



UNDER SECRETARY OF THE ARMY  
WASHINGTON

16 MAR 2000



**CHALLENGE Number 2000-0083**

[REDACTED]

Dear [REDACTED]

This responds to your appeal of the February 22, 2000, decision of the Assistant Secretary of the Army (Manpower and Reserve Affairs), denying your challenge to the 1999 FAIR Act inventory. I received your appeal on March 3, 2000.

**U600, Selected Education and Training Services**

**Activity Challenged.** You are appealing the decision that the FAIR Act inventory properly includes your work as Department of Defense Alternate Test Control Officer, Army Personnel Test Control Officer, Contracting Officers Representative, College Programs Manager and related supervisory functions associated with educational services functions, as performed at Fort Carson.

**Decision.** I have reviewed the Assistant Secretary's decision, which is incorporated herein by reference, in light of your appeal. Based upon this review, I have determined that the selected activities included under Function Code U600 are not inherently Governmental. Therefore, I am affirming the challenge decision that they are properly included in the Army's FAIR Act list.

**Rationale.** Your appeal indicates your belief that the work you perform in your job, as described above, is Governmental in nature. However, the FAIR Act requires consideration of the nature of functions, not of individual jobs or positions. In this regard, the Assistant Secretary determined from an Army-wide perspective that the educational services functions included under function code U600 and within your challenge were not inherently Governmental within the meaning of the FAIR Act. If the FAIR Act challenge process were applied to jobs rather than to functions, your interpretation of the Office of Federal Procurement Policy Letter 92-1 would not be unreasonable. But the FAIR Act challenge process pertains to functions, not to individual jobs. Therefore, if a function is otherwise determined not to be Governmental in nature, administration and management (as distinct from policy and oversight) of work required to perform that function is also not inherently Governmental.

Please note that the Army's FAIR Act determinations are only one step in pursuing a larger objective. The larger objective is to ensure that Army functions and activities are performed in a manner that is both cost-effective and in the best interests



of the taxpayers. In this connection, the Army FAIR Act inventory will be reviewed in conjunction with the Army's larger, ongoing review of all functions for possible re-engineering, privatization, consolidation or other reinvention efforts. As the Assistant Secretary indicated, these reviews may lead to decisions to keep performance of some activities in-house based on risk assessment, national security considerations, or enlightened human resources management.

A handwritten signature in cursive script, appearing to read "Bernard Rostker". The signature is written in dark ink and is positioned above the printed name.

Bernard Rostker



UNDER SECRETARY OF THE ARMY  
WASHINGTON

16 MAR 2000



CHALLENGE Number 2000-0106



Dear [REDACTED]:

This responds to your appeal of the February 22, 2000, decision of the Assistant Secretary of the Army (Manpower and Reserve Affairs), denying your challenge to the 1999 FAIR Act inventory. I received your appeal on March 2, 2000.

You correctly pointed out that the reply to your challenge inadvertently depicted the wrong receipt date. We apologize for the error.

**U600, Selected Education and Training Services**

**Activity Challenged.** You are appealing the decision that the Army Continuing Education System and educational services functions and related management functions, as performed at Fort Carson, were properly included on the list.

**Decision.** I have reviewed the Assistant Secretary's decision, which is incorporated herein by reference, in light of your appeal. Based upon this review, I have determined that selected activities included under Function Code U600 are not inherently Governmental. Therefore, I am affirming the challenge decision that they are properly included in the Army's FAIR Act list:

**Rationale.** Your appeal suggests that the Assistant Secretary's decision confused your challenge with someone else's, because it referenced Function Code U999 rather than U600 and because it did not address the specific educational services aspects of your job that you described in your challenge. I have also considered the contention suggested in your appeal that the management functions that you perform are Governmental in nature within the meaning of Office of Federal Procurement Policy (OFPP) Letter 92-1 even if the functions being managed are commercial in nature.

First, the FAIR Act requires consideration of the nature of functions, not of individual jobs or positions. In this case, the subject of the FAIR Act determination is the function, broadly defined, of education and training services. This broadly defined function includes all of the work identifiable under FAIR Act function codes U600 and U999. It also includes performance of related management and supervisory tasks and



responsibilities required for operation and maintenance of training and education organizations (such as the Mountain Post Training and Education Center).

Furthermore, these tasks and responsibilities are not considered to be inherently Governmental because the underlying training and education services are not considered to be inherently Governmental when the determination within the meaning of the FAIR Act is made at the functional level, rather than at the level of individual jobs. In addition, performance of related management and supervisory tasks is not inherently Governmental because law, rule, and regulation substantially circumscribe discretion at the installation level.

Please note that the Army's FAIR Act determinations are only one step in pursuing a larger objective. The larger objective is to ensure that Army functions and activities are performed in a manner that is both cost-effective and in the best interests of the taxpayers. In this connection, the Army FAIR Act inventory will be reviewed in conjunction with the Army's larger, ongoing review of all functions for possible re-engineering, privatization, consolidation or other reinvention efforts. As the Assistant Secretary indicated, these reviews may lead to decisions to keep performance of some activities in-house based on risk assessment, national security considerations, or enlightened human resources management.

A handwritten signature in black ink, appearing to read "Bernard Rostker". The signature is fluid and cursive, with a large initial "B" and "R".

Bernard Rostker