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SECRETARY OF THE AIR FORCE**

AIR FORCE INSTRUCTION 51-305

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Law

ACQUISITION LAW AND LITIGATION

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This Air Force Instruction (AFI) implements Headquarters Air Force Mission Directive (HAF MD) 1-14, *General Counsel and The Judge Advocate General* and Air Force Policy Directive (AFPD) 51-3, *Civil Law, Acquisition Law, and Litigation* by providing guidance to judge advocates, commanders and other Air Force personnel, as well as contractors and the public, on acquisition and commercial law, litigation and policy matters involving the Air Force or Air Force personnel. It also establishes the management structure and responsibilities within the Judge Advocate General's Corps for the practice of acquisition and commercial law, and it establishes the support functions of managing contracting offices during contract disputes and litigation. This publication applies to all Air Force personnel, including Air Force civilian employees, service members, and contractors as well as organizations in the Regular Air Force, Air National Guard, Air Force Reserve, and Civil Air Patrol units when operating as an auxiliary of the Air Force. Ensure all records created as a result of processes prescribed in this publication are maintained in accordance with Air Force Manual 33-363, *Management of Records*, and disposed of in accordance with the Air Force Records Disposition Schedule located in the Air Force Records Information Management System. Refer recommended changes and questions about this publication to the Office of Primary Responsibility (OPR) using Air Force Form 847, *Recommendation for Change of Publication*. Route the Air Force Form 847 through the appropriate functional chain of command. This publication may be supplemented at any level, but all supplements must be routed to the OPR of this publication for coordination prior to certification and approval. The authorities to waive wing/unit level requirements in this publication are identified with a Tier ("T-0, T-1, T-2, T-3") number following the compliance statement. See AFI

33-360, *Publications and Forms Management*, for a description of the authorities associated with the tier numbers. Submit requests for waivers through the chain of command to the appropriate tier waiver approval authority, or alternately, to the requestors commander for non-tiered compliance items.

Chapter 1

ACQUISITION LAW AND LITIGATION OVERVIEW

1.1. Overview . The purpose of this instruction is to describe the roles and responsibilities of judge advocates, commanders and other Air Force personnel in ensuring compliance with federal acquisition laws and regulations. This instruction does not amend or alter the roles and responsibilities set forth in HAF MD 1-14 and should be read consistently with that Mission Directive.

1.2. Shared Functions with the Office of the Air Force General Counsel (SAF/GC). In regard to the practice of acquisition and commercial law, the Air Force Judge Advocate General's Corps has shared functions with the Office of the Air Force General Counsel, Acquisition Law Division (SAF/GCQ), as detailed in HAF MD 1-14.

1.3. Exceptions to Instruction. Roles, responsibilities, policies and procedures relating to the following areas are not explained in this instruction:

1.3.1. Release or provision of information in civil litigation, civil discovery and the litigation hold/preservation notice process, and foreign civil proceedings affecting Federal Government interests. For these areas, see AFI 51-301, *Civil Litigation*, Chapters 3-5.

1.3.2. Procurement fraud cases, including *qui tam* cases. For these areas, see AFI 51-1101, *The Air Force Procurement Fraud Remedies Program*.

1.3.3. Alternative dispute resolution with respect to contract controversies and disputes. For these areas, see AFI 51-1201, *Negotiation and Dispute Resolution Program*.

Chapter 2

ROLES AND RESPONSIBILITIES

2.1. The Office of the Judge Advocate General (AF/JA). Executes duties and provides legal services consistent with HAF MD 1-14.

2.2. Acquisition Law and Litigation Directorate (AF/JAQ). Develops policy, plans, and programs; establishes requirements for the resourcing and support of the Air Force's acquisition and commercial law mission; and provides fiscal law advice when related to acquisition law and litigation. In particular, AF/JAQ must:

2.2.1. Advise the Chief of Staff of the Air Force, The Judge Advocate General, and Headquarters Air Force directorates.

2.2.2. Collaborate with SAF/GCQ on guidance, advice, and assistance on acquisition and commercial law matters that AF/JAQ provides to all legal offices of major commands, field operating agencies, and direct reporting units.

2.2.3. Develop policies, and provide policy guidance on acquisition and commercial litigation and legal support. See AFPD 51-3, *Civil Law, Acquisition Law and Litigation*. These matters include, but are not limited to:

2.2.3.1. Acquisition and commercial law disputes, bid protests, claims, litigation, and alternative dispute resolution.

2.2.3.2. Acquisition and commercial law support provided by military and civil service attorneys, paralegals, and support staff assigned to legal offices.

2.2.3.3. Administrative matters that impact acquisition and commercial litigation, such as document retention and the assembly of agency records.

2.2.3.4. Lessons learned and best practices on acquisition and commercial law matters.

2.2.4. Develop core competencies for acquisition and commercial law support, and review and evaluate the performance of such support. These matters include, but are not limited to:

2.2.4.1. Overseeing and directing the representation of the Air Force in acquisition and commercial litigation.

2.2.4.2. Assessing acquisition and commercial law processes and advising on process improvements.

2.2.4.3. Monitoring and assessing the quality and consistency of legal advice provided by acquisition and commercial law attorneys assigned to legal offices.

2.2.4.4. Assisting SAF/GCQ in advising program executive officers on litigation risk and mitigation on major source selections as part of the bid protest review teams set up jointly with SAF/GCQ. See AFPD 51-3. Advice will be provided at key decision points in the source selection process (to include solicitation release, competitive range determination, and award decision phases), as well as other points during source selection as requested by program executive officers. All advice provided to program executive officers shall be coordinated through the lead SAF/GCQ attorney for the program, and will be developed in collaboration with program legal offices.

2.2.4.5. Identifying trends, lessons learned, best practices and process improvements for issues affecting acquisition and commercial law attorneys, paralegals, and support staff.

2.2.5. Advise The Judge Advocate General on how acquisition legal support is provided across the enterprise.

2.2.6. Team, as appropriate, with SAF/GC on acquisition law attorney participation in multi-functional independent review teams under Air Force Federal Acquisition Regulation Supplement (AFFARS) Section 5301.9001, *Policy, Thresholds, and Approvals*, and AFPD 51-3.

2.2.7. Conduct mid and long-range planning, programming and requirements development for acquisition law support. These matters include, but are not limited to:

2.2.7.1. Supporting The Judge Advocate General in ensuring attorneys, paralegals and support staff are trained to provide expert acquisition law counsel, advice and support on acquisition law matters. These matters include acquisition planning, contract formation, contract administration, contract litigation, source selection, competition, sole sourcing, personal services, competitive sourcing under Office of Management and Budget Circular A-76, privatization, intellectual property, fiscal law concerning acquisitions, bankruptcy, surety, small business programs, procurement integrity, ethics in contracting, contractor debarment, contracting in support of disaster relief operations, and contingency contracting.

2.2.7.2. Anticipating and planning requirements for resources, and advising The Judge Advocate General on those requirements.

2.2.7.3. Developing attorney and paralegal training programs and opportunities, and ensuring the quality of training objectives and materials.

2.2.7.4. Developing processes that integrate acquisition law support with supported activities.

2.2.8. Monitor legislative developments potentially impacting acquisitions, coordinate with SAF/GCQ in proposing legislative initiatives to SAF/LL, and as appropriate seek input from MAJCOM and program legal offices on the potential impact of legislative proposals, pursuant to AFPD 51-3.

2.3. Air Force Legal Operations Agency Commercial Law and Litigation Directorate (AFLOA/JAQ). AFLOA/JAQ consists of two divisions: the Commercial Litigation Field Support Center (AFLOA/JAQC) and the Contract Law Field Support Center (AFLOA/JAQC). AFLOA/JAQ oversees the operation of these divisions and the personnel assigned to them.

2.3.1. The Commercial Litigation Field Support Center (AFLOA/JAQC) must:

2.3.1.1. Represent the Air Force, U.S. Special Operations Command, U.S. Transportation Command, and U.S. Cyber Command in pre-award and post-award bid protests. This representation occurs when protests are filed with the Government Accountability Office (GAO) concerning acquisitions. Representation also includes requests for costs and requests for reconsideration related to such protests. See AFPD 51-3. The responsibilities of AFLOA/JAQC shall include but are not limited to:

2.3.1.1.1. Managing the Air Force bid protest docket. (T-1).

- 2.3.1.1.2. Submitting filings with the GAO, with the assistance of the appropriate field legal office(s). **(T-1)**.
 - 2.3.1.1.3. Coordinating with SAF/GCQ and the Department of Justice on proposed head of contracting activity overrides of stays of contract award or performance under Title 31 United States Code (U.S.C.) Section 3553, and filing required notice with the GAO if an override is approved. **(T-1)**.
 - 2.3.1.1.4. When appropriate and in coordination with the appropriate field legal office(s), providing a litigation risk assessment to the contracting officer. **(T-2)**.
 - 2.3.1.1.5. Devising and carrying out litigation strategies. **(T-2)**.
 - 2.3.1.1.6. Requesting or agreeing to outcome prediction at the GAO, with the concurrence of the supported activity.
 - 2.3.1.1.7. Advising the contracting officer and source selection authority on litigating bid protests and taking corrective action. **(T-2)**.
 - 2.3.1.1.8. When AFLOA/JAQC represents one of the parties identified in this section in a bid protest filed with the GAO, it retains decision-making authority on any matter arising out of the litigation. **(T-2)**. Matters which remain the ultimate responsibility of the supported activity are:
 - 2.3.1.1.8.1. Deciding whether to take corrective action.
 - 2.3.1.1.8.2. Deciding whether to seek an override of the automatic stay of contract award or performance under 31 U.S.C. § 3553.
 - 2.3.1.1.8.3. Deciding whether to follow the GAO's recommendation in the event of a sustained protest.
- 2.3.1.2. Represent the Air Force, U.S. Special Operations Command, U.S. Transportation Command, and U.S. Cyber Command in appeals to the Armed Services Board of Contract Appeals (ASBCA) from contracting officers' final decisions. These decisions relate to procurement contract claims governed by the Contract Disputes Act (Title 41 U.S.C. Sections 7101-7109) or as required by contract clauses. These decisions also relate to deemed denials of such claims, both as to entitlement and quantum. See AFPD 51-3. The responsibilities of AFLOA/JAQC shall include but are not limited to:
- 2.3.1.2.1. Managing the Air Force contract appeals docket. **(T-1)**.
 - 2.3.1.2.2. Submitting filings with the ASBCA, with the assistance of the appropriate field legal office(s). **(T-1)**.
 - 2.3.1.2.3. When appropriate and in collaboration with the cognizant field legal office, providing a litigation risk assessment to the contracting officer and program manager. **(T-2)**.
 - 2.3.1.2.4. Devising and carrying out litigation strategies. **(T-2)**.
 - 2.3.1.2.5. Advising the contracting officer or other authorized official on litigation and settlement of claims. **(T-2)**.

- 2.3.1.2.6. When AFLOA/JAQC acts pursuant to this section, it retains decision-making authority on any matter arising out of the litigation. **(T-2)**. Matters which remain the ultimate responsibility of the supported activity are:
- 2.3.1.2.6.1. Deciding whether to settle a claim or participate in alternative dispute resolution.
 - 2.3.1.2.6.2. Deciding whether to fund litigation support activities such as expert witnesses, litigation support contractors, and deposition transcription services.
- 2.3.1.3. Act as agency counsel in support of the Department of Justice in cases representing the Air Force, U.S. Special Operations Command, U.S. Transportation Command, and U.S. Cyber Command in all types of acquisition and commercial litigation. This litigation involves acquisitions, including pre-award and post-award bid protests filed with the U.S. Court of Federal Claims. The responsibilities of AFLOA/JAQC shall include but are not limited to:
- 2.3.1.3.1. Defending appeals filed with the U.S. Court of Federal Claims from contracting officers' final decisions on claims filed pursuant to the Contract Disputes Act, including appeals of deemed denials of such claims, and the Tucker Act (Title 28 U.S.C. Section 1491), as well as appeals of contracting officers' final decisions in federal district courts pursuant to the Little Tucker Act (Title 28 U.S.C. Section 1346). **(T-2)**.
 - 2.3.1.3.2. Defending intellectual property-related litigation (including inventions, patents, copyrights, trademarks, proprietary information, non-disclosure agreements, and trade secrets matters as addressed in AFI 51-303, *Intellectual Property*), and bankruptcy-related litigation. **(T-2)**.
 - 2.3.1.3.3. Defending Air Force interests in bankruptcies filed by contractors in federal courts. **(T-2)**.
 - 2.3.1.3.4. Acting as agency counsel in support of the Department of Justice on all appeals of the above cases filed in intermediate and final appellate courts, such as the U.S. Court of Appeals for the Federal Circuit and the Supreme Court of the United States. **(T-2)**.
- 2.3.1.4. Represent the Air Force in other acquisition-related administrative proceedings, such as North American Industry Classification System code appeals with the Small Business Administration when requested by base-level/servicing legal office and permitted by resources. In addition, AFLOA/JAQC represents the Air Force in patent and copyright administrative claims based on Department of Defense Federal Acquisition Regulation Supplement provisions, and other intellectual property disputes before federal administrative tribunals.
- 2.3.1.5. Promptly notify the appropriate field legal office of final decisions in contract and commercial litigation.
- 2.3.1.6. In coordination with AF/JAQC, publish templates, point papers, guides, reference materials, handbooks, and other materials designed to improve, streamline, and standardize acquisition law litigation.

2.3.1.7. For contract claim appeals in the U.S. Court of Federal Claims, ensure compliance with AFI 51-301, paragraphs 2.2 (Litigation Reports), 2.3 (Administrative Records), and 2.4 (Authenticating Air Force Official Information).

2.3.1.8. For AFLOA/JAQC responsibilities in third-party commercial litigation, see the Civil Litigation Handbook as provided by AFLOA/JAQC.

2.3.2. The Contract Law Field Support Center (AFLOA/JAQC) must:

2.3.2.1. Provide reachback support to Air Force, and as appropriate, joint and sister service acquisition law professionals on all aspects of military procurement, contract formation, contract administration, program management, and associated subject matters (e.g. ethics, socioeconomic policies, intellectual property, labor relations). **(T-1)**.

2.3.2.2. Act as the focal point for field support reachback for home station and deployed legal offices, including in contingency and disaster relief acquisitions. **(T-2)**.

2.3.2.3. Provide training and reachback support on acquisition and fiscal law to deploying, deployed, and expeditionary Airmen, including in contingency and disaster relief operations. **(T-2)**.

2.3.2.4. Upon request, provide reachback support on corrective action in any bid protest before the GAO or the U.S. Court of Federal Claims. **(T-2)**.

2.3.2.5. Review all contracting officer final decisions, pursuant to the AFFARS Section 5333.290, *Claims and Terminations for Default*. This specifically includes, but is not limited to, decisions on contract claims and all contract termination actions where a contractor will be terminated for default or cause. **(T-2)**.

2.3.2.6. Perform duties tasked to either AFLOA or AFLOA/JAQC in AFPD 51-11, *Coordination of Remedies for Fraud and Corruption Related to Air Force Procurement Matters*, and AFI 51-1101. **(T-2)**.

2.3.2.7. Provide acquisition law support directly to the Air Force Installation Contracting Agency (AFICA). The responsibilities of AFLOA/JAQC shall include, but are not limited to:

2.3.2.7.1. Acting as focal point for legal support on acquisition and acquisition-related matters to the AFICA Commander (AFICA/CC).

2.3.2.7.1.1. Within AFICA and/or when requested by AFICA/CC or his/her designee, AFLOA/JAQC shall act as the focal point among legal offices supporting AFICA in order to determine and convey AFICA legal positions. **(T-1)**.

2.3.2.7.1.2. AFLOA/JAQC shall provide the final and authoritative AFICA legal position to AFICA/CC or his/her designee for his/her action. **(T-1)**.

2.3.2.7.2. Supporting AFICA's application of strategic sourcing concepts and processes at the local, regional, and enterprise level with the goal to reduce costs and improve mission effectiveness. **(T-1)**.

2.3.2.7.3. Providing direct acquisition law support that includes, but is not limited to, cradle-to-grave support for the acquisition planning, pre-award, source selection, and

post-award administration. AFLOA/JAQC shall provide such support to the following AFICA subordinate units:

2.3.2.7.3.1. The 771st Enterprise Sourcing Squadron. **(T-1)**.

2.3.2.7.3.2. The 773d Enterprise Sourcing Squadron. **(T-1)**.

2.3.2.7.3.3. AFICA's Defense Technical Information Center supporting Contracting Directorate (AFICA/KD). **(T-1)**.

2.3.2.7.4. Providing program counsel support to AFICA organizations for Foreign Military Sales programs as necessary. **(T-1)**.

2.3.2.7.5. Assigning attorneys to work on multidisciplinary independent review teams in coordination with AF/JAQC and the lead attorney from SAF/GC. **(T-1)**. See AFPD 51-3.

2.3.2.8. Provide legal support to the 38th Contracting Squadron on any acquisition-related matters. **(T-1)**.

2.3.2.9. Serve as the Air Force's principal representative on all Randolph-Sheppard Act arbitrations before the Department of Education, pursuant to Title 20 U.S.C. Section 107 *et seq.* **(T-1)**. The Contract Law Field Support Center will also serve as the Office of Primary Responsibility for coordinating Air Force Randolph-Sheppard Act policy with SAF/GCQ.

2.3.2.10. In coordination with AF/JAQC:

2.3.2.10.1. Provide field legal offices with templates, point papers, guides, reference materials, handbooks, and other materials designed to improve, streamline, and standardize the practice of acquisition law.

2.3.2.10.2. Support the Air Force Judge Advocate General's School, the Air Force Expeditionary Center, and similar organizations in providing acquisition law training.

2.4. Legal Offices of Major Commands, Field Operating Agencies, and Direct Reporting Units. Legal offices of major commands, field operating agencies, and direct reporting units must:

2.4.1. Provide acquisition and fiscal law advice to contracting activities and other units within their organization, and to other organizations identified by formal support agreements. **(T-2)**.

2.4.2. Identify and inform AFLOA/JAQC of matters likely to be the subject of acquisition and commercial litigation, as listed in paragraph 2.3.1 of this instruction. **(T-1)**.

2.4.3. Identify and inform AFLOA/JAQC for review, prior to their issuance and in accordance with AFFARS Section 5333.290, of all contracting officer final decisions. This specifically includes, but is not limited to, decisions on contract claims and all contract termination actions where a contractor will be terminated for default or cause. **(T-1)**.

2.4.4. Identify and inform AFLOA/JAQC of matters involving the Randolph-Sheppard Act (20 U.S.C. § 107 *et seq.*) which are deemed likely to be the subject of arbitration or litigation. **(T-1)**.

2.4.5. Identify and inform AF/JAQ and SAF/GCQ of draft, proposed, or implemented policy or legislative matters relevant to acquisitions. **(T-1)**.

2.4.6. Ensure program and contract attorneys support AFLOA/JAQ attorneys serving as trial attorneys, agency counsels, and Randolph-Sheppard Act principal representatives. This support includes responding to inquiries, facilitating witness availability, and facilitating the provision of documents by the contracting activity. **(T-1)**.

2.5. Base-Level/Servicing Staff Judge Advocates or Chief Counsel. Base-level/servicing staff judge advocates or chief counsel must:

2.5.1. Foster acquisition expertise within their office, in accordance with the standards published by AF/JAQ, and maintain continuity of acquisition efforts and litigation support. **(T-2)**.

2.5.2. Conduct outreach to supported contracting activities in order to facilitate participation in acquisition planning and requirements generation, and preparation for potential future litigation. **(T-2)**.

2.5.3. Identify and inform AFLOA/JAQC of matters likely to be the subject of acquisition and commercial litigation, as listed in paragraph 2.3.1 of this instruction. **(T-1)**. Communications with AFLOA/JAQC are not routed through intermediate command functional levels; however, intermediate command functional levels should be informed such communications are occurring per MAJCOM guidance.

2.5.4. Identify and inform AFLOA/JAQC, for their review, of all contracting officer final decisions prior to the issuance of the decision, in accordance with AFFARS Section 5333.290. This specifically includes, but is not limited to, decisions on contract claims and all contract termination actions where a contractor will be terminated for default or cause. **(T-1)**. Communications with AFLOA/JAQC are not routed through intermediate command functional levels; however, intermediate command functional levels should be informed such communications are occurring per MAJCOM guidance.

2.5.5. Identify and inform AFLOA/JAQC of matters involving the Randolph-Sheppard Act (20 U.S.C. § 107 *et seq.*) which are deemed likely to be the subject of arbitration or litigation. **(T-1)**.

2.5.6. Provide legal and logistical support to AFLOA/JAQ personnel for acquisition litigation arising from their installation.

2.5.6.1. In bid protests, base-level/servicing staff judge advocates or chief counsel must:

2.5.6.1.1. Represent the Air Force in agency-level bid protests. **(T-1)**.

2.5.6.1.2. For any GAO bid protests filed against base actions, prepare a draft memorandum of law and assist the contracting officer with drafting the contracting officer's statement of facts. **(T-2)**.

2.5.6.1.3. Assist in drafting requests for dismissal, responding to requests for documents, and responding to supplemental GAO bid protest allegations, as needed. **(T-3)**.

2.5.6.1.4. Assist the contracting officer with assembling the relevant documents for the GAO agency report and transmitting them to AFLOA/JAQC. **(T-3)**.

- 2.5.6.1.5. Assist in making corrective action determinations and ensuring the corrective action memorandum for record is prepared and signed by the contracting officer. **(T-3)**.
- 2.5.6.1.6. Assist in corrective action implementation. **(T-3)**.
- 2.5.6.2. For any bid protests filed with the U.S. Court of Federal Claims, assist AFLOA/JAQC and the Department of Justice on assembling the administrative record and protest defenses. **(T-3)**.
- 2.5.6.3. In appeals before the ASBCA, federal court lawsuits (including U.S. Court of Federal Claims contract claim appeals) and administrative proceedings, base-level/servicing legal offices must:
- 2.5.6.3.1. Assist the contracting activity in responding to AFLOA/JAQC trial attorney requests for documents. **(T-3)**.
 - 2.5.6.3.2. Assist the contracting activity in responding to the complaint and to written discovery requested by the opposing party. **(T-3)**.
 - 2.5.6.3.3. Identify personnel and documents, including emails and electronic media, relating to the issues identified by the opposing party in the complaint. **(T-3)**.
 - 2.5.6.3.4. Assist in making requested personnel available for AFLOA/JAQC review of facts pertinent to the dispute, interviews, depositions, hearing testimony and preparation for same.
 - 2.5.6.3.5. Assist in making requested facilities or sites available for AFLOA/JAQC review of facts and witness interviews.
 - 2.5.6.3.6. Assist in determining agency objectives in any potential settlement considerations.
- 2.5.6.4. Comply with the substantive litigation requirements as stated in AFI 51-301, paragraph 1.4.2.
- 2.5.6.5. Support AFLOA/JAQC attorneys serving as trial attorneys, agency counsels, and Randolph-Sheppard Act principal representatives. This support includes responding to inquiries, providing documents, facilitating witness availability, and generating requested or tasked legal memoranda. **(T-3)**.

2.6. Managing Contracting Offices. Managing contracting offices must:

- 2.6.1. Provide AFLOA/JAQC with the agency report following a bid protest to the GAO, or with the administrative record following a bid protest to the U.S. Court of Federal Claims. **(T-1)**.
- 2.6.2. If the contracting activity seeks an override of a mandatory stay of award or performance from the head of contracting activity, provide AFLOA/JAQC with a draft determination and finding, draft SAF/AQ decision document, and all supporting documentation. **(T-1)**.
- 2.6.3. Provide AFLOA/JAQC with all relevant documents for the agency record (i.e, the “Rule 4 File”) following a contract claim appeal to the ASBCA or the U.S. Court of Federal Claims. **(T-1)**.

2.6.4. Provide all proposed contracting officer final decisions to AFLOA/JAQQ for review prior to making a determination and in accordance with the AFFARS Section 5333.290. This shall include, but is not limited to, decisions on contract claims and all contract termination actions where a contractor will be terminated for default or cause. The managing contracting office shall also provide relevant underlying documents. These documents include the contract, all modifications, and records of all correspondence between the contractor and government agents on the contract matter. **(T-1)**.

2.6.4.1. In coordination with the servicing legal office, provide AFLOA/JAQQ with the preliminary legal review of the final decision.

2.6.4.2. Coordinate with AFLOA/JAQQ on all extensions of the deadline for the contracting officer's final decision, prior to issuing the notice of extension to the contractor.

2.7. Supported Activities with Contracts Subject to Litigation. Supported activities whose contracts are in litigation must fund expenses arising from such litigation. These expenses include attorney travel; expert consultant and expert witness fees and expenses; witness travel; court reporter and deposition transcription costs; document database services to collect, manage, search and produce documents; and payment of awards and litigation costs ordered by a court or administrative body.

2.8. Legal Support to Air Force Small Business Programs. SAF/GC and judge advocate personnel support Air Force small business programs at headquarters, command, and unit levels in accordance with HAF MD 1-14 and AFI 90-1801, *Small Business Programs*. In particular, SAF/GCQ serves as the focal point legal advisor to the Air Force Office of Small Business Programs (SAF/SB).

2.8.1. Whenever the Director, SAF/SB, acts as a reviewing or deciding official on any complaint or appeal brought by a small business concern or a federal agency, the responsibility for representing the command, unit, or official that is the subject of a complaint or appeal shall fall on the judge advocate office supporting such command, unit, or official. **(T-1)**. Such complaints and appeals include, but are not limited to, appeals by the Small Business Administration under Federal Acquisition Regulation, Part 19, *Small Business Programs*, current edition, and small business complaints referred for review by the Small Business Administration National Ombudsman under Public Law 104-121, *Small Business Regulatory Enforcement Fairness Act*, as amended by Public Law 110-28.

2.8.2. As the focal point legal advisor to SAF/SB, SAF/GCQ advises and supports the Director, SAF/SB, in his or her review of complaints or appeals as well as in the preparation and implementation of any decision or resolution. When requested by SAF/GCQ or SAF/SB, judge advocates shall provide assistance on small business complaints and appeals. **(T-1)**.

2.9. Miscellaneous Roles and Responsibilities. For roles and responsibilities of other Air Force personnel, offices, units, and activities in relation to litigation, see AFI 51-301, paragraph 1.6.

JEFFREY A. ROCKWELL
Lieutenant General, USAF
The Judge Advocate General

Attachment 1**GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

Title 10 USC § 2371, *Research Projects*

Title 10 USC § 2371a, *Cooperative Research and Development Agreements*

Title 10 USC § 2371b, *Authority of the Department of Defense to Carry Out Certain Prototype Projects*

Title 15 USC § 3706, *Grants and Cooperative Agreements*

Title 20 USC § 107 *et seq.*, *Randolph-Sheppard Act*

Title 28 USC § 1346, *Little Tucker Act*

Title 28 USC § 1491, *Tucker Act*

Title 31 USC § 3553, *Review of Protests*

Title 31 USC, Chapter 63, *Using Procurement Contracts and Grant and Cooperative Agreements*.

Title 41 USC §§ 7101-7109, *Contract Disputes Act*

Public Law 104-121, *Small Business Regulatory Enforcement Fairness Act*, 29 March 1996

Public Law 110-28, *Small Business Regulatory Enforcement Fairness Act*, 25 May 2007

Federal Acquisition Regulation, Part 19, *Small Business Programs*, current edition

AFFARS Section 5301.9001, *Policy, Thresholds, and Approvals*, current edition

AFFARS Section 5333.290, *Claims and Terminations for Default*, current edition

Office of Management and Budget Circular A-76, *Performance of Commercial Activities*, 4 August 1983

HAF MD 1-14 *General Counsel and the Judge Advocate General*, 29 December 2016

AFI 33-360, *Publications and Forms Management*, 1 December 2015

AFMAN 33-363, *Management of Records*, 1 March 2008

AFPD 51-3, *Civil Law, Acquisition Law and Litigation*, 28 November 2018

AFPD 51-11, *Coordination of Remedies for Fraud and Corruption Related to Air Force Procurement Matters*, 24 April 2018

AFI 51-301, *Civil Litigation*, 2 October 2018

AFI 51-303, *Intellectual Property*, 22 June 2018

AFI 51-1101, *The Air Force Procurement Fraud Remedies Program*, 19 October 2017

AFI 51-1201, *Negotiation and Dispute Resolution Program*, 2 October 2018

AFI 63-101/20-101, *Integrated Life Cycle Management*, 9 May 2017

AFI 90-1801, *Small Business Programs*, 2 August 2018

Adopted Forms

AF Form 847, *Recommendation for Change of Publication*

Abbreviations and Acronyms

AFFARS—Air Force Federal Acquisition Regulation Supplement

AFI—Air Force Instruction

AFICA—Air Force Installation Contracting Agency

AFLOA—Air Force Legal Operations Agency

AFPD—Air Force Policy Directive

ASBCA—Armed Services Board of Contract Appeals

CFR—Code of Federal Regulations

FAR—Federal Acquisition Regulation

GAO—Government Accountability Office

GC—Office of the General Counsel

GCQ—Office of the General Counsel, Acquisition Law Division

HAF—Headquarters Air Force

JAQ (AF/JAQ)—Acquisition Law and Litigation Directorate

JAQ (AFLOA/JAQ)—Commercial Law and Litigation Directorate

JAQC—Commercial Litigation Field Support Center

JAQK—Contract Law Field Support Center

MD—Mission Directive

OPR—Office of Primary Responsibility

SAF—Secretary of the Air Force

SB—Office of Small Business Programs

USC—United States Code

Terms

Acquisition—The means of acquiring by contract, agreement, other transaction, or other instrument as authorized by law, supplies or services using appropriated or nonappropriated funds. Used here, this terms includes, but is not limited to, the activities involved in the terms “acquisition” as stated in the Federal Acquisition Regulation (48 Code of Federal Regulations (C.F.R.) § 2.101); “grant,” “cooperative agreement,” and “intergovernmental support agreement” as stated in the Department of Defense Grants and Agreements regulation (32 C.F.R. §§ 21.640 & 21.655); “cooperative research and development agreement” as stated in Title 10 U.S.C. Section

2371a and Title 15 U.S.C. Section 3706; and, “other transaction” as stated in Title 10 U.S.C. Sections 2371 & 2371b.

Acquisition Fraud Counsel—An Air Force attorney (preferably a civilian) appointed by the staff judge advocate, for that organization or installation, to execute the procurement fraud remedies program for his or her command, installation, or program in accordance with AFI 51-1101, *The Air Force Procurement Fraud Remedies Program*.

Acquisition Law—The body of law concerning acquisitions. Acquisitions law covers all stages of acquisitions described in Department of Defense Instruction 5000.02, *Operation of the Defense Acquisition System*. Acquisition law additionally includes the practice of fiscal law and ethics when the question concerns an acquisition.

Acquisition Litigation—Litigation that includes bid protests filed at the Government Accountability Office (GAO), the U.S. Court of Federal Claims, and the U.S. Court of Appeals for the Federal Circuit; and contract claims filed at the Armed Services Board of Contract Appeals (ASBCA), the U.S. Court of Federal Claims, and U.S. district courts.

Agency Report—In a bid protest, the file submitted by the agency to the GAO and parties to the protest. The agency report includes the relevant information necessary for the GAO to issue its decision.

Commercial Law—The body of law concerning commercial transactions, the legal rights, relations, and conduct of persons and businesses who are engaged in the formation, administration, and litigation of agreements to buy supplies, services, and construction of commercial items. These matters include intellectual property, fiscal law, bankruptcy, surety, and procurement integrity.

Contract—A mutually binding legal relationship obligating the seller to furnish supplies, services, utilities, and/or construction and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by Title 31 U.S.C., Chapter 63.

Contracting Officer—Officials appointed and authorized to enter into, administer, or terminate contracts and make related determinations and findings. This appointment and authorization is also known as a contract warrant. Contracting officers may bind the Government only to the extent of the authority delegated to them. Contracting officers shall receive from the appointing authority (see FAR Section 1.603-1) clear instructions in writing regarding the limits of their authority. Information on the limits of the contracting officer’s authority shall be readily available to the public and agency personnel.

Contracting Officer's Statement of Facts—Document written by the contracting officer that sets forth the contracting officer's findings, actions, and recommendations, and any additional evidence or information not provided in the agency report that may be necessary to determine the merits of the protest and is submitted as part of the agency report to the GAO.

Corrective Action Memorandum for Record—Document written by the contracting officer for the contract file that sets forth the relevant facts, provides why the contracting officer determined corrective action was necessary, and sets forth what the corrective action will be.

Debarment—An action taken by a debarring official under FAR Section 9.406 to exclude a contractor from Government contracting and Government-approved subcontracting for a reasonable, specified period; a contractor that is excluded is “debarred.”

Grant—Also known as a grant agreement, is a legal instrument reflecting a relationship between the Federal Government and a state, a local government, or other recipient when the principal purpose of the relationship is to transfer a thing of value to the state or local government or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States rather than acquire property or services for the direct benefit or use of the Federal Government; and in which substantial involvement is not expected between the transferring executive agency and the state, local government, or other recipient when carrying out the activity contemplated by the grant.

Intellectual Property—Rights protecting intangible property interests such as patents, copyrights, trademarks, trade secrets, technical data rights, and software rights.

Other Transaction—A generalized term for a procurement action/agreement to conduct research, development and prototyping under 10 U.S.C. § 2371 and its associated subsections.

Memorandum of Law—Document that contains a discussion of the controlling legal authority and is submitted as part of the agency report to the GAO.

Program Executive Officer—The program executive officer is the main stakeholder responsible for cost, schedule and performance in a Department of Defense acquisition program and/or portfolio. A program executive officer may be responsible for a specific program (e.g., the Presidential Aircraft Recapitalization) or for an entire portfolio of similar programs (e.g., Fighter/Bomber, Mobility, and Space). Specific program executive officer duties within the Air Force are defined in paragraph 2.26 of AFI 63-101/20-101, *Integrated Life Cycle Management*.

Procurement Integrity—Procurement Integrity encompasses a range of legislation, regulations, directives, actions, and attitudes for preserving the integrity of the federal procurement system and assuring the fair treatment of bidders, offerors, and contractors. The term “integrity” itself is defined as firm adherence to a code or standard of values.

Qui Tam—Suit filed under seal by a private party on behalf of the Federal Government against a contractor alleging the submission of false claims to the government.

Rule 4 File—In a contract appeal, the file submitted by the agency to the ASBCA and parties to the appeal. The Rule 4 File includes information required by the ASBCA in order for it to make a decision.