

OFFICE OF COUNSEL SUBPLAN

1. Purpose. This appendix supplements the Detroit District Quality Management Plan (QMP) for the execution of quality control (QC) activities in the Office of Counsel.

2. Applicability. This appendix applies to all legal services performed by the Detroit District Office of Counsel. The QC functions and responsibilities will complement the District's Vision and Strategic Business Plan for providing QC in our services.

3. References

- a. AR 27-1, Legal Services, dated 30 September 1996
- b. AR 27-20, Claims, dated 14 November 2002
- c. AR 27-26, Rules of Professional Responsibility for Lawyers, dated 1 May 1992
- d. AR 27-40, Litigation, dated 19 September 1994
- e. DA PAM 27-21, Administrative and Civil Law Handbook
- f. DA PAM 27-26, Rules for Professional Conduct for Lawyers
- g. DA PAM 27-153, Contract Law
- h. DA PAM 27-162, Claims Procedures, dated 1 April 1998
- i. FM 27-100, Legal Operations
- j. USACE Supplement 1 to AR 690-200, 2\302, Civilian Attorneys Under the Qualifying Authority of the Chief Counsel USACE, dated 29 June 2001
- k. The Chief Counsel's Task Force Report on the Delivery of Legal Services, September 1994
- j. AR 15-6, Procedures for Investigating Officers, dated 30 September 1996
- m. AR 25-55, The Department of the Army Freedom of Information Act Program, dated 1 November 1997
- n. AR 340-21, The Army Privacy Act Program, dated 5 July 1985

- o. AR 735-5, Policies and Procedures for Property Accountability (Reports of Survey), dated 10 June 2002
- p. DoDD 5500.7, Joint Ethics Regulation, dated 30 August 1993
- q. DoDD 5515.9, Settlement of Tort Claims, dated 12 September 1990
- r. Federal Acquisition Regulation (FAR), dated 1 January 2003
- s. Defense Federal Acquisition Regulation Supplement (DFARS), dated 20 December 2002
- t. Army Federal Acquisition Regulation Supplement (AFARS)
- u. Engineer Federal Acquisition Regulation Supplement (EFARS)
- v. Federal Tort Claims Act Handbook, U.S. Army Claims Service, dated 22 September 1992
- w. EP 1165-2-1, Digest of Water Resources Policies and Authorities, dated 30 July 1999

4. Definitions

a. Quality Control. In this context, the definition means consistency with law and regulation as a fundamental requisite for all products and services.

b. Quality Checks and Reviews. Routine reviews both internally within Office of Counsel for performance and external review of District products and services for legal compliance.

5. Responsibilities. The Detroit District Counsel is responsible for furnishing expert legal counsel to the District Commander, executive staff and operating officials concerning all legal aspects of Detroit District activities including planning, design, construction and operation and maintenance of Civil Works projects. The District Counsel plans, directs and reviews the work of the legal staff, determining legal sufficiency and soundness of conclusions. Members of the legal staff serve as agency representatives regarding bid protests and as trial attorneys before the Corps of Engineer Board of Contract Appeals, the Merit Systems Protection Board, and the Equal Employment Opportunity Commission. Counsel prepares litigation reports and assists Department of Justice attorneys concerning other litigation involving the District. Counsel handles administrative tort claims and contract claims; performs the functions of Ethics Counselor; serves as the initial denial authority for Freedom of Information Act request; and provides attorney expertise in the areas of contracting, fiscal, tort, personnel,

EEO, environmental, water rights, regulatory and general law. The District Counsel is responsible through quality checks and reviews for legal compliance.

6. Quality Control

a. Detroit District Office of Counsel is responsible for quality control of products that they review. The standards for that review are set out in the referenced documents and in supplemental guidance published by the Chief Counsel, USACE and Division Counsel, CELRD.

(1) CELRE-OC participates in the Quality Control processes of the Civil Works Authorities Program in accordance with EC 1165-2-201, and 203 and HQUSACE-OC Memorandum, A Legal Review of Civil Works Project Decision Documents, dated 26 April 1996.

(2) CELRE-OC participates in the Quality Control processes of the District's acquisition program in accordance with the Federal Acquisition Regulations as supplemented by the EFAR, Appendix A, Part 3, Contract Requests, Claims and Appeals.

(3) CELRE-OC participates in the Quality Control processes of the District's Regulatory Program through the performance of legal reviews for adherence to standards in 33 CFR 320 and following, particularly 326.

b. The Detroit District Counsel shall be responsible for establishing Quality Control over internal Office of Counsel products and services in accordance with the standards published in that referenced documents, at paragraph 3, and the supplementary guidance published by HQUSACE-OC and CELRD-OC.

(1) The following checklists will be utilized to ensure consistency in the applications of the published standards:

(a) Claims, Management Control Evaluation Checklist, AR 27-20, Appendix B;

(b) Tort Claims Investigation Materials, DA PAM 27-162, Appendix 1;

(i) Claimant Interview Checklist

(ii) Scope of Duty Checklist

(iii) Interview Checklist; Government Driver

(iv) Interview Checklist; Police Officer

(v) Checklist for Slip and Fall Investigations

(c) Army Law Library Checklist, DA Circular 11-91-1

(2) The following monographs from the Division Trial Attorney will be utilized to ensure consistent application of legal standards to contract claims and appeals:

- (a) Cost or Pricing Data and the Truth in Negotiations Act
- (b) Early Completion Claims
- (c) Equal Access to Justice Act
- (d) Recovery of Unabsorbed Home Office Overhead under the Eichleay Formula
- (e) Pricing Field Office Overhead in Equitable Adjustments
- (f) Indefinite Quantity Contracts
- (g) A Superior Knowledge
- (h) Termination for Convenience Settlement Proposals
- (i) Litigating Pro Se Appeals Before Boards of Contract Appeals
- (j) Recovery of Administrative Costs Following Default Termination
- (k) Issues for Consideration in Demonstrative Use of Videotape
- (l) Requirements Contracts
- (m) Brief Writing
- (n) ORD Bid Protest Workshop
- (o) Procurement Law Update
- (p) Prompt Payment Act
- (q) Best Value Source Selection

(3) Legal staff will utilize the standards and USACE Guidance contained in the U.S. Army Corps of Engineer's Legal Services Deskbook at <http://137.161.248.42/>.

(4) District Counsel will ensure through quality checks and reviews that legal staff conform to the requirements Law Manager Case Management Tracking System for reporting the case status and progress in the principle legal practice areas.