

# TJAGSA Practice Notes

Faculty, The Judge Advocate General's School, U.S. Army

## *Soldiers' and Sailors' Civil Relief Act (SSCRA)* Note

### Georgia Courts Apply SSCRA Against Soldiers

Military practitioners typically regard the Soldiers' and Sailors' Civil Relief Act (SSCRA) as a means to protect those in military service, and why not? The stated purpose of the Act is to enable military personnel "to devote their entire energy to the defense needs of the Nation."<sup>1</sup> However, one provision of the SSCRA can diminish, instead of enhance, a service member's rights—the law tolling the statutes of limitations under 50 U.S.C. App. § 525 (the so-called "tolling provision").<sup>2</sup>

In *Vincent v. Longwater*,<sup>3</sup> the Georgia Court of Appeals held that a civilian plaintiff could sue a soldier well past the normal statute of limitations because of the SSCRA tolling provision. Longwater sued Sergeant (SGT) Vincent as the result of a 1995 traffic accident. Sergeant Vincent was a soldier on active duty in the Army at the time, and subsequently reported for duty in Korea. The sheriff returned service to the plaintiff and indicated that he was unable to serve it.<sup>4</sup> In 1998, Vincent received service. He asserted Georgia's two-year statute of limitations on personal injury suits<sup>5</sup> precluded the action. Longwater—the civilian plaintiff—countered by asserting that the SSCRA

tolled the statute of limitations for the time Vincent served on active duty.<sup>6</sup>

The Georgia court rejected SGT Vincent's argument that the tolling provision does not apply to career military personnel. The court also pointed out that, unlike SSCRA stays,<sup>7</sup> the tolling provision is not discretionary—courts must apply it. Significantly, the opinion implicitly accepts, at face value, the tolling provision's language applying it to actions by *or* against persons in military service.<sup>8</sup>

Perhaps, the court felt no need to address the issue of whether the SSCRA tolling provision deprives service members of some of the protections that statutes of limitation give other potential civil defendants. As early as 1944, state courts applied the tolling provision against service members.<sup>9</sup> A steady line of cases over the years reinforced this analysis.<sup>10</sup>

Certainly, the tolling provision can help a service member who might otherwise lose the opportunity to sue under a statute of limitation. However, legal assistance attorneys need to keep the "down side" in mind when assessing the potential impact of statutes of limitation against military clients. Lieutenant Colonel Culver.

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1. 50 U.S.C. app. § 510 (2000).

2. *Id.* § 525 reads as follows:

The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether such cause of action or the right or privilege to institute such action or proceeding shall have accrued prior to or during the period of such service, nor shall any part of such period which occurs after October 6, 1942 be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment.

3. 538 S.E.2d 164 (2000).

4. Georgia's law on service of process allows a court to order a necessary or proper party residing outside the state or departed from the state to be served by publication. GA. CODE ANN. § 9-11-4 (2000). The court's opinion in *Vincent v. Longwater* never reaches the question of why the plaintiff in the case never took such action.

5. *See id.* § 9-3-33.

6. *Vincent*, 538 S.E.2d at 165-66.

7. *See generally* 50 U.S.C. app. § 521 (2000).

8. *Vincent*, 538 S.E.2d at 166.

9. *See Blazejowski v. Stadnicki*, 317 Mass. 352, 58 N.E.2d 164 (1944).

10. *See, e.g., Kenney v. Churchill Truck Lines, Inc.*, 286 N.E.2d 619 (1972); *Zitomer v. Holdsworth*, 178 F. Supp. 504 (D. Pa. 1959); *Landis v. Hodgson*, 706 P.2d 1363 (Idaho Ct. App. 1985).

## *Contract and Fiscal Law Note*

### **Open Sesame! FedBizOpps.gov Named Sole Procurement Entry Point**

Effective 1 October 2001, all federal agencies must use [www.FedBizOpps.gov](http://www.FedBizOpps.gov) to publicize procurements greater than \$25,000.<sup>11</sup> This note addresses which procurement actions must be publicized on the website, exceptions to this requirement, and the website's interaction with the Commerce Business Daily (CBD).

On 16 May 2001, the Federal Acquisition Regulatory Council published an interim rule<sup>12</sup> amending the Federal Acquisition Regulation (FAR).<sup>13</sup> The rule requires all federal agencies to transition from publicizing procurements greater than \$25,000 in the CBD<sup>14</sup> to publicizing those same actions on the Internet. The Web site, [www.FedBizOpps.gov](http://www.FedBizOpps.gov), is known as the "Governmentwide point of entry (GPE)."<sup>15</sup> The GPE is "the single point where Government business opportunities greater than \$25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public."<sup>16</sup> The idea behind electronic notification is to simplify and streamline the procurement process and "enhance customer service and promote cost effectiveness."<sup>17</sup>

Agencies must post all solicitations greater than \$25,000 on the GPE beginning 1 October 2001.<sup>18</sup> From 1 October 2001

until 1 January 2002, agencies must also direct the GPE to post the solicitations in the CBD.<sup>19</sup> Beginning 1 January 2002, agencies no longer need to post solicitations in the CBD and may rely solely on publication in the GPE.<sup>20</sup> In addition to posting solicitations greater than \$25,000, the new rule also requires agencies to use the GPE to post other information, including pre-solicitation notices, award notices involving subcontracting opportunities, and amendments to solicitations.<sup>21</sup> To determine publication dates for calculating response times,<sup>22</sup> use the CBD publication date for notices published before 1 January 2002,<sup>23</sup> and the date the notice appears on the GPE for notices published after 1 January 2002.<sup>24</sup>

As with any good rule, this one has its exceptions. Contracting officers do not need to publish solicitations on the GPE when "disclosure would compromise the national security," when "the nature of the file ([for example], size, format) does not make it cost-effective or practicable . . . to provide access through the GPE," and when "the agency's senior procurement executive makes a written determination that access through the GPE is not in the Government's interest."<sup>25</sup>

Hopefully, the use of [www.FedBizOpps.gov](http://www.FedBizOpps.gov) will push the federal procurement process even further into the electronic age. The long term goal is for agencies to "realize the efficiencies in electronic processes that justify agency investments in these processes."<sup>26</sup> Over 90,000 vendors are already registered to receive notice of contracting opportunities through the GPE.<sup>27</sup> Because of the low-cost access to the Internet, use of

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11. Electronic Commerce in Federal Procurement, 66 Fed Reg. 27,407 (May 16, 2001) (to be codified at 48 C.F.R. pts. 2, 4-7, 9, 12-14, 19, 22, 34-36).

12. *Id.*

13. GENERAL SERVS. ADMIN. ET AL., FEDERAL ACQUISITION REGULATION (June 1997) [hereinafter FAR].

14. *Id.* at 5.101.

15. 66 Fed Reg. 27,409 (to be codified at 48 C.F.R. pt. 2.101).

16. *Id.*

17. Deidre Lee, Director of Defense Procurement, *quoted in FedBizOpps Website Tapped as Sole Government E-Procurement Venue*, THE GOV'T CONTRACTOR, May 23, 2001, at ¶ 214.

18. 66 Fed Reg. at 27,408.

19. *Id.*

20. *Id.*

21. *Id.*

22. When the government posts a solicitation, it must give potential offerors a "reasonable opportunity" to respond to that solicitation. For commercial item solicitations and other solicitations less than \$100,000, the government chooses the "reasonable opportunity" that it provides to the offerors. For non-commercial item acquisitions greater than \$100,000, the government must provide at least a thirty-day response time. FAR, *supra* note 11, at 5.203(a)-(c).

23. 66 Fed Reg. at 27,410 (to be codified at 48 C.F.R. pt. 5.203).

24. *Id.*

25. *Id.* (to be codified at 48 C.F.R. pt. 5.102(a)(4)). Unfortunately, the rule provides almost no guidance for interpreting these terms.

the GPE should help small businesses seeking to do business with the government. Although the government may eventually relinquish control of the GPE to private industry, the government wishes to initially manage the start-up of this “technological architecture.”<sup>28</sup>

Beginning 1 October 2001, all agencies must use [www.FedBizOpps.gov](http://www.FedBizOpps.gov) to publicize solicitations greater than \$25,000. After 1 January 2002, agencies may use the GPE exclusively and no longer publicize their solicitations in the CBD. Though there are a few exceptions to this new rule, procurement officials must be prepared to bring significant portions of the acquisition process on-line. Major Siemietkowski.

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26. *Id.* at 27,409.

27. *FedBizOpps Website Tapped as Sole Government E-Procurement Venue*, *supra* note 15.

28. 66 Fed Reg. at 27,408.