



Department of Defense INSTRUCTION

NUMBER 7050.05

June 4, 2008

IG DoD

SUBJECT: Coordination of Remedies for Fraud and Corruption Related to Procurement Activities

References: (a) DoD Directive 7050.5, same subject as above, June 7, 1989 (hereby canceled)
(b) DoD Instruction 5025.01, "DoD Directives Program," October 28, 2007
(c) DoD Directive 5106.01, "Inspector General of the Department of Defense," April 13, 2006
(d) Sections 6(e) and 32(i)(4)(B) of the Federal Rule of Criminal Procedure
(e) through (l), see Enclosure 1

1. PURPOSE

This Instruction:

1.1. Reissues Reference (a) as a DoD Instruction in accordance with the guidance in Reference (b) and the authority in Reference (c).

1.2. Establishes policies, procedures, and responsibilities for the coordination of criminal, civil, contractual, and administrative remedies stemming from investigations of fraud or corruption related to DoD procurement activities.

2. APPLICABILITY

This Instruction applies to the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to as the "DoD Components").

3. DEFINITIONS

Terms used in this Instruction are defined in Enclosure 2.

4. POLICY

It is DoD policy that:

4.1. Each DoD Component shall monitor, from its inception, all significant investigations of fraud or corruption related to procurement activities affecting its organization. The monitoring shall ensure that all possible criminal, civil, contractual, and administrative remedies are identified to cognizant procurement and command officials and to Department of Justice (DoJ) officials, as appropriate, and that appropriate remedies are pursued expeditiously. This process shall include coordination with all other affected DoD Components.

4.2. All investigations of fraud or corruption related to procurement activities shall be reviewed to determine and implement the appropriate contractual and administrative actions that are necessary to recover funds lost through fraud or corruption and to ensure the integrity of DoD programs and operations.

4.3. Appropriate criminal, civil, contractual, and administrative actions shall be taken expeditiously. (See Enclosure 3.) During an investigation and before prosecution or litigation, and when based in whole or in part on evidence developed during the investigation, contractual, and administrative actions shall be taken only with the advance knowledge of the responsible Defense Criminal Investigative Organization (DCIO) and, when necessary, the appropriate legal counsel in the Department of Defense and the DoJ. When appropriate, contractual or administrative remedies should be taken before final resolution of the criminal or civil case.

5. RESPONSIBILITIES

5.1. The Inspector General of the Department of Defense (IG DoD) shall:

5.1.1. Monitor implementation of, and compliance with, the provisions of this Instruction.

5.1.2. Develop training materials on fraud and corruption in procurement-related activities to be used in conjunction with training materials developed by other DoD Components.

5.1.3. Request, when necessary and as described in paragraphs 5.2. and E4.3., that the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) designate one of the Centralized Organization(s) to be the lead organization for the Department of Defense.

5.1.4. Provide the Centralized Organization(s) information on the progress of requests for admission to the Voluntary Disclosure Program, the progress of voluntary disclosure verification investigations and reports, and other information provided by a disclosing company.

5.1.5. Notify the Military Departments of fraud affecting their department, even if the fraud does not meet the \$500,000 threshold for significant investigations of fraud or corruption as defined at paragraph E2.8.

5.2. The USD(AT&L) shall, upon request from the IG DoD, designate one of the Centralized Organization(s) to serve as the Lead Centralized Organization. In such a case, the USD(AT&L) shall direct the other Centralized Organization(s) to take action to support the Lead Centralized Organization.

5.3. The Heads of the DoD Components shall:

5.3.1. Establish a Centralized Organization to monitor the progress of each significant investigation and verification investigation affecting its organization, and to take action necessary to ensure the coordination of criminal, civil, contractual, and administrative remedies.

5.3.2. Ensure that, in all cases involving allegations affecting more than one DoD Component, the Centralized Organization(s) identifies a Lead Centralized Organization.

5.3.3. Establish procedures for coordination of criminal, civil, contractual, and administrative remedies in connection with investigations of fraud or corruption related to procurement activities.

5.3.4. Establish procedures requiring the Centralized Organization(s) to discuss regularly with the assigned DCIO(s) issues such as the status of significant investigations and verification investigations.

5.3.5. Establish procedures requiring that all contractual and administrative remedies contemplated during a criminal investigation be accomplished with the advance knowledge of the appropriate DCIO(s) and Centralized Organization(s).

5.3.6. Establish procedures to ensure that all proper and effective administrative and contractual remedies available to the Department of Defense are, when found applicable and appropriate, considered and undertaken promptly by the necessary DoD officials (e.g., commanders, program officials, and contracting officers). Any suspension or debarment actions should begin as soon as practicable upon an indictment or conviction. The Centralized Organization(s) shall ensure that the appropriate DCIO(s) and DoJ criminal and civil prosecution offices are notified of all proposed actions.

5.3.7. Establish procedures to ensure that a case-specific comprehensive remedies plan is developed for each significant investigation and each verification investigation. Those procedures shall include the participation of the appropriate DCIO(s) and Centralized Organization(s).

5.3.8. Establish procedures to ensure that in significant investigations and verification investigations, when the adverse impact on a DoD mission can be determined, such adverse impact is identified and documented by the Centralized Organization(s) and used in the

development of the remedies plan required in subparagraph 5.3.7. This information shall be furnished to the DCIO responsible for the investigation and used by the Centralized Organization(s) in the development and preparation of victim impact statement(s) for use in sentencing proceedings, as provided for in section 32(i)(4)(B) of the Federal Rule of Criminal Procedure (Reference (d)) and section 3771 of title 18, United States Code (U.S.C.) (Reference (e)). Some examples of adverse impact on a DoD mission are endangerment of personnel or property, monetary loss, denigration of program or personnel integrity, compromise of the procurement process, and reduction or loss of mission readiness.

5.3.9. Ensure training materials are developed on fraud and corruption in the procurement process and that all procurement and procurement-related training includes instruction on fraud and corruption appropriate for the duration and nature of the training.

5.3.10. Establish procedures enabling the Centralized Organization(s) to ensure that safety and readiness issues are examined and appropriately addressed for all cases in which a notice is required under subparagraph 5.4.1. The minimum procedures to be followed by the Centralized Organization(s) are in Enclosure 4.

5.3.11. Ensure that appropriate command procurement and project management personnel are provided sufficient information (less information subject to section 6(e) of Reference (d) or contained in court sealed documents or under court orders) to evaluate risk, preserve evidence, determine if further inquiry is warranted on their part to prevent reoccurrence and/or detect other possible fraud within their activity, and otherwise take actions to protect the Government's interests.

5.4. The IG DoD and the Secretaries of the Military Departments, or their designees, shall establish procedures ensuring that their respective DCIO shall:

5.4.1. Expeditiously notify in writing the Centralized Organization(s) of the start of all significant investigations. Initial notification shall include the following elements: case title, case control number, investigative agency, office of primary responsibility (name and telephone number of the investigating official), date opened, factual basis for the investigation, and suspected offense(s).

5.4.2. Expeditiously notify the Defense Security Service of any investigation that develops evidence that would impact on DoD-cleared industrial facilities or personnel.

5.4.3. Make simultaneous presentations, whenever possible, of all fraud and corruption investigations to the criminal and civil sections of the appropriate United States Attorney's Office and/or the Criminal Division and the Civil Division, DoJ.

5.4.4. For all significant investigations and verification investigations, share all available non-grand jury investigative information with the Centralized Organization(s). In furtherance of this goal, DCIOs are encouraged to use non-grand jury investigative techniques whenever possible in order to maximize their ability to share non-Reference (d) investigative information with the Centralized Organization(s), allowing use in civil, administrative, and contractual

actions. Grand jury investigative techniques (i.e., the use of grand jury testimony and grand jury subpoenas) should be used only when other investigative techniques have proven unsuccessful or are deemed inappropriate based upon specific circumstances associated with the investigation.

5.4.5. Discuss regularly with the Centralized Organization(s) such issues as the status of significant investigations and verification investigations, and their coordination with prosecution authorities. If the DCIO has prepared any documents summarizing the current status of the investigation, such documents shall be provided to the Centralized Organization(s). Completed reports of investigations shall also be provided to the Centralized Organization(s).

5.4.6. Provide any court records, documents, or other evidence of fraud or corruption related to procurement activities to the appropriate procurement officials, commanders, and suspension and debarment authorities, when such information is needed to allow consideration of applicable remedies. Such information shall be provided expeditiously to enable the suspension and debarment authority to consider suspension and debarment action in a timely manner.

5.4.7. Provide expeditiously to prosecution authorities information on any adverse impact on a DoD mission gathered under subparagraph 5.3.8. Such information also should be used in preparing a victim-impact statement for use in sentencing proceedings.

5.4.8. Gather at the earliest practical point in the investigation, and whenever possible without reliance on grand jury subpoenas, relevant information on responsible individuals and the organizational structure, finances, and contract history of DoD contractors under investigation for fraud or corruption related to procurement activities, in order to facilitate the criminal investigation. Compile any civil, contractual, or administrative actions or remedies that may be taken. (See Enclosure 5 for examples of available sources of such information.)

5.4.9. Provide timely notice to other cognizant DCIO(s) of evidence of fraud affecting other DoD Components.

5.4.10. Ascertain the impact upon any ongoing investigation or prosecution of any contractual or administrative actions being considered, and advise the appropriate Centralized Organization(s) of any adverse impact.

5.4.11. Obtain a DD Form 350, "Individual Contracting Action Report" (or its successor) on every investigation into non-conforming products, defective products, and product substitution in which a serious hazard to health, safety, or operational readiness is indicated. Timely notification shall be made to the Centralized Organization(s) identified as having contract actions or performing contract management services with the subject of the investigation.

5.4.12. Coordinate their criminal investigations with the appropriate investigative and enforcement offices in Federal and State departments, agencies, and commissions that are or may be conducting investigations into similar or related misconduct.

6. INFORMATION REQUIREMENTS

The reporting requirements in this Instruction are exempt from licensing according to paragraph C4.4.7. of DoD 8910.1-M (Reference (f)).

7. RELEASABILITY

UNLIMITED. This Instruction is approved for public release. Copies may be obtained through the Internet from the DoD Issuances Web Site at <http://www.dtic.mil/whs/directives>.

8. EFFECTIVE DATE

This Instruction is effective immediately.


Claude M. Kicklighter
Inspector General

Enclosures - 5

- E1. References, continued
- E2. Definitions
- E3. Criminal, Civil, Contractual, and Administrative Actions That May Be Taken in Response to Evidence of Procurement Fraud
- E4. Actions to Be Taken in Non-Conforming Product, Defective Product, and Product Substitution Investigations
- E5. Sources of Information Relating to Government Contractors

E1. ENCLOSURE 1

REFERENCES, continued

- (e) Title 18, United States Code
- (f) DoD 8910-1.M, "DoD Procedures for Management of Information Requirements,"
June 30, 1998
- (g) Title 41, United States Code
- (h) Title 15, United States Code
- (i) Title 31, United States Code
- (j) Title 28, United States Code
- (k) Title 10, United States Code
- (l) Subpart 4.6, DoD Federal Acquisition Regulation Supplement

E2. ENCLOSURE 2

DEFINITIONS

The following terms and their definitions are for the purpose of this issuance only.

E2.1. Centralized Organization. The organization within a DoD Component responsible for monitoring and ensuring the coordination of criminal, civil, administrative, and contractual remedies for each significant investigation of fraud or corruption related to procurement activities affecting the DoD Component.

E2.2. Defective Product. A product or the component of a product that fails to function or operate in accordance with the terms of a contract, its specifications or drawings, or with applicable Federal or military specifications.

E2.3. Defense Criminal Investigative Organizations. The U.S. Army Criminal Investigation Command, the Naval Criminal Investigative Service, the Air Force Office of Special Investigations, and the Defense Criminal Investigative Service.

E2.4. Non-conforming Product. A product or the component of a product that has not been manufactured, assembled, tested, or inspected in accordance with the terms of a contract, its specifications, or drawings, including military specifications.

E2.5. Product Substitution. Substitution of a product or a component of a product that does not fully comply with all contract requirements.

E2.6. Remedies. Criminal, civil, contractual, and administrative actions that should be initiated by a commander or official having responsibility over a matter central to a significant procurement fraud case in order to protect DoD interests and to deter future incidents of fraudulent conduct.

E2.7. Remedies Plans. Comprehensive, evolving plans prepared for pursuing all applicable remedies in significant procurement fraud cases. These plans are updated periodically to report new information and provide the status and success of all applicable remedies.

E2.8. Significant Investigations of Fraud or Corruption Related to Procurement Activities (Significant Investigations). Fraud investigations involving an alleged loss of \$500,000 or more; all investigations of corruption involving bribery, gratuities, or conflicts of interest; all defective product, non-conforming product, or product substitution investigations involving a serious hazard to health, safety, or operational readiness; and investigations otherwise determined to be significant by the cognizant agency official.

E2.9. Verification Investigation. An investigation, whether or not it is a significant investigation, to verify that the misconduct and the damages resulting from the misconduct were not greater than described and quantified in the report of investigation or estimate of damages

provided by the contractor in connection with a voluntary disclosure admitted under the DoD Voluntary Disclosure Program.

E2.10. Voluntary Disclosure. A notification to the DoD Voluntary Disclosure Program office by a defense contractor or subcontractor of an incident or incidents of potential criminal or civil fraud affecting its contractual relationship with the Department of Defense.

E3. ENCLOSURE 3

CRIMINAL, CIVIL, CONTRACTUAL, AND ADMINISTRATIVE ACTIONS THAT MAY
BE TAKEN IN RESPONSE TO EVIDENCE OF PROCUREMENT FRAUD

E3.1. CRIMINAL

E3.1.1. Bribery (section 201 of Reference (e)).

E3.1.2. Conspiracy (section 371 of Reference (e)).

E3.1.3. Conspiracy to Defraud the Government with Respect to Claims (section 286 of Reference (e)).

E3.1.4. Criminal Anti-Kickback Statute (section 54 of title 41, U.S.C. of Reference (g)).

E3.1.5. Criminal False Claims (section 287 of Reference (e)).

E3.1.6. False Statements (section 1001 of Reference (e)).

E3.1.7. Fraud and Related Activity in Connection with Computers (section 1030 of Reference (e)).

E3.1.8. Fraud Involving Aircraft or Space Vehicle Parts (section 38 of Reference (e)).

E3.1.9. Mail Fraud and Wire Fraud (sections 1341 and 1342 of Reference (e)).

E3.1.10. Major Fraud Act (section 1031 of Reference (e)).

E3.1.11. Misuse of a Credit Device (section 1029 of Reference (e)).

E3.1.12. Obstruction of a Federal Audit (section 1516 of Reference (e)).

E3.1.13. Obstruction of an Administrative Proceeding (section 1505 of Reference (e)).

E3.1.14. Obstruction of Justice (section 1503 of Reference (e)).

E3.1.15. Procurement Integrity Act (section 423 of Reference (g)).

E3.1.16. Restrictions on Former Officers, Employees, and Elected Officials of the Executive and Legislative Branches and Acts Affecting a Personal Financial Interest (sections 207, 208, and 216 of Reference (e)).

E3.1.17. Sherman Antitrust Act (title 15, U.S.C. (Reference (h))).

E3.1.18. Theft of Government Property (section 641 of Reference (e)).

E3.2. CIVIL

E3.2.1. Statutory

E3.2.1.1. Anti-Kickback Act (sections 55 et seq. of Reference (g)).

E3.2.1.2. Civil False Claims Act (sections 3729 et seq., of Reference (i)).

E3.2.1.3. Contract Disputes Act (section 604 of Reference (g)).

E3.2.1.4. Federal Debt Collection Procedures Act (sections 3001-3308 of Reference (j)).

E3.2.1.5. Forfeiture of Fraudulent Claims (section 2514 of Reference (j)).

E3.2.1.6. Gratuities (section 2207 of Reference (k)).

E3.2.1.7. Procurement Integrity Act (section 423 of Reference (g)).

E3.2.1.8. Truth in Negotiations Act (section 2306(a) of Reference (k)).

E3.2.1.9. Voiding Contracts (section 218 of Reference (e)).

E3.2.1.10. Restrictions on Former Officers, Employees, and Elected Officials of the Executive and Legislative Branches (sections 207, 208, and 216 of Reference (e)).

E3.2.2. Nonstatutory/Common Law

E3.2.2.1. Conversion.

E3.2.2.2. Fraud and/or Deceit.

E3.2.2.3. Money paid under mistake of fact.

E3.2.2.4. Unjust enrichment.

E3.3. CONTRACTUAL

E3.3.1. Breach of contract.

E3.3.2. Breach of warranty.

E3.3.3. Correction of defects (or cost of correction).

E3.3.4. Denial of claims submitted by contractors.

E3.3.5. Disallowance of contract costs.

E3.3.6. Enforcement of performance bond and/or guarantee agreement.

E3.3.7. Offset of payments due to contractor from other contracts or under the Anti-Kickback Act (section 56 of Reference (g)).

E3.3.8. Price reduction.

E3.3.9. Rescission or cancellation of the contract.

E3.3.10. Reformation.

E3.3.11. Refusal to accept nonconforming goods.

E3.3.12. Removal of the contractor from automated solicitation or payment system.

E3.3.13. Revocation of acceptance.

E3.3.14. Termination of contract for default or convenience.

E3.3.15. Termination of the contract pursuant to section 2207 of Reference (k).

E3.3.16. Withholding of payments to contractor.

E3.4. ADMINISTRATIVE

E3.4.1. Change in contracting forms and procedures.

E3.4.2. Program Fraud Civil Remedies Act of 1986 (sections 3801-3812 of Reference (i)).

E3.4.3. Remove contractor or subcontractor from Qualified Products List, Qualified Manufacture's List, Qualified Suppliers List, or similar preferred Government source list.

E3.4.4. Removal or reassignment of Government personnel.

E3.4.5. Review of contract administration and payment controls.

E3.4.6. Revocation of facility security clearances.

E3.4.7. Revocation of personal security clearances.

E3.4.8. Revocation of warrant of contracting officer.

E3.4.9. Suspension or debarment of contractor or contractor employees.

E3.4.10. Voluntary refunds.

E4. ENCLOSURE 4

ACTIONS TO BE TAKEN IN NON-CONFORMING PRODUCT, DEFECTIVE PRODUCT,
AND PRODUCT SUBSTITUTION INVESTIGATIONS

E4.1. In all cases involving allegations of non-conforming product(s), defective product(s), or product substitution, the DCIOs shall:

E4.1.1. Immediately notify the appropriate Centralized Organization(s) of the initiation of the investigation.

E4.1.2. Continue to provide to the Centralized Organization(s) any information developed during the course of the investigation that indicates a suspect product(s) has been, or might be, provided to the Department of Defense.

E4.1.3. Ensure that any request for testing of the suspect product(s) is provided to the Centralized Organization(s).

E4.2. In all cases involving allegations of non-conforming product(s), defective product(s), or product substitution in which a serious hazard to health, safety, or operational readiness is indicated, the Centralized Organization(s) shall:

E4.2.1. Review the notice of the investigation immediately after receiving it from the DCIO to determine any potential safety or readiness issues indicated by the suspected fraud.

E4.2.2. Notify all appropriate safety, procurement, and program officials of the existence of the investigation.

E4.2.3. Ensure the DoD Component provides the DCIO with full testing support to completely identify the non-conforming or defective nature of the suspect product(s) (the appropriate procurement program shall assume costs associated with the testing).

E4.2.4. Prepare a comprehensive impact statement describing the adverse impact of the fraud on DoD programs for use in any criminal, civil, contractual, or administrative action related to the matter.

E4.3. In all cases involving allegations of non-conforming product(s), defective product(s), or product substitution that affect more than one DoD Component, the Centralized Organization(s) shall identify a Lead Centralized Organization. Should the Centralized Organization(s) fail to identify a Lead Centralized Organization, the DCIO responsible for the investigation shall notify the IG, DoD. The IG, DoD shall request USD(AT&L) to appoint a Lead Centralized Organization.

E4.3.1. The DoD Components affected by the misconduct shall provide the Lead Centralized Organization with all of the information needed to prepare a complete and thorough victim impact statement.

E4.3.2. The Lead Centralized Organization shall ensure that information on the fraud is provided to all other affected Centralized Organization(s) and determine whether non-DoD Government organization(s) are also affected, taking the lead for the Department of Defense in coordinating with those other Government organization(s).

E4.3.3. The Lead Centralized Organization shall ensure compliance with the requirements of section E4.2. and assume responsibility for preparing a comprehensive victim impact statement as required by subparagraph 5.3.8. of this Instruction. Other Centralized Organization(s) shall cooperate with and support the Lead Centralized Organization.

E5. ENCLOSURE 5

SOURCES OF INFORMATION RELATING TO GOVERNMENT CONTRACTORS

<u>Type of Information</u>	<u>Possible Sources</u>
Location, dollar value, type, and number of current contracts with the Department of Defense	Defense Contract Management Agency (DCMA) DD Form 350 Report “Contract Administration Report” on contracts DCMA administers (A determination as to the contract history of any DoD contractor with contracts in excess of \$25,000 annually can be made through a review of the “Individual Procurement Action Report” (DD Form 350) system, as prescribed by Subpart 4.6 of the DoD FAR Supplement (Reference (1)). Federal Procurement Data System Next Generation Director for Information Operations and Reports (DIOR) Contracts Report
Financial status of corporation, history of corporation, owners, and officers	Dunn and Bradstreet Reports Corporate filings with the Secretary of the State of the State of incorporation Central Contractor Registry Securities and Exchange Commission (for publicly traded corporations) Federal Energy Regulatory Commission (for energy companies) Commodity Futures Trading Commission

<u>Type of Information</u>	<u>Possible Sources</u>
	Small Business Administration (SBA) (for small businesses)
	Government Accountability Office (bid protests and contractors indebted to the Government)
	Armed Services Board of Contract Appeals
	“List of Contractors Indebted to the United States” (maintained, published, and distributed by the Defense Finance and Accounting Service).
Security clearance background information on facility and officers	Defense Security Service
Performance history of contractor	Local contracting officers
	DCMA pre-award surveys
	SBA Certificate of Competency records
	General Services Administration Excluded Parties Listing System
Name, location, offense alleged, and previous investigative efforts involving DCMA awarded or DCMA-administered contracts.	DCMA Automated Criminal Case Management System. (Available through field offices of the DCMA Contract Integrity Center)
Bid protests, litigation, and bankruptcy involving DCMA awarded or DCMA-administered contracts	Field offices of the DCMA General Counsel office
Name, location, previous quality issues, offenses alleged, and previous investigative efforts involving Defense Logistics Agency (DLA)-awarded or DLA-administered contracts	DLA Automated Criminal Case Management System or Defense Logistics Agency Criminal Incident Reporting System (available through Fraud Counsel located in each DLA Buying Center’s General Counsel’s office)

Type of Information

Bid protests, litigation and bankruptcy awards involving DLA contracts

Possible Sources

Available through Fraud Counsel located in each DLA Buying Center's General Counsel's office