



## AMERICAN BATTLE MONUMENTS COMMISSION

Courthouse Plaza II, Suite 500  
2300 Clarendon Boulevard  
Arlington, VA 22201-3367

Established by Congress 1923

April 16, 2010

The President  
The White House  
Washington, D.C. 20500

Dear Mr. President:

This letter is to report a violation of the *Antideficiency Act*, as required by section 1341(a) of Title 31, United States Code. I am reporting this violation in my capacity as Secretary of the American Battle Monuments Commission (ABMC) as ABMC commissioners have not been appointed.

The violation occurred in the Commission's Salaries And Expenses account (74X0100) and Trust Fund account (74X8569). The violation concerned provisions that obligated the Government to indemnify parties against losses (i.e., open ended indemnification clause) in a June 2004 contract that the Commission entered into for administration and services for temporary workers retained by the Commission primarily to support the staffing increase necessary for the National World War II Memorial undertaking authorized by Public Law 103-32. This 2004 contract was a five year contract and was cancelled on August 9, 2009.

The violation was discovered during the annual audit of the Commission by the Government Accountability Office for fiscal year 2009. It was reported by the Government Accountability Office in their report, GAO-10-399, dated March 1, 2010. Commission staff that wrote and approved this contract are no longer employed with the Commission and no disciplinary action was taken.

The Commission agrees with the Government Accountability Office that the provision was a violation of the *Antideficiency Act*. There is no evidence that the violations were willful or knowing. The Commission, at that time, erroneously believed that the provision did not give rise to an *Antideficiency Act* violation. The Commission accepts that the contract provisions should not have been accepted because they contained an open-ended hold-harmless clause which subjected the Commission to potentially unlimited liability.

This contract, as noted above, was cancelled on August 9, 2009. This type of provision is cited in section 145.2 of OMB Circular No. A-11 as a reportable violation of the *Antideficiency Act*. No funds were expended in violation of the *Antideficiency Act*.

The Commission is taking remedial action. I have directed the following:

- Implement a review of all contracts in order to ensure compliance with all legal requirements;
- Conduct training for appropriate Commission staff;
- Develop a new system of administrative control of funds, in conjunction with implementing a new financial management system, to ensure compliance with the *Antideficiency Act* and to be approved by the Office of Management and Budget;
- Undertake a staffing review to consider Commission requirements for contracting and purchasing; and
- Provide status reports to the Commission's Chief of Staff on these actions.

I am sending identical letters to the Speaker of the House of Representatives, the President of the United States Senate, and the Comptroller General of the United States.

Most Respectfully,



Max Cleland  
Secretary

P.S. Info:



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April 16, 2010

The Honorable Joseph R. Biden, Jr.  
President  
United States Senate  
S-212, US Capitol  
Washington, DC 20510

Dear Mr. President:

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Secretary

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Established by Congress 1923

April 16, 2010

The Honorable Nancy Pelosi  
Speaker of the House of Representatives  
H-232, US Capitol  
Washington, DC 20515

Dear Madam Speaker:

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