

FOREWORD

Welcome to this year's Contract and Fiscal Law *Year in Review*! The *Year-in-Review* is the Contract and Fiscal Law Department's* annual attempt to summarize the past fiscal year's most important and relevant cases and developments in a variety of procurement and fiscal subject matter areas. While the *Year in Review* is always helpful in training new and old alike, this year's edition is a great place to start if you are relatively new to government and contract and fiscal law because it is a blend of basic procurement principals, new rulings, and guidance. Whether you are a member of the Armed Forces procurement society or another governmental agency, there are lessons for everyone. This edition is full of worthwhile teaching points and reinforcements, starting with a Court of Federal Claims case that provides a history of agency authority. There are other great "teaching cases" on unduly restrictive specifications, lack of advanced planning, the Federal Supply Schedule (FSS), and what constitutes notice of an award.

So "What's new?," you may ask. One of the most significant new developments is the creation of the new Civilian Boards of Contract Appeals, which is covered in our Contract Disputes Act section. For those of us in the military, the change has no direct effect on us. For procurement associates working in non-Department of Defense (DoD) government contract positions, the move to a consolidated board marks a change of where their claims will be heard. There is also new guidance from the DoD and the services on such issues as increasing the ordering period for task order or delivery orders, and award-and incentive-fee contracts. There is also new guidance concerning the FSS and whether or not the FSS is a mandatory source for purchases. Not to be outdone, there are new developments in the area of fiscal law as well; whether you are interested in the new authorization for DoD to accept conference fees or the new Government Accountability Office Anti-Deficiency Act Violation webpage, there are positive reinforcements to your fiscal law teaching.

The *Year in Review* was previewed at the 2006 Contract and Fiscal Law Symposium which was held at the Judge Advocate General's Legal Center and School from 6-9 December 2006. This year's Symposium brought in some new faces and new topics to the Judge Advocate General's Legal Center and School that sparked wonderful discussions of the blended workforce and organizational conflict of interest. In addition to an array of panel discussions from chief trial attorneys and acquisition and industry personnel on fiscal law issues, the attendees heard from the Services Acquisition Reform Act (SARA) Advisory Panel, the Special Inspector General for Iraq Reconstruction's office, and Mr. Vern Edwards who spoke on the acquisition challenges. The week ended with the Honorable Kenneth J. Krieg, Under Secretary of Defense for Acquisition, Technology and Logistics delivering our Cuneo Lecturer and Mr. T. Christian Miller delivering the Creekmore Lecturer. Professor Steve Schooner, the perennial favorite, closed the Symposium with a look back at procurement trends and where we go from here.

In last year's foreword, I encouraged practitioners to help share their wealth of knowledge with the young attorneys throughout your organizations, something the Army worked to do in several ways. First, the Army created an informal reachback group to help young judge advocates work through contract and fiscal problems they encounter. The reachback group primarily focuses on questions from deployed Judge Advocates, promising to get proposed courses of action back with seventy-two hours; however the group helps anybody with a question. Naturally, questions from a person deployed in support of our troops takes precedence.

The second change that the Army undertook in recognizing a contract and fiscal law emphasis throughout the Corps was the creation of the Contract and Fiscal Law Division (KFLD) at The Office of the Judge Advocate General. On 17 July 2006, Major General Scott Black, The Judge Advocate General of the U.S. Army, authorized a change that combined the former Contract Appeals Division with a new actions branch, to act as a "strategic hub" for contract and fiscal law for the Judge Advocate General's Corps. The new division is headed by Colonel Sam Rob and all assets are collocated at the United States Legal Services Agency in Balston, Virginia.

Third, the Army is looking for ways to train and mentor new contracts attorneys. Several young judge advocates volunteered for training under the mentorship of trusted contract and fiscal law attorneys who have been practicing in this area for years. The goal is to prepare these captains to be contract attorneys at divisions and corps before they deploy. These

* The Contract and Fiscal Law Department is composed of seven judge advocates (Lieutenant Colonel Ralph J. Tremaglio, III; Lieutenant Michael L. Norris; Major Michael S. Devine; Major Andrew S. Kantner, Major Marci A. Lawson, USAF; Major Mark Ries; and Major Jennifer C. Santiago) and our Administrative Assistant, Ms. Dottie Gross. Each officer has contributed sections to this work. The Department would like to thank our outside contributing authors: Major Danielle Conway-Jones, Major Art Coulter, Ms. Margaret Patterson, Lieutenant Colonel (P) John Siemietkowski, and Lieutenant Colonel Kathy White. Their time and effort continue to make this publication what it is. Last, but not least, the issue would be disharmonious without the diligent fine-tuning by the School's resident footnote guru, Mr. Chuck Strong. Thank you all!

captains are training with procurement attorneys in Germany, Fort Bragg, and Fort Lewis, and their experiences will provide us important feedback on how to make the program even better.

Last, the Judge Advocate General's Legal Center and School has reinstated a spring Contract Attorneys Course (CAC). Unlike the summer offering of nine and a half days, the spring CAC will be seven days, running from Monday through the following Tuesday. The curriculum is almost identical to the summer CAC, but shifts operational-oriented classes to the 3rd annual Operational Contracting Course, which starts immediately following the CAC. This year's Operational Contracting Course will begin on Wednesday and will last two-and-a-half days. This two-week combined schedule will give more attorneys access to the basic contract attorneys course and afford "newbies" the opportunity to learn the basics of contracting before attending the more advanced Operational Contracting Course.

Significantly, the 2006 Contract and Fiscal Law Symposium focused on several speakers, such as Secretary Krieg (Under Secretary of Defense for Acquisition, Technology, and Logistics), Vern Edwards, and Steve Schooner. The aging procurement workforce and the gap the government will suffer when the present force retires was brought to the attention of all attendees. The Army JAG Corps is attempting to address this potential shortfall through the measures listed above, but what about your agency? I encourage folks to actively plan how the government is going to find, recruit, and train the next generation of procurement workforce. As a final note, I'd like to publicly acknowledge Major Andrew Kantner's contribution to the Year in Review. For the past two years, Andrew has been the editor of the edition and has kept everyone focused and on task. He will be leaving the department this coming summer and we wish him well. There is much to be gleaned from this year's edition, so enjoy.

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