Congress of the United States
Washington, DC 20515

April 19, 2011

The Honorable Robert M. Gates
Secretary of Defense
United States Department of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Secretary Gates,

We write in regard to Department of Defense policies and procedures for workloading government-owned facilities, particularly United States Army arsenals. We are concerned that the statutory requirements for workloading the arsenals are not being fulfilled to the extent required by law.

One such government-owned facility in our home state, the Pine Bluff Arsenal, located in Jefferson County, Arkansas, has a long record of outstanding service to our men and women in uniform. Among other responsibilities, the Pine Bluff Arsenal's core mission includes ammunition production, chemical/biological defense production, and depot storage and repair. We encourage you to continue to workload the Pine Bluff Arsenal in accordance with existing statutes and regulations.

In October 2010, Under Secretary of the Army Joseph W. Westphal visited Pine Bluff Arsenal to see firsthand the industrial capability and capacity of the arsenal. In referencing his visit, Under Secretary Westphal remarked on the efficiencies of bringing work to these facilities. He explained that, "if you take a bunch of work out of a particular arsenal, like Pine Bluff, the cost of work will increase, and so their customer base will (have) a problem."

It is our firm belief that continued maintenance and operation of government-owned facilities, such as United States Army Arsenals, is of critical importance to our military's national security mission. Current global threats range from conventional, chemical to even nuclear. Arsenals continue to provide immediate access to the needed materials, supplies and ammunition to combat these threats. Maintaining an adequate workload at our arsenals is even more significant during this period of economic turmoil when our manufacturing base is shrinking and work is increasingly sent overseas.

It is our understanding that Army acquisition officials have a responsibility for identifying requirements that can be manufactured within existing government-owned arsenals, for conducting make-or-buy analyses on those requirements, and for having those requirements

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manufactured within government-owned facilities where the make-or-buy analyses demonstrates that this is possible.

It is our concern that these requirements are not being fulfilled to a degree that satisfies the intent established within the law, and we are seeking feedback on these concerns.

Specifically, we are requesting the following information:

1. A description of the actions taken by the Department of Defense to fulfill the obligations outlined in the Arsenal Act, the Defense Industrial Reserve Act, and Section 806 of P.L. 105-261 *before* private sector solicitations are sought,
2. The criteria the Department of Defense uses to measure compliance with the obligations in the laws and regulations listed above and with whom the responsibility for this decision-making rests,
3. The role played by the Army Materiel Command throughout this process,
4. The criteria used by the Department of Defense when conducting make-or-buy analyses, and
5. An explanation with regard to why the following items were put up for competitive bids by the private sector rather than used to workload government-owned facilities:
    a. Solicitation M6785407R1007 – production of smoke grenades advertised for off-shore sources,
    b. Solicitation W15QKN-09-X-0326 –production of 120mm practice mortars advertised for outsource,
    c. Solicitation W52P1J09R0216 – production of training mortars (60mm and 81mm mortars) advertised for outsource, and
    d. Solicitation W52P1J-11-R-0074 – production of 105mm illuminating cartridges advertised for competitive bid.

As you know, there are a number of laws and regulations regarding facilities such as the Pine Bluff Arsenal. The Arsenal Act, 10 U.S.C. § 4532, is the primary law governing the Department's responsibilities to provide work to government-owned facilities. In part, this law states that, "the Secretary of the Army shall have supplies needed for the Department of the Army made in factories or arsenals owned by the United States, so far as those factories or arsenals can make those supplies on an economical basis." In *American Federation of Government Employees 2119, et al. v. Rumsfeld, et al.*, the Seventh Circuit U.S. Court of Appeals held the language in the Arsenal Act is "mandatory rather than permissive." We agree with this interpretation.

The Defense Industrial Reserve Act, 10 U.S.C. § 2535, governs the use of government-owned facilities and private bases. This statute states that it is the intent of Congress "to provide a comprehensive and continuous program for the future safety and for the defense of the United States by providing adequate measures whereby an essential nucleus of Government-owned industrial plants and an industrial reserve of machine tools and other industrial manufacturing equipment may be assured for immediate use." Although part of the act emphasizes a reliance on private industry for support of defense production, it is our understanding that this reliance is not intended to pertain to the workload of existing government-owned facilities, but rather to the establishment or retention of government-owned facilities.

The Arsenal Act, which directs the Army to make supplies at government-owned facilities, and the Defense Industrial Reserve Act, which directs the military to maintain these government-owned facilities are implemented by Army Regulation (AR) 700-90. AR 700-90 requires that materiel requirements from all customers and foreign military sales be matched to installation capacity and that a make-or-buy analysis be conducted under the authority of the Arsenal Act.

Furthermore, Section 806 of P.L. 105-261 provides that the designated official within the Department "shall have the authority to restrict the procurement of conventional ammunition to sources within the national technology and industrial base in accordance with the authority in section 2304(c) of title 10, United States Code." Section 806 of P.L. 105-261 continues, stating that this limitation is authorized in any case in which the Department official determines that such limitation is "necessary to maintain a facility, producer, manufacturer, or other supplier available for furnishing an essential item of ammunition or ammunition component."

In addition to the specific requests mentioned earlier, we ask that you work to provide adequate workload to our arsenals within the existing regulations and statutes. We would appreciate a reply no later than May 6, 2011. Thank you for your attention to this matter and we look forward to your response.

Sincerely,

Mark Pryor

Senator Mark Pryor

John Boozman

Senator John Boozman

Mike Ross

Congressman Mike Ross

Cc: The Honorable Ashton Carter, Under Secretary of Defense for Acquisition, Technology and Logistics; The Honorable John McHugh, Secretary of the Army; The Honorable Malcolm Ross O'Neill, Assistant Secretary of the Army for Acquisition, Logistics and Technology; The Honorable Joseph Westphal, Under Secretary of the Army; General Ann Dunwoody, Commander, U.S. Army Materiel Command