



UNDER SECRETARY OF DEFENSE
1100 DEFENSE PENTAGON
WASHINGTON, DC 20301-1100

COMPTROLLER

MAY 06 2016

The Honorable Gene Dodaro
Comptroller General of the United States
Washington, DC 20548

Dear Mr. Dodaro:

This letter reports multiple violations of the Antideficiency Act (ADA), Army case number 12-07 (enclosed), as required by 31 U.S.C. 1351. The violations involved fiscal years (FYs) 2003-2012 Operation and Maintenance, Army National Guard (OMNG). The violations totaled \$76.1 million and occurred within the U.S. Army National Guard Bureau (ARNG), Recruiting Assistance Program (RAP). In this case, ARNG improperly developed and funded Information Technology systems in support of business activities (recruiting/human resource management) that were not certified as part of a Defense Business System; awarded contracts and task orders that did not provide for a bona fide need of the FY funds used; and improperly procured Recruitment and Retention Promotional Items (RRPI) exceeding the \$50 statutory limitation contained in 10 U.S.C. 2261 resulting in violations of 31 U.S.C. 1341(a)(1)(A).

The ARNG improperly awarded contracts and task orders for RRPI whose value per item ranged from \$52.50 to \$550, for a total of \$2.3 million. The ADA violations include purchases for plaques, framed prints, heavy jackets, Minuteman statues, ring kits/rings, encased swords on wood bases, as well as I-Pod Nano and GPS devices. The items were presented at various events, for either recruiting or award purposes. These obligations resulted in violations of 31 U.S.C. 1341(a)(1)(A) because the recruitment and retention recognition items exceeded the \$50 statutory limitation contained in 10 U.S.C. 2261.¹

The ARNG improperly obligated and expended \$2.7 million to develop the Guard Force PC Game (including development of the concept plan and initial design); three recruiting tools as part of the Mission Zone system; and the Gold Master/PRISM Guard Shield PC game. Research, Development, Testing and Evaluation funds should have been used instead of OMNG funds.² The ARNG also obligated and expended an additional \$39.9 million in support of Defense Business System development and modernization efforts without obtaining the required Investment Review Board and Defense Business System Management Committee review, certification, and approval. The five systems: Mission Zone, Path-2-Honor, Army National Guard Recruiting Web Site, Virtual Armory, and 1-800 Go Guard.com all constitute defense

^{1,2} Although the circumstances described herein constitute violations of 10 U.S.C. 2261 and 31 U.S.C. 1301 respectively, the Department of Justice (DOJ) Office of Legal Counsel (OLC) has concluded that "a violation of a statutory restriction on spending does not violate the ADA where the restriction is not 'in an appropriation.'" See also: DOJ OLC opinion, "Use of Appropriated Funds to Provide Light Refreshments to Non-Federal Participants at EPA Conferences," April 5, 2007 (http://www.justice.gov/sites/default/files/olc/opinions/2007/04/31/epa-light-refreshments13_0.pdf); and DOJ OLC letter, "Re: Whether the Federal Aviation Administration's Finalizing and Implementing of Slot Auction Regulations Would Violate the Anti-Deficiency Act," October 7, 2008. However, given GAO's views to the contrary, consistent with section 145.8 of OMB Circular A-11, DoD is submitting this report in its entirety to the President, the Congress, and the Comptroller General.



business systems that required certification, per 10 U.S.C. 2222. Funds obligated for these systems, without the required certifications, constitute violations of 31 U.S.C. 1341(a)(1)(A).

The ARNG obligated and expended \$31.2 million to pay for severable services with periods-of-performance that exceeded 12 months, in violation of the bona fide need rule. An exception to the bona fide need rule is 10 U.S.C. 2410a. It authorizes current year funds to be obligated for the entire period of performance for severable services contracts, even though the period of performance crosses into the following fiscal year. However, the statute limits the contract's period of performance to a 12-month maximum; exceeding the 12-month maximum violates the bona fide need rule and accordingly 31 U.S.C. 1341(a)(1)(A).

Richard Guzzetta, Colonel (COL) (Retired), Chief, Army National Guard Strength Maintenance Division; Michael Jones, COL (Retired), Chief, Army National Guard Strength Maintenance Division; and Gregory Michel, COL, Chief, Army National Guard Strength Sustainment Division were found responsible for the 31 U.S.C. 1341(a)(1)(A) violations. Lieutenant General Timothy J. Kadavy, Director, Army National Guard issued General Officer Memorandum of Reprimand to COL (Retired) Guzzetta, COL (Retired) Jones and COL Michel. The violations contained no willful or knowing intent on the part of the responsible individuals to violate the ADA.

Twenty-five corrective actions were developed to prevent recurrence of these types of violations. They include: the ARNG now requires that all Contracting Officer Representatives (COR), Program Managers (PM) and leadership attend fiscal law and COR Training. The Acquisition Management office has been created to provide assistance to all divisions, including CORs, PMs and leadership. The ARNG also requires a legal review for every Acquisition Planning Board requirement. Furthermore, the ARNG Strength Maintenance Program Regulation is currently being revised to address how RRPI are governed and remove any ambiguity regarding the \$50 statutory limits established by 10 U.S.C. 2261 and clarify the duties and responsibilities for the various ARNG recruiting positions. The Acquisition Planning Management Office reviews all contracts and task orders prior to award and verifies they are limited to performance periods not exceeding one year. The Secretary of the Army terminated RAP in February 2012.

Identical reports are also being submitted to the President (through the Director of the Office of Management and Budget), President of the Senate, and Speaker of the House of Representatives.

Sincerely,



Michael McCord

Enclosure:
As stated