



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
LITTLE ROCK DISTRICT, CORPS OF ENGINEERS  
POST OFFICE BOX 867  
LITTLE ROCK, ARKANSAS 72203-0867

CESWL-OC (100)

24 September 2001

DISTRICT ENGINEER'S POLICY MEMORANDUM NO. 2001-18

SUBJECT: Management of Trials and Settlements of Cases Before Boards of Contract Appeals

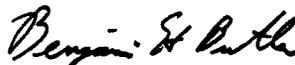
1. Upon receiving notice of an appeal, the District Counsel will appoint a Trial Management Team (TMT), with an Assistant District Counsel as Team Leader. This team will include the trial attorney(s) who will try the case, the contracting officer, a cost-engineering representative, and other staff members the District Counsel deems necessary. The TMT will manage the preparations for trial and consider settlement possibilities. The Team Leader, in consultation with the Commander, will designate a negotiator for settlement efforts. The trial attorney(s) will retain the authority to make decisions concerning the subject matter of the case and to make legal decisions affecting the pursuit of the case, in consultation with the District Counsel.
2. Once a case is in litigation before a court or a Board of Contract Appeals (BCA), the trial attorney, acting with the consent of the District Commander, has the authority to settle the case on whatever terms the District Commander deems appropriate. The Contracting Officer and other staff members will have input into that decision. However, only the District Commander's concurrence is necessary for settlement.
3. In litigation (whether before the BCA or in court), the Trial attorney has authority to settle the case with the consent of the client. Under the rules of Professional Responsibility, the client is the Army. The District Commander may delegate that authority or exercise it himself in the case of disagreement among his staff.
4. There should be a reasonable basis for the amount of the settlement offer made by the Government. In reaching that amount, the following factors are among those which must be considered: the amount we believe we owe the contractor; the amount at risk in the litigation, which includes an evaluation of the strength of each claim; the cost of the litigation, including the time and expense involved; the potential for the appellant to collect attorney fees under the Equal Access to Justice Act (EAJA); and any other case-specific relevant factors.
5. All staff agencies in the District will provide support to the TMT as requested.

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6. Upon completion of a settlement agreement, the designated negotiator will draft a Memorandum for Record summarizing the course of negotiations and rationale for settlement, including those factors listed in paragraph 4, above.

  
BENJAMIN H. BUTLER  
Colonel, Corps of Engineers  
District Engineer

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