OF THE AUDITOR GENERAL
3101 PARK CENTER DRIVE
ALEXANDRIA, VA 22302-1596

23 February 2009

Under Secretary of the Army

This is our report on the audit of Flat Fees for Contracting and Contract Management Services. At your request, we interviewed key resource management and acquisition personnel and reviewed selected Army acquisition plans, databases, and memorandums of understanding to determine whether any Army activities charged a flat fee for contracting or contract management services without specific authority to do so.

We conducted this performance audit in accordance with generally accepted government auditing standards.

There are no recommendations in this report. On 14 October 2008, Headquarters, DA and command personnel agreed with the facts and conclusions in the report, and that agreement established the Army's official position.

For additional information about this report, contact the Contract Audits Division at 703-681-4929.

I appreciate the courtesies and cooperation extended to us during the audit.

The Auditor General

Abbreviations Used in This Report

AMC	U.S. Army Materiel Command
ASA (ALT)	Assistant Secretary of the Army (Acquisition, Logistics and Technology)
ASA (FM&C)	Assistant Secretary of the Army (Financial Management and Comptroller)
ASSP	Army Service Strategy Panel
CECOM	U.S. Army CECOM Life Cycle Management Command
CHESS	Computer Hardware, Enterprise Software and Solutions
DASA (P)	Deputy Assistant Secretary of the Army (Procurement)
HRsPO	HRsolutions Program Office
ITEC4	Information Technology, Electronic Commerce, and Commercial Contracting Center
MIPR	Military Interdepartmental Purchase Request
MOA	Memorandum of Agreement

CONTENTS

Page

Introduction

What We Audited 2

Background 3

Objective and Conclusion

Flat Fees for Contracting Services 5

Annexes

A – General Audit Information 17

B – Supplemental Information 23

INTRODUCTION

WHAT WE AUDITED

The Under Secretary of the Army requested we determine whether any Army activities charged a flat fee for contracting and contract management services without specific authority to do so. The Under Secretary's request followed an Office of General Counsel decision that the HRsolutions Program Office (HRsPO) inappropriately charged a flat fee to its customers in violation of the Economy Act (31 U.S.C. section 1535). The Economy Act authorizes Federal agencies to charge a fee equal to the actual costs associated with providing services to other Federal agencies. Once the services are completed, any excess funds collected by the servicing agency must be returned to the requesting agency. The Office of General Counsel concluded the fees charged by HRsPO weren't directly associated with actual costs.

To identify Army activities potentially charging a flat fee for service, we interviewed key personnel from the:

- Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology) (ASA (ALT)).
- Office of the Assistant Secretary of the Army (Financial Management and Comptroller) (ASA (FM&C)).
- Office of the Assistant Chief of Staff for Installation Management.
- U.S. Army Installation Management Command.
- Headquarters, U.S. Army Materiel Command (AMC), G-8.
- U.S. Army Contracting Command.
- Headquarters, U.S. Army Corps of Engineers.

We also:

- Reviewed applicable guidance and regulations to determine the authorities for and restrictions against charging a fee for contracting services.

- Discussed fees for service structures with Army organizations that are authorized to charge a fee, such as the Corps of Engineers.
- Reviewed selected Memorandums of Agreement (MOAs) and Military Interdepartmental Purchase Requests (MIPRs) to identify fee for service agreements.
- Performed Internet keyword searches.

BACKGROUND

HRsPO is an initiative within the Office of the Deputy Under Secretary of the Army for Business Transformation. In 2004, HRsPO was created to streamline the acquisition of human resource services, through a competitive, efficient, standardized, and well-managed process that emphasizes accountability and performance. Additionally, HRsPO acts as a liaison between customers and service providers to build contractor and vendor relationships to better accomplish the Army's human resource and readiness management missions.

HRsPO is organized to provide contract administration and management services for Army, DOD, and other Federal agencies' human resource requirements through four functional areas:

- Personnel services and support.
- Studies and analysis.
- Recruitment and retention.
- Administration support.

In accordance with the Economy Act, government organizations and activities may charge a fee for services provided that the fee is equal to the actual cost to perform the services and any excess fees must be returned to the customer. HRsPO charges a flat 2 percent administration fee to all its customers to recover operating costs. However, the actual costs associated with supporting individual customers aren't reconciled to the amount of fees collected from the same customers. Consequently, fees

charged could well exceed the actual cost to perform a specific service for a specific customer. As the Office of General Counsel opined, since HRsPO didn't return excess fees to its customers, it was in violation of the Economy Act.

FLAT FEES FOR CONTRACTING SERVICES

OBJECTIVE

Did any Army activities charge a flat fee for contracting and contract management services without proper authority?

CONCLUSION

Possibly. Other than HRsPO, we couldn't identify any Army activities that charged a flat fee for contracting and contract management services without proper authority. We did find two additional activities that charged customers a flat fee for service. One—the Computer Hardware, Enterprise Software and Solutions (CHESS)—did so under DOD direction. The other—the Rapid Response Project Office—was returning excess amounts to customers. Although we performed extensive research, DOD systems and records didn't provide full visibility over customer and service provider financial relationships. Therefore, it is impossible to be absolutely sure that other activities aren't charging flat fees for service.

We did identify management controls in the Army Federal Acquisition Regulation Supplement, Subpart 5137.590 (Army Management and Oversight of the Acquisition of Services) that should prevent organizations from charging flat fees and make sure they obtain approval before the acquisition of services in the future. Specifically, this guidance established the Army Service Strategy Panel (ASSP). This panel reviews and approves acquisition plans which should describe how the activity is to be funded and disclose any plans to charge fees—flat or otherwise—for service.

At the time we completed our review in August 2008, the U.S. Army CECOM Life Cycle Management Command (CECOM) Internal Review Office had an ongoing audit of the Rapid Response Program Office. The Internal Review staff explained their audit scope included the propriety of fees charged by the program office and said their report would address any findings and recommendations related to program expenses and fees. Accordingly, we don't address the propriety of the Rapid Response Program Office's fee structure in this report.

Our detailed discussion of these conditions begins on page 7. Because our results are positive, we didn't make any recommendations. However, during the period from October 2008 through January 2009, Headquarters, DA and Command personnel included in the audit provided informal comments agreeing with the facts and conclusions included in the report and that agreement established the Army's official position.

BACKGROUND

Authorities, guidance, and restrictions for activities charging a fee for contracting related services are provided by:

- Title 31 U.S.C. section 1535 – The Economy Act of 1932, and Section 501 – Franchise Fund Pilot Program.
- Government Management Reform Act of 1994.
- Federal Acquisition Regulation, Subpart 17.5 (Interagency Acquisition Under the Economy Act) and the related Army (Subpart 5117.78) and DOD (Subpart 217.5) supplements.
- DOD Financial Management Regulation, Volume 11A, Chapter 3, Economy Act Orders and Volume 11A, Chapter 18, Non-Economy Act Orders.
- DOD Instruction 4000.19 (Inter-service and Intra-governmental Support), 9 August 1995.
- Army Federal Acquisition Regulation Supplement, Part 5137.590 (Army Management and Oversight of the Acquisition of Services).
- Non-Economy Act Orders – 16 October 2005 Memorandum.

Economy Act

Title 31 U.S.C. section 1535 – The Economy Act of 1932 and Federal Acquisition Regulation, Subpart 17.5 authorize Federal agencies to use interagency and intra-agency acquisition vehicles to charge a fee equal to the actual costs associated with providing a service. The servicing agency is required to return any excess funds to the requesting agency once the services are provided and

the expenses reconciled. Interagency acquisitions to which the Economy Act doesn't apply include:

- Acquisitions from required or operational sources of supplies such as Federal Supply Schedule contracts, which have separate statutory authority.
- Acquisitions using Governmentwide Acquisition Contracts.

Franchise Funds

Public Law 103-356, Title IV, section 403 authorized the establishment of a franchise fund to provide common administrative support services not included in the original mission of agencies. However, before commencing operations, franchise funds must first be approved by the Director of the Office of Management and Budget. On 13 October 1994, the Director authorized six Federal agencies to operate Franchise Funds: the Environmental Protection Agency, and the Departments of Commerce, Veterans Affairs, Health and Human Services, the Interior, and the Treasury.

Federal agencies operating Franchise Funds are authorized to retain amounts in excess of actual costs of services but not more than 4 percent of the total Franchise Fund. Any funds in excess of the 4 percent limit are transferred to the Treasury. As of 4 August 2008, no DOD activities had been granted authority to operate a franchise fund.

DISCUSSION

In this section, we discuss these five areas:

- Army Fee for Service Activities.
- Army Service Strategy Panel.
- U.S. Army Contracting Command Data Call Review.
- Military Interdepartmental Purchase Requests and Memorandums of Agreement.
- U.S. Army Corps of Engineers Authority.

Army Fee for Service Activities

At least two additional activities, besides HRsPO, charged customers a flat fee for service. However, one of those activities, CHESS, did so under DOD direction. The other, the Rapid Response Project Office, appeared to return excess amounts to customers.

To identify Army activities potentially charging a flat fee for service, we conducted a series of keyword Internet searches. We found a list of Governmentwide Acquisition Contracts and Multi-Agency Contracts on the Department of the Treasury's Web site dated April 2003 that identified Federal organizations with Blanket Purchase Agreements and Indefinite Delivery/ Indefinite Quantity contracts that charge a flat fee for contracting services.

The Treasury's list identified four Army activities potentially charging a flat fee for service:

- The Army Small Computer Program which became CHESS.
- The Army Desktop and Mobile Computing Activity which is currently managed under CHESS.
- Human Resources XXI which converted to HRsPO in 2004 and is currently in operation. The Office of General Counsel identified this activity as inappropriately charging a flat fee.
- The Rapid Response Project Office which is currently in operation and structured similarly to HRsPO. The CECOM Internal Review is independently reviewing this project office's fee structure.

According to the Federal Acquisition Regulation, Part 2, a Governmentwide Acquisition Contract is a task-order or delivery-order contract for information technology established by one agency for governmentwide use. The Governmentwide Acquisition Contract is operated by an Executive Agent designated by the Office of Management and Budget. Similarly, a Multi-Agency Contract is a task-order or delivery-order contract established by one agency for use by government agencies to obtain supplies and services, consistent with the Economy Act. The Treasury Department's list doesn't identify which activities are Governmentwide Acquisition Contracts and which are Multi-Agency Contracts. Thus, we reviewed all Army activities

charging a flat fee, regardless of whether the Economy Act applies to their operation.

CHESS

CHESS operates under the Program Executive Officer, Enterprise Information Systems. The Army appointed CHESS as its Software Product Manager under the DOD Enterprise Software Initiative, and they are responsible for managing Army Enterprise Software Agreements. CHESS' mission is to support all Army customers' commercial information technology requirements. Many of the contracts under the CHESS program are for hardware and services and are in the form of Indefinite Delivery/ Indefinite Quantity contracts, with no usage fee. The remaining contracts are Blanket Purchase Agreements under the DOD Enterprise Software Initiative. All customers using these Blanket Purchase Agreement contracts are charged a flat 2 percent Acquisition, Contracting, and Technical fee, which is included in the price. The majority of these agreements are with vendors from the General Services Administration Federal Supply Schedule. The DOD Enterprise Software Implementation Plan, dated 17 February 2000, authorizes the DOD Enterprise Software Initiative Steering Group to establish a fee structure to reimburse contract management costs.

Because the Acquisition, Contracting, and Technical fee is mandated by the DOD Enterprise Software Initiative, we believe the CHESS program had proper authority to charge its customers a fee for using the Blanket Purchase Agreement contracts.

Rapid Response Project Office

The Rapid Response Project Office is a full-service, multi-disciplined project office and is the proponent for and manager of a multi-award task order contract that consists of eight Indefinite Delivery/Indefinite Quantity contracts. Some of the task areas the contracts support are:

- Research and development.
- Logistics support.
- Acquisition support.
- Test and evaluation.

- Reverse engineering.
- Training.

The Rapid Response Project Office is structured similarly to HRsPO in that it is staffed with a mixture of government and contracted employees. A 1 percent flat fee is charged to all customers and is used to sustain the entire project office, including the internal support contract and the government employee salaries. The office provides full-service support, including preparation of solicitation documents, task order close-out, contracting officers representative support, and post award administration. However, since the office isn't staffed with a certified contracting officer, contracts and task orders are formally executed by the CECOM Acquisition Center.

We found the Rapid Response Project Office charges a flat fee for its contracting services much the same as HRsPO. However, unlike HRsPO, the office periodically adjusts the rate it charges to reflect annual costs and returns excess amounts collected back to its customers.

At the time we completed audit fieldwork in August 2008, the CECOM Internal Review Office had an ongoing audit of the Rapid Response Program Office. The Internal Review staff explained their audit scope included the propriety of fees charged by the program office and their report would address their findings and recommendations. Accordingly, we didn't address this in the report or reach any conclusions on the propriety of the fee amounts charged, managed, and retained by the Rapid Response Project Office.

ASSP

Army Federal Acquisition Regulation Supplement, Subpart 5137.590 (Army Management and Oversight of the Acquisition of Services) provides management controls which should make sure future acquisitions of services are sound. Specifically, the Army Supplement establishes the ASSP and sets a review threshold for acquisition strategies based on the total dollar value of the acquisition, unless the Under Secretary of Defense (Acquisition, Technology and Logistics) or ASA (ALT) designates the acquisition as a Special Interest Category procurement. Acquisition plans must be approved before the ASSP issues the solicitation.

The ASSP chairperson is the Deputy Assistant Secretary of the Army (Procurement) (DASA (P)), who designates the ASSP membership based on the unique requirements of the acquisition. Annex B contains the Army Federal Acquisition Regulation Supplement table outlining the review thresholds and decision authorities.

According to the Army Federal Acquisition Regulation Supplement, the acquisition strategy content must address the following eight topics:

- Requirements.
- Risk management.
- Competition.
- Implications.
- Business arrangements.
- Multiyear contracts.
- Leases.
- Metrics.

ASSPs assess the requirements, risks, and legal aspects of the acquisition strategy to determine if it is advantageous to the Army to acquire the service. The funding methods and total estimated dollar value of the procurement, including options, are typically described in the Business Arrangements section of an acquisition strategy. Acquisition strategies also address the contract structure, such as single contract or multiple-award contract, and contract types and pricing arrangements, such as fixed-price or cost-reimbursement contracts.

A representative from the Office of ASA (ALT) provided us a spreadsheet list of all acquisition plans reviewed by the DASA (P) ASSP from October 2004 to July 2008. We reviewed the spreadsheet, which identified 26 acquisition strategies, in an attempt to identify Army activities charging a flat fee for contracting services. Each of the Army acquisition strategies on the list provides services valued in excess of $500 million to both Army

and non-Army organizations. We found both the Human Resource XXI Program Office and the Rapid Response Project Office on the DASA (P) ASSP spreadsheet.

The ASSP spreadsheet didn't specifically identify whether any of the activities charged a flat fee. Rather it provided only the activity name, customer, contracting office, acquisition dollar value, and point of contact information. We reviewed each activity's Web site to determine if any fee information was available. In addition to the Web site review, we also reviewed four acquisition strategies from randomly selected activities:

- Intel Support Service.
- Universal Services Contract 05.
- U.S. Army Intelligence and Security Command's Interpreter and Translator Management Services.
- War Fighter Field Operations Customer Support.

Of the 26 activities we reviewed, only the HRsPO and the Rapid Response Project Office were identified as charging a flat fee for contracting related services.

Human Resource XXI ASSP Review

The DASA (P) approved the Human Resources XXI acquisition plan in 2003. We reviewed the plan and found it was authorized under the 2002 Army realignment plan to convert to a reimbursable contractor supported organization. The plan explains that a flat fee will be charged to all customers to support operational costs. It continues, stating the Human Resources XXI Office is in compliance with the DOD Financial Management Regulation guidance requiring organizations to break even financially at the end of each fiscal year.

We obtained a copy of the issues discussed during the ASSP review of the Human Resources XXI acquisition plan and found no mention of the flat fee structure; however, several other concerns were discussed including the need to determine:

- The suitability of a Time & Materials contract and consider a Fixed-Price contract.

- Whether adequate market research was performed and if it supports the contention that these services are unique and not provided through another source, such as the General Services Administration Federal Supply Schedule.

- The extent of subcontracting and the criteria to evaluate the offeror's approach to subcontracting.

- The metrics to define the success of the overall effort and individual task orders.

The flat fee for contracting services wasn't included in the issue discussion document because the acquisition plan stated the Human Resources XXI Office is authorized to charge a fee and was in compliance with DOD regulations. In addition, the office had a Certified Public Accountant perform an audit in FY 02, which included a review of financial transactions for FY 00 and FY 01. It determined the activity was in compliance with DOD financial regulations.

Accordingly, although the flat fee charged by Human Resources XXI and its successor HRsPO organization was well known, we found no evidence of its being brought under question before the recently raised Office of General Counsel concerns that prompted our review.

U.S. Army Contracting Command Data Call Review

To assist us in identifying any AMC or legacy Army Contracting Agency offices that might have charged a flat fee for service, Army Contracting Command issued a data call to all of its Principal Assistants Responsible for Contracting. We reviewed the responses from the data call and found that the Army didn't direct any AMC activities to charge a flat fee for contracting services. However, the Information Technology, Electronic Commerce, and Commercial Contracting Center (ITEC4) responded that it awarded the Blanket Purchase Agreements for the CHESS DOD Enterprise Software Initiative, which includes the DOD-directed ACT Fee.

As previously discussed, the DOD Enterprise Software Initiative Working Group determined the fee associated with the CHESS Blanket Purchase Agreements. ITEC4 doesn't receive any proceeds from this fee. Rather CHESS receives the fee for

maintaining the Blanket Purchase Agreement. Because the amounts and procedures for collecting and managing the Acquisition, Contracting, and Technical Fee are determined at the DOD level we didn't consider them to be within the scope of our review.

MIPRs and MOAs

We reviewed selected MIPR transactions from the Defense Finance and Accounting Service's Operational Data Store to determine whether it indicated the possible charging of a flat fee for contracting-related services. We limited our review to FY 06 and FY 07 transactions and planned to sort the data by the activity with the highest number of MIPR transactions from outside the Army. Unfortunately, two key Operational Data Store fields—the DOD Accounting Address Code and the Customer Identification Number—weren't populated. We then attempted to identify Army activities using the Unit Identification Code. However, the activity name descriptions associated with the Unit Identification Codes were too vague to identify a specific unit or organization. Also, some codes had multiple DOD Accounting Address Codes, thus making it impossible to match the MIPR transactions to the appropriate address. Ultimately, we discontinued this approach for identifying indicators of potential activities charging a flat fee for contracting or contract management services.

We also reviewed selected MOAs to identify Army activities that may have inappropriately charged a flat fee for contracting services. We began our review by searching government Web sites to obtain published MOAs and found three examples: one from the General Services Administration and two from the Corps of Engineers. These agreements contained details about the services to be provided and the payment in the form of an Economy Act reimbursable order. In compliance with the Economy Act, the MOAs state the servicing activity will determine the actual costs within 90 days of completing the work. Any excess funds will be returned to the requesting activity.

To determine the best way to obtain and review MOAs, we consulted with resource management and acquisition personnel from the Office of the Assistant Chief of Staff for Installation Management and Installation Management Command. They informed us that, due to the large volume of MOAs, most are

approved and maintained at the installation level. Since most agreements are for local services and Installation Management Command's installations are better staffed to approve and maintain the MOAs, review and approval responsibilities remain at the installation. Given the volume and geographic dispersion of MOA documentation, we found it to be time and resource prohibitive for us to review individual installation MOAs. However, both the Office of the Assistant Chief of Staff for Installation Management and Installation Management Command stressed that they were unaware of any MOAs that provided for the charging of a flat fee for service in violation of the Economy Act.

To better understand policies, procedures, and controls pertaining to MOAs on AMC installations, we met with a representative from Headquarters, AMC, G-8. We found that AMC MOAs are also maintained at the installation level since a majority of the agreements are for local services. However, in accordance with a 2000 AMC Headquarters policy memorandum, all MOAs between an AMC organization and a non-AMC organization are reviewed and approved at the Headquarters G-8 level. Since then, the AMC G-8 hasn't identified any flat fees for service arrangements.

U.S. Army Corps of Engineers Authority

We met with Headquarters, U.S. Army Corps of Engineers representatives to determine whether they had specific statutory or regulatory authority to charge a fixed fee for contracted services. They cited 10 U.S.C. section 2205 on Reimbursements, dated 3 January 2007, as the authority to charge a fixed rate for contracted services. It states that DOD organizations are authorized reimbursement of the costs of providing planning, supervision, administrative, or overhead services incident to any construction, maintenance, or repair project to real property or for providing facility services. The Corps charges a flat supervision and administration fee to recoup these costs in each class or group of projects instead of an individual fee for each project. Thus, the actual supervision and administration costs will not necessarily match the actual costs of the work performed on each project.

The flat supervision and administration rate was established in 1963 and updated periodically, with the most recent change in

April 2008. The Corps' regulatory authority doesn't require it to periodically monitor the actual usage and support cost to determine if these fees are appropriate.

SUMMARY

As previously discussed, our review identified only three activities charging a flat fee for contracting related services.

- HRsPO.
- CHESS.
- Rapid Response Project Office.

Nonetheless, because DOD-level systems and records didn't provide full visibility over customer and service provider financial relationships, it is impossible to be absolutely sure that other activities aren't charging flat fees for service. However, we believe the management controls in the Army Federal Acquisition Regulation Supplement, Subpart 5137.590 (Army Management and Oversight of the Acquisition of Services) should make sure future acquisitions of services are sound and prevent the charging of flat fees.

GENERAL AUDIT INFORMATION

SCOPE AND METHODOLOGY

We conducted the audit from May through October 2008 under project A-2008-ALC-0591.000 at the:

- Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology).
- Office of the Assistant Secretary of the Army (Financial Management and Comptroller).
- Office of the Assistant Chief of Staff for Installation Management.
- Headquarters, U.S. Army Corps of Engineers.
- U.S. Army Installation Management Command.
- Headquarters, U.S. Army Materiel Command, G-8.
- U.S. Army Contracting Command.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our finding and conclusion based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our finding and conclusion based on our audit objective.

We used computer-generated data during this audit, but we didn't use it to form our conclusions. Hence, we aren't required to test the reliability of the data.

To identify Army activities charging a flat fee for contracting or contract management services without proper authority, we established and answered one objective. We:

- Interviewed personnel in the Office of the ASA (ALT) and Army Contracting Command to discuss the ASSP, Principal Assistant Responsible for Contracting data call, and current policy and regulations.

- Interviewed personnel in the Office of the ASA (FM&C) to discuss reviewing MIPR transactions as a way to identify Army activities charging a flat fee for services.

- Interviewed personnel from Headquarters, U.S. Army Corps of Engineers to determine their authority to charge a flat fee for contracting services.

- Interviewed personnel from Headquarters AMC, G-8; the Office of the Assistant Chief of Staff for Installation Management; and Installation Management Command to determine if MOAs and Interagency Service Agreements would help identify Army activities charging a flat fee for services.

- Reviewed:

  - Federal Acquisition Regulation, Subpart 17.5 (Interagency Acquisitions Under the Economy Act).

  - Army Federal Acquisition Regulation Supplement, Part 5137.590 (Army Management and Oversight of the Acquisition of Services).

  - DOD Instruction 4000.19 (Inter-service and Intragovernmental Support), 9 August 1995.

  - DOD Financial Management Regulation, Volume 11A, Chapter 3, Economy Act Orders and Volume 11A, Chapter 18, Non-Economy Act Orders.

  - Title 31 U.S.C. section 1535 – The Economy Act of 1932, and Section 501 – Franchise Fund Pilot Program.

  - Government Management Reform Act of 1994.

  - Non-Economy Act Orders – 16 October 2006 Memorandum.

- Analyzed data from the Operational Data Store to use MIPRs to identify Army activities charging a flat fee for services.

- Conducted Internet keyword searches to identify any Army activities charging a flat fee for contracting services.

- Coordinated with the:
  - Deputy Director for the Computer Hardware Enterprise Software Solutions.
  - Internal Review Office at Fort Monmouth for information pertaining to its review at the Rapid Response Program Office.

RESPONSIBILITIES

The Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology) is responsible for effectively and efficiently developing, acquiring, fielding, and sustaining materiel by leveraging domestic, organic, commercial, and foreign technologies and capabilities to meet the Army's current and future mission requirements. The office's vision is to equip and sustain the world's most capable, powerful, and respected Army.

The Office of the Assistant Secretary of the Army (Financial Management and Comptroller) is responsible for formulating, submitting, and defending the Army budget. During budget execution the office oversees the use of appropriated resources to accomplish the Army's assigned missions. The office provides transparent reporting to Congress and the American public on the use of assigned resources and the achievement of established performance objectives, including reporting on the effectiveness of management controls. It also provides timely, accurate, and reliable financial information to enable commanders and managers at all levels to incorporate cost considerations into decision-making. The office also manages and coordinates programs for the accession, training, and professional development of resource managers.

The Office of the Assistant Chief of Staff for Installation Management is responsible for providing policy guidance and program management on all matters relating to overall management and resourcing of Army installations worldwide. The office ensures the availability of efficient, effective base services and facilities.

The Corps of Engineers' mission is to provide quality, responsive engineering services to the nation including:

- Planning, designing, building, and operating water resources and other civil works projects (Navigation, Flood Control, and Environmental Protection and Disaster Response).
- Designing and managing the construction of military facilities for all military departments and DOD agencies (Military Construction).
- Providing design and construction management support for other Defense and Federal agencies (Interagency and International Services).
- Managing and executing research and development and real estate programs in support of DOD infrastructure and operational requirements.
- Providing engineering services and capabilities, as a public service, across the full spectrum of operations – from peace to war – in support of national interests.
- Responding to national emergencies in support of the Department of Homeland Security and other Federal agencies.

Additionally, the Commander, Corps of Engineers is designated as a Head of Contracting Activity and performs services for the Offices of Assistant Secretaries of the Army (Acquisition, Logistics, and Technology), (Civil Works), and (Installations and Environment).

The Army activated Installation Management Command on 24 October 2006 to consolidate and strengthen installation support services to Soldiers and their Families through the full authority of command. The new command replaced the former U.S. Army Installation Management Agency, the former Community and Family Support Center, and the former Army Environmental Center under a single command as a direct reporting unit. The command's responsibilities include:

- Managing the Army's installations to support readiness and mission execution.

- Providing equitable services and facilities.
- Optimizing resources.
- Sustaining the environment.
- Enhancing the well-being of the military community.

Army Materiel Command is responsible for providing superior technology, acquisition support, and logistics to ensure dominant land force capability for Soldiers, the United States, and our allies.

The Office of the Deputy Chief of Staff for Resource Management, G-8 is responsible for leading management of AMC financial and manpower efforts. This office is responsible for approving MOAs between Army Materiel Command activities and Non-Army Materiel Command activities.

U.S. Army Contracting Command serves as Army Materiel Command's expert and advisor on procedures/policy governing weapon systems contracting and the acquisition life cycle. The command serves as the focal point for contracting/acquisition excellence. Army Contracting Command is also responsible for formulating contracting policy for the Office of the Secretary of Defense and the Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology) and serves as the Army representative on eight Defense Acquisition Regulation Committees. Command acts as the agent for the customer in identifying and resolving contracting and acquisition policy issues and serves as the Army member for the Joint Logistics Commander's Joint Group on Acquisition.

ACKNOWLEDGMENTS

These personnel contributed to the report: Joseph Bentz (Program Director), George Sunderland (Audit Manager), David Petro (Auditor-in-Charge), Charnetta Harvey (Assistant Auditor-in-Charge), Faith Pruett (Editor), and John Johnson (Auditor).

We are sending copies of this report to the:

Assistant Secretary of the Army (Acquisition, Logistics and Technology)
Assistant Secretary of the Army (Financial Management and Comptroller)
Commander, U.S. Army Materiel Command

We will also make copies available to others upon request.

SUPPLEMENTAL INFORMATION

Army Acquisition of Services Review Thresholds		
Category	Estimated Value	Decision Authority
Category I	Acquisitions of services valued at $500 million or more	Deputy Assistant Secretary of the Army (Procurement)
Category II	Acquisitions of services valued at $250 million or more, but less than $500 million	Head of Contracting Activities, Program Executive Offices, and Direct Reporting Program Managers
Category III	Acquisitions of services valued at $10 million or more, but less than $250 million	Principal Assistants Responsible for Contracting, Program Executive Offices, and Direct Reporting Program Managers
Category IV	Acquisitions of services valued at greater than the simplified acquisition threshold, but less than $10 million	Directorates of Contracting and Program Managers

Our Mission

To serve America's Army by providing objective and independent auditing services. These services help the Army make informed decisions, resolve issues, use resources effectively and efficiently, and satisfy statutory and fiduciary responsibilities.

To Suggest Audits or Request Audit Support

To suggest audits or request audit support, contact the Office of the Principal Deputy Auditor General at 703-681-9802 or send an e-mail to AAAAuditRequests@conus.army.mil.

Additional Copies

We distribute each report in accordance with the requirements of Government Auditing Standards, GAO-07-731G, July 2007.

To obtain additional copies of this report or other U.S. Army Audit Agency reports, visit our Web site at https://www.aaa.army.mil. The site is available only to military domains and the U.S. Government Accountability Office. Other activities may request copies of Agency reports by contacting our Audit Coordination and Followup Office at 703-614-9439 or sending an e-mail to AAALiaison@conus.army.mil.

o

P

Army Regulation 11–7

Army Programs

Internal Review Program

Headquarters
Department of the Army
Washington, DC
26 October 2007

UNCLASSIFIED

SUMMARY of CHANGE

AR 11-7
Internal Review Program

This major revision dated 26 October 2007--

- Includes new standards for internal review evaluators (chapters 3, 4, and 5).
- Makes administrative changes throughout.

Headquarters
Department of the Army
Washington, DC
26 October 2007

*Army Regulation 11–7

Effective 26 November 2007

Army Programs

Internal Review Program

By Order of the Secretary of the Army:

GEORGE W. CASEY, JR.
General, United States Army
Chief of Staff

Official:

JOYCE E. MORROW
Administrative Assistant to the Secretary of the Army

History. This publication is a major revision.

Summary. This regulation contains policies for establishing and operating an internal review activity within an Army organization.

Applicability. This regulation applies to the Active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve unless otherwise stated.

Proponent and exception authority. The proponent of this regulation is the Assistant Secretary of the Army (Financial Management and Comptroller). The proponent has the authority to approve exceptions or waivers to this regulation that are consistent with controlling law and regulations. The proponent may delegate this approval authority, in writing, to a division chief within the proponent agency or its direct reporting unit or field operating agency, in the grade of colonel or the civilian equivalent. Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and must include a formal review by the activity's senior legal officer. All waiver requests will be endorsed by the commander or senior leader of the requesting activity and forwarded through their higher headquarters to the policy proponent. Refer to AR 25–30 for specific guidance.

Army management control process. This regulation contains management control provisions and identifies key management controls that must be evaluated (see appendix B).

Supplementation. Supplementation of this regulation and establishment of command and local forms are prohibited without prior approval from the Assistant Secretary of the Army (Financial Management and Comptroller) (SAFM–FOI), 109 Army Pentagon, Washington, DC 20310–0109.

Suggested improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to Office of Assistant Secretary of the Army (Financial Management and Comptroller) (SAFM–FOI), 109 Army Pentagon, Washington, DC 20310–0109.

Committee Continuance Approval. The Department of the Army Committee Management Officer concurs in the establishment and/or continuance of the committee(s) outlined herein, in accordance with AR 15–1, Committee Management. The AR 15–1 requires the proponent to justify establishing/continuing its committee(s), coordinate draft publications, and coordinate changes in committee status with the Department of the Army Committee Management Office (SAAA–RP), Office of the Administrative Assistant, Resources and Program's Agency, 2511 Jefferson Davis Highway, Taylor Building, 13th Floor, Arlington, VA 22202–3926. Further, if it is determined that an established "group" identified within this regulation later takes on the characteristics of a committee, the proponent will follow all AR 15–1 requirements for establishing and continuing the group as a committee.

Distribution. This publication is available in electronic media only and is intended for command levels C, D, and E for the Active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve.

Contents (Listed by paragraph and page number)

Chapter 1
Introduction, *page 1*
Purpose • 1–1, *page 1*
References • 1–2, *page 1*
Explanation of abbreviations and terms • 1–3, *page 1*
Responsibilities • 1–4, *page 1*

*This regulation supersedes AR 11–7, dated 15 June 2001.

UNCLASSIFIED

Contents—Continued

Staff relationships • 1–5, *page 2*
Internal review concept • 1–6, *page 2*

Chapter 2
The Internal Review Program, *page 3*
Program objective • 2–1, *page 3*
Staffing • 2–2, *page 3*
Training • 2–3, *page 3*
Scope of work • 2–4, *page 3*
Policy relationships • 2–5, *page 4*
Guidance • 2–6, *page 4*
Risk assessment files • 2–7, *page 4*
Liaison with external audit organizations • 2–8, *page 4*
Audit followup • 2–9, *page 5*

Chapter 3
Internal Review General Standards, *page 5*
Introduction • 3–1, *page 5*
Independence general standard • 3–2, *page 5*
Personal Impairment • 3–3, *page 5*
External impairments • 3–4, *page 6*
Organizational independence • 3–5, *page 6*
Professional judgment • 3–6, *page 6*
Competence • 3–7, *page 7*
Continuing professional education • 3–8, *page 7*
Quality control and assurance standard • 3–9, *page 8*

Chapter 4
Field Work Standards, *page 9*
Introduction • 4–1, *page 9*
Reasonable assurance • 4–2, *page 9*
Significance in a review • 4–3, *page 9*
Review risk • 4–4, *page 9*
Planning • 4–5, *page 10*
Nature and profile of the program and user needs • 4–6, *page 10*
Internal control • 4–7, *page 12*
Information systems controls • 4–8, *page 13*
Legal and regulatory requirements, contract provisions, and grants • 4–9, *page 14*
Fraud • 4–10, *page 14*
Abuse • 4–11, *page 14*
Ongoing investigations or legal proceedings • 4–12, *page 14*
Previous engagements • 4–13, *page 15*
Identifying review criteria • 4–14, *page 15*
Identifying sources of evidence and the amount and type of evidence required • 4–15, *page 15*
Using the work of others • 4–16, *page 15*
Assigning staff and other resources • 4–17, *page 16*
Communicating with management, those charged with governance, and others • 4–18, *page 16*
Preparing the review plan • 4–19, *page 16*
Supervision • 4–20, *page 16*
Obtaining sufficient, appropriate evidence • 4–21, *page 17*
Appropriateness • 4–22, *page 17*
Sufficiency • 4–23, *page 18*
Overall assessment of evidence • 4–24, *page 18*
Developing elements of a finding • 4–25, *page 19*

Contents—Continued

Review documentation • 4–26, *page 19*

Chapter 5
Reporting Standards, *page 20*
Introduction • 5–1, *page 20*
Reporting • 5–2, *page 20*
Report contents • 5–3, *page 21*
Objectives, scope, and methodology • 5–4, *page 21*
Reporting findings • 5–5, *page 21*
Deficiencies in internal control • 5–6, *page 22*
Fraud, illegal acts, violations of provisions of contracts or grant agreements, and abuse • 5–7, *page 22*
Reporting findings directly to parties outside the reviewed entity • 5–8, *page 22*
Conclusions • 5–9, *page 23*
Recommendations • 5–10, *page 23*
Reporting evaluators' compliance with standards • 5–11, *page 23*
Reporting views of responsible officials • 5–12, *page 23*
Reporting confidential or sensitive information • 5–13, *page 24*
Distributing reports • 5–14, *page 24*

Appendixes

A. References, *page 25*

B. Management Control Evaluation Checklist, *page 26*

Glossary

Chapter 1
Introduction

1–1. Purpose
This regulation prescribes polices, roles, responsibilities, and standards of the Department of the Army (DA) Internal Review (IR) Program.

1–2. References
Required and related publications and prescribed and referenced forms are listed in appendix A.

1–3. Explanation of abbreviations and terms
Abbreviations and special terms used in this regulation are explained in the glossary.

1–4. Responsibilities
a. The Assistant Secretary of the Army (Financial Management and Comptroller) (ASA (FM&C)) will—

(1) Maintain Headquarters Department of the Army (HQDA) Staff responsibility for the IR program.

(2) Exercise this responsibility through the Deputy Assistant Secretary of the Army (Financial Operations), (DASA (FO)).

b. The DA IR Director will—

(1) Be responsible to the DASA (FO) for management of the IR program.

(2) Interpret Comptroller General of the United States and DOD policies as they relate to IR.

(3) Develop IR policy and standards.

(4) Develop, administer, and execute a comprehensive IR continuing professional training program.

(5) Ensure effective execution of IR programs at Army Commands (ACOMs), Army Service Component Commands (ASCCs), Direct Reporting Units (DRUs), Army Staff agencies, and other organizations where IR offices are established.

(6) Provide guidance and assistance to organizations reporting to HQDA.

(7) Advise commanders and activity heads on maintaining adequately staffed IR offices with an appropriate grade structure.

(8) Establish and select members to the Internal Review Steering Group in accordance with the IR steering group charter.

c. Commanders at all levels, heads of HQDA activities, and U.S. property and fiscal officers (USPFOs) will—

(1) Establish and adequately resource an IR program as part of the command and control process.

(2) Ensure the IR office's organizational alignment is as an independent office, which is located outside the typical staff structure, reporting directly to the commander, principal deputy commander, or chief of staff of installation/garrison, division, district, or separate activity. Ensure that state-level National Guard IR offices are organizationally aligned under and report to the USPFO, the independent Federal official in each state, in accordance with NGR 130–6.

(3) Establish and maintain an effective followup program and provide liaison services to both internal and external audit organizations such as the U.S. Army Audit Agency (USAAA), Government Accountability Office (GAO); and the United States Department of Defense Office of the Inspector General (DODIG); as prescribed in AR 36–2.

(4) Adjudicate and resolve disagreements on IR report results and associated recommendations between IR, subordinate commanders, and functional directors.

(5) Provide, to the extent that resources permit and in accordance with policies established by Installation Management Command or other appropriate DA headquarters, IR services to support tenant activities whose organizational structure does not provide for IR capability.

(6) Ensure IR evaluators are granted full and unrestricted access (consistent with their security level) to all files, electronic and otherwise, needed in connection with a review, inquiry, or other IR service.

(7) Ensure that assigned IR personnel complete professional training or equivalent training taken to comply with continuing professional education (CPE) requirements prescribed by this regulation. Where appropriate, have an additional skill identifier (ASI) awarded to military evaluators.

(8) Ensure that Army special access programs (SAPs) are adequately prioritized and considered in the command's IR program. At least one member of the IR staff should be cleared for access to the command's SAP.

d. The IR Director/Chief will—

(1) Serve as the commander's principal advisor to the commander on internal controls.

(2) Advise and assist the commander regarding audit activity being conducted by USAAA, GAO, DODIG, and other external oversight organizations.

(3) Direct, manage, and execute a full range of IR services prescribed in this regulation and consistent with the needs of their customers.

(4) Establish and maintain a risk assessment file in accordance with paragraph 2–7 of this regulation.

(5) Develop annually a flexible IR review plan identifying areas most relevant to the command. The risk assessment file of paragraph 2–7 of this regulation should be used in developing the annual plan.

(6) Elevate through the chain of command to the IR proponent results of reviews that have Armywide implications.

(7) Submit semiannually reports to HQDA through each respective ACOM, ASCC, or DRU to HQDA.

(8) Establish an internal quality control program in accordance with this regulation which evaluates the quality and level of service provided by the IR organization and subordinate IR elements. The internal quality control program will include formal annual self-evaluations and an external review not less than once every three years. Reviews will evaluate organization and staffing, program management, review planning, review process, audit compliance and liaison, and consulting and other advisory services. Each review will also address the overall effectiveness of IR elements, to include customer satisfaction and value added to the local command. Ensure subordinate IR offices receive an external review at least once every 3 years; any Army IR headquarters office, or other external professional audit organization may accomplish the external review.

(9) Ensure IR services are delivered in accordance with—

(a) Chapter 3 through chapter 5 of this regulation.

(b) DOD policies.

(c) Comptroller General standards for internal control in the Federal Government.

(d) Army polices outlined in this regulation.

(10) Provide technical advice, assistance, and consultation on internal controls to assessable unit managers within their organizations as necessary.

(11) Evaluate, during the normal course of reviews, the effectiveness of internal controls, the adequacy of internal control evaluations and actions taken to correct material weaknesses.

(12) Ensure proper career development, including professional training programs, of all assigned IR personnel.

(13) Ensure that weaknesses identified through internal reviews and internal and external audits are considered during preparation of the commander's annual assurance statement in accordance with AR 11–2.

(14) Review, if aligned at the headquarters of a reporting organization, the organization's annual internal control assurance statement and provide the commander an assessment of its thoroughness and validity.

(15) Establish and maintain an audit recommendation tracking system and an effective followup system on both internal and external audit reports that support the USAAA audit followup program in accordance with AR 36–2.

(16) Track and followup, within the tracking system established in paragraph (14), above, on recommendations of internal reviews.

(17) Serve as the commander's principal official for liaison with internal and external audit organizations (GAO, DODIG, USAAA), including—

(a) Assisting command, in coordination with HQDA elements, with assessing audit objectives, sites, milestones, and other information on audits about to start or underway.

(b) Arranging entrance conferences, discussions, and exit conferences with both internal and external audit organizations and the appropriate organization officials.

(c) Providing administrative support to external audit organizations, when possible.

(d) Ensuring accurate, adequate, responsive, and coordinated comments are provided to "draft" audit findings and recommendations.

1–5. Staff relationships

Internal review should be an integral part of the commander's personal staff and/or special staff management team along with The Inspector General and other special staff elements and should work closely to achieve a complementary effort. The IR Director should be aligned as both a personal and special staff officer. As a member of the commander's personal staff, the IR Director will have direct access to the commander whenever required. At other times, the IR Director will function as a member of the special staff.

1–6. Internal review concept

a. The fundamental tenet of Army management philosophy is that commanders at all levels are responsible for the accomplishment of their missions and for effective stewardship of the resources provided to them for mission accomplishment. Full responsibility is vested in commanders for compliance with laws, policies, procedures; achieving program objectives; and for the accuracy, propriety, legality, and reliability of their actions. In discharging their responsibility, commanders will rely on their IR capability and other facets of their internal control system to ensure the preservation and proper use of resources.

b. Internal review reviews are based on stated objectives of the review and provide assurance or conclusions predicated on an evaluation against objective criteria, such as specific requirements or measures, or good business practices. IR reviews provide management and those charged with governance and responsibility to oversee or initiate corrective action an objective analysis that may improve a program's performance and operation, reduce costs,

facilitate decisionmaking and contribute to public accountability. The IR reviews can also provide descriptive information in response to review objectives to describe a process or a condition.

c. Services provided by IR will be—

(1) Review services.

(2) Consulting and advisory services.

(3) Liaison with internal and external audit organizations.

(4) Followup.

Chapter 2
The Internal Review Program

2–1. Program objective

a. Internal review is an independent, objective assurance, and consulting activity within the command designed to add value and improve the command's operations. The objective of the Army's IR program is to provide commanders and their staffs with a full range of professional internal review services that are timely, support local decision makers, and ensure effective stewardship.

b. Internal review is a primary tool of the commander's system of command and control.

2–2. Staffing

a. Internal review resourcing should be commensurate with assigned responsibilities. Along with the annual plan, the inventory of assessable units established under the Army manager's Internal Control Program, identifies some of the potential workload of an IR organization and should be used to help identify manpower requirements.

b. The IR staff will be primarily comprised of qualified, professional personnel. The grades of personnel will be established and maintained in accordance with standard Army civilian personnel position descriptions. Temporary augmentation by military, civilian and/or contractor functional experts, under the supervision of the IR Director/Chief, is encouraged to meet special technical requirements of individual engagements. In exercising discretion to augment IR staffs under this paragraph, commanders will ensure compliance with this regulation. Where appropriate due to the type of work accomplished, IR staffs may include industrial engineers, computer analysts/specialists, management analysts, statisticians, or other such personnel with special skills.

c. The National Guard will staff USPFO IR offices with competitive civilian employees to ensure an independent attitude and appearance is maintained and to fully comply with professional standards and this regulation.

d. National Guard M–day and Army Reserve troop program unit Soldiers should be qualified for the position assigned. They should also be encouraged to obtain the ASI or skill identifier (SI) established by U.S. Army Human Resource Command for military auditors. The Army's goal is to have all qualified military personnel identified with the ASI or SI.

e. Contractor augmentation is authorized to technically augment or supplement the onboard IR staff. In these instances, the IR office will perform necessary contract oversight.

2–3. Training

a. Proper training of IR personnel is essential to maintain the skills and knowledge required to operate an effective IR program as required by this regulation. Commanders and IR Directors/Chiefs will ensure that each IR evaluator maintains proficiency through continuing education and training at levels prescribed in this regulation and GAO's guidance on generally accepted government auditing standards (GAGAS) requirements for CPE.

b. The OASA (FM&C) is the functional proponent for the Career Program–11 and will provide professional training guidelines and opportunities for all IR personnel. A principal source of training for IR personnel will be from training programs identified and established by the DASA (FO). These programs are intended to provide uniform IR training and expand individual qualifications to enable maximum utilization of professional resources.

2–4. Scope of work

a. The scope of work performed by the IR office can encompass all aspects of management, internal control, and all programs, functions, transactions, records, systems and documents. Properly cleared IR personnel shall be entitled to full and unrestricted access to all personnel, facilities, records, reports, data bases (read only), documents, or other information or material needed to accomplish announced review objectives. Only the commander may restrict IR personnel access to an area under his or her control and the reason will be documented in the IR files.

b. Internal review services will normally include performance of reviews, followup, audit liaison, and consulting or advisory services. In determining the type of service to be provided, the IR Director/Chief should evaluate, among other considerations, how the information will be used and the time available for the work.

c. Engagements performed by the IR office and supporting documents will be considered part of the command/

management deliberative process and therefore not releasable outside the command without the commander's approval or under a Freedom of Information Act (FOIA) request approved by the Judge Advocate General and the command's FOIA officer.

2–5. Policy relationships

There are several audit and investigative organizations internal and external to the Army whose operations impact command operations and with whom liaison and coordination is to be maintained. The most commonly encountered organizations are—

a. Government Accountability Office. The GAO is an element of the legislative branch of the U.S. Government and performs audits, evaluations, and surveys of governmental organizations or functions as directed by the Congress.

b. Department of Defense Office of the Inspector General. The DODIG may initiate, conduct, and supervise audits within the DOD as The Inspector General considers appropriate or which have been requested by the Secretary of Defense.

c. U.S. Army Audit Agency. The USAAA is the DA's central internal audit organization operating under The Auditor General of the Army. The USAAA furnishes audit services to all organizational levels and functions throughout the Army.

d. Department of the Army Inspector General. The Office of The Inspector General and the U.S. Army Inspector General Agency provide the Secretary of the Army and the Chief of Staff, Army with periodic reports on the discipline, efficiency, economy, morale, training, and readiness throughout the Army. The Office of The Inspector General and the U.S. Army Inspector General Agency provides DA with a continuing assessment of the command, operational, logistical, and administrative effectiveness of the Army.

e. Criminal Investigation Division. The Criminal Investigation Command provides crime investigation support to Army commands and often works closely with USAAA and local IR offices.

2–6. Guidance

a. Commanders may use IR resources in any role consistent with the concepts and policies contained in this regulation. In exercising this broad discretion, commanders should consider the following:

(1) Cyclic reviews of appropriated fund functions or activities will not be scheduled by IR offices in their annual plans unless the command has a documented need warranting such a resource allocation.

(2) The IR office should not be used to make regularly scheduled reviews of nonappropriated fund instrumentalities (NAFI) having a cash basis, single entry system of accounts. Normally, disinterested officers will review such funds.

(3) The IR office should not be used to perform periodic or cyclic reviews of private organizations, for example, Type 1—Federally Sanctioned (Army Emergency Relief); Type 2—Organization (Parent Teacher Student Association); or Type 3—Independent (Thrift Shops). Appropriated funds cannot be used for this purpose.

(4) The IR office may review NAFIs, unit funds, and other federally sanctioned funds when the commander believes there are indications of fraud or misappropriation of funds or other assets, or when warranted by special circumstances. The reason for use will be documented. The NAFI reviews will be conducted in accordance with AR 215–1, chapter 18.

(5) Internal review personnel should not serve in operational roles outside of the IR organization. The IR personnel may serve in an advisory role for command programs, for example, providing advice on the establishment of automated systems, process action teams, source selection evaluation boards, or administration of the command's internal control process, as long as a requisite degree of independence can be maintained.

b. The commander, in consultation with the IR Director/Chief, will determine whether the performance of a particular service is consistent with the guidance in this regulation.

2–7. Risk assessment files

Army IR offices staffed with two or more employees will establish a risk assessment file. The risk assessment file should include all major programs, activities, functions, or systems. The organization's list of assessable unit managers and the Internal Control Plan, prepared in accordance with AR 11–2, can serve as the basis for the file, but will require modification. The risk assessment file should be expanded based upon the identified activities in the Internal Control Plan to include all programs, activities, functions, and systems. Additionally, IR offices, in conjunction with assessable unit managers, will rank the relative risk (high, medium, and low) for each activity identified. This file should also include serviced activities not having their own IR resources.

2–8. Liaison with external audit organizations

The IR office will serve as the primary action office or audit focal point for monitoring all actions related to audits, surveys, and reviews performed by the Army's internal audit organization USAAA or external audit agencies—GAO, DODIG, and commercial audit firms. The IR office will assist and advise responsible command elements in preparing

command replies. The IR office should ensure command replies to external audit products are accurate, responsive, properly coordinated with all responsible command elements, and meet suspense dates.

2–9. Audit followup

Audit followup is the collective effort between IR and commanders to ensure—

a. Prompt and effective action is taken to implement agreed to recommendations in IR, USAAA, GAO, DODIG, and commercial review and/or audit reports.

b. Controls are adequate to prevent recurrence of deficiencies.

c. Internal review Directors/Chiefs provide commanders and their staff with periodic reports on the status of corrective actions, highlighting those actions not taken or delayed, and when feasible, a description of the effects of failure to take corrective actions or delayed corrective actions.

b. The IR offices maintain an audit followup tracking system and use the Internal Review Management System for this purpose.

Chapter 3
Internal Review General Standards

3–1. Introduction

This chapter establishes general standards and provides guidance for performing internal reviews, consulting and advisory services, followup, and liaison. These general standards concern the fundamental requirements for ensuring the credibility of evaluators' results. Credibility is essential to all Army IR activities performing work that Army leaders rely on for making decisions. These general standards encompass the independence of the IR organization and its individual evaluators; the exercise of professional judgment in the performance of work and the preparation of related reports; the competence of IR staff, including the need for their continuing professional education; and the existence of quality control systems and external peer reviews. These general standards provide the underlying framework that is critical in effectively applying the fieldwork and reporting standards (described in the following chapters) when performing the detailed work associated with Army IR engagements and when preparing related reports and other products. Therefore, these general standards are required to be followed by all Army IR organizations and IR evaluators.

3–2. Independence general standard

In all matters IR organizations and the individual evaluators must be free both in fact and appearance from personal, external, and organizational impairments to independence. IR organizations and evaluators have a responsibility to maintain independence so that their opinions, conclusions, judgments, and recommendations will be impartial and viewed as impartial by knowledgeable third parties. Evaluators should avoid situations that could lead objective third parties with knowledge of the relevant information to conclude that the evaluators are not able to maintain independence and thus are not capable of exercising objective and impartial judgment on all issues associated with conducting and reporting on the work. Evaluators need to consider three general classes of impairments to independence—personal, external, and organizational. If one or more of these impairments affects or can be perceived to affect an evaluator's capability to perform the work and report results impartially, that evaluator should either decline to perform the work, or in those situations in which the IR evaluator, because of a legislative requirement or for other reasons, cannot decline to perform the work, the impairment or impairments should be reported in the scope section of the review report. In using the work of a specialist, evaluators need to consider the specialist as a member of the IR team and, accordingly, assess the specialist's ability to perform the work and report results impartially. Conducting this assessment, evaluators should provide the specialist with AR 11–7 independence requirements and obtain representations from the specialist regarding the specialist's independence from the activity or program under review. If the specialist has impairment to independence, evaluators should not use the work of that specialist.

3–3. Personal Impairment

Evaluators participating on an engagement must be free from personal impairments to independence. Personal impairments of evaluators result from relationships or beliefs that might cause evaluators to limit the extent of the inquiry, limit disclosure, or weaken or slant review results in any way. Individual evaluators should notify the appropriate officials within their organizations if they have any personal impairment to independence. Examples of personal impairments of individual evaluators include, but are not limited to, the following:

a. Immediate family or close family member, who is a director or officer of the reviewed entity, or, as an employee of the reviewed entity is in a position to exert direct and significant influence over the entity or the program under review.

b. Financial interest that is direct, or is significant/material though indirect, in the reviewed entity or program.

c. Responsibility for managing an entity or making decisions that could affect operations of the entity or program

being reviewed; for example serving as a director, officer, or other senior position of the entity, activity, or program being reviewed, or as a member of management in any decisionmaking, supervisory, or ongoing monitoring function for the entity, activity, or program under review.

d. Concurrent or subsequent performance of a review by the same individual who maintained the official accounting records when such services involved preparing source documents or originating data in electronic or other form; posting transactions (whether coded by management or not coded); authorizing, executing, or consummating transactions (for example, approving invoices, payrolls, claims, or other payments of the entity or program being reviewed); maintaining an entity's bank account or otherwise having custody of the reviewed entity's funds; or otherwise exercising authority on behalf of the entity, or having authority to do so.

e. Preconceived ideas toward individuals, groups, organizations, or objectives of a particular program that could bias the review.

f. Biases, including those resulting from political, ideological, or social convictions that result from membership or employment in, or loyalty to, a particular type of policy, group, organization, or level of government.

g. Seeking employment during the conduct of the review with a reviewed organization.

3–4. External impairments

Internal review organizations must be free from external impairments to independence. Factors external to the IR organization may restrict the work or interfere with evaluators' ability to form independent and objective opinions and conclusions. External impairments to independence occur when evaluators are deterred from acting objectively and exercising professional skepticism by pressures, actual or perceived, from management and employees of the activity being reviewed or oversight organizations. For example, under the following conditions, evaluators may not have complete freedom to make an independent and objective judgment and a review may be adversely affected—

a. External interference or influence that could improperly or imprudently limit or modify the scope of a review or threaten to do so, including pressure to reduce inappropriately the extent of work performed in order to reduce costs.

b. External interference with the selection or application of review procedures or in the selection of transactions to be examined.

c. Unreasonable restrictions on the time allowed for completing a review or issuing the report.

d. Restriction on access to records, government officials, or other individuals needs to conduct the review.

e. Interference external to the IR organization in the assignment, appointment, and promotion of IR personnel.

f. Restrictions on funds or other resources provided to the IR organization that adversely affect the IR organization's ability to carry out its responsibilities.

g. Authority to overrule or to inappropriately influence the evaluators' judgment as to the appropriate content of the report.

h. Threat of replacing the evaluator over a disagreement with the contents of a review report, the evaluators' conclusions, or the application of an accounting principle or other criteria.

i. Influences that jeopardize the evaluators' continued employment for reasons other than incompetence, misconduct, or the need for IR services.

3–5. Organizational independence

The independence standard does not pose any limitations on the types of services IR organizations can perform for their customers, as long as the services do not involve making management decisions. The IR evaluators may also assist management officials in the implementation of recommended solutions, such as establishing internal controls or implementing a database system, or other systems and tools, that would result in more efficient operations. Army IR organizations can be presumed to be free from organizational impairments to independence if the head of the IR organization meets all of the following criteria:

a. Is accountable to the highest levels of their Army organizations, such as commander, deputy commander, chief of staff, garrison commander, or, for the National Guard Bureau (NGB) and State National Guards, Chief and the USPFO, respectively.

b. Reports the review results both to the highest levels of their Army organizations, that is, commander, deputy commander, chief of staff, garrison commander, or, for the NGB and State National Guards, Chief and USPFO, respectively.

c. Is located organizationally outside the staff or line management function of the activity under review.

d. Has access to the highest levels of their Army organizations, that is, commander, deputy commander, chief of staff, garrison commander, or, for the NGB and State National Guards, Chief and the USPFO, respectively.

e. Is sufficiently removed from political pressures to conduct reviews and report results, opinions, and conclusion objectively without fear of political reprisal.

3–6. Professional judgment

Internal review evaluators must use professional judgment in planning and performing engagements and reporting the

results. Professional judgment includes exercising reasonable care and professional skepticism. Reasonable care concerns acting diligently in accordance with applicable professional standards and ethical principles. Professional skepticism is an attitude that includes a questioning mind and a critical assessment of evidence. Professional skepticism includes a mindset in which evaluators assume neither that management is dishonest nor of unquestioned honesty. Believing that management is honest is not a reason to accept less than sufficient appropriate evidence. The IR evaluators that do not perform their work in accordance with the AR 11–7 standards must justify any departures from the standards.

a. Using the evaluators' professional knowledge, skills, and experience to diligently perform, in good faith and with integrity, the gathering of information and the objective evaluation of the sufficiency and appropriateness of evidence is a critical component of reviews. Professional judgment and competence are interrelated because judgments made are dependent upon the evaluators' competence.

b. Professional judgment represents the application of the collective knowledge, skills, and experiences of all the personnel involved with an engagement, as well as the professional judgment of individual evaluators. In addition to personnel directly involved in the review, professional judgment may involve collaboration with other stakeholders, outside experts, and management in the reviewed organization.

c. Using professional judgment in all aspects of carrying out their professional responsibilities, including following the independence standards, maintaining objectivity and credibility, assigning competent IR staff to the assignment, defining the scope of work, evaluating and reporting the results of the work, and maintaining appropriate quality control over the assignment process is essential to performing and reporting on a review.

d. Using professional judgment is important in determining the required level of understanding of the review's subject matter and related circumstances. This includes consideration about whether the review team's collective experience, training, knowledge, skills, abilities, and overall understanding are sufficient to assess the risks that the subject matter under review may contain a significant inaccuracy or could be misinterpreted.

e. Considering the risk level of each assignment, including the risk that they may come to an improper conclusion is another important issue. Within the context of review risk, exercising professional judgment in determining the sufficiency and appropriateness of evidence to be used to support the findings and conclusions, based on the review objectives and any recommendations reported, is an integral part of the review process.

f. Evaluators should document significant decisions affecting the review's objectives, scope, and methodology; findings; conclusions; and recommendations resulting from professional judgment.

g. While this standard places responsibility on each IR organization and evaluator to exercise professional judgment in planning and performing a review engagement, it does not imply unlimited responsibility, nor does it imply infallibility on the part of either the IR organization or an evaluator. Absolute assurance is not attainable because of the nature of evidence and the characteristics of fraud. Professional judgment does not mean eliminating all possible limitations or weaknesses associated with a specific review, but rather identifying, considering, minimizing, mitigating, and explaining them.

3–7. Competence

The Army IR staff assigned to perform engagements must collectively possess adequate professional competence for the tasks required. This standard places responsibility on IR activities to ensure that each engagement is performed by staff that collectively has the knowledge, skills, and experience necessary for that assignment. Accordingly, IR activities should have a process for recruiting, hiring, continuously developing, and evaluating its staff to assist the activity in maintaining a workforce that has adequate competence. The nature, extent, and formality of the process will depend on various factors such as the size of the IR organization, its work, and its structure. The staff assigned to conduct an engagement must collectively possess the technical knowledge, skills, and experience necessary to be competent for the type of work being performed before beginning work on the engagement. The staff assigned to an engagement should collectively possess—

a. Knowledge of the standards applicable to the type of work they are assigned and the education, skills, and experience to apply this knowledge to the work being performed.

b. General knowledge of the environment in which the reviewed entity operates and the subject matter under review.

c. Skills to communicate clearly and effectively, both orally and in writing.

d. Skills appropriate for the work being performed.

3–8. Continuing professional education

a. Army IR evaluators performing work under these standards, including planning, directing, performing fieldwork, or reporting on a review under these standards, need to maintain their professional competence through CPE. Therefore, each evaluator performing work under the standards in this regulation should complete, every 2 years, at least 24 hours of CPE that is directly related to the Army IR evaluator profession or government auditing, the government environment, or the specific or unique environment in which the reviewed Army organization operates. Evaluators who are involved in any amount of planning, directing, or reporting on IR engagements and those evaluators who are not involved in those activities but charge 20 percent or more of their time annually to IR

engagements should also obtain at least an additional 56 hours of CPE (for a total of 80 hours of CPE in every 2 year period) that enhances the evaluator's professional proficiency to perform review engagements.

b. The CPE programs are structured educational activities with learning objectives designed to maintain or enhance participants' knowledge, skills, and abilities in areas applicable to performing review engagements. Determining what subjects are appropriate for individual evaluators to satisfy both the 80–hour and the 24–hour requirements is a matter of professional judgment to be exercised by evaluators in consultation with appropriate officials in their IR organizations. Among the considerations in exercising that judgment are the evaluators' experience, the responsibilities they assume in performing engagements, and the operating environment of the reviewed entity.

c. Improving their own competencies and meeting CPE requirements are primarily the responsibilities of individual evaluators. The IR organization should have quality control procedures to help ensure that evaluators meet the continuing education requirements, including documentation of the CPE completed. The GAO has developed guidance pertaining to CPE requirements to assist in exercising professional judgment in complying with the CPE requirements.

d. External specialists assisting in performing an engagement should be qualified and maintain professional competence in their areas of specialization but are not required to meet the CPE requirements described above. However, evaluators who use the work of external specialists should assess the professional qualifications of such specialists and document their findings and conclusions. Internal specialists who are part of the IR organization and perform as a member of the IR staff should comply with these standards, including the CPE requirements.

3–9. Quality control and assurance standard

a. Each Army IR organization performing IR engagements in accordance with the standards in this regulation should have an appropriate internal quality control system in place and should undergo an external peer review.

b. An IR organization's system of quality control encompasses the IR organization's structure and the policies adopted and procedures established to provide the organization with reasonable assurance of complying with applicable standards governing Army IR engagements. An IR organization's internal quality control system should include procedures for monitoring, on an ongoing basis, whether the policies and procedures related to the standards are suitably designed and are being effectively applied.

c. The nature and extent of an IR organization's internal quality control system depends on a number of factors, such as its size, the degree of operating autonomy allowed its personnel and its IR offices, the nature of its work, its organizational structure, and appropriate cost-benefit considerations. Thus, the system established by individual IR activities will vary as will the need for, and extent of, its documentation of the systems. However, each IR organization should prepare appropriate documentation for its system of quality control to demonstrate compliance with its policies and procedures. The form and content of such documentation is a matter of judgment. Documentation of compliance should be retained for a period of time sufficient to enable those performing monitoring procedures and peer reviews to evaluate the extent of the IR organization's compliance with the quality control policies and procedures.

d. Army IR activities performing IR engagements in accordance with the standards in this regulation should have an external peer review of their IR engagement practices at least once every 3 years by evaluators independent of the IR organization being reviewed.[1] The external peer review should determine whether, during the period under review, the reviewed IR organization's internal quality control system was adequate; and whether quality control policies and procedures were being complied with to provide the IR organization with reasonable assurance of conforming to applicable professional standards. IR activities should take remedial, corrective actions as needed based on the results of the quality assurance review.

e. Members of the external peer review team should meet the following requirements:

(1) Each review team member should have current knowledge of the standards in this regulation and of the government environment relative to the work being reviewed.

(2) Each review team member should be independent (as identified in the standards in this regulation) of the IR organization being reviewed, its staff, and the IR engagements selected for the external peer review. A review team or a member of the review team is not permitted to review the IR organization that conducted its IR organization's most recent external peer review.

(3) Each review team member should have knowledge on how to perform a peer review. Such knowledge may be obtained from on-the-job training, training courses, or a combination of both.

f. The peer review should meet the following requirements:

(1) The peer review should include a review of the IR organization's internal quality control policies and procedures, including related monitoring procedures, IR engagement reports, and other necessary documents (for example, independence documentation, CPE records, and personnel management files related to compliance with hiring, performance evaluation, and assignment policies). The review should also include interviews with various levels of the

[1] Army IR activities should have an external quality assurance review conducted within 3 years from the date they start (that is, start of fieldwork) their first assignment in accordance with this the general, fieldwork and reporting standards contained in this regulation. Subsequent external quality assurance reviews should be conducted every 3 years. Extensions of these timeframes beyond 3 months to meet the external quality assurance review requirements can only be granted DA program managers and should only be requested for extraordinary circumstances.

reviewed IR organization's professional staff to assess their understanding of and compliance with relevant quality control policies and procedures.

(2) The review team should use one of the following approaches to selecting IR engagements for review:

(a) Select IR engagements that provide a reasonable cross section of the assignments performed by the reviewed IR organization in accordance with the standards in this regulation.

(b) Select IR engagements that provide a reasonable cross section of the reviewed IR organization's work subject to quality control requirements, including one or more assignments performed in accordance with the standards in this regulation.

(3) The peer review should be sufficiently comprehensive to provide a reasonable basis for concluding whether the reviewed IR organization's system of quality control was complied with to provide the activity with reasonable assurance of conforming to professional standards in the conduct of its work. The review team should consider the adequacy and results of the reviewed IR organization's monitoring efforts to efficiently plan its peer review procedures.

(4) The review team should prepare a written report communicating the results of the external peer review. The report should indicate the scope of the review, including any limitations thereon, and should express an opinion on whether the system of quality control of the reviewed IR organization's engagement practices was adequate and being complied with during the year reviewed, providing the IR organization with reasonable assurance of conforming to professional standards for IR engagements. The report should state the professional standards[2] to which the reviewed IR organization is being held. The report should also describe the reasons for any modification of the opinion. When there are matters that resulted in a modification to the opinion, evaluators should report a detailed description of the findings and recommendations, either in the peer review report or in a separate letter of comment or management letter, to enable the reviewed IR organization to take appropriate actions. The written report should refer to the letter of comment or management letter if such a letter is issued along with a modified report.

Chapter 4
Field Work Standards

4–1. Introduction

This chapter prescribes fieldwork standards and provides guidance for reviews conducted in accordance with standards established in this regulation. The fieldwork standards for IR reviews relate to planning the review; supervising staff; obtaining sufficient, competent, and relevant evidence; and preparing review documentation. The concepts of reasonable assurance, significance, and review risk form a framework for applying these standards and are included throughout the discussion of reviews.

4–2. Reasonable assurance

Reviews that comply with the standards of this regulation provide reasonable assurance that evidence is sufficient and appropriate to support the evaluators' findings and conclusions. Thus, the sufficiency and appropriateness of evidence needed and tests of evidence will vary based on the review objectives, findings, and conclusions. Objectives for reviews range from narrow to broad and involve varying types and quality of evidence. In some engagements, sufficient, appropriate evidence is available, but in others, information may have limitations. Professional judgment assists evaluators in determining the review scope and methodology needed to address the review's objectives, while providing the appropriate level of assurance that the obtained evidence is sufficient and appropriate to address the review objectives.

4–3. Significance in a review

The concept of significance assists evaluators throughout a review, including when deciding the type and extent of review work to perform, when evaluating results of review work, and when developing the report and related findings and conclusions. Significance is defined as the relative importance of a matter within the context in which it is being considered, including quantitative and qualitative factors. Such factors include the magnitude of the matter in relation to the subject matter of the review, the nature and effect of the matter, the relevance of the matter, the needs and interests of an objective third party with knowledge of the relevant information, and the impact of the matter to the reviewed program or activity. Professional judgment assists evaluators when evaluating the significance of matters within the context of the review objectives.

4–4. Review risk

Review risk is the possibility that the evaluators' findings, conclusions, recommendations, or assurance may be improper or incomplete, as a result of factors such as evidence that is not sufficient and/or appropriate, an inadequate review process, or intentional omissions or misleading information due to misrepresentation or fraud. The assessment

[2] "Professional standards" refer to both the standards in this regulation and quality control standards used by the reviewed IR organization.

of review risk involves both qualitative and quantitative considerations. Factors such as the time frames, complexity, or sensitivity of the work; size of the program in terms of dollar amounts and number of citizens served; adequacy of the reviewed entity's systems and processes to detect inconsistencies, significant errors, or fraud; and evaluators' access to records, also impact review risk. Review risk includes the risk that evaluators will not detect a mistake, inconsistency, significant error, or fraud in the evidence supporting the review. Review risk can be reduced by taking actions such as increasing the scope of work; adding experts, additional evaluators, or other resources to the review team; changing the methodology to obtain additional evidence, higher quality evidence, or alternative forms of corroborating evidence; or aligning the findings and conclusions to reflect the evidence obtained.

4–5. Planning

Evaluators must adequately plan and document the planning of the work necessary to address the review objectives. Evaluators must plan the review to reduce review risk to an appropriate level for the evaluators to provide reasonable assurance that the evidence is sufficient and appropriate to support the evaluators' findings and conclusions. This determination is a matter of professional judgment. In planning the review, evaluators should assess significance and review risk and apply these assessments in defining the review objectives and the scope and methodology to address those objectives. Planning is a continuous process throughout the review. Therefore, evaluators may need to adjust the review objectives, scope, and methodology as work is being completed.

a. The objectives are what the review is intended to accomplish. They identify the review subjects and performance aspects to be included, as well as, the potential finding and reporting elements that the evaluators expect to develop. Review objectives can be thought of as questions about the reviewed process that evaluators seek to answer based on evidence obtained and assessed against criteria.

b. Scope is the boundary of the review and is directly tied to the review objectives. The scope defines the subject matter that evaluators will assess and report on, such as a particular program or aspect of a program the necessary documentation or records, the period of time reviewed, and the locations that will be included.

c. The methodology describes the nature and extent of review procedures for gathering and analyzing evidence to address the review objectives. Review procedures are the specific steps and tests evaluators will carry out to address the review objectives. Evaluators should design the methodology to obtain sufficient, appropriate evidence to address the review objectives, reduce review risk to an acceptable level, and provide reasonable assurance that the evidence is sufficient and appropriate to support the evaluators' findings and conclusions. Methodology includes both the nature and extent of review procedures used to address the review objectives.

d. Evaluators should assess review risk and significance within the context of the review objectives by gaining an understanding of the following:

(1) The nature and profile of the programs and the needs of potential users of the review report.

(2) Internal control as it relates to the specific objectives and scope of the review.

(3) Information systems controls for purposes of assessing review risk and planning the review within the context of the review.

(4) Legal and regulatory requirements, contract provisions or grant agreements, potential fraud, or abuse that is significant within the context of the risk objectives.

(5) The results of previous reviews that directly relate to the current review objectives.

e. During planning, evaluators will—

(1) Identify the potential criteria needed to evaluate matters subject to review.

(2) Identify sources of review evidence and consider the amount and type of evidence needed given review risk and significance.

(3) Evaluate whether to use the work of other evaluators and experts to address some of the review objectives.

(4) Assign sufficient staff and specialists with adequate collective professional competence and identify other resources needed to perform the review.

(5) Communicate about planning and performance of the review to management officials, those charged with governance, and others as applicable.

(6) Prepare a written review plan.

4–6. Nature and profile of the program and user needs

a. As evaluators plan their reviews, they should obtain an understanding of the nature of the program or program's components under review and the potential use that will be made of the review results or reports. The nature and profile of a program include—

(1) Visibility, sensitivity, and relevant risks associated with the program under review.

(2) Age of the program or changes in its conditions.

(3) Size of the program in terms of total dollars, number of citizens affected, or other measures.

(4) Level and extent of review or other forms of independent oversight.

(5) Program's strategic plan and objectives.

(6) External factors or conditions that could directly affect the program.

b. One group of users of the evaluators' report is government officials who may have authorized or requested the review. Other important users of the evaluators' report are the entity being reviewed, those responsible for acting on the evaluators' recommendations. An awareness of potential users' interests and influence can help evaluators judge whether possible findings could be significant to relevant users.

c. Obtaining an understanding of the program under review helps evaluators to assess the relevant risks associated with the program and the impact on the review objectives, scope, and methodology. The evaluators' understanding may come from knowledge they already have about the program or knowledge they gain from inquiries and observations they make in planning the review. The extent and breadth of those inquiries and observations will vary among reviews based on the review objectives, as will the need to understand individual aspects of the program, such as the following:

(1) *Laws, regulations, and provisions of contracts or grant agreements.* Government programs are usually created by law and are subject to specific laws and regulations. Laws and regulations usually set forth what is to be done, who is to do it, the purpose to be achieved, the population to be served, and related funding guidelines or restrictions. Government programs may also be subject to provisions of contracts and grant agreements. Thus, understanding the laws and legislative history establishing a program and the provisions of any contracts or grant agreements can be essential to understanding the program itself. Obtaining that understanding is also a necessary step in identifying the provisions of laws, regulations, contracts, or grant agreements that are significant within the context of the review objectives.

(2) *Purpose and goals.* Purpose is the result or effect that is intended or desired from a program's operation. Legislatures usually establish the program's purpose when they provide authority for the program. Entity officials may provide more detailed information on the program's purpose to supplement the authorizing legislation. Entity officials are sometimes asked to set goals for program performance and operations, including both output and outcome goals. Evaluators may use the stated program purpose and goals as criteria for assessing program performance or may develop additional criteria to use when assessing performance.

(3) *Internal control.* Internal control, sometimes referred to as management control, in the broadest sense includes the plan, policies, methods, and procedures adopted by management to meet its missions, goals, and objectives. Internal control includes the processes for planning, organizing, directing, and controlling program operations. It includes the systems for measuring, reporting, and monitoring program performance. Internal control serves as a defense in safeguarding assets and in preventing and detecting errors; fraud; violations of laws, regulations, and provisions of contracts and grant agreements; or abuse.

(4) *Efforts.* Efforts are the amount of resources (in terms of money, material, personnel, and so forth) that are put into a program. These resources may come from within or outside the entity operating the program. Measures of efforts can have a number of dimensions, such as cost, timing, and quality. Examples of measures of efforts are dollars spent, employee-hours expended, and square feet of building space.

(5) *Program operations.* Program operations are the strategies, processes, and activities management uses to convert efforts into outputs. Program operations may be subject to internal control.

(6) *Outputs.* Outputs represent the quantity of goods or services produced by a program. For example, an output measure for a job training program could be the number of persons completing training, and an output measure for an aviation safety inspection program could be the number of safety inspections completed.

(7) Outcomes: Outcomes are accomplishments or results of a program. For example, an outcome measure for a job training program could be the percentage of trained persons obtaining a job and still in the work place after a specified period of time. An example of an outcome measure for an aviation safety inspection program could be the percentage reduction in safety problems found in subsequent inspections or the percentage of problems deemed corrected in followup inspections. Such outcome measures show the progress made in achieving the stated program purpose of helping unemployable citizens obtain and retain jobs, and improving the safety of aviation operations. Outcomes may be influenced by cultural, economic, physical, or technological factors outside the program. Evaluators may use approaches drawn from other disciplines, such as program evaluation, to isolate the effects of the program from these other influences. Outcomes also include unexpected and/or unintentional effects of a program, both positive and negative.

4–7. Internal control

a. Evaluators should obtain an understanding of internal control[3] that is significant within the context of the review objectives. For internal control that is significant within the context of the review objectives, evaluators should assess whether internal controls have been properly designed and implemented. For those internal controls that are deemed significant within the context of the review objectives, evaluators should plan to obtain sufficient, appropriate evidence to support their assessment about the effectiveness of those controls. Information systems controls are often an integral part of an entity's internal control. Thus, when obtaining an understanding of internal control significant to the review objectives, evaluators should also determine whether it is necessary to evaluate information systems controls.

b. Evaluators may modify the nature, timing, or extent of the review procedures based on the evaluators' assessment of internal control and the results of internal control testing. For example, poorly controlled aspects of a program have a higher risk of failure, so evaluators may choose to focus their efforts in these areas. Conversely, effective controls at the reviewed entity may enable the evaluators to limit the extent and type of review testing needed.

c. Evaluators may obtain an understanding of internal control through inquiries, observations, inspection of documents and records, review of other evaluators' reports, or direct tests. The procedures evaluators perform to obtain an understanding of internal control may vary among reviews based on review objectives and review risk. The extent of these procedures will vary based on the review objectives, known or potential internal control risks or problems, and the evaluators' knowledge about internal control gained in prior reviews.

d. The following discussion of the principal types of internal control objectives is intended to help evaluators better understand internal controls and determine whether or to what extent they are significant to the review objectives.

(1) *Effectiveness and efficiency of program operations.* Controls over program operations include policies and procedures that the reviewed entity has implemented to provide reasonable assurance that a program meets its objectives, while considering cost-effectiveness and efficiency. Understanding these controls can help evaluators understand the program's operations that convert inputs and efforts to outputs and outcomes.

(2) *Relevance and reliability of information.* Controls over the relevance and reliability of information include policies, procedures, and practices that officials of the reviewed entity have implemented to provide themselves reasonable assurance that operational and financial information they use for decisionmaking and reporting externally is relevant and reliable and fairly disclosed in reports. Understanding these controls can help evaluators—

(a) Assess the risk that the information gathered by the entity may not be relevant or reliable.

(b) Design appropriate tests of the information considering the review objectives.

(3) *Compliance with applicable laws and regulations and provisions of contracts or grant agreements.* Controls over compliance include policies and procedures that the reviewed entity has implemented to provide reasonable assurance that program implementation is in accordance with laws, regulations, and provisions of contracts or grant agreements. Understanding the relevant controls concerning compliance with those laws and regulations and provisions of contracts or grant agreements that the evaluators have determined are significant within the context of the review objectives can help them assess the risk of illegal acts, violations of provisions of contracts or grant agreements, or abuse.

e. A subset of these categories of internal control objectives is the safeguarding of assets and resources. Controls over the safeguarding of assets and resources include policies and procedures that the reviewed entity has implemented to reasonably prevent or promptly detect unauthorized acquisition, use, or disposition of assets and resources.

f. In performance reviews, a deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, detect, or correct—

(1) Impairments of effectiveness or efficiency of operations.

(2) Misstatements in financial or performance information.

(3) Violations of laws and regulations, on a timely basis.

g. A deficiency in design exists when—

(1) A control necessary to meet the control objective is missing.

(2) An existing control is not properly designed so that, even if the control operates as designed, the control objective is not met.

h. A deficiency in operation exists when a properly designed control does not operate as designed, or when the

[3] Refer to the internal control guidance contained in the Internal Control–Integrated Framework, published by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). As discussed in the COSO framework, internal control consists of five interrelated components- control environment, risk assessment, control activities, information and communication, and monitoring. The objectives of internal control relate to financial reporting, operations, and compliance. Safeguarding of assets is a subset of these objectives. In that respect, management designs internal control to provide reasonable assurance that unauthorized acquisition, use, or disposition of assets will be prevented or timely detected and corrected. In addition to the COSO document, the publication, Standards for Internal Control in the Federal Government, GAO/AIMD-00-21.3.1 (Washington, DC: November 1999), which incorporates the relevant guidance developed by COSO, provides definitions and fundamental concepts pertaining to internal control at the Federal level and may be useful to other auditors at any level of government. The related Internal Control Management and Evaluation Tool, GAO–01–1008G (Washington, DC: August 2001), based on the Federal internal control standards, provides a systematic, organized, and structured approach to assessing the internal control structure.

person performing the control does not possess the necessary authority or qualifications to perform the control effectively.

4–8. Information systems controls

a. Understanding information systems controls is important when information systems are used extensively throughout the program under review and the fundamental business processes related to the review objectives rely on information systems. Information systems controls consist of those internal controls that are dependent on information systems processing and include general controls and application controls. Information systems general controls are the policies and procedures that apply to all or a large segment of an entity's information systems. General controls help ensure the proper operation of information systems by creating the environment for proper operation of application controls. General controls include security management, logical and physical access, configuration management, segregation of duties, and contingency planning. Application controls, sometimes referred to as business process controls, are those controls that are incorporated directly into computer applications to help ensure the validity, completeness, accuracy, and confidentiality of transactions and data during application processing. Application controls include controls over input, processing, output, master data, application interfaces, and data management system interfaces.

b. An organizations' use of information systems controls may be extensive; however, evaluators are primarily interested in those information systems controls that are significant to the review objectives. Information systems controls are significant to the review objectives if evaluators determine that it is necessary to assess the effectiveness of information systems controls in order to obtain sufficient, appropriate evidence. When information systems controls are determined to be significant to the review objectives, evaluators should then assess the effectiveness of such controls. This assessment would include other information systems controls that impact the effectiveness of the significant controls or the reliability of information used in performing the significant controls. Evaluators should obtain a sufficient understanding of information systems controls necessary to assess review risk and plan the review within the context of the review objectives.[4]

c. Review procedures to evaluate the effectiveness of significant information systems controls include—

(1) Gaining an understanding of the system as it relates to the information.

(2) Identifying and evaluating the general controls and application controls that are critical to providing assurance over the reliability of the information required for the review.

d. The assessment of information systems controls may be done in conjunction with the evaluators' consideration of internal control within the context of the review objectives, or as a separate review objective or review procedure, depending on the objectives of the review. Depending on the significance of information systems controls to the review objectives, the extent of review procedures to obtain such an understanding may be limited or extensive. In addition, the nature and extent of review risk related to information systems controls are affected by the nature of the hardware and software used, the configuration of the entity's systems and networks, and the entity's information systems strategy.

e. Evaluators should determine which review procedures related to information systems controls are needed to obtain sufficient, appropriate evidence to support the review findings and conclusions. The following factors may assist evaluators in making this determination:

(1) The extent to which internal controls that are significant to the review depend on the reliability of information processed or generated by information systems.

(2) The availability of evidence outside the information system to support the findings and conclusions. It may not be possible for evaluators to obtain sufficient, appropriate evidence without assessing the effectiveness of relevant information systems controls. For example, if information supporting the findings and conclusions is generated by information systems or its reliability is dependent on information systems controls; there may not be sufficient supporting or corroborating information or documentary evidence that is available other than that produced by the information systems.

(3) The relationship of information systems controls to data reliability. To obtain evidence about the reliability of computer-generated information, evaluators may decide to assess the effectiveness of information systems controls as part of obtaining evidence about the reliability of the data. If the evaluator concludes that information systems controls are effective, the evaluator may reduce the extent of direct testing of data.

(4) The assessment of the effectiveness of information systems controls as a review objective. When assessing the effectiveness of information systems controls is directly a part of a review objective, evaluators should test information systems controls necessary to address the review objectives. For example, the review may involve the effectiveness of information systems controls related to certain systems, facilities, or organizations.

[4] Refer to additional criteria and guidance in the Federal Information System Controls Review Manual, GAO/AIMD-12.19.6 (Washington, DC: January 1999), and IS Standards, Guidelines and Procedures for Reviewing and Control Professionals, published by the Information Systems Review and Control Association.

4–9. Legal and regulatory requirements, contract provisions, and grants

a. Evaluators should determine which laws, regulations, and provisions of contracts or grant agreements are significant within the context of the review objectives and assess the risk that violations of those laws, regulations, and provisions of contracts or grant agreements could occur. Based on that risk assessment, the evaluators should design and perform procedures to provide reasonable assurance of detecting instances of violations of legal and regulatory requirements or violations of provisions of contracts or grant agreements that are significant within the context of the review objectives.

b. The evaluators' assessment of review risk may be affected by such factors as the complexity or newness of the laws, regulations, and provisions of contracts or grant agreements. The evaluators' assessment of review risk also may be affected by whether the entity has controls that are effective in preventing or detecting violations of laws, regulations, and provisions of contracts or grant agreements. If evaluators obtain sufficient, appropriate evidence of the effectiveness of these controls, they can reduce the extent of their tests of compliance.

4–10. Fraud

a. In planning the review, evaluators should assess risks of fraud[5] occurring that is significant within the context of the review objectives. Review team members should discuss among the team fraud risks, including factors such as individuals' incentives or pressures to commit fraud, the opportunity for fraud to occur, and rationalizations or attitudes that could allow individuals to commit fraud. Evaluators should gather and assess information to identify risks of fraud that are significant within the scope of the review objectives or that could affect the findings and conclusions. For example, evaluators may obtain information through discussion with officials of the reviewed entity or through other means to determine the susceptibility of the program to fraud, the status of internal controls the entity has established to detect and prevent fraud or the risk that officials of the reviewed entity could override internal control. An attitude of professional skepticism in assessing these risks assists evaluators in assessing which factors or risks could significantly affect the review objectives.

b. When evaluators identify factors or risks related to fraud that has occurred or is likely to have occurred that they believe are significant within the context of the review objectives, they should design procedures to provide reasonable assurance of detecting such fraud. Assessing the risk of fraud is an ongoing process throughout the review and relates not only to planning the review but also to evaluating evidence obtained during the review.

c. When information comes to the evaluators' attention indicating that fraud that is significant within the context of the review objectives may have occurred, evaluators should extend the review steps and procedures, as necessary, to—

(1) Determine whether fraud has likely occurred.

(2) Determine, if so, its effect on the review findings. If the fraud that may have occurred is not significant within the context of the review objectives, the evaluators may conduct additional review work as a separate engagement or refer the matter to other parties with oversight responsibility or jurisdiction.

4–11. Abuse

a. Abuse involves behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary business practice given the facts and circumstances. Abuse also includes misuse of authority or position for personal financial interests or those of an immediate or close family member or business associate. Abuse does not necessarily involve fraud, violation of laws, regulations, or provisions of a contract or grant agreement.

b. If during the course of the review, evaluators become aware of abuse that could be quantitatively or qualitatively significant to the program under review, evaluators should apply review procedures specifically directed to ascertain the potential effect on the program under review within the context of the review objectives. After performing additional work, evaluators may discover that the abuse represents potential fraud or illegal acts. Because the determination of abuse is subjective, evaluators are not required to provide reasonable assurance of detecting abuse.

4–12. Ongoing investigations or legal proceedings

Avoiding interference with investigations or legal proceedings is important in pursuing indications of fraud, illegal acts, and violations of provisions of contracts or grant agreements, or abuse. Laws, regulations, or policies might require evaluators to report indications of certain types of fraud, illegal acts, and violations of provisions of contracts or grant agreements, or abuse to law enforcement or investigatory authorities before performing additional review procedures. When investigations or legal proceedings are initiated or in process, evaluators should evaluate the impact on the current review. In some cases, it may be appropriate for the evaluators to work with investigators and/or legal authorities, or withdraw from or defer further work on the review or a portion of the review to avoid interfering with an investigation.

[5] Fraud is a type of illegal act involving the obtaining of something of value through willful misrepresentation. Whether an act is, in fact, fraud is a determination to be made through the judicial or other adjudicative system and is beyond Evaluators' professional responsibility.

4–13. Previous engagements

Evaluators should evaluate whether the reviewed entity has taken appropriate corrective action to address findings and recommendations from previous engagements that are significant within the context of the review objectives. When planning the review, evaluators should ask management of the reviewed entity to identify previous reviews, performance audits, or other studies that directly relate to the objectives of the review, including whether related recommendations have been implemented. Evaluators should use this information in assessing risk and determining the nature, timing, and extent of current review work, to include determining the extent to which testing the implementation of the corrective actions is applicable to the current review objectives.

4–14. Identifying review criteria

a. Evaluators should identify criteria. Criteria represent the laws, regulations, contracts, grant agreements, standards, measures, expectations of what should exist, defined business practices, and benchmarks against which performance is compared or evaluated. Criteria identify the required or desired state or expectation with respect to the program or operation. Criteria provide a context for evaluating evidence and understanding the findings, conclusions, and recommendations included in the report. Evaluators should use criteria that are relevant to the review objectives and permit consistent assessment of the subject matter.

b. The following are some examples of criteria:

(1) Purpose or goals prescribed by law or regulation or set by officials of the reviewed entity.

(2) Policies and procedures established by officials of the reviewed entity.

(3) Technically developed standards or norms.

(4) Expert opinions.

(5) Prior periods' performance.

(6) Defined business practices.

(7) Contract or grant terms.

(8) Performance of other entities or sectors used as defined benchmarks.

4–15. Identifying sources of evidence and the amount and type of evidence required

a. Evaluators should identify potential sources of information that could be used as evidence. Evaluators should determine the amount and type of evidence needed to obtain sufficient, appropriate evidence to address the review objectives and adequately plan review work.

b. If evaluators believe that it is likely that sufficient, appropriate evidence will not be available, they may revise the review objectives or modify the scope and methodology and determine alternative procedures to obtain additional evidence or other forms of evidence to address the current review objectives. Evaluators should also assess whether the lack of sufficient, appropriate evidence is due to internal control deficiencies or other program weaknesses, and whether the lack of sufficient, appropriate evidence could be the basis for review findings.

4–16. Using the work of others

a. Evaluators should determine whether other evaluators have conducted, or are conducting, reviews of the program that could be relevant to the current review objectives. The results of other evaluators' work may be useful sources of information for planning and performing the review. If other evaluators have identified areas that warrant further review work or followup, their work may influence the evaluators' selection of objectives, scope, and methodology.

b. If other evaluators have completed review work related to the objectives of the current review, the current evaluators may be able to rely on the work of the other evaluators to support findings or conclusions for the current review and thereby avoid duplication of efforts. If evaluators rely on the work of other evaluators, they should perform procedures that provide a sufficient basis for that reliance. Evaluators should obtain evidence concerning the other evaluators' qualifications and independence and should determine whether the scope, quality, and timing of the review work performed by the other evaluators is adequate for reliance in the context of the current review objectives. Procedures that evaluators may perform in making this determination include reviewing the other evaluators' report, review plan, or review documentation, and/or performing tests of the other evaluators' work. The nature and extent of evidence needed will depend on the significance of the other evaluators' work to the current review objectives and the extent to which the evaluators will rely on that work.

c. Some reviews may necessitate the use of specialized techniques or methods that require the skills of a specialist. If evaluators intend to rely on the work of specialists, they should obtain an understanding of the qualifications and independence of the specialists. Evaluating the professional qualifications of the specialist involves the following:

(1) The professional certification, license, or other recognition of the competence of the specialist in his or her field, as appropriate.

(2) The reputation and standing of the specialist in the views of peers and others familiar with the specialist's capability or performance.

(3) The specialist's experience and previous work in the subject matter.

(4) The evaluators' prior experience in using the specialist's work.

4–17. Assigning staff and other resources

a. The IR management should assign sufficient staff and specialists with adequate collective professional competence to perform the review. Staffing a review includes, among other things—

(1) Assigning staff and specialists with the collective knowledge, skills, and experience appropriate for the job.

(2) Assigning a sufficient number of staff and supervisors to the review.

(3) Providing for on-the-job training of staff.

(4) Engaging specialists when necessary.

b. If planning to use the work of a specialist, evaluators should document the nature and scope of the work to be performed by the specialist, including—

(1) The objectives and scope of the specialist's work.

(2) The intended use of the specialist's work to support the review objectives.

(3) The specialist's procedures and findings so they can be evaluated and related to other planned review procedures.

(4) The assumptions and methods used by the specialist.

4–18. Communicating with management, those charged with governance, and others

a. Evaluators should communicate an overview of the objectives, scope, and methodology, and timing of the review and planned reporting (including any potential restrictions on the report) to the following, as applicable:

(1) Management of the reviewed entity, including those with sufficient authority and responsibility to implement corrective action in the program or activity being reviewed.

(2) Those charged with governance.

(3) The individuals requesting review services, such as contracting officials, grantees, or legislative members or staff, if applicable.

b. In situations in which those charged with governance are not clearly evident, evaluators should document the process followed and conclusions reached for identifying those charged with governance.

c. Determining the form, content, and frequency of the communication is a matter of professional judgment, although written communication is preferred. Evaluators may use an engagement letter to communicate the information. Evaluators should document this communication.

d. If a review is terminated before it is completed and a review report is not issued, evaluators should document the results of the work to the date of termination and why the review was terminated. Determining whether and how to communicate the reason for terminating the review to those charged with governance, appropriate officials of the reviewed entity, the entity contracting for or requesting the review, and other appropriate officials will depend on the facts and circumstances and, therefore, is a matter of professional judgment.

4–19. Preparing the review plan

a. Evaluators must prepare a written review plan for each review. The form and content of the written review plan may vary among reviews and may include a review strategy, review program, project plan, and review planning paper, or other appropriate documentation of key decisions about the review objectives, scope, and methodology and of the evaluators' basis for those decisions. Evaluators should update the plan, as necessary, to reflect any significant changes to the plan made during the review.

b. A written review plan provides an opportunity for the review organization's management to supervise review planning and to determine whether—

(1) The proposed review objectives are likely to result in a useful report.

(2) The review plan adequately addresses relevant risks.

(3) The proposed review scope and methodology are adequate to address the review objectives.

(4) Available evidence is likely to be sufficient and appropriate for purposes of the review.

(5) Sufficient staff, supervisors, and specialists with adequate collective professional competence and other resources are available to perform the review and to meet expected time frames for completing the work.

4–20. Supervision

a. Review supervisors or those designated to supervise evaluators must properly supervise review staff.

b. Review supervision involves providing sufficient guidance and direction to staff assigned to the review to address the review objectives and follow applicable standards, while staying informed about significant problems encountered, reviewing the work performed, and providing effective on-the-job training.

c. The nature and extent of the supervision of review staff and the review of their work may vary depending on a

number of factors, such as the size of the review organization, the significance of the work, and the experience of the staff.

4–21. Obtaining sufficient, appropriate evidence

a. Evaluators must obtain sufficient, appropriate evidence to provide a reasonable basis for their findings and conclusions.

b. The concept of sufficient, appropriate evidence is integral to a review. Appropriateness is the measure of the quality of evidence that encompasses its relevance, validity, and reliability in providing support for findings and conclusions related to the review objectives. In assessing the overall appropriateness of evidence, evaluators should assess whether the evidence is relevant, valid, and reliable. Sufficiency is a measure of the quantity of evidence used to support the findings and conclusions related to the review objectives. In assessing the sufficiency of evidence, evaluators should determine whether enough evidence has been obtained to persuade a knowledgeable person that the findings are reasonable.

c. In assessing evidence, evaluators should evaluate whether the evidence taken as a whole is sufficient and appropriate for addressing the review objectives and supporting findings and conclusions. Review objectives may vary widely, as may the level of work necessary to assess the sufficiency and appropriateness of evidence to address the objectives. For example, in establishing the appropriateness of evidence, evaluators may test its reliability by obtaining supporting evidence, using statistical testing, or obtaining corroborating evidence. The concepts of review risk and significance assist evaluators with evaluating the review evidence.

d. Professional judgment assists evaluators in determining the sufficiency and appropriateness of evidence taken as a whole. Interpreting, summarizing, or analyzing evidence is typically used in the process of determining the sufficiency and appropriateness of evidence and in reporting the results of the review work.

e. When appropriate, evaluators may use statistical methods to analyze and interpret evidence to assess its sufficiency.

4–22. Appropriateness

a. Appropriateness is the measure of the quality of evidence that encompasses the relevance, validity, and reliability of evidence used for addressing the review objectives and supporting findings and conclusions.

(1) Relevance refers to the extent to which the evidence has a logical relationship with, and importance to, the issue being addressed.

(2) Validity refers to the extent to which evidence is based on sound reasoning or accurate information.

(3) Reliability refers to the consistency of results when information is measured or tested and includes the concepts of being verifiable or supported.

b. There are different types and sources of evidence that evaluators may use, depending on the review objectives. Evidence may be obtained by observation, inquiry, or inspection. Each type of evidence has its own strengths and weaknesses. The following contrasts are useful in judging the appropriateness of evidence. However, these contrasts are not adequate in themselves to determine appropriateness. The nature and types of evidence to support evaluators' findings and conclusions are matters of the evaluators' professional judgment based on the review objectives and review risk.

(1) Evidence obtained when internal control is effective is generally more reliable than evidence obtained when internal control is weak or nonexistent.

(2) Evidence obtained through the evaluators' direct physical examination, observation, computation, and inspection is generally more reliable than evidence obtained indirectly.

(3) Examination of original documents is generally more reliable than examination of copies.

(4) Testimonial evidence obtained under conditions in which persons may speak freely is generally more reliable than evidence obtained under circumstances in which the persons may be intimidated.

(5) Testimonial evidence obtained from an individual who is not biased and has direct knowledge about the area is generally more reliable than testimonial evidence obtained from an individual who is biased or has indirect or partial knowledge about the area.

(6) Evidence obtained from a knowledgeable, credible, and unbiased third party is generally more reliable than evidence from management of the reviewed entity or others who have a direct interest in the reviewed entity.

c. Testimonial evidence may be useful in interpreting or corroborating documentary or physical information. Evaluators should evaluate the objectivity, credibility, and reliability of the testimonial evidence. Documentary evidence may be used to help verify, support, or challenge testimonial evidence.

d. Surveys generally provide self-reported information about existing conditions or programs. Evaluation of the survey design and administration assists evaluators in evaluating the objectivity, credibility, and reliability of the self-reported information.

e. When sampling is used, the method of selection that is appropriate will depend on the review objectives. When a representative sample is needed, the use of statistical sampling approaches generally results in stronger evidence than

that obtained from non-statistical techniques. When a representative sample is not needed, a targeted selection may be effective if the evaluators have isolated certain risk factors or other criteria to target the selection.

f. When evaluators use information gathered by officials of the reviewed entity as part of their evidence, they should determine what the officials of the reviewed entity or other evaluators did to obtain assurance over the reliability of the information. Evaluators may find it necessary to perform testing of managements' procedures to obtain assurance or perform direct testing of the information. The nature and extent of the evaluators' procedures will depend on the significance of the information to the review objectives and the nature of the information being used.

g. Evaluators should assess the sufficiency and appropriateness of computer-processed information regardless of whether this information is provided to evaluators or extracted independently by the evaluators. The nature, timing, and extent of review procedures to assess sufficiency and appropriateness is affected by the effectiveness of the entity's internal controls over the information, including information systems controls, and the significance of the information and the level of detail presented in the evaluators' findings and conclusions in light of the review objectives.

4–23. Sufficiency

a. Sufficiency is a measure of the quantity of evidence used for addressing the review objectives and supporting findings and conclusions. Sufficiency also depends on the appropriateness of the evidence. In determining the sufficiency of evidence, evaluators should determine whether enough appropriate evidence exists to address the review objective and support the findings and conclusions.

b. The following presumptions are useful in judging the sufficiency of evidence. The sufficiency of evidence required to support the evaluators' findings and conclusions is a matter of the evaluators' professional judgment.

(1) The greater the review risk, the greater the quantity and quality of evidence required.

(2) Stronger evidence may allow less evidence to be used.

(3) Having a large volume of review evidence does not compensate for a lack of relevance, validity, or reliability.

4–24. Overall assessment of evidence

a. Evaluators should determine the overall sufficiency and appropriateness of evidence to provide a reasonable basis for the findings and conclusions, within the context of the review objectives. Professional judgments about the sufficiency and appropriateness of evidence are closely interrelated, as evaluators interpret the results of review testing and evaluate whether the nature and extent of the evidence obtained is sufficient and appropriate. Evaluators should perform and document an overall assessment of the collective evidence used to support findings and conclusions, including the results of any specific assessments conducted to conclude on the validity and reliability of specific evidence.

b. Sufficiency and appropriateness of evidence are relative concepts, which may be thought of in terms of a continuum rather than as absolutes. Sufficiency and appropriateness are evaluated in the context of the related findings and conclusions. For example, even though the evaluators may have some limitations or uncertainties about the sufficiency or appropriateness of some of the evidence, they may nonetheless determine that in total there is sufficient, appropriate evidence to support the findings and conclusions.

c. When assessing the sufficiency and appropriateness of evidence, evaluators should evaluate the expected significance of evidence to the review objectives, findings, and conclusions, available corroborating evidence, and the level of review risk. The steps to assess evidence may depend on the nature of the evidence, how the evidence is used in the review or report, and the review objectives.

(1) Evidence is sufficient and appropriate when it provides a reasonable basis for supporting the findings or conclusions within the context of the review objectives.

(2) Evidence is not sufficient or not appropriate when—

(a) Using the evidence carries an unacceptably high risk that it could lead to an incorrect or improper conclusion.

(b) The evidence has significant limitations, given the review objectives and intended use of the evidence.

(c) the evidence does not provide an adequate basis for addressing the review objectives or supporting the findings and conclusions. In these cases, evaluators should not use such evidence as support for findings and conclusions.

d. Evidence has limitations or uncertainties when the validity or reliability of the evidence has not been assessed or cannot be assessed, given the review objectives and the intended use of the evidence. Limitations also include errors identified by the evaluators in their testing. When the evaluators identify limitations or uncertainties in evidence that is significant to the review findings and conclusions, they should apply additional procedures, as appropriate. Such procedures include—

(1) Seeking independent, corroborating evidence from other sources.

(2) Redefining the review objectives or limiting the review scope to eliminate the need to use the evidence.

(3) Presenting the findings and conclusions so that the supporting evidence is sufficient and appropriate and describing in the report the limitations or uncertainties with the validity or reliability of the evidence, if such disclosure is necessary to avoid misleading the report users about the findings or conclusions.

(4) Determining whether to report the limitations or uncertainties as a finding, including any related, significant internal control deficiencies.

4–25. Developing elements of a finding

a. Evaluators should plan and perform procedures to develop the elements of a finding necessary to address the review objectives. In addition, if evaluators are able to sufficiently develop the elements of a finding, they should develop recommendations for corrective action if they are significant within the context of the review objectives. The elements needed for a finding depend entirely on the objectives of the review. Thus, a finding or set of findings is complete to the extent that the review objectives are addressed and the report clearly relates those objectives to the elements of a finding. For example, a review objective may be limited to determining the current status or condition of program operations or progress in implementing legislative requirements, and not the related cause or effect. In this situation, developing the condition would address the review objective and development of the other elements of a finding would not be necessary.

b. The element of criteria is discussed in paragraph 4–14, and the other elements of a finding—condition, effect, and cause-follow.

c. Condition is a situation that exists. The condition is determined and documented during the review.

d. The cause identifies the reason or explanation for the condition or the factor or factors responsible for the difference between the situation that exists (condition) and the required or desired state (criteria), which may also serve as a basis for recommendations for corrective actions. Common factors include poorly designed policies, procedures, or criteria; inconsistent, incomplete, or incorrect implementation; or factors beyond the control of program management. Evaluators may assess whether the evidence provides a reasonable and convincing argument for why the stated cause is the key factor or factors contributing to the difference. When the evaluators' objectives include explaining why a particular type of positive or negative program performance, output, or outcome identified in the review occurred, they are referred to as "cause." Identifying the cause of problems may assist evaluators in making constructive recommendations for corrective action. Because problems can result from a number of plausible factors or multiple causes, the recommendation can be more persuasive if evaluators can clearly demonstrate and explain with evidence and reasoning the link between the problems and the factor or factors they have identified as the cause or causes. Evaluators may identify deficiencies in program design or structure as the cause of deficient performance. Evaluators may also identify deficiencies in internal control that are significant to the subject matter of the performance review as the cause of deficient performance. In developing these types of findings, the deficiencies in program design or internal control would be described as the "cause." Often the causes of deficient program performance are complex and involve multiple factors, including fundamental, systemic root causes. Alternatively, when the evaluators' objectives include estimating the program's effect on changes in physical, social, or economic conditions, evaluators seek evidence of the extent to which the program itself is the "cause" of those changes.

e. The effect is a clear, logical link to establish the impact or potential impact of the difference between the situation that exists (condition) and the required or desired state (criteria). The effect or potential effect identifies the outcomes or consequences of the condition. When the evaluators' objectives include identifying the actual or potential consequences of a condition that varies (either positively or negatively) from the criteria identified in the review, "effect" is a measure of those consequences. Effect or potential effect may be used to demonstrate the need for corrective action in response to identified problems or relevant risks. When the evaluators' objectives include estimating the extent to which a program has caused changes in physical, social, or economic conditions, "effect" is a measure of the impact achieved by the program. In this case, effect is the extent to which positive or negative changes in actual physical, social, or economic conditions can be identified and attributed to the program.

4–26. Review documentation

a. Evaluators must prepare review documentation related to planning, conducting, and reporting for each review. Evaluators should prepare review documentation in sufficient detail to enable an experienced reviewer,[6] having no previous connection to the review, to understand from the review documentation the nature, timing, extent, and results of review procedures performed, the review evidence obtained and its source and the conclusions reached, including evidence that supports the evaluators' significant judgments and conclusions. Evaluators should prepare review documentation that contains support for findings, conclusions, and recommendations before they issue their report.

b. Evaluators should design the form and content of review documentation to meet the circumstances of the particular review. The review documentation constitutes the principal record of the work that the evaluators have performed in accordance with standards and the conclusions that the evaluators have reached. The quantity, type, and content of review documentation are a matter of the evaluators' professional judgment.

c. Review documentation is an essential element of review quality. The process of preparing and reviewing review documentation also contributes to the quality of a review. Review documentation serves to—

[6] An experienced reviewer means an individual (whether internal or external to the review organization) who possesses the competencies and skills that would have enabled him or her to perform the performance review. These competencies and skills include an understanding of the review processes, the standards in this regulation and applicable legal and regulatory requirements, the subject matter associated with achieving the review objectives, and the issues related to the reviewed entity's environment.

(1) Provide the principal support for the evaluators' report.

(2) Aid evaluators in conducting and supervising the review.

(3) Allow for the appraisal of review quality.

d. Under the standards in this regulation, evaluators should document the following:

(1) The objectives, scope, and methodology of the review.

(2) The work performed to support significant judgments and conclusions, including descriptions of transactions and records examined.[7]

(3) Evidence of supervisory review, before the review report is issued, of the work performed that supports findings, conclusions, and recommendations contained in the review report.

e. When evaluators do not comply with applicable requirements in this regulation due to law, regulation, scope limitations, restrictions on access to records, or other issues impacting the review, the evaluators should document the departure from the standard requirements and the impact on the review and on the evaluators' conclusions. This applies to departures from both mandatory requirements and presumptively mandatory requirements when alternative procedures performed in the circumstances were not sufficient to achieve the objectives of the standard (see paras 5–11*a* and 5–11*b*).

f. Review organizations should establish policies and procedures for the safe custody and retention of review documentation for a time sufficient to satisfy legal, regulatory, and administrative requirements for records retention. Whether review documentation is in paper, electronic, or other media, the integrity, accessibility, and retrievability of the underlying information could be compromised if the documentation is altered, added to, or deleted without the evaluators' knowledge, or if the documentation is lost or damaged. For review documentation that is retained electronically, the IR organization should establish information systems controls concerning accessing and updating the review documentation.

g. Internal review organizations should develop policies to deal with requests by outside parties to obtain access to review documentation, especially when an outside party attempts to obtain information indirectly through the reviewer rather than directly from the reviewed entity. In developing such policies, IR organizations should determine what laws and regulations apply, if any.

Chapter 5
Reporting Standards

5–1. Introduction

This chapter establishes reporting standards and provides guidance for reviews conducted in accordance with the standards in this regulation. The reporting standards for reviews relate to the form of the report, the report contents, and report issuance and distribution.

5–2. Reporting

a. Evaluators must issue reports communicating the results of each completed review. Evaluators should use a form of the review report that is appropriate for its intended use and is in writing or in some other retrievable form. For example, the evaluator may present reports using electronic media that are retrievable by report users and the IR organization. The users' needs will influence the form of the review report. Different forms of reports include formal written reports, memorandum, briefing slides, or other presentation materials.

b. The purposes of review reports are to—

(1) Communicate the results of reviews to those charged with governance, the appropriate officials of the reviewed entity, and the appropriate oversight officials.

(2) Make the results less susceptible to misunderstanding.

(3) Make the results available to the public, as applicable.

(4) Facilitate followup to determine whether appropriate corrective actions have been taken.

c. If a review is terminated before it is completed and a review report is not issued, evaluators should follow the guidance in paragraph 4–18*d*.

d. If after the report is issued, the evaluators discover that they did not have sufficient, appropriate evidence to support the reported findings or conclusions, they should communicate with those charged with governance, the appropriate officials of the reviewed entity, and the appropriate officials of the organizations requiring or arranging for the reviews, so that they do not continue to rely on the findings or conclusions that were not supported. The evaluators

[7] Evaluators may meet this requirement by listing file numbers, case numbers, or other means of identifying specific documents they examined. They are not required to include copies of documents they examined as part of the review documentation, nor are they required to list detailed information from those documents.

should then determine whether to conduct additional review work necessary to reissue the report with revised findings or conclusions.

5–3. Report contents

Evaluators should prepare review reports that contain—

a. The objectives, scope, and methodology of the review.

b. The review results, including findings, conclusions, and recommendations, as appropriate.

c. A statement about the evaluators' compliance with these standards.

d. A summary of the views of responsible officials.

e. The nature of any confidential or sensitive information omitted, if applicable.

5–4. Objectives, scope, and methodology

a. Evaluators should include in the report a description of the review objectives and the scope and methodology used for addressing the review objectives. Report users need this information to understand the purpose of the review, the nature and extent of the review work performed the context and perspective regarding what is reported, and any significant limitations in review objectives, scope, or methodology.

b. Review objectives for reviews may vary widely. Evaluators should communicate review objectives in the review report in a clear, specific, neutral, and unbiased manner that includes relevant assumptions, including why the IR organization undertook the assignment and the underlying purpose of the review and resulting report. When review objectives are limited and broader objectives can be inferred by users, stating in the review report that certain issues were outside the scope of the review can avoid potential misunderstanding.

c. Evaluators should describe the scope of the work performed and any limitations, including issues that would be relevant to likely users, so that they could reasonably interpret the findings, conclusions, and recommendations in the report without being misled. Evaluators should also report any significant constraints imposed on the review approach by information limitations or scope impairments, including denials of access to certain records or individuals.

d. In describing the work conducted to address the review objectives and support the reported findings and conclusions, evaluators should, as applicable, explain the relationship between the population and the items tested; identify organizations, geographic locations, and the period covered; report the kinds and sources of evidence; and explain any significant limitations or uncertainties based on the evaluators' overall assessment of the sufficiency and appropriateness of the evidence in the aggregate.

e. In reporting review methodology, evaluators should explain how the completed review work supports the review objectives, including the evidence gathering and analysis techniques, in sufficient detail to allow knowledgeable users of their reports to understand how the evaluators addressed the review objectives. When the evaluators used extensive or multiple sources of information, the evaluators may include a description of the procedures performed as part of their assessment of the sufficiency and appropriateness of information used as review evidence. Evaluators should identify significant assumptions made in conducting the review; describe comparative techniques applied; describe the criteria used; and, when sampling significantly supports the evaluators' findings, conclusions, or recommendations, describe the sample design and state why the design was chosen, including whether the results can be projected to the intended population.

5–5. Reporting findings

a. In the review report, evaluators should present sufficient, appropriate evidence to support the findings and conclusions in relation to the review objectives. Clearly developed findings, assist management or oversight officials of the reviewed entity in understanding the need for taking corrective action. If evaluators are able to sufficiently develop the elements of a finding, they should provide recommendations for corrective action if they are significant within the context of the review objectives. However, the extent to which the elements for a finding are developed depends on the review objectives. Thus, a finding or set of findings is complete to the extent that the evaluators address the review objectives.

b. As discussed in chapter 4, even though the evaluators may have some uncertainty about the sufficiency or appropriateness of some of the evidence, they may nonetheless, determine that in total there is sufficient, appropriate evidence given the findings and conclusions. Evaluators should describe the limitations or uncertainties regarding evidence in conjunction with the findings and conclusions, in addition to describing those limitations or uncertainties as part of the objectives, scope and methodology. Additionally, this description provides report users with a clear understanding regarding how much responsibility the evaluators are taking for the information. Evaluators should describe in their report limitations or uncertainties with the reliability or validity of evidence if—

(1) The evidence is significant to the findings and conclusions within the context of the review objectives.

(2) Such disclosure is necessary to avoid misleading the report users about the findings and conclusions.

c. Evaluators should place their findings in perspective by describing the nature and extent of the issues being reported and the extent of the work performed that resulted in the finding. To give the reader a basis for judging the prevalence and consequences of these findings, evaluators should, as applicable, relate the instances identified to the population or the number of cases examined and quantify the results in terms of dollar value, or other measures, as appropriate. If the results cannot be projected, evaluators should limit their conclusions appropriately.

d. Evaluators may provide selective background information to establish the context for the overall message and to help the reader understand the findings and significance of the issues discussed.[8] When reporting on the results of their work, evaluators should disclose significant facts relevant to the objectives of their work and known to them which, if not disclosed, could mislead knowledgeable users, misrepresent the results, or conceal significant improper or illegal practices.

e. Evaluators should report deficiencies[9] in internal control that are significant within the context of the objectives of the review, all instances of fraud, illegal acts[10] unless they are inconsequential within the context of the review objectives, significant violations of provisions of contracts or grant agreements, and significant abuse, that have occurred or are likely to have occurred.

5–6. Deficiencies in internal control

a. When evaluators detect deficiencies in internal control that are not significant to the objectives of the review, they may include those deficiencies in the report or communicate those deficiencies in writing to officials of the reviewed entity unless the deficiencies are inconsequential considering both qualitative and quantitative factors. Evaluators should refer to that written communication in the review report, if the written communication is separate from the review report. Determining whether or how to communicate to officials of the reviewed entity deficiencies that are inconsequential within the context of the review objectives is a matter of professional judgment. Evaluators should document such communications. Evaluators should include in the review report—

(1) The scope of their work on internal control.

(2) Any deficiencies in internal control that are significant within the context of the review objectives and based upon the review work performed.

b. In a performance review, evaluators may conclude that identified deficiencies in internal control that are significant within the context of the review objectives are the cause of deficient performance of the program or operations being reviewed. In reporting this type of finding, the internal control deficiency would be described as the cause.

5–7. Fraud, illegal acts, violations of provisions of contracts or grant agreements, and abuse

a. When evaluators conclude, based on sufficient, appropriate evidence, that fraud, illegal acts, significant violations of provisions of contracts or grant agreements, or significant abuse either has occurred or is likely to have occurred, they should report the matter as a finding.

b. When evaluators detect violations of provisions of contracts or grant agreements, or abuse that are not significant, they should communicate those findings in writing to officials of the reviewed entity unless the findings are inconsequential within the context of the review objectives, considering both qualitative and quantitative factors. Determining whether or how to communicate to officials of the reviewed entity fraud, illegal acts, violation of provisions of contracts or grant agreements, or abuse that is inconsequential is a matter of the evaluators' professional judgment. Evaluators should document such communications.

c. When fraud, illegal acts, violations of provisions of contracts or grant agreements, or abuse either have occurred or are likely to have occurred, evaluators may consult with authorities or legal counsel about whether publicly reporting such information would compromise investigative or legal proceedings. Evaluators may limit their public reporting to matters that would not compromise those proceedings, and for example, report only on information that is already a part of the public record.

5–8. Reporting findings directly to parties outside the reviewed entity

a. Evaluators should report known or likely fraud, illegal acts, and violations of contracts provision or grant agreements, or abuse directly to parties outside the reviewed entity in the following two circumstances.[11]

(1) When entity management fails to satisfy legal or regulatory requirements to report such information to external parties specified in law or regulation, evaluators should first communicate the failure to report such information to those charged with governance. If the reviewed entity still does not report this information to the specified external

[8] Appropriate background information may include information on how programs and operations work; the significance of programs and operations (for example, dollars, impact, purposes, and past review work if relevant); a description of the reviewed entity's responsibilities; and explanation of terms, organizational structure, and the statutory basis for the program and operations.

[9] As discussed in chapter 4, a deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements in financial or performance information, violations of laws and regulations, or impairments of effectiveness or efficiency of operations on a timely basis.

[10] Whether a particular act is, in fact, illegal may have to await final determination by a court of law or other adjudicative body. Disclosing matters that have led reviewers to conclude that an illegal act is likely to have occurred is not a final determination of illegality.

[11] Internal review organizations do not have a duty to report outside that entity unless required by law, rule, regulation, or policy.

parties as soon as practicable after the evaluators' communication with those charged with governance, then the evaluators should report the information directly to the specified external parties.

(2) When entity management fails to take timely and appropriate steps to respond to known or likely fraud, illegal acts, violations of provisions of contracts or grant agreements, or abuse that—

(a) Is significant to the findings and conclusions.

(b) Involves funding received directly or indirectly from a government agency. Evaluators should first report management's failure to take timely and appropriate steps to those charged with governance. If the reviewed entity still does not take timely and appropriate steps as soon as practicable after the evaluators' communication with those charged with governance, then the evaluators should report the entity's failure to take timely and appropriate steps directly to the funding agency.

b. The reporting in paragraph 5–8 is in addition to any legal requirements to report such information directly to parties outside the reviewed entity. Evaluators should comply with these requirements even if they have resigned or been dismissed from the review prior to its completion.

c. Evaluators should obtain sufficient, appropriate evidence, such as confirmation from outside parties, to corroborate assertions by management of the reviewed entity that it has reported such findings in accordance with laws, regulations, and funding agreements. When evaluators are unable to do so, they should report such information directly as discussed above.

5–9. Conclusions

Evaluators should report conclusions, as applicable, based on the review objectives and the review findings. Report conclusions are logical inferences about the program based on the evaluators' findings, not merely a summary of the findings. The strength of the evaluators' conclusions depends on the sufficiency and appropriateness of the evidence supporting the findings and the soundness of the logic used to formulate the conclusions. Conclusions are stronger if they lead to the evaluators' recommendations and convince the knowledgeable user of the report that action is necessary.

5–10. Recommendations

a. Evaluators should recommend actions to correct problems identified during the review and to improve programs and operations when the potential for improvement in programs, operations, and performance is substantiated by the reported findings and conclusions. Evaluators should make recommendations that flow logically from the findings and conclusions, are directed at resolving the cause of identified problems, and clearly state the actions recommended.

b. Effective recommendations encourage improvements in the conduct of government programs and operations. Recommendations are effective when they are addressed to parties that have the authority to act and when the recommended actions are specific, practical, cost effective, and measurable.

5–11. Reporting evaluators' compliance with standards

a. When evaluators comply with all applicable standards, they should use the following language, which represents an unmodified standards compliance statement, in the review report to indicate that they performed the review in accordance with standards: "We conducted this performance review in accordance with standards in AR 11–7. Those standards require that we plan and perform the review to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our review objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our review objectives."

b. When evaluators do not comply with all applicable AR 11–7 standards, they should include a modified compliance statement in the review report. Evaluators should use a statement that includes the language in *a*, above, modified to indicate the standards that were not followed.

5–12. Reporting views of responsible officials

a. Providing a draft report with findings for review and comment by responsible officials of the reviewed entity and others helps the evaluators develop a report that is fair, complete, and objective. Including the views of responsible officials' results in a report that presents not only the evaluators' findings, conclusions, and recommendations, but also the perspectives of the responsible officials of the reviewed entity and the corrective actions they plan to take. Obtaining the comments in writing is preferred, but oral comments are acceptable.

b. When evaluators receive written comments from the responsible officials, they should include in their report a copy of the officials' written comments, or a summary of the comments received. When the responsible officials provide oral comments only, the evaluators should prepare a summary of the oral comments and provide a copy of the summary to the responsible officials to verify that the comments are accurately stated.

c. Evaluators should also include in the report an evaluation of the comments, as appropriate. In cases in which the reviewed entity provides technical comments in addition to its written or oral comments on the report, evaluators may disclose in the report that such comments were received.

d. Obtaining oral comments may be appropriate when, for example, there is a reporting date critical to meeting a

user's needs; evaluators have worked closely with the responsible officials throughout the conduct of the work and the parties are familiar with the findings and issues addressed in the draft report; or the evaluators do not expect major disagreements with the draft report's findings, conclusions, and recommendations, or major controversies with regard to the issues discussed in the draft report.

e. When the reviewed entity's comments are inconsistent or in conflict with the report's findings, conclusions, or recommendations or when planned corrective actions do not adequately address the evaluators' recommendations, the evaluators should evaluate the validity of the reviewed entity's comments. If the evaluators disagree with the comments, they should explain in the report their reasons for disagreement. Conversely, the evaluators should modify their report as necessary if they find the comments valid and supported with sufficient, appropriate evidence.

f. If the reviewed entity refuses to provide comments or is unable to provide comments within a reasonable period of time, the evaluators may issue the report without receiving comments from the reviewed entity. In such cases, the evaluators should indicate in the report that the reviewed entity did not provide comments.

5–13. Reporting confidential or sensitive information

a. If certain pertinent information is prohibited from public disclosure or is excluded from a report due to the confidential or sensitive nature of the information, evaluators should disclose in the report that certain information has been omitted and the reason or other circumstances that makes the omission necessary.

b. Certain information may be classified or may be otherwise prohibited from general disclosure by Federal, state, or local laws or regulations. In such circumstances, evaluators may issue a separate, classified or limited-official-use report containing such information and distribute the report only to persons authorized by law or regulation to receive it.

c. Additional circumstances associated with public safety and security concerns could also justify the exclusion of certain information from a publicly available or widely distributed report. For example, detailed information related to computer security for a particular program may be excluded from publicly available reports because of the potential damage that could be caused by the misuse of this information. In such circumstances, evaluators may issue a limited-official-use report containing such information and distribute the report only to those parties responsible for acting on the evaluators' recommendations. The evaluators may consult with legal counsel regarding any requirements or other circumstances that may necessitate the omission of certain information.

d. Considering the broad public interest in the program or activity under review assists evaluators when deciding whether to exclude certain information from publicly available reports. When circumstances call for omission of certain information, evaluators should evaluate whether this omission could distort the review results or conceal improper or illegal practices.

e. When review organizations are subject to public records laws, evaluators should determine whether public records laws could impact the availability of classified or limited-official-use reports and determine whether other means of communicating with management and those charged with governance would be more appropriate. For example, the evaluators may communicate general information in a written report and communicate detailed information verbally. The reviewer may consult with legal counsel regarding applicable public records laws.

5–14. Distributing reports

a. Distribution of reports completed under this regulation is in accordance with paragraph 2–4*c* of this regulation.

b. Evaluators should document any limitation on report distribution. The following discussion outlines distribution for reports completed under this regulation:

(1) Review organizations in government entities should distribute review reports to those charged with governance, to the appropriate officials of the reviewed entity, and to the appropriate oversight bodies or organizations requiring or arranging for the reviews.

(2) Evaluators should also distribute copies of the reports to other officials who have legal oversight authority or who may be responsible for acting on review findings and recommendations, and to others authorized to receive such reports.

Appendix A
References

Section I
Required Publications

AR 11–2
Management Control (Cited in paras 1–4*d*(13) and 2–7.)

AR 36–2
Audit Services in the Department of the Army (Cited in paras 1–4*c*(3) and 1–4*d*(15).)

Section II
Related Publications
A related publication is a source of additional information. The user does not have to read it to understand this regulation.

AR 215–1
Military Morale, Welfare, and Recreation Programs and Nonappropriated Fund Instrumentalities

GAO–07–731G
Comptroller General of the United States Government Auditing Standards (GAS)

DOD Directive 7600.2
Audit Policies

DOD Instruction 7600.6
Audit of Nonappropriated Fund Instrumentalities and Related Activities

DOD 7600.7–M
Internal Audit Manual

DOD Directive 7650.3
Follow-up on General Accounting Office, DOD Inspector General, and Internal Audit Reports

FM 100–22
Installation Management

FM 101–5
Staff Organization and Operations (Available at http://www.adtdl.army.mil/atdls.htm.)

The Institute of Internal Auditors Web site
http://www.theiia.org

Section III
Prescribed Forms
This section contains no entries.

Section IV
Referenced Forms
DA Forms are available on the Army Publishing Directorate Web site (http://www.apd.army.mil)

DA Form 11–2–R
Management Control Evaluation Certification Statement (LRA)

DA Form 2028
Recommended Changes to Publications and Blank Forms

Appendix B
Management Control Evaluation Checklist

B–1. Function
The function covered by this checklist is the Army Internal Review Program.

B–2. Purpose
The purpose of this checklist is to assist IR Chiefs and IR personnel in evaluating the key internal controls outlined below. It is not intended to cover all controls.

B–3. Instructions
Answers should be based on the actual testing of key internal controls (for example, document analysis, direct observation, sampling, simulation, other). Answers that indicate deficiencies should be explained and corrective action indicated in supporting documentation. Certification this evaluation has been conducted should be accomplished on DA Form 11–2–R (Management Control Evaluation Certification Statement (LRA)).

B–4. Test questions
a. Do all IR personnel complete, every two years, at least 80 hours of CPE that directly enhance the individual's professional proficiency? Are at least 24 of the 80 hours of CPE directly related to the individual's assigned duties? Are at least 20 of the 80 hours completed in any one year of the two-year period?

b. Is an IR quality assurance program established and implemented in accordance with AR 11–7? Has the IR program undergone an external quality review not less than every three years, with quality review in the intervening years conducted by the IR Director?

B–5. Supersession
There is no previous checklist for this functional area.

B–6. Comments
Help to make this a better tool for evaluating internal controls. Submit comments to Office of the Assistant Secretary of the Army (Financial Management and Comptroller) (SAFM–FOI), 109 Army Pentagon, Washington, DC 20310–0109.

Glossary

Section I
Abbreviations

ACOM
Army Command

ASA (FM&C)
Assistant Secretary of the Army (Financial Management and Comptroller)

ASCC
Army Service Component Command

COSO
Committee of Sponsoring Organization of the Treadway Commission

DA
Department of the Army

DASA (FO)
Deputy Assistant Secretary of the Army (Financial Operations)

DOD
Department of Defense

DODIG
Department of Defense Inspector General

DRU
Direct Reporting Unit

FOIA
Freedom of Information Act

GAGAS
generally accepted government auditing standards

GAO
Government Accountability Office

HQDA
Headquarters, Department of the Army

IR
internal review

NAFI
nonappropriated fund instrumentalities

NGB
National Guard Bureau

USAAA
U.S. Army Audit Agency

USPFO
U.S. property and fiscal officer

ASI
additional skill identifier

CPE
continuing professional education

SAP
special access programs

SI
skill identifier

Section II
Terms
This section contains no entries.

Section III
Special Abbreviations and Terms
This section contains no entries.

UNCLASSIFIED

PIN 000279-000

Q

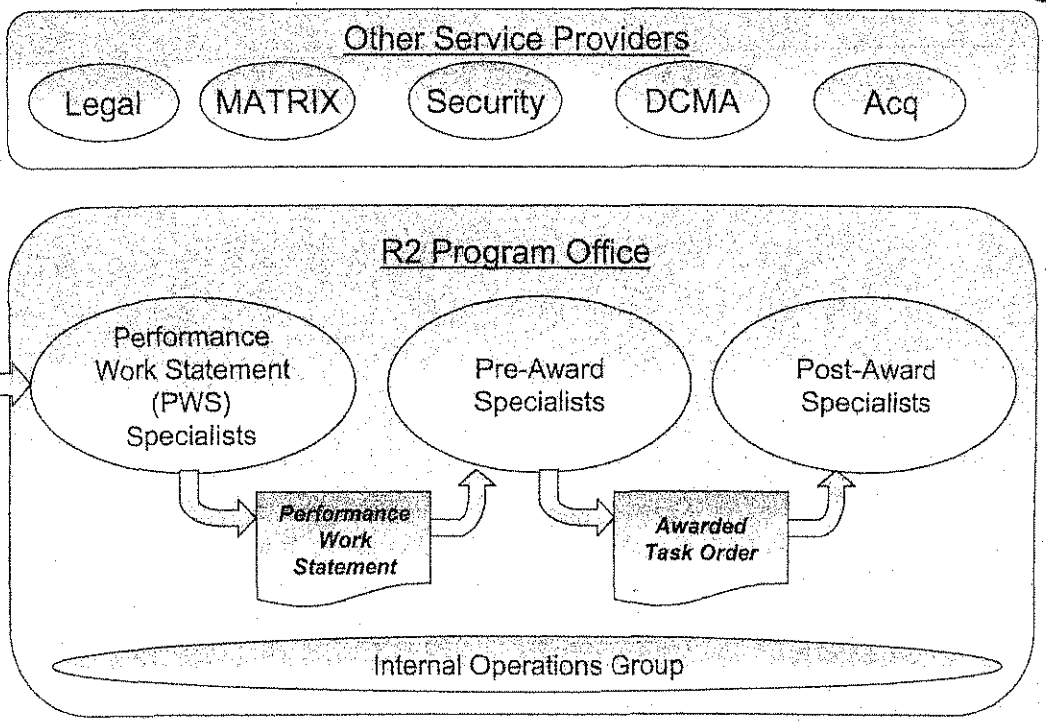
R2 Fee Study Kick Off Meeting

January 9, 2008

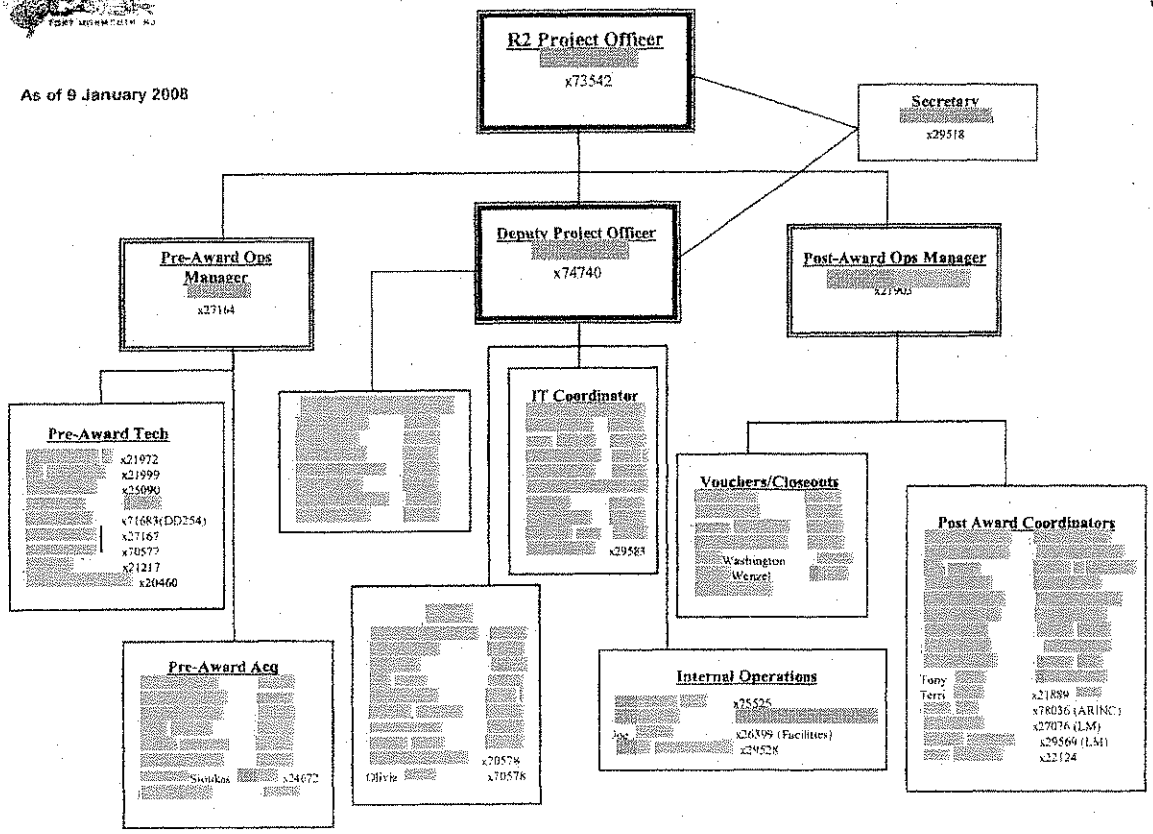
CECOM —— PEO C3T —— PEO IEW&S —— PEO-EIS —— CERDEC

CECOM LIFE CYCLE MANAGEMENT COMMAND

R2PO Cost Center Overview



As of 9 January 2008



CECOM —— PEO C3T —— PEO IEW&S —— PEO-EIS —— CERDEC

CECOM LIFE CYCLE MANAGEMENT COMMAND

Planned Approach

- **Gather 'Cost' Parameters for all R2 cost center components**
  - Determine costs for each "organization" within R2
  - Extract "volume" and "flow" measures from the R2 application
- **Create Initial Models For Categorizing Task Orders and Segmenting Customers**
  - Interview management to gather data on contract categories and segmentation (characteristics and examples)
  - Create a "task order" characterization matrix and customer "segmentation" matrix
- **Refine the Model for Categorizing Task Orders**
  - Schedule meeting with various representatives from the cost center components (PWS, Pre-Award, Vouchers, IT, etc.) to review / refine the model
  - Synthesize a specific task order model from the data residing in the R2 application and the data collected during our information gathering sessions
- **Synthesize a Pricing Strategy for Services**
  - Develop a "pricing" model for task orders based on the cost data and the segmentation
- **Validate the Proposed Task Order and Pricing Models Using the Collected Examples**

Pricing Offer/Strategy

Will pricing be available by:

- One price per year per customer for all contracts
- Ala carte – pay for each contract
- Price for very small customers
- Price for very large customers
- Charge for establishing contract for new customer

Issues/Next Steps

- We need data extractions from the R2 applications. Who will work with us from the R2 IT team?
- Who should we work with in determining the costs model from 'Performance Work Statement (PWS) Specialists', 'Pre-Award Specialist' and 'Post-Award Specialist'?
- Who should we work with to find cost of human resources from each of the boxes on the R2 organization chart?
- How are the costs for services provided by other organization determined? [Legal, OCONUS, Security, DCMA, Acquisition center]

R

G8 Response
To
R2 Presentation

Command Analysis Office
CECOM LCMC G8
26 Mar 2009

Purpose

- R2 Admin Support Cost IPT developed a solution for the R2 Office Support Cost that complies with the Economy Act.
- The planned execution of the solution has created additional challenges within the internal operations of the R2 Office.
- The desired outcome of this briefing is to develop solutions to the identified roadblocks.

Agenda

- Provide background info.
- Define requirement.
- Identify proposed solution to date.
- Present challenges.
- Facilitate discussion and obtain solutions from comptroller and management accounting.

Background

- Currently, each customer is provided an estimate for R2 support cost.
- R2 accepts funding for its support from customer as "reimbursable, creates a JOAN, and places funding into a "JOAN pool", where it retains its unique accounting classification.
- Execution of "JOAN pool" covers all R2 annual operating expenses with ¼ year allowable carryover.
- R2 ADDED: "JOAN pool" is the system where all active JOANs are held pending cost application against funds.

Requirement

<u>The Economy Act (31 USC Sec. 1535 (b))</u>

- States that agencies are required to recover the actual cost of goods and services provided.
- The level of effort should be specifically identifiable to the customer order
- ...If collections were more than the actual costs, the excess should be returned to the customer
- If the reverse was true, the customer should be contacted to obtain more funding.

Proposed Solution to Support Cost

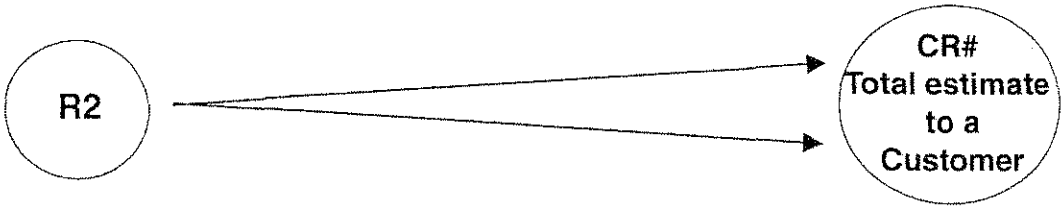
- Step 1 – Provide Pre and Post award customer estimates based on established cost pools developed from historical data.

- G8 Response:

  Continue to develop customer cost estimates.

To-Be Support Cost Process

- STEP 1a:
  - R2 provide customer estimate in two parts - Part 1 Pre-Award effort and Part 2 Post-Award support for their job (CR#)



  - Estimate based on cost pools for various aspects of task orders
  - SEC will automate estimating system or commercial software program will be utilized
  - IPT is reviewing cost pools/estimating process/tools

To-Be Support Cost Process (cont'd)

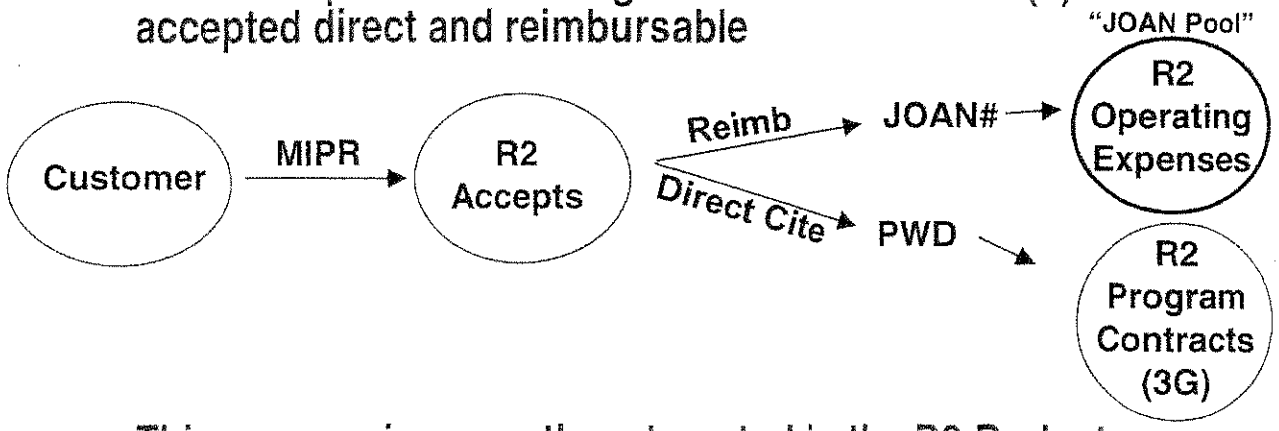
- STEP 1a: from previous page

- G8 Response:

  Recommend estimate be based on standard hourly rate x # estimated hours to be performed.

To-Be Support Cost Process – Cont'd

- STEP 1b:
  - Customer provides funding to R2 office via MIPR(s) which are accepted direct and reimbursable



  - This process is currently automated in the R2 Budget application
- G8 Response: This concept appears to be adequate at Step 1 level.

Proposed Solution to Support Cost

- Step 2 – Develop and integrate software tools (time tracking, budget, contracts) to identify and track actual costs to each customer.

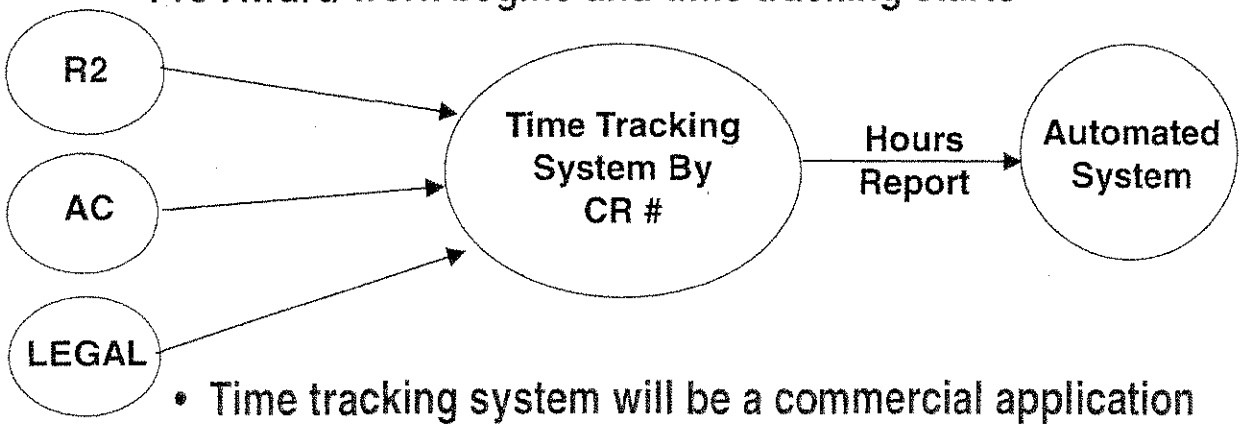
- G8 Response:

  Establish milestone events with dates for system implementation.

TEAM CAISA

To-Be Support Process (cont'd)

- STEP 2:
  - Pre-Award work begins and time tracking starts



- Time tracking system will be a commercial application
- R2 ADDED: Automated System stores the completed details. Produces statements and reports. To be matched with funds received (in development).

G8 Response: Supports time tracking system.

To-Be Support Process – Cont'd

- STEP 3: Reconciliation
  - Pre-Award work is complete and customer's direct cite funds are obligated on contract and pre-award actual hours can be calculated to give us a total pre-award cost.

Actual Hours X Rates
+ Overhead (indirect and other direct costs)
Total Pre-Award Cost

1. Reconcile Pre-Award Costs with customer. Reconciliation is on paper to customer (Estimate $500, Actual $450, we return $50 to customer from their JOAN)
   2. Return customers exact same funds
   3. Collect additional funding if needed

- G8 Response: 1. Recommend funds not be returned at this point as customer may require additional service on contract.
  2. Return customer funds identical to funds received.
  3. Request additional funds as needed.

TEAM C4ISR

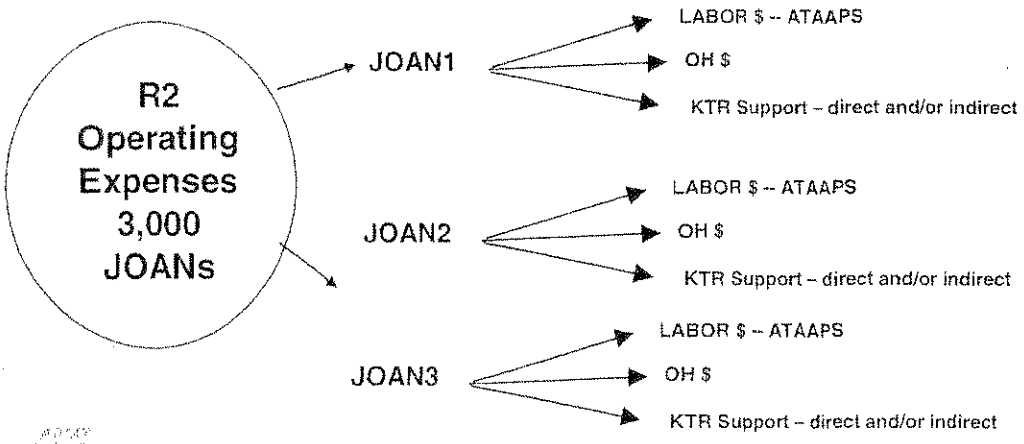
Question?

- Does the Economy Act require that customer funds (JOANs) be expended against the customer's actual costs or can they be expended against program costs?
- Alternative 1 and 2 detail each approach

- G8 Response: Customer funds can not be expended against program costs and must be expended against actual costs of services provided to customer.

Step 4 – Alternative 1
Expenditure of Customer Funds by Customer's Actual costs

- Step 4 -
  - Each JOAN will be sub-divided into Labor + Overhead + KTR Support to be expended against each customer's actual costs



Step 4 – Alternative 1 (cont'd)
Expenditure of Customer Funds by Customer's Actual costs

- Step 4 – from previous page.

- G8 Response: Approach appears feasible in that R2 would have available funds to return to the customer.
  - Dependent on multiple JOAN contract.
  - Facts: Increased workload for R2.

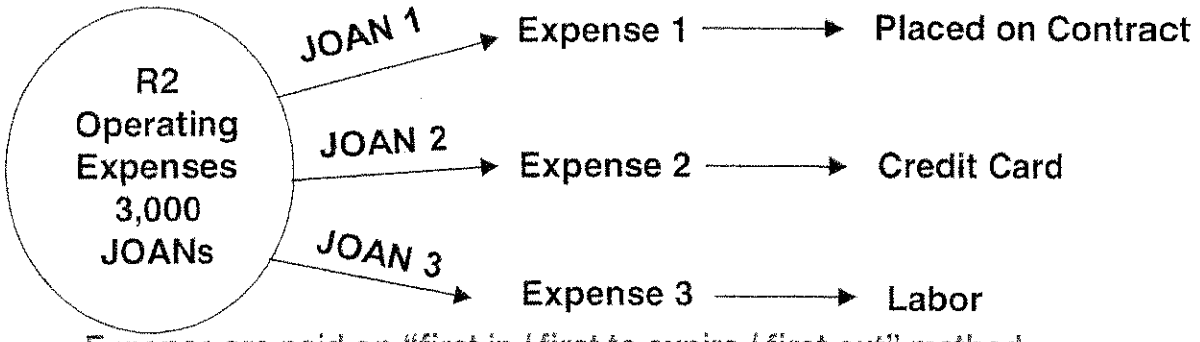
    Provides clear audit trail.

    Contract Officer determines type of contract.

    Contract is considered commercial therefore it is FFP

Step 4 – Alternative 2

Expenditure of Customer Funds by program cost



- Expense are paid on "first in / first to expire / first out" method
- Program's Actual costs are disbursed on each customer's JOAN vs. customer's actual costs disbursed on each customer's JOAN (alternative 2)

- G8 Response: This alternative neither meets the requirements of the Economy Act nor the Purpose, Time, and Amount provisions of the Financial Management Regulation (FMR). Alternative 2 will not be considered.

TEAM CAISR

Challenges to Expenditure Question 1

- Applies to Alternative 1 and 2
- 1. Contractor support contract is FFP, for work effort, not number of people. How do we account for contractor support for the direct portions of the workload? (They can not be placed in overhead, as they are direct.)
- Impact: Support contracts for R2

- G8 Response: 1. Use average standard rate for contractor support.

Challenges to Expenditure Question 1 (cont)

- Applies to Alternative 1 and 2
- 2. How do we account/explain for the difference in rates between government and contractor support in our estimates? In some cases we do not know if it will be government or contractor support for the task order.
- R2 ADDED: There is no difference in work distribution.
- Impact: Support contracts for R2

- G8 Response: 2. Combine the rates for government and contractor support to arrive at an average hourly rate. Utilize this average hourly rate that has been established in all applicable areas.

TEAM C4ISR

Challenges to Expenditure Question 2

- Applies to Alternative 1.
- 1. Current 8A internal support contract is FFP. R2 must fully fund each line item with one PWD. Using multiple PWDs is not allowed.
- Impact: Funding R2 Support Contract

- G8 Response: 1. Recommend negotiation with the Contracting Officer for a type of contract other FFP that allows multiple JOANS.

Challenges to Expenditure Question 2 (cont)

- Applies to Alternative 1.
- 2. How do we fund this contract if each JOAN must be billed for the support received?
- 3. What are the mechanics for charging these costs back to the customer if we can not place multiple PWDs on the contract?
- Impact: Funding R2 Support Contract

- G8 Response:
  - 2. Current procedures which do not allow multiple JOANS on the FFP contract limit R2 to the use of one selected JOAN.
  - 3. Under current limitations customer costs should be transferred from the FFP Contract to customer JOANS as soon as possible. Use the current R2 system to transfer costs.

Challenges to Expenditures
Question 3

- Alternative 2
- If we use a JOAN on contract, and after reconciliation have to return funds, we can not return the exact funds as they are already on contract and may have billed or may not be able to be removed.
- Impact: Support contracts for R2, inability to return exact funds sent to R2.

- G8 Response:
- 1. Alternative 2 does not comply with the Economy Act provisions. Customer funds in excess of the actual cost of services must be returned to the customer.

  2. Do not utilize 100% of any JOAN on the FFP contract for contractor support. Any unutilized funds will be held to cover other actual costs and possible return of excess funds to customer.

Challenges to Expenditures
Question 4

- Applies to alternative 1 and 2.
- Actual support costs can be calculated for 1st 3rd quarter. With over 3,000 JOANs, actuals can not be calculated for 4th quarter as there will not be enough time to close out all the JOANs. Can estimates be develop for 4th quarter costs at the end of 3rd quarter, and be used to bill the customer, to close out all JOANs?
- Impact: OMA customers (cannot use returned funds in timely manner, R2 closing out books on time)
- Recommended solution: Use estimates as actuals for 4th quarter to reconcile. R2 ADDED: R2 feels that it is unrealistic to estimate for only September as they have 3,000 JOANS (70% expiring funds) this includes all MIPRs, options with various funds.

- G8 Response: Use estimates as actuals for September only to reconcile. Estimates should include all possible costs.

TEAM CAISR

Challenges to Expenditures
Question 5

- Applies to alternative 1 and 2.
- 1. Actual support costs could dramatically increase if a large problem develops on a task order (protest, stop work, etc). 2. What happens if the customer has no more funding to pay our support costs to resolve the issue? 3. How do we account for it? 4. Do we continue support? R2 ADDED: Mission is to manage direct cite contract for customer.
- Impact: Task Order Mission, Potential R2 funding shortfall

G8 Response: Keep records of all costs regardless of fund availability.

1. If an infrequent large problem occurs funds should be requested from the customer.
2. Do not continue unfunded support.
3. If support is not provided R2 has nothing to account for.
4. Support ceases when funding is totally expended.

Note: Any unavoidable costs will be considered overhead.

Challenges to Expenditures
Question 6

- Applies to alternative 1 and 2.
- Most OMA Customers who place a task on contract in 2nd, 3rd or 4th quarter will require support into the next FY. They often will only have that year's OMA to support the effort.

  1. How do we collect OMA for support that crosses the fiscal year?
  2. Can we carry over the OMA as our support is really non-severable?
  3. What budget mechanism do we use for that?
- Impact: Task Order Mission,OMA customers, Potential R2 funding shortfall

- G8 Response:

  1. You don't. The only alternative is to request OMA funds for the next fiscal year from the customer.
  2. R2 support is severable as it is performed by a government Activity which does not have carry-over authority. OMA funds can not be carried over for this purpose.
  3. After Direct Cite contract award, OMA funds can be carried over only on an internal contractor services award to monitor/close direct cite contracts

Challenges to Expenditures
Question 7

- Applies to Alternative 1 and 2.
- What is a reasonable adjustment amount when reconciling for returning funds? There is a cost in time and money for returning funds to each customer.
- Impact: R2 and DCSRM Workload, customer satisfaction
- Recommended solution: Adjustment amount should be $1,000 or more for returning funds.

- G8 Response: Excess funds will be returned to customer.

  AMC has issued a memo, dated 17 May 2006, which establishes a $250 billing price variance threshold for cost reimbursable orders which will be written down at year end.

Challenges to Expenditures
Question 8

- Applies to Alternative 1 and 2.
- AF policy now requires an FSA to accompany the support cost. Many of our other customers prefer an FSA for management purposes. 1. Do we need to reconcile the costs if the support cost was agreed upon in a FSA?

  2. Is it command policy that all FSAs should be reconciled?
- Impact: R2 Workload, customer satisfaction.

- G8 Response: 1. FSAs are not reconciled, however, associated funding documents are reconciled.

  2. No, it is not command policy.

TEAM C4ISR

Impact on R2 Office
Staffing and Costs

- R2 internal budget will increase based upon the required changes:
  - # of budget staff to increase 5 – 10 people depending on requirements
  - Require a GS-14 Business Operations Manager to oversee this process
  - Software cost for time tracking systems, accounting system, etc. Estimate: $250K
  - Costs will be passed down to customer

- G8 Response: Agree that these are reasonable costs to be charged to the customer.

S

AMSEL-LG 31 March 2009

MEMORANDUM FOR [redacted], Comptroller, CECOM Life Cycle Management Command G8

SUBJECT: Fee for Service Charges

1. The statutory legal authority that permits one Government organization to place an order for goods or services with another Government organization is 31 U.S.C. § 1535, commonly known as "The Economy Act".

2. The Economy Act provides that, if certain conditions exist, the head of an agency or major organizational unit within an agency may place an order with a major organizational unit within the same agency or another agency for goods or services.

3. Public Law 103-355 (the Federal Acquisition Streamlining Act of 1994, also referred to as FASA), Title 1, Section 1074, October 13, 1994, 108 Stat. 3271, provided that the Federal Acquisition Regulation (FAR) was to be revised to include regulations governing the exercise of authority under section 1535 of title 31 (the Economy Act) for Federal agencies to purchase goods and services under contracts entered into or administered by other agencies, i.e., Economy Act purchases.

4. FASA also prescribed the content of the FAR regulations. Among its other mandates, FASA required that the FAR **prohibit** any payment to the agency filling a purchase order of **"any fee that exceeds the actual cost or, if the actual cost is not known, the estimated cost of entering into and administering the contract or other agreement under which the order is filled."** (emphasis added)

5. The FAR, at Subpart 17.5, implemented the statutory requirements. Specifically, the FAR states at FAR 17.505(d):

> If the Economy Act order requires use of a contract by the servicing agency, then in no event shall the servicing agency require, or the requiring agency pay, any fee or charge in excess of the actual cost (or estimated cost if the actual cost is not known) of entering into and administering the contract or other agreement under which the order is filled.

6. Clearly then, by implication, the servicing agency is permitted to charge a fee for the actual cost, or estimated cost if the actual cost is unknown, of entering into and administering the contract and subsequent delivery orders.

7. As stated by the General Accounting Office (now the Government Accountability Office, or GAO) in Decision of Associate General Counsel Kipplinger, B-250377, January 28, 1993, actual costs "includes all direct costs attributable to providing the goods or services ordered, as well as indirect costs funded out of the performing agency's currently available appropriations that bear a significant relationship to providing the goods or services". Whether a charge is reasonable under the Economy Act may include consideration of factors such as the condition of the performing agency's accounting system and the volume of the performing agency's Economy Act transactions. However, **the performing agency may not use the fees to augment its agency's appropriation.** Id.

8. The GAO also assessed the reasonableness of 'actual costs' charged by a federal entity in In Re Federal Mediation and Conciliation Service – Propriety of Financial Management Service Charges under the Economy Act, B-257823, January 22, 1998. As explained in this decision, the Financial Management Service (FMS) provided accounting services to agencies and organizations on a reimbursable basis. Within FMS, a Center for Applied Financial Management (the Center) was established, with its own staff, equipment and office space. "Its sole purpose is to perform work and provide services to its customers." A customer with an Economy Act order for the Center questioned the methodology used to calculate the actual costs of providing these services. Id. at *1. Nevertheless, GAO reviewed that methodology of determining actual costs, and found it reasonable. The language GAO employed to describe the parameters of the Economy Act is notable:

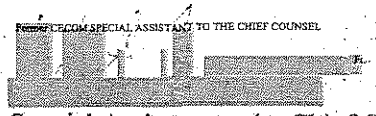
> Agencies possess some flexibility in applying the Act's 'actual cost' standard to specific situations, so long as there is reasonable assurance that the performing agency is reimbursed for its costs without the ordering or the performing agency augmenting its appropriations. Thus, we have not objected to the use of a standard cost for items provided out of inventory, or to a standard level user cost for the use of storage space. From a fiscal law perspective, our concern is whether reimbursements are based on reasonable standard cost determinations that do not augment appropriations or otherwise run afoul of the Economy Act.
>
> . . .
>
> It is not our role to recreate FMS' computation of billable hours but to assess its general accuracy as a means to recover "actual costs" consistent with the dictates of the Economy Act. The test is whether the computation of standard cost produces a reasonable approximation of actual costs, not exacting precision.

Id. at *3-4 (internal citations omitted).

9. Since the requiring activity usually wants to know the cost of services "up front', these costs are most often estimated. This can be done using any reasonable method. The estimate could be performed on an individual delivery order basis, whereby the fulfilling agency or center would estimate the costs for engineering, program management, acquisition, clerical, etc. to arrive at a fee for that particular delivery or task order. Another acceptable method would be to use a

formula to arrive at the best estimate of the customers' fair share of the actual cost of entering into and administering the contract and the delivery orders placed against it. The decision regarding which method to use should be based on, among other things, the nature of the contract, the structure of the program management, the volume of delivery or task orders anticipated, and the accounting system being used. In any case, the center filling the order is prohibited (by statute and regulation) from charging more than the estimated cost.

10. Point of contact for this action is Action Attorney, Office of the Chief Counsel, at (732) 532-9815, or e-mail: Action Attorney@conus.army.mil.



Special Assistant to the Chief Counsel

MEMORANDUM FOR [redacted]

SUBJECT: Fee for Service Charges

1. The statutory legal authority that permits one Government organization to place an order for goods or services with another Government organization is 31 U.S.C. 1535, commonly known as "The Economy Act".

2. The Economy Act provides that, if certain conditions exist, the head of an agency or major organizational unit within an agency may place an order with a major organizational unit within the same agency or another agency for goods or services.

3. Public Law 103-355 (Federal Acquisition Streamlining Act of 1994, also referred to as FASA), Title 1, Section 1074, October 13, 1994, 108 Stat. 3271, provided that the Federal Acquisition Regulation (FAR) was to be revised to include regulations governing the exercise of authority under section 1535 of title 31 (Economy Act) for Federal agencies to purchase goods and services under contracts entered into or administered by other agencies, i.e., Economy Act purchases.

4. FASA also prescribed the content of the FAR regulations. Among its other mandates, FASA required that the FAR **prohibit** any payment to the agency filling a purchase order of "**any fee that exceeds the actual cost or, if the actual cost is not known, the estimated cost of entering into and administering the contract or other agreement under which the order is filled.**" (emphasis added)

5. The FAR, at Subpart 17.5, implemented the statutory requirements. Specifically, the FAR states at FAR 17.505(d):

> If the Economy Act order requires use of a contract by the servicing agency, then in no event shall the servicing agency require, or the requiring agency pay, any fee or charge in excess of the actual cost (or estimated cost if the actual cost is not known) of entering into and administering the contract or other agreement under which the order is filled.

6. Clearly then, by implication, the servicing agency **is** permitted to charge a fee for the actual cost, or estimated cost if the actual cost is unknown, of entering into and administering the contract and subsequent delivery orders.

7. As stated by the General Accounting Office in Decision of Associate General Counsel Kipplinger, B-250377, January 28,1993, actual costs "includes all direct costs attributable to providing the goods or services ordered, as well as indirect costs funded out of the performing agency's currently available appropriations that bear a significant relationship to providing the goods or services". Whether a charge is reasonable under the Economy Act may include consideration of factors such as the condition of the performing agency's accounting system and the volume of the performing agency's Economy Act transactions. However, **the performing agency may not use the fees to augment its agency's appropriation,** id.

8. Since the requiring activity usually wants to know the cost of services "up front", these costs are most often estimated. This can be done using any reasonable method. The estimate could be performed on an individual delivery order basis, whereby the fulfilling agency or center would estimate the costs for engineering, program management, acquisition, clerical, etc. to arrive at a fee for that particular delivery order. Another acceptable method would be to use a formula to arrive at the best estimate of the customers' fair share of the actual cost of entering into and administering the contract and the delivery orders placed against it. The decision regarding which method to use should be based on, among other things, the nature of the contract, the structure of the program management, the volume of delivery orders anticipated, and the accounting system being used. In any case, the center filling the order is prohibited (by statute and regulation) from charging more than the estimated cost.

9. At CECOM, for example, the Rapid Response to Critical System Requirements R2CSR) program uses the formula approach. To learn more about the derivation of the estimated cost formula and the methods currently being used to track the actual administrative costs of that program, contact [redacted], x74369 or (732) 427-4369; e-mail [redacted] 1.monmouth.army.mil.

10. Point of contact for this action is Action Attorney [redacted], Office of the Chief Counsel, x23227 or (732) 532-3227; e-mail [redacted]@mail1.monmouth.army.mil.

Former Chief Counsel, CECOM LCMC
Chief Counsel

CECOM ATTORNEY

Sent: Thursday, March 20, 2008 8:19 AM
To: R2 Project Officer
Cc: CECOM ATTORNEY
Subject: FW: Fee Memo
Attachments: Legal CECOM ATTORNEY memo on fee.doc

I have reviewed the memo, double-checked GAO cases, the FAR, as well as the DoD FMR. The memo is still valid from a legal perspective. Basically the Economy Act has not changed, you can charge actual costs (direct/indirect)(reasonably estimated), but you cannot use these reimbursements to augment the Agency's appropriations.

How the R2 office calculates reimbursements is obviously a finance issue, as there is detailed guidance in the FMR Vol 11A, Ch. 1, 010203, and more specifics in Ch 3, para 0306. You may want to revalidate R2's methods of reimbursement with them to ensure it is still on track. There have been relatively recent changes in some of this guidance, but I don't think it affects R2's procedures. The recent guidance stemmed from DoD Agencies 'banking' expiring funds with non-DoD entities.

CECOM ATTORNEY

-----Original Message-----
From: CECOM ATTORNEY
Sent: Wednesday, March 12, 2008 11:49 AM
CECOM ATTORNEY
Subject: FW: Fee Memo

If you get a minute, can you just revalidate this, I do not believe anything has changed.

-----Original Message-----
From: R2 Project Officer
Sent: Thursday, March 06, 2008 2:24 PM
CECOM ATTORNEY
Cc: tt,CECOM ATTORNEY
Subject: Fee Memo

CECOM ATTORNEY

Could you please review this guidance we received from many years ago? Please review and update it if there have been any changes.
Thank you.
Sandy

R2 Project Officer

R2 Project Officer
AMSEL-LC-R2
BLDG 295
Fort Monmouth, NJ 07703
Phone: 732-427-3542 DSN: 987-3542

MEMORANDUM FOR Former Deputy to Commander CECOM

SUBJECT: Fee for Service Charges

1. The statutory legal authority that permits one Government organization to place an order for goods or services with another Government organization is 31 U.S.C. 1535, commonly known as "The Economy Act".

2. The Economy Act provides that, if certain conditions exist, the head of an agency or major organizational unit within an agency may place an order with a major organizational unit within the same agency or another agency for goods or services.

3. Public Law 103-355 (Federal Acquisition Streamlining Act of 1994, also referred to as FASA), Title 1, Section 1074, October 13, 1994, 108 Stat. 3271, provided that the Federal Acquisition Regulation (FAR) was to be revised to include regulations governing the exercise of authority under section 1535 of title 31 (Economy Act) for Federal agencies to purchase goods and services under contracts entered into or administered by other agencies, i.e., Economy Act purchases.

4. FASA also prescribed the content of the FAR regulations. Among its other mandates, FASA required that the FAR **prohibit** any payment to the agency filling a purchase order of "**any fee that exceeds the actual cost or, if the actual cost is not known, the estimated cost of entering into and administering the contract or other agreement under which the order is filled.**" (emphasis added)

5. The FAR, at Subpart 17.5, implemented the statutory requirements. Specifically, the FAR states at FAR 17.505(d):

> If the Economy Act order requires use of a contract by the servicing agency, then in no event shall the servicing agency require, or the requiring agency pay, any fee or charge in excess of the actual cost (or estimated cost if the actual cost is not known) of entering into and administering the contract or other agreement under which the order is filled.

6. Clearly then, by implication, the servicing agency is permitted to charge a fee for the actual cost, or estimated cost if the actual cost is unknown, of entering into and administering the contract and subsequent delivery orders.

7. As stated by the General Accounting Office in Decision of Associate General Counsel Kipplinger, B-250377, January 28,1993, actual costs "includes all direct costs attributable to providing the goods or services ordered, as well as indirect costs funded out of the performing agency's currently available appropriations that bear a significant relationship to providing the goods or services". Whether a charge is reasonable under the Economy Act may include consideration of factors such as the condition of the performing agency's accounting system and the volume of the performing agency's Economy Act transactions. However, **the performing agency may not use the fees to augment its agency's appropriation,** id.

8. Since the requiring activity usually wants to know the cost of services "up front', these costs are most often estimated. This can be done using any reasonable method. The estimate could be performed on an individual delivery order basis, whereby the fulfilling agency or center would estimate the costs for engineering, program management, acquisition, clerical, etc. to arrive at a fee for that particular delivery order. Another acceptable method would be to use a formula to arrive at the best estimate of the customers' fair share of the actual cost of entering into and administering the contract and the delivery orders placed against it. The decision regarding which method to use should be based on, among other things, the nature of the contract, the structure of the program management, the volume of delivery orders anticipated, and the accounting system being used. In any case, the center filling the order is prohibited (by statute and regulation) from charging more than the estimated cost.

9. At CECOM, for example, the Rapid Response to Critical System Requirements R2CSR) program uses the formula approach. To learn more about the derivation of the estimated cost formula and the methods currently being used to track the actual administrative costs of that program, contac x74369 or (732) 427-4369; e-mail monmouth.army.mil.

10. Point of contact for this action is
x23227 or (732) 532-3227; e-mail @mail1.monmouth.army.mil.

Chief Counsel

U

From: SEC Contractor CTR USA AMC
Sent: Tuesday, April 21, 2009 4:11 PM
To: G8 IPT lead USA AMC
Cc: IPT Team Member USA AMC
Subject: R2 Fee Estimation IPT - Milestone status

Hello G8 IPT lead,

We committed to send you a milestone chart for the implementation of the time tracking application.

We are in the process of ordering the software. IPT Team Member who manages our IDE organization is actively working this issue.

When the software arrives, we will have to install it, configure it, provide training and implement it. This will take approximately 3 months.

We will collect data over a period of 6 months then we will update our fee estimation model based on those numbers.

We will schedule a meeting with you at that time to review the data we've collected and how we've modified our estimation model.

I have reviewed this plan with IPT Team Member and they agree with it.

I'm suggesting that we no longer require the IPT meetings. Our questions have been addressed and we understand the G8's requirements.

Do you agree?

Please advise.

Thank you.

SEC Contractor
R2 Project Office
Software Engineering Center
Contractor - Sensor Technologies
732-532-2289

Thank you.

v

Investigating Officer

From: Director CECOM IRAC Office
Sent: Friday, October 05, 2012 10:55 AM
To: Investigating Officer
Cc: Director CECOM IRAC Office
Subject: FW: R2/G8 IPT (UNCLASSIFIED)
Attachments: R2 Fee Estimation IPT - Milestone status.txt
Signed By: s.army.mil

Importance: High

Classification: UNCLASSIFIED
Caveats: FOUO//SENSITIVE

Email msg from G8 poc to disband the IPT; R2 Office ordering new software and taking nine months to capture all of the necessary data. The nine months would put us to end of March 2010 which is probably another reason I never established a follow-up to our initial review.

Director CECOM IRAC Office, CGFM, CICA
Director
Internal Review Office
"Recognized, Trusted, Valued"

AMSEL-IR
CECOM
Bldg 6001, Suite C1110, Room C1109
Voice: DSN: 848-4325; locally: 861-4325; Commercial: 443-861-4325
Fax: DSN:848-4341; Commercial: 443-861-4341
Blackberry: 571-212-0117

Director CECOM IRAC Office (**NEW DISA EMAIL ACCOUNT**)

Director CECOM IRAC Office (old APC account)

-----Original Message-----
From: Director CECOM IRAC Office CIV USA AMC
Sent: Friday, January 14, 2011 11:01 AM
To: Investigating Officer (2) CIV USA AMC
Cc: Director CECOM IRAC Office USA AMC
Subject: FW: R2/G8 IPT (UNCLASSIFIED)
Importance: High

Classification: UNCLASSIFIED
Caveats: FOUO//SENSITIVE

:

Some more info.

This e-mail talks about not terminating the IPT. The attached file also talks about what they (R2) understood the requirements as explained by G8 and what R2 expected to accomplish along with milestone dates.

Thanks.

Director CECOM IRAC Office, CGFM
Director
Internal Review Office
"Recognized, Trusted, Valued"

AMSEL-IR
CECOM LCMC
Bldg 6001, Room C1109
Aberdeen Proving Ground, MD 21005-0001
(Comm) 443-861-4325 or locally (861-4325) DSN - 848-4325
Fax: Comm (443-861-4343); DSN (848-4343) Blackberry - 1-571-212-0117

-----Original Message-----
From: G8 IPT Team Lead CIV USA AMC
Sent: Wednesday, April 29, 2009 11:02 AM
To: IPT Team Personnel CIV USA AMC; IPT Team Personnel CIV USA AMC; IPT Team Personnel CIV USA AMC; Director CECOM IRAC Office USA AMC; IPT Team Personnel CIV USA AMC; IPT Team Personnel USA AMC; IPT Team Personnel CIV USA AMC; IPT Team Personnel CIV USA AMC; IPT Team Personnel Mr CIV USA AMC; IPT Team Personnel CIV USA AMC; IPT Team Personnel CIV USA AMC; IPT Team Personnel CIV USA AMC; IPT Team Personnel CIV USA AMC; IPT Team Personnel USA AMC; IPT Team Personnel CIV USA AMC; IPT Team Personnel CIV USA AMC; IPT Team Personnel CIV USA AMC; IPT Team Personnels CIV USA; IPT Team Personnels CIV USA AMC; IPT Team Personnel CIV USA AMC; IPT Team Personnel CTR USA AMC; IPT Team Personnel ; IPT Team Personnel CIV USA AMC
Subject: R2/G8 IPT

Good Morning All,

In the attached memo R2 has indicated that G8 has answered all of its questions and understands G8's requirements. Therefore, temporarily this IPT does not have to continue meeting.

As you can see from the attached memo R2 is in the process of updating its fee estimation model and ordering new software. This process is estimated to take approximately 9 months. When complete the R2/G8 IPT team will reconvene and review the R2 progress.

I wanted to take a moment to thank all of you who worked on this R2/G8 action. This was quite a challenging effort, one that included input from the LCMC Legal Department, Acquisition Center, Internal Review, R2 and G8.

Again, I would like to thank all of you for all of your valuable input.

Respectfully,

G8 IPT Team Lead
Operations Research Analyst
CECOM LCMC, Cost Analysis Division
Ft. Monmouth, NJ 07703
E:Mail: G8 IPT Team Lead
4552

W

AMCIR-IR (11-7a)

MEMORANDUM FOR Chief of Staff, CECOM Life Cycle Management Command

SUBJECT: Internal Review and Audit Compliance Office (IRACO) Quality Assurance and Assistance (QA2) Visit

1. This memorandum provides you with the results of the subject visit. Army Regulation 11-7, Internal Review and Compliance Program, dated 15 June 2001 and Government Auditing Standards requires major commanders, who have Internal Review and Audit Compliance Offices (IRACO), to establish a formal Quality Assurance (QA) Program. The QA Program requires formal annual self-evaluations and an external review not less than once every three years. The QA reviews evaluate the quality and level of services provided by the IRACO, and overall effectiveness of the IRACO to include customer satisfaction and value added to the organization. The review was performed using the Department of the Army QA2 guide and was conducted from 13 – 17 September 2010.

2. The IRACO Program has an overall rating of 90%. We concluded that the IR Office for CECOM LCMC was generally in compliance with professional standards, policies and practices. There were no major weaknesses noted; however, some adjustments were needed in a couple areas. These were discussed with the IR Director. These issues are provided in enclosure 1. We made six recommendations that should assist to ensure your IR program is compliant with the regulations that govern Internal Review throughout the Army and enhance program management. The recommendations pertain to: (1) establishment of an auditable entity file, (2) conducting in-house training on automated workpapers, (3) re-fresher course on cross-referencing workpapers, (4) consistent supervisory reviews to include initialing the IR Plan and workpapers, (5) referencing DAIR standards on powerpoint reports, and (6) scheduling follow-up reviews in the annual IR Plan.

3. The specific areas that we reviewed and their individual ratings are listed below.

Area Reviewed	Rating
IR Program:	
Organization & Staffing	90%
Program Management	89%
Audit Process	89%
Consulting & Advisory Services (C&As)	88%
Audit Compliance & Liaison	92%
Information Technology	93%
Internal Review Support	90%
Overall IR Program Rating	90%

TAB W

AMCIR-IR
SUBJECT: Internal Review (IR) and Management Control Process (MCP) Quality Assurance and Assistance (QA2) Visit

4. We discussed the results of the visit with the CECOM Chief of Staff and CECOM LCMC IRACO during the outbrief on 17 Sep 10.

5. If you have any questions or desire additional information, please call the undersigned at (703) 806-9138, DSN 656-9138 or Susan.McCoy@us.army.mil.

Encl

Director, Internal Review and
Audit Compliance Office

From: Director CECOM IRAC OFFICE
To: Auditor Army Audit Agency
cc: Auditor CECOM IRAC OFFICE ;
Subject: FW: Army Audit CECOM field work
Date: Tuesday, June 24, 2008 10:29:00 AM
Attachments: Request for Entrance PD Signed.pdf

Per our discussion yesterday, here is a summary of what we found while doing a review of R2's reimbursable rate:

Objective: Determine R2's process for setting customer reimbursable rates.

Results. We found that beginning in the second quarter of FY 2007 the R2 Project Office switched to charging its customers a 0.5% reimbursable rate for services provided, based on calculating a rate of actual costs versus incoming workload. The move to a percentage rate was the result of an R2 internal audit that determined that R2 may have excess funds compared to their planned financial requirements for FY 2007. Accordingly, as a reimbursable non-profit organization, a 0.5% reimbursable rate was set as a means to better align incoming fees with operating expenses. In addition, R2 indicated the move to a rate fee was also to comply with statutory and regulatory guidance. The 0.5% rate remained in effect until January 2008 at which time the rate was increased to 1%. We agree with the R2 Project Office charging a percentage rate as it relates to actual costs.

We made recommendations to the LRC and to G8 and requested decisions in writing from both G8 and our Legal Office. Recommendation 6B of the report states
"Have the R2 Project Officer formally submit a proposal to the G8 office to approve in writing R2 charging their customers a percentage as a reimbursable rate. This methodology is based on actual and real time workload which is a more exact methodology than any other reimbursement scenario that has been reviewed. The R2 office should conduct quarterly reviews of their financial posture and determine if a rate adjustment is deemed necessary. The quarterly review process would bring both the R2 Project Office and G8 in compliance with the intent of the CECOM LCMC SOP on reimbursable rates."

The report is in draft form. I have not received responses from our Logistics and Readiness Center (LRC) (which the R2 Office is part of) and G8 Offices. Our G8, Legal Office and R2 Office are still working this issue. The R2 Office unofficially concurred with our recommendations, however, the recommendations were addressed to the Director of the LRC.

TAB X1

On another note of what I brought up in our telephone conversation regarding the PEO C3T's Special Projects Office/Norteast Regional Response Center (SPO/NRRC). They charge a flat overhead rate to administer contracting services provided by various contractors.

Hope that is what you were looking for.

Thanks.

Director CECOM IRAC OFFICE CGFM
Director

Internal Review Office
AMSEL-IR
HQ, CECOM LCMC
Building 826
Ft. Monmouth, NJ 07703
Phone: (Comm) 732-427-4113, DSN 987-4113
Fax: (Comm) 732-532-4918, DSN 992-4918
-----Original Message-----
From: Auditor CECOM IRAC OFFICE CIV USA AMC
Sent: Tuesday, June 24, 2008 9:18 AM
To: Director CECOM IRAC OFFICE CIV USA AMC
Subject: FW: Army Audit CECOM field work

Auditor CECOM IRAC OFFICE, CGFM
Sr.IR Evaluator/AAA Liaison Officer
CECOM LCMC Internal Review Office
AMSEL-IR, Fort Monmouth, NJ 07703
Phone:(732) 427-4114, DSN: 987
Fax: (732) 542-4918, DSN: 992
Auditor CECOM IRAC OFFICE
-----Original Message-----
From: Auditor Army Audit Agency
Sent: Monday, June 23, 2008 10:15 AM
To: Auditor CECOM IRAC OFFICE
Cc: Auditor Army Audit Agency
Subject: Army Audit CECOM field work

Auditor CECOM IRAC OFFIC

Good morning. I am with the Army Audit Agency and we would like to set

up meetings with several activities on Fort Monmouth for our current audit, Flat Fee for Contracting and Contract Management Services (A-2008-ALC-0591.000). I've attached our entrance letter for this audit. The audit was requested by the Acting Under Secretary of the Army and based on a recent Office of General Counsel decision for the HRsolutions Program Office that flat fees for service are in violation of the Economy Act. The Under Secretary has asked us to identify any other activities that are charging a flat fee for services.

During our initial audit research, we identified an organization, the Rapid Response (R2) Project Office, on Fort Monmouth that charged a flat fee in the past, but has since converted to a fee based on actual costs, which is allowed under the Economy Act. We would like to meet with a representative from this office to discuss the current fee structure and the change from a flat fee to an actual cost-based fee.

We have also been in contact with a representative from HQ AMC G-8 pertaining to Memorandums of Agreement (MOA) and Interservice Support Agreements (ISA). He said that a majority of these documents are maintained at the individual installations. We are using these documents to identify potential organizations that are charging a flat fee for service. Could you please provide a POC for the CECOM G-8 office to discuss the local MOAs and ISAs?

Our schedule is open right now, but filling up with other meetings. If these offices prefer, we could make initial contact through VTC and followup in person. Thank you for your assistance.

Auditor Army Audit Agency
Auditor, Fort Meade Field Office
Phone: 301-677-7192 DSN 622
Fax: 301-677-3360 DSN 622

From: Auditor CECOM IRAC OFFICE
To: Auditor Army Audit Agency
cc: Director CECOM IRAC OFFICE
Subject: RE: AAA Report on Flat Fees for Contracting Services
Date: Thursday, September 04, 2008 10:01:20 AM

Auditor Army Au
,
You can report that we completed an internal review at the local level but we suggest that you leave it at that, rather than including a statement that DA can request a copy of the report, because it was a request by local management.

Thanks, and if you have any concerns, just let me know.

Auditor CECOM

Auditor CECOM IRAC OFFICE, CGFM
Sr.IR Evaluator/AAA Liaison Officer
CECOM LCMC Internal Review Office
AMSEL-IR, Fort Monmouth, NJ 07703
Phone:(732) 427-4114, DSN: 987
Fax: (732) 542-4918, DSN: 992
Auditor CECOM IRAC OFFICE/@US.Army.Mil
-----Original Message-----
From: Auditor Army Audit Agency Mr AAA
Sent: Wednesday, September 03, 2008 7:51 AM
To: Auditor CECOM IRAC OFFICE CIV USA AMC
Subject: AAA Report on Flat Fees for Contracting Services

Auditor CECOM IRAC OFFIC

Several months ago we spoke pertaining to your on-going audit of the fee for service in the R2 Project Office in relation to our audit of Flat Fees for Contracting Services. We mentioned in our report that your office was currently conducting an audit, so we didn't looking into R2's operations and fees. Auditor A would like to state in our report that the results of your audit would be available if the Under Secretary wanted a copy. Our goal is to make him aware that your office is conducting a related audit and if he wants, the report would be available. We are not obligating you to issue a report to him or his office. Please let me know if we could make that statement in our report. If you have any questions, please call or email. Thanks.

Auditor Army Audit Agency
Auditor, Army Audit Agency
Contract Audits, SAAG-ALC
Fort Meade Field Office, MD

Phone: 301-677-7192 DSN 622
Fax: 301-677-3360 DSN 622

7 July 08

MEMORANDUM FOR RECORD FOR R2 PROJECT OFFICE

SUBJECT: 4th Quarter Administrative Support Cost

1. Internal operations review the program's support costs every quarter and advise the organization of any changes in the amount of Administrative Support Cost (Fee) to collect.

2. As a result of the 4th quarter review of the R2 Project Office overhead, the amount of fee to be collected will be reduced. As of this notice, but no later than, 7 Jul 08, please begin collecting .5% on all new tasks and existing contracts for the remainder of the fiscal year.

3. This office will not be sending a Global messages to all of the GTLs on this issue, since it will only affect customers sending funding during the 4th quarter. Therefore, please use the following language when discussing the administrative support cost with your customers.

> "As a result of the 4th quarter review of the programs overhead costs, the R2 Project Office will be reducing the administrative support costs to .5 percent for all task orders for the 4th quarter (7 Jul 08 thru 30 Sep 08). A review of our overhead costs is performed every quarter to determine the correct range for the administrative costs. This office will be collecting .5% on this task".

4. Specific implementation instructions:

> Pre and Post - Annotate the .5% under the action notes in the database.
>
> Pre – FSAs – Do not take Administrative Support Cost.
>
> Pre - Any new tasks with ceiling over $40M, please notify Annemarie.

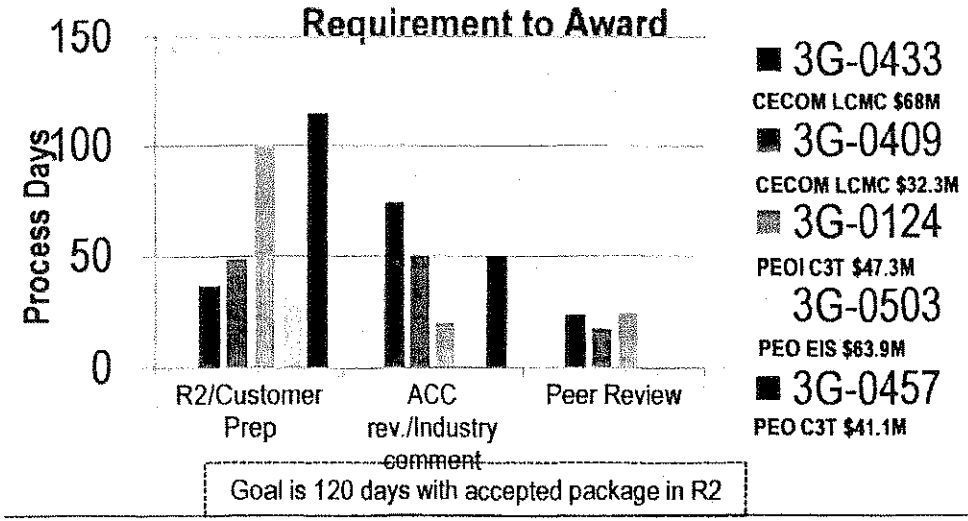
5. The Office will not accept any "Expiring Funds" after 15 August 08. All "Non-Expiring Funds" that are available for Carryover will be accepted thru 30 Sep 08. This is subject to change based upon final ruling of DSCRM on the amount of carryover authorized.

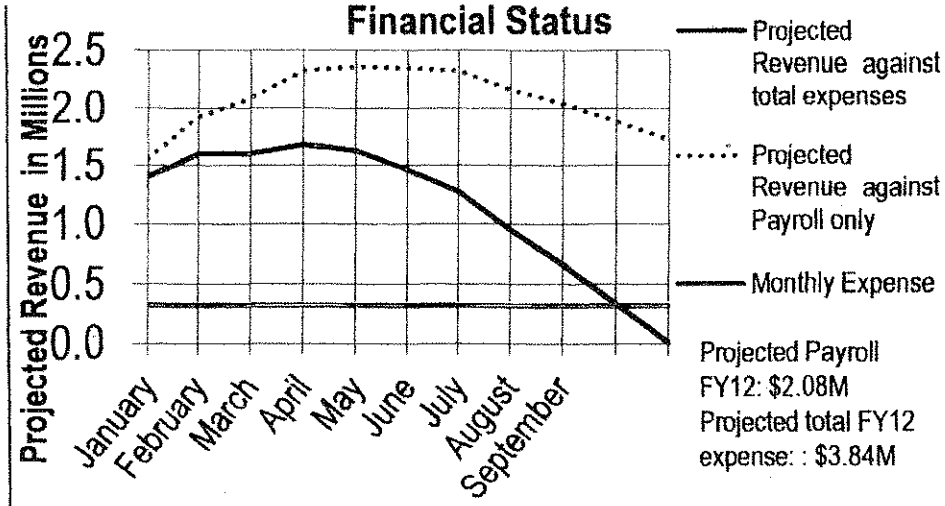
//signed//

Project Officer
R2 Project Office

z

R2-3G





Top 3 Longest Contracting Actions Being Worked

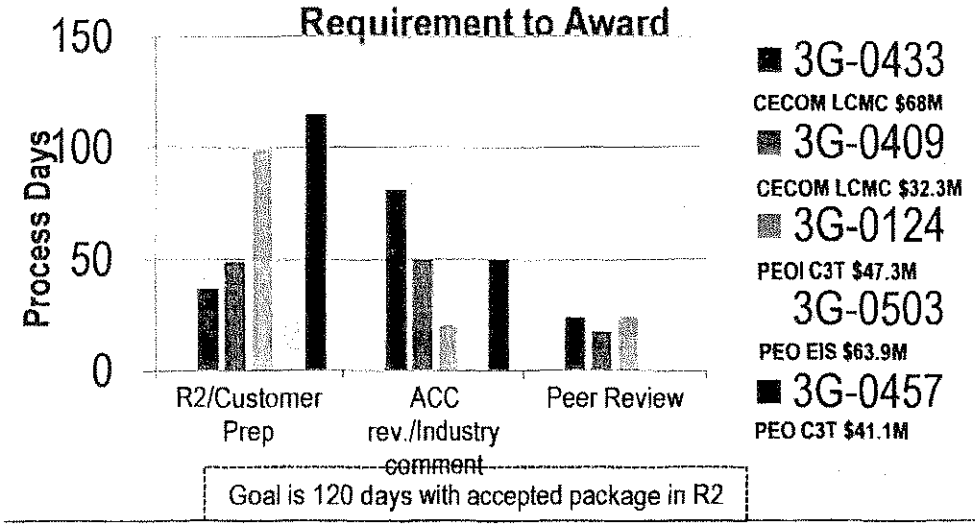
- **3G-0433** – Submitted to ACC Aug 18th 2011 – Tech evals complete; KO preparing discussion letters to offerors – anticipated 2 week delay in award. Required award NLT 30 Jan. Now predicted to award 14 Feb 12.
- **3G-0403** – Submitted to ACC July 18th 2011 – Scheduled to RTEP Jan 2012 – Current contract expires August 2012 – Award needed by April 2012 with May 2012 start date - Finalizing package for peer review.
- **3G-0409** – Submitted to ACC Oct 11, 2011 – RTEP released Jan 12, 2012 – Proposal due Feb 13,2012.

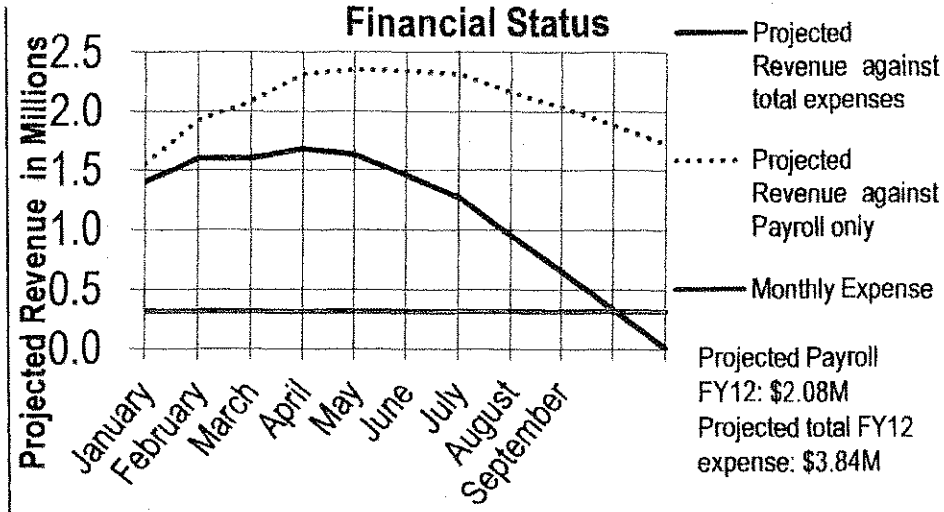
Issues/Updates

- 3G-0245 – Protest Dismissed pending rework of tech evals
- 3G-0470 – Pre-release documents sent for questions.
- 3G-0525 – PWS under review. Customer updating PWS based on legal comments/review.
- 3G-0124- Anticipated award Feb 10
- 3G-0393 – Awarded January 20th; $87.88M
- 3G-0480 – Package nearing completion - one or two remaining documents being finalized
- 3G-0457 – Customer preparing final updates to documents.
- 3G-0503 – Preparing for peer review/require signed SCA
- 18 Pre-Award Task Order Packages released or planned for release for pre-RTEP questions to contractors

U.S. ARMY CECOM
One Vision, One Mission - The Warfighter.

R2-3G





Top Concerns/Issues for R2-3G

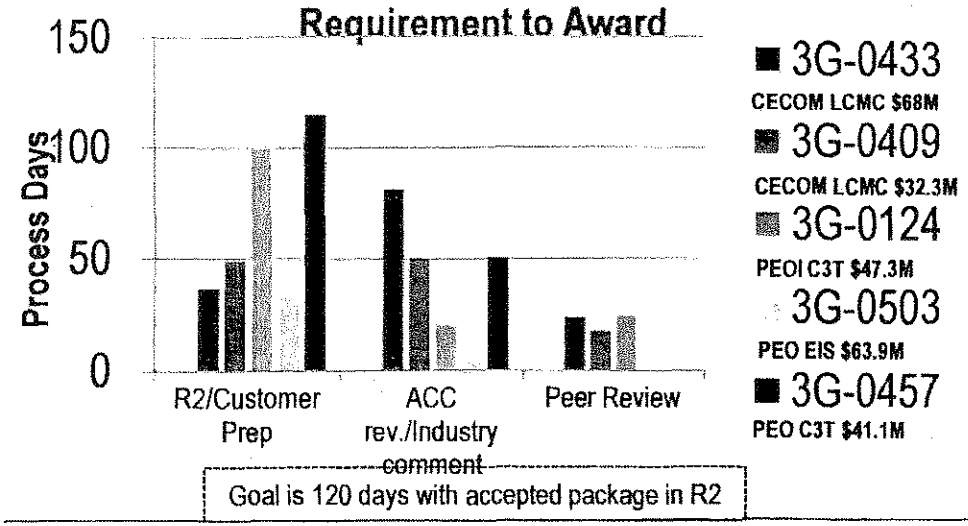
- **3G-0433 – CECOM LCMC Drawdown Special Projects Office -** Submitted to ACC Aug 18th 2011 –
- Original Required Award NLT 30 Jan.
  Current Status: KO preparing discussion letters to offerors
  Projected award dates: Best Case: week of 20 February 2012
  Worst Case: 9 March 2012
  New KO assigned attempting to streamline to best case scenario

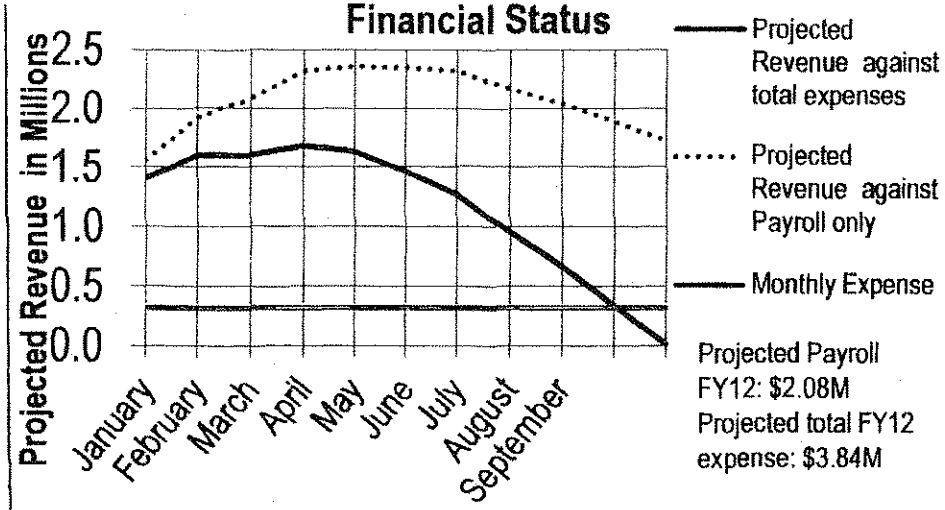
Updates

- 3G-0409 – RTEP Released. Due Back 13 February 2012.
- 3G-0245 – Protest Dismissed pending rework of tech evals
- 3G-0470 – Awaiting Legal review comments – sent 1/19/12
- 3G-0525 –Customer updating PWS based on legal comments
- 3G-0124- Tech Eval and Pricing Reports in process
- 3G-0480 – ACC preparing RTEP for review/release
- 3G-0457 – ACC preparing RTEP for review/release
- 3G-0503 – RTEP scheduled for release 3 Feb
- 18 Pre-Award Task Order Packages in progress

U.S. ARMY CECOM
One Vision. One Mission - The Warfighter.

R2-3G





Top Concerns/Issues for R2-3G

- **3G-0433 – CECOM LCMC Drawdown Special Projects Office -** Submitted to ACC Aug 18th 2011 –
- Original Required Award NLT 30 Jan.

  Current Status: KO preparing discussion letters to offerors

  Projected award dates: Best Case: week of 20 February 2012
  Worst Case: 9 March 2012

  New KO assigned attempting to streamline to best case scenario

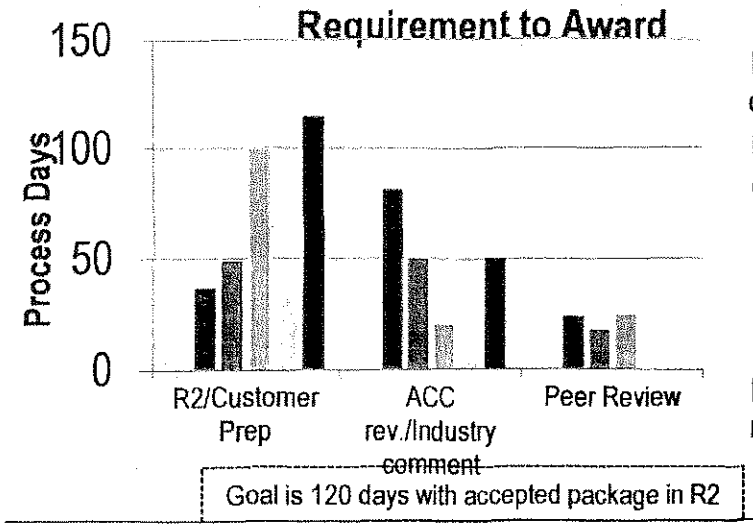
  Update: Discussion letters under review – were to release 2/3/12. Missed date. Now planned for 2/7/12 release. ACC states still on track for 20 February award.

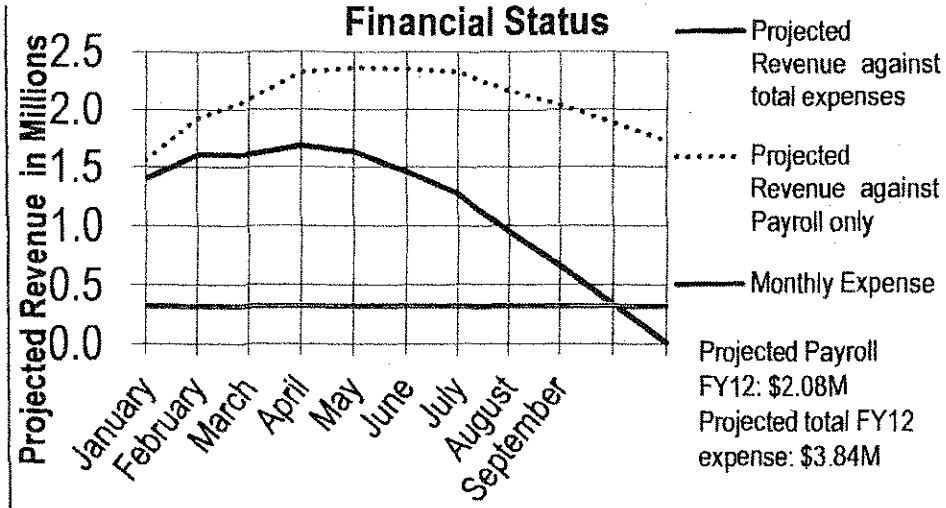
U.S. ARMY CECOM
One Vision, One Mission - The Warfighter.

Updates

- 3G-0409 – RTEP Released. Due Back 13 February 2012.
- 3G-0245 – Protest Dismissed – Reworking Tech Evals
- 3G-0470 – Awaiting Legal review comments – sent 1/19/12
- 3G-0525 –Customer updating PWS based on legal comments
- 3G-0124- Tech Eval and Pricing Reports in process
- 3G-0480 – ACC preparing RTEP for review/release
- 3G-0457 – ACC preparing RTEP for review/release
- 3G-0503 – RTEP release was 3 Feb – Now 7 Feb
- 3G-0403 – RTEP Released. Proposals due back 14 Feb.
- 3G-0533 – PM Ares requesting movement of package to new KO. Unsure of impact at this time to timeline.
- 18 Pre-Award Task Order Packages in progress

R2-3G





Top Concerns/Issues for R2-3G

3G-0433 – CECOM LCMC Drawdown Special Projects Office - Submitted to ACC Aug 18th 2011 – Original Required Award NLT 30 Jan.

Projected award dates: Best Case: week of 20 February 2012
Worst Case: 9 March 2012

Update: Discussion letters released 2/4/12. Due back 2/8/12. Pricing will update reports and award decision will be made. ACC states still on track for 20 February award.

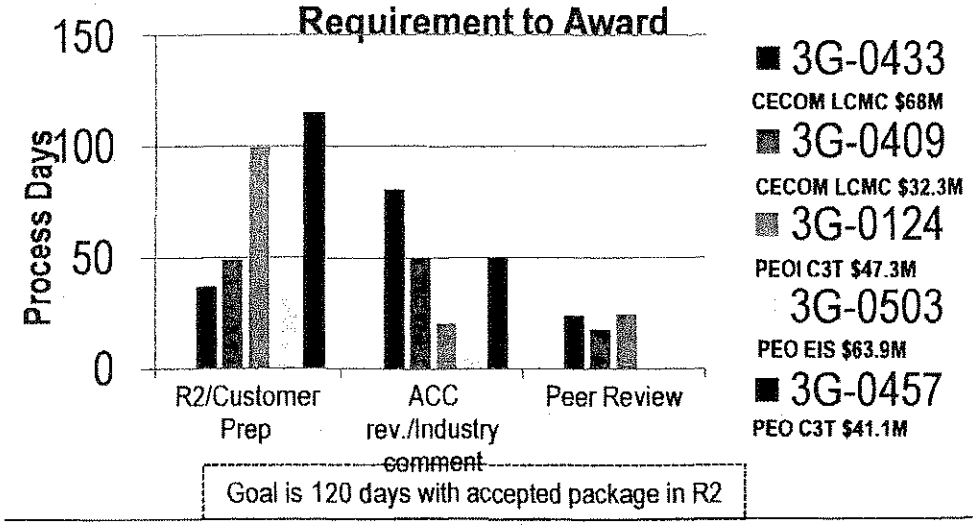
3G-0533 – PM ARES – Package moved to new KO/team at ACC-APG.
Award needed NLT 26 June 2012 Task Order Value: 250M
Support for Constant Hawk Support in OCONUS- Finalizing package documents to support customer. Customer working SCA.

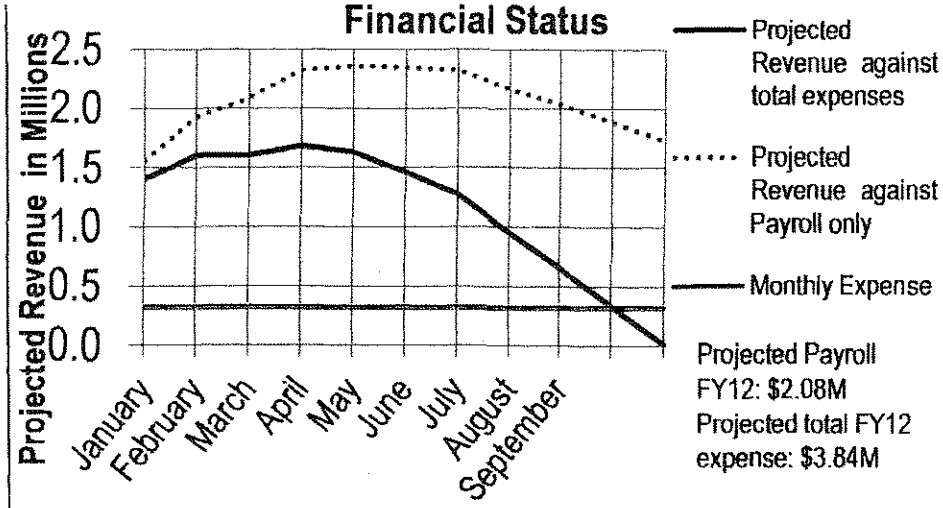
U.S. ARMY CECOM
One Vision, One Mission - The Warfighter.

Updates

- 3G-0409 – RTEP Released. Due Back 13 February 2012.
- 3G-0245 – Protest Dismissed – Reworking Tech Evals
- 3G-0470 – Customer updating – Still require final SCA
- 3G-0525 –Customer updating PWS
- 3G-0124- Tech Eval. and Pricing Reports in process
- 3G-0480 – ACC preparing RTEP for review/release
- 3G-0457 – ACC preparing RTEP for review/release
- 3G-0503 – RTEP released 7 Feb. Due back 8 Mar
- 3G-0403 – RTEP Released. Proposals due back 14 Feb.
- 3G-0472 – RTEP being drafted by ACC for release.
- 21 Pre-Award Task Order Packages in progress

R2-3G





Top Concerns/Issues for R2-3G

3G-0433 – CECOM LCMC Drawdown Special Projects Office - Submitted to ACC Aug 18th 2011 – Original Required Award NLT 30 Jan.
Projected award: 20 February 2012 - 9 March 2012
Update: Discussions/changes to customer responses and updates for legal office still ongoing. ACC and customer working updates quickly as they are received. KO still attempting to award NLT 21 February

3G-0533 – PM ARES – New KO/team at ACC-APG. Award needed 26 June - Task Order Value: 250M - Support for Constant Hawk OCONUS- Customer finalizing / updating documents as required.

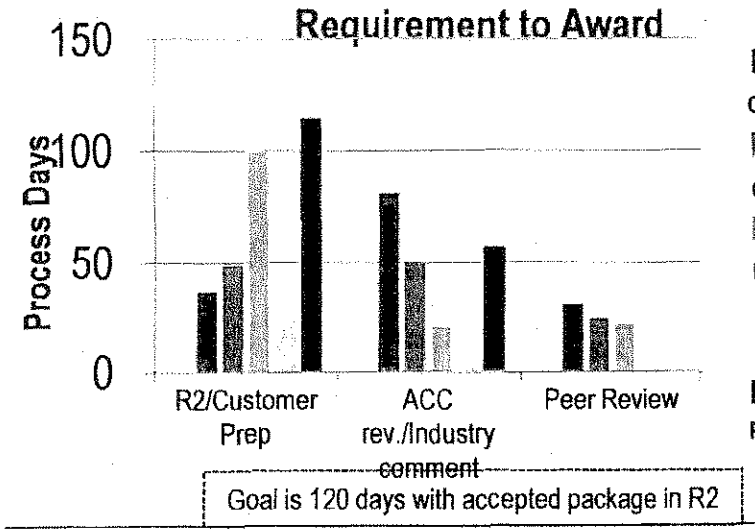
3G-0513 – LEO RESET ARFORGEN (Combatant Command Support Requirements) $49.9M– Legal requested hold on RTEP release for re-review. Requested award date Mar 1. Customer extended current support. Award req. by Jul1.

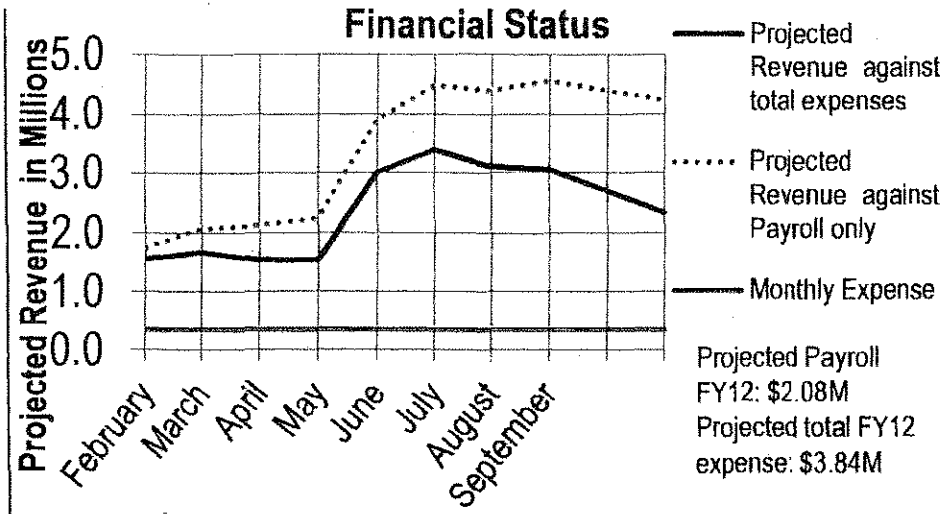
U.S. ARMY CECOM
One Vision, One Mission - The Warfighter.

Updates

- 3G-0409 – RTEP Released. Due Back 13 February 2012.
- 3G-0245 – Protest Dismissed – Reworking Tech Evals
- 3G-0470 – Customer updating – Still require final SCA
- 3G-0525 –Customer updating PWS
- 3G-0124- Tech Eval. and Pricing Reports in process
- 3G-0480 – ACC preparing RTEP for review/release
- 3G-0457 – ACC preparing RTEP for review/release
- 3G-0503 – RTEP released 7 Feb. Due back 8 Mar
- 3G-0403 – RTEP Released. Proposals due back 14 Feb.
- 3G-0472 – RTEP being drafted by ACC for release
- 3G-0123 – Package being prepared for Pre-Release
- 22 Pre-Award Task Order Packages in progress

R2-3G





Top Concerns/Issues for R2-3G

Multiple RTEPs on hold pending Legal/ACC approval of new RTEP.
Affected RTEPS: 3G-0462, 3G-0472, 3G-0480, 3G-0513

3G-0433 – CECOM LCMC Drawdown Special Projects Office - Submitted to ACC Aug 18th 2011 – Original Required Award NLT 30 Jan.
Projected award: 20 February 2012 - 9 March 2012
Update: Awarded 24 Feb.

3G-0533 – PM ARES – New KO/team at ACC-APG. Award needed 26 June - Task Order Value: 250M - Support for Constant Hawk OCONUS- Customer finalizing / updating documents as required.

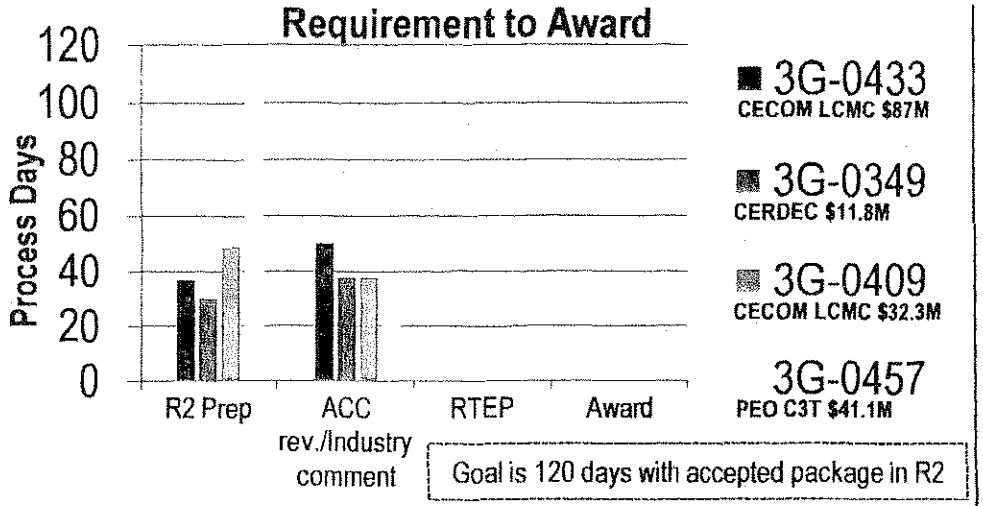
3G-0513 – LEO RESET ARFORGEN (Combatant Command Support Requirements) $49.9M– On hold (see above) Requested award date Mar 1. Customer extended current support. Award req. by Jul1.

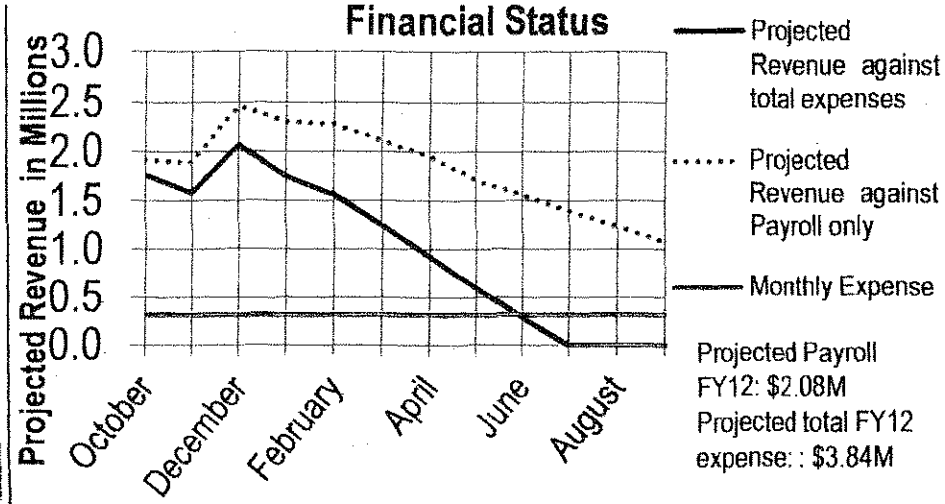
U.S. ARMY CECOM
One Vision, One Mission - The Warfighter.

Updates

- 3G-0409 – TEPs received. In evaluation stage.
- 3G-0245 – Protest Dismissed – Reworking Tech Evals
- 3G-0470 – Customer updating – Still require final SCA
- 3G-0525 –Customer updating PWS
- 3G-0124- Tech Eval. and Pricing Reports in process
- 3G-0480 – RTEP on hold
- 3G-0457 – Customer revising requirement
- 3G-0403 – TEPs received. In evaluation stage
- 3G-0472 – RTEP on hold
- 3G-0123 – Package being prepared for Pre-Release
- 3G-0462 – RTEP on hold
- 3G-0513 – RTEP on hold
- 24 Pre-Award Task Order Packages in progress

R2-3G





Ready For Award Next 30 Days

3G-0245	CERDEC	$76.9M	07 Nov
3G-0373	CSLA	$10.3M	11 Nov
3G-0370	CSLA	$14M	11 Nov
3G-0372	CSLA	$3.6M	11 Nov
* 3G-0317	SAMD	$157.9	09 Nov
# 3G-0393	CECOM IE	$90.0M	15 Nov
# 3G-0316	PEO IEW&S	$37.6M	17 Nov

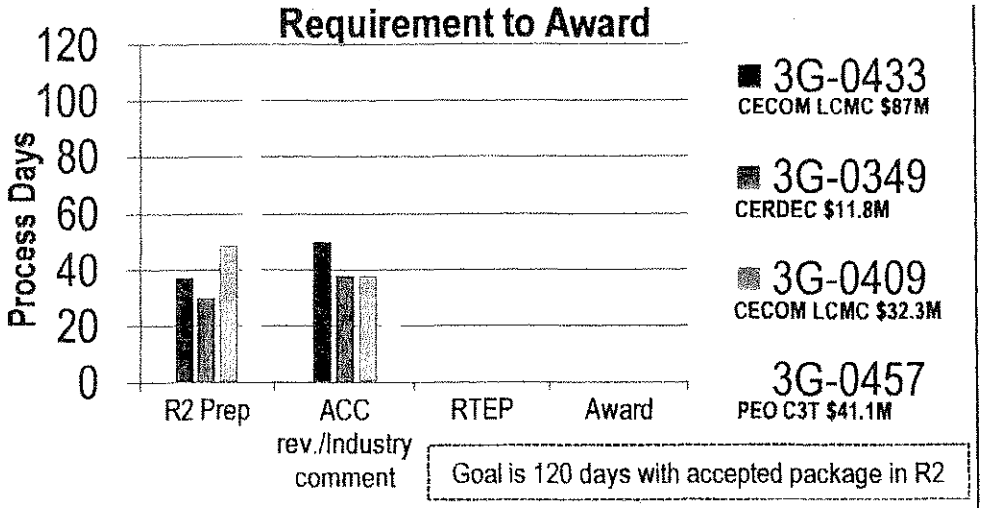
Picatinny Award
*RTEP on street
+no funding received. Will award upon receipt of funding.

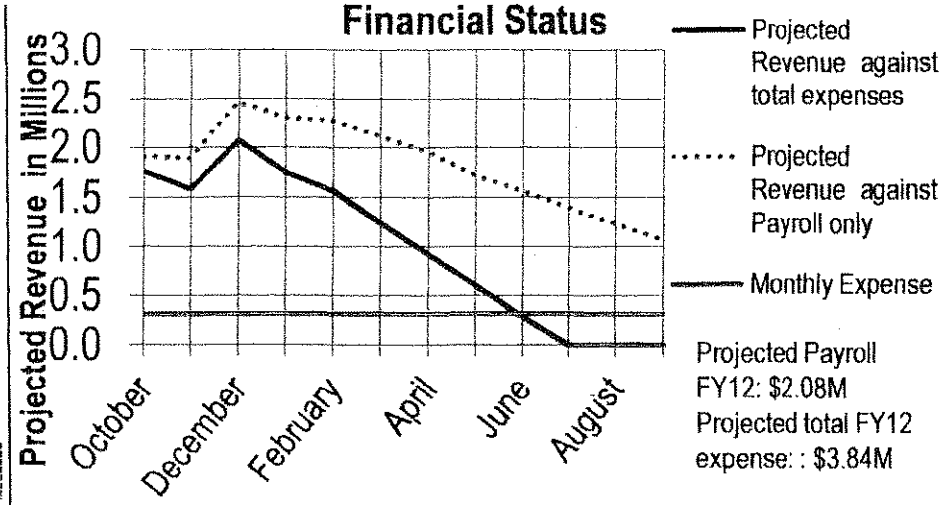
Issues

- Protest ongoing against 3G-0416

U.S. ARMY CECOM
One Vision. One Mission. The Warfighter.

R2-3G





Ready For Award Next 30 Days

3G-0245	CERDEC	$76.9M	07 Nov
3G-0373	CSLA	$10.3M	18 Nov
3G-0370	CSLA	$14M	18 Nov
3G-0372	CSLA	$3.6M	18 Nov
* 3G-0317	SAMD	$157.9	09 Nov
# 3G-0393	CECOM IE	$90.0M	15 Nov
# 3G-0316	PEO IEW&S	$37.6M	17 Nov

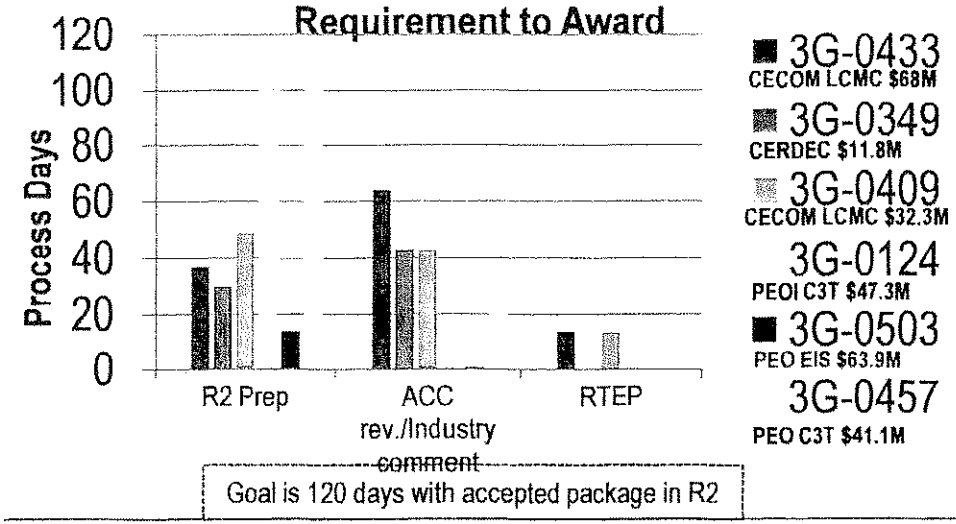
Picatinny Award
*RTEP on street
+no funding received. Will award upon receipt of funding.

U.S. ARMY CECOM
One Vision, One Mission - The Warfighter.

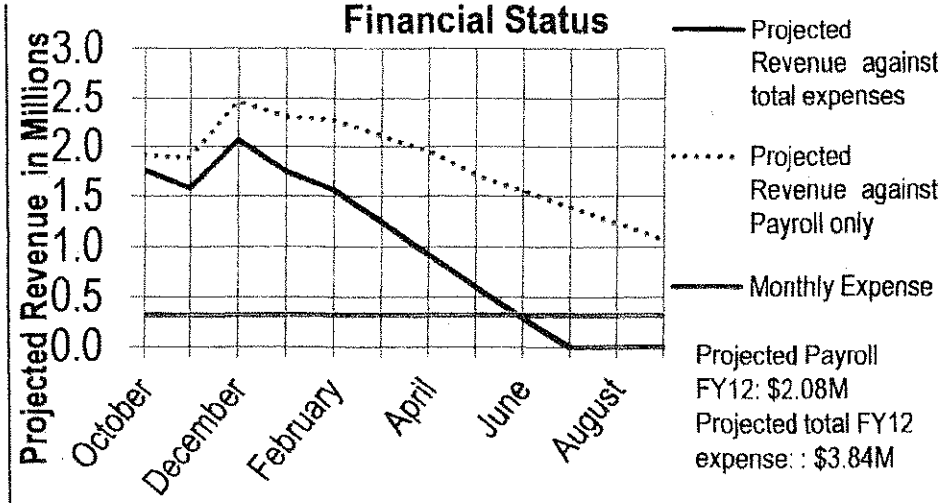
Issues

- 3G-0416 - Protest ongoing
- 3G-0245 – Delay due to Legal review. ACC Legal has had final package since Mon 11-7.
- 3G-0370, 3G-0373, 3G-0373 – ACC states award again delayed. State award will be NLT 11-18.
- 3G-0317 – ACC still conducting final review. Unsure of award date.
- 3G-0393 and 3G-0316 – Picatinny stated these would both be awarded by mid November.

R2-3G



Goal is 120 days with accepted package in R2



Ready For Award Next 30 Days

3G-0245	CERDEC	$76.9M	07 Nov
3G-0298	Air Force	$35.8M	05 Dec
3G-0370	CSLA	$14M	21 Nov
# 3G-0393	CECOM IE	$90.0M	25 Nov

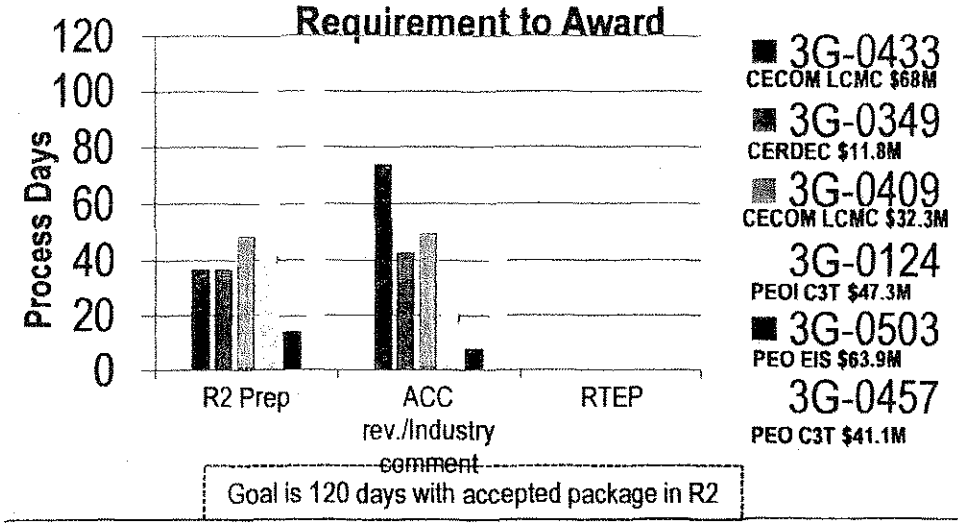
Picatinny Award
*RTEP on street
+no funding received. Will award upon receipt of funding.

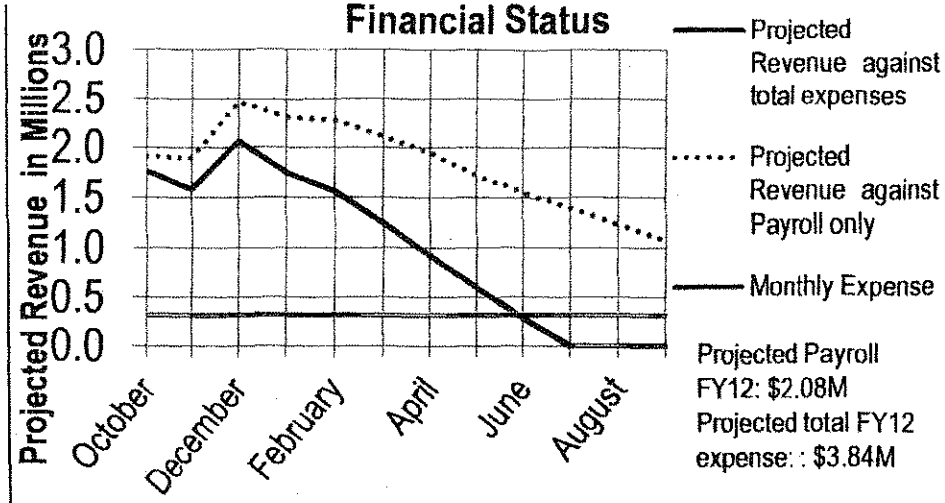
U.S. ARMY CECOM
One Vision, One Mission - The Warfighter.

Issues

- 3G-0416 - Protest ongoing
- 3G-0370 – Set for award 21 Nov
- 3G-0393 – On track for 25 Nov award
- 3G-0298 – Task Order added to tracking – Near Award
- 3G-0503 – New Package added for PEO EIS award needed 1 April 2012
- 3G-0317 – Awarded Nov 14 - $ 73.2M
- 3G-0373 – Awarded Nov 15 – $ 8.62M
- 3G-0372 – Awarded Nov 16 - $ 3.29M
- 3G-0245 – Awarded Nov 17 - $ 22.4M
- 3G-0316 - Awarded Nov 18 - $ 28.3M

R2-3G





Ready For Award Next 30 Days

3G-0298	Air Force	$35.8M	10 Dec
# 3G-0393	CERDEC I2WD	$90.0M	25 Nov

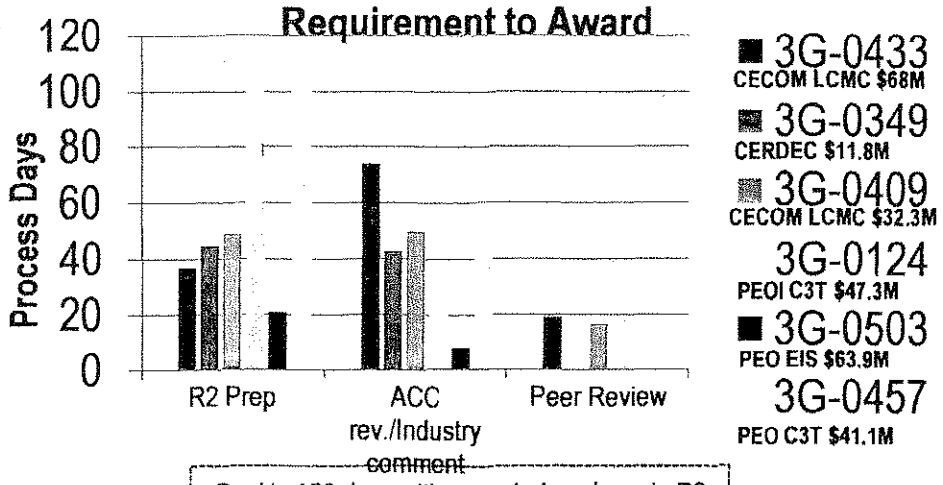
Picatinny Award
*RTEP on street
+no funding received. Will award upon receipt of funding.

Issues

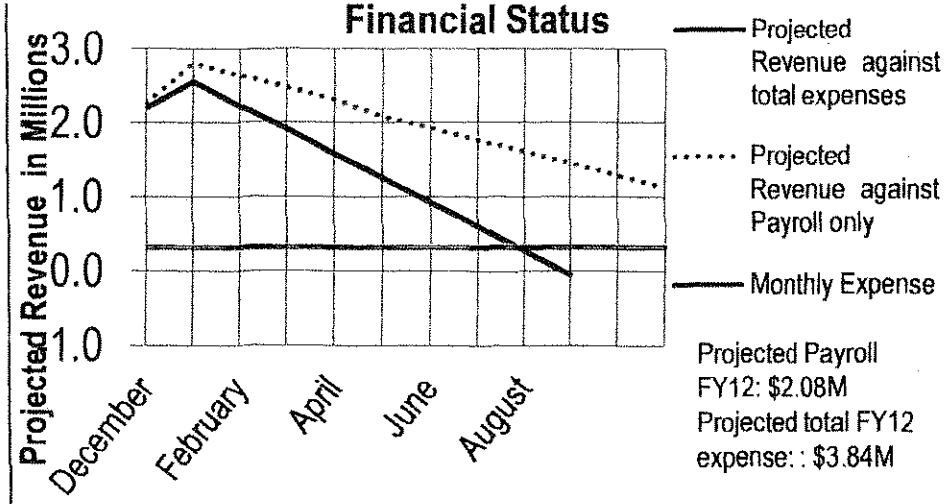
- 3G-0416 - Protest ongoing
- 3G-0370 – Awarded 11/23. 10.7M.
- 3G-0393 – Planned 25 Nov award. Still Waiting.
- 3G-0298 – Task Order on track for 10 December award
- 3G-0433 – At ACC for final peer review prior to RTEP.
- 3G-0349 – Finalizing task order documents
- 3G-0409 – At ACC for final peer review prior to RTEP
- 3G-0124- At ACC for final peer review prior to RTEP
- 3G-0457 – Working with customer on task order package
- 3G-0503 – Working package for award 1 April 2012

U.S. ARMY CECOM
One Vision, One Mission - The Warfighter

R2-3G



Goal is 120 days with accepted package in R2



Ready For Award Next 30 Days

3G-0298	Air Force	$35.8M	10 Dec
# 3G-0393	CERDEC I2WD	$90.0M	25 Nov

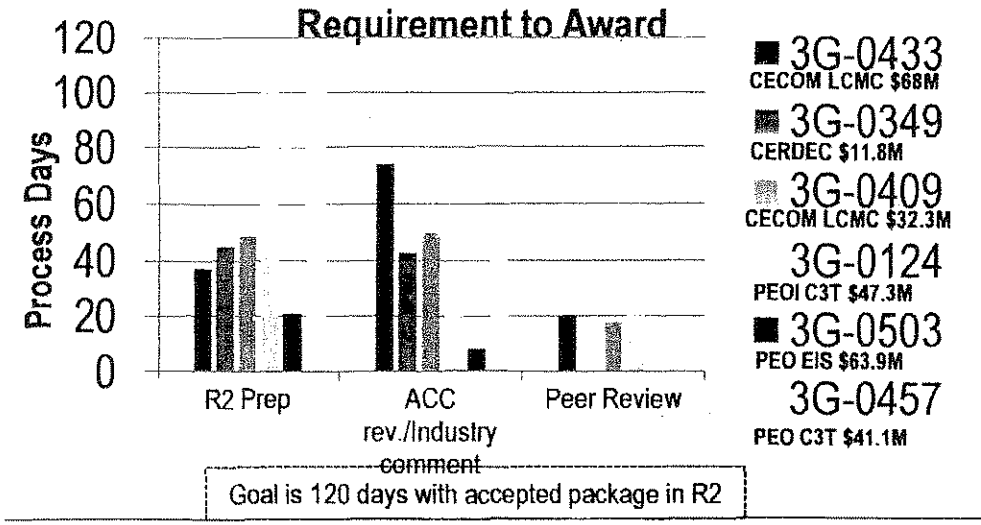
Picatinny Award
*RTEP on street
+no funding received. Will award upon receipt of funding.

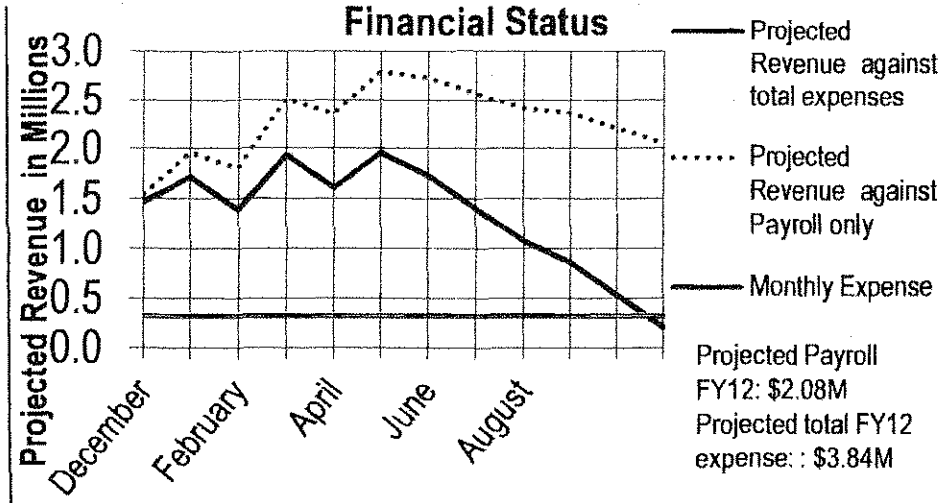
Issues

- 3G-0416 – Task cancelled. Protest dismissed.
- 3G-0393 – Planned 25 Nov award. Still Waiting.
- 3G-0298 – Expected award date 13 December award
- 3G-0433 – In ACC peer review prior to RTEP since 11/16.
- 3G-0349 – Finalizing task order documents with customer
- 3G-0409 – In ACC peer review prior to RTEP since 11/18
- 3G-0124- In ACC peer review prior to RTEP since 11/16
- 3G-0457 – Developing task order package with customer
- 3G-0503 – Developing task order package with customer
- 3G-0410 – Developing task package. PWS out for KTR review
- Added Peer Review tracking of package due to new process at ACC that has an unknown additional time requirement prior to RTEP and prior to award.

U.S. ARMY CECOM
One Vision, One Mission - The Warfighter.

R2-3G





Ready For Award Next 30 Days

3G-0298	Air Force	$35.8M	15 Dec
# 3G-0393	CERDEC I2WD	$90.0M	25 Nov

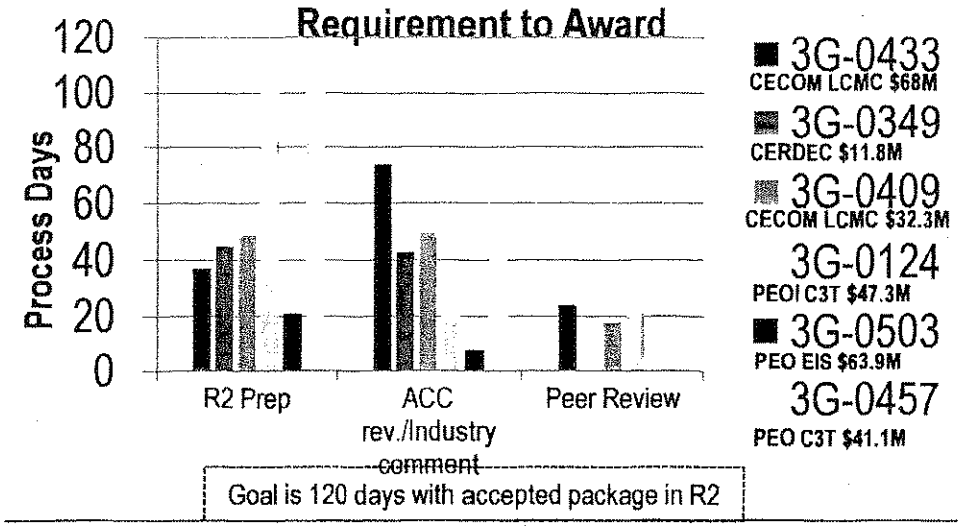
Picatinny Award
*RTEP on street
+no funding received. Will award upon receipt of funding.

Issues

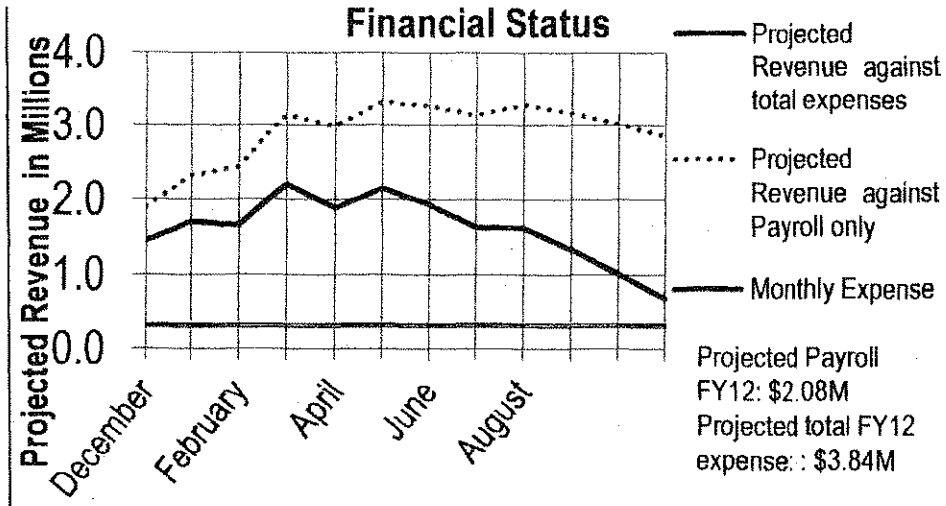
- 3G-0393 – Planned 25 Nov award. Still Waiting.
- 3G-0298 – Moved to 12 Dec award. Funding recvd.
- 3G-0433 – Peer process continues. With small business
- 3G-0349 – Finalizing task order documents with customer
- 3G-0409 – In ACC peer review.
- 3G-0124 - In ACC peer review.
- 3G-0457 – Developing task order package with customer
- 3G-0503 – Developing task order package with customer
- 3G-0484-New package sent for early RTEP questions.
- 3G-0462 – New package sent to early RTEP questions

U.S. ARMY CECOM
One Vision, One Mission – The Warfighter.

R2-3G



Goal is 120 days with accepted package in R2



Ready For Award Next 30 Days

3G-0393 CERDEC I2WD $90.0M 25 Nov

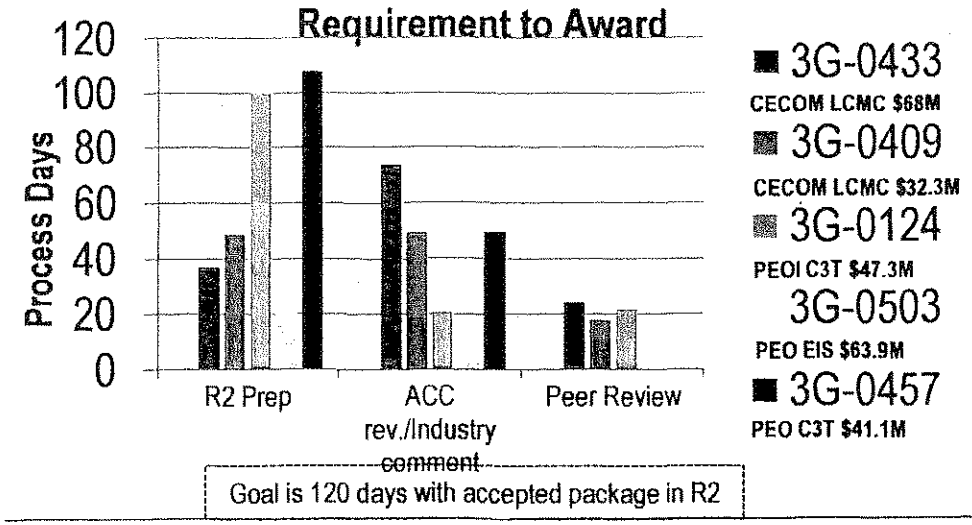
Picatinny Award
*RTEP on street
+no funding received. Will award upon receipt of funding.

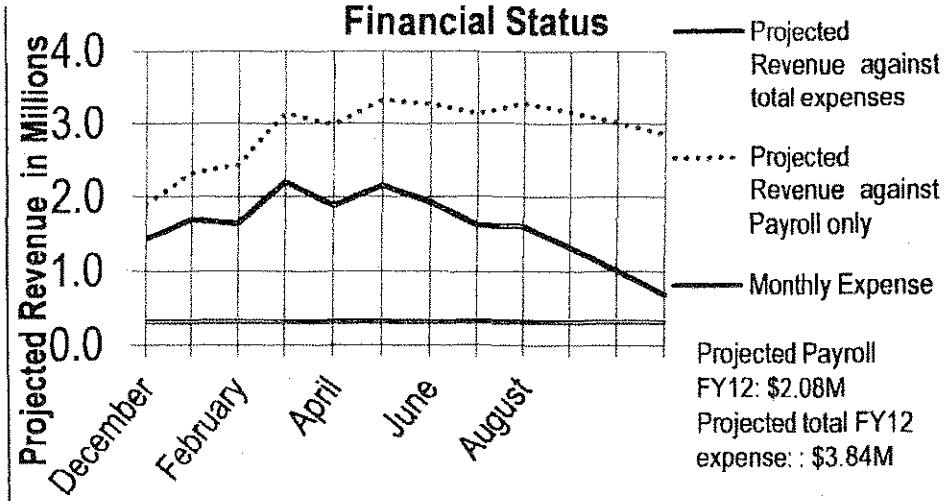
Issues

- 3G-0317 – Protest On-going
- 3G-0393 – Planned 25 Nov award. Still Waiting.
- 3G-0433 – RTEP Released – Proposals due back 12-30.
- 3G-0349 – Finalizing task order documents with customer
- 3G-0409 – Continuing Peer Review Process at ACC
- 3G-0124- Continuing Peer Review Process at ACC
- 17 Pre-Award Task Order Packages released or planned for release for pre-RTEP questions to contractors
- 3G-0298 Air Force Task Order Awarded 12-13 $23.5M

U.S. ARMY CECOM
One Vision; One Mission - The Warfighter.

R2-3G





Ready For Award Next 30 Days

3G-0393 CERDEC I2WD $90.0M 30 Dec

Note on 3G-0393: Update received 12/20: Picatinny KO required add'l information from offeror due to pricing questions that arose during review. Entered negotiations with offeror which caused a delay. Currently awaiting one more document from offeror and will then finalize award. Anticipate 30 Dec award.

Picatinny Award
*RTEP on street
+no funding received. Will award upon receipt of funding.

Issues

- 3G-0317 – Protest On-going
- 3G-0245 – Protest Received
- 3G-0393 – See updated status notes under Ready for Award
- 3G-0433 – RTEP Released – Proposals due back 12-30.
- 3G-0349 – Task cancelled by customer
- 3G-0409 – Continuing Peer Review Process at ACC
- 3G-0124- Continuing Peer Review Process at ACC
- 18 Pre-Award Task Order Packages released or planned for release for pre-RTEP questions to contractors

U.S. ARMY CECOM
One Vision, One Mission - The Warfighter.

R2-3G

Anticipated Award Dates			Req Date	Revised
*3G-0416	$67M	29 Aug	07 Sept	unchanged
*3G-0231	$34.5M	28 Sept	28 Sept	unchanged
*3G-0257	$40.9M	23 Sept	23 Sept	unchanged
*3G-0245	$76.9M	23 Sept	23 Sept	unchanged
*3G-0121	$44.7M	26 Sept	15 Sept	unchanged
*3G-0133	$48.7M	27 Sept	25 Sept	unchanged
*3G-0292	$35M	29 Sept	29 Sept	unchanged
*3G-0052	$22.4	30 Sept	20 Sept	unchanged
*3G-0373	$10.3M	07 Oct	07 Oct	unchanged
!3G-0298	$35.8M	10 Oct	20 Sept	unchanged
!3G-0350	$16.7	13 Oct	10 Oct	unchanged
*3G-0370	$14M	14 Oct	14 Oct	unchanged
*3G-0372	$3.6M	14 Oct	14 Oct	unchanged
*3G-0317	$157.9	27 Oct	27 Oct	unchanged
3G-0403	$44.9M		10 Nov	new addition
3G-0433	$87M		15 Dec	new addition

Background

R2-3G Basic Contracts awarded 29 July 2010 to 18 prime contractors.

Competitive Awards

3G-0281	awarded	01 Apr	$5.20M
3G-0139	awarded	21 June	$12.38M
3G-0396	awarded	12 July	$16.6M
3G-0312	awarded	28 July	$1.10M
3G-0310	awarded	29 July	$19.7M
3G-0384	awarded	23 Aug	$13.0M
3G-0311	awarded	30 Aug	$8.96M
3G-0356	awarded	30 Aug	$ 3.11M

Ready For Award

3G-0336, 09 Sept anticipated
3G-0416, 09 Sept anticipated ***

U.S. ARMY CECOM
One Vision, One Mission - The Warfighter.

*RTEP on street
! KO Review
Req Date – date requiring activity needs award
*** Customer reviewing documents – award may slip

R2-3G

Anticipated Award Dates			Req Date	Revised
*3G-0231	$34.5M	28 Sept	28 Sept	unchanged
*3G-0257	$40.9M	23 Sept	23 Sept	unchanged
*3G-0245	$76.9M	23 Sept	23 Sept	unchanged
*3G-0121	$44.7M	26 Sept	15 Sept	unchanged
*3G-0133	$48.7M	27 Sept	25 Sept	unchanged
*3G-0292	$35M	29 Sept	29 Sept	unchanged
*3G-0052	$22.4	30 Sept	20 Sept	unchanged
*3G-0373	$10.3M	07 Oct	07 Oct	unchanged
!3G-0298	$35.8M	10 Oct	20 Sept	unchanged
*3G-0350	$16.7M	13 Oct	10 Oct	unchanged
*3G-0370	$14M	14 Oct	14 Oct	unchanged
*3G-0372	$3.6M	14 Oct	14 Oct	unchanged
*3G-0317	$157.9	27 Oct	27 Oct	unchanged
3G-0403	$44.9M		10 Nov	unchanged
3G-0433	$87M		15 Dec	unchanged

Background

R2-3G Basic Contracts awarded 29 July 2010 to 18 prime contractors.

Competitive Awards

3G-0281	awarded	01 Apr	$5.20M
3G-0139	awarded	21 June	$12.38M
3G-0396	awarded	12 July	$16.6M
3G-0312	awarded	28 July	$1.10M
3G-0310	awarded	29 July	$19.7M
3G-0384	awarded	23 Aug	$13.0M
3G-0311	awarded	30 Aug	$8.96M
3G-0356	awarded	30 Aug	$ 3.11M

Ready For Award

3G-0336, 15 Sept anticipated
3G-0416, 17 Sept anticipated
3G-0133, 22 Sept anticipated

*RTEP on street
! KO Review
Req Date – date requiring activity needs award

U.S. ARMY CECOM
One Vision. One Mission - The Warfighter.

R2-3G

Anticipated Award Dates			Req Date	Revised
*3G-0231	$34.5M	27 Sept	28 Sept	unchanged
*3G-0257	$40.9M	23 Sept	23 Sept	unchanged
*3G-0245	$76.9M	23 Sept	23 Sept	unchanged
*3G-0121	$44.7M	26 Sept	15 Sept	unchanged
*3G-0133	$48.7M	27 Sept	25 Sept	unchanged
*3G-0292	$35M	29 Sept	29 Sept	unchanged
*3G-0052	$22.4	27 Sept	20 Sept	unchanged
*3G-0373	$10.3M	07 Oct	07 Oct	unchanged
!3G-0298	$35.8M	10 Oct	20 Sept	unchanged
*3G-0350	$16.7M	13 Oct	10 Oct	unchanged
*3G-0370	$14M	14 Oct	14 Oct	unchanged
*3G-0372	$3.6M	14 Oct	14 Oct	unchanged
*3G-0317	$157.9	27 Oct	27 Oct	unchanged
3G-0403	$44.9M		10 Nov	unchanged
3G-0433	$87M		15 Dec	unchanged

Background

R2-3G Basic Contracts awarded 29 July 2010 to 18 prime contractors.

Competitive Awards

3G-0281	awarded	01 Apr	$5.20M
3G-0139	awarded	21 June	$12.38M
3G-0396	awarded	12 July	$16.6M
3G-0312	awarded	28 July	$1.10M
3G-0310	awarded	29 July	$19.7M
3G-0384	awarded	23 Aug	$13.0M
3G-0311	awarded	30 Aug	$8.96M
3G-0356	awarded	30 Aug	$ 3.11M

Ready For Award

3G-0336, 15 Sept anticipated
3G-0416, 17 Sept anticipated
3G-0133, 22 Sept anticipated

U.S. ARMY CECOM
One Vision, One Mission - The Warfighter.

*RTEP on street
! KO Review
Req Date – date requiring activity needs award

R2-3G

Anticipated Award Dates			Req Date	Revised
*3G-0373	$10.3M	07 Oct	7 Oct	unchanged
!3G-0298	$35.8M	20 Nov	1 Nov	unchanged
*3G-0350	$16.7M	13 Oct	10 Oct	unchanged
*3G-0370	$14M	14 Oct	14 Oct	unchanged
*3G-0372	$3.6M	14 Oct	14 Oct	unchanged
*3G-0317	$157.9	17 Oct	15 Oct	unchanged
#3G-0393	$90.0M	15 Oct	15 Oct	added
#3G-0316	$37.6M	20 Oct	20 Oct	added
3G-0403	$44.9M		10 Nov	unchanged
3G-0433	$87M		15 Dec	unchanged

Ready For Award

3G-0245	27 Sept	anticipated	$76.9M
3G-0140	26 Sept	(Picatinny),	$25.5M
*3G-0231	29 Sept	anticipated	$34.5M
*3G-0257	27 Sept	anticipated	$40.9M
*3G-0121	26 Sept	anticipated	$44.7M
*3G-0292	29 Sept	anticipated	$35.0M
*3G-0052	27 Sept	anticipated	$22.4M
#3G-0380	27 Sept	anticipated	$24.0M
#3G-0174	27 Sept	anticipated	$9.1M

U.S. ARMY CECOM
One Vision, One Mission - The Warfighter.

Background

R2-3G Basic Contracts awarded 29 July 2010 to 18 prime contractors.

Competitive Awards

3G-0281	awarded	01 Apr	$5.20M
3G-0139	awarded	21 June	$12.38M
3G-0396	awarded	12 July	$16.6M
3G-0312	awarded	28 July	$1.10M
3G-0310	awarded	29 July	$19.7M
3G-0384	awarded	23 Aug	$13.0M
3G-0311	awarded	30 Aug	$8.96M
3G-0356	awarded	30 Aug	$ 3.11M
3G-0336	awarded	15 Sept	$9.87M
#3G-0175	awarded	20 Sept	$6.95M
3G-0416	awarded	22 Sept	$20.8M
3G-0133	awarded	22 Sept	$35.2M

*RTEP on street
! KO Review
Req Date – date requiring activity needs award
Picatinny Award

R2-3G

Background

R2-3G Basic Contracts awarded 29 July 2010 to 18 prime contractors.

Ready For Award

*3G-0245 27 Sept anticipated $76.9M

*no funding received. Will award upon receipt of funding.

Anticipated Award Dates			Req Date	Revised
*3G-0373	$10.3M	07 Oct	14 Oct	revised date
*3G-0350	$16.7M	13 Oct	10 Oct	unchanged
*3G-0370	$14M	14 Oct	14 Oct	unchanged
*3G-0372	$3.6M	14 Oct	14 Oct	unchanged
*3G-0317	$157.9	17 Oct	15 Oct	unchanged
#3G-0393	$90.0M	15 Oct	15 Oct	unchanged
#3G-0316	$37.6M	20 Oct	20 Oct	unchanged
*3G-0298	$35.8M	20 Nov	10 Nov	unchanged
3G-0433	$87M		15 Dec	unchanged
#3G-0303	$13.4M	20 Dec	20 Dec	unchanged
3G-0403	$44.9M		15 Jun	unchanged

Recent Awards

3G-0281	awarded	01 Apr	$5.20M
3G-0139	awarded	21 Jun	$12.38M
3G-0396	awarded	12 Jul	$16.6M
3G-0312	awarded	28 Jul	$1.10M
3G-0310	awarded	29 Jul	$19.7M
3G-0384	awarded	23 Aug	$13.0M
3G-0311	awarded	30 Aug	$8.96M
3G-0356	awarded	30 Aug	$3.11M
3G-0336	awarded	15 Sep	$9.87M
#3G-0175	awarded	20 Sep	$6.95M
3G-0416	awarded	22 Sep	$20.8M
3G-0133	awarded	22 Sep	$35.2M
3G-0052	awarded	26 Sep	$18.3M
#3G-0174	awarded	27 Sept	$9.3M
3G-0292	awarded	27 Sept	$33.2M
#3G-0140	awarded	27 Sept	$13.5M
#3G-0380	awarded	28 Sept	$21.9M
3G-0121	awarded	28 Sept	$32.3M
3G-0257	awarded	29 Sept	$43.2M
3G-0231	awarded	29 Sept	$37.9M

U.S. ARMY CECOM
One Vision, One Mission - The Warfighter.

*RTEP on street
! KO Review
Req Date – date requiring activity needs award
Picatinny Award

R2-3G

Background

R2-3G Basic Contracts awarded 29 July 2010 to 18 prime contractors.

Ready For Award Next 30 Days

Anticipated Award Dates

+3G-0245	$76.9M	27 Sep
*3G-0373	$10.3M	07 Oct
*3G-0370	$14M	14 Oct
*3G-0372	$3.6M	14 Oct
*3G-0350	$16.7M	19 Oct
#3G-0316	$37.6M	20 Oct
*3G-0317	$157.9	27 Oct
#3G-0393	$90.0M	31 Oct

Picatinny Award

*RTEP on street

+no funding received. Will award upon receipt of funding.

Awards In Last 30 Days

Task	Awarded	Base Amt
3G-0336	15 Sep	$9.87M
3G-0416	22 Sep	$20.8M
3G-0133	22 Sep	$35.2M
3G-0052	26 Sep	$18.3M
3G-0292	27 Sept	$33.2M
#3G-0380	28 Sept	$21.9M
3G-0121	28 Sept	$32.3M
3G-0257	29 Sept	$43.2M
3G-0231	29 Sept	$37.9M

Tasks initiated since June 1, 2011

#3G-0175	20 Sep	$6.95M
#3G-0174	27 Sept	$9.3M
#3G-0140	27 Sept	$13.5M

Average process time of 123 days.

Payroll Status

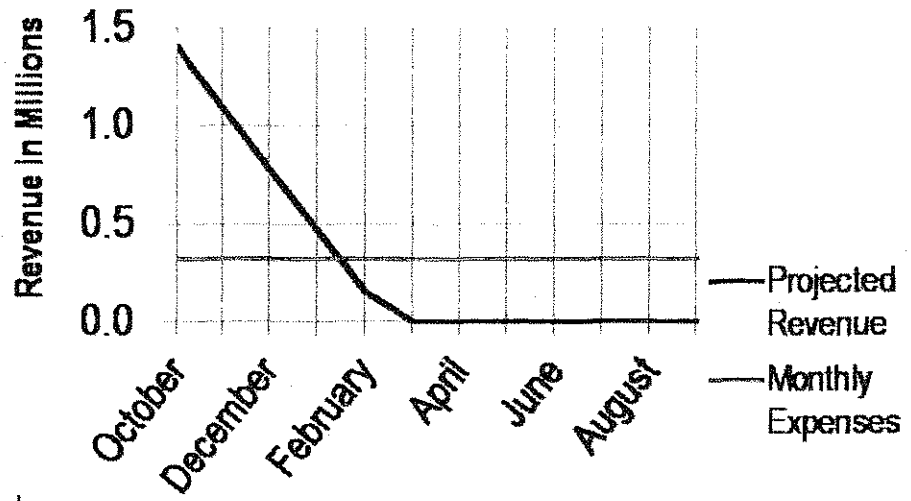
Payroll and expenses covered until January 30, 2011

U.S. ARMY CECOM

One Vision, One Mission - The Warfighter.

R2-3G

Requirement to Award



Ready For Award Next 30 Days

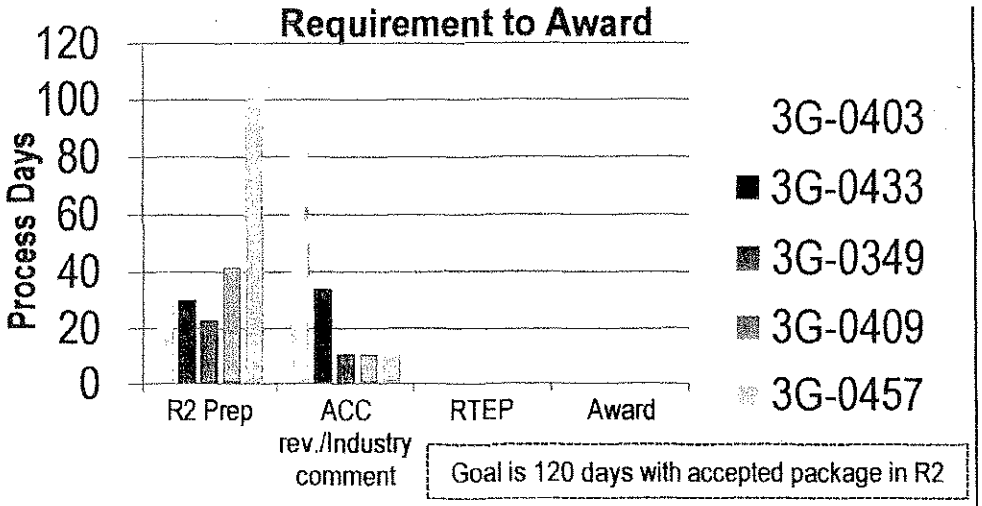
+3G-0245	$76.9M	27 Sep
*3G-0373	$10.3M	07 Oct
*3G-0370	$14M	14 Oct
*3G-0372	$3.6M	14 Oct
*3G-0350	$16.7M	19 Oct
#3G-0316	$37.6M	20 Oct
*3G-0317	$157.9	27 Oct
#3G-0393	$90.0M	31 Oct

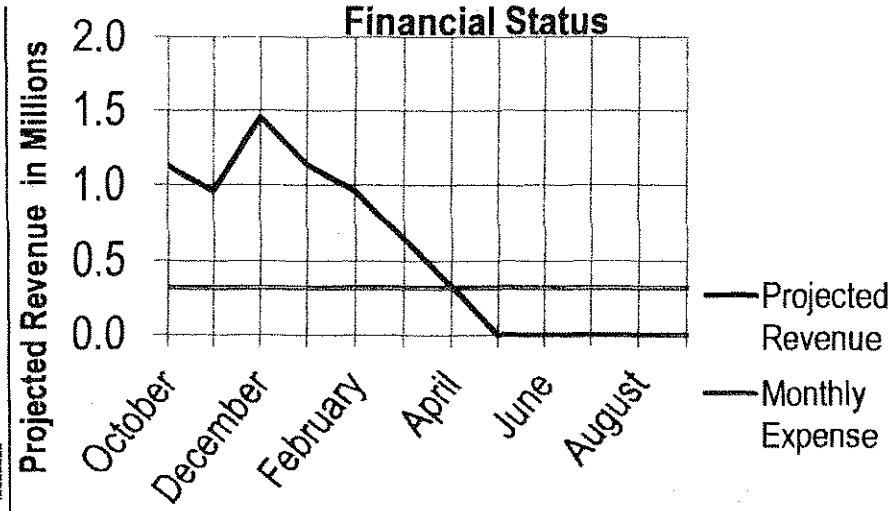
Picatinny Award
*RTEP on street
+no funding received. Will award upon receipt of funding.

U.S. ARMY CECOM
One Vision, One Mission - The Warfighter.

Issues

R2-3G





Ready For Award Next 30 Days

+3G-0245	$76.9M	27 Sep
+3G-0373	$10.3M	07 Oct
+ 3G-0370	$14M	14 Oct
+ 3G-0372	$3.6M	14 Oct
*3G-0350	$16.7M	19 Oct
*3G-0317	$157.9	27 Oct
#3G-0393	$90.0M	31 Oct
#3G-0316	$37.6M	17 Nov

Picatinny Award
*RTEP on street
+no funding received. Will award upon receipt of funding.

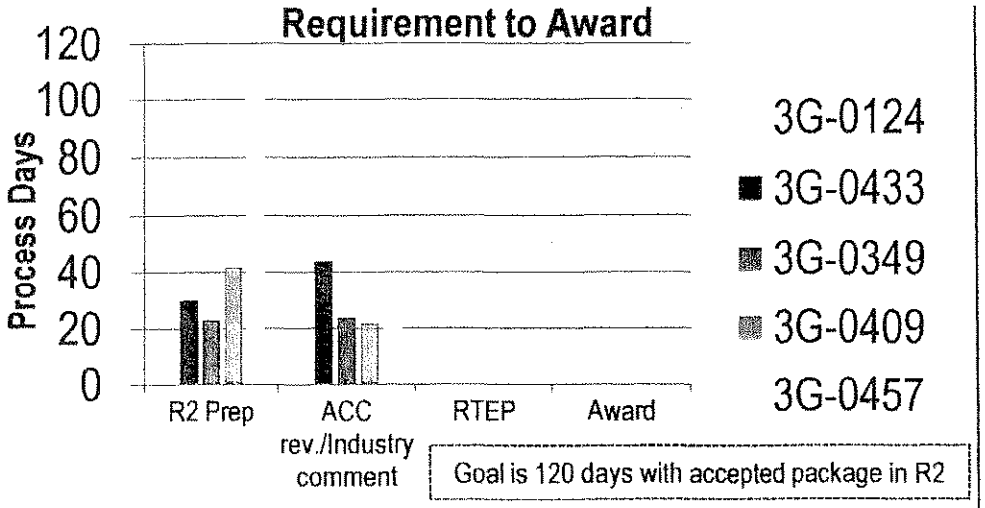
Issues

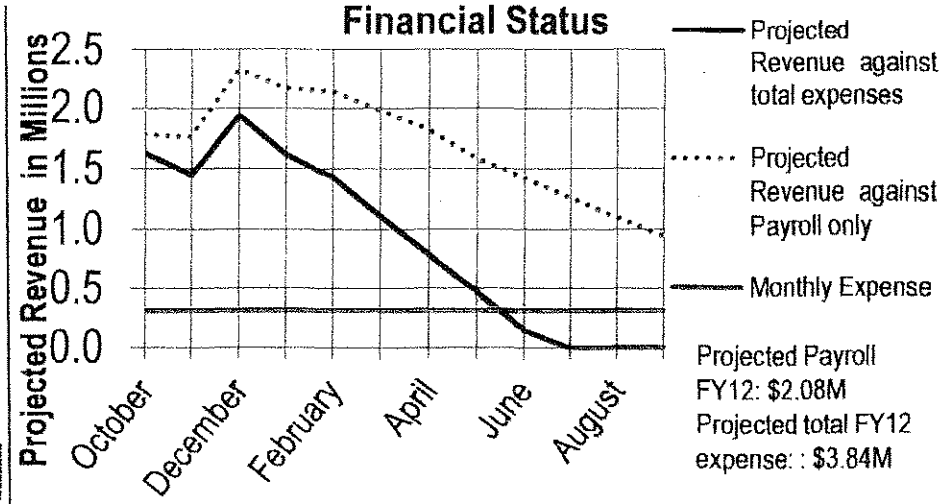
- Protest received against 3G-0416

- Requirement to Award data skewed upwards due to inclusion of tasks dating to old processes. Once these are awarded, data will better reflect current process and timeline.

U.S. ARMY CECOM
One Vision, One Mission - The Warfighter.

R2-3G





Ready For Award Next 30 Days

+3G-0245	$76.9M	27 Sep
+3G-0373	$10.3M	07 Oct
+ 3G-0370	$14M	14 Oct
+ 3G-0372	$3.6M	14 Oct
*3G-0350	$16.7M	19 Oct
*3G-0317	$157.9	27 Oct
#3G-0393	$90.0M	31 Oct
#3G-0316	$37.6M	17 Nov

Picatinny Award
*RTEP on street
+no funding received. Will award upon receipt of funding.

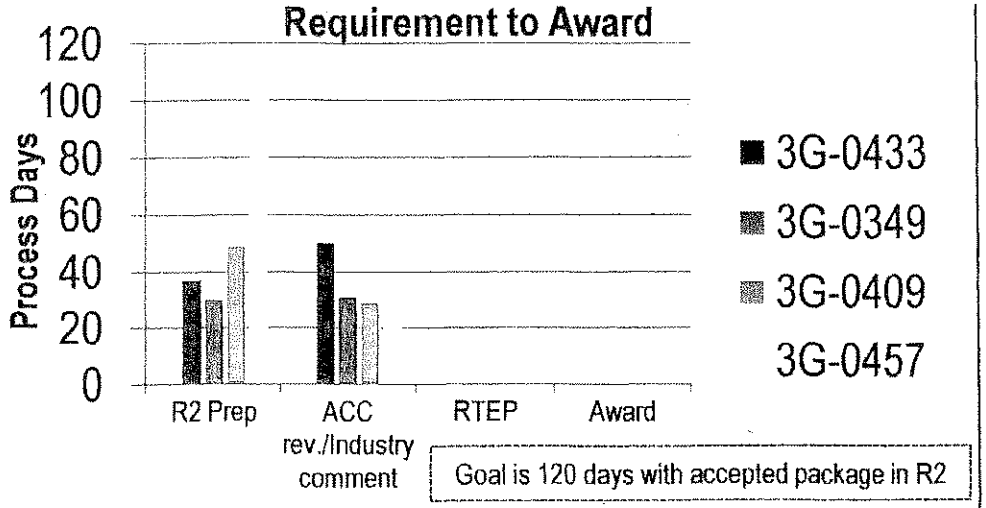
Issues

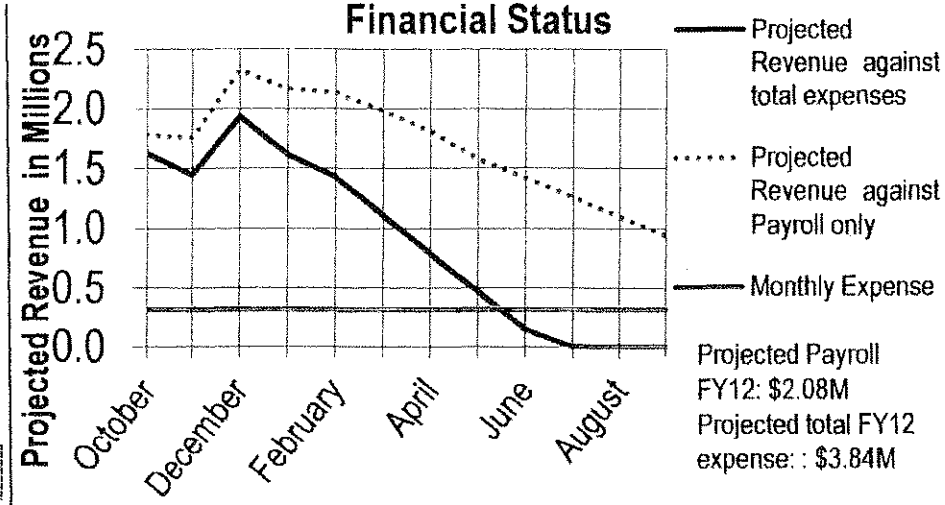
- Protest ongoing against 3G-0416

- Requirement to Award data skewed upwards due to inclusion of tasks dating to old processes. Once these are awarded, data will better reflect current process and timeline.

U.S. ARMY CECOM
One Vision, One Mission - The Warfighter.

R2-3G





Ready For Award Next 30 Days

3G-0245	$76.9M	04 Nov
3G-0373	$10.3M	05 Nov
3G-0370	$14M	05 Nov
3G-0372	$3.6M	05 Nov
3G-0317	$157.9	01 Nov
# 3G-0393	$90.0M	31 Oct
# 3G-0316	$37.6M	17 Nov

Picatinny Award

Issues

- Protest ongoing against 3G-0416
- 3G-0350 Awarded Oct 26 $11.6M

U.S. ARMY CECOM
One Vision, One Mission - The Warfighter.

R2-3G

Anticipated Award Dates	Revised
*3G-0310 $25M 30 26 July	this week
*3G-0384 $29.8M 30 03 August	unchanged
*3G-0317 $157.9 08 September	unchanged
*3G-0133 $48.7M 27 September	unchanged
*3G-0416 $67M 02 August	unchanged
*3G-0356 $7.5M 25 August	unchanged
*3G-0336 $10.7M 29 August	unchanged
*3G-0311 $4.2M 31 August	unchanged
!3G-0231 $34.5M 28 September	unchanged
*3G-0257 $40.9M 23 September	unchanged
*3G-0292 $35M 29 September	unchanged
*3G-0052 $22.4 30 September	unchanged
!3G-0355 $10.3 30 September	unchanged
*3G-0370 $14M early October	unchanged
*3G-0372 $3.6M early October	unchanged
*3G-0373 $10.3M early October	unchanged
!3G-0350 $16.7 13 October	unchanged
*3G-0121 $44.7M 26 September	unchanged
!3G-0298 $35.8M October	unchanged

Background

R2-3G Basic Contracts awarded 29 July 2010 to 18 prime contractors.

Competitive Awards

3G-0281 awarded 1 April 2011 for $5.2M
3G-0139 awarded 21 June 2011 for $12.375M
3G-0396 awarded 12 July 2011 for $15.1M
3G-0312 awarded 28 July 2011 for $1.1M

Ready For Award

3G-0310, 22 July anticipated date

U.S. ARMY CECOM
One Vision, One Mission - The Warfighter

*RTEP on street
! KO Review

R2-3G

Anticipated Award Dates	Revised
*3G-0356 $7.5M 25 August	unchanged
*3G-0317 $157.9 08 September	unchanged
*3G-0133 $48.7M 27 September	unchanged
*3G-0416 $67M 02 August	unchanged
*3G-0356 $7.5M 25 August	unchanged
*3G-0336 $10.7M 29 August	unchanged
*3G-0311 $4.2M 31 August	unchanged
!3G-0231 $34.5M 28 September	unchanged
*3G-0257 $40.9M 23 September	unchanged
*3G-0245 $76.9M 23 September	New Update
*3G-0121 $44.7M 26 September	unchanged
*3G-0292 $35M 29 September	unchanged
*3G-0052 $22.4 30 September	unchanged
#3G-0355 $10.3 30 September	delayed
*3G-0370 $14M early October	unchanged
*3G-0372 $3.6M early October	unchanged
*3G-0373 $10.3M early October	unchanged
!3G-0350 $16.7 13 October	unchanged
!3G-0298 $35.8M October	unchanged

Background

R2-3G Basic Contracts awarded 29 July 2010 to 18 prime contractors.

Competitive Awards

3G-0281 awarded 1 April 2011 for $5.2M
3G-0139 awarded 21 June 2011 for $12.375M
3G-0396 awarded 12 July 2011 for $15.1M
3G-0312 awarded 28 July 2011 for $1.1M
3G-0310 awarded 29 July 2011 for $12.1M

Ready For Award

3G-0384, 12 August anticipated date
3G-0416, 22 August anticipated date
3G-0311, 24 August anticipated date

*RTEP on street
! KO Review
Additional documentation needed. Delayed release

R2-3G

Anticipated Award Dates	Revised
*3G-0416 $67M 02 August	22 August
*3G-0356 $7.5M 25 August	unchanged
*3G-0336 $10.7M 29 August	unchanged
*3G-0317 $157.9 08 September	unchanged
!3G-0231 $34.5M 28 September	unchanged
*3G-0257 $40.9M 23 September	unchanged
*3G-0245 $76.9M 23 September	unchanged
*3G-0121 $44.7M 26 September	unchanged
*3G-0133 $48.7M 27 September	unchanged
*3G-0292 $35M 29 September	unchanged
*3G-0052 $22.4 30 September	unchanged
#3G-0355 $10.3 30 September	delayed
*3G-0370 $14M early October	unchanged
*3G-0372 $3.6M early October	unchanged
*3G-0373 $10.3M early October	unchanged
!3G-0350 $16.7 13 October	unchanged
!3G-0298 $35.8M October	unchanged

Background

R2-3G Basic Contracts awarded 29 July 2010 to 18 prime contractors.

Competitive Awards

3G-0281 awarded 1 April 2011 for $5.2M
3G-0139 awarded 21 June 2011 for $12.375M
3G-0396 awarded 12 July 2011 for $15.1M
3G-0312 awarded 28 July 2011 for $1.1M
3G-0310 awarded 29 July 2011 for $12.1M

Ready For Award

3G-0384, 12 or 15 August anticipated date
3G-0311, 24 August anticipated date

*RTEP on street
! KO Review
Additional documentation needed. Delayed release

U.S. ARMY CECOM
One Vision, One Mission - The Warfighter.

R2-3G

Anticipated Award Dates			Req Date	Revised
*3G-0416	$67M	29 Aug	07 Sept	updated
*3G-0231	$34.5M	28 Sept	28 Sept	unchanged
*3G-0257	$40.9M	23 Sept	23 Sept	unchanged
*3G-0245	$76.9M	23 Sept	23 Sept	unchanged
*3G-0121	$44.7M	26 Sept	15 Sept	unchanged
*3G-0133	$48.7M	27 Sept	25 Sept	unchanged
*3G-0292	$35M	29 Sept	29 Sept	unchanged
*3G-0052	$22.4	30 Sept	20 Sept	unchanged
*3G-0373	$10.3M	07 Oct	07 Oct	unchanged
!3G-0298	$35.8M	10 Oct	20 Sept	unchanged
!3G-0350	$16.7	13 Oct	10 Oct	unchanged
*3G-0370	$14M	14 Oct	14 Oct	unchanged
*3G-0372	$3.6M	14 Oct	14 Oct	unchanged
*3G-0317	$157.9	27 Oct	27 Oct	updated

Background

R2-3G Basic Contracts awarded 29 July 2010 to 18 prime contractors.

Competitive Awards

3G-0281	awarded	01 Apr	$5.2M
3G-0139	awarded	21 June	$12.375M
3G-0396	awarded	12 July	$15.1M
3G-0312	awarded	28 July	$1.1M
3G-0310	awarded	29 July	$12.1M

Ready For Award

3G-0384, 22 August anticipated
3G-0311, 24 August anticipated
3G-0356, 25 August anticipated
3G-0336, 29 August anticipated

U.S. ARMY CECOM
One Vision, One Mission - The Warfighter.

*RTEP on street
! KO Review
Req Date – date requiring activity needs award

R2-3G

Anticipated Award Dates			Req Date	Revised
*3G-0416	$67M	29 Aug	07 Sept	unchanged
*3G-0231	$34.5M	28 Sept	28 Sept	unchanged
*3G-0257	$40.9M	23 Sept	23 Sept	unchanged
*3G-0245	$76.9M	23 Sept	23 Sept	unchanged
*3G-0121	$44.7M	26 Sept	15 Sept	unchanged
*3G-0133	$48.7M	27 Sept	25 Sept	unchanged
*3G-0292	$35M	29 Sept	29 Sept	unchanged
*3G-0052	$22.4	30 Sept	20 Sept	unchanged
*3G-0373	$10.3M	07 Oct	07 Oct	unchanged
!3G-0298	$35.8M	10 Oct	20 Sept	unchanged
!3G-0350	$16.7	13 Oct	10 Oct	unchanged
*3G-0370	$14M	14 Oct	14 Oct	unchanged
*3G-0372	$3.6M	14 Oct	14 Oct	unchanged
*3G-0317	$157.9	27 Oct	27 Oct	unchanged
3G-0403	$44.9M		10 Nov	new addition
3G-0433	$87M		15 Dec	new addition

Background

R2-3G Basic Contracts awarded 29 July 2010 to 18 prime contractors.

Competitive Awards

3G-0281	awarded	01 Apr	$5.2M
3G-0139	awarded	21 June	$12.38M
3G-0396	awarded	12 July	$16.6M
3G-0312	awarded	28 July	$1.1M
3G-0310	awarded	29 July	$19.7M
3G-0384	awarded	23 Aug	$13.04M

Ready For Award

3G-0311, 24 August anticipated
3G-0356, 25 August anticipated
3G-0336, 29 August anticipated

U.S. ARMY CECOM
One Vision, One Mission - The Warfighter.

*RTEP on street
! KO Review
Req Date – date requiring activity needs award

R2-3G

Anticipated Award Dates	Revised
*3G-0310 $25M 30 26 July	this week
*3G-0384 $29.8M 30 03 August	unchanged
*3G-0317 $157.9 08 September	unchanged
*3G-0133 $48.7M 27 September	unchanged
*3G-0416 $67M 02 August	unchanged
*3G-0356 $7.5M 25 August	unchanged
*3G-0336 $10.7M 29 August	unchanged
*3G-0311 $4.2M 31 August	unchanged
!3G-0231 $34.5M 28 September	unchanged
*3G-0257 $40.9M 23 September	unchanged
*3G-0292 $35M 29 September	unchanged
*3G-0052 $22.4 30 September	unchanged
!3G-0355 $10.3 30 September	unchanged
*3G-0370 $14M early October	unchanged
*3G-0372 $3.6M early October	unchanged
*3G-0373 $10.3M early October	unchanged
!3G-0350 $16.7 13 October	unchanged
*3G-0121 $44.7M 26 September	unchanged
!3G-0298 $35.8M October	unchanged

Background

R2-3G Basic Contracts awarded 29 July 2010 to 18 prime contractors.

Competitive Awards

3G-0281 awarded 1 April 2011 for $5.2M
3G-0139 awarded 21 June 2011 for $12.375M
3G-0396 awarded 12 July 2011 for $15.1M
3G-0312 awarded 28 July 2011 for $1.1M

Ready For Award

3G-0310, 22 July anticipated date

U.S. ARMY CECOM
One Vision, One Mission - The Warfighter.

*RTEP on street
! KO Review

R2-3G

Anticipated Award Dates	Revised
*3G-0356 $7.5M 25 August	unchanged
*3G-0317 $157.9 08 September	unchanged
*3G-0133 $48.7M 27 September	unchanged
*3G-0416 $67M 02 August	unchanged
*3G-0356 $7.5M 25 August	unchanged
*3G-0336 $10.7M 29 August	unchanged
*3G-0311 $4.2M 31 August	unchanged
!3G-0231 $34.5M 28 September	unchanged
*3G-0257 $40.9M 23 September	unchanged
*3G-0245 $76.9M 23 September	New Update
*3G-0121 $44.7M 26 September	unchanged
*3G-0292 $35M 29 September	unchanged
*3G-0052 $22.4 30 September	unchanged
#3G-0355 $10.3 30 September	delayed
*3G-0370 $14M early October	unchanged
*3G-0372 $3.6M early October	unchanged
*3G-0373 $10.3M early October	unchanged
!3G-0350 $16.7 13 October	unchanged
!3G-0298 $35.8M October	unchanged

Background

R2-3G Basic Contracts awarded 29 July 2010 to 18 prime contractors.

Competitive Awards

3G-0281 awarded 1 April 2011 for $5.2M
3G-0139 awarded 21 June 2011 for $12.375M
3G-0396 awarded 12 July 2011 for $15.1M
3G-0312 awarded 28 July 2011 for $1.1M
3G-0310 awarded 29 July 2011 for $12.1M

Ready For Award

3G-0384, 12 August anticipated date
3G-0416, 22 August anticipated date
3G-0311, 24 August anticipated date

*RTEP on street
! KO Review
Additional documentation needed. Delayed release

U.S. ARMY CECOM
One Vision, One Mission - The Warfighter.

R2-3G

Anticipated Award Dates	Revised
*3G-0416 $67M 02 August	22 August
*3G-0356 $7.5M 25 August	unchanged
*3G-0336 $10.7M 29 August	unchanged
*3G-0317 $157.9 08 September	unchanged
!3G-0231 $34.5M 28 September	unchanged
*3G-0257 $40.9M 23 September	unchanged
*3G-0245 $76.9M 23 September	unchanged
*3G-0121 $44.7M 26 September	unchanged
*3G-0133 $48.7M 27 September	unchanged
*3G-0292 $35M 29 September	unchanged
*3G-0052 $22.4 30 September	unchanged
#3G-0355 $10.3 30 September	delayed
*3G-0370 $14M early October	unchanged
*3G-0372 $3.6M early October	unchanged
*3G-0373 $10.3M early October	unchanged
!3G-0350 $16.7 13 October	unchanged
!3G-0298 $35.8M October	unchanged

Background

R2-3G Basic Contracts awarded 29 July 2010 to 18 prime contractors.

Competitive Awards

3G-0281 awarded 1 April 2011 for $5.2M
3G-0139 awarded 21 June 2011 for $12.375M
3G-0396 awarded 12 July 2011 for $15.1M
3G-0312 awarded 28 July 2011 for $1.1M
3G-0310 awarded 29 July 2011 for $12.1M

Ready For Award

3G-0384, 12 or 15 August anticipated date
3G-0311, 24 August anticipated date

*RTEP on street
! KO Review
Additional documentation needed. Delayed release

U.S. ARMY CECOM
One Vision, One Mission - The Warfighter.

R2-3G

Anticipated Award Dates			Req Date	Revised
*3G-0416	$67M	29 Aug	07 Sept	updated
*3G-0231	$34.5M	28 Sept	28 Sept	unchanged
*3G-0257	$40.9M	23 Sept	23 Sept	unchanged
*3G-0245	$76.9M	23 Sept	23 Sept	unchanged
*3G-0121	$44.7M	26 Sept	15 Sept	unchanged
*3G-0133	$48.7M	27 Sept	25 Sept	unchanged
*3G-0292	$35M	29 Sept	29 Sept	unchanged
*3G-0052	$22.4	30 Sept	20 Sept	unchanged
*3G-0373	$10.3M	07 Oct	07 Oct	unchanged
!3G-0298	$35.8M	10 Oct	20 Sept	unchanged
!3G-0350	$16.7	13 Oct	10 Oct	unchanged
*3G-0370	$14M	14 Oct	14 Oct	unchanged
*3G-0372	$3.6M	14 Oct	14 Oct	unchanged
*3G-0317	$157.9	27 Oct	27 Oct	updated

Background

R2-3G Basic Contracts awarded 29 July 2010 to 18 prime contractors.

Competitive Awards

3G-0281	awarded	01 Apr	$5.2M
3G-0139	awarded	21 June	$12.375M
3G-0396	awarded	12 July	$15.1M
3G-0312	awarded	28 July	$1.1M
3G-0310	awarded	29 July	$12.1M

Ready For Award

3G-0384, 22 August anticipated
3G-0311, 24 August anticipated
3G-0356, 25 August anticipated
3G-0336, 29 August anticipated

U.S. ARMY CECOM
One Vision. One Mission - The Warfighter.

*RTEP on street
! KO Review
Req Date – date requiring activity needs award

R2-3G

Anticipated Award Dates			Req Date	Revised
*3G-0416	$67M	29 Aug	07 Sept	unchanged
*3G-0231	$34.5M	28 Sept	28 Sept	unchanged
*3G-0257	$40.9M	23 Sept	23 Sept	unchanged
*3G-0245	$76.9M	23 Sept	23 Sept	unchanged
*3G-0121	$44.7M	26 Sept	15 Sept	unchanged
*3G-0133	$48.7M	27 Sept	25 Sept	unchanged
*3G-0292	$35M	29 Sept	29 Sept	unchanged
*3G-0052	$22.4	30 Sept	20 Sept	unchanged
*3G-0373	$10.3M	07 Oct	07 Oct	unchanged
!3G-0298	$35.8M	10 Oct	20 Sept	unchanged
!3G-0350	$16.7	13 Oct	10 Oct	unchanged
*3G-0370	$14M	14 Oct	14 Oct	unchanged
*3G-0372	$3.6M	14 Oct	14 Oct	unchanged
*3G-0317	$157.9	27 Oct	27 Oct	unchanged
3G-0403	$44.9M		10 Nov	new addition
3G-0433	$87M		15 Dec	new addition

Background

R2-3G Basic Contracts awarded 29 July 2010 to 18 prime contractors.

Competitive Awards

3G-0281	awarded	01 Apr	$5.2M
3G-0139	awarded	21 June	$12.38M
3G-0396	awarded	12 July	$16.6M
3G-0312	awarded	28 July	$1.1M
3G-0310	awarded	29 July	$19.7M
3G-0384	awarded	23 Aug	$13.04M

Ready For Award

3G-0311, 24 August anticipated
3G-0356, 25 August anticipated
3G-0336, 29 August anticipated

U.S. ARMY CECOM
One Vision. One Mission - The Warfighter.

*RTEP on street
! KO Review
Req Date – date requiring activity needs award

R2-3G

Anticipated Award Dates			Req Date	Revised
*3G-0416	$67M	29 Aug	07 Sept	unchanged
*3G-0231	$34.5M	28 Sept	28 Sept	unchanged
*3G-0257	$40.9M	23 Sept	23 Sept	unchanged
*3G-0245	$76.9M	23 Sept	23 Sept	unchanged
*3G-0121	$44.7M	26 Sept	15 Sept	unchanged
*3G-0133	$48.7M	27 Sept	25 Sept	unchanged
*3G-0292	$35M	29 Sept	29 Sept	unchanged
*3G-0052	$22.4	30 Sept	20 Sept	unchanged
*3G-0373	$10.3M	07 Oct	07 Oct	unchanged
!3G-0298	$35.8M	10 Oct	20 Sept	unchanged
!3G-0350	$16.7	13 Oct	10 Oct	unchanged
*3G-0370	$14M	14 Oct	14 Oct	unchanged
*3G-0372	$3.6M	14 Oct	14 Oct	unchanged
*3G-0317	$157.9	27 Oct	27 Oct	unchanged
3G-0403	$44.9M		10 Nov	new addition
3G-0433	$87M		15 Dec	new addition

Background

R2-3G Basic Contracts awarded 29 July 2010 to 18 prime contractors.

Competitive Awards

3G-0281	awarded	01 Apr	$5.20M
3G-0139	awarded	21 June	$12.38M
3G-0396	awarded	12 July	$16.6M
3G-0312	awarded	28 July	$1.10M
3G-0310	awarded	29 July	$19.7M
3G-0384	awarded	23 Aug	$13.0M
3G-0311	awarded	30 Aug	$8.96M
3G-0356	awarded	30 Aug	$ 3.11M

Ready For Award

3G-0336, 09 Sept anticipated
3G-0416, 09 Sept anticipated ***

U.S. ARMY CECOM
One Vision, One Mission - The Warfighter.

*RTEP on street
! KO Review
Req Date – date requiring activity needs award
*** Customer reviewing documents – award may slip

R2-3G

Anticipated Award Dates			Req Date	Revised
*3G-0231	$34.5M	28 Sept	28 Sept	unchanged
*3G-0257	$40.9M	23 Sept	23 Sept	unchanged
*3G-0245	$76.9M	23 Sept	23 Sept	unchanged
*3G-0121	$44.7M	26 Sept	15 Sept	unchanged
*3G-0133	$48.7M	27 Sept	25 Sept	unchanged
*3G-0292	$35M	29 Sept	29 Sept	unchanged
*3G-0052	$22.4	30 Sept	20 Sept	unchanged
*3G-0373	$10.3M	07 Oct	07 Oct	unchanged
!3G-0298	$35.8M	10 Oct	20 Sept	unchanged
*3G-0350	$16.7M	13 Oct	10 Oct	unchanged
*3G-0370	$14M	14 Oct	14 Oct	unchanged
*3G-0372	$3.6M	14 Oct	14 Oct	unchanged
*3G-0317	$157.9	27 Oct	27 Oct	unchanged
3G-0403	$44.9M		10 Nov	unchanged
3G-0433	$87M		15 Dec	unchanged

Background

R2-3G Basic Contracts awarded 29 July 2010 to 18 prime contractors.

Competitive Awards

3G-0281	awarded	01 Apr	$5.20M
3G-0139	awarded	21 June	$12.38M
3G-0396	awarded	12 July	$16.6M
3G-0312	awarded	28 July	$1.10M
3G-0310	awarded	29 July	$19.7M
3G-0384	awarded	23 Aug	$13.0M
3G-0311	awarded	30 Aug	$8.96M
3G-0356	awarded	30 Aug	$ 3.11M

Ready For Award

3G-0336, 15 Sept anticipated
3G-0416, 17 Sept anticipated
3G-0133, 22 Sept anticipated

U.S. ARMY CECOM
One Vision, One Mission - The Warfighter.

*RTEP on street
! KO Review
Req Date – date requiring activity needs award

R2-3G

Anticipated Award Dates			Req Date	Revised
*3G-0231	$34.5M	27 Sept	28 Sept	unchanged
*3G-0257	$40.9M	23 Sept	23 Sept	unchanged
*3G-0245	$76.9M	23 Sept	23 Sept	unchanged
*3G-0121	$44.7M	26 Sept	15 Sept	unchanged
*3G-0133	$48.7M	27 Sept	25 Sept	unchanged
*3G-0292	$35M	29 Sept	29 Sept	unchanged
*3G-0052	$22.4	27 Sept	20 Sept	unchanged
*3G-0373	$10.3M	07 Oct	07 Oct	unchanged
!3G-0298	$35.8M	10 Oct	20 Sept	unchanged
*3G-0350	$16.7M	13 Oct	10 Oct	unchanged
*3G-0370	$14M	14 Oct	14 Oct	unchanged
*3G-0372	$3.6M	14 Oct	14 Oct	unchanged
*3G-0317	$157.9	27 Oct	27 Oct	unchanged
3G-0403	$44.9M		10 Nov	unchanged
3G-0433	$87M		15 Dec	unchanged

Background

R2-3G Basic Contracts awarded 29 July 2010 to 18 prime contractors.

Competitive Awards

3G-0281	awarded	01 Apr	$5.20M
3G-0139	awarded	21 June	$12.38M
3G-0396	awarded	12 July	$16.6M
3G-0312	awarded	28 July	$1.10M
3G-0310	awarded	29 July	$19.7M
3G-0384	awarded	23 Aug	$13.0M
3G-0311	awarded	30 Aug	$8.96M
3G-0356	awarded	30 Aug	$ 3.11M

Ready For Award

3G-0336, 15 Sept anticipated
3G-0416, 17 Sept anticipated
3G-0133, 22 Sept anticipated

*RTEP on street
! KO Review
Req Date – date requiring activity needs award

U.S. ARMY CECOM
One Vision, One Mission - The Warfighter.

R2-3G

Anticipated Award Dates			Req Date	Revised
*3G-0373	$10.3M	07 Oct	7 Oct	unchanged
!3G-0298	$35.8M	20 Nov	1 Nov	unchanged
*3G-0350	$16.7M	13 Oct	10 Oct	unchanged
*3G-0370	$14M	14 Oct	14 Oct	unchanged
*3G-0372	$3.6M	14 Oct	14 Oct	unchanged
*3G-0317	$157.9	17 Oct	15 Oct	unchanged
#3G-0393	$90.0M	15 Oct	15 Oct	added
#3G-0316	$37.6M	20 Oct	20 Oct	added
3G-0403	$44.9M		10 Nov	unchanged
3G-0433	$87M		15 Dec	unchanged

Ready For Award

3G-0245	27 Sept	anticipated	$76.9M
3G-0140	26 Sept	(Picatinny),	$25.5M
*3G-0231	29 Sept	anticipated	$34.5M
*3G-0257	27 Sept	anticipated	$40.9M
*3G-0121	26 Sept	anticipated	$44.7M
*3G-0292	29 Sept	anticipated	$35.0M
*3G-0052	27 Sept	anticipated	$22.4M
#3G-0380	27 Sept	anticipated	$24.0M
#3G-0174	27 Sept	anticipated	$9.1M

U.S. ARMY CECOM
One Vision. One Mission - The Warfighter.

Background

R2-3G Basic Contracts awarded 29 July 2010 to 18 prime contractors.

Competitive Awards

3G-0281	awarded	01 Apr	$5.20M
3G-0139	awarded	21 June	$12.38M
3G-0396	awarded	12 July	$16.6M
3G-0312	awarded	28 July	$1.10M
3G-0310	awarded	29 July	$19.7M
3G-0384	awarded	23 Aug	$13.0M
3G-0311	awarded	30 Aug	$8.96M
3G-0356	awarded	30 Aug	$ 3.11M
3G-0336	awarded	15 Sept	$9.87M
#3G-0175	awarded	20 Sept	$6.95M
3G-0416	awarded	22 Sept	$20.8M
3G-0133	awarded	22 Sept	$35.2M

*RTEP on street
! KO Review
Req Date – date requiring activity needs award
Picatinny Award

A
A

Tab AA

Witness Listing for Army Report --DI-11-0119—

Copy only in unredacted Army Report version