



DEPUTY SECRETARY OF DEFENSE

1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

MAY 31 2017

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

Dear Mr. Dodaro:

This letter reports a violation of the Antideficiency Act (ADA), Army case number 16-03 (enclosed), as required by 31 U.S.C. § 1351. The violation involved fiscal year 2009 Operation and Maintenance, Army (OMA), funds. The violation totaled \$938,998.00 and occurred at the U.S. Army Garrison, Fort Hood, Texas. The Fort Hood Directorate of Public Works (DPW) authorized a military construction project for the removal of the perimeter fence and another such project for the construction of 41 concrete pads at Longhorn Airfield. The two military construction projects provided for a single capability for parking Army aviation assets, but were separately costed and funded. The construction of the projects exceeded the \$750,000 threshold for use of OMA and required Unspecified Minor Military Construction funds. Consequently, the Army incurred an uncorrectable violation of 10 U.S.C. § 2805 and 31 U.S.C. § 1341(a)(1)(A)¹.

Army personnel obligated \$749,998 in OMA funds to construct 41 helicopter parking pads. The parking pad project was approved as a stand-alone, minor military construction project. Total costs were kept under the \$750,000 threshold, allowing it to be funded with OMA funds in accordance with 10 U.S.C. § 2805. However, in order for work to begin, it was first necessary to remove 4,908 linear feet of security fence. The Army obligated an additional \$189,000 for the demolition and disposal of the security fence. Experts from the Fort Hood Aviation Operation Directorate determined that the 41 parking pads could not have been constructed with the fence in its original location. Therefore, the Army should have scoped and costed the entire effort as a single military construction project for \$938,998.

The former director of the Fort Hood Directorate of Public Works was found responsible for the 31 U.S.C. § 1341(a)(1)(A) violation. The Commander, U.S. Army Garrison Fort Carson, issued a written reprimand to the former director of the Fort Hood Directorate of Public Works. The violation contained no willful or knowing intent on the part

¹ Although the circumstances described herein constitute a violation of 10 U.S.C. § 2805, 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 the Government Accountability Office's views to the contrary, consistent with section 145.8 of the Office of Management and Budget Circular A-11, DoD is submitting this report in its entirety to the President, the Congress, and the Comptroller General of the United States.



of the responsible individuals to violate the ADA.

To prevent a recurrence of this type of violation, in January 2015, the U.S. Army Installation Management Command updated the Garrison Commander Delegation of Administrative Control of Funds Authority Memoranda. Among the requirements in the delegation, it directs the garrison commanders to ensure their resource management personnel receive fiscal law training every three years, complete annual ethics training, and become familiar with provisions of Department of Defense Financial Management Regulation Volume 14, Chapter 2 "Anti Deficiency Act Violations." In August 2015, the Installation Management Command published a periodical for senior commanders that discussed construction classification issues that can lead to ADA violations.

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.

A handwritten signature in black ink, appearing to read "Randy" followed by a stylized flourish.

Enclosure:
As stated