

## APPENDIX A

### **PURPOSE, TIME, OBLIGATIONS, AND ANTIDEFICIENCY ACT PROBLEMS**

#### NOTES

#### FACTS

##### **1. THE DOALL CONTRACT.**

You are pouring yourself a cup of coffee on 27 September 2002 at Fort Outpost, when the phone rings. Brigadier General (BG) Combat, the commanding general, is calling to say that he was delighted to hear on CNN that Congress had passed the FY 2003 DoD Authorization Act.

The installation base support services contract (for security, recreation activities, vehicle maintenance, janitorial services, and the like) currently held by Doall, Inc. is of utmost concern to the commander. BG Combat wonders why we have not exercised Doall's options for services beginning 1 October 2002 through 30 September 2003. BG Combat remarks that Mr. Einstein, Director of the U.S. Special Operations Test and Evaluation Command (USSOTEC), a tenant activity on Fort Outpost, has \$250,000 of unobligated FY 2002 Research, Development, Test, and Evaluation (RDT&E) funds available because of delays in the Submersible Helicopter Program (SUBHELP). Doall services USSOTEC under a separate line item in the contract. There were two options in the contract: one for installation services and one for the USSOTEC services. BG Combat wants the FY 2003 options exercised and the \$250,000 obligated by tomorrow.

Just before hanging up, BG Combat remarks that Mrs. Combat and other members of the Women's Club need a sedan to attend their weekly luncheon at Dirty Nellie's on 2 October 2002, and Doall's vehicle dispatcher has refused to schedule sedans for October until the government exercises the option.

How do you respond to the general?

NOTES

FACTS

**2. MR. PENNEY’S O&M LEDGER.**

Mr. Link N. Penney, a budget analyst, attacks his in-box on his first day back from the TJAGSA Fiscal Law Course. Mr. Penney is trying to fill out his O + M Ledger. He comes into your office with “obligation” questions about five transactions.

For each transaction, Mr. Penney tells you the type of transaction and the amount previously certified (i.e. the amount **committed**). He asks you to help him figure out:

- the amounts he should record as obligations and;
- the amount and type of any adjustment currently needed or that he should anticipate (i.e. additional commitments needed, decommitments or future obligations).

Explain the rationale for the accounting entries you recommend.

He addresses the following contract actions eagerly:

- a. Type: Award of \$295,000 firm fixed-price contract with economic price adjustment (+/-10%).  
Previously Certified (i.e. committed): \$324,500.  
Amount to Record as an Obligation: \_\_\_\_\_  
Adjustment (amount and type): \_\_\_\_\_
- b. Type: Award of \$160,000 cost-plus-fixed-fee contract (\$150,000 estimated cost, \$10,000 fixed fee).  
Previously Certified (i.e. committed): \$150,000.  
Amount to Record as an Obligation: \_\_\_\_\_  
Adjustment (amount and type): \_\_\_\_\_
- c. Type: Contract award of letter contract with a ceiling price not to exceed \$100,000 and a maximum government liability prior to definitization of \$50,000. (Assume all necessary prior approvals granted).  
Previously Certified (i.e. committed): \$100,000.  
Amount to Record as an Obligation: \_\_\_\_\_  
Adjustment (amount and type): \_\_\_\_\_

NOTES

FACTS

- d. Type: Definitization of a letter contract with definitized firm fixed-price of \$237,621.  
Previously Obligated (when Letter Contract was awarded): \$100,000.  
Amount to Obligate upon Definitization: \_\_\_\_\_  
Adjustment (amount and type): \_\_\_\_\_
  
- e. Type: Award of an indefinite quantity/indefinite delivery contract with a minimum quantity of 100 widgets and a maximum quantity of 1000 widgets. The unit price is \$10 per widget.  
Previously Certified (i.e. committed): \$5,000.  
Amount to Record as an Obligation: \_\_\_\_\_  
Adjustment (amount and type): \_\_\_\_\_
  
- f. Type: Delivery Order D00001 under the previous contract for 47 widgets.  
Additional Amount to Record as an Obligation: \_\_\_\_\_  
Adjustment: \_\_\_\_\_
  
- g. Type: Termination for convenience of a \$2.1M firm fixed-price contract.  
Previously Recorded as an Obligation: \$2.1M  
Amount already Disbursed (i.e. paid to the contractor): \$680,000  
Amount to Obligate upon T4C (not a precise number, but explain how to determine): \_\_\_\_\_  
Adjustment: \_\_\_\_\_
  
- h. Type: Default termination of a \$375,000 construction contract that was 60% complete.  
Previously Obligated: \$375,000.  
Amount already Disbursed (i.e. paid to the contractor): \$180,000  
Amount to Obligate upon T4D: \_\_\_\_\_  
Adjustment: \_\_\_\_\_

## NOTES

## FACTS

### **3. THE NEVER ENDING STORY — A TALE OF TWO AUDITS.**

On 5 September 2001, Art Dodger, an experienced contract attorney with the National Guard Bureau (NGB), finished reviewing the default termination notice for the 5-ton truck replacement engine contract with the contracting officer and the item manager. The defaulted contract cited FY 1999 National Guard and Reserve Procurement, Army funds. It was lucky that the contractor had defaulted since the Army had decided to replace the entire truck instead of only the engines. As the contracting officer put the letter in the mail, Art asked: “What are you going to do with the \$5 million left over from this defaulted contract? You have less than a month to spend it!” The item manager remarked that she would need many spare parts to keep the old engines running. The contracting officer chimed in that there was a basic ordering agreement for spares with the old engine manufacturer and he could obligate all of the funds tomorrow. After a quick decision briefing to the Chief, NGB, the contracting officer obligated the \$5 million for spare parts by issuing orders to the truck manufacturer.

In January 2002, as the new spare parts poured into the depot, a DoD IG audit team arrived to perform a long overdue review of inventory management practices. The team was struck immediately by the pallets of truck engine parts dumped in an open field. The team seized all of the paperwork related to the acquisition and, in due course, sent a draft audit report citing the NGB for an Antideficiency Act (ADA) violation for buying spare parts with procurement funds rather than operations and maintenance funds (O&M).

Art wrote a response to the draft audit report for his commander, noting that there was no ADA violation since the activity made the allegedly improper transaction in good faith and it could easily correct the error. The Commander, on Art’s advice, directed the Resource Manager to replace the funds with FY 2001 O&M funds that the NGB had not obligated before the end of the fiscal year. The Resource Manager acted swiftly to replace the funds.

The audit team, smelling blood, revised its report to note that by late August 2001, NGB had obligated all the FY 2001 O&M funds allotted to it. To make up the shortfall, DoD allotted an additional \$7 million in O&M funds to the NGB in mid-September for its use during the rest of the fiscal year.

## NOTES

## FACTS

Undeterred, Art noted that the spares ordered far exceeded authorized inventory levels. Hence, Art concluded that the spare parts were a bona fide need of FY 2002. In addition, Art pointed out that the NGB training budget contained plenty of FY 2002 O&M appropriations. Luckily, the DoD IG accepted this theory. Unfortunately, the GAO picked up on the spare parts inventory investigation and scheduled an investigation of its own.

Discuss all of the potential ADA violations arising from these facts.

### **4. THE COMMANDER'S TQM CONFERENCE.**

As your plane cruises over beautiful Diamond Head, you think how lucky you are to have secured a three-year, all-expense-paid tour at Schofield Barracks, in beautiful Hawaii — home of the 25th Infantry Division (“Tropic Lightning”). No sooner had you unpacked and reported in for your first day on the job when the Deputy Staff Judge Advocate (DSJA) asks you to step into his office.

It seems that the DSJA is wrestling with a request from the division commander and, because of the “visibility” associated with this request, seeks your help. The division commander wants to conduct a two-day “Total Quality Management” (TQM) session with the top military commanders and civilian supervisors under his command.

To minimize the potential for “outside disruption,” the commander wants to conduct the TQM session in a conference room at a nearby hotel. The general hopes that by moving the TQM session off-post, the participants will be away from the day-to-day distractions of their offices—particularly the telephone.

The general not only wants to rent the conference room at the hotel, he wants to secure the services of a civilian consultant who specializes in TQM matters. The commander would also like the hotel to provide all TQM participants a “working lunch.” He anticipates that during the lunch, the outside consultant will make a presentation to the participants. The commander proposes to use Operation and Maintenance funds to pay for the food.

## NOTES

## FACTS

Finally, the commander would like to buy the participants commemorative T-shirts, in acknowledgment of this “first of many” TQM sessions. In fact, he wants to style the shirt after the one he saw the DSJA wearing during a recent “Island Iron Man” road race.

The DSJA looks at you expectantly and asks: “So, what do you think?”

### **5. COMMANDER’S COINS.**

Several days later, the DSJA returns to your office. He tells you that the commander was displeased with your advice about the TQM conference. Now the commander has another question, which the DSJA hopes you can answer in the affirmative. The commander wants to use Operation and Maintenance funds to purchase 1,000 custom-minted “Tropic Lightning” commander’s coins. The total price will be \$2000 to \$4000 for the die (a one-time expense) and then \$2 per coin.

The commander wants to place the order right away, because he would like to present a coin to the new mayor on the occasion of his first visit. He also wants to have a large supply for an upcoming training exercise. He plans to make some unplanned appearances at the training site, where he will hand out coins as on-the-spot awards to those soldiers who epitomize the “Tropic Lightning” standard of excellence. He will use them for civilian on-the-spot awards as well. The civilian workforce has been under a lot of stress with all the talk about outsourcing several of the large directorates. The commander was quite excited about this idea for such a cheap and versatile training tool. He thinks handing out some coins to local residents at community relations events will also help maintain the good will his division has always enjoyed in the local community. He has no doubt that he will easily use 500 coins within this fiscal year.

The DSJA again looks at you expectantly (because you are still new and he is withholding judgment) and asks, “What do you think? I know Special Forces units have been buying these things for years. This isn’t a problem, is it?”

## APPENDIX A

### **PURPOSE, TIME, OBLIGATIONS, AND ANTIDEFICIENCY ACT DISCUSSION QUESTIONS**

#### **1. THE DOALL CONTRACT**

- A. Are FY 2003 funds available for the Doall contract options?
- B. May the contracting officer use FY 2002 RDT&E funds to exercise the FY 2003 Doall contract option?
- C. Assuming sufficient FY 2002 O&M Funds are available, may the contracting officer use FY 2002 O&M Funds to exercise the FY 2003 Doall contract option?
- D. May the contracting officer take advantage of 10 U.S.C. § 2410a or 41 U.S.C. § 253l? Why or why not?
- E. How can the contracting officer avoid this situation in follow-on contracts?
- F. May the Women's Club use a government vehicle?

#### **2. MR. LINK N. PENNEY'S LEDGER (See problem for questions.)**

#### **3. THE NEVER ENDING STORY, OR A TALE OF TWO AUDITS**

- A. What did the National Guard Bureau (NGB) do wrong when it bought the spare parts?
- B. Did the NGB avoid an ADA violation by obligating FY 2001 O&M, ANG funds?
- C. Did the NGB avoid an ADA violation by obligating FY 2002 O&M, ANG funds?

**4. THE COMMANDER'S TQM CONFERENCE**

- A. May we use appropriated funds to pay for the lunch?
- B. May we use appropriated funds to pay for the T-shirts?

**5. COMMANDER'S COINS**

- A. May the commander use appropriated funds to buy coins for distribution to others? Where does your analysis begin?
- B. May appropriated funds be used to fund commander's coins as awards for soldiers?
- C. How should the commander draw the distinction between gifts and awards?
- D. May appropriated funds be used to fund commander's coins as awards for civilian employees? What about giving the coins as morale boosters?
- E. May the commander give a coin to the local mayor on the occasion of his visit?
- F. May the commander give coins to members of the local community as tokens of goodwill?
- G. Does the commander's remark that he "will easily use 500 coins within this fiscal year" raise any bona fide needs issues?