FOREWORD

The Gansler Commission Report and Beyond

Welcome to the Contract and Fiscal Law Department's Year in Review.[*] While fiscal year (FY) 2007 brought us many highlights, the real news for those of us in the Army is the Gansler Commission Report which came out just after the FY closed. The participants at our annual Symposium discussed the Gansler Report during a variety of sessions, both plenary and elective. It is such a hot topic that we are dedicating this Foreword to it. Since it is not technically from the last FY, the report is not covered in the body of the Year in Review; however, now is the time for all of us to understand the report. It is important for all of us to know the findings, the recommendations, and what we can do to help. In a nutshell, the report determined that the Army contracting process is undermanned, overworked, inexperienced, and undervalued by the operational Army. This may be news for those outside the contracting community, but it is not a new theme for these pages. For several years, I have been encouraging contract and fiscal professionals to help share their wealth of knowledge with the young attorneys throughout their offices, and the Corps. Now, with the Gansler Report we have the empirical data to support the comments and recommendations people have had for years.

The Secretary of the Army established the Commission to provide an independent body to study lessons learned from recent operations in Iraq, Afghanistan, and Kuwait, and looked for the Commission to also provide recommendations for the future. The commission members' experiences crossed all sectors of the Department of Defense, from the institutional level to the operational level.[1] During the forty-five days in which the Commission conducted its research, the commission interviewed over 100 people both within the continental United States and deployed. Some of the more glaring facts include the following: the Army contracting workforce continues to decrease while there has been a seven-fold increase in the contracting workload; the Army contracting process has become more complex; and only 3% of Army contracting personnel are active duty, creating some obvious difficulties when we deploy. On the operational side, the Gansler Commission noted that essential segments of the institutional Army have not adapted to the Army's transformation into an expeditionary force. While the report lists several areas of improvement (financial management, personnel, contract management, training and education, and doctrine), the one essential area in which requiring activities must improve is defining their operational requirements.

The report makes four recommendations to improve the Army's contingency contracting capabilities. The first recommendation is to increase the stature, quantity, and development of both military and civilian contracting personnel. The second recommendation is to restructure organization and to restore responsibility to facilitate contracting and contract management in expeditionary and CONUS operations. This recommendation includes creating five new general officer billets for contracting-centric officers and the creation of a Contracting Command. The third recommendation is to provide training and tools for overall contracting activities. The fourth recommendation is to obtain legislative, regulatory, and policy assistance to increase contracting effectiveness in expeditionary operations. This includes increasing contracting personnel by 1,400 individuals and adding benefits for volunteer civilian personnel serving in a combat zone.

The Army has already initiated some of these reforms. On 6 December 2007, the Army briefed the Senate Armed Services subcommittee on its intent to increase contracting personnel by 1,400 people. As Dean Steve Schooner, George Washington University School of Law and noted commentator on Government procurement law, pointed out at our Symposium, that may be easier said then done. Similar to the operational Army's inability to adequately define its operational requirements, the government as a whole does not adequately describe the duties of our procurement professionals in order to entice college graduates to seek government employment. While government procurement positions may be challenged to compete with the salaries at large contractors, better government position descriptions may help draw graduates to the government instead of to large government contract firms. During the same briefing to the subcommittee, the Army announced that it intends to create a two-star Army Contracting Command that will fall under the Army Materiel Command. It is clear that the Army contracting community now has the momentum to pursue the changes recommended.

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[*] The Contract and Fiscal Law Department is composed of six resident Judge Advocates: Lieutenant Colonel Ralph J. Tremaglio, III; Lieutenant Colonel Michael L. Norris; Major Michael Wong; Major Marci A. Lawson, USAF; Major Mark A. Ries; and Major Jose Cora, and our Administrative Assistant, Ms. Tammy Kern. Each officer has contributed sections to this work. The Department would like to thank our outside contributing authors: Major Peter D. DiPaola (ADK Drilling Individual Mobilization Augmentee), Major Brett Eugsa (ADK Drilling Individual Mobilization Augmentee), MAJ Jennifer Connelly, and Ms. Margaret Patterson. We greatly appreciate their expertise and contributions. Finally, the issue has benefited inordinately from diligent fine-tuning by the School's resident footnote gurus, Mr. Chuck Strong and Captain Alison Tulud. Thank you all!

[1] Dr. Jacques S. Gansler, former Under Secretary of Defense for Acquisition, Technology & Logistics; David J. Berteau, former Principal Deputy Assistant Secretary of Defense for Production and Logistics; and George T. Singley III, former Deputy Director, Defense Research & Engineering; General (GEN) (Retired) David M. Maddox, U.S. Army, former Commander, U.S. Army Europe; Rear Admiral (Ret.) David R. Oliver, U.S. Navy, former Director, Office of Management and Budget, Coalition Provisional Authority, Iraq; and GEN (Ret.) Leon E. Salomon, U.S. Army, former Commander, U.S. Army Materiel Command.

We will have to wait for next year's Year in Review to see how far that momentum will take us.

Year in Review articles are the Contract and Fiscal Law Department's annual attempt to capture and analyze the past FY's most important, relevant, and occasionally eccentric cases and developments. Although we could not cover every new decision or rule, we have tried to discuss topics most relevant to our readers. In addition, we have tried to spot trends and put developments into context. I hope we have succeeded and that you find these articles useful in your practice, thought provoking, and a "good read." If you have comments about this year's articles, or suggestions regarding how we can improve the Year in Review for future years, please email them to Contract-YIR@hqda.army.mil.

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