FAX COVER SHEET

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URGENT

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To: FOIA Managers **Fax # :**

Number of pages including cover: 2

MESSAGE: Two items for your information

1. I have received an e-mail from AFCIC stating that if we receive a FOIA request from Mr. Christoper Chermansky requesting information about Air Force officers, DO NOT SEND OUT A FINAL RESPONSE. Let me know if you have one, or get one from him.

2. The following is a HQ JAQ clarification regarding the release of contract abstract information. **The answer is that (b)(3) indicates that we withhold abstracts of unsuccessful offeror proposal information; however, the DoD regulation, which the AF has implemented, says that "proposal" information does not include the unsuccessful offeror's name, unit prices and total prices, AND that we are required to do (b)(4) submitter notice prior to release of names, unit prices and total prices.**

The following is taken from the guidance I have provided following discussions with DoJ and DoD:

1. On 2 Feb 98, we issued coordinated guidance that unsuccessful offerors' proposals, as well as abstracts generated by the government as a result of competitive RFPs containing information from those unsuccessful proposals, should be withheld from release under 10 U.S.C. §2305(g), or (b)(3). However, a distinction is to be made between the offerors' names, bottom line price and unit price information and other information generated by the government from unsuccessful offerors' proposals as a result of competitive RFPs. That distinction is based on DOD regulation 5400.7-R, which applies to Military Departments and provides:

a. The term "proposal" in 10 U.S.C. 2305(g) does not include an offeror's name;

b. The term "proposal" in 10 U.S.C. 2305(g) does not include an offeror's total price or unit prices when set forth in a record other than the proposal itself;

c. Submitter notice, and analysis as appropriate, are required for exemption (b)(4) matters that are not specifically incorporated by reference in the contract.

2. For example ALC/PKXA faxed for our review samples of SF Forms 1409 and 1410. (These forms are titled, "Abstract of Offers," and list the Names of Offerors and Contract Line Item (CLIN) prices

submitted to the Air Force in response to Solicitations for Supplies or Services.) With reference to the SF Forms 1409/1410, we responded to the question raised regarding the disclosure of unsuccessful offerors' information contained on these forms--and whether these abstracts are to be withheld under the new statute, 10 U.S.C. §2305(g), which provides that a proposal in the possession or control of DOD that is not incorporated by reference in a contact may not be made available to any person under 5 U.S.C. §552. **With respect to SF Forms 1409/1410, offerors' names, bottom line prices and unit prices may be released, BUT subject to submitter notification to unsuccessful offerors.**

3. I raised concerns to DOD and DOJ that submitter notice for SF Form 1409/1410s (which may contain upwards to 20 offeror's names and unit prices) is no less burdensome now than it was before 10 U.S.C. 2305(g) was enacted; I have been advised that there is no way around the submitter notice requirement, but that we may want to word the notice in such a way as to indicate that offerors names, total prices and unit prices are not considered "confidential" by the Government--as identified by the above DOD Regulation.