



# REDACTED REPORT



DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
1000 ARMY PENTAGON  
WASHINGTON, D.C. 20310-1000

USDC/DC/IDEC

DEC 16 2011

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—Department of  
the Army, Intelligence and Security Command  
(INSCOM), Fort Belvoir, Virginia – (Office of  
Special Counsel File Number DI-11-2122)

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 the information requesting an investigation of allegations and a report of findings in the above referenced case.

The Secretary of the Army (SA) has delegated to me his authority, as agency head, 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) has enclosed two versions of its report. The first version of the report contains the names and duty titles of military service members and civilian employees of the DA. This first 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, the President of the United States and the Senate and House Armed Services Committees for their review. Other releases of the first version of the report may result in violations of the Privacy Act<sup>1</sup> and breaches of personal privacy interests.

The second version of the report has been constructed to eliminate references to privacy-protected information and is suitable for release to all others as well as the regulations that require protection as noted above. We request that only the second version of the report be made available on your 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.

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<sup>1</sup> The Privacy Act of 1974, Title 5, USC, Section 552a.

## INFORMATION INITIATING THE INVESTIGATION

By letter dated May 26, 2011, the Office of Special Counsel (OSC) referred to the Secretary of the Army allegations submitted by an anonymous whistleblower. The OSC had concluded that there existed a likelihood that information provided by the whistleblower revealed that employees at the Department of the Army (DA), Intelligence and Security Command [hereinafter INSCOM], Fort Belvoir, Virginia, engaged in conduct that constituted violations of law, rule, or regulation, gross mismanagement, and a gross waste of funds. On June 9, 2011, the Secretary of the Army forwarded the OSC referral to the Deputy The Chief of Staff (DCS), G-2 for action since DA DCS, G-2 has oversight and control over all intelligence and counterintelligence, and security countermeasures for the Department of the Army.<sup>2</sup>

The anonymous whistleblower identified the following alleged violations:

1. That in August 2010, the INSCOM Chief of Staff and the Deputy Resource Manager (G-8), directed the signing of Contract Number W911W4-10-D-0011 on behalf of the Army with private company Silverback 7, Inc. According to the whistleblower, the contract was executed to streamline multiple staffing contracts for 49 positions across INSCOM into one contract with employees from one company. The cost of the contract totaled \$8,238,429.80, or approximately \$700,000 per month. However, the whistleblower alleged that from August 2010, when the contract was executed, until February 2011, no positions were staffed by Silverback 7, although the company continued to receive monthly payments from the Army. The whistleblower stated that in February 2011, Silverback 7 filled 15 of the 49 open positions, but as of May 2, 2011, no additional personnel were added. Thus, the whistleblower alleged that, although Silverback 7 has been paid approximately \$6,762,000 for the full 49 positions, only 15 positions are currently filled by Silverback 7 employees, and those were only filled for four months of the 12 month contract period, which was set to expire in August 2011. The whistleblower further alleged that the Chief of Staff, INSCOM, and the Deputy Resource Manager (G-8) were aware of these staffing shortfalls, but took no action to terminate the contract for default under 48 C.F.R. § 49.402-1.
2. The Chief of Staff, INSCOM, and the Deputy Resource Manager (G-8) approved two contracts with Avue Technologies Corporation

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<sup>2</sup> DA General Order 3 (July 9, 2002), *Assignment of Functions and Responsibilities Within Headquarters, Department of the Army* states that DCS, G-2 is responsible for intelligence and counterintelligence, and security countermeasures policy, plans, programs, and budget functions for the DA in coordination with the Department of Defense and the National Intelligence Community. INSCOM is a Direct Reporting Unit (DRU) and reports directly to the DA DCS, G-2. Direct Reporting Unit (DRU), IAW Army Regulation (AR) 10-87 [TAB B], *Army Commands, Army Service Component Commands, and Direct Reporting Units*, dated 4 September 2007, is an Army organization comprised of one or more units with institutional or operational support functions, designated by the SA, normally to provide broad general support to the Army in a single, unique discipline not otherwise available elsewhere in the Army. DRUs report directly to a HQDA principal and/or Army Command and operate under authorities established by the SA.

(Avue),<sup>3</sup> Contract Numbers W911W4-08-F-0102 and W911W4-10-F-1250 (which the IO corrected to reflect the correct contract number of W911W4-10-F-0250), which resulted in either no product or unusable product for the agency. The whistleblower explained that in August 2008, the Army entered into an \$800,000 contract with Avue to produce an automated time and attendance system, and a \$1 million contract to develop a salary management tool. Avue was paid for both contracts at the beginning of the contract period. The whistleblower disclosed that with regard to the automated time and attendance system, the agency was unable to use Avue's product and discarded it after a short period of use. The whistleblower noted that Avue also revealed after the fact that it did not have the required certifications from the government to do this type of work and had not held the certifications at the time the contract was made. The whistleblower further alleged that Avue failed to produce any end item or required progress reports on the development of the \$1 million salary management tool. Thus, the whistleblower alleged that Avue misled the agency in the contracting process and failed to deliver any work product under the contract with regard to the salary management tool. The whistleblower noted that although this was known to the Deputy Resource Manager (G-8) and the Chief of Staff, INSCOM, neither attempted to intervene or follow up with Avue, and Avue was paid for the contracts with no deliverable product.

3. Pursuant to 48 C.F.R. § 49.402-1, under contracts containing the Default clause, the Government has the right to terminate a contract completely or in part for default if the contractor fails to perform the services within the time specified in the contracts, fails to perform any other provision of the contract, or fails to perform the services within the time specified in the contract, fails to perform any other provision of the contract, or fails to make progress, thus endangering performance of the contract.<sup>4</sup> In both instances above, the Deputy Resource Manager (G-8) and the Chief of Staff, INSCOM, were aware that the contractors were failing or failed to provide either work progress reports or a deliverable end product. However, the whistleblower alleged that, although the clause should have been available to them, The Deputy Resource Manager (G-8) and the Chief of Staff, INSCOM, took no action to terminate the contracts for default prior to their end dates.

## CONDUCT OF THE INVESTIGATION

By letter dated June 9, 2011, the Secretary of the Army forwarded the OSC referral to the Lieutenant General (LTG) Richard P. Zahner, the DCS, G-2. On June 17, 2011, the DCS G-2 appointed the Investigating Officer (IO), [TAB C], under the provisions of Army Regulation (AR) 15-6, *Procedures for Investigating Officers and Board of Officers*, with a mandate to

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<sup>3</sup> It should be noted that although INSCOM ordered these services from Allied Technology Group, Inc., that company is a reseller of Avue Technologies Corporation products. For purposes of module configuration and operation, INSCOM worked directly with Avue representatives. Therefore, some of the documents gathered during the investigation conducted pursuant to Army Regulation 15-6 include orders and/or payment documents that refer to Allied Technology and not Avue.

<sup>4</sup> 48 C.F.R. § 49.504 requires the Default clause, located at 48 C.F.R. § 52.249-8, be inserted in fixed-price supply and service contracts. The clause allows the Government to terminate the contract for failure to perform under the contract.

investigate the allegations forwarded by OSC.<sup>5</sup> [TAB D]. In order to adequately address the allegations forwarded by OSC, the DCS, G-2 directed the investigating officer (IO), at a minimum, to address the following issues and questions:

1. Determine if there has been an abuse or the wrongful exercise of authority on the part of any individual relative to the subject allegations.
2. Determine if there has been any gross mismanagement committed by any individual relative to the subject allegations.
3. Determine whether the IO discerned any violations or apparent violations of law, rule, or regulation by Federal or contractor employees regarding INSCOM contracting activities. Specifically identify those provisions that were violated, the individuals who committed the violations, and the facts and circumstances surrounding those violations.
4. Specify the chain of command and supervisory relationships of the Chief of Staff, INSCOM, and the Deputy Resource Manager (G-8) at INSCOM beginning in January 2008 and continuing to present. Ensure you specify their authorities and relationships, if any, regarding INSCOM contracting activities.
5. Identify and describe the INSCOM contracting activity to include all officials who held and exercised a contracting warrant to bind the Government to the following contracts: Contract Numbers W911W4-10-D-0011, W911W4-08-F-0102, and W911W4-10-F-1250, as well as those who had the responsibility for administering and overseeing said contracts. Include a “flow chart” of INSCOM Contract Administration and Oversight structure (CY 2008-the present) as part of the IO’s DA Form 1574 attachments.
6. Determine whether the Chief of Staff, INSCOM, the Deputy Resource Manager (G-8), or another INSCOM official directed the signing of said contracts (Contract Numbers W911W4-10-D-0011, W911W4-08-F-0102, and W911W4-10-F-1250) on behalf of the Army. If any official directed such signing, determine if he/she had the proper authority to do so.
7. Determine whether the identified contracts (Contract Numbers W911W4-10-D-0011, W911W4-08-0102 and W911W4-10-F-1250) were properly entered into by INSCOM officials, whether said contracts were properly administered, and whether the contracts have been performed and deliverable and usable end products have been provided according to the contract terms. At a minimum, ensure the following matters are addressed:

- a. Contract Number W911W4-10-D-0011. Were all the positions that were subject of the total contract cost of \$8,238,429.80 filled during the entire time of the contract so as to merit the full payment of \$8,238,429.80?

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<sup>5</sup> AR 15-6 promulgates guidelines for Army administrative investigations. Army commands and organizations frequently appoint investigating officers under provisions of AR 15-6 to investigate all manner of allegations and concerns. [TAB D].

b. Contract Numbers W911W4-08-F-0102 and W911W4-10-F-1250.

1. Were the end products produced and delivered to meet the contract requirements usable? Describe in detail whether or not the end products met the contract requirements.
2. Did the contractor Avue Technologies Corporation have the appropriate certifications to perform the work required by Contract numbers W911W4-08-F-0102 and W911W4-10-F-1250?
3. Did Avue Technologies Corporation mislead any government officials?
4. Were the Chief of Staff, INSCOM, and the Deputy Resource Manager (G-8) or other INSCOM officials aware of any shortfalls in the work product provided by Avue Technologies Corporation, and if so, did they fail to intervene or take follow up action to ensure Avue was made aware of these shortfalls?

8. If the contracts have not been appropriately administered or performed, state the cause(s) and determine (if applicable) which INSCOM officials were aware of any shortfalls and (if applicable) whether any corrective actions have or should have been pursued (e.g., contract modification, termination, etc.).

9. Determine whether the identified contracts (Contract Numbers W911W4-10-D-0011, W911W4-08-0102 and W911W4-10-F-1250) contained the appropriate Default Clause as required by 48 C.F.R. 49.402-1.

The General Law Branch of the Administrative Law Division, and the Contract and Fiscal Actions Branch of the Contract and Fiscal Law Division, Office of The Judge Advocate General provided legal counsel to the The Deputy The Chief of Staff, G-2 and the IO.

## **BACKGROUND**

In order to understand the context and details surrounding the allegations and the resultant findings and conclusions, the following background information is provided relating to INSCOM, its current mission, and the organizational structure and functions of INSCOM. [TAB K].

## **Current INSCOM Mission**

AR 10-87, Army Commands (ACOMs), Army Service Component Commands (ASCCs), and Direct Reporting Units (DRUs), dated September 4, 2007, prescribes the mission, functions, and command and staff relationships of INSCOM. [TAB B]. INSCOM's mission is to synchronize the operations of all INSCOM units to produce intelligence in support of the Army, combatant commands, and the National intelligence community. INSCOM responds to taskings from national and departmental authorities for Signal intelligence (SIGINT), human intelligence (HUMINT), counterintelligence (CI), imagery intelligence, measurement and signature intelligence (MASINT), technical intelligence (TI), electronic warfare (EW), and information operations (IO). INSCOM also provides Title 50 USC National Intelligence Program support to combatant commands and Army organizations.

## **INSCOM Functions**

INSCOM has been designated by the SA as a DRU and reports directly to the DCS, G-2. INSCOM is responsible for the planning and execution of DRU responsibilities by exercising command and control of organic, assigned and attached Army forces. INSCOM serves as the principal Army advisor to the Director, National Security Agency/Chief, Central Security Service for the United States Signals Intelligence Directive System and maintains liaison with national agencies for SIGINT operations. INSCOM supports the National SIGINT Special Activities Office program and DOD and DA SIGINT programs; performs worldwide SIGINT operations; advises and assists other Army organizations on SIGINT matters; and monitors intelligence and EW systems development by the National Security Agency and other service/military departments. INSCOM intelligence operations are conducted in coordination with and under the staff supervision of the DCS, G-2. In addition, the DCS, G-3/5/6<sup>6</sup> exercises Operational Control (OPCON)<sup>7</sup> over selected INSCOM activities. Other INSCOM functions include operating the Army Central Security Facility and Cryptologic Records Center and overseeing the Army personnel security clearance adjudication program.

## **INSCOM Command and Staff Relationships and Major Subordinate Commands**

The Commander, INSCOM is supervised by the DCS, G-2. The Commander, INSCOM, is responsible to the SA for the execution of assigned responsibilities contained in 10 USC 3013(b) and exercises administrative control (ADCON)<sup>8</sup> authority and responsibility on behalf of

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<sup>6</sup> DA General Order 3 (July 9, 2002, revised April 1, 2005), *Assignment of Functions and Responsibilities Within Headquarters, Department of the Army*, re-designated the Deputy Chief of Staff, G-3, (DCS, G-3) as the Deputy Chief of Staff, G-3/5/7 (DCS, G-3/5/7) and reorganized the Office of the DCS, G-3/5/7 as an Army Staff element, with responsibility for Operations, Strategic Plans and Policy, Force Management, Training, Battle Command, and Capabilities Integration.

<sup>7</sup> OPCON is the authority to perform those functions of command over subordinate forces involving organizing and employing commands and forces, assigning tasks, designative objectives, and giving authoritative direction necessary to accomplish the mission IAW Field Manual (FM) 1-02, Operational Terms and Graphics, dated September 2004.

<sup>8</sup> ADCON is the direction or exercise of authority over subordinate or other organizations with respect to administration and support, including organization of Service forces, control of resources and equipment, personnel management, unit logistics, individual and unit training, readiness, mobilization, demobilization, discipline, and other matters not included in the operational missions of the subordinate or other organizations IAW FM 1-02.

the SA and in this regard is primarily responsible for the administration and support of Army forces worldwide for certain ADCON functions. INSCOM is authorized to communicate and coordinate directly with Army Commands (ACOMs), Army Service Component Commands (ASCCs),<sup>9</sup>, or other Direct Reporting Units (DRUs) commanders; HQDA; other DOD headquarters and agencies; and other foreign and domestic Government departments, as required, on matters of mutual interest subject to procedures established by the DCS, G-2. Headquartered at Fort Belvoir, Virginia, INSCOM is a global command with major subordinate commands and a variety of smaller units with personnel dispersed over 180 locations worldwide.

### **Flow of Contracting Authority**

The flow of contracting authority starts with the Constitution of the United States. Article I, Section 8 provides that the Congress shall have the power to raise and support armies and to provide and maintain a navy. Congress provided 10 U.S.C. Section 3014, which created the Office of the Secretary of the Army. Paragraph (c)(1) of 10 U.S.C. Section 3014 states that the Office of the Secretary of the Army shall have sole responsibility for acquisition. Further, under 41 U.S.C. the Secretary of the Army is granted Head of Agency authority and establishes Contracting Activities and delegates broad authorities to manage the contracting functions to the appropriate Head of Contracting Activity (HCA). Federal Acquisition Regulation (FAR) 2.101 defines the HCA as the official who has overall responsibility for managing the contracting activity.

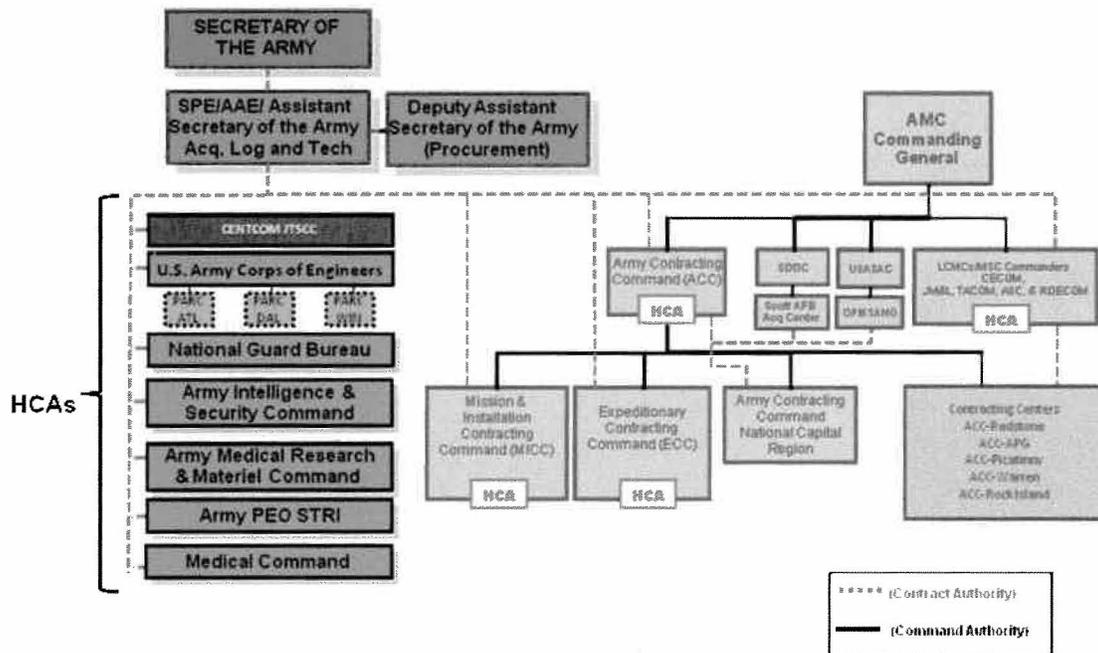
General Order 3 (July 9, 2002), *Assignment of Functions and Responsibilities Within Headquarters, Department of the Army*, provides that the Assistant Secretary of the Army (Acquisition, Logistics and Technology) (ASA(ALT)) serves as the Army Acquisition Executive (AAE) and the Senior Procurement Executive (SPE) on behalf of the Secretary of the Army, as ASA(ALT) derives its authority from the Secretary of the Army. The ASA (ALT)'s responsibilities include the delegation of contracting authority [G.O. 3, paragraph 5, subparagraph g.]. The ASA (ALT) acting in his/her role as the Senior Procurement Executive (SPE) delegates contracting authority to the HCAs. The HCAs delegate contracting authority to the Principal Assistants Responsible for Contracting (PARCs) (in accordance with Army Federal Acquisition Regulation Supplement (AFARS) 5101.601(4)(ii), the HCA appoints in writing a PARC to carry out delegable duties). The HCA's and PARCs (when authorized by the HCA) appoint Contracting Officers. Contracting Officers have the authority to enter into, administer, and terminate contracts and may bind the Government in accordance with the authority delegated to them.

Defense Federal Acquisition Regulation Supplement (DFARS) 202.101 contains the list of Army Contracting Activities. Each of these Contracting Activities is headed by an HCA. All

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<sup>9</sup> AR 10-87, Section II, Terms, provides the following definitions of ACs and ASCCs: An Army Command is defined as "[a]n Army force, designated by the SA, performing multiple Army Service Title 10 USC functions across multiple disciplines. Responsibilities are those established by the SA." An Army Service Component Command is defined as "[a]n Army force, designated by the SA, comprised primarily of operational organizations serving as the Army component of a combatant command or subunified command. If directed by the CCDR, serves as a JTFCC [Joint force land component commander] or JTF [Joint Task Force]. Command responsibilities are those assigned to the CCDR [combatant commander] and delegated to the ASCC and those established by the SA." [TAB B].

the HCAs are Commanders except the the Deputy Surgeon General, Medical Command; the Director, Program Executive Office for Simulation, Training, and Instrumentation (PEO STRI); the Commander, U.S. Army Corps of Engineers; the Commander, U.S. Army Research, Development, and Engineering Command (RDECOM); and, the Commander, INSCOM. The below diagram depicts the Army contracting structure:



As part of its responsibility for all Army procurement and contracting functions, the ASA (ALT) executes an Army Procurement Management Review (PMR) program. The PMR guidance is detailed in the Army Federal Acquisition Regulation Supplement (AFARS) Appendix CC. The PMR program requires review of each Army contracting activity at least every two years, with the following stated objectives:

- (a) Assess, analyze, and communicate the health of Army contracting to senior Army leadership;
- (b) Ensure management oversight and control of contracting related issues;
- (c) Ensure compliance with Federal, Defense, and Army acquisition regulations and policies; and
- (c) Provide acquisition management consultant services for the Army to enhance the procurement process.

The ASA (ALT) is the Army Acquisition Executive (AAE) and the Senior Procurement Executive (SPE) for the Army, and is responsible for all procurement and contracting functions of the Army to include agency head authority for contracting matters; delegation of contracting authority; designation of contracting activities; promulgating Army contracting policies and procedures (Army Federal Acquisition Regulation Supplement (AFARS)); and procurement management review program activities. This includes initial development, implementation and promulgation of acquisition, procurement and contracting policies, procedures, and good business practices. The ASA (ALT) is responsible for funding and staffing the PMR Program.

The Deputy Assistant Secretary of the Army for Procurement (DASA (P)) is the DA proponent for the PMR Program. The DASA (P) is responsible for providing responsive, responsible management and execution of contracting functions Army-wide, and issuing guidance, on a periodic basis, on areas of special interest to the Army senior leadership. This includes providing policy guidance on all contracting operations and contracting support of weapon systems acquisition. The DASA(P) will provide oversight of the organizations, resources, policies and procedures related to the management and execution of Army contracting world-wide; serve as the Army lead for implementation, management, and oversight of acquisition initiatives and excellence; manage the Army's contracting and acquisition career programs; and ensure competition and all special interest and socio-economic program goals are supported.

Within the Office of the DASA (P), the Directorate of Business Operations is responsible for effective administration and conduct of the PMR program, and oversees Army-wide execution of the PMR program as administered by the HCAs. The HCAs execute the Army PMR program under the direction of the DASA (P) to ensure fulfillment of HCA responsibilities for a responsive and cost-effective contracting system, and review contracting compliance with FAR, DFARS, AFARS, Command Supplements, and DA Policy, consistent with DA PMR objectives and DASA (P) special areas of interest.

The PMR program identifies tiered responsibilities of the HCAs, Principal Assistant Responsible for Contracting (PARC), and Directors of Contracting (DOCs). The responsibility for oversight is delineated at each tier. DASA (P) PMRs identify areas of risk as either High, Medium, or Low depending on the severity of discrepancies found. When a contracting activity receives a High risk rating, the PMR is conducted *annually*, as opposed to every two years.<sup>10</sup>

### **INSCOM Acquisition Center**

The PARC is in charge of the INSCOM Acquisition Center and reports directly to the HCA. The INSCOM Acquisition Center is the contracting entity for intelligence requirements. INSCOM is a tenant activity on Fort Belvoir. Therefore, installation type support must be procured through the Fort Belvoir Directorate of Contracting. Installation type support includes all supplies or services which support the INSCOM facility but are not essential to the INSCOM mission. Examples include procurement, maintenance and repair of general office equipment,

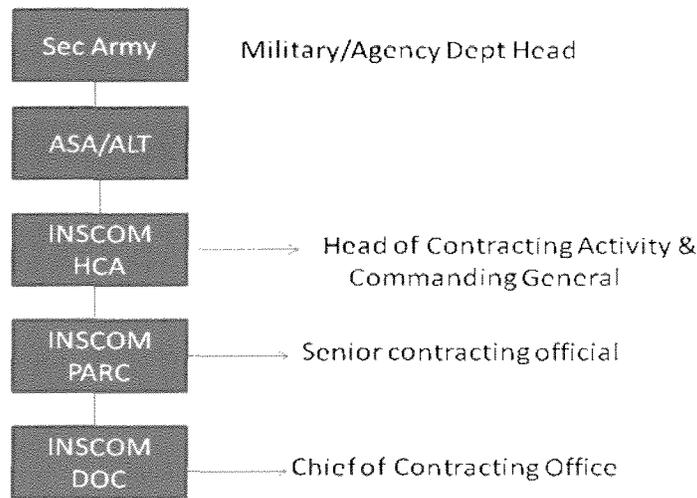
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<sup>10</sup> INSCOM was reviewed by DASA (P) PMRs in 2008, 2009, 2010, and 2011. See page 47 for further discussion of these reviews as part of the corrective action section.

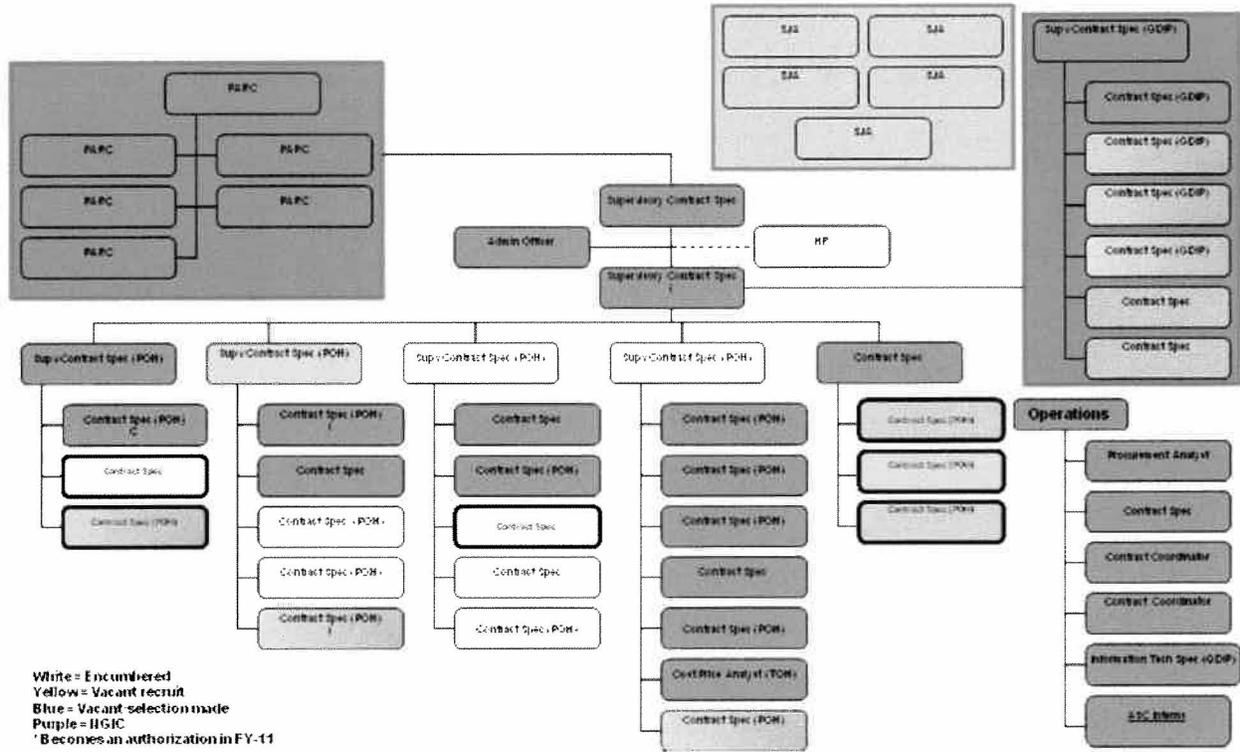
and transportation. INSCOM may also make Installation type purchases up to \$2,500 using the Government Purchase Card. The INSCOM Directorate of Contracting procures mission type services and supplies that directly support the INSCOM mission. Examples include commercial goods, Intelligence and Linguist services, studies, and requirements containing classified documents and security clearances to perform a full spectrum of military and civilian operations.

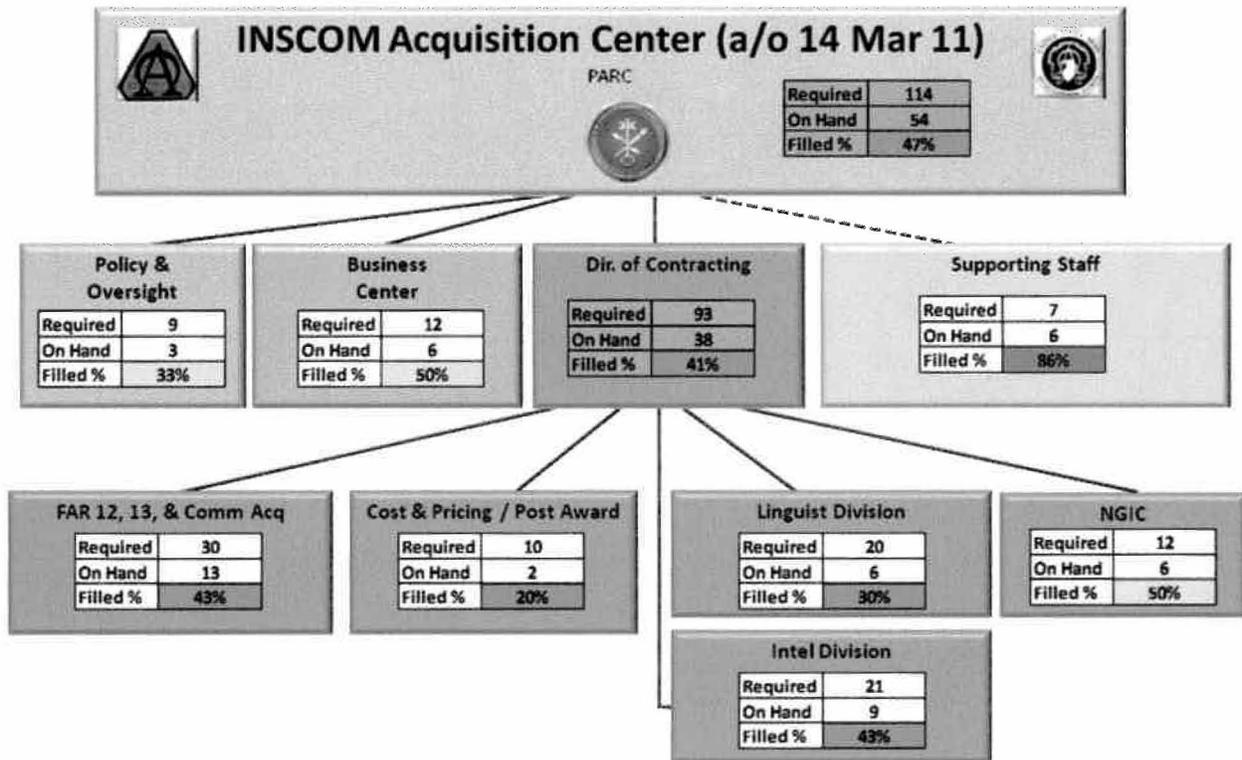
As discussed above, the INSCOM PARC [TAB J] derives its authority from the HCA, which flows from the AAE or SPE, which is ASA (ALT). ASA (ALT) derives its authority from the Agency head (Secretary of the Army) and delegates procurement authority to the individual HCAs who can re-delegate only those functions in FAR/DFARS/AFARS to the PARCs in writing. The Commanding General (CG) of INSCOM is dual-hatted and is both the CG (2-star General) for INSCOM, reporting to the Army DCS,G-2 (3-star General) and is also the HCA, as delegated in writing by ASA(ALT). The Director of Contracting (DOC) is the “operational manager” of the contracting office and also has some specific functions. The DOC has the overall responsibility for surveillance of the acquisition planning program within INSCOM.

DOD's procurement is decentralized. FAR 1.601(a) states that authority and responsibility to contract for authorized supplies and services are vested in the agency head (e.g., the Secretary of each Military Department or chief official of any other Defense Component or Agency). The agency head may establish contracting activities and delegate broad authority to manage the agency's contracting functions to heads of such contracting activities. DOD contracting activities are listed in the definition of "contracting activity" in DFARS 202.101. Within a "contracting activity" are individual "contracting offices" that award or execute a contract for supplies or services and perform post-award functions, e.g., the DOC Office under the INSCOM PARC. The below diagrams depict the aforementioned relationships:



# PARC/DOC (JULY 2010)





## APPLICABLE RULES AND REGULATIONS

The whistleblower made several allegations but cited authority (48 C.F.R. Section 49.402-1) in one of the allegations. Although the whistleblower cites to 48 C.F.R Section 49.402-1 in the complaint, that regulation is only a part of the regulatory scheme that applies to the investigation. Also relevant are other fiscal law and contract regulations, as well as statutory provisions governing contracting activities that were the subject of the investigation.

### 31 USC Section 1301, Availability of Appropriations: Purpose

A basic tenet of fiscal law is that agencies may use funds only for the purpose for which Congress has appropriated them. For example, in each annual Defense Department appropriation, Congress provides funds for the necessary expenses of agency operations and maintenance, research and development, various capital assets, construction, etc. The so-called “Purpose Statute” codifies this principle, and the purpose of an appropriation, while set forth generally in the appropriation language itself, is further defined by regulation, practice, and the opinions of the Comptroller General.

Comptroller General decisions are often stated in terms of whether appropriated funds are or are not “legally available” for a given obligation or expenditure. This is simply another way

of saying that a given item is or is not a legal expenditure. Whether appropriated funds are legally available for something depends on three things:

1. the purpose of the obligation of expenditure must be authorized;
2. the obligation must occur within the time limits applicable to the appropriation; and
3. the obligation and expenditure must be within the amounts Congress has established.

Thus, there are three elements to the concept of availability: purpose, time, and amount. All three must be observed for the obligation or expenditure to be legal. One of the fundamental statutes dealing with the use of appropriated funds is 31 U.S.C. § 1301(a): “Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.” Simply stated, 31 U.S.C. § 1301(a) says that public funds may be used only for the purpose or purposes for which they were appropriated. It prohibits charging authorized items to the wrong appropriation, and unauthorized items to any appropriation.

### **31 USC Section 1502, Availability of Appropriations: Time (Bona Fide Needs Rule)**

As previously discussed, the concept of the “legal availability” of appropriations is defined in terms of three elements—purpose, time and amount. This section focuses on the second element, time. Appropriations normally include language specifying that a covered fund is available for a definite period. For example, Congress normally makes a procurement appropriation available for a three-year period, or construction funds may be made available for five years. Where Congress has not specified a period of availability, the funds are deemed available only for a single fiscal year. While there are exceptions, the Bona Fide Needs (BFN) Rule reflects the general principle that funds may be obligated only to satisfy agency needs that arise in the fiscal year(s) during which the appropriation is available. Funds appropriated for operations and maintenance (O&M) normally are available for obligation only for the single fiscal year in which they are appropriated. Thus, and as a general rule, an agency may obligate current year funds only for services needed during that fiscal year. While under limited circumstances, agencies may obligate O&M funds in the current fiscal year for services that will be performed in part in the next fiscal year, there still must be a legitimate need for those services in the year of the obligation (contract award).

The two basic authorities conferred by an appropriation law are the authority to incur obligations and the authority to make expenditures. An obligation results from some action that creates a liability or definite commitment on the part of the government to make an expenditure. The expenditure is the disbursement of funds to pay the obligation. While an obligation and expenditure may occur simultaneously, ordinarily the obligation precedes the expenditure in time.

The starting point for analyzing when appropriations may be obligated and when they may be expended is the firmly established proposition that “Congress has the right to limit its appropriations to particular times as well as to particular objects, and when it has clearly done so,

its will expressed in the law should be implicitly followed.”<sup>11</sup> The placing of time limits on the availability of appropriations is one of the primary means of congressional control. By imposing a time limit, Congress reserves to itself the prerogative of periodically reviewing a given program or agency’s activities. When an appropriation is by its terms made available for a fixed period of time or until a specified date, the general rule is that the availability relates to the authority to obligate the appropriation, and does not necessarily prohibit payments after the expiration date for obligations previously incurred, unless the payment is otherwise expressly prohibited by statute. Thus, a time-limited appropriation is available to incur an obligation only during the period for which it is made. However, it remains available beyond that period, within limits, to make adjustments to the amount of such obligations and to make payments to liquidate such obligations.

Classified on the basis of duration, appropriations are of three types: annual, multiple year, and no-year appropriations. Annual appropriations (also called fiscal year or 1-year appropriations) are made for a specified fiscal year and are available for obligation only during the fiscal year for which made. The federal government’s fiscal year begins on October 1 and ends on September 30 of the following year. For example, fiscal year 2005 began on October 1, 2004, and ended on September 30, 2005.

All appropriations are presumed to be annual appropriations unless the appropriation act expressly provides otherwise. Annual appropriations are available only to meet *bona fide* needs of the fiscal year for which they were appropriated. The BFN Rule is one of the fundamental principles of appropriations law: A fiscal year appropriation may be obligated only to meet a legitimate, or *bona fide*, need arising in, or in some cases arising prior to but continuing to exist in, the fiscal year for which the appropriation was made. The principle that payment is chargeable to the fiscal year in which the obligation is incurred as long as the need arose, or continued to exist in, that year applies even though the funds are not to be disbursed and the exact amount owed by the government cannot be determined until the subsequent fiscal year. The BFN Rule applies to multiple year as well as fiscal year appropriations.

### **31 USC Section 3324: Advance Payments**

In accordance with 31 USC Section 3324, agencies may not pay for goods or services until they have received them. This law is intended to prevent the loss of government funds where, for example, after payment is made, the contractor refuses to perform, is unable to perform, or has provided defective goods or services. Exceptions to the advance payment prohibition may appear in appropriation acts as well as other legislation. The extent of the authority conferred and its duration will of course be determined in accordance with rules applicable to construing appropriations language. Some may be limited by duration and some may be limited to a particular agency. Also, the BFN Rule applies.

### **AFARS Subsection 5101.602-2: Responsibilities**

A hallmark concept of the Federal Acquisition process is that the procurement of supplies and services is a team effort. The official ultimately responsible for the award and

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<sup>11</sup> See 13 Op. Att’y Gen. 288, 292 (1870).

administration of a contract, the contracting officer, must rely heavily upon legal, financial, engineering, and other functional experts. In particular, the acquisition regulations require contracting officers to appoint a contracting officer's representative (COR), who is typically an experienced Government employee assigned to the requiring activity and nominated for the COR position by a senior official. The COR is the contracting officer's alter ego, albeit with substantially limited authority, at a level physically and technically proximate to the service or supply being procured.

The same oversight principle exercised by CORs discussed above is embodied in the Department of Defense Financial Management Regulation (DoD FMR). Specifically, Volume 11A, Chapter 18, paragraph 180401, provides that ordering officials must "establish quality surveillance plans . . . that would facilitate the oversight of goods provided and services performed by the performing activity" and oversee contract performance accordingly. While this responsibility would fall normally on the contracting activity where that organization has awarded the contract, as noted above, the contracting officer will rely on personnel from the functional or requiring activity for direct support.

As a matter of law and regulation, DoD activities may procure goods and services through/from non-DoD agencies. In light of past problems arising from such transactions, the DoD and the Army have instituted specific internal controls to ensure that reliance on outside agencies for supplies and services is necessary and in the requiring activity's best interests. In part, this policy requires certification and approval by the head of the requiring activity (Colonel or GS-15) for orders in excess of the simplified acquisition threshold (SAT). The SAT at the time of the awarding of the contracts (Automated Time and Attendance Module and Salary Management Module) that are the subject of this investigation was \$100,000. The Army policy also directs requiring activities to seek approval from the The Deputy Assistant Secretary of the Army (Policy and Procurement), for acquisitions with a total planned dollar value of \$500,000 or more.

#### **DFARS 208.405-70: Additional Ordering Procedures**

This regulatory provision implements Section 803, Public Law 107-107 (2001) (10 U.S.C. Section 2304<sup>12</sup> note), which was repealed as being redundant with a later enacted statutory provision mandating competition for orders under multiple-award contracts (§ 863(f), Public Law 110-417 (2008)). Under this regulation, competition<sup>13</sup> is required for Federal Supply

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<sup>12</sup> 10 USC Section 2304 provides that the head of an agency in conducting a procurement for property or services—

(A) shall obtain full and open competition through the use of competitive procedures in accordance with the requirements of this chapter and the Federal Acquisition Regulation; and

(B) shall use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.

<sup>13</sup> IAW DFARS 208.405-70, An order exceeding \$150,000 is placed on a competitive basis only if the contracting officer provides a fair notice of the intent to make the purchase, including a description of the

Schedule orders exceeding \$150,000 for supplies or services. (The threshold was \$100,000 until 2011.) If an agency decides to issue an order without competition, it may do so only upon written determination that a sole-source purchase is specifically authorized by law or that certain other criteria are met, justifying<sup>14</sup> award of a noncompetitive order.

### **FAR Subsection 17.207: Exercise of Options**

Contracting activities often award service contracts that include both a base period of performance and a series of option years. This contractual framework affords the Government substantial flexibility to ensure continuity of services in successive years, without having to conduct a new competition annually for the requirements. While exercise of an option is a unilateral right of the Government, the contracting officer must justify each such action formally. In part, per the FAR, the contracting officer must determine that proper funds are available, the requirement covered by the option meets an existing Government need, and the option exercise is the most advantageous method of fulfilling that need.

Before exercising an option, the contracting officer must make a written determination for the contract file that exercise is in accordance with the terms of the option, the requirements of Subsection 17.207, and FAR Part 6 (regarding full and open competition). To satisfy requirements of FAR Part 6, the option must have been evaluated as part of the initial competition and be exercisable at an amount specified in or reasonably determinable from the

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supplies to be delivered or the services to be performed and the basis upon which the contracting officer will make the selection, to—

(1) As many schedule contractors as practicable, consistent with market research appropriate to the circumstances, to reasonably ensure that offers will be received from at least three contractors that can fulfill the requirements, and the contracting officer--

(i)(A) Receives offers from at least three contractors that can fulfill the requirements; or

(B) Determines in writing that no additional contractors that can fulfill the requirements could be identified despite reasonable efforts to do so (documentation should clearly explain efforts made to obtain offers from at least three contractors); and

(ii) Ensures all offers received are fairly considered; or

(2) All contractors offering the required supplies or services under the applicable multiple award schedule, and affords all contractors responding to the notice a fair opportunity to submit an offer and have that offer fairly considered.

<sup>14</sup> 10 USC Section 2304 provides that the head of an agency may not award a contract using procedures other than competitive procedures unless the contracting officer for the contract justifies the use of such procedures in writing and certifies the accuracy and completeness of the justification; the justification is approved; and, any required notice has been published with respect to such contract pursuant to section 41 USC 1708 and all bids or proposals received in response to that notice have been considered by the head of the agency. *See also* FAR 6.303-1.

terms of the basic contract. The contract modification or other written document which notifies the contractor of the exercise of the option shall cite the option clause as authority.

### **DOD Instruction 8500.2: Information Assurance Implementation**

This regulation “[i]mplements policy, assigns responsibilities, and prescribes procedures for applying integrated, layered protection of the DoD information systems and networks . . . .” To meet these mandates in part, commanders must ensure “contracts include requirements to protect DoD sensitive information, and that the contracts are monitored for compliance.”

### **48 C.F.R Section 49.402-1: Termination for Default**

Termination for default is generally the exercise of the Government’s contractual right to completely or partially terminate a contract because of the contractor’s actual or anticipated failure to perform its contractual obligations. Under a termination for default, the Government is not liable for the contractor’s costs on undelivered work and is entitled to the repayment of advance and progress payments, if any, applicable to that work. The Government may elect, under the Default clause, to require the contractor to transfer title and deliver to the Government completed supplies and manufacturing materials, as directed by the contracting officer.

## **SUMMARY OF THE EVIDENCE OBTAINED FROM THE INVESTIGATION**

The whistleblower made the following allegations that were subsequently referred by OSC to the SA:

**OSC-Referred Allegation 1: That in August 2010, INSCOM Chief of Staff and the Deputy Resource Manager, directed the signing of Contract No. W911W4-10-D-0011 on behalf of the Army with private company Silverback 7, Inc. According to the whistleblower, the contract was executed to streamline multiple staffing contracts for 49 positions across INSCOM into one contract with employees from one company. The cost of the contract totaled \$8,238,429.80, or approximately \$700,000 per month. However, the whistleblower alleged that from August 2010, when the contract was executed, until February 2011, no positions were staffed by Silver 7, although the company continued to receive monthly payments from the Army. The whistleblower stated that in February 2011, Silverback 7 filled 15 of the 49 open positions, but as of May 2, 2011, no additional personnel were added. Thus, the whistleblower alleged that, although Silverback 7 has been paid approximately \$6,762,000 for the full 49 positions, only 15 positions are currently filled by Silverback 7 employees, and those were only filled for four months of the 12 month contract period, which was set to expire in August 2011. The whistleblower further alleged that the Chief of Staff, INSCOM and the Deputy Resource Manager (G-8) were aware of these staffing shortfalls, but took no action to terminate the contract for default under 48 C.F.R. § 49.402-1.**

**Conclusion as to Allegation 1:** Allegation 1 is *partially substantiated*. The IO found that neither the Chief of Staff, INSCOM, nor the Deputy Resource Manager (G-8) directed the signing of said contract<sup>15</sup>, or any of the other contracts related to this investigation (W911W4-08-F-0102 and W911W4-10-F-0250). Neither the Chief of Staff, INSCOM, nor the Deputy Resource Manager (G-8) is authorized to sign contracts within HQS INSCOM. On each and every occasion, a properly warranted contracting officer signed the contracts.<sup>16</sup> However, year-end pressure to award the contract resulted in a rushed process that lacked sufficient oversight and review by appropriate officials.

The IO found that the allegation that Silverback did not fill the 49 open positions but still had been paid is substantiated. In July 2011, not all of the 49 positions were filled. Because the contract was awarded as a firm-fixed-priced contract, Silverback 7 will be paid the entire cost (\$8,238,429.80) regardless of the number of positions filled. The 49 positions mentioned in the Performance Work Statement, were referenced as a historical number and only as an estimate of individuals needed to do this effort. According to the the Deputy Director of Contracting because this was awarded as a firm-fixed-price contract, the contractor could provide whatever number of personnel deemed necessary to achieve the effort and would receive base year funding or payment of \$8,238.429.80. In the January 2011 Monthly Status Report, Silverback 7 reported that the contract “calls for” 49 positions, but using the staffing mix called for in the Performance Work Statement (PWS), additional requirements appeared to have increased total Full Time Equivalent (FTEs) required for this contract to 54. At the end of December 2010, 5 of 54 positions were filled for a fill rate of 9.25%. The monthly status report also says “the remaining positions are being passed onto this task order as their current contracts reach their respective period of performance end dates.” As of the last payment to Silverback 7 for June 2011 a total of \$5,148,814.42 had been paid to them and 30 of 42 “released” positions had been filled for a fill rate of 71.42%. According to the most recent monthly status report dated October 5, 2011 (September Monthly Status Report), 38 of 43 released positions had been filled for a fill rate of 88.37%. Silverback 7 will be paid the entire firm-fixed-price amount for the base year.

The whistleblower’s allegation that the Chief of Staff, INSCOM and the Deputy Resource Manager (G-8) were aware of the contract shortfalls but took no action terminate the

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<sup>15</sup> For purposes of this Report, the use of the Silverback 7 contract and the Silverback 7 task order are used interchangeably.

<sup>16</sup> One of the issues that the Appointing Authority directed the IO to investigate was whether there had been “an abuse or the wrongful exercise of authority on the part of any individual relative to the subject allegations”. [See page 4, Issue #1]. In answer to this specific question, though the IO did not specifically conclude that there had or had not been an abuse of authority on the part of any individual relative to any of subject allegations presented for investigation, the IO did conclude with respect to the above allegation that “[o]n each and every occasion, a properly warranted contracting officer signed the contracts.” Nevertheless, all of the AR 15-6 record evidence reflects that there was no evidence of “an abuse of authority”. The Merit Systems Protection Board has defined an “abuse of authority” as “an arbitrary or capricious exercise of power by a Federal official or employee that adversely affects the rights of any person or that results in personal gain or advantage to himself or to preferred other persons.” *Doyle v. Department of Veterans Affairs*, 2008 WL 1712316 (Fed. Cir. 2008); *Embree v. Department of the Treasury*, 70 M.S.P.R. 79, 85 (1996). It is well settled that “[d]iscussion and even disagreement with supervisors over job-related activities is a normal part of most occupations.” *Willis v. Department of Agriculture*, 141 F.3d 1139, 1143 (Fed. Cir.1998). There was no testimonial or documentary evidence where this standard was met.

contract is *partially substantiated*. As discussed below, the IO identified potential violations and concerns about the contract and actions taken by individuals. The IO found gross mismanagement on the part of the DOC leadership, the Contracting Officer, and the INSCOM G-8 with respect to the Program and Resource Management Task Order. The Task Order should have been reviewed by the Contracting Officer, DOC leadership, and the INSCOM G-8 to ensure that it was the most advantageous acquisition strategy for the government to pursue. Silverback 7 based its \$8,000,000 price proposal on the provision of 49 positions and it was, or should have been, clear both to contracting officials and requiring activity personnel that the contractor proposed an overall price that included staffing all 49 positions, despite the fact that INSCOM knew the contractor would not be required to provide personnel for all positions from contract inception.

**Discussion:** To analyze the merits of the whistleblower's allegations requires a discussion of the background on Contract Number W911W40-10-D-0011-0001 (Program and Resource Management Support). What follows is a discussion of the background of the Program and Resource Management Support contract, the time pressures to award the contract, and the positions actually filled by Silverback 7.

The Program and Resource Management Support requirement was awarded to Silverback 7 on August 27, 2010. The current task order 0001 was a competitively-awarded, firm-fixed-price order under INSCOM's "Rapid Labor Service Support Requirements" (Omnibus III) multiple-award contract for information technology/management support, force management support, intelligence/operations support, program and resource analysis support, and administrative support. The Deputy Director of Contracting, indicated that task order 0001 was firm-fixed price because the requirement was for a commercial service and the FAR specifies that service contracts should be firm-fixed price. The Deputy Resource Manager (G-8) said that task order 0001 contemplated multiple positions under multiple other contracts that were transitioning to one enterprise contract (i.e., the Silverback 7 contract). The contract type chosen was not the Deputy Resource Manager (G-8)'s decision, but he recognizes now that there was duplication of payment for the same services.

The contract was processed very quickly and awarded the day before the OMNIBUS II contract expired. The Deputy Resource Manager (G-8) testified that he was informally pushing for IDIQ so the lowest price, technically acceptable FFP contract would have been the way to proceed with a contract award. He also stated he does not direct contracting officers or determine contract types. As Resource Manager, he only advises whether funds are available. He further stated that if he had a vote in the matter, he would not have supported a FFP contract. This particular task order was not sent through the Contract Acquisition Review Board (CARB) [TAB E, CARB Charter], but according to the CARB Charter and the Deputy Director of Contracting, it should have been because of its estimated value. The Deputy The Chief of Staff, HQS INSCOM, stated in an email dated July 14, 2011, that it was not specifically CARB'd as the OMNIBUS III had already been CARB'd for a myriad of operational and support service activities.

The intent for this task order was to consolidate throughout HQS INSCOM the requirements for Program and Resource Management support to increase efficiencies for this functional area. There were other on-going contractual efforts that overlapped with the same

services that were to be provided under the Program and Resource Support contract, and, during IO's investigation, it became clear to the IO (based on the testimony gathered from all of the witnesses) that although everyone agreed that the consolidation intent was good, end of year pressures to get the contract awarded resulted in duplication of effort. Every person interviewed by the IO (both functional and contracts personnel) relative to the investigation indicated the contract was done very quickly, at end of the fiscal year (August 2010), and that they felt pressured to get the contract awarded. Many individuals felt that with more time to work this on the functional (Human Resources and Resource Management) and contracts side, better choices could have been made to review the overlapping efforts and devise the proper acquisition and functional strategy to either terminate those similar contractual efforts or to phase the requirements in based on their period of performance.

The Contracting Officer Representative (COR) [TAB F, COR Appointment Letter], expressed her concern about the overlapping contracts when she found out about it, but no action was taken. The Program Analyst, G-8, also testified that the Supervisory Contract Specialist/Contracting Officer, also expressed his concern about the overlapping contracts when the Program Analyst, G-8, advised him of this information. They both discussed their "concern" with the Deputy Resource Manager (G-8). Some of the overlap of contracts included a Genesis contract, a task order in the OMNIBUS III contract, and other contracts throughout INSCOM's Major Subordinate Commands.

Silverback 7, in the Performance Work Statement (PWS), HQS INSCOM states that "Previous contractor resource applications for like work of a similar size and scope utilized forty-nine (49) personnel . . . The government is not recommending nor suggesting that this level of support be provided and the information is only provided to permit an understanding of the sense of the historical effort provided. The government encourages contractor innovation for maximum effectiveness and efficiency." According to the Deputy Director of Contractor's testimony, based on the PWS, Silverback 7 was not required to provide 49 individuals as the whistleblower believes was required. However, Silverback 7 did, in fact, base its price proposal on providing 49 personnel for various INSCOM requirements.

At the end of December 2010, only 5 of 54 positions were filled for a fill rate of 9.25%. As noted above, positions noted in the PWS were being phased into the Silverback 7 task order slowly, although under the FFP contract Silverback 7 began receiving payment for all 49 positions upon its first monthly invoice. As of June 2011, Silverback 7 had been paid over \$5 million. By the end June 2011, 42 of 49 positions had become available for performance under Task Order 1, and 30 of 42 had actually been filled—a 71% fill rate.

The IO found that the lack of collaboration between Resource Management and the Director of Contracting to prevent overlap/duplication of effort was a strong indication that the entire effort was grossly mismanaged. To come to this conclusion, the IO used the Merriam-Webster Dictionary and case law to define gross mismanagement. The IO based her conclusion on the Merriam-Webster Dictionary definition which defines gross mismanagement as "glaringly noticeable usually because of inexcusable badness or objectionableness" and stated that based on her reading of applicable case law which cited 5 U.S.C. Section 2303(b)(8), gross mismanagement is defined as such serious errors by an agency that a conclusion that the agency

erred is not debatable among reasonable people, and the matter must also be significant. Further, the IO's litmus test also included that there must be an element of blatancy.<sup>17</sup>

I find that with respect to the IO's conclusion of gross mismanagement on the part of the Resource Management and the Director of Contracting, her conclusion is supported based on my assessment of what constitutes gross mismanagement.<sup>18</sup> Generally, there is no statutory definition of "gross mismanagement" set forth in either the whistleblower statute of Title 5, U.S.C., Section 1213, or in other law. Rather, the OSC relies on the definition established in Merit Systems Protection Board (MSPB) case law in connection with prohibited personnel practices and the individual right of action (IRA) to the MSPB. The MSPB has defined "gross mismanagement" as "a decision that creates a 'substantial risk of significant adverse impact on the agency's ability to accomplish its mission.'" *Nafus v. Department of the Army*, 57 M.S.P.R. 386 (May 5, 1993), *McDonnell v. Department of Agriculture*, 108 M.S.P.R. 443, paragraph 19 (March 17, 2008). Further, the MSPB has elaborated on what is meant by "gross mismanagement" stating, "'gross mismanagement' **is more than de minimus wrongdoing or negligence**. Thus, gross mismanagement **does not include management decisions which are merely debatable**, nor does it mean action or inaction which constitutes **simple negligence or wrongdoing**." *Nafus* at 395-396, *emphasis added*. "A lawful but problematic policy constitutes gross mismanagement when reasonable people could not debate the error in the policy." *Chambers v. Department of Interior*, 515 F.3d 1362, 1368 (Fed. Cir. 2008). The matter at issue must also be significant. *White v. Department of Air Force*, 391 F.3d 1377, 1382 (Fed. Cir. 2005). Consequently, based on my review of all the relevant testimony and documentary evidence in the record, I agree with the IO's finding in this matter.

Further, I note the following discussion where the IO elaborated on the basis for her conclusion that the actions of the INSCOM Contracting and Resource Management (G-8) personnel with respect to the Program and Resource Management Task Order amounted to gross mismanagement:

"The Task Order should have been reviewed by the Contracting Officer, DOC leadership, and the INSCOM G8 to ensure that it was the most advantageous acquisition strategy for the government to pursue. Silverback 7 based their \$8,000,000 price proposal on the provision of 49 positions. It was, or should have been, clear both to contracting officials and requiring activity personnel that the contractor proposed an overall price that included staffing all 49 positions, despite the fact that INSCOM knew the contractor would not be required to provide personnel for all positions from contract inception. The lack of collaboration between Resource Management and the Director of Contracting to prevent overlap/duplication of effort is a strong indication that the entire effort was grossly mismanaged."

Additionally, based on the statements made by the Chief, Business Transformation Office, the Program Analyst, G-8, and the Program Analyst, G-8 #2, the IO cited to the fact that:

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<sup>17</sup> See *White v. Department of the Air Force*, 391 F.3d 1377 (Fed. Cir. 2004); see also *Pulcini v. Social Security Administration*, 83 M.S.P.B 685 (1999).

<sup>18</sup> This standard is consistent with the IO's litmus test for "gross mismanagement" and was used throughout the rest of the Report to substantiate the IO's conclusions regarding findings of gross mismanagement.

“[t]he W911W4-10-D-0011/Task Order 0001 firm-fixed-price contract for the Program and Resource Management effort did not include a crosswalk of similar ongoing services with existing contracts. The Deputy Resource Manager (G-8) did note when he participated in CARB reviews and heard of program and resource requirements, that they needed to be removed and moved to the Task Order 0001 under the OMNIBUS III effort. However, based on sworn statements by the Chief, Business Transformation Office, the Program Analyst, G-8, Super’y Con. Specialist, Contracting Officer, and the Program Analyst, G-8 #2, existing contracts performing similar program and resource management services did continue.”

Further, the IO concluded that every person interviewed (both functional and contracts personnel) relative to the investigation indicated the contract was done very quickly, at end of year (August 2010), and that they felt pressured to get the contract awarded.

In addition to addressing the specific allegation by the whistleblower, the IO also investigated other rules and regulation that may have been violated as a result of the awarding of Contract Number W911W40-10-D-0011-0001 (Program and Resource Management Support). The IO found that there was an apparent Bona Fide Needs rule violation (31 U.S.C. 1502) based on the August 27, 2010 award of Program and Resource Management support under Task Order D-0011-0001. The award obligated \$8,238,429.80 in FY10 O&M. The original period of performance began on 13 September 2010 and included a base year and four option years. Specifically, the IO found that:

“Per 31 U.S.C. § 1502(a), ‘the balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability . . .’ If the bulk of the Program and Resource Management services requirement did not exist in FY10 as it appeared the requirements (personnel fill) were being phased in, then it could be that obligating FY10 funds for the full amount of these services was improper. While 10 U.S.C § 2410a allows activities to obligate O&M funds for the full amount of a severable services contract in the current fiscal year (even though performance will occur in the next fiscal year), this statutory authority requires that there be a current, identified, bona fide need for those services. In this case, a substantial block of these services was being performed under other contracts at the time of this award, and would be phased into the overall Program and Resource Management contract only after those contracts expired.

The firm-fixed-price task order for D-0011-0001, Program and Resource Management, was not the best acquisition strategy. An ID/IQ, fixed-price task order would have allowed G8/Resource Manager to determine exactly which positions would be phased in and opened at specified times and line items could have been established for those services for future orders. In this case, the contracting officer would have obligated FY10 funds for the number of positions known to be open at that specified time. Orders for services for FY11 would have been funded with FY11 O&M.

I find that HQS INSCOM it failed to adhere to its own CARB policy. According to the Deputy Director of Contracting..., Silverback 7 should have been CARB'd by itself. The Deputy The Chief of Staff, HQS INSCOM, also stated in an email to me that the 'Silver Back 7 Task Order was not specifically CARB'd as the OMNIBUS III had already been CARB'd for myriad operational and support service activities.' However, based on HQS INSCOM's CARB Charter, it appears that the Silverback7 contract should have been reviewed separate from the previously CARB'd OMNIBUS III contract, both due to meeting the \$500,000 threshold, and based on it being a new requirement...

It is clear the issue of responsibility for contract execution and oversight has been an ongoing issue within HQS INSCOM since 2008, but never may have been brought to the attention of HQS INSCOM leadership for action."

In conclusion, while the IO found the completed actions for the contracts appeared to have met the competition requirements such as was the case with the W911W4-10-D-0011 contract, and a source selection board was held and/or the contract was awarded through assumed GSA pre-competed contracts, the outcome for the first year of this task order was less than optimal. HQ INSCOM could have made better functional/acquisition choices regarding the Program and Resource Management Support Contract. A different acquisition strategy would have prevented duplication of efforts through existing contracts and would have precluded essentially what amounted to double payments for the same services. It is apparent that INSCOM contracting officials felt pressured to award this order prior to the end of the fiscal year and that they did not have a clear and detailed understanding of the contract requirements. Since there were existing contractual efforts that clearly overlapped with the Program and Resource Management Support contract, it would have been better to either delay the award of the Program and Resource Management Support contract while the other contracts were either terminated (if that was possible) or transitioned/completed their period of performance or to establish a more flexible contract type to permit HQS INSCOM to phase in the required services by individual task orders. Suffice it to say that there were several discussions with The Deputy Resource Manager (G-8) by the KO and COR, the Super'y Con. Specialist, the Contracting Officer and Program Analyst, G-8 respectively, about their concerns, regarding this situation. Both The Super'y Con. Specialist, Contracting Officer and Program Analyst, G-8 elaborated on these discussions in their statements.

**OSC-Referred Allegation 2: The Chief of Staff, INSCOM, and The Deputy Resource Manager (G-8) approved two contracts with Avue Technologies Corporation (Avue), Contract Numbers W911W4-08-F-0102 and W911W4-10-F-1250 (which the IO corrected to reflect the correct contract number of W911W4-10-F-0250 (not "1250")), which resulted in either no product or unusable product for the agency. In August 2008, the Army entered into an \$800,000 contract with Avue to produce an automated time and attendance system, and a \$1 million contract to develop a salary management tool. Avue was paid for both contracts at the beginning of the contract period. With regard to the automated time and attendance system, the agency was unable to use Avue's product and discarded it after a short period of use. Avue revealed after the fact that it did not have the required certifications from the government to do this type of work and had not held the**

**certifications at the time the contract was made. Avue failed to produce any end item or required progress reports on the development of the \$1 million salary management tool. Thus, Avue misled the agency in the contracting process and failed to deliver any work product under the contract with regard to the salary management tool. Although this was known to the Deputy Resource Manager (G-8) and the Chief of Staff, INSCOM, neither attempted to intervene or follow up with Avue, and Avue was paid for the contracts with no deliverable product.**

**Conclusion as to Allegation 2:** Allegation 2 is *partially substantiated*. The IO found that the Avue efforts never resulted in wholly usable products delivered to HQS INSCOM for either the Automated Time and Attendance (ATA) Module or Salary Management Module (SMM).<sup>19</sup>

The IO also found that action or inaction on the part of the Deputy Resource Manager (G-8) with respect to the Salary Management Module (W911W4-08-0102) amounted to gross mismanagement. INSCOM expended over \$470,000 for the SMM, and while INSCOM apparently never used this module, the order was never terminated, and, in fact, two option years were executed for this service after the original order. As the INSCOM official ultimately responsible for this requirement, the Deputy Resource Manager (G-8) should have exercised far greater oversight to ensure the expenditure of funds for this capability was in INSCOM's best interests.

The IO did not find gross mismanagement on the part of any individual with respect to the ATA Module for which INSCOM ultimately expended over \$580,000 over the course of three years.. The IO found there eventually were indications that Avue was not going to successfully provide a wholly usable capability for command-wide deployment, but INSCOM's role with the ATA effort and the vendor's lack of success did not amount to "gross mismanagement" by the individuals who worked the matter daily. The IO believed, however, that a decision to terminate the contract should have been made after the failed pilot in April-June 2010.

As to the allegation that Avue did not have the required certifications, it was *unclear* to the IO what "certification" the Whistleblower was referring to. The IO made the assumption that the whistleblower was referring to information assurance and information security related certifications. Certification requirements were not specified in the performance work statements or elsewhere in the contracts, so the IO could not find fault with Avue. DODI 8500.2 does require contracted companies to protect sensitive information when that information is provided to contractor companies. At this time, there is no indication that any sensitive information was compromised, and INSCOM has received all Personally Identifiable Information (PII) data back from Avue. The IO found, however, that Avue did have a DOD system accreditation which expired in 2009, but Avue did not get it renewed or receive a new one. The G-1 was never informed of the lapse in accreditation and only found out about it through a review of the files in February 2011, as was reflected in the Business Transformation Senior Review Group (BTSRG) Minutes for February 16, 2011. [TAB G, BTSRG February 15, 2011 Meeting Minutes]. If a

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<sup>19</sup> The terms Salary Management Module, SM Module, and SMM are used interchangeably. Similarly, the terms Automated Time and Attendance, ATA Module and ATA are used interchangeably.

contracting officer's representative (COR) had been properly appointed, this lapse of accreditation could have been discovered much earlier.

The IO also noted that HQS INSCOM accessed Avue servers through Avue's website for the ATA module. Thus, no system accreditations were required by HQS INSCOM since the ATA module was resident on Avue infrastructure.

The allegation that Avue misled government officials is *not substantiated*. Based on the evidence collected by the IO, the majority of the individuals interviewed felt that Avue may have had good intentions, but when the key single software developer for Avue left, the pilot proved to be suboptimal, and everything started moving in a negative manner.<sup>20</sup>

The allegation that the Chief of Staff, INSCOM, knew of the issues with Avue and failed to take action or intervene is *not substantiated*. Upon discovery of the issues by the Chief of Staff, INSCOM in February 2011, the Chief of Staff, INSCOM convened a senior level meeting of the BTRSG on 15 February 2011 and took immediate and responsible action regarding the Avue issues as was reflected in the BTRSG Minutes for February 16, 2011. [TAB G, BTRSG February 15, 2011 Meeting Minutes].

**Discussion:** A discussion of the background of the two contracts is required to analyze the merits of the whistleblower's allegations.

The INSCOM contracting officer awarded the Salary Management Module (SMM) (W911W4-08-F-0102) order per the terms of an existing General Services Administration (GSA) information technology services contract on September 19, 2008. Notably, per the terms of both the SMM and ATA orders, the vendor required payment in advance for each annual increment of services, as these orders apparently were deemed publication subscriptions, for which a purchaser would receive a discount. This order was initiated as a result of a demonstration by Avue to the INSCOM BTRSG. Avue demonstrated data base and information management capabilities that spanned the INSCOM Human Resource and Resource Management (RM) functional areas and the respective offices of the INSCOM G-1, G-8, and the Assistant Chief of Staff (ACofS).<sup>21</sup> Based on this demonstration, the INSCOM RM decided to pursue specific demonstrated capabilities for the SMM (G-8) and ATA (G-1) as was reflected in the respective contracts. Option years were also exercised for the SMM following its original award in September 2008, and Option Year 2 ended in September 2011. To date, INSCOM has expended over \$470,000 on SMM. No Contracting Officer Representative (COR) was assigned to work the SMM based on information received from the Directorate of Contracting (DOC).

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<sup>20</sup> It is currently unclear why INSCOM employees apparently did not use or access the SMM. Discussions with the vendor are required to determine specifically whether this capability was available to INSCOM at the time and INSCOM merely failed to take advantage of it, despite paying the vendor for the service. Likewise, as noted below, INSCOM should consult the vendor and seek a refund of payments made for this service, if in fact, the vendor concurs that the SMM module would not have been effective, absent a functional ATA module.

<sup>21</sup> G-1 is the HQS INSCOM staff element responsible for all military and civilian personnel actions. G-8 is the HQS INSCOM staff element which manages resources across the INSCOM Command. Each staff element is related in that G-8 executes funding activities for G-1 responsible personnel activities.

DOC identified in their contract synopsis that the requirement was submitted by the Deputy Resource Manager (G-8) in August 2008 via a memorandum DOC received on August 7, 2008. The memorandum requested “the purchase of a subscription/access to software which automates the salary and compensation process. The salary management process software compliments [sic] the Time and Attendance software that the ACofS G-1 is procuring. Purchase will be for one base year plus four option years” The two option years (2009-2010 and 2010-2011) were exercised based on memoranda from the G-1. The first was signed on 28 August 2009 by a G-1 employee, on behalf of the Deputy G-1, for Option Year 1. The Option Year 2 request was signed on September 2, 2010 by the Special Programs Advisor, G-1, on behalf of the Deputy G-1. In an email provided by the Deputy G-1 from Ms. Chony Culley to Ms. Carolyn Scarfo, dated March 8, 2010, “The Deputy Resource Manager (G-8) confirmed that he would like to have the Salary module for next year.”

Based on the testimonial evidence obtained from all of the interviews, it is clear there was disagreement from the award of the order in 2008 to the present (August 2011) regarding the SMM effort and the organization within INSCOM responsible for it. The Human Resources Specialist testified that the issue regarding the SMM and which HQS INSCOM organization was assigned the responsibility for the SMM requirement was raised numerous times. She also stated that she raised it to her supervisor, the Asst HRC/Chief, CHRD, and the Deputy G-1, the Deputy G-1. Additionally, the Human Resources Specialist said she talked to the Deputy G-1 about her concerns and recommended that he talk with the Deputy Resource Manager (G-8) to ensure he understood the SMM was not G-1’s responsibility and specifically not her responsibility. In the Human Resources Specialist’s statement, she believes he told her “don’t be concerned, because the Deputy Resource Manager (G-8) understood that”. No document beyond the initial August 2008 Deputy Resource Manager (G-8) Memo indicates any further effort was initiated/engaged upon by the ACofS, RM staff, or the Deputy Resource Manager (G-8), who generated the original requirement to implement the SMM. While the option years were exercised pursuant to memoranda signed by G-1 personnel, the email from March 2010 from the Resource Management Officer states the Deputy Resource Manager (G-8) confirmed he wanted the second option year exercised for the September 22, 2010 – September 21, 2011 period of performance.

There also appears to have been some confusion within HQS INSCOM as to whether or not the SMM was dependent upon the ATA effort. The Deputy Resource Manager (G-8) indicated that the ATA effort needed to be functional before the SMM effort could be implemented, but there was no other evidence of any dependence between the two efforts. The IO asked the Deputy Resource Manager (G-8) why he thought the SMM would “kick in” after the ATA effort was fully implemented, and he replied that the way it was briefed was that the data would be available and based on Avue’s model, some things are built on others. The Deputy Resource Manager (G-8) also testified that he understood that the ATA Module was absolutely required to be in place before the SMM effort could be initiated. The IO also asked him why the SMM contract was executed if it was a follow-on to the ATA module, and he replied that he was just trying to be prepared. The Deputy Resource Manager (G-8) further stated that the ATA Module was supposed to be completed in time to execute the SMM. The Deputy Resource Manager (G-8) said he was not contacted by Avue about executing the SMM.

Based on all the sworn statements gathered by the IO, no one could tell the IO where to view the results of the SMM contractual efforts and most described it as a “concept” that was

never realized. The Human Resources Specialist said that she made it clear to many that the SMM was not dependent on completion of the ATA Module which was a completely separate undertaking under a separate order W911W4-08-F-0104. After award of the order, she said that the CEO of Avue asked her to set up a meeting with the Deputy Resource Manager (G-8). She set up the meeting and demonstration with G-1 and RM personnel present, including the Deputy Resource Manager (G-8), the Program Analyst, G-8 #1, RM, and possibly the Budget Analyst, G-8, RM. According to the Human Resources Specialist, the Deputy Resource Manager (G-8) left the meeting early but stated that the Human Resources Specialist “should get with the Program Analyst, G-8 #1.” The CEO of Avue expressed disappointment they did not get a chance to talk to the Deputy Resource Manager (G-8). The Human Resources Specialist stated she was also disappointed because that was the main reason for the meeting. She also specifically recalls that at that meeting it was stated that the SMM was not dependent upon the ATA Module. Further, The Human Resources Specialist testified that the Deputy Resource Manager (G-8) also stated that he was unaware that the SMM was actually a separate contract from the ATA Module Contract. Based on interviews conducted and materials provided for review, it is currently unclear what product/capability Avue provided to HQS INSCOM as a SMM. Additionally, based on interviews and material reviewed, the IO was unable confirm that HQS INSCOM personnel even initiated action with Avue on the SMM effort after award of the offer by GSA in September 2008. Even as late as of August 9, 2011, when the AR 15-6 investigation was winding down, this contract still had not been terminated by the government. Total cost to the government as of August 9, 2011, was over \$470,000.00. No effort or product was produced since the contract award in September 2008.

The INSCOM contracting officer also awarded the Automated Time and Attendance (ATA) Module (W911W4-08-F-0104) order on September 19, 2008, and one option year was exercised. The contracting officer awarded a subsequent order (W911W4-10-F-0250) in September 2010 when INSCOM failed to exercise timely the second option year established for the initial ATA order. As with the SMM capability, award of the ATA Module followed a demonstration by Avue of this system’s capabilities to the INSCOM BTRSG. As of August 12, 2011, over \$580,000.00 had been expended for ATA efforts which began in September 2008.

Throughout the period of performance, no formal COR appointment was made. In January 2011, it appears the Deputy G-1 intended to nominate the Human Resources Specialist as COR, but contracting officials indicated she did not have the required training to be designated as the COR. Nevertheless, the primary action officers for the ATA Module effort were the Human Resources Specialist, G-1, and the Chief, Business Transformation Office, mentor, Office of Business Transformation. The mentor responsibility was part of the Army’s Lean Six Sigma mentorship program and Chief, Business Transformation Office was the “black belt” mentor to the Human Resources Specialist.

The contract documents from Avue refer to their contracts as “subscription agreement[s]” and state, “There’s no need to develop an SOW – Avue Master Subscription Agreement, that all Avue clients adopt, is incorporated in the Federal Supply Schedule and serves as the SOW.” There was a short Statement of Work (SOW) in the contract file for the base year provided by the HQS INSCOM Contracting activity. The G-1 stated that one of the requirements for the company to be selected would be “the ability to configure the application to meet customer-specific requirements.” Avue’s plan offered a fixed-price subscription service for which there

would be no licensing fees, no limits on concurrent users, no transaction charges and no professional services. Additionally, this particular Avue document pointed that the ATA Module would be hosted on the vendor's servers, and as such, INSCOM would avoid IT support costs, hardware and software costs, and expensive system maintenance and upgrade costs (Exhibit 12, Avue Digital Offerings).

The vendor, however, would be required to meet INSCOM's customized, functional-specifications for this module to be fully operational for command-wide usage. The effort began in September 2008 and after encountering numerous problems, the parties agreed to execute a pilot for 160 personnel. The outcome was still not positive. In fact, the pilot generated an increase in error rates. In a July 2010 letter from the Deputy G-1 to Avue, INSCOM brought numerous concerns to the attention of Avue top officials. The Deputy G-1 letter to Avue further demanded that the change requests be completed by August 19, 2010, to include development of a new training plan and proposed milestones for the next launch. A letter from Avue to The Deputy G-1, dated August 19, 2010, indicated that Avue had been actively engaged in completing the requested changes to the ATA Module, and that they hoped to be substantially finished by August 19, 2010.

The Human Resources Specialist noted that Avue did not complete the multiple change requests needed to ensure the application would be effective for INSCOM's purposes. According to the Human Resources Specialist and the Chief, Business Transformation Office, the loss of the key software developer had a huge impact on the effort. The Human Resources Specialist also noted that Avue always made very convincing promises, but she subsequently learned that the key software developer responsible for fixing many of the pay problems was not correcting the root cause. This created more problems for them regarding the module. She stated that months passed and that while pay problems would decrease, they subsequently would later escalate.

In October/November 2010, another meeting was called with the Avue developers, and INSCOM provided a list of numerous errors that had to be corrected within a short time. By December 2010, INSCOM knew they could not continue with Avue. The Human Resources Specialist and the Chief, Business Transformation Office asked for assistance from the contracting office. Contracting Officer #1, supported them by conducting a meeting with Avue in January 2011 to try one more time to push the contractor to achieve the desired results. After a suboptimal pilot outcome from April-June 2010, three rounds of change requests that Avue did not fully act upon, and yet another unsuccessful meeting, it was apparent an in-progress review (IPR) would be necessary with the BTRSG chaired by the Chief of Staff, INSCOM. This February 15 IPR prompted the Chief of Staff, INSCOM to direct ATA pilot participants to stop using that module and resume use of the manual method until replacement automation could be found, according to the BTRSG Minutes from this meeting dated February 16, 2011. [TAB G, BTRSG February 15, 2011 Meeting Minutes]. INSCOM issued a stop work notice to Avue on 2 March 2011. They also asked the contractor to return all PII data and to purge their IT systems of it. The contract was never formally terminated, as was discussed in Contracting Officer #1's statement.

Another INSCOM concern expressed at the time was with the safeguarding of PII and its removal from the contractor's system. The INSCOM DOC was to notify the vendor that HQS INSCOM would no longer be using the ATA pilot product, as was reflected in the INSCOM

DOC Memo to Avue. The Chief of Staff, INSCOM, also directed action to be taken by the DOC to provide data input to the Contract Performance Reporting System (CPARS) to document Avue's poor performance. This action was captured in the BTRSG Minutes dated June 17, 2010. [TAB H, BTRSG June 17, 2010 Meeting Minutes]. A subsequent March 29, 2011, BTRSG meeting provided an update on the ATA effort. Avue had not responded regarding the PII concern and the DOC and G-1 were tasked to provide updates on a recurring basis regarding progress and efforts to retrieve PII data from Avue. Avue eventually returned a number of disks with the PII data. However, the contract was never formally terminated according to the Contract Specialist, Contracting Officer #1. The Contract Specialist, Contracting Officer #1 stated in his sworn statement that because of the subscription-type contract and funds being paid "up front," it would be difficult to terminate without incurring additional termination costs. The Avue to HQS INSCOM interaction became adversarial when the DOC issued the stop work notice. However, as stated above, the contract was never formally terminated.

Total cost to the government for Time and Attendance (\$588,020) and Salary Management Module (\$473,243) was \$1,061,263. For Time and Attendance, no wholly usable product was produced following a failed pilot. There was not effort by HQS INSCOM personnel to work the Salary Management Module, and, based on interviews and documentation reviewed, there was no product/capability provided to HQS INSCOM by Avue.

Based on the evidence and previously discussed definition of gross mismanagement, the IO found there was gross mismanagement on the part of the Deputy Resource Manager (G-8) with respect to the SMM contract (W911W4-08-0102). INSCOM expended \$473,243.00 in appropriated funds for the SMM, but the government never initiated action, the contract was never terminated, and there was no product/capability provided to HQS INSCOM by Avue. As the INSCOM official ultimately responsible for this requirement, the Deputy Resource Manager (G-8) should have exercised far greater oversight to ensure the expenditure of funds for this capability was in INSCOM's best interests.

The IO found that, in retrospect, INSCOM should not have allowed the vendor to continue its ATA Module effort after the failed pilot in April-June 2010. Nevertheless, the IO did not find that this inaction amounted to gross mismanagement with respect to that specific module. In support of that conclusion, the IO pointed out that there were enough negative indicators that Avue was not going to successfully provide a wholly usable capability for Command-wide deployment. This effort and lack of success did not amount to "gross mismanagement" by the individuals who worked it day to day, but a decision to terminate the contract should have been made after the failed pilot in April-June 2010. In any event, the vendor's failure should have immediately been brought to the attention of the DOC/contracting officer and G-1 The Deputy so that the command could have made a reasoned decision before the exercise of the 2010-2011 option year which obligated the command to yet another advance payment, whether or not it had received a system it could use.

Avue had serious problems meeting the requirement for ATA from the inception of the contract. Although Avue appeared to be "very convincing" according to the Human Resources Specialist and the Chief, Business Transformation Office, their performance problems could have been addressed earlier if a COR had been designated before the contract award as required by the AFARS. A properly trained COR would have known how to respond to those specific performance issues.

The CG, INSCOM's 2011 Annual Assurance on Internal Controls and Compliance with OMB Circular A-123, Appendix A, dated May 9, 2011, notes remaining "concern" regarding "Contract Non-Compliance Issues" and states the Command is fully engaged in its effort to address, correct and eliminate contracting non-compliance issues reported in Department of the Army Inspector General inspections and in the Deputy Assistant Secretary of the Army Procurement Management Review. The CG provides that, although challenges remain, much progress has been made to address the concerns. The majority of the deficiencies cited in the inspection reports have been corrected and corrective actions are in progress for the remaining deficiencies. The 2008 USAMAA Manpower Study recommended increasing current authorizations in the Directorate for Contracting by 21 personnel. Currently positions are being filled and the fill rate is improving, according to the Fiscal Year 2011 Annual Statement of Assurance on Internal Controls and Compliance with OMB Circular A-123, Appendix A, Basis for Reasonable Assurance section, Tab A-1. Tab A-1 also identified details on a multitude of external and internal inspections, and there are ongoing actions to improve HQS INSCOM internal controls. The corrective actions taken to resolve the deficiencies cited in the inspection reports also address some of the IO's findings in this investigation.

In addition to the obvious technical and contract administration problems discussed above that arose under the two task orders for the ATA and SM modules, the IO found that these transactions violated various statutes and regulations. Department of Defense Instruction 8500.2 (DODI 8500.2, dated February 6, 2003) requires contracting officials to "ensure that contracts include requirements to protect DoD sensitive information, and that the contracts are monitored for compliance." However, there was no language in the performance work statements, or elsewhere in the contracts awarded to Avue that required Avue to comply with DODI 8500.2. This was a failure on the part of INSCOM for not specifying the requirement in the statement of work. Since INSCOM did not formally advise Avue of the requirement to protect information, the IO found no fault with Avue in this regard.

Additionally, the following actions or inactions constituted a violation of regulations by government employees regarding HQS INSCOM contracting activities. CORs were not designated for either of the Avue contracts as required by AFARS 5101.602-2(i)(A), which provides that a properly trained COR shall be designated in writing prior to contract award. There are minimal training requirements that must be met in order to be appointed as a COR, such as completion of the Defense Acquisition University (DAU) online course CLC 106 and additional training courses specified by the individual Principal Assistant Responsible for Contracting (PARC) organizations (AFARS Revision #25, Item II, dated April 1, 2010). DOD Financial Management Regulation (FMR) Vol. 11A, chapter 18, paragraph 180401, also provides that the requiring activity "must establish quality surveillance plans . . . and ensure execution that would facilitate the oversight of the goods provided or services performed by the performing agency."

There was an apparent Purpose Statute (31 U.S.C. § 1301(a)) violation associated with the ATA subscription relative to software development using O&M funds versus Research, Development, Test, and Evaluation (RDTE) funding. Based on DOD FMR Vol. 1, Chap. 2A, paragraph 010212, RDTE is required for efforts to bring a program to an objective system. There was a short Statement of Work (SOW) in the contract binder/paperwork for the base year provided by the INSCOM contracting activity. The G-1 stated that one of the requirements for

the company to be selected would be “the ability to configure the application to meet customer-specific requirements.” Despite three change orders and a pilot project, an objective system was never achieved. Given the apparent magnitude and nature of the changes to the Avue system apparently required to attain a useable system for INSCOM, what occurred in this case was tantamount to software or system development, and not merely the acquisition of a software service to automate time and attendance functions for the command.

There was an apparent violation of the Bona Fide Needs rule (31 U.S.C. § 1502(a)) because with the award of the SM Module order, INSCOM obligated an annual appropriation (O&M) for needs that did not exist at the time of obligation and reasonably would not have arisen until a future fiscal year if use of the SMM was dependent upon a properly functioning ATA. Moreover, it should have been clear before exercise of the SMM options that either the command lacked a current need for that module or that the SMM module would not be executable without a fully-functioning ATA module, which INSCOM never acquired. Thus, for the SM module, INSCOM also lacked a current need that would otherwise have justified the obligation of funds following the initial award.

INSCOM also violated the statutory prohibition against making advance payments (31 U.S.C. § 3324). As noted above, the INSCOM contracting activity issued three orders against a GSA contract for information technology supplies and services per FAR Part 8. The vendor, Avue, presented the modules as “subscription services” and their pricing required payment in advance for an annual or part year subscription. This type of advance payment is generally prohibited by 31 U.S.C. § 3324, but an exception exists for a publication printed or recorded in any way for auditory or visual use of the agency. Based on the interviews conducted by the IO, the record documents reviewed, and because substantial customization of the modules was required in order to meet INSCOM’s requirements, the IO found that the efforts provided by Avue were not “publications” and, therefore, INSCOM paid in advance for these services improperly. This is evident from a review of the Statement of Work.

The IO also found that HQS INSCOM may not have complied fully with guidance that requires certain determinations be made before offloading requirements to non-DOD activities, i.e., in this case ordering supplies or services under a non-DOD (GSA) contract. Army policy regarding the Proper Use of non-Department of Defense (Non-DoD) Contracts, dated July 12, 2005, requires review and approval for the use of non-DOD contract vehicles when procuring supplies or services on or after January 1, 2005 for amounts greater than the simplified acquisition threshold, which at that time was \$100,000.00. The IO found no evidence that INSCOM complied with these requirements. Avue contracts were awarded off of GSA-EBUY and are non-DOD contracts. The IO noted that while an INSCOM contracting officer did prepare and sign a certification for the proper use of a non-DoD contract for the follow-on ATA effort (F-0250), this certification should have been issued by a senior official in the requiring activity, presumably the G-1 or G-8. AFARS 5117.7802 specifies applicability of the aforementioned July 12, 2005 policy.<sup>22</sup>

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<sup>22</sup> This Army policy requires certain determinations and findings be made, but HQS INSCOM, the requiring activity, failed to do so. This is nothing fatal or reportable (like a funding violation)—but it was commented on in the ROI as one of the general deficiencies noted during the investigation. The policy is intended to ensure that before DoD activities off-load requirements to non-DoD activities, there is ample justification to do so and assurance that it makes sense from efficiency and financial standpoints to do so.

Additionally, the IO found that INSCOM apparently failed to properly justify the exercise of option periods for both the Avue ATA and SMM procured under a General Services Administration (GSA) contract. FAR 17.207, Exercise of options, requires contracting officers to determine among other things, that “(2) the requirement covered by the option fulfills an existing government need; [and] (3) the exercise of the option is the most advantageous method of fulfilling the Government’s need . . .” Although there was paperwork from the functional representative indicating inferentially that the effort was and separate paperwork exercising option years the option exercises executed by INSCOM were questionable for the Avue efforts because Avue had failed to produce a wholly-usable product for ATA and INSCOM never initiated the SMM service. Moreover, the IO found no evidence to suggest that anyone at INSCOM properly rendered the determinations required by FAR 17.207, which would have been a prerequisite to ordering these services past their base years.

Based on a preponderance of the testimonial and documentary evidence, there was an apparent violation of section 803 of the FY 2002 National Defense Authorization Act (P.L. 107-107, 10 U.S.C. 2304 note), as implemented by DFARS 208.405-70, Additional ordering procedures. In accordance with the statute and regulation, competition is required for orders in excess of \$150,000 placed under GSA multiple award schedule contracts for supplies or services. (The threshold prior to 2011 was \$100,000.) Before awarding such an order on a sole-source basis, the contracting activity must process a justification and approval per FAR 8.405-6. The Super’y Con. Specialist, Contracting Officer, indicated that GSA orders F-0104 and 0102 were competed via EBUY-GSA/Federal Supply Schedule/Full and Open amongst ID/IQ awardees in Svc Area 1, but the follow-on ATA order (F-0250) was awarded on a sole source basis. There is no evidence in the contract files of a justification and approval or other evidence suggesting INSCOM provided supporting justification to the GSA contracting officer. The Super’y Con. Specialist, Contracting Officer was not able to provide a completed Justification and Approval (J&A), and based on the IO’s discussion with him, it appears a J&A may have been initiated, but never finalized.

As previously mentioned, neither the Chief of Staff, INSCOM nor the Deputy Resource Manager (G-8) directed the signing of any contracts, as neither of them are authorized to sign contracts within HQS INSCOM. Additionally, they have no authority to direct anyone within HQS INSCOM to sign a contract. All of the contracts appear to have been signed by individuals with the requisite authority. Despite being signed by the appropriate individuals, however, the IO found that the contracts were not properly entered into by HQS INSCOM officials. Some basic procedures were properly initiated. For instance, requirements were generated by the functional, CARB meetings were held as normally scheduled for the contracts, and contracting worked the effort with the functional. The completed actions for the contracts also appear to have been competed, such as the W911W4-10-D-0011 contract and source selection board was held and/or the contract was awarded through assumed GSA pre-competed contracts. However, the outcomes were less than optimal and in the case of the SMM, there was no product/capability provided to HQS INSCOM from 2008 through August 2011. The Deputy Resource Manager (G-8), as the originator of the original requirement to contract for the SMM, should have ensured it was either implemented, or if not required as initially thought, terminated. The Deputy Resource Manager (G-8) was also key in the exercising of the SMM option years as described in

the statements provided by the Resourcing Management Officer and other documentary evidence gathered during the RIO including email traffic from the Resource Management Officer. There was no evidence that HQS INSCOM received any access to an SMM subscription through a web-site link, nor was there evidence that HQS INSCOM initiated any action towards an SMM effort.

It is questionable whether the services purchased would be considered a “publication” because the statement of work for the initial Time and Attendance contract referred to customization requirements that the contractor selected must provide. Therefore, it does not appear that an actual publication was initially contemplated or ever bought for this effort. Since the ATA effort had multiple change order requests, it appears that Avue was required to perform development work. Therefore, there is a question as to proper use of O&M for the ATA effort, as previously discussed.

The Avue efforts for the Time and Attendance and the Salary Management Modules should have had a different acquisition strategy since the desired outcome included customization of the software – change requests were provided to the Avue contractor. Purchase of the modules as a “subscription” should have precluded customization of the efforts, and the outcome resulted in no wholly usable product for Time and Attendance and the Salary Management Module. The option year contracts for Avue should not have been awarded, nor should a new contract have been executed when option year 2 was not exercised on time. Avue should have been required to show a working capability in the first year. This did not happen for the Time and Attendance Module and it is unclear whether AVUE could have provided a working capability for the Salary Management Module. After the failed pilot for the Time and Attendance module from April-June 2010 and three failed attempts to fix the issues (July and September of 2010 and January of 2011) via Change Requests, the contract should have been terminated and the new contract W911W4-F-0250 should not have been awarded.

The IO’s review of the SMM effort found that there was no product/capability provided to HQS INSCOM by Avue. Mixed input was provided with respect to this module as some said it was still a “concept” and dependent on a usable product from Time and Attendance first. In the Human Resources Specialist’s sworn statement, she stated it was not dependent on the Time and Attendance Module. Based on the interviews conducted and the intent of the Salary Management Module, the IO did not believe it was dependent on the Automation Time and Attendance module. However, in the event the Salary Management Module was in-fact dependent on a fully usable Time & Attendance module, there should not have been a simultaneous award and the decision should have been reached regarding the way forward (such as termination of contract, management decision of organizational responsibility). Moreover, if HQS INSCOM use of the SMM depended on a properly functioning ATA module, there is an apparent violation of the Bona Fide Needs Rule (31 U.S.C. 1502(a)), because HQS INSCOM obligated an annual appropriation (O&M) for a need that did not exist at the time of obligation and reasonably would not have arisen until a future fiscal year.

Year-end pressure to award contracts resulted in a rushed process that lacked sufficient oversight and review by appropriate officials. Multiple contracts were worked at year end resulting in an environment where contract personnel felt the pressure to get them awarded. This was based on sworn statements by the Super’y Con. Specialist, Contracting Officer, the Deputy Director of Contracting; DOC; and the Contract Specialist, Contracting Officer #1. All of the

contract efforts were signed by appropriate Contracting Officers based on the documents the IO received.

The Salary Management Module (SMM) was awarded through GSA-EBUY September 19, 2008. This contract award resulted from the BTRSG receiving a demonstration from Avue/Allied Technology Group of capabilities that spanned the Human Resource and Resource Management functional areas and the respective offices of G-1, G-8, ACofS, and RM deciding to pursue specific demonstrated capabilities for the SMM (G-8) and ATA (G-1). INSCOM exercised option years for SMM following its award in September 2008, and Option Year 2 ended in September 2011. To date, \$473,243.00 has been expended on SMM. No COR was assigned to work the SMM based on information received from the DOC, which is contrary to AFARS 5101.602-2(i)(A). That section provides, in part, that a properly trained COR should be designated in writing prior to contract award. DOC identified in their contract synopsis that the requirement was submitted by the Deputy Resource Manager (G-8), in August 2008 via a memorandum DOC received on August 7, 2008. The memorandum from the Deputy G-1 stated the following: "request the purchase of a subscription/access to software which automates the salary and compensation process. The salary management process software compliments the Time and Attendance software that the ACofS G-1 is procuring. Purchase will be for one base year plus four option years".

The two option years (2009-2010 and 2010-2011) were exercised based on memoranda from the INSCOM G-1. The first was signed on August 28, 2009 by a G-1 employee, on behalf of the Deputy G-1, for Option Year 1. The Option Year 2 request was signed by the Special Programs Advisor, G-1, in a memorandum dated September 2, 2010. In an email provided by the Deputy G-1 from the Resource Management Officer to the Special Programs Advisor, G-1, dated March 8, 2010, "The Deputy Resource Manager (G-8) confirmed that he would like to have the Salary module for next year." Based on the testimonial evidence gathered during all of the interviews, it is clear there was disagreement from 2008 to the present (August 2011) regarding the SMM effort and the organization within HQS INSCOM assigned the lead. The Human Resources Specialist stated in her testimony that the issue regarding the SMM and which HQS INSCOM organization was assigned the responsibility for the SMM requirement was raised numerous times. She also stated that she raised it to her supervisor, Asst HRO/Chief, CHRD, and the Deputy G-1. The Human Resources Specialist said she talked to the Deputy G-1 about her concerns and recommended that he talk with the Deputy Resource Manager (G-8) to ensure he understood the SMM was not G-1's responsibility and specifically not her responsibility. She testified that she believes he told her "don't be concerned, because the Deputy Resource Manager (G-8) understood that". No document beyond the initial August 2008 Deputy Resource Manager (G-8) Memo indicates any further effort was initiated/engaged upon by the ACofS, RM staff, or the Deputy Resource Manager (G-8), who generated the original requirement to implement the SMM. While the option years were exercised pursuant to memoranda signed by G-1 personnel, the email from March 2010 from the Resource Management Officer states the Deputy Resource Manager (G-8) confirmed he wanted the second option year exercised for the September 22, 2010 – September 21, 2011 period of performance.

There also appears to have been some confusion within HQS INSCOM as to whether or not the SMM was dependent upon the ATA effort. The Deputy Resource Manager (G-8) indicated that the ATA effort needed to be functional before the SMM effort could be

implemented, but there was no other evidence of any dependence between the two efforts. The IO asked the Deputy Resource Manager (G-8) why he thought the SMM would “kick in” after the ATA effort was fully implemented, and he replied that the way it was briefed was that the data would be available and based on Avue’s model, some things are built on others. He also stated in his testimony that he understood that the ATA Module was absolutely required to be in place before the SMM effort could be initiated. The IO also asked him why the SMM contract was executed if it was a follow-on to the ATA module, and he replied that he was just trying to be prepared. He further stated that the ATA Module was supposed to be completed in time to execute the SMM. The Deputy Resource Manager (G-8) said he was not contacted by Avue about executing the SMM.

Based on all the sworn statements in the ROI record, the IO could not find anyone who could tell her where to view the results of the SMM contractual efforts and most described it as a “concept” that was never realized. In her statement, the Human Resources Specialist reiterated that she made it clear to many that the SMM was not dependent on completion of the ATA Module which was a completely separate contract, W911W4-08-F-0104. She said that the CEO of Avue asked her to set up a meeting with the Deputy Resource Manager (G-8). The Human Resources Specialist further testified that she set up the meeting and demonstration with G-1 and RM personnel present, including the Deputy Resource Manager (G-8), the Program Analyst, G-8 #1 from RM, and she believed as well as the Budget Analyst, G-8 from RM. According to the Human Resources Specialist, the Deputy Resource Manager (G-8) left the meeting early but stated that the Human Resources Specialist “should get with the Program Analyst, G-8 #1.” The CEO of Avue expressed disappointment they did not get a chance to talk to the Deputy Resource Manager (G-8). The Human Resources Specialist testified that she was also disappointed because that was the main reason for the meeting. She also specifically recalled that at that meeting it was stated that the SMM was NOT dependent upon the ATA Module. The Deputy Resource Manager (G-8) also stated that he was unaware that the SMM was actually a separate contract from the ATA Module Contract. Based on interviews conducted and materials provided for review, the IO concluded that there was no product/capability provided to HQS INSCOM by Avue since the contract award in September 2008. Additionally, the IO was unable to find that HQS INSCOM personnel initiated action with Avue on the SMM effort after contract award in September 2008. Total cost to the government as of August 9, 2011, is \$473,243.00.

Avue had a requirement to meet the customized requirements HQS INSCOM desired for this ATA module to be fully functional for command-wide usage. The effort began in September 2008, and in April-June 2010 a pilot was executed for 160 personnel. The outcome was still not positive. In fact, there was an increase in error rates. In a July 2010 memorandum sent to Avue CEOs by the Deputy G-1, HQS INSCOM stated that there were concerns requiring Avue’s attention. The memorandum further demanded that the change requests be completed by August 19, 2010, to include development of a new training plan and proposed milestones for the next launch. A letter from Avue to the Deputy G-1 dated 19 August 2010 indicated that Avue had been actively engaged in completing the requested changes to the Avue ATA Module, and they hoped to be finished by August 19, 2010, with the exception of several items. The Human Resources Specialist testified that she noted that Avue did not complete the multiple change requests needed to ensure the capability would be usable.

According to testimony provided by the Human Resources Specialist and the Chief, Business Transformation Office, the loss of the key software developer had a huge impact on the effort. The Human Resources Specialist also noted that Avue always made very convincing promises. However, she subsequently learned that the key software developer responsible for fixing many of the pay problems was not correcting the root cause. This created more problems for them regarding the module. Further, she stated in her testimony that months passed and pay problems would decrease and then escalate again. In October/November 2010, another meeting was called with the Avue developers, and HQS INSCOM provided a list of numerous errors that had to be corrected within a short time. By December 2010, HQS INSCOM knew they could not continue with Avue. The Human Resources Specialist and the Chief, Business Transformation Office asked for assistance from the DOC. Contract Specialist, Contracting Officer #1, supported them by conducting a meeting with Avue in January 2011 to try one more time to achieve the desired results. After a suboptimal pilot outcome from April-June 2010, three rounds of change requests that Avue did not fully act upon, and yet another unsuccessful meeting, The Human Resources Specialist, the Chief, Business Transformation Office, and the Deputy G-1 knew the effort had to cease.

Based on the pilot outcome from April-June 2010 and three rounds of change requests never corrected, no wholly usable products were delivered by Avue. The G-1 and Contracts personnel collaborated in early 2011 and following a final session with the contractor it was apparent an IPR would be necessary with the Business Transformation Senior Review Group chaired by the Chief of Staff, INSCOM. This IPR occurred on February 15, 2011 [TAB G, BTSRG February 15, 2011 Meeting Minutes]. The meeting's minutes reflects that one critical result of this meeting was the Chief of Staff, INSCOM's decision for Automated Time and Attendance (ATA) pilot participants to stop using the ATA effective immediately and revert back to the manual method until a replacement could be found. The other primary issue was to ensure the contractor would ensure all proper procedures for the vendor removing Personal Identifiable Information (PII) from their systems is identified, communicated, accomplished and inspected. Director of Contracting (DOC) was to notify the vendor that HQS INSCOM would no longer be using their ATA pilot product. The Chief of Staff, INSCOM, also directed action to be taken by the DOC to provide data input to the Contract Performance Reporting System (CPARS) to document Avue's performance. A subsequent, March 29, 2011 BTSRG meeting [TAB I, BTSRG March 29, 2011 Meeting Minutes and IPR] provided an update on the ATA effort. Avue had not responded regarding the PII concern and the DOC and G-1 were tasked to provide updates on a recurring basis regarding progress and efforts to get the PII data returned from Avue. Notice to Avue issued by the DOC on 2 March 2011 was to stop performance, return the PII data and to clean their systems. Avue did return a series of disks with the PII data. Official action by the DOC to formally terminate for convenience of the Government was never completed.

The IO was unable to make any substantiated findings regarding whether Avue misled the agency. The majority of the individuals interviewed felt that Avue may have had good intentions, but when the key single software developer left, the pilot proved to be suboptimal, and everything started moving in a negative manner. Avue did have some nonperformance issues outside the HQS INSCOM contract. Contracting personnel felt the lack of a COR for the Avue efforts was not helpful, and in this situation, a COR may have been able to identify any

attempts to mislead the government. As previously noted, the AFARS requires COR designation prior to contract award, but this requirement was not followed for the Avue efforts.

Based on the above, the preponderance of the evidence reflects that the acquisition strategy adopted by INSCOM was flawed. INSCOM should not have purchased these IT services as a “subscription.” Doing so drove INSCOM to make improper advance payments, where, by reasonable definition, the services offered by the vendor were not “publications” for which such payments would have been proper under 31 U.S.C. § 3324. Moreover, whether INSCOM knew it at the time of the initial order, the extent of customization required for the ATA module should have driven them to conclude that, in practice, this was not a publication subscription but was more akin to a software development effort. And even if these services might generally be considered “publications,” in this case, INSCOM continued to pay in advance for one module that did not operate properly and for another module that apparently was never used. Finally, greater scrutiny of the command’s actual needs and contractor performance before the exercise of the contract options also would have helped INSCOM avoid this wasteful expenditure of appropriated funds. Pro forma requests to exercise option years (and the contracting officer’s apparent failure to confirm the success of one module and/or the actual use of another) were no substitute for a careful determination of whether a follow-on effort was truly in the best interests of the Government.

The Deputy Resource Manager (G-8) and the Deputy G-1 (G-1) appear to have been the most senior officials at INSCOM who were aware of the issues with Avue until the Chief of Staff, INSCOM was made aware in February 2011. The Chief of Staff, INSCOM, does not work day to day activities with respect to contract issues. The Avue issues were brought to him in February 2011 timeframe when it was apparent there were increased software errors and the key software developer no longer supported the project. The BTSRG convened on 15 February 2011 and the Chief of Staff, INSCOM, took immediate and responsible action regarding the Avue issues [TAB G, BTSRG February 15, 2011 Meeting Minutes]. He also received an update in the March 29, 2011, BTSRG and directed recurring sessions to keep him apprised.

The Deputy Resource Manager (G-8) knew of the G-1 efforts regarding Time and Attendance because of the Memorandum he signed in 2008 requesting procurement of the Salary Management Module which was to “compliment” the Time and Attendance module. There was disagreement between the HQS INSCOM G-1 and G-8 about who (what organization) was to work the SMM. The Human Resources Specialist said she expressed this concern to her immediate supervisor, the Asst HRO/Chief, CHRD, and to the Deputy G-1. Action should have been taken by the Deputy G-1 and the Asst HRO/Chief, CHRD to engage the Deputy Resource Manager (G-8) to resolve the concern the Human Resources Specialist expressed regarding organizational responsibility for the SMM. The Deputy Resource Manager (G-8), in addition to identifying the requirement for SMM in 2008, was also involved as a member of the BTSRG. As a member of the BTSRG, he should have been present when the G-1 conducted the IPR and decisions were made by the Chief of Staff, INSCOM, the Chief of Staff. However, even though the Deputy Resource Manager (G-8) signed the original requirement for the Salary Management Module and option years were exercised, no effort was initiated by the government to move forward on a Salary Management Module. The Deputy Resource Manager (G-8), as the originator of the SMM requirement, should have initiated the SMM effort with Avue.

In conclusion, the Avue efforts for the Time and Attendance and the Salary Management Modules should have had a different acquisition strategy since the desired outcome included customization of the software – change requests were provided to the Avue contractor. Further, the option year contracts for Avue should not have been awarded, nor should a new contract have been executed when option year 2 was not exercised on time. Avue should have been required to show a working capability in the first year. Lastly, after the failed pilot for the Time and Attendance module from April-June 2010 and three failed attempts to fix the issues (July and September of 2010 and January of 2011), the contract should have been terminated and the new contract W911W4-F-0250 should not have been awarded.

**OSC-Referred Allegation 3: Pursuant to 48 C.F.R. § 49.402-1, under contracts containing the Default clause, the Government has the right to terminate a contract completely or in part for default if the contractor fails to perform the services within the time specified in the contracts, fails to perform any other provision of the contract, or fails to perform the services within the time specified in the contract, fails to perform any other provision of the contract, or fails to make progress, thus endangering performance of the contract. In all the contracts discussed above, the Deputy Resource Manager (G-8) and the Chief of Staff, INSCOM, were aware that the contractors were failing or failed to provide either work progress reports or a deliverable end product. However, the whistleblower alleged that, although the clause should have been available to them, the Deputy Resource Manager (G-8) and the Chief of Staff, INSCOM, took no action to terminate the contracts for default prior to their end dates.**

**Conclusion as to Allegation 3:** The allegation that the Deputy Resource Manager (G-8) and the Chief of Staff, INSCOM, were aware that the contractors were failing or failed to provide either work progress reports or a deliverable end product is *substantiated*. The whistleblower's allegation that the Deputy Resource Manager (G-8) and the Chief of Staff, INSCOM, were aware of the failings, and that the termination for default clause was available to them, is *substantiated* in that the Deputy Resource Manager (G-8) and the Chief of Staff, INSCOM, took no action to invoke the termination for default clause prior to the contracts' end dates. However, it should be noted that with respect to the Chief of Staff, INSCOM, the Chief of Staff, INSCOM did convene a BTRSG meeting to address the contract issues with Avue and directed a stop work order on the Avue contract.

It is true that all of the contracts that were the subject of this investigation had default clauses. Although the Chief of Staff, INSCOM, decided that the ATA module pilot participants would stop using it immediately upon his discovery of the irreconcilable issues with Avue, that order was never formally terminated prior to its end date. The INSCOM Director of Contracting (DOC) issued a stop work notice to Avue on March 2, 2011. They also asked the contractor to return all PII data and to purge their IT systems of it. The contract was never formally terminated.

Further, another INSCOM concern expressed at the time was with the safeguarding of PII and its removal from the contractor's system. The INSCOM DOC was to notify the vendor that HQS INSCOM would no longer be using the ATA pilot product. The Chief of Staff, INSCOM, also directed action to be taken by the DOC to provide data input to the Contract Performance

Reporting System (CPARS) to document Avue's poor performance. [TAB H, BTRSG June 17, 2011 Meeting Minutes]. A subsequent March 29, 2011, BTRSG meeting provided an update on the ATA effort. Avue had not responded regarding the PII concern and the DOC and G-1 were tasked to provide updates on a recurring basis regarding progress and efforts to retrieve PII data from Avue. Avue eventually returned a number of disks with the PII data. However, the contract was never formally terminated according to the Contract Specialist, Contracting Officer #1. The Contract Specialist, Contracting Officer #1 stated in his sworn statement that because of the subscription-type contract and funds being paid "up front," it would be difficult to terminate without incurring additional termination costs. The Avue to HQS INSCOM interaction became adversarial when the DOC issued the stop work notice. However, as stated above, the contract was never formally terminated.

Likewise, the IO concluded similarly that the SMM order was not terminated for default (or cause). As there was no evidence to support a termination for default or cause in the case of the Silverback 7 task order for resource management support services, the contracting officer never considered such action.

**Discussion:** The discussions concerning the first two allegations go into the great detail about the failures surrounding the contracts and what actions, if any, were taken by either the Deputy Resource Manager (G-8) or the Chief of Staff, INSCOM, concerning the contracts.

## **IO's RECOMMENDATIONS**

The IO concluded her ROI by stating the following. It reflects the thoroughness, objective, and constructive nature of the effort she undertook to address the OSC referred allegations, provide an honest assessment of the state of INSCOM's contracting affairs, and provide insightful and practical solutions and recommendations to the deficiencies that were amply reflected in the testimonial and documentary evidence she gathered during her investigation:

"I have completed this informal investigation and followed a deliberate action plan to ensure all information was gathered fairly through interviews and documentation review. The results show major concerns and potential violations in contracting areas and individual actions where actions should have been taken to ensure the government's best interests were achieved. I have detailed recommendations regarding all findings and believe if HQS INSCOM follows through by implementing the recommendations they can achieve a positive direction regarding contracting for critical mission capabilities in support of Army Intelligence."

The IO made the following recommendations:

1. To the extent that the corrective actions taken to resolve the deficiencies cited in the inspection reports from the INSCOM Annual Assurance on Internal Controls and Compliance with OMB Circular A-123, Appendix A, HQS INSCOM continue efforts to implement corrective actions to address all the remaining deficiencies including that the BTRSG work

jointly to provide frequent and detailed updates to the Commanding General (CG), INSCOM regarding the status of all contracting inspection actions outstanding, and ensure an action plan is developed/reviewed and executed to ensure completion. The interviews conducted and materials reviewed indicated concerns of training deficiencies and individuals feeling “rushed” to complete contract requirements. This lack of training and a rushed process created an environment where abuse and/or wrongful exercise of authority regarding contract actions can occur repeatedly.

2. CG, INSCOM establish procedures to ensure future CARB review of a contract if the acquisition strategy originally briefed to the CARB changes. The CARB provides evaluations of contracts, tasks or delivery orders, and contract related documents for HQS INSCOM’s acquisition activities regarding the relevance, effectiveness, and efficiencies of the acquisition strategy and contracting methods chosen to provide a capability to satisfy an HQS INSCOM mission or task consistent with the CG priorities. Further, the CG, INSCOM establish procedures to ensure future CARB review of a contract if the acquisition strategy originally briefed to the CARB changes. The functional requirements generator (G-1 and G-8 for these contracts) should be required to brief the CARB on all similar requirements being met by existing contracts that could possibly be duplicative/overlapping to avoid paying funds for similar activities and multiple contractors performing similar work as appears to be the case for the Program and Resource Management effort. Additionally, all task orders that meet the dollar threshold and/or other requirements delineated in the CARB Charter should go through the CARB. HQs, INSCOM DOC should create a dynamic, always current database that lists all contractual efforts by functional area to assist with this review.

3. Much more RM staff rigor regarding the requirements generation. The plan is to increase the size of the DOC as noted in INSCOM’s expansion and reorganization chart by 52% from July 2010 to November 2011, so INSCOM should focus on hiring personnel with contracting expertise. This will help DOC staff in working short-fused contract actions and reduce the pressure felt during the busy end of year time in contracting. Additionally, the recommendation to review of cut off dates for requesting contract support from DOC to enable better administration of the contracts, their execution, and outcomes. This also enables greater collaboration between the contracting and functional staffs to clearly understand what the requirements are for the contract and achieve an optimal acquisition strategy.

4. That INSCOM establish a process that requires an IPR, jointly provided by the functional and contract staff, with HQS INSCOM Senior Staff (Command Group level) for all contracts before option years are exercised. This review should be jointly provided by the functional and contract staff from a contracts administration perspective and for functional review to ensure previous work was accomplished in a successful manner. This review will allow senior INSCOM leaders to provide the contracting officer with a clear determination of whether the option should be exercised. Proof of contract success should be evident before moving forward with the option. CORs should be appointed for ALL contracts within HQS INSCOM prior to contract award as required in the AFARS.

5. That the contracting officer initiate negotiations with Silverback7 to collect

“overpayments.” Additionally, any option year exercised should be reviewed to ensure the government only pays for positions filled.

6. That the appointing authority direct HQS INSCOM to proceed per DFAS-IN Regulation 37-, paragraph 040204, and issue a flash report of possible Anti-Deficiency Act violations.<sup>23</sup> For the flash report (paragraph e, amount & nature of alleged violation), HQS INSCOM should address the apparent Bona Fide Needs rule violations associated with both the GSA order for the SMM (F-0102) and the award of the base year task order for the Silverback7 effort. Additionally, HQS INSCOM should address the apparent Purpose Statute violation related to the use of Operations and Maintenance funds to develop an automated time and attendance IT capability under a separate GSA order (F-0104; F-0250).

7. That INSCOM ensure that its contracting procedures include a requirement that an activity responsible for supplies or services acquired by interagency order certify that prior efforts under the order have been successful and that it is otherwise in the best interests of the organization to request an option exercise per FAR 17.207.

8. That the appointing authority direct the INSCOM contracting personnel to seek to recoup advance payments made for which no product/capability or services were received.

9. That INSCOM review legal advisor involvement on all contracts at HQS INSCOM to ensure the procedures are being followed as identified in the HQS INSCOM Acquisition Instruction (May 12, 2010) and HQS INSCOM Contract and Fiscal Law SOP (undated), respectively and that INSCOM change the existing policy to require a legal review for all contract actions in excess of \$100,000. HQS INSCOM’s policy appears to be that any contract action with a value of \$500,000 or more requires a legal review.

10. That HQS INSCOM require the KO and COR jointly maintain a Contract Synopsis Worksheet for all contractual efforts. That HQS INSCOM review its undated HQS INSCOM Contract and Fiscal Law SOP and ensure it correctly reflects current requirements in the DFARS and AFARS and provides the guidance and direction required to improve and enhance legal reviews, if required. That HQS INSCOM ensure CARB reviews are robust enough to fully discuss the best acquisition approach to ensure it is the most advantageous to the government.

11. That the INSCOM CG reemphasize the use of INSCOM’s contracting SOP to ensure that J&As and D&Fs are properly made when required by the FAR and its supplements. That the SOP be revised to articulate requirements related to protection of sensitive information, accreditation requirements and other safeguarding procedures. Requirements pertaining to protection of sensitive information and necessary accreditations should be captured in statements of work as appropriate.

12. That CORs, with appropriate training, be designated prior to the contract award and must complete the appropriate training.

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<sup>23</sup> See corrective action taken by LTG Zahner in his referral of the AR 15-6 report to the INSCOM Commanding General for implantation of the IO’s recommendations, including the submission of a flash report. [TAB L].

13. That information technology (IT) experts be assigned to work with functionals when IT requirements are contracted for to identify issues early on.

## **LISTING OF VIOLATIONS OR APPARENT VIOLATIONS OF LAW RULE, OR REGULATION**

This Report adopts the IO's findings of violations or apparent violations of law, rule, or regulation:

1. An apparent violation of the "Purpose Statute" (31 U.S.C. Section 1301(a)), stemming from the acquisition of what ostensibly was a "subscription" to an automated database intended to track time and attendance for INSCOM civilian employees. The violation occurred when the command obligated Operations and Maintenance (O&M) funds for what became a requirement to develop an information technology (IT) system. Under the circumstances, INSCOM should have funded the requirement with Research, Development, Test, and Evaluation (RDT&E) funds.

2. Two apparent violations of the "Bona Fide Needs Rule" (31 U.S.C. § 1502(a)) where, without statutory authority, INSCOM used current-year O&M funds for the needs of a future fiscal year. This violation apparently occurred when INSCOM obligated O&M funds for the Avue Salary Management module in Fiscal Years 2008 and 2009, knowing that this module would not be needed until the Automated Time and Attendance (ATA) module was completed in a subsequent fiscal year. Additionally, INSCOM violated 31 U.S.C. § 1502(a) when the contracting officer awarded a task order for Program and Resource Management services in Fiscal Year 2010, knowing that a large segment of those services were being performed at that time under other contracts and would not be performed under the newly-awarded task order until Fiscal Year 2011.

3. An apparent violation of 31 U.S.C. § 3324, which, in part, prohibits making advance payments for services. While the statute does authorize payment in advance for publication subscriptions, the IO found that neither the Avue ATA nor SM database modules amounted to such excepted subscriptions. Improper advance payments thus occurred over the course of three fiscal years (Fiscal Years 2008-2010).

4. An apparent violation of section 803 of the FY 2002 National Defense Authorization Act (P.L. 107-107, 10 U.S.C. § 2304 note), as implemented by DFARS 208.405-70, Additional ordering procedures. Per the statute and regulation, competition is required for orders in excess of \$150,000 placed under GSA multiple award schedule contracts for supplies or services. (The threshold prior to 2011 was \$100,000.) Before awarding such an order on a sole-source basis, the contracting activity must process a justification and approval per FAR 8.405-6. The IO found no evidence in the contract files of a justification and approval or other evidence suggesting INSCOM provided a sole source justification to the GSA contracting officer for the second Avue ATA module order (F-0250).

5. An apparent violation of Army policy regarding “Proper Use of Non-Department of Defense (non-DoD) Contracts)” that requires certain determinations be made before issuing orders to non-DoD activities for supplies or services. Specifically, Army policy, as implemented by Army Federal Acquisition Regulation Supplement (AFARS) subsection 5117.7802, requires approval by a senior official of the requiring activity before using a non-DoD contract vehicle for procuring supplies or services in amounts exceeding the simplified acquisition threshold, which at that time was \$100,000. The IO found no evidence of such approvals for the three orders placed with the General Services Administration (GSA) for automated time/attendance and salary management applications/services.

6. An apparent violation of the Federal Acquisition Regulation (FAR) rule that requires contracting officers make certain findings before exercising contract options. In pertinent part, before exercising options, a contracting officer must determine that the requirement covered by the option fulfills an existing need and that exercise of the option is the most advantageous method of fulfilling the organization’s need. FAR subsection 17.207. While limited documentary evidence suggests these determinations were made generally, the option exercises were questionable in light of the problems encountered with the ATA module and the fact that INSCOM never used the SM modules.

7. INSCOM failed to adhere to its internal Contract Action Review Board (CARB) rules, in that INSCOM failed to conduct such a board before awarding the task order to Silverback7 for the Program and Resource Management services. While the INSCOM CARB did review and approve the basic multiple award contract against which the Silverback7 order was placed, this subsequent order was a new requirement in excess of the CARB thresholds.

8. INSCOM failed to comply with the mandate of Department of Defense Instruction (DoDI) 8500.2, Information Assurance Implementation, paragraph 5.7.10, which directs activities both to include clauses requiring contractors to protect DoD sensitive information and to monitor contractor compliance.

9. INSCOM failed to follow the AFARS rule requiring the appointment of contracting officer representatives (CORs) to monitor the performance of Avue under the SM and ATA module orders issue by GSA. See AFARS subsection 5101.602-2(i)(A). See also Department of Defense Financial Management Regulation (DoD FMR), Vol. 11A, chapter 18, paragraph 180401 (directing activities to establish quality surveillance plans and to ensure effective oversight of services procured through another agency).

## **CORRECTIVE ACTIONS UNDERTAKEN**

### **Corrective Actions Directed by the Appointing Authority**

Based on the testimonial and documentary evidence gathered during the AR 15-6 investigation, the Appointing Authority, The Deputy The Chief of Staff (DCS), G-2, LTG

Zahner, accepted all of the findings and recommendations of the IO. He forwarded to the Commanding General, INSCOM, a copy of the AR 15-6 ROI and a memorandum dated December 1, 2011 directing her to implement the IO's recommendations. [TAB L]. LTG Zahner directed that the INSCOM Commander to take several immediate actions, including submitting a "flash report" to the Assistant Secretary of the Army (Financial Management & Comptroller) regarding possible Antideficiency Act violations.

The initiation of a "flash report" will trigger an investigation into the potential violation of the Antideficiency Act that will be conducted in accordance with the DoD Financial Management Regulation (FMR) and the applicable Defense Finance and Accounting Service regulation (DFAS-IN 37-1). That process is described in the section that follows below.

Additionally, LTG Zahner issued a memorandum dated December 9, 2011 to the Acting Assistant Secretary of the Army (Acquisition, Logistics & Technology) (ASA (ALT)) requesting that she conduct "a comprehensive review of INSCOM Head of Contracting Activity (HCA) authorities and its assigned contracting activity to determine if an organizational transfer or realignment of these authorities or activities would improve INSCOM's contracting chain and functional performance." [TAB M]. ASA (ALT) will be provided a copy of this Army Report for its use during its review efforts.

### **The DoD Process for Investigation of Potential Antideficiency Act Violations Initiation of Flash Report and Aftermath**

Within the Department of Defense, the investigation of a potential Antideficiency Act violation is conducted pursuant to DoD Financial Management Regulations (DOD FMR), Volume 14, principally Chapters 2, 3, 4, 5 and 7.<sup>24</sup> [TAB N]. Depending on the complexity of the facts and circumstances of the subject investigation, this process may take 6 – 12 months or more to complete. What follows is a description of the process that will be used to determine if an Antideficiency Act violation did in fact occur and the corrective actions that follow from such a finding. Based on LTG Zahner's referral of the AR 15-6 ROI to the Commanding General, INSCOM, with direction to initiate a "flash report," the ADA process will be invoked:

Generally, an ADA violation may occur from various circumstances. Inadequate supervisory involvement and oversight along with a lack of appropriate training are common throughout most DoD ADA violations. Therefore, supervisors of DoD personnel who have responsibility for control and use of DoD funds must ensure that their personnel receive proper oversight, support, and training to prevent violations. If a suspected or potential ADA violation is discovered, then a preliminary ADA review must be initiated.

Normally, when an individual learns of or detects a potential ADA violation, that individual must inform the senior resource manager of the command or activity concerned. The

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<sup>24</sup> Procedures for selection of an investigating officer for a formal Investigation are covered in DoD FMR, Volume 14, Chapter 4. Reports are prepared according to the DoD FMR, Volume 14, Chapters 3 (Preliminary Reviews of Potential Violations) and 7 (Antideficiency Act Report).

resource manager immediately will notify the commander responsible for the allowance/allotment involved in the alleged violation.

**Flash Report.** In order to report the suspected violation, the commander will prepare a flash report in accordance with Defense Finance and Accounting Service-Indianapolis (DFAS-IN) Regulation 37-1, paragraph 040204, and send it through the chain of command to the Assistant Secretary of the Army (Financial Management and Comptroller (ASA (FM&C))) by priority message within 15 business days of the date of discovery. The flash report will include the following information:

- a. Accounting classification of funds involved.
- b. Name and location of the activity where the alleged violation occurred.
- c. Name and location of the activity issuing the fund authorization.
- d. Amount of fund authorization or limitation that was allegedly exceeded.
- e. Amount and nature of the alleged violation.
- f. Date the alleged violation occurred and date discovered.
- g. Means of discovery.
- h. Name, organization, phone numbers, and email address of the investigator(s) that will conduct the preliminary review.

**Preliminary Investigation.** If the The Deputy Assistant Secretary of the Army (Financial Operations) (DASA (FO)) directs it, the commander must appoint an investigating officer, a legal representative, and a subject matter expert to a team that will conduct the *preliminary investigation*. The commander will conduct and complete a preliminary review within 90 days after the discovery of the potential violation. The purpose of the preliminary review is to gather facts and ultimately factually establish whether a reportable Antideficiency violation did or did not occur. In the instant case, this review will include a substantive analysis of the findings and conclusions of the AR 15-6 ROI, including the stated violations and apparent violations of laws, rules, and regulations that relate to funding but not the contracting. Additionally, that ADA preliminary investigation effort may result in the identification of additional violations of funding laws or regulations. Also, the review effort will include research into the applicable business transactions and accounting records to determine the amount and cause of the potential statutory violation. A preliminary review shall focus on the potential violation of the ADA and shall not focus on identification of the individual(s) responsible or the corrective actions. These aspects will be developed during the formal investigation, if a formal investigation is warranted.

The preliminary investigator or the review team lead shall be an individual with no vested interest in the outcome of the review. The preliminary investigator or the review team lead shall

also be capable of conducting a complete, impartial, and unbiased review. A commander of a major command, a superior to a commander of a major command who is in the chain-of-command, or equivalent in an organization other than a Military Department, shall appoint a trained and qualified individual to serve as an investigator or a review team lead. To help assure independence and impartiality during the review, an investigator or review team lead shall be selected from an organization external to the installation-level organization being reviewed. DoD Components are required to document that the investigators and/or review team leads are free of personal, external, and organizational impairments and retain the document(s) in the ADA case file.

The Commander documents the results in a report of preliminary review and sends it through the chain of command to the ASA (FM&C), ATTN: SAFM-FO in accordance with the guidance provided for in DoD FMR, Volume 14, Chapter 3, on preliminary reviews.

**Formal Investigation.** The ASA (FM&C) and the Office of the General Counsel (OGC) review the preliminary investigation report. If the result of this review is that there is no violation, then the preliminary report completes the actions regarding the potential violation. On the other hand, if the determination is that there is a potential violation, then DASA (FO) will direct a *formal investigation*. The provisions in DoD FMR, Volume 14, Chapter 4 and Chapter 5, are followed when conducting a formal investigation. Additionally, DoD FMR Volume 14, Chapters 6 and 7, provide status and violation report procedures, respectively. The ASA (FM&C) notifies the command that it has six months to produce a completed formal report. This includes full relevant and specific facts of the case, an analysis of the ADA violation, planned corrective actions, findings as to who is responsible, etc.

The investigating officer shall carefully consider the facts and circumstances surrounding the violation before affixing responsibility for the violation. The investigating officer shall attempt to discover the specific act, or the failure to take action, that resulted in the violation, and the responsible individual(s) for that act or failure to take action. The standard for responsibility requires identification of the individual(s) who made or authorized the obligations and/or expenditures that led to the violation. An ADA Violation Report is considered incomplete until an individual(s) has been named as responsible for the violation. A conclusion that no one could be determined responsible for the violation is not acceptable.

The ADA Violation Report shall include assignment of responsibility to one or more individuals for the violation so appropriate administrative or disciplinary action, if any, may be imposed as required by sections 1349, 1350, 1518, and 1519 of title 31, United States Code. No discipline can be actually administered until the end of the process when DoD OGC has approved the formal investigation.

If, at any time during an investigation, the investigating officer believes there may be a criminal issue(s) involved, then the investigation shall be stopped immediately. The investigating officer shall consult with legal counsel to determine if the issue should be referred to appropriate criminal investigators for resolution. Following completion of the investigation, if DoD OGC has determined that the violation was knowing and willful, then the case may have to be submitted to the Department of Justice.

Part of an investigating officer's responsibilities includes recommending actions to prevent future violations of a similar type (procedural corrections) and correct the specific adverse funding condition (funding corrections) that resulted from the violation. When the causes of the violation have been determined, officials of the DoD Component under investigation, working with the investigating officer, shall determine the corrective actions necessary to ensure a violation of a similar nature will not recur. Those actions shall be included in the ADA Violation Report. In addition, officials of the DoD Component under investigation, working with the investigating officer, shall develop a summary of lessons learned from the specific circumstances of the case that can be applied to the installation involved, the major command, the DoD Component, or all DoD Components. The ADA Violation Report does not serve to condone, retroactively approve, or financially justify, a violation. To the extent possible, violations shall be corrected with the proper funding, together with the necessary approval from the proper approving authority.

**DoD Level Review.** If ASA F(M&C) and OGC approve the formal, it goes to the Office of Secretary of Defense (OSD) for advance decision. OSD (Comptroller) sends it to DoD OGC (Fiscal) for review. There is no timeframe for this review. If OSD's advance decision is to approve the case as written, OSD notifies Army to impose discipline on the responsible individuals.

**DoD Decision.** When OSD approves, the USD (Comptroller) himself signs out the memos to the General Accounting Office, Congress, Office of Management and Budget, and the President.

**Additional Actions.** The provisions of AR 27-10, *Military Justice*, will be followed, if applicable. This regulation implements a memorandum of understanding (MOU) between the Department of Defense and the Department of Justice. It outlines areas of responsibility for investigation and prosecution of offenses where the two departments have concurrent jurisdiction. Additionally, Commanders will submit a Serious Incident Report (see AR 190-45, Serious Incident Report) if appropriate.

### **Corrective Actions To Be Taken by the ASA (ALT)**

As noted above, the Appointing Authority, LTG Zahner, requested that the ASA(ALT) conduct a comprehensive review of the INSCOM HCA authorities and contracting function. While the AR 15-6 investigation was very thorough, the additional investigation and review by ASA (ALT) will provide further opportunity to examine any potential statutory, regulatory, or policy violations that may not have been adequately addressed by the current investigation

Additionally, as discussed above, independent of the subject OSC referral that led to the initiation of the AR 15-6 investigation, the ASA (ALT) had investigated and had begun to identify deficiencies that existed in the INSCOM contracting function. The ASA (ALT), as the Army Acquisition Executive and the Senior Procurement Executive for the Army, is responsible for all procurement and contracting functions of the Army to include agency head authority for contracting matters; delegation of contracting authority; designation of contracting activities;

promulgating Army contracting policies and procedures; and procurement management review (PMR) program activities of which the DASA (P) is the DA proponent for the PMR Program.

As a result of the ASA (ALT's) PMR process, the INSCOM contracting function was reviewed on an annual basis (rather than the usual ever two years cycle) by DASA (P) in 2008, 2009 and 2010 due to receiving a High risk rating at each year's PMR. The PMR reviews identified repeated discrepancies in contract execution in pre-award and post-award actions. Systemic issues of inefficient contract management and administration were identified in each review. In addition, a special review of the Theater Linguistic contract revealed High risk areas that were subsequently corrected in the follow-on contract.

The 2011 PMR review indicated that while some of the issues identified in previous PMRs were still occurring, an overall risk rating of Medium was appropriate due to management actions to correct identified deficiencies and the involvement of the HCA in improving the training and staffing levels of the contracting management team.

As a result of all of the DASA (P) PMRs, INSCOM has initiated several corrective actions to improve processes: (1) During Fiscal Year 2011, the PARC in coordination with the HCA instituted a disciplined approach to submitting requirements throughout the year with cut off dates so that contracting personnel can effectively meet end of year deadlines; (2) the INSCOM PARC conducted training on cost and pricing techniques, and all personnel who initiate Independent Government Cost Estimates (IGCE) are required to participate in this training; (3) INSCOM Contracting Officers are instructed to incorporate a written acquisition strategy on all actions exceeding \$150,000; (4) INSCOM procurement law attorneys conduct source selection training to all members of source selection teams; (5) INSCOM realigned their management staff to enable increased contracting oversight; and (6) two positions, a The Deputy PARC and senior level Policy Chief, were added to engage senior management in internal reviews and policy formation to institute process improvements.

## CONCLUSION

The Department of the Army takes very seriously its responsibility to address, in a timely, thorough manner, the concerns of the OSC.

The OSC referral facilitated the Army's ability to identify several statutory and regulatory violations and to initiate appropriate corrective actions to address them.

This investigation revealed that INSCOM continues to experience challenges in awarding and managing contracts, despite several reviews and inspections of contracting activities. Of particular note, the allegation that Silverback did not fill the 49 open positions but still had been paid was substantiated. Although, neither the Chief of Staff, INSCOM, nor the Deputy Resource Manager (G-8), as alleged, directed the signing of this contract, or any of the other contracts related to this investigation within HQS INSCOM, year-end pressure to award the contract resulted in a rushed process that lacked sufficient oversight and review by appropriate officials. This led to a finding that actions by the DOC leadership, the Contracting Officer, and the INSCOM G-8 resulted in gross mismanagement. The allegation that the Avue efforts never resulted in wholly usable products delivered to HQS INSCOM for either the Automated Time and Attendance Module or Salary Management Module was substantiated. The actions of the Deputy Resource Manager (G-8) with respect to the Salary Management Module amounted to gross mismanagement. With respect to the ATA Module, the lack of success did not amount to gross mismanagement by the individuals who worked it day to day, but a decision to terminate the contract should have been made after the failed pilot in April-June 2010. The allegations that Avue misled government officials and that the Chief of Staff, INSCOM, knew of the issues with Avue and failed to take action or intervene were not substantiated. The allegation that the default clause should have been available to the Deputy Resource Manager (G-8) and the Chief of Staff, INSCOM, and that they were aware of the availability of the termination for default contract clause but took no action to invoke the default clause prior to the contracts' end dates was substantiated. However, it should be noted in the investigation that though neither the Deputy Resource Manager (G-8) and the Chief of Staff, INSCOM invoked the termination for default clause, the Chief of Staff, INSCOM did convene a BTRSG meeting to address the contract issues with Avue and directed a stop work order on the Avue contract.

As noted above, previously, INSCOM had been the subject of annual Army Procurement Management Reviews (PMR) in 2008, 2009, and 2010. The ASA (ALT)'s rigorous process required review of each Army contracting activity at least every two years, to, among other objectives, assess, analyze, and communicate the health of Army contracting to senior Army leadership; ensure management oversight and control of contracting related issues; and ensure compliance with Federal, Defense, and Army acquisition regulations and policies. Those reviews did not entail a 100% review of all contracts and did not review the specific contracts which were the subject of the OSC referred allegations. Nevertheless, as a result of those PMR reviews, HQS INSCOM did initiate several corrective actions to improve the contracting processes at INSCOM. As a result, improvements were noted during the 2011 annual review.

Additionally, as a result of the findings and conclusions in the subject Report, the Appointing Authority, LTG Zahner, forwarded the AR 15-6 ROI to the INSCOM Commanding General to implement the findings and conclusions of the IO and to take appropriate corrective action, including the initiation of a "flash report" that will invoke additional investigative efforts

for a final DoD decision with respect to violations of the Antideficiency Act. Further, LTG Zahner has forwarded to the ASA (ALT) a request to conduct a comprehensive review of INSCOM Head of Contracting Activity (HCA) authorities and its assigned contracting activity to determine if an organizational transfer or realignment of these authorities or activities would improve INSCOM's contracting chain and functional performance

In summary, the Department of the Army has taken appropriate action to remedy or correct all inappropriate actions that occurred in this matter. In addition, the Army has and will continue to take action to prevent such events from occurring in the future.

This letter, with enclosures, is submitted in satisfaction of my responsibilities under Title 5, U.S.C., Sections 1213(c) and (d). Please direct any further questions you may have concerning this matter to [REDACTED] 703-614-3500.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom R. Lamont", written in a cursive style.

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



SECRETARY OF THE ARMY  
WASHINGTON

MAR 18 2011

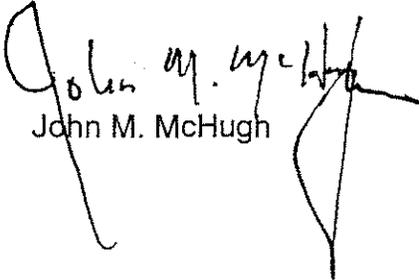
MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY  
(MANPOWER AND RESERVE AFFAIRS)

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



Organization and Functions

**Army  
Commands,  
Army Service  
Component  
Commands, and  
Direct Reporting  
Units**

Headquarters  
Department of the Army  
Washington, DC  
4 September 2007

**UNCLASSIFIED**



# **SUMMARY of CHANGE**

AR 10-87

Army Commands, Army Service Component Commands, and Direct Reporting Units

This major revision dated 4 September 2007--

- o Shifts the Army organizational focus from major Army commands in the continental United States towards all primary Army organizations (throughout).
- o Removes the term major Army command and the acronym MACOM from the Army lexicon and designates each former major Army command as an Army Command, an Army Service Component Command of a combatant command or subunified command, or a Direct Reporting Unit (throughout).
- o Reorganizes the Department of the Army headquarters to more effectively support a leaner, more agile, modular force (throughout).
- o Recognizes the distinction at the Headquarters, Department of the Army level for Army Commands, Army Service Component Commands, and Direct Reporting Units by defining and aligning the responsibilities of each organization for executing policy and operations (throughout).
- o Recognizes the Armywide role and multidiscipline functions of the three Army Commands (U.S. Army Forces Command, U.S. Army Training and Doctrine Command, U.S. Army Materiel Command) (chaps 2, 3, and 4).
- o Recognizes the Theater Army as an Army Service Component Command, reporting directly to Department of the Army, and serving as the Army's single point of contact for combatant commands (para 1-1d(3) and chap 5 through chap 13).
- o Recognizes that Direct Reporting Units are Army organizations that provide broad general support to the Army in a single, unique discipline and exercise authorities as specified in regulation, policy, delegation, or other issuance (throughout).
- o Recognizes each organization's primary missions, functions, and command and staff relationships (throughout).
- o Recognizes for Headquarters, Department of the Army, and when specified Direct Reporting Units, the Administrative Assistant to the Secretary of the Army exercises the same authorities as commanders of Army Commands and Army Service Component Commands, as prescribed by regulation, policy, delegation, or other issuance (throughout).
- o Sets the conditions to implement business transformation processes to effectively and efficiently manage Army resources by formally establishing functional organizations that provide and manage Army operational support globally (throughout).

Effective 4 October 2007

## Organization and Functions

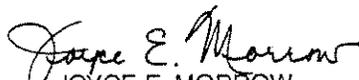
### Army Commands, Army Service Component Commands, and Direct Reporting Units

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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 publication reorganizes Army headquarters to more effectively support a leaner, more agile modular force. It distinguishes the differences in scope and responsibility of organizations. It recognizes the Armywide role and multidiscipline functions of the Army Commands; the Theater Army as an Army Service Component Command reporting directly to Department of the Army and serving as the Army's single point of contact for combatant commands; and the Direct Reporting Units as providing broad, general support to the Army in a normally single, unique discipline not otherwise available elsewhere in the Army. It identifies each organization's missions, functions, and command and staff relationships with higher and collateral headquarters and agencies.

**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 Director, Army Staff. 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, but does not identify key management controls that must be evaluated.

**Supplementation.** Supplementation of this regulation and establishment of command and local forms are prohibited without prior approval from Director, Army Staff (DACS-ZD), 2800 Army Pentagon, Washington, DC 20310-0200.

**Suggested improvements.** Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to Director of the

Army Staff (DACS-DMC), 200 Army Pentagon, Washington, DC 20310-0200.

**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, ATTN: SAAA-RP, Office of the Administrative Assistant, Resources and Programs 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 intended for command levels D for the Active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve.

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\*This regulation supersedes AR 10-87, dated 30 October 1992.

Activity and USACE, manages acquisition of Army medical facilities funded by military construction (MILCON), Defense.

### **15-3. Command and staff relationships**

*a.* TSG is dual hatted as the Commander, MEDCOM and is supervised by the CSA.

*b.* The Commander, MEDCOM is responsible to the SA for execution of assigned responsibilities contained in 10 USC 3013(b). The Commander, MEDCOM exercises ADCON authority and responsibility on behalf of the SA and in this regard is primarily responsible for the administration and support of Army forces worldwide for certain ADCON functions.

*c.* The Commander, MEDCOM is authorized to communicate and coordinate directly with ACOM, ASCC, or other DRU commanders; HQDA; other DOD headquarters and agencies; and other Government departments, as required, on matters of mutual interest subject to procedures established by CSA.

*d.* Commander, MEDCOM directs all Active Army health services activities involved in providing direct health care support within the prescribed geographical limits of responsibility; designates missions and levels of care to be provided by subordinate military treatment facilities; and determines manpower staffing standards and levels of staffing.

*e.* MEDCOM is dependent on other Army organizations and agencies for appropriate support and services per prescribed regulations and policies and maintains the following relationships:

(1) Coordinates with TRADOC on medical combat development functions and doctrinal concepts and systems for health services support to the Army in the field.

(2) Supervises and evaluates the performance of Army Medical Department RC units when training with MEDCOM activities.

(3) Administers the individual medical training programs for RC personnel performing Advanced Individual Training at MEDCOM activities.

(4) Provides doctrinal support for training and evaluation of both Active Army and RC medical units and individuals throughout the Army.

(5) Coordinates with TRICARE Management Activity to ensure integrated, standardized health care delivery.

(6) Coordinates with Defense Logistics Agency to develop and execute policies and procedures for medical logistics organizations pertaining to Theater Lead Agents for medical materiel.

*f.* For command relationships—

(1) Command relationships for operational Service forces are established by the SECDEF and applicable CCDRs.

(2) Pursuant to the direction of the SA, certain authorities and responsibilities for ADCON of Army forces assigned to a combatant command are shared by the Commander, MEDCOM; ACOMs; the ASCC of the combatant command; and other DRUs. Subject to applicable law, regulation, and policy, the allocation of authorities and responsibilities pertinent to the exercise of shared ADCON will be documented in appropriate agreements/understandings between the commanders of MEDCOM, ACOMs, the ASCC, and other DRUs as appropriate.

## **Chapter 16**

### **U.S. Army Intelligence and Security Command**

#### **16-1. Mission**

*a.* INSCOM synchronizes the operations of all INSCOM units to produce intelligence in support of the Army, combatant commands, and the National intelligence community. INSCOM responds to taskings from national and departmental authorities for Signal intelligence (SIGINT), human intelligence (HUMINT), counterintelligence (CI), imagery intelligence, measurement and signature intelligence (MASINT), technical intelligence (TI), electronic warfare (EW), and information operations (IO).

*b.* INSCOM provides Title 50 USC National Intelligence Program support to combatant commands and Army organizations.

#### **16-2. Functions**

*a.* INSCOM is designated by the SA as a DRU and reports directly to the Deputy Chief of Staff, G-2 (DCS, G-2).

*b.* INSCOM is responsible for the planning and execution of DRU responsibilities by exercising command and control of organic, assigned and attached Army forces.

*c.* INSCOM serves as the principal Army advisor to the Director, National Security Agency/Chief, Central Security Service for the United States Signals Intelligence Directive System and maintains liaison with national agencies for SIGINT operations. INSCOM supports the National SIGINT Special Activities Office program and DOD and DA SIGINT programs; performs worldwide SIGINT operations; advises and assists other Army organizations on SIGINT

matters; and monitors intelligence and EW systems development by the National Security Agency and other service/military departments.

*d.* INSCOM intelligence operations are conducted in coordination with and under the staff supervision of the DCS, G-2. In addition, the DCS, G-3/5/7 exercises OPCON over selected INSCOM activities.

*e.* INSCOM commands organizations tailored to provide intelligence to CCDRs and other supported commands and agencies.

*f.* INSCOM performs counterterrorism operations in support of the Army Anti-Terrorism Strategic Plan.

*g.* INSCOM provides intelligence capabilities for JCS and HQDA collection projects.

*h.* INSCOM is the Army authority for project TROJAN and operates the Army Technical Control and Analysis Element.

*i.* INSCOM is the proponent for the Army HUMINT program and is the Army program administrator for Army target exploitation assets.

*j.* INSCOM plans, conducts, and coordinates theater and strategic CI, cyber-CI, and offensive CI operations and activities; administers the Army Intelligence Polygraph Program; is responsible for the Army Central Control Office and subcontrol offices; conducts counterespionage investigations; manages the Army technical CI program; oversees the Army TEMPEST countermeasures program; and provides CI support to selected DA and DOD acquisition and special access programs.

*k.* INSCOM is the Army proponent for CI/HUMINT collection management, for the Army Cover Support Program and for the Army Intelligence Badge and Credentials Program. INSCOM administers and maintains the DA CI/HUMINT source registries and databases.

*l.* INSCOM performs imagery intelligence operations, provides technical and operational support to the Army tactical exploitation of National Space Capabilities effort, and supports the Special Activities Office Intelligence Program.

*m.* INSCOM performs Advanced Geospatial Intelligence (AGI), MASINT and technical collection for the Army, other services, the combatant commands and the intelligence community; when directed by HQDA, INSCOM coordinates AGI, MASINT and technical collection operations with National Geospatial-Intelligence Agency, Defense Intelligence Agency (DIA), other services, and other agencies; maintains and deploys MASINT and technical collection systems to meet Army and national intelligence collection requirements; assists in the preparation of the AGI/MASINT and technical collection doctrine and training; and establishes, maintains, and disseminates classification and security guidance for AGI/MASINT and technical collection within the Army.

*n.* INSCOM is the Army proponent for TI and document/media exploitation; performs threat foreign materiel acquisition and exploitation operations in support of the Army and other Services; conducts TI collection operations and battlefield-level TI exploitation of foreign ground forces materiel; provides interface with strategic scientific and TI agencies in support of foreign materiel exploitation; and supports the DA Foreign Materiel Exploitation and Foreign Materiel Acquisition Program.

*o.* INSCOM provides EW capabilities to Army and CCDRs, technical guidance to the Army on EW threat and maintains the operational level database for meaconing, intrusion, jamming, and interference information.

*p.* INSCOM provides an IO reach back capability and deploys IO support teams for Army and other forces as directed by the DCS, G-3/5/7; manages facets of Army CND in coordination with computer network service providers; executes the Army Reprogramming Analysis Team Threat Analysis Program; conducts computer network attack (CNA) and computer network exploitation; is the functional proponent for battlefield deception; and oversees the Army Operations Security Support Element.

*q.* INSCOM is the Army proponent for open source intelligence under the Defense Intelligence Information Support Program.

*r.* INSCOM exercises centralized oversight of sensitive compartmented information contracting; serves as an obligation authority for designated intelligence funding programs; and assists HQDA in developing the Army intelligence portions of the Five Year Defense Plan.

*s.* INSCOM is the Army proponent for design and development of operational level and expeditionary intelligence systems; develops the overall functional description of intelligence systems for which INSCOM is the sole user; is the Army representative for all phases of SIGINT systems development applicable to Army participation in the national SIGINT system; coordinates with pertinent commands and acquisition agencies for INSCOM sole user systems; is the Army combat developer for MASINT and CNA/special purpose electronic attack weapons; conducts test and evaluation (T&E) for assigned classified or secure source systems; and manages and directs the operations of specialized nonstandard intelligence equipment and the National Inventory Control Point.

*t.* INSCOM is the Army proponent for the Expeditionary Signals Intelligence Training Program; is the Army coordinator for Project Foundry and the Tactical Intelligence Readiness Training Program; and conducts the O-5 series aircraft Aviator Qualification Course.

*u.* INSCOM administers the Army Contract Linguistics Program.

*v.* INSCOM directs the Military Intelligence Civilian Excepted Career and Great Skills Programs.

- w. INSCOM establishes and manages the Technical Surveillance Counter Measure Certification Program.
- x. INSCOM, in compliance with DIA and DCS, G-2, develops attaché personnel requirements and provides personnel, financial, and administrative support for Army personnel assigned to the Defense Attaché System and the Foreign Area Officer Program.
- y. INSCOM operates the Army Central Security Facility and the Cryptologic Records Center.
- z. INSCOM oversees the Army personnel security clearance adjudication program.

### **16-3. Command and staff relationships**

- a. The Commander, INSCOM is supervised by the DCS, G-2.
- b. The Commander, INSCOM is responsible to the SA for execution of assigned responsibilities contained in 10 USC 3013(b). The Commander, INSCOM exercises ADCON authority and responsibility on behalf of the SA and in this regard is primarily responsible for the administration and support of Army forces worldwide for certain ADCON functions.
- c. INSCOM is authorized to communicate and coordinate directly with ACOM, ASCC, or other DRU commanders; HQDA; other DOD headquarters and agencies; and other foreign and domestic Government departments, as required, on matters of mutual interest subject to procedures established by the DCS, G-2.
- d. INSCOM is subordinate to the Chief, Central Security Service IAW U.S. Signals Intelligence Directives for the conduct of SIGINT operations.
- e. Relationships concerning Service responsibilities for RC units and personnel are regulated by MOUs.
- f. INSCOM is dependent on other Army organizations and agencies for appropriate support and services per prescribed regulations and policies.
- g. For command relationships—
  - (1) Command relationships for operational Service forces are established by the SECDEF and applicable CCDRs.
  - (2) Pursuant to the direction of the SA, certain authorities and responsibilities for ADCON of Army forces assigned to a combatant command are shared by the Commander, INSCOM; ACOMs; the ASCC of the COCOM; and other DRUs. Subject to applicable law, regulation, and policy, the allocation of authorities and responsibilities pertinent to the exercise of shared ADCON will be documented in appropriate agreements/understandings between the commanders of INSCOM, ACOMs, the ASCC, and other DRUs as appropriate.

## **Chapter 17 U.S. Army Criminal Investigation Command**

### **17-1. Mission**

USACIDC conducts sensitive or special interest investigations as directed by the SA or the CSA; plans for and provides personal security (protective services) for DOD and DA officials as designated by the SA or CSA; provides criminal investigative support, including forensic support, to all Army elements; maintains overall responsibility for Army investigations of controlled substances; conducts and controls all Army investigations of serious crimes, less serious crimes, upon request, or as necessary for effective Army law enforcement, and fraud; and, other crimes arising in Army procurement activities.

### **17-2. Functions**

- a. USACIDC is designated as a DRU by the SA and reports directly to The Provost Marshal General (PMG), Army.
- b. USACIDC is responsible for the planning and execution of DRU responsibilities by exercising specified ADCON of organic, assigned and attached Army forces.
- c. USACIDC conducts sensitive, classified and other significant criminal investigations and keeps the SA informed of such investigations.
- d. USACIDC prepares reports of criminal investigations and distributes these reports to affected commander's organizations and activities.
- e. USACIDC reports incidents or situations to the SA, CSA, field commanders, and agency heads to keep them aware of matters within their areas of interest.
- f. USACIDC conducts crime prevention surveys and criminal activity threat assessments of facilities, activities, events, and areas that are under Army control or that directly affect the Army community. The USACIDC also conducts crime prevention surveys of other DOD facilities and activities as requested if criminal investigative resources are available.
- g. USACIDC establishes liaison, coordination requirements, and procedures for USACIDC personnel to ensure effective exchange of information on matters of mutual interest with Federal, State, local, and indigenous law enforcement agencies and Army commanders and their staffs.
- h. USACIDC develops criminal intelligence through the collection of raw criminal information and the centralized

**USARPAC**

U.S. Army Pacific

**USARSO**

U.S. Army South

**USASMDC/ARSTRAT**

U.S. Army Space and Missile Defense Command/Army Strategic Command

**USASOC**

U.S. Army Special Operations Command

**USC**

United States Code

**USCENTCOM**

United States Central Command

**USEUCOM**

United States European Command

**USFK**

United States Forces Korea

**USJFCOM**

United States Joint Forces Command

**USMA**

United States Military Academy

**USNORTHCOM**

United States Northern Command

**USPACOM**

United States Pacific Command

**USSOCOM**

United States Special Operations Command

**USSOUTHCOM**

United States Southern Command

**USSTRATCOM**

United States Strategic Command

**USTRANSCOM**

United States Transportation Command

**Section II**

**Terms**

**Administrative control (ADCON)**

Direction or exercise of authority over subordinate or other organizations in respect to administration and support, including organization of Service forces, control of resources and equipment, personnel management, unit logistics, individual and unit training, readiness, mobilization, demobilization, discipline, and other matters not included in the operational missions of the subordinate or other organizations.

**Army Command (ACOM)**

An Army force, designated by the SA, performing multiple Army Service Title 10 USC functions across multiple disciplines. Responsibilities are those established by the SA.

**Army Force Generation (ARFORGEN)**

A structured progression of increased unit readiness over time, resulting in recurring periods of availability of trained, ready, and cohesive units prepared for operational deployment in support of geographic CCDR requirements.

**Army Service Component Command (ASCC)**

An Army force, designated by the SA, comprised primarily of operational organizations serving as the Army component of a combatant command or subunified command. If directed by the CCDR, serves as a JFLCC or JTF. Command responsibilities are those assigned to the CCDR and delegated to the ASCC and those established by the SA.

**Combatant command**

A unified or specified command with a broad continuing mission under a single commander established and so designated by the President, through the SECDEF and with the advice and assistance of the Chairman of the Joint Chiefs of Staff. Combatant commands typically have geographic or functional responsibilities.

**Combatant command (command authority) (COCOM)**

Nontransferable command authority established by 10 USC 164, exercised only by commanders of unified or specified commands unless otherwise directed by the President or the SECDEF. COCOM cannot be delegated and is the authority of a CCDR to perform those functions of command over assigned forces involving organizing and employing commands and forces, assigning tasks, designating objectives, and giving authoritative direction over all aspects of military operations, Joint training, and logistics necessary to accomplish the missions assigned to the command. COCOM should be exercised through the commanders of subordinate organizations. Normally this authority is exercised through subordinate Joint force commanders and Service and/or functional component commanders. COCOM provides full authority to organize and employ commands and forces, as the CCDR considers necessary to accomplish assigned missions. OPCON is inherent in COCOM.

**Command**

The authority a commander lawfully exercises over subordinates by virtue of rank or assignment. Command includes the authority and responsibility of effectively using available resources and for planning the employment, organizing, directing, coordinating, and controlling military forces for the accomplishment of assigned missions. It also includes responsibility for health, welfare, morale, and discipline of assigned personnel.

**Direct Reporting Unit (DRU)**

An Army organization comprised of one or more units with institutional or operational support functions, designated by the SA, normally to provide broad general support to the Army in a single, unique discipline not otherwise available elsewhere in the Army. DRUs report directly to a HQDA principal and/or ACOM and operate under authorities established by the SA.

**Institutional Army**

Those organizations and activities that generate and sustain trained, ready, and available forces to meet the requirements of the National Military Strategy and support the geographic CCDRs in the performance of the full spectrum of military operations. Administer executive responsibilities IAW public law.

**Shared administrative control (shared ADCON)**

The internal allocation of 10 USC 3013(b) responsibilities and functions between Army Organizations for the exercise of ADCON responsibilities and authorities of Army personnel and units. Shared ADCON will be as directed by the SA. The allocation of authorities and responsibilities pertinent to the exercise of shared ADCON between ASCCs, ACOMs, and/or DRUs, as appropriate, will be documented in appropriate agreements/understandings. The exercise of shared ADCON responsibilities and authorities with regard to an Army force are subject, by law, to the authority, direction and control of the SECDEF.

**Training and readiness oversight (TRO)**

The authority CCDRs may exercise over assigned RC forces when not on active duty or when on active duty for training. This authority includes— (1) Providing guidance to Service component commanders on operational requirements and priorities to be addressed in military department training and readiness programs. (2) Commenting on Service component program recommendations and budget requests. (3) Coordinating and approving participation by assigned RC forces in Joint exercises and other Joint training when on active duty for training or performing IDT. (4) Obtaining and reviewing readiness and inspection reports on assigned RC forces. (5) Coordinating and reviewing



DEPARTMENT OF THE ARMY  
OFFICE OF THE DEPUTY CHIEF OF STAFF, G-2  
1000 ARMY PENTAGON  
WASHINGTON, DC 20310-1000

DAMI-ZA

17 June 2011

MEMORANDUM FOR [REDACTED] Headquarters Department of the Army Deputy  
Chief of Staff, G-2, 1000 Army Pentagon, Room 2E408 Washington, D.C. 20310-1000

SUBJECT: Appointment of AR 15-6 Investigating Officer

1. References:

a. Secretary of the Army memorandum, June 9, 2011, subject: Whistleblower Investigation-  
Intelligence and Security Command (INSCOM), Fort Belvoir, Virginia (Office of Special  
Counsel (OSC) File No. DI-11-2122).

b. U.S. Office of the Special Counsel Letter, May 26, 2011, subject: OSC File No.  
DI-11-2122.

2. You are hereby appointed an investigating officer pursuant to AR 15-6 to conduct an informal  
investigation to make findings and recommendations concerning allegations that actions taken by  
employees at the U.S. Army Intelligence and Security Command (INSCOM), constitute a  
violation of a law, rule, or regulation, gross mismanagement, or an abuse of authority with  
respect to the administration and oversight of three government contracts as stated in reference b.  
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 or misconduct disclosed during your inquiry.

3. You are directed to make findings and recommendations on the issues and questions listed  
below in paragraph 4, concerning the administration and oversight of these contracts. In  
conducting your investigation, you will consider the evidence of witnesses, the materials (to  
include enclosures) contained in reference a, and any other materials that you consider relevant.

4. At a minimum, your investigation will address the following issues and questions:

a. Determine if there has been an abuse or the wrongful exercise of authority on the part of  
any individual relative to the subject allegations.

b. Determine if there has been any gross mismanagement committed by any individual  
relative to the subject allegations.



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c. Determine whether you discerned any violations or apparent violations of law, rule, or regulation by Federal or contractor employees regarding INSCOM contracting activities. Specifically identify those provisions that were violated, the individuals who committed the violations, and the facts and circumstances surrounding those violations.

d. Specify the chain of command and supervisory relationships of [REDACTED] and [REDACTED] at INSCOM beginning in January 2008 and continuing to the present. Ensure you specify their authorities and relationships, if any, regarding INSCOM contracting activities.

e. Identify and describe the INSCOM contracting activity to include all officials who held and exercised a contracting warrant to bind the Government to the following contracts: Contract Numbers W911W4-10-D-0011, W911W4-08-F-0102 and W911W4-10-F-1250, as well as those who had the responsibility for administering and overseeing said contracts. Include a "flow chart" of INSCOM Contract Administration and Oversight structure (CY 2008-the present) as part of your DA Form 1574 attachments.

f. Determine whether [REDACTED] or another INSCOM official directed the signing of said contracts (Contract Numbers W911W4-10-D-0011, W911W4-08-F-0102 and W911W4-10-F-1250) on behalf of the Army. If any official directed such signing, determine if he/she had the proper authority to do so.

g. Determine whether the identified contracts (Contract Numbers W911W4-10-D-0011, W911W4-08-F-0102 and W911W4-10-F-1250) were properly entered into by INSCOM officials, whether said contracts were properly administered, and whether the contracts have been performed and deliverable and usable end products have been provided according to the contract terms. At a minimum, ensure the following matters are addressed:

1. Contract Number W911W4-10-D-0011. Were all the positions that were the subject of the total contract cost of \$8,238,429.80 filled during the entire time of the contract so as to merit the full payment of \$8,238,429.80?

2. Contract Numbers W911W4-08-F-0102 and W911W4-10-F-1250. *Salary & TEA*

a. Where the end products produced and delivered to meet the contract requirements usable? Describe in detail whether or not the end products met the contract requirements.

b. Did the contractor Avue Technologies Corporation have the appropriate certifications to perform the work required by Contract Numbers W911W4-08-F-0102 and W911W4-10-F-1250.

c. Did Avue Technologies Corporation mislead any government officials?

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d. Were [REDACTED] and [REDACTED] or other INSCOM officials aware of any shortfalls in the work product provided by Avue Technologies Corporation, and if so, did they fail to intervene or take follow up action to ensure Avue was made aware of these shortfalls?

3. If the contracts have not been appropriately administered or performed, state the cause(s) and determine (if applicable) which INSCOM officials were aware of any shortfalls and (if applicable) whether any corrective actions have or should have been pursued (e.g. contract modification, termination etc.).

4. Determine whether the identified contracts (Contract Numbers W911W4-10-D-0011, W911W4-08-F-0102 and W911W4-10-F-1250) contained the appropriate Default Clause as required by 48 C.F.R. 49.402-1.

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 involve INSCOM contracting activities. You are advised not to investigate matters that fall outside INSCOM contracting activities. If you are in doubt regarding the relevance of a matter, you will consult your legal advisor, Major [REDACTED] Office of the Judge Advocate General, Administrative Law Division [REDACTED]. You will consult with your legal advisor prior to beginning your investigation.

6. In conducting your investigation, you will use the informal procedures specified in AR 15-6, Chapter 4. Upon completing your investigation, you must provide appropriate specific findings and recommendations. 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 and assess the relative weight and credibility of the evidence and determine, if possible, which evidence should be accepted as valid. If any questions asked solicit an answer that requires a follow-up question and answer, ensure that you have pursued those questions in order to fully develop the recorded evidence.

7. 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 findings. In compiling your report of investigation, consider carefully that information contained therein will be subject to public disclosure and release.

8. You should contact those witnesses you consider relevant during the course of your investigation. You are to thoroughly document all witness interviews in writing, preferably on DA Form 2823 (Sworn Statement), and have witnesses certify their statements when final. In

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In addition, you must provide all persons interviewed with a Privacy Act statement before you elicit any information.

9. All witness statements will be written (typed or block printed) and sworn. You will interview all witnesses in person, if practicable. Caution all individuals that they must not discuss the subject matter of the investigation with anyone other than a properly detailed and identified investigator. If, in the course of your investigation, you come to suspect that certain people may have committed criminal conduct, you must advise them of their rights under Article 31, UCMJ, or the Fifth Amendment, U.S. Constitution, as appropriate. In such a case, waivers should be documented on DA Form 3881 (Rights and Warning Procedure/Waiver Certificate).

10. This investigation has been directed by the OSC pursuant to a whistleblower complaint. The whistleblower at this time remains anonymous. However, should the whistleblower identify himself or herself to you, you must fully interview him/her as part of your investigation.

11. 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.

12. 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 proceed.

13. 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.

14. COL(P) [REDACTED] Director for Contracting, Deputy Assistant Secretary of the Army (Procurement) ([REDACTED]), a Federal acquisition subject matter expert, will assist you in this investigation. You should contact him prior to conducting any interviews. (i)

15. 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 the DA Form 1574, with appropriate enclosures and forward the entire package, to me. Before beginning your investigation, you must receive a legal briefing from your legal advisor, Major [REDACTED]. You may consult the legal advisor at any time during the investigation and you will consult the legal advisor before you advise anyone of their rights under Article 31, UCMJ, or the Fifth Amendment, U.S.

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Constitution, and before putting your report in final form. Additionally, along with your report of investigation, you will submit a draft final agency response in accordance with the requirements as stated in reference b enclosure 3.

16. You are directed to begin your investigation as soon as practicable. This investigation takes priority over all normal duties, TDY and leave. You must turn in your report NLT 30 days from the date of this memo. If you need additional time you may request it directly from me. Recognize that the suspense for Department of the Army to respond back to the Office of Special Counsel is 25 July 2011. Therefore any additional time that will extend beyond that date will need to be coordinated with [REDACTED] DAOGC [REDACTED]

Encls  
as

  
RICHARD P. ZAHNER  
Lieutenant General, USA  
Deputy Chief of Staff, G2

Boards, Commissions, and Committees

# Procedures for Investigating Officers and Boards of Officers

Headquarters  
Department of the Army  
Washington, DC  
2 October 2006

**UNCLASSIFIED**





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.

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## 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 5-4a.)

(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 8-3i(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, 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 5-4a, 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 2-1a(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 2-1a(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 5-1e, 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 seniority 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 seniority shall be final (see para 2-3c).

(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.

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*(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

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(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)

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

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(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)

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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

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(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

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(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

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## 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 1-9c and d). In all investigations involving fratricide/friendly fire incidents (see AR 385-40), the appointing authority, after taking action on the investigation, will forward a copy of the completed investigation 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 3-10b).
- (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 2-1a), 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.

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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 I?

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?

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

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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.*

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

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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.*

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

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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.*

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#### 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

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### 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 3-8e).

*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 3-6b) 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 1 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 5-7c)) 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 3-8a.)

(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 5-8a.)
- 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 5-2b), 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 3-7c(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 3-7c(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](http://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](http://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](http://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 action 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.

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Management  
ACQUISITION STRATEGY REVIEW AND CONTRACT MANAGEMENT

---

CHARTER FOR THE  
INSCOM  
CONTRACT ACQUISITION REVIEW BOARD (CARB)

1. MISSION

On behalf of the INSCOM Commander, the CARB will evaluate contracts, task or delivery orders, and contract related documents for INSCOM's acquisition activities. The CARB will make recommendations to the INSCOM Commander regarding the relevance, effectiveness, and efficiencies of the acquisition strategy and contracting methods chosen to provide a capability that satisfies an INSCOM mission or task consistent with the Commanding General's (CG) priorities. The CARB's goal is to ensure each INSCOM contract uses the best possible acquisition approach in support of INSCOM's intelligence missions.

2. AUTHORITY

The CARB derives its authority from the CG who is the Head of Contracting Activity (HCA). As part of the review process, the CARB is authorized to request information as required to accomplish its mission i.e., mission and task information, contract proposal and execution information, military inter-departmental purchase request (MIPR), funding sources, procedures, and other information. The CARB is authorized to interface with HQs staff elements, Major Subordinate Commands (MSCs), Contracting Officers (KOs), Contracting Officer Representatives (CORs), and Technical Task Managers (TTMs).

3. COMPOSITION

The CARB should consist of the Principal or Deputy from the below listed staffs. If the Principal or Deputy is unavailable, that element's representative must have training or experience in contracting and acquisition policy. Additionally, members will be well versed in INSCOM's Strategic Plan, mission requirements, priorities and resourcing processes.



- Chief of Staff (Chairperson)
- PARC (Deputy Chairperson)
- ACofS, G1
- ACofS, G3
- ACofS, G4
- ACofS, CIO/G6
- ACofS, RM
- DOC
- G2X
- HQDA G2

a. Secretariat: The secretariat of the CARB will be appointed by the CARB Chairperson. The secretariat must have training and experience in contracting and acquisition policy and must be COR trained.

b. Advisors: Advisors to the CARB will consist of subject matter experts from the HQs INSCOM staffs listed below. Advisors will attend CARB meetings as requested by the Chairperson.

- Directorate of Futures
- Director of Small Business Program
- SJA
- IG
- G2
- Others as required

#### 4. RESPONSIBILITIES

a. Chairperson

- Implement policy and guidance on the CARB procedures for reviewing, validating, and recommending for approval or disapproval for contract acquisition requests
- Prepare contract management information items or decision items
- Represent the CARB in other forums and reporting activities as required
- Mediate and seeks resolution to reach consensus
- Present Majority and Minority positions to the Commanding General
- Call and chair meetings
- Approve minutes
- Provide oversight of acquisition and contract management data

- The Deputy Chairperson will perform the duties and responsibilities of the Chairperson when the Chairperson is absent or if otherwise delegated
- b. Members
- Represent organizational or functional viewpoints consistent with the missions and responsibilities of the CARB
  - Propose discussion/decision items
  - Attend and participate in meetings
  - May invite subject matter experts/advisors as necessary
- c. Secretariat
- Coordinate and review agenda items prior to presentation to the CARB
  - Schedule regular meeting times and location
  - Research and present items of interest based on the business on the agenda
  - Ensure that proprietary information in the possession of the CARB is properly protected
  - Disseminate decision results to appropriate officials within INSCOM
  - Monitor the progress of actions
  - Serve as focal point for follow-on actions required by the CARB
  - Act as the data steward for acquisition and contract management data
  - Maintain CARB files and portal submissions
  - Provide administrative assistance
  - Review CARB packages to ensure that they are complete prior to review by the CARB. Incomplete CARB packages are returned to submitting organization with instructions to complete the package in accordance with the CARB letter of instruction
  - Capture cost savings/cost avoidance as a result of CARB actions

## **5. THE CONTRACT ACQUISITION AND FUNDING REVIEW PROCESS**

- a. Scope The following sections explain the information required and oversight that will be applicable to the following types of contracting activities with an estimated cost of \$500,000 and/or three (3) full contractor work years or more:
- All contracts that are executed by the INSCOM DOC
  - All contracts that involve a MIPR where funds are received, sent, or controlled by INSCOM and are transferred to an organization outside of INSCOM HQ for contract execution
  - Any increase or decrease in funding (\$500,000) and/or labor hours (three work years) by modification to an existing contract or task order

- If more than one action is contemplated for the same statement of work within a given fiscal year, the dollar amount applies to the cumulative dollar amount for the fiscal year. In that instance, the cumulative effort should be briefed initially and approval may be obtained in advance for the other associated actions
  
- b. CARB Review Focus Areas
  - Mission and Task: Ensure that all submissions meet validated mission requirements
  
  - Performance: The scope and desired outcomes of the acquisition are clearly articulated
  
  - Non-duplication of Effort: Ensure the contract or task does not unnecessarily duplicate functions or services currently performed by the government workforce or existing contract efforts
  
  - Enterprise-wide Management: Ensure that INSCOM takes advantage of economies of scale and other potential savings that may be achieved through combining like requirements across INSCOM
  
  - Funding: Ensure the appropriate type of funds are used and that the action meets fiscal statutory and regulatory requirements. The CARB board will consider the following in its discussion of fiscal issues:
    - The expected costs of the contract
    - Availability of funding within resource program (BA1, Army, S&IA, CCP, GDIP, NGP, FCIP, MIP, GWOT, etc.) with respect to the contract function
    - Availability of funding (fully funded verses partially or incrementally funded) in or across fiscal years
    - The amount of funds provided from INSCOM base and/or other sources, e.g., GWOT, supplemental, inbound MIPRs, etc.
    - Whether appropriate approvals have been obtained
      - Budget data will be identified using the appropriate RM database system
      - Contract modifications over \$500,000 will be reviewed by the HQs INSCOM Command Group, excluding incremental funding modifications for contract actions which have been previously approved by the Command Group
  
  - Information Technology Configuration Control Issues: The CARB Board will verify that the CIO/G-6 has reviewed the impacts of the proposed acquisition upon INSCOM's Corporate IT Network

- Research and Development Technology Areas: The CARB will verify/ensure that the Futures Director has reviewed and provided input on all R&D related acquisition actions
  
- Timelines:
  - All CARB submissions will be entered into the CARB portal not later than the close of business of the Wednesday preceding the next scheduled CARB meeting to allow adequate time for review. Submissions received after this deadline will not be reviewed at the next scheduled CARB meeting, but will be reviewed at the next subsequent CARB meeting
  - All requests for new contracts must be submitted to the CARB in advance of the lead times listed below. The following provides details on required lead time:
    - New start over \$30M - 10 months
    - New start \$5M to \$30M - 134 days
    - Commercial open market new starts
      - \$500k to \$5M - 104 days
      - \$100K to 500K - 74 days
      - Under \$100K - 60 days
    - 8(a) Sole Source award - 104 days
    - Order under a GSA schedule - 74 days
    - Competition under an existing IDIQ multiple award contract - 74 days
    - Funding modification or option exercise - 74 days

c. CARB Meetings

- The CARB will meet a minimum of once per week or as directed by the CARB Chairperson
  - The exact time and location of the meetings will be determined and scheduled by the secretariat. The weekly CARB meetings are normally scheduled for 0900-1200 on Wednesday
- CARB meetings will be limited to the CARB members and those personnel invited to present their submission(s) by a CARB member
  - Those personnel required to explain submissions will be present only during the actual presentation/briefing of their submissions
- Geographically separated elements will conduct their presentations/briefings via telephonic conference call
- Briefings/presentations will be generally limited to ten (10) minutes
- An agenda, giving the order for review of CARB submissions, will be published no later than 1200 the day prior to each CARB meeting

d. Required from the Originator

- Originators must submit the following information:
  - Management decision and justification document which provide:
    - A clear description of the acquisition requirement, cost and quantity, that is supported by a description of the types and quantities of labor mix, bill of materials and location of where work will be performed
    - Correlation to HQ INSCOM priorities and requirements and impact statement if action is disapproved
    - Rationale for using a contracting office outside of INSCOM and issuing a MIPR
    - Rationale for the choice of an existing contract vehicle or a new contract vehicle
    - Dependencies in which this contract, task order, or funding process is connected, related to, or could be affected by other contracts, task orders, and funding processes
    - Rationale for why the function cannot be performed by existing government resources/authorizations
    - Staffing and coordination verification (note: legal review will occur during the execution phase; after approval by the INSCOM Commander)
  - Certification of funding availability and or funding strategy by program element and fiscal year (to include options). See ANNEX B for matrix to provide fiscal information
  - Independent Government Cost Estimate (IGCE) (New contract requirements or change in contract scope)
  - Performance Based Work Statement or Statement of Work
  - A matrix of military, government civilian (to include POH/TOH positions) and/or contractor personnel authorized for or currently performing this or similar function(s) at the MSC or Principal Staff level. See ANNEX C for matrix to provide this information
  - Procurement for IM/IT (IAW AR 25-1) labor/services/equipment must be reviewed and approved by the CIO/G-6 configuration control board prior to submission to the CARB. An approved IR 25-70 request must be included in the submission
  - Verification that space and infrastructure is available to support this effort
  - Other pre-contract acquisition data as requested by CARB
  - Originators must comply with the following format requirements:
    - Use the current, approved versions of CARB forms found on the portal to submit the CARB package. Do not tailor or otherwise modify the forms

- Submissions to the CARB must be accompanied by a transmittal letter signed by the relevant MSC Commander/Staff Principal or Deputy
- When requesting additional contractor support, the MSC Commander/Staff Principal or Deputy will provide a signed request for Service Contract Approval Form for the INSCOM CG's review/approval IAW the Secretary of the Army letter dated 23 February 2006, Subject: Army Policy for Civilian Hiring and Initiation/Continuation of Contracts for Service Personnel
- See ANNEX D for required documents by type of contracting action

e. Exceptions

- The INSCOM Commander has authorized expedited or exempted contract actions for: Special Access Programs as necessary, health and safety issues, and unprogrammed and/or immediate funding where the CARB process may delay execution beyond an acceptable timeline
- The INSCOM Commander is the approval authority for any other requests to expedite or exempt contract actions
- The HQDA, G-2 will submit the Request for Contract Approval and CARB Summary (utilizing the G-2 specific templates available at the CARB Portal). For contracting actions handled by INSCOM Contracting, the following documents (as applicable) will be submitted: PR&C, IGCE, DD-254, Market Research Request, PBWS, and Justification & Approval. Signature by the HQDA G-2 Principal on the Request for Contract Approval will serve as the transmittal letter. The HQDA, G-2 is exempt from submitting Annex B, Annex C, and the IR25-70.

6. REQUIREMENTS

- a. Each cognizant HQ INSCOM Staff Element will validate requirements in its proponent areas and identify cost savings/cost avoidance in applicable recommendations.
- Requirements will be reviewed through an INSCOM enterprise, or corporate, perspective rather than as unrelated, individual actions. It is necessary to determine if the various requirements compliment or support each other or if they are duplicative and redundant
    - o Submitters should coordinate actions which are parts of or link directly into larger efforts (such as IT support, SSLSM and MASINT) with their counterparts or POCs on the HQ INSCOM Staff
    - o It is necessary from a funding perspective to determine the total cost for a specific effort, function or requirement. Savings can be realized, and efficiencies gained, by using the same contracting vehicle to consolidate identical or similar contractor support for multiple users

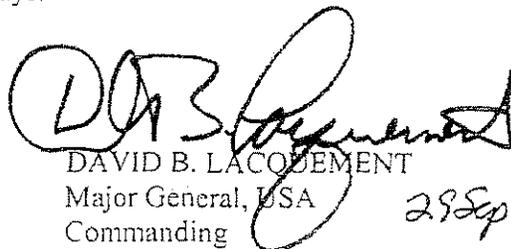
- Requirements must be coordinated with the appropriate INSCOM Staff Element(s) before the CARB action is submitted into the portal. Uncoordinated submissions consume a disproportionate amount of time and delay actions
  - Although each Staff Element will validate requirements in the area(s) for which it is the proponent, the INSCOM G3 will prioritize requirements against each other and based on INSCOM's overall validated needs
- b. CARB submissions must identify the originator or source of each requirement. Originator means the authority that originally directed or tasked the requirement -- HQDA G2, DIA, NSA, etc. An initiative or self-imposed mission or function is not considered an original requirement.

## 7. DECISION AUTHORITY

The INSCOM Commander has authority to approve or disapprove all CARB actions except those submitted by the HQDA, G-2. Approval by the INSCOM Commander validates the relevance, effectiveness, and efficiency of the acquisition strategy. All approved actions must still be executed in accordance with applicable statute, rules, and regulations. The CARB Secretariat will post the CARB recommendations on the portal within five days of the CARB's review of the submission. The CARB recommendations to the Commander will consist of one of the following:

- Approve the submission and recommend execution
- Approve the submission, with modification, and recommend execution
- Disapprove the submission with rationale

Secretariat will post the Command Group's decision on the contract action via the CARB portal within three working days.

  
DAVID B. LACOMMENT  
Major General, USA  
Commanding

29 Sep 08

ANNEX A  
CONTRACT ACQUISITION REVIEW BOARD  
UNCLASSIFIED  
ABBREVIATIONS/ACRONYMS

BA1 (TIARA)	Tactical Intelligence and Related Activities Program
CARB	Contract Acquisition Review Board
CCP	Consolidated Cryptologic Program
CG	Commanding General
CIO/G6	Chief Information Officer
COR	Contracting Officer Representative
CofS	Chief of Staff
CORE DB	Data Base
DIA	Defense Intelligence Agency
DJCIP	Defense Joint Counterintelligence Program
DOC	Director of Contracting
DoD	Department of Defense
FCIP	Foreign Counterintelligence Program
G1	Personnel
G2	Intelligence and Security
G2X	CI/HUMINT Staff
G3	Operations
G4	Logistics
GDIP	General Defense Intelligence Program
GWOT	Global War on Terrorism
HCA	Head of Contracting Activity
HQDA	Headquarters Department of Army
HQs	Headquarters
IAW	In Accordance With
IG	Inspector General
IGCE	Independent Government Cost Estimate
I2S	INSCOM Investment Strategy
IM/IT	Information Management/Information Technology

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INSCOM	U S Army Security and Intelligence Command
IR	INSCOM Regulation
KO	Contracting Officer
MAA	Mission Area Analysis
MIP	Military Intelligence Program
MIPR	Military Inter-departmental Purchase Request
MSCs	Major Subordinate Commands
NGP	National Geospatial Intelligence Program
NLT	Not Later Than
NSA	National Security Agency
PAO	Public Affairs Office
PARC	Principal Assistant Responsible for Contracting
PD2	Procurement Desktop-Defense
PIO	Program Integration Office
RDT&E	Research Development Test and Evaluation
RM	Resource Management
SBP	Small Business Program
S&IA	Security and Intelligence Activities Program
SJA	Staff Judge Advocate
TTMs	Technical Task Managers





New Request	Option Year	MIPR	Modification
<ul style="list-style-type: none"> <li>▪ CARB Summary Sheet</li> <li>▪ CG Approval Request</li> <li>▪ PR&amp;C</li> <li>▪ DD 254</li> <li>▪ IGCE</li> <li>▪ Market Research Request</li> <li>▪ Annex B</li> <li>▪ Annex C (when applicable)</li> <li>▪ Transmittal Letter</li> <li>▪ Form 3044 (25-70) (when applicable)</li> <li>▪ PWS/SOW</li> <li>▪ Other Supporting Documents as Required: (Equipment list, J&amp;A*, and/or D&amp;F*)</li> </ul> <p>* Approved by legal advisor</p>	<ul style="list-style-type: none"> <li>▪ CARB Summary Sheet</li> <li>▪ CG Approval Request</li> <li>▪ PR&amp;C</li> <li>▪ DD 254</li> <li>▪ IGCE</li> <li>▪ Market Research Request</li> <li>▪ Annex B</li> <li>▪ Annex C (when applicable)</li> <li>▪ Transmittal Letter</li> <li>▪ Form 3044 (25-70) (when applicable)</li> <li>▪ PWS/SOW</li> <li>▪ Other Supporting Documents as Required: (i.e., Equipment list)</li> </ul> <p>* Approved by legal advisor</p>	<ul style="list-style-type: none"> <li>▪ CARB Summary Sheet</li> <li>▪ CG Approval Request</li> <li>▪ Annex B</li> <li>▪ Annex C (when applicable)</li> <li>▪ Transmittal Letter</li> <li>▪ Form 3044 (25-70) (when applicable)</li> <li>▪ MIPR approved by legal advisor (Economy Act based MIPRs and MIPRs outside DoD require D&amp;F*)</li> <li>▪ Other Supporting Documents as Required: (Equipment list, J&amp;A*)</li> </ul> <p>* Approved by legal advisor</p>	<ul style="list-style-type: none"> <li>▪ CARB Summary Sheet</li> <li>▪ CG Approval Request</li> <li>▪ PR&amp;C (when applicable)</li> <li>▪ Annex B</li> <li>▪ Annex C (when applicable)</li> <li>▪ Transmittal Letter</li> <li>▪ Form 3044 (25-70) (when applicable)</li> <li>▪ Other Supporting Documents as Required: (Equipment list, J&amp;A*, and/or D&amp;F*)</li> </ul> <p>* Approved by legal advisor</p>

**ANNEX D**



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DEPARTMENT OF THE ARMY  
UNITED STATES ARMY INTELLIGENCE AND SECURITY COMMAND  
8826 BELLAH STREET  
FORT BELVOIR, VIRGINIA 22060-5246

IAPC-DOC

November 30, 2010

MEMORANDUM FOR

SUBJECT: Contracting Officer's Representative Appointment for [REDACTED]

1. Pursuant to DFARS 201.602-2, you are appointed as the Contracting Officer's Representative (COR) in administration of the following contract:  
Contract No: W911W4-10-D-0011-0001  
For: Programming & Resource Management Support Services  
Contractor: Silverback7  
Contract Period: 1 Sept 2010 – 31 August 2015
2. You are authorized by this designation to take action with respect to the following:
  - a. Verify the contractor performs the technical requirements of the contract in accordance with the contract terms, conditions and specifications. Specific emphasis should be placed on the quality provisions, for both adherences to the contract provisions and to the contractor's own quality control program.
  - b. Perform, or cause to be performed, inspections necessary in connection with PWS and verify the contractor has corrected all deficiencies. Perform acceptance for the Government of services performed under this contract.
  - c. Maintain liaison and direct communications with the contractor. Written communications with the contractor and other documents pertaining to the contract shall be signed as an "Alternate Contracting Officer's Representative" and a copy shall be furnished to the Contracting Officer.
  - d. Monitor the contractor's administrative performance; notify the contractor of deficiencies observed during surveillance and direct appropriate action to effect correction. Record and report to the Contracting Officer incidents of faulty or nonconforming work, delays or problems. In addition, you are required to submit a monthly report concerning performance of services rendered under this contract.
  - e. Coordinate site entry for contractor personnel, and insure any Government-furnished property is available when required.
  - f. Monitor the contractor's reporting of information as required under the Contracting Manpower Reporting (CMR) requirement task of the contract.
  - g. Input data concerning the contractor's past performance into the Contractor Performance Assessment System (CPARS).
  - h. Complete and ensure contractor's personnel completion of initial and refresher Mandatory Intelligence Training in accordance with Army Regulation (AR 381-10).

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TAB F

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3. You are not empowered to award, agree to or sign any contract (including delivery orders) or contract modification or in any way to obligate the payment of money by the government. You may not take any action which may affect contract or delivery order schedules, funds or scope. All contractual agreements, commitments, or modifications which involve price, quantity, quality, delivery schedules, or other terms and conditions of the contract must be made by the Contracting Officer. You may be personally liable for unauthorized acts. You may not re-delegate your COR authority.
4. Your appointment as COR will remain in effect through the life of the contract, unless sooner revoked in writing by the Contracting Officer or unless you are separated from Government service. If you are to be reassigned or to be separated from Government service, you must notify the Contracting Officer sufficiently in advance of reassignment or separation to permit timely selection and designation of a successor COR. If your appointment is revoked for any reason before completion of this contract, turn your records over to the successor COR or obtain disposition instructions from the Contracting Officer.
5. You are required to maintain adequate records to sufficiently describe the performance of your duties as a COR during the life of this contract and to dispose of such records as directed by the Contracting Officer. As a minimum, the ACOR file must contain the following:
  - a. A copy of your letter of appointment from the Contracting Officer, a copy of any changes to that letter, and a copy of any termination letter.
  - b. A copy of the contract or the appropriate part of the contract and all contract modifications.
  - c. The applicable quality assurance surveillance plan (QASP).
  - d. All correspondence initiated by authorized representatives concerning performance of the contract.
  - e. The names and position titles of individuals who serve on the contract administration team. The Contracting Officer must approve all those who serve on this team.
  - f. A record of inspections performed and the results.
  - g. Memoranda for record or minutes of any pre-performance conferences.
  - h. Memoranda for record or minutes of any meetings and discussions with the contractor or others pertaining to the contract or contractor performance.
  - i. Applicable laboratory test results.
  - j. Records relating to the contractor's quality control system and plan and results of the quality control effort.
  - k. A copy of the surveillance schedule.

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1. Documentation pertaining to your acceptance of performance of services, including reports and other data.
6. At the time of contract completion, you will forward all records to the Contracting Officer for retention in the contract files.
7. All personnel engaged in contracting and related activities shall conduct business dealings with industry in a manner above reproach in every aspect and shall protect the U.S. Government's interest, as well as maintain its reputation for fair and equal dealings with all contractors. DOD 5500.7-R sets forth standards of conduct for all personnel directly and indirectly involved in contracting.
8. A COR who may have direct or indirect financial interests which would place the COR in a position where there is conflict between the ACOR's private interests and the public interests of the United States shall advise their supervisor and the Contracting Officer of the conflict so appropriate actions may be taken. ACOR's shall avoid the appearance of a conflict of interest in order to maintain public confidence in the U.S. Government's conduct of business with the private sector.
9. You are required to acknowledge receipt of this appointment on a duplicate copy and return it to the Contracting Officer. Your signature also serves as certification you have read and understand the contents of DOD 5500.7-R. The original copy of this appointment should be retained for your file.
10. Point of contact for this action is the undersigned at (703) 428-4466 or email: [REDACTED]@mi.army.mil.

11. COR contact information: [REDACTED]@mi.army.mil / 301-688-6402

[REDACTED]  
Contracting Officer

RECEIPT ACKNOWLEDGED

[REDACTED]  
30 NOV 10

Date

Programming & Resource Management Support Services

[REDACTED]@mi.army.mil  
(703) 428-4425

CF:  
Contractor: Silverback7  
Contract File

IACS

16 FEB 2011

MEMO FOR BT SRG

SUBJECT: BT SRG Meeting, 15 Feb 11

1. BT SRG Members Present (8 out of 13):

Members

C/S, [REDACTED]  
G-1, [REDACTED]  
G-2, [REDACTED]  
G-3, [REDACTED]  
G-4, [REDACTED]  
CIO/G-6, [REDACTED]  
G-8, [REDACTED]  
SMIO, [REDACTED]

Staff & Guests

SMIO-BTO, [REDACTED]  
SMIO-BTO, [REDACTED] (MBB)  
SMIO, [REDACTED]  
G-1, [REDACTED]  
G-1, [REDACTED]

2. One (1) IPR was presented.

GB – Streamline and Automate Timecard Preparation (G-1): [REDACTED]

BTO [REDACTED] presented to SRG for review and decision. [REDACTED]

a. Discussion: The BT SRG members discussed the current problems, issues and concerns as presented about the current Automated Time Attendance (ATA) system not meeting our time & attendance needs. The original 4 pay period pilot from Apr-Jun 10 was considered a success in terms of reducing manual defects (missing documents, wrong codes, missing signatures, etc). However, new electronic defects, which were identified and delivered to the vendor in three different rounds, were not successful. Furthermore, the number of defects from electronic errors increased from 10% to 60% as of pay period ending 12 Feb 11. Therefore, the ATA was not suitable for full headquarters deployment. Additional discussions focused on how the contract was changed apparently due to DOC missing the option year renewal by 3 days. Considerable discussion was held regarding the recent discovery that the vendor had an expired Interim Authority To Operate (IATO) with DoD and we were no longer authorized to process Personal Identifiable Information (PII) with this vendor.

b. Tasking:

[REDACTED]  
(1) G-1 will draft and staff and email to be published NLT COB Wednesday 16 Feb 11 to the pilot participants, explaining the decision to stop using the current ATA product.

TAB G

IACS

SUBJECT: BT SRG Meeting, 15 Feb 11

(2) DOC and G-1 will discuss with AVUE the method by which INSCOM will receive records of time and attendance transactions in AVUE for the period April 2010 to present.

(3) DOC will determine the best method and timeframe with which to stop the contract with coordination and feedback from G-1.

(4) CIO/G-6 will coordinate with DOC to ensure all proper procedures for the vendor for removing our PII from their systems is identified, communicated, accomplished and inspected.

(5) DOC will officially notify the vendor that INSCOM will no longer use their ATA product.

(6) G-1 will quickly identify an alternate ATA solution which is being used by a majority of Army customers and meet with a few of those organizations to gather best practices and feedback about the product. Afterwards, the G-1 will present their recommendations for a replacement ATA to the BT SRG for decision regarding funding and implementation date.

*SUSPENSE: 17 MARCH 2011. ENSURE SUSPENSE IS ENTERED INTO LCATS.*

(7) CofS will follow-up with DOC regarding the CARB/contracting process related to the most recent contract with AVUE.

(8) DOC will follow-up with data input into the CPARS system to document AVUE's performance.

c. Decision:

(1) INSCOM headquarters ATA Pilot Participants will stop using the ATA effective immediately and revert back to the direct DCPS manual entry method until a replacement ATA can be identified and implemented.

(2) G-1 will process current pay period directly into DCPS and will no longer submit any electronic pay files to DFAS from AVUE for processing. *G-1 WILL INFORM DFAS OF THIS CHANGE OF SUBMISSION VENUE.*

(3) If ATA records are not retrieved from AVUE, INSCOM needs to address the situation with the DAIG openly on the LSS Project issue, if records of individuals from pilot are selected for inspection.

3. The INSCOM Point of Contact is the INSCOM Business Transformation Office (IASI-BTO), 703-428-4624/4990.

[Redacted signature block]

Chief of Staff

# IPR Update

## Lean Six Sigma Streamline and Automate Timecard Preparation IPR Update

[REDACTED] (GB)  
[REDACTED] (Mentor)

[REDACTED] (Sponsor)

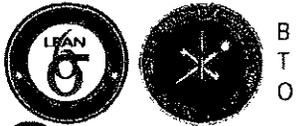
15 February 2011



INSCOM's Business Transformation Office (BTO)

- ◆ Purpose
- ◆ Summary of Change Requests
- ◆ Course of Actions
- ◆ Before (As-Is), Pilot (To-Be), & After (Now)
- ◆ Major Electronic Errors
- ◆ Issues/Concerns
- ◆ Transition Plan
- ◆ Lessons learned
- ◆ Decision
- ◆ Discussion & Questions

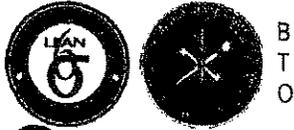
- ◆ The Purpose of this presentation is to update the BT SRG members on the status of the ongoing Time & Attendance Project within select headquarters directorates with our partner AVUE.
- ◆ Discuss problems, issues and concerns about current vendor inability to meet our Time & Attendance Needs.
- ◆ Get a Decision based on Courses of Action for Way-Ahead:
  - AVUE Promised INSCOM management reports, time off request forms, and customization:
  - What we got was no reports, broken forms, 60% electronic error rate, and no further customization



# Summary of Change Requests

IPR Update

- ◆ INSCOM has requested 3 rounds of changes to improve product and minimize electronic defects after the pilot:
  - ◆ Round 1 – 8 Jul 10 (23 Change Requests)
    - ◆ 2 Week Timesheet
    - ◆ Improved time off and extra time request process interactions
    - ◆ Eliminate .5 hour OT/Meal Error
    - ◆ Need Management Reports
    - ◆ Fix Travel Comp Form
  - ◆ Round 2 – 3 Sep 10 (32 Change Requests)
    - ◆ Supervisors need to be able to certify all pay periods and pending transactions for current and previous pay period from 1 screen
    - ◆ Improve Schedule Forms and Schedule change process
    - ◆ Eliminate .5 hour OT/Meal Error
    - ◆ Need Management Reports
  - ◆ Round 3 – 13 Jan 11 (90 Change Requests)
    - ◆ Supervisors need to be able to certify all pay periods and pending transactions for current and previous pay period from 1 screen
    - ◆ Improve Schedule Forms and Schedule change process
    - ◆ Eliminate .5 hour OT/Meal Error
    - ◆ Need Management Reports
    - ◆ More mistake proofing and user friendliness improvements



# Courses of Action

IPR Update

## ◆ CA #1 Transition to a Different Product



Temporarily Return Pilot Participates to Manual Process Through an Organized Re-Transition Process (Over 4 pay periods) – No longer an option due to PII Concerns – Cease Immediately

- ◆ Full Headquarters Implementation with kickoff with new Product

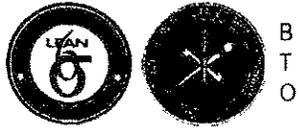
- ◆ Least Risky with Electronic Errors and Lower Costs

## ◆ CA #2 Stop AVUE ATA Services and Return to Manual Process

- ◆ Moderate Risk of Continued Manual Errors

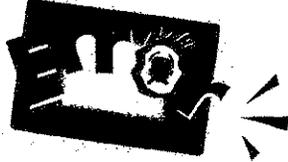
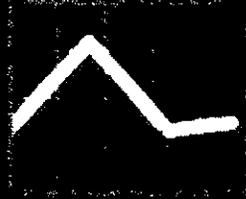
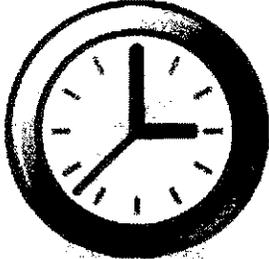
## ◆ CA #3 Stay With AVUE for ATA Services

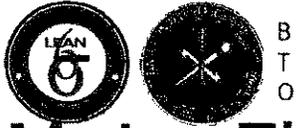
- ◆ Most Risky with Electronic Errors and Increasing Costs



# Before (As-Is), Pilot (To-Be), & After (Now)



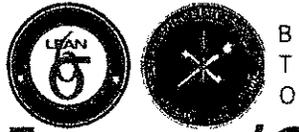
	Before (As-Is) – Prior to 11 Apr 10	Pilot (To-Be) – 11 Apr – 5 Jun 10	After (Now) – 6 Jun 10 - Present
Defect Rate	<ul style="list-style-type: none"> <li>Manual Errors = 34.5%</li> </ul> 	<ul style="list-style-type: none"> <li>Manual Errors = 0% (Goal was &lt;=3%)</li> <li>Electronic Errors = 10% Invalids</li> </ul> 	<ul style="list-style-type: none"> <li>Manual Errors = 0% (Goal was &lt;=3%)</li> <li>Electronic Errors = 60% (40% caught by INSCOM prior to submission) 20% Invalids</li> </ul>
Process Cycle Time (PCT)	<ul style="list-style-type: none"> <li>46 minutes per employee per pay period + 11 minutes CSR time</li> </ul> 	<ul style="list-style-type: none"> <li>16 minutes per employee per pay period + 30 minutes of CSR time</li> </ul>	<ul style="list-style-type: none"> <li>90 minutes per employee per pay period + 3600 minutes of CSR time (Includes and</li> </ul> 



# Major Electronic Errors

IPR Update

- ◆ Schedule Change Requests not be submitted correctly to DFAS
- ◆ Time Off Award Balances took 60-90 days to update after DCPS and mypay balances updated
- ◆ Military Leave Balances not updated for those eligible
- ◆ Numerous invalid OT requests due to meal/elapsed time issues being corrected prior to and after submission to DFAS
- ◆ 30+ cases of employees being charged annual leave during a holiday
- ◆ 5+ cases of employees being paid 1-4 pay periods after there termination dates.
- ◆ Deployed employees not getting OT or holiday pay consistently and on a regular basis.
- ◆ Employee timecards overwritten with less hours or not receiving approved OT as requested, approved and certified.

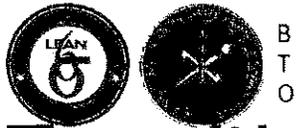


## Issues/Concerns

IPR Update

- ◆ DA IG Inspection of ATA for Pilot Participants Records
- ◆ Orderly Transition Away From AVUE ATA
- ◆ Apply Lessons Learned and Desired Capabilities for New Product Requirements
- ◆ Type of Contracts was changed due to missed option year renewal suspense (subscription service to maintenance ???)
- ◆ AVUEs DoD System Accreditation expired in 2009 and they did not get it renewed or a new one. Additionally they did not inform us. We discovered last week only after doing a review of the LSS Project files.
- ◆ Unrealistic testing procedures by AVUE. They ask INSCOM to test on staging, but the testing does not prove if the change will be fixed live. Too many incidents of upgrades actually causing more problems.
- ◆ AVUE says that we can implement headquarters wide with only 17 corrections out of the 90 requested.

“Automating a bad process just makes it a faster bad process”



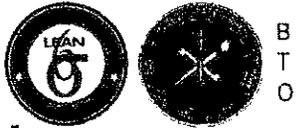
# Transition Plan

IPR Update



Develop Transition to Manual Process Implementation Plan and Schedule - No longer an option due to PII Concerns – Cease Immediately

- ◆ Identify/Retrain Directorate Timekeepers
- ◆ Removing Participates Orderly by Directorate
  - ◆ Remove G-3 STDA and NGIC RSE after PPE 26 Feb 11 (Wanted out first and G-3 can provide timekeeper support until timekeeper identified and trained)
  - ◆ Remove G-4 after PPE 12 March 11 (Has majority of deployed civilians in pilot)
  - ◆ Remove G-1 after PPE 26 March 11 (CSR can backfill until timekeeper identified & trained)
  - ◆ Remove RM after 9 April 11 (Currently has no timekeeper)
- ◆ Headquarters Wide Full Implementation with 30-60 days with New Product

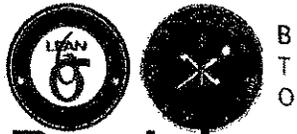


## Lessons Learned

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IPR Update

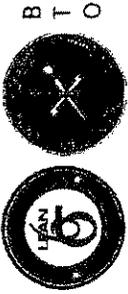
- ◆ We can not afford to go back to a total manual process.
- ◆ Getting Supervisors to approve time off requests, extra time requests and certifying time in a timely manner.
- ◆ Keep directorate timekeepers engaged.
- ◆ Need a COR regardless of how small the contract is
- ◆ Employees, timekeepers and supervisors not taking advantage of the many ATA training courses offered.
- ◆ Don't mess with Peoples Pay
- ◆ We had high hopes, and proved we are capable of doing better, we just got a defective vendor product



# Decision – Chose Course of Action

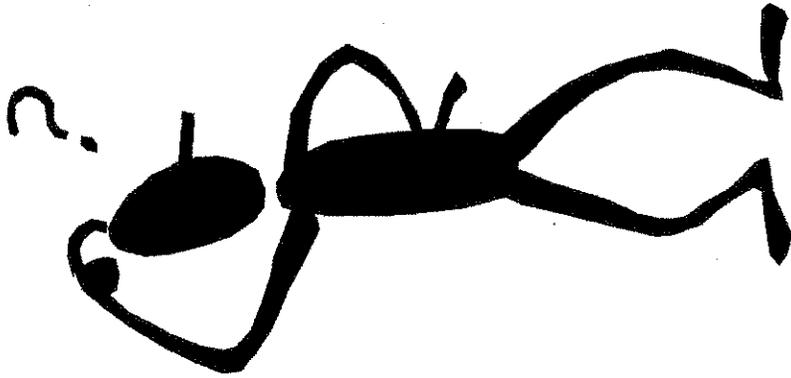
IPR Update

- ◆ CA #1 Transition to a Different Product \_\_\_\_\_
  - ◆ Approve Transition Plan and Directorate Order - No longer an option due to PII Concerns – Cease Immediately
  - ◆  G3 STDA & NGIC RSE – PPE 26 Feb 11 \_\_\_\_\_
  - ◆ G4 – PPE 12 Mar 11 \_\_\_\_\_
  - ◆ G1 – PPE 26 Mar 11 \_\_\_\_\_
  - ◆ G8 – PPE 9 Apr 11 \_\_\_\_\_
  - ◆ Direct G-1 to Pursue a new ATA Product
  - ◆ Direct DOC/SJA Support for Assistance
- ◆ CA #2 Stop AVUE ATA Services and Return to Manual Process \_\_\_\_\_
  - ◆ Direct DOC/SJA Support for Assistance
- ◆ CA #3 Stay With AVUE for ATA Services \_\_\_\_\_
  - ◆ Continue with DOC Assistance



# Discussion & Questions

- ◆ Discussion and Questions



IACS

30 June 2010

MEMO FOR BT SRG

SUBJECT: BT SRG Meeting, 17 Jun 10

1. BT SRG Members Present (8 out of 12):

C/S,  
G-1,  
G-2,  
G-3,  
G-4,  
G-6,  
RM,  
SMIO,

SMIO -BTO, [REDACTED] (Chief BTO)  
SMIO-BTO, [REDACTED] (MBB)  
G-4, [REDACTED] (BB)  
G-1, [REDACTED] (GB)  
G-1, [REDACTED] (Chief CPD)

2. BB - LSS Improve Civilian Deployment Process: [REDACTED] presented the Analyze Phase Tollgate; SRG Approved Analyze Phase Tollgate.

a. Discussion:

(1) There are mid term R&R travel for Deployed Civilians that may also be using commercial flights.

(2) It was repeated that the CRC is the only approved Army deployment Facility.

(3) The SRG discussed the subject of a Single Point of Contact for Deployment, and challenged the team to provide information and tracking.

(4) Team should put in writing concerns on Civilain Deployment Policies to DA G-1.

(5) SRG discussed status to clothing policy and Civilian Deployements. Currently, policy is being staffed.

b. Tasking: Team should research use of IDTS and portal for Civilian Deployment communications and tracking and present recommendations at future BT SRG Meeting. Team should consider emulating the In/Out Processing Portal for Civialian Deployment communications and tracking if a portal method is choosen.

c. Decision: None.

TABH

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2.30

571  
Avue Technologies Corporation  
1415 Broadway Plaza St 800  
Tacoma, WA 98402

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
 AVUE TECHNOLOGIES CORPORATION  
 ATTN: JAMES D. WILSON  
 LINDA E. BROWN RIX  
 CO. CHIEF EXECUTIVE OFFICERS  
 1415 BROADWAY PLAZA, ST. 800  
 TACOMA, WA 98402

2. Article Number  
 (Transfer from service label)

7005 1160 0000 2007 4182

PS Form 3811, February 2004

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 Addressee

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 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

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Domestic Return Receipt

102595-02

IACS

6 Apr 2011

MEMO FOR BT SRG

SUBJECT: BT SRG Meeting, 29 Mar 11

1. BT SRG Members Present (7 out of 13):

Members

C/S, [REDACTED]  
G-1, [REDACTED]  
G-2, [REDACTED]  
G-3, [REDACTED]  
G-4, [REDACTED]  
CIO/G-6, [REDACTED]  
SMIO, [REDACTED]

Staff & Guests

SMIO-BTO, [REDACTED]  
G-1, [REDACTED] (GB)  
G-1, [REDACTED] (Guest)  
G-1, [REDACTED] (Guest)  
G-4, [REDACTED] (BB)  
G-4, [REDACTED] (Guest)  
CIO/G-6, [REDACTED] (Guest)

2. One (1) Tollgate was presented.

BB – Improve Civilian Deployments (G-4): [REDACTED] presented to BT SRG for discussion, tasking, and decision/approval:

a. Discussion:

(1) BT SRG discussed the recommendation by the team for using the UDC (Winchester, VA) and Camp Atterbury vs. CRC (Fort Benning, GA). G-3 suggested that INSCOM should request a waiver and additional information from Army G-1/G3 then she would support using the UDC and Camp Atterbury.

(2) BT SRG discussed missing health assessments (PHA, PDHA and PDHRA) in MEDPROs as high as 60% of deployed INSCOM civilians due to lack of CRC (Ft. Benning, GA) standards for inputting required health assessment information.

(3) CIO/G-6 indicated that they were resource constrained currently with SharePoint development and were not able to develop a civilian deployment portal without additional resources at this time.

(3) SMIO & CIO/G-6 objected to a full deployment without first doing a pilot on ATAAPS.

TAB I

IACS

SUBJECT: BT SRG Meeting, 29 Mar 11

b. Tasking:

(1) G-1 will contact and coordinate with Army G-1 to get waiver/permission for INSCOM to use UDC & Camp Atterbury as primary CRC site for deployed DACs. No suspense date provided.

(2) G-1 will take responsibility for ensuring that MEDPROs is updated with required health assessment information for all deployed DACs IAW updated policy and regulation.

(3) G-1 will develop an SOP which includes the health assessment process (PHA, PDHA, and PDHRA) by 21 Apr 11.

(4) BB Team will develop online orientation on deployment process by 21 Apr 11.

(5) BB Team/G-3 will contact and coordinate with Army G-3 to get waive/permission for INSCOM to use UDC & Camp Atterbury as primary CRC site for deployed DACs. No suspense date provided.

(6) G-3 will update policy #11 after waivers/permission is received from Army G-1/G-3 and new DTS process, PHA/PDHA/PDHRA requirement, and change of primary CRC deployment site. No suspense date provided.

(7) G-4/G-1 will draft, staff, and publish OPOD for providing deployment process information to all INSCOM personnel after waivers/permission is received from Army G-1/G-3 regarding the change of primary CRC deployment site. No suspense date provided.

(8) CIO/G-6 will develop portal tool with supervisor checklist, help capability (hover-over) and MEDPROs form links. No suspense date provided.

c. Decision/Approval: Improve Tollgate was approved and permission granted to move into control phase.

3. Two (2) IPRs was presented.

GB – Streamline and Automate Timecard Preparation IPR (G-1): [REDACTED]

[REDACTED] presented to BT SRG for discussion, tasking, and decision:

a. Discussion:

(1) BT SRG discussed the status of ongoing efforts to get PII data back from AVUE. As of the today, no response was received by AVUE. Members were extremely concerned about getting PII data back.

IACS

SUBJECT: BT SRG Meeting, 29 Mar 11

(2) BT SRG discussed the alternate solution of ATAAPS and implementation dates for headquarters deployment. Including capability and cost (Return on Investment). Several Army organizations using ATAAPS comments/suggestions were presented to the BT SRG for discussion.

(3) SMIO & CIO/G-6 objected to a full deployment without first doing a pilot on ATAAPS.

(4) SMIO expressed concern for implementing ATAAPS and training requirements during the DAIG re-inspection preparation time from mid Apr – mid Jun 2011.

(5) G-8 via SMIO proxy indicated that they endorsed ATAAPS especially because of the built in cost based accounting capability.

b. Tasking: DOC and G-1 would update the C/S on a recurring basis on progress and efforts to get INSCOM's PII data back from AVUE.

c. Decision:

(1) ATAAPS was approved as the ATA solution for INSCOM.

(2) Implementation Date of 19 Jun 11 was approved. This includes a 10-week implementation schedule starting in mid Apr 11.

BB – Improve Database Management IPR (CIO/G-6): [REDACTED] presented to BT SRG for discussion, tasking, and decision:

a. Discussion:

(1) BT SRG briefly discussed the completion of the vacancy module requirements. CIO/G-6 indicated that some changes would be required after full implementation of the improvement efforts to the CHIP has been completed.

(2) BT SRG discussed the current progress of identifying which unclassified COREDB elements could be moved down from SIPRNET to NIPRNET (Read only HR data Set, not a copy of COREDB).

b. Tasking: CIO/G-6 would begin work on the next module (Personnel Locator).

IACS

SUBJECT: BT SRG Meeting, 29 Mar 11

c. Decision: Approval for completing Vacancy module requirement was granted.

4. The INSCOM Point of Contact is the INSCOM Business Transformation Office (IASI-BTO), 703-428-4624/4990.



Chief of Staff

# IPR Update

# Lean Six Sigma G-1

## Streamline and Automate Timecard Preparation IPR Update

[REDACTED] (GB)

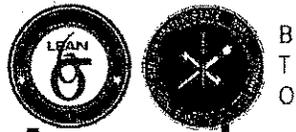
[REDACTED] (Mentor)

[REDACTED] (Sponsor)

29 March 2011



INSCOM's Business Transformation Office (BTO)



# Agenda

IPR Update

- ◆ Purpose
- ◆ Status of AVUE ATA Close-out
- ◆ Status of Alternate ATA Solution
  - Recommendation for Alternate ATA Solution
  - ATAAPS Benchmarking Results
  - ATAAPS Benchmarking Comments/Observations/Suggestions
  - ATAAPS Implementation Schedule – Headquarters
  - ATAAPS User Roles
  - High-Level Value Stream Map 'To-Be'
- ◆ Decision
- ◆ Discussion & Questions

- ◆ The Purpose of this presentation is to update the BT SRG members on the status of the ongoing Time & Attendance Project within the headquarters:
  - ◆ Review Status of AVUE ATA Close-out
  - ◆ Review Status of Identifying Alternate ATA Solution
  - ◆ Review Recommendation for Alternate ATA Solution
- ◆ Get a Decision for Funding and Approve/Set Implementation Dates of Alternate ATA Solution:
  - ◆ Decision to Fund Alternate ATA Solution
  - ◆ Decision to Approve/Set Implementation Dates of Alternate ATA Solution



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# Status of AVUE ATA Close-Out

IPR Update

- ◆ 15 Feb 11 BT SRG directs INSCOM headquarters Pilot Participants to stop using the ATA effective immediately and revert back to direct DCPS manual entry method until a replacement can be identified and implemented
- ◆ 2 Mar 11 DOC issues Notice of Termination for Convenience (Contract: W911W4-10-F-0250 to AVUE Technologies Corporation)
  - ◆ Date Certified Mail Sent: 9 Mar 11
  - ◆ Date of Receipt of Certified Mail by AVUE: 14 Mar 11
  - ◆ AVUE is supposed to provide DoD PII data back to INSCOM within 7 working days. Suspense: 23 Mar 11
  - ◆ AVUE is supposed to provide employee timesheets electronically for pay periods 19 Apr 10 – 12 Feb 11 within 30 days. Suspense: 13 Apr 11
  - ◆ AVUE is supposed to remove all INSCOM data from their systems to include backups and their security manager will certify in writing within 30 days. Suspense: 13 Apr 11



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# Status of Alternate Solution

IPR Update

- ◆ 15 Feb 11 BT SRG tasks G-1 to quickly identify an alternate ATA solution which is being used by a majority of Army customers and contact a few of those organizations to gather best practices and feedback about the product. G-1 will present their recommendations for a replacement ATA to the BT SRG for decision regarding funding and implementation date.
- ◆ Ongoing ATAAPS Benchmarking (Best Practices) with Army Organizations
  - ◆ Weekly Interviews & Surveys sent to Army Organizations using ATAAPS
  - ◆ 4 out of 9 responses received so far
- ◆ Demo with DISA via Webinar on 14 Mar 11
- ◆ MIPR as you go with DISA, (No contract or MOA)
- ◆ DISA Hosted vs. INSCOM Hosted (The ROI will be favorable to paying DISA to manage ATAAPS vs. Hosting costs incurred by INSCOM)

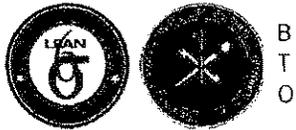


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# Recommendation for Alternate ATA Solution

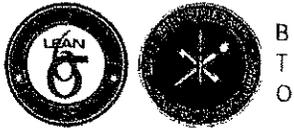
<b>Since the BT SRG on 15 Feb directed G-1 to quickly identify an alternate ATA solution which is being used by a majority of Army Customers, ATAAPS (200,000+) was chosen as the majority by the team. eMTS (Air Force System) was 2nd with 15,000+ users.</b>	<b>ATAAPS</b>
System Experience (Time in Service)	13yrs
System Size (Number of Accounts)	200,000+
Forms Capable for Leave and Premium Requests	Yes
CAC Logon Capable (First Time logon Username & Password Required)	Yes
Reduce Manual Defects (no signature, wrong codes, missing documents, etc)	99%
Reduce Electronic Defects (invalid time, missing time, etc)	95%
Reduce Cycle Time by ½ (Compared to manual process of 46mins)	23mins
General Fund Enterprise Business System (GFEBS) 1.4.1+ Compliant	Yes
Ability to Use Work Center/Cost Center, Job Order Codes, and Fund/FA Type	Yes
Training by DISA	Super User & Time Keepers
Estimated Time to Implement within Headquarters	10 Weeks
Cost per year – Headquarters (600 x \$19.45) - MIPR	\$11,670
Cost per year – Command (3000 x \$19.45) - MIPR	\$58,350



# ATAAPS Benchmarking Results

IPR Update

Command	Contacted	Rank 1 (Low) to 10 (High)
AMC	30 March 2011	
ARCENT	23 March 2011	10
FORSCOM	30 March 2011	
IMCOM	30 March 2011	
NETCOM - Local	10 March 2011	8
NETCOM – Ft. Huachuca	16 March 2011	9
USACIDC	16 March 2011	N/A – Just Started
USAREUR	16 March 2011	Pending
USARPAC	23 March 2011	Pending



## ATAAPS Benchmarking Comments/Observations/Suggestions

- ◆ Comments/Observations/Suggestions:
  - ◆ + Training was very helpful
  - ◆ + Help Desk support from DISA was excellent and very timely
  - ◆ + Email notifications for leave and premium requests very effective
  - ◆ + Retroactive Updates are easy
  - ◆ + ATAAPS is simple to use and it streamlines inputting T/A cards
  - ◆ ! Why are you not already using ATAAPS it's a no brainer
  - ◆ ! Certifiers actually certifying on Wednesday/Thursday of 2<sup>nd</sup> pay week (Not week after)
  - ◆ ! Pay file is pulled on Monday following payroll close
  - ◆ ! Ensure employees are terminated at the end of a pay period (not start or middle)
  - ◆ ! Schedule changes should only be done in ATAAPS not DCPS
  - ◆ ! Make sure you complete and submit your DD 2875 (System Authorization Access Request SAAR) ASAP
  - ◆ - Employees need to be careful no validation against leave earned, could get LWOP
  - ◆ - Leave slip input has some quirks especially for those on CWS

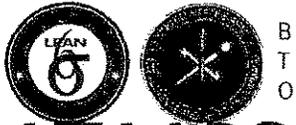


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# ATAAPS Implementation Schedule - Headquarters



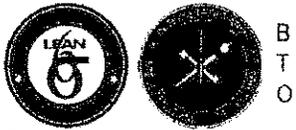
Activity	Participants	Proposed	Duration
Kickoff Meeting with DISA & DFAS	G-1	Week ending 16 Apr 11	1 week
Submit MIPR to DISA (\$11,670)	G-1/G-8	PPE 23 Apr 11	1 week
Validation of the MER File (Setup for Employee Accounts)	Super User & Timekeepers	PPE 7 May 11	2 weeks
Build of ATAAPS database & Employee submit DD2875 for ATAAPS accounts	DISA & All	PPE 21 May 11	2 weeks
Setup Team Roster and Assign Timekeepers and Certifiers	G-1	PPE 4 Jun 11	2 weeks
Provide training to Super Users & Timekeepers (Train-the-Trainer)	Super Users & Timekeepers	PPE 18 Jun 11	2 weeks
Go Live – Pay Period Starting	All	PPS 19 Jun 11	N/A



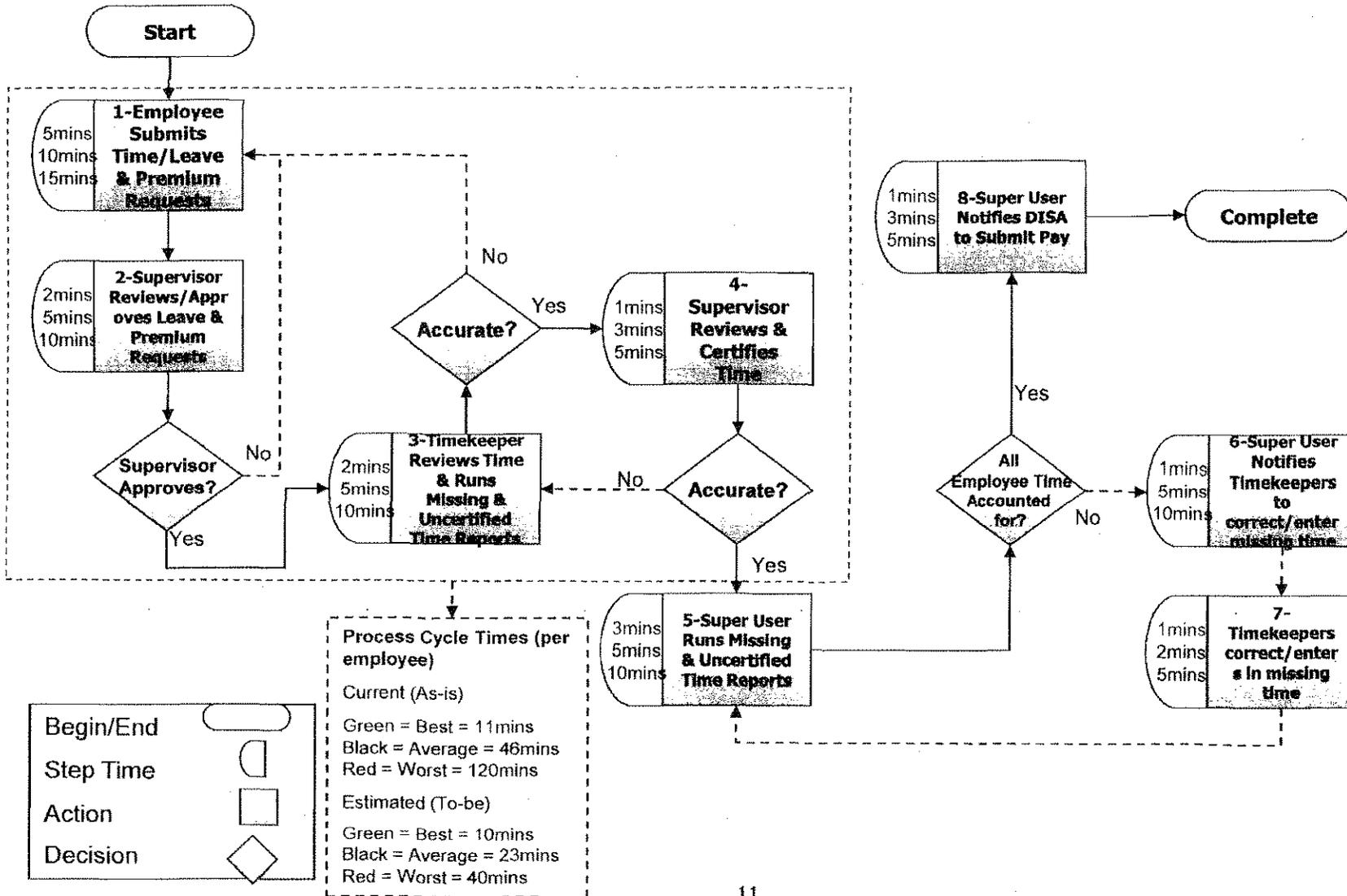
# ATAAPS User Roles

IPR Update

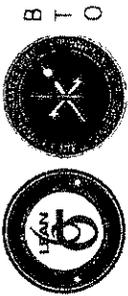
- ◆ Employees (Staff)
  - ◆ Timecards are pre-populated with default time.
  - ◆ Reports, or modifies their own time and attendance.
  - ◆ Must concur and submit bi-weekly timecard to certifier
- ◆ Certifiers (Supervisors)
  - ◆ Are responsible for certifying time and attendance.
- ◆ Timekeepers (Staff)
  - ◆ Run missing time and uncertified time reports in ATAAPS and may run DCPS Reports.
  - ◆ Manages employee schedules
  - ◆ May input time & attendance on behalf of employees.
  - ◆ May create new employee accounts.
  - ◆ May assign roles within designated staff only
  - ◆ May manage team rosters within designated staff only
- ◆ Super Users – G-1
  - ◆ Runs missing time and uncertified time reports in ATAAPS & DCPS.
  - ◆ Creates team rosters
  - ◆ Assigns timekeepers and certifiers to team rosters
  - ◆ Has access above and beyond all users except system administrator (DISA Only)
- ◆ System Administrators – DISA
  - ◆ Run Default Labor along with interface processes (SDA, MER Files, etc)



# High-level Value Stream Map 'To-be'

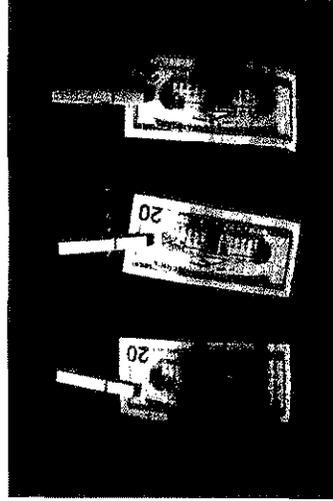
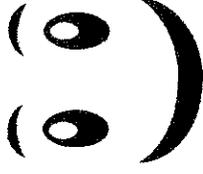
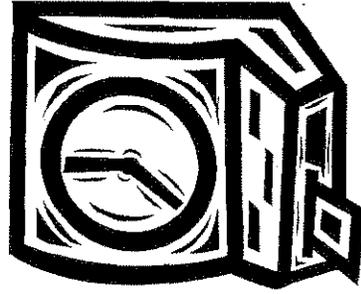
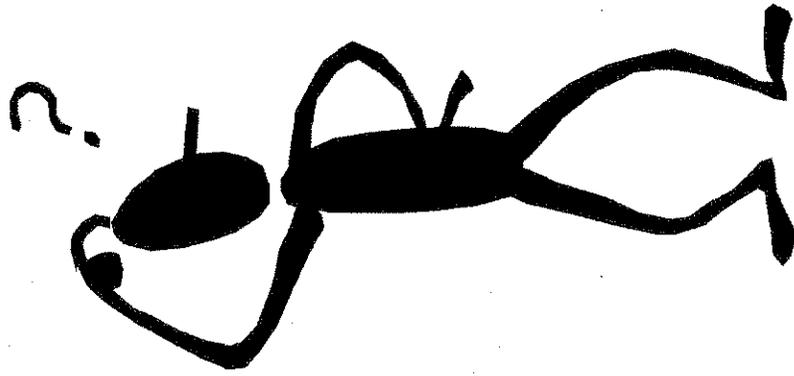


- ◆ Approve ATAAPS as ATA Solution Yes \_\_\_\_\_ or No \_\_\_\_\_
- ◆ Approve/Set Implementation Dates of Alternate Solution:
  - ◆ Recommendation for Pay Period Starting: 19 Jun 11 (10 Wks Lead Time) Yes \_\_\_\_\_
  - ◆ Recommendation for Alternate Pay Period Starting: \_\_\_\_\_ (10 Wks Lead Time)



# Discussion & Questions

IPR Update



UNCLASSIFIED

**FLOWCHART OF INSCOM CONTRACT ADMINISTRATION AND OVERSIGHT STRUCTURE**

Position	JAN 08 - JAN 09	FEB 09 - MAR 09	APR 09 - JUN 09	JUL 09	AUG 09 - JUL 10	AUG 10 - NOV 10	DEC 10 - MAR 11	APR 11	MAY 11 - JUN 11	JUL 11
PARC	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
DISL	NA	NA	NA	NA	NA	NA	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
A/PARC	NA	NA	NA	NA	NA	NA	NA	NA	[REDACTED]	[REDACTED]
DOC	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
D/DOC	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	NA	NA	NA

PAJ J

UNCLASSIFIED

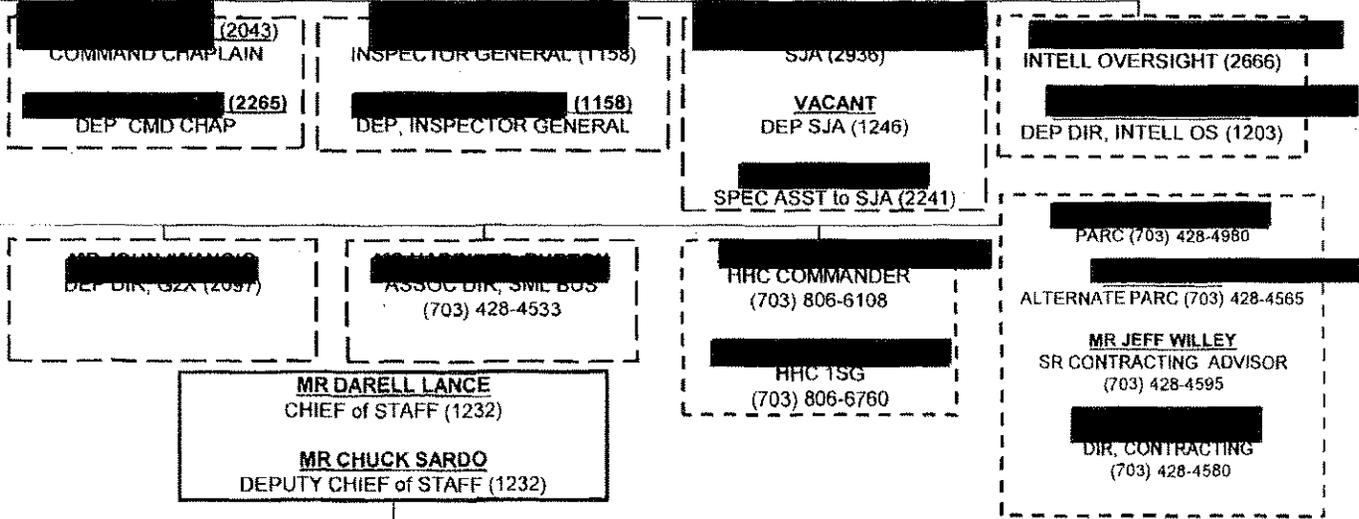
**MG MARY A. LEGERE (1603)**  
 COMMANDING GENERAL

**BG ROBERT L. WALTER, JR (1637)**  
 DEPUTY COMMANDING GENERAL

**(1637)**  
 DEPUTY COMMANDER

**(2245)**  
 DEPUTY TO THE COMMANDER

**(1205)**  
 COMMAND SERGEANT MAJOR



**MR DARELL LANCE**  
 CHIEF of STAFF (1232)

**MR CHUCK SARDO**  
 DEPUTY CHIEF of STAFF (1232)

**(703) 428-4675**  
 ACofS, G1  
 (703) 428-4675  
**MR RAY DOMASKIN**  
 DEP ACofS, G1  
 (703) 428-4676

**(703) 428-4381**  
 ACofS, G2  
 (703) 428-4381

**(2975)**  
 ACofS, G3  
 (703) 428-4381  
**(2848)**  
 DEP ACofS, G3  
 (2848)  
 VACANT  
 SR OPNS ADVISOR

**(703) 428-4410**  
 ACofS, G4  
 (703) 428-4410  
**(703) 428-4412**  
 DEP ACofS, G4  
 (703) 428-4412

**(2468)**  
 ACofS, G6/CIO  
 (2468)  
**(2981)**  
 DEP ACofS, G6/CIO  
 (2981)

**(703) 428-4418**  
 ACofS, G8/RM  
 (703) 428-4418  
**MR GEORGE MANCINI**  
 DEP ACofS, G8/RM  
 (703) 428-4419

**(703) 428-4554**  
 DIR, SMIO  
 (703) 428-4554

**(301) 688-6718**  
 VACANT  
 DIR, ARMY CRYPTOLOGIC OFF  
 (301) 688-6718  
**(443) 479-1539**  
 DEP DIR (443) 479-1539  
 VACANT  
 SR CRYPTO ADVISOR

**(1666)**  
 Chief, Internal Review (1666)

**(1778)**  
 DIR, FUTURES (1778)  
**(1120)**  
 DEP DIR FUTURES  
 (1120)  
**(2047)**  
 ENTERPRISE ARCHITECTURE  
 (2047)

**(1791)**  
 1<sup>ST</sup> INFO OPER CMD (LAND) (1791)  
**(2230)**  
 SGM 1<sup>ST</sup> IO (2230)  
**(2263)**  
 DEP DIR 1<sup>ST</sup> IO (2263)

**703-428-4836**  
 DIR, ADSO  
 703-428-4836  
**703-428-4763**  
 DEP DIR, ADSO  
 703-428-4763

**(571) 557-9669**  
 SR OPNS ADVISOR TO NGA  
 (571) 557-9669

Special Staff to CG  
 CofS Staff Elements

**(202) 231-6694**  
 SR OPNS ADVISOR TO DIA  
 (202) 231-6694

**METRO PARK**  
 COMMERCIAL - (703) 428-XXXX  
 DSN - 328-XXXX

**NOLAN BLDG**  
 COMMERCIAL - (703) 706-XXXX  
 DSN - 235-XXXX

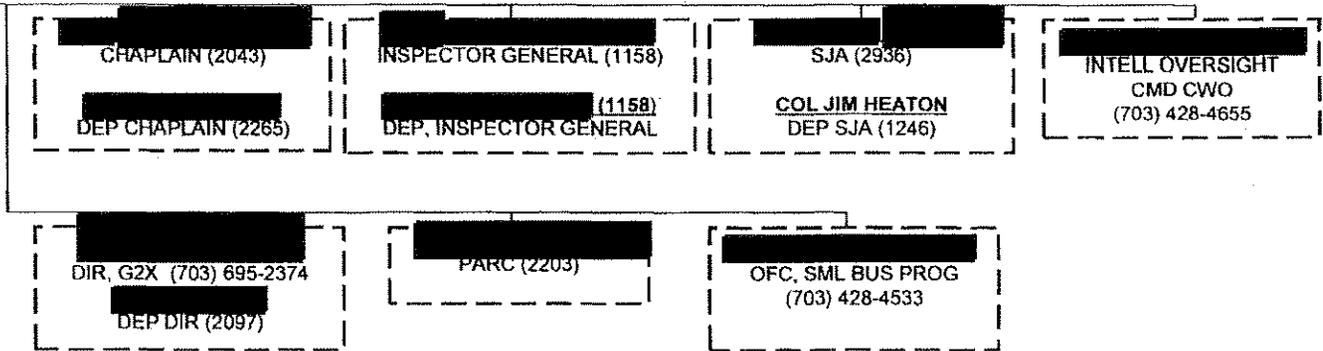
\* Updated: 15 Jun 11

**MG DAVID LACQUEMENT (1603)**  
 COMMANDING GENERAL

**DCG VACANT (1637)**  
 DCG (IMA)

**[REDACTED]**  
 DEPUTY COMMANDER (1637)

**[REDACTED]**  
 COMMAND SERGEANT MAJOR (1205)

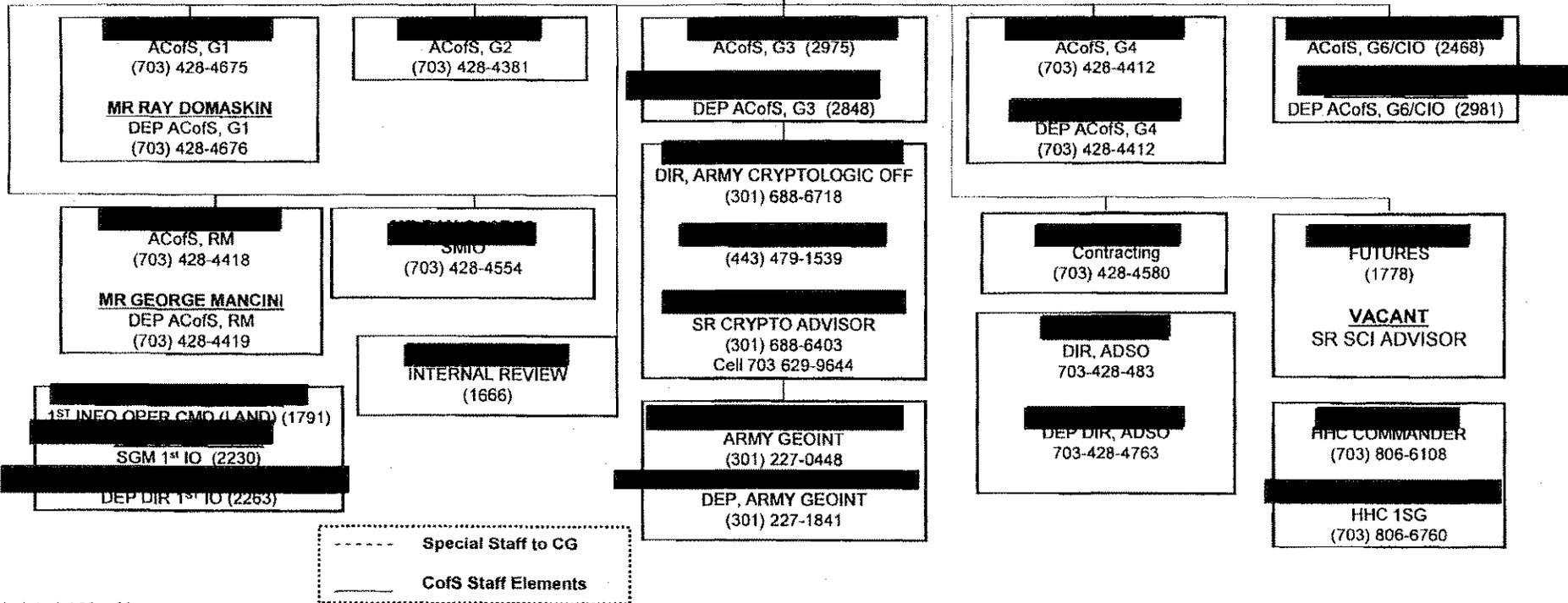


**NOLAN BLDG**  
 COMMERCIAL - (703) 706-XXXX  
 DSN - 235-XXXX

**MR DARELL LANCE**  
 CHIEF OF STAFF (1232)

**MR CHUCK SARDO**  
 DEPUTY CHIEF OF STAFF (1232)

**METRO PARK**  
 COMMERCIAL - (703) 428-XXXX  
 DSN - 238-XXXX



\* Updated 4 Mar 09



DEPARTMENT OF THE ARMY  
OFFICE OF THE DEPUTY CHIEF OF STAFF, G-2  
1000 ARMY PENTAGON  
WASHINGTON, DC 20310-1000

DAMI-ZA

1 December 2011

MEMORANDUM FOR Commanding General, U.S. Army Intelligence and Security Command, 8825 Beulah Street, Fort Belvoir, VA 20060-5246

SUBJECT: Implementation of Recommendations from the AR 15-6 Whistleblower Investigation – Intelligence and Security Command (HQS INSCOM), Fort Belvoir, Virginia (Office of Special Counsel File Number DI-11-2122)

1. I direct your attention to the enclosed approved AR 15-6 Whistleblower Investigation report. I have approved all of the findings and recommendations and direct that you implement the recommendations. In particular you should take immediate action to:

a. Submit a flash report to the Assistant Secretary of the Army (Financial Management & Comptroller) IAW DFAS-IN Regulation 371 regarding possible Anti-Deficiency Act violations.

b. Conduct negotiations with the contractor Silverback7 to seek an equitable adjustment of the base year contract price, where it is clear that both Silverback7 and INSCOM knew that Silverback7 would not be required immediately to perform all functions or fill all staff positions set forth in the Performance Work Statement, but for which Silverback7 actually proposed a fixed price.

c. Conduct negotiations with Avue Technology Corporation to recoup advance payments made on the Salary Management Module (SMM) IT module, where it is apparent that INSCOM was never provided a SMM product/capability or service.

d. Ensure INSCOM senior leaders adhere to and/or bolster Contract Acquisition Review Board (CARB) policies and procedures and vet requirements carefully to promote proper acquisition strategy and funding models.

e. Direct that all contract actions in excess of \$100,000 will receive a written legal review from the INSCOM Office of the Staff Judge Advocate.

2. The findings of the AR 15-6 Whistleblower Investigation establish that INSCOM continues to experience challenges in managing and conducting contracting actions. I expect you to review the report of this investigation closely and take all necessary and appropriate actions to address shortfalls, to include any adverse personnel action you deem appropriate.

Encl

  
RICHARD P. ZAHNER  
Lieutenant General, GS  
Deputy Chief of Staff, G-2





DEPARTMENT OF THE ARMY  
OFFICE OF THE DEPUTY CHIEF OF STAFF, G-2  
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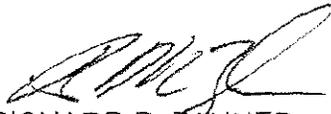
9 December 2011

MEMORANDUM FOR Acting Assistant Secretary of the Army (Acquisition, Logistics & Technology), 103 Army Pentagon, Washington, DC 20310-0103

SUBJECT: Review of U.S. Army Intelligence and Security Command (INSCOM) Contracting Authority and Activity

1. Request a comprehensive review of INSCOM Head of Contracting Activity (HCA) authorities and its assigned contracting activity to determine if an organizational transfer or realignment of these authorities or activities would improve INSCOM's contracting chain and functional performance. INSCOM is a Direct Reporting Unit (DRU) under my supervision. The Commanding General (CG), INSCOM currently is appointed as the HCA and is responsible for the overall management of its assigned contracting activity. INSCOM is also designated an Army contracting activity IAW DFARS 202.101. The INSCOM contracting activity has an assigned non-Command Selection List military Acquisition Corps Colonel designated as its Principal Assistant Responsible for Contracting (PARC), the senior functional expert in the contracting chain.

2. CG INSCOM was designated an HCA and authorized to establish a dedicated contracting activity at a time when it was not practical for the Army to support its classified contracting needs through another contracting center. I am convinced it is time the Army senior contracting officials review the appropriateness of continuing with this structure. Contracting has never been an INSCOM core competency and with today's expanded classified information system connectivity, INSCOM's contracting requirements may be better served by a dedicated contracting center that can leverage INSCOM's security expertise to support INSCOM's unique contracting requirements. INSCOM's vital missions of fielding intelligence resources/capabilities and conducting Army HUMINT and counterintelligence operations need the Army's best contracting support. The ODCS, G-2 and INSCOM staffs will provide whatever assistance is necessary to facilitate your review.

  
RICHARD P. CAHNER  
Lieutenant General, GS  
Deputy Chief of Staff, G-2

CF:  
Vice Chief of Staff of the Army  
Director of the Army Staff

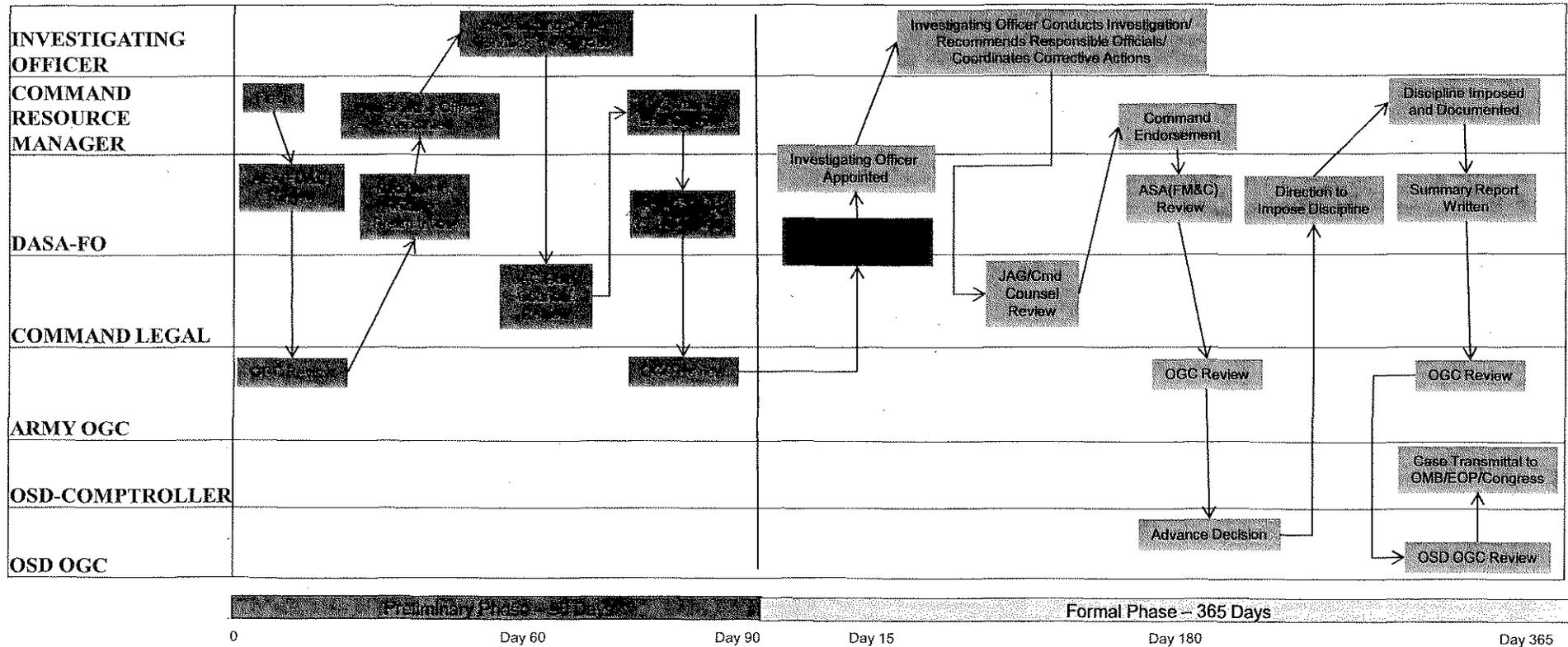




# DoD PROCESS TO INVESTIGATE POTENTIAL ANTIDEFICIENCY ACT VIOLATION

Preliminary

Formal



TAB N

## Tab O

Witness Listing for Army Report --DI-11-2122—*copy only in unredacted Army Report version*