



# THE ARMY LAWYER

Headquarters, Department of the Army

Department of the Army Pamphlet 27-50-404

January 2007

## Contract and Fiscal Law Developments of 2006—The Year in Review

*Major Andrew S. Kantner (Editor), Lieutenant Colonel Ralph J. Tremaglio, III, Chair, Lieutenant Colonel Michael L. Norris, Vice-Chair, Major Michael S. Devine, Major Marci A. Lawson, USAF, Major Mark A. Ries, Major Jennifer C. Santiago, Major Danielle M. Conway, Major Art J. Coulter, Ms. Margaret K. Patterson, Lieutenant Colonel John J. Siemietkowski, Lieutenant Colonel Katherine E. White*

### Contents

#### Foreword

**Contract Formation** (Authority; Competition; Contract Types; Sealed Bidding; Negotiated Acquisitions; Simplified Acquisitions; Commercial Items; Socio-Economic Policies; Labor Standards; Bid Protests)

**Contract Administration** (Contract Interpretation; Changes; Contract Disputes Act (CDA) Litigation; Terminations for Convenience; Inspection, Acceptance and Warranty; Value Engineering Change Provisions)

**Special Topics** (Alternative Dispute Resolution; Competitive Sourcing; Privatization; Construction Contracting; Bonds, Sureties, and Insurance; Deployment and Contingency Contracting; Information Technology (IT); Major Systems Acquisitions; Intellectual Property; Payment and Collection; Performance-Based Service Acquisitions; Procurement Fraud; Taxation; Contractors Accompanying the Force)

**Fiscal Law** (Purpose; Time; Anti-Deficiency Act; Construction Funding; Intragovernmental Acquisitions; Obligations; Operational Funding; Liability of Accountable Officers)

**Appendix A: Department of Defense Legislation for Fiscal Year 2007**

**Appendix B: Gov't Contract & Fiscal Law Websites & Electronic Newsletters**

CLE News

Current Materials of Interest

---

**Editor, Major Anita J. Fitch**  
**Assistant Editor, Captain Colette E. Kitchel**  
**Technical Editor, Charles J. Strong**

*The Army Lawyer* (ISSN 0364-1287, USPS 490-330) is published monthly by The Judge Advocate General's Legal Center and School, Charlottesville, Virginia, for the official use of Army lawyers in the performance of their legal responsibilities. Individual paid subscriptions to *The Army Lawyer* are available for \$45.00 each (\$63.00 foreign) per year, periodical postage paid at Charlottesville, Virginia, and additional mailing offices (see subscription form on the inside back cover). POSTMASTER: Send any address changes to The Judge Advocate General's Legal Center and School, 600 Massie Road, ATTN: ALCS-ADA-P, Charlottesville, Virginia 22903-1781. The opinions expressed by the authors in the articles do not necessarily reflect the view of The Judge Advocate General or the Department of the Army. Masculine or feminine pronouns appearing in this pamphlet refer to both genders unless the context indicates another use.

The Editor and Assistant Editor thank the Adjunct Editors for their invaluable assistance. The Board of Adjunct Editors consists of highly qualified Reserve officers selected for their demonstrated academic excellence and legal research and writing skills. Prospective candidates may send Microsoft Word versions of their resumes, detailing relevant experience, to the Technical Editor at [charles.strong@hqda.army.mil](mailto:charles.strong@hqda.army.mil)

*The Army Lawyer* welcomes articles from all military and civilian authors on topics of interest to military lawyers. Articles should be

submitted via electronic mail to [charles.strong@hqda.army.mil](mailto:charles.strong@hqda.army.mil) or on 3 1/2" diskettes to: Editor, *The Army Lawyer*, The Judge Advocate General's Legal Center and School, U.S. Army, 600 Massie Road, ATTN: ALCS-ADA-P, Charlottesville, Virginia 22903-1781. Articles should follow *The Bluebook, A Uniform System of Citation* (18th ed. 2005) and *Military Citation* (TJAGLCS, 11th ed. 2006). Manuscripts will be returned on specific request. No compensation can be paid for articles.

*The Army Lawyer* articles are indexed in the *Index to Legal Periodicals*, the *Current Law Index*, the *Legal Resources Index*, and the *Index to U.S. Government Periodicals*. *The Army Lawyer* is also available in the Judge Advocate General's Corps electronic reference library and can be accessed on the World Wide Web by registered users at <http://www.jagcnet.army.mil/ArmyLawyer>.

*Address changes for official channels distribution:* Provide changes to the Editor, *The Army Lawyer*, The Judge Advocate General's Legal Center and School, 600 Massie Road, ATTN: ALCS-ADA-P (Mr. Strong), Charlottesville, Virginia 22903-1781, telephone 1-800-552-3978, ext. 396 or electronic mail to [charles.strong@hqda.army.mil](mailto:charles.strong@hqda.army.mil).

Issues may be cited as ARMY LAW., [date], at [page number].

### *The Ugly: War Profiteers*

Continuing the push to provide law and order to the “Wild Middle East,” there were a number of high profile pleas and convictions this past year. The U.S. Attorney Office for the Central District of Illinois and the U.S. Department of Justice’s Criminal Division has been leading the criminal charge as evidenced by these three cases involving the work of Halliburton’s subsidiary, Kellogg, Brown & Root Services Inc. (KBR), on the Logistics Civil Augmentation Program (LOGCAP III). The LOGCAP III supports the logistical needs of U.S. military forces in Iraq.<sup>45</sup>

On 18 November 2005, Glenn A. Powell, a former employee of KBR was sentenced to fifteen months in prison for taking a \$121,800 kickback to award a subcontract from the LOGCAP III prime contract to an Iraqi subcontractor.

On 23 March 2006, Stephen L. Seamans, a former ‘Procurement Materials and Property Manager’ of KBR pled guilty to wire fraud and conspiracy to launder money related to the awarding of a subcontract under the LOGCAP III contract. According to the plea agreement and statements made in court, Seamans accepted kickbacks in excess of \$124,000 to improperly award a dining facility services contract at Camp Arifjan in Kuwait. He awaits sentencing.<sup>46</sup>

On 23 June 2006, Mohammad Shabir Khan, Tamimi Global Company’s former Director of Operations for Kuwait and Iraq pled guilty to paying KBR employees kickbacks to secure two military dining facility contracts.<sup>47</sup>

### *Administrative*

#### *APA Review*

As a reminder that suspension and debarment officials (SDO) are reviewable there was a rare challenge of that authority this year: *WEDJ et al. v. Department of Defense*.<sup>48</sup>

WEDJ Inc., a small air conditioner manufacturer in York, Pennsylvania, had numerous government contracts with the Communications and Electronics Command (CECOM) and the Defense Logistics Agency to provide environmental control units—military air conditioners—on various weapon systems. WEDJ used the Administrative Procedure Act (APA)<sup>49</sup> to attack the Army’s SDO decision to debar WEDJ and its principles under *Federal Acquisition Regulation (FAR) part 9-406*. The Army’s SDO debarred WEDJ and its principles for improperly using surplus parts and falsifying first article test results on air conditioners for Patriot Missile Shelters, Firefinder Radar Control Shelters and Navy Hovercraft.

WEDJ contention was that the SDO had acted arbitrary and capriciously by relying on the factual record before him. Judge James McClure reviewed the administrative record and noted that each of WEDJ’s “spurious” allegations had been heard by the SDO in the hearing and in the written materials and had been properly considered. Key to this decision is that Army had kept a complete administrative record and that the SDO had what he needed before him to make a decision that survived APA scrutiny.

There is nothing new here, but the case is a classic textbook manner in which coordination between the buying command (CECOM), the investigators (Defense Criminal Investigative Service and the Army’s Criminal Investigative Command-Major Procurement Fraud Unit), the DOJ, and the agency headquarters element (Army Procurement Fraud Branch) resulted in a solid administrative record supporting a fact-based debarment.

---

<sup>45</sup> Department of Justice, Press Release, Former KBR Employee Sentenced to 15 Months in Prison for Accepting Kickbacks (18 Nov. 2006), <http://www.usdoj.gov/usao/ilc/press/> (last visited 16 Nov. 2006).

<sup>46</sup> Department of Justice, Press Release, Former KBR Employee Pleads Guilty to Accepting Kickbacks Related to Award of Military Subcontract (23 Mar. 2006), <http://www.usdoj.gov/usao/ilc/press/> (last visited 16 Nov. 2006).

<sup>47</sup> Department of Justice, Press Release, Former Tamimi Global Executive Admits Paying Kickbacks for Military Subcontracts in Kuwait, (23 June 2006), <http://www.usdoj.gov/usao/ilc/press/> (last visited 16 Nov. 2006).

<sup>48</sup> 2006 WL 2077021 (M.D. Pa.)

<sup>49</sup> 5 U.S.C.S. § 551 et seq. (LEXIS 2006).