

Protecting Taxpayers' Dollars — DCMA Contract Disputes Resolution Center

by Ms. Carolina Woods, Staff Writer

Nestled in the heart of historic Manassas, Va., is the Defense Contract Management Agency's (DCMA's) Contract Disputes Resolution Center (CDRC). The Center, which is collocated with the Virginia contract management office (CMO), was created in 2000 to resolve contract disputes between the Agency and defense contractors that are likely to, or do, end up in litigation. The Center currently has a staff of 15 attorneys who are divided into three trial teams: the West Team, which consists of four attorneys located in Carson, Calif., Chicago and the Twin Cities, Minn.; the East Team, with four attorneys divided between Boston and Manassas; and the Manassas team, comprised of five attorneys located in Manassas and Philadelphia. The Center also employs a chief trial attorney, located in Manassas, and an alternate disputes resolution (ADR) specialist located in New York City. The

CDRC team also includes two paralegals and one legal technician, both located in Manassas.

According to Mr. Arthur Taylor, deputy director and chief, Manassas trial team, CDRC, the Center is focused on providing the greatest level of support to its customers. The Center works very closely with the Agency contracting officers, administrative contracting officers and terminating contracting officers, since they are the ones who issue the final decisions resulting in disputes. "Once [these officers] issue a final decision, they want someone in the Center who can represent them if a dispute arises. We work with them on a day-to-day basis," reiterated Mr. Taylor. The Center also reviews all final decisions before they are issued in order to help contracting officers "avoid making bad final decisions and strengthen the good ones."

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Prior to the Center's creation, the contract litigation process was decentralized throughout DCMA. Thus, when contract disputes arose involving a particular CMO, the attorney in that office was responsible for handling that contract dispute. However, in many instances, this method of approaching contract disputes did not yield the best results. As stated by Mr. Taylor, "The problem with that [approach] was that the CMO attorneys were being pulled in many different directions due to the many



(Above) Mr. Michael Chiaparas, DCMA Contract Disputes Resolution Center director (DCMA staff photo)

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issues they faced. The CMO commanders were more concerned with personnel issues because these issues are usually more immediate, and [commanders] have to deal with them more quickly.” Hence, personnel issues were taking most of the CMO attorneys’ time, and contract litigation issues were suffering. Another major obstacle that CMO attorneys faced was that of resources. As Mr. Taylor explained, “The [CMO] attorneys were engaged in litigation against very specialized attorneys from some of the biggest law firms in D.C. Many of those firms were able to throw a lot more resources into these cases than the CMOs were.” So a decision was made in 2000 to centralize the contract litigation function, taking it out of the districts and CMOs and placing it into one organization within DCMA.

The decision to create the CDRC has paid off spectacularly for the Agency. Between Jan. 1, 2003, and June 30, 2006, the Center has closed 111 separate appeals or cases. Of those cases, 44 were won by the Center and include cases where there was a favorable decision for the

government or the contractor withdrew its appeals voluntarily. Only two of the closed appeals were lost during this time period. Thus, the CDRC’s winning percentage in those cases that went to decision or were dismissed is in excess of 95 percent. The remaining 65 closed appeals were resolved by the parties through direct settlement negotiations or through the use of ADR. Although separately counted, the CDRC also considers cases that are settled as victories since settlements are win-win situations as they often expedite the resolution of the business dispute to the satisfaction of all parties. Combining the “settled” column with the “won” column raises the government’s success rate to 98 percent. The direct savings to the government resulting from the settlements — that is, reduction of a contractor’s claims or recovery by the government — is in the multiple millions.

One recent case that was settled is a clear example of the “settlement equals a win” concept. A dispute with the United Technologies Corporation (UTC) involved determining



(Above) Members of the DCMA Contract Disputes Resolution Center staff — seated, from left: Ms. Sharon Parr, Ms. Michele Simmons and Ms. Ronda Sekellick; standing, from left: Mr. Robert Duecaster, Mr. Michael Chiaparas and Mr. Arthur Taylor (DCMA staff photo)

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whether certain transactions UTC had incurred while dealing with its subcontractors were actual costs that should be included in computing its overhead rates. “We were able to get a very good decision out of both the Armed Services Board of Contract Appeals and the Court of Appeals for the federal circuit since they ruled in favor of the government and denied some of [UTC’s] legal arguments,” Mr. Taylor remarked. Following the decisions by the two forums, and after close to 10 years of litigation, the parties were able to settle the case. The final resolution resulted in UTC paying \$283 million to the government. This is especially noteworthy since UTC had initially maintained the position that it did not owe the government anything on the matter in dispute.

Since its creation, one of the Center’s main approaches to solving contract disputes is the use of ADR. ADR, which can be used in personnel cases as well as contracts, is a method of resolving disputes that does not involve litigation. The normal contract disputes litigation process can be costly and lengthy, taking an average of three to five years to resolve. By using ADR to resolve contract disputes, the costs and timeframes to reach final resolutions are significantly reduced. “The best [ADR] method, in our opinion, is to allow the parties to reach their own decisions. The reason is that then the parties are controlling the outcome and not leaving the decision in the hands of a third party,” stated Mr. Taylor. So far, the ADR method that has yielded the most success for the CDRC is using an Armed Services Board of Contract Appeals judge to serve as a settlement judge. With this approach, both parties have an opportunity to present their cases to the selected judge, who in turn addresses his/her findings with each party individually. Although the judge does not provide a decision on the



case, he/she gives each party his/her opinion on the issues in the case. With the settlement judge’s assistance, the parties can then negotiate and hopefully settle the dispute. The CDRC has been very successful in resolving disputes with this process.

As of June 30, 2006, the Center had 50 outstanding Armed Services Board of Contract Appeals cases (including ADR cases) and 23 federal court cases on its docket. These cases have a total value of \$3.2 billion in dispute. During fiscal year 2006, the Center had opened 36 new appeals and closed 36 appeals (through July 28, 2006); recovered \$337 million in costs, which are either returned to DCMA’s service customers or the Treasury; and realized \$37 million in cost savings or cost avoidance for DCMA’s military customers. “Many people do not realize the amount of money that is at stake in our cases,” said Mr. Taylor. “When you look at the various services ... they all have trial teams that deal with contract disputes. Although these trial teams may have more attorneys and more cases, the dollar value of their cases is not even close to what we do. They are dealing in the hundreds-of-millions total value for all their combined cases while we deal in the billions of dollars,” he added.

(Above) Mr. Arthur Taylor, DCMA Contract Disputes Resolution Center deputy director (DCMA staff photo)