

Report to Congress on Contracting Fraud



**Under Secretary of Defense
for Acquisition, Technology and Logistics**

October 2011

Preparation of this Report/study cost the
Department of Defense a total of
approximately \$81,000 for FY 2011.

Generated on 2011Oct06
1559 RefID: D-315854E

A. Background

In the Committee Print of the Committee on Appropriations' Explanatory Statement, page 72, accompanying H.R. 3326, the Department of Defense (DoD) Appropriations Act, 2010 (Public Law 111-118) requested the Secretary of Defense, in coordination with the DoD Inspector General (DoDIG), to report to the congressional defense committees on contracting fraud. The report is to include an assessment of the total value of DoD contracts entered into with contractors that have been indicted for, settled charges of, been fined by any Federal department or agency for, or been convicted of fraud in connection with any contract or other transaction entered into with the Federal Government over the past 10 years. The report is also to include recommendations for penalties for contractors who are repeatedly involved in contract fraud allegations as well as actions the Department has taken to strengthen its policies and safeguards against contractor fraud.

B. The DoD Approach to Dealing With Allegations of Procurement Fraud

Pursuant to DoD Instruction 7050.05, "Coordination of Remedies for Fraud and Corruptions Related to Procurement Activities," each DoD Component is "required to monitor, from its inception, all significant investigations of fraud and corruption related to procurement activities affecting its organization." This monitoring is designed to focus DoD Components' attention on two general courses of action.

The first course of action entails a range of contractual and administrative actions that DoD Components may use to protect the Government as investigations into possible fraudulent behavior develop. These administrative and contractual actions are discretionary and should remain so. Contracting Officers and Suspension and Debarment Officials must retain the ability to engage early rather than relying upon debarments after convictions since convictions generally occur many years after the misconduct and permit too much time to pass before the Government's interest is adequately protected. For example, if the allegations appear serious, DoD Components will likely plan to acquire required goods and services from alternative sources and minimize possible lost time should the allegations be proven. Even before allegations of fraud are fully proven, DoD Components have the ability to engage with the contractor either with a suspension, debarment, or a show-cause letter, and, through these processes, work with the contractor to ensure that the Government is protected in any future dealings with the contractor.

The second course of action involves criminal and civil remedies for contractor misconduct. Holding contractors accountable civilly and criminally for fraud falls solely under the purview of the Department of Justice (DoJ) (e.g., Contract Disputes Act of 1978; Executive Order 6166, June 10, 1933). As such, DoD Components generally refer fraud matters to the DoJ to initiate cases, when appropriate, and work with the DoJ to assist in prosecuting these cases.

C. Summary of Fraud Related Criminal Convictions and Civil Judgments or Settlements

1. Criminal Convictions

The DoJ identified 54 DoD contractor companies that were criminally charged with fraudulent practices over the past 10 years. A list of these contractors is contained in Table 1A. The amount of funds the Department obligated to these companies subsequent to conviction is also identified in Table 1A, along with the total dollars obligated to these companies for the 10-year period. The contractors criminally convicted of fraudulent actions identified by the DCIOs for the period 2007 – 2009 that were not included in the DoJ database are contained in Table 1B, along with the dollars the DoD obligated subsequent to the convictions.

A criminal conviction often results in a debarment but not automatically. Suspension and debarment are not considered punishments (see Federal Acquisition Regulation (FAR) Subpart 9.402) but are actions taken to protect the Government in future contracting actions when the contracting officer makes a separate determination with regard to present responsibility. Contractors suspended, proposed for debarment or debarred are precluded from receiving future contract awards or extensions absent agency findings of compelling reasons. In appropriate circumstances, the agency may enter into an administrative agreement with a convicted contractor in lieu of a suspension or debarment. Administrative agreements usually require the contractor to implement ethical codes of conduct, employee training, and independent oversight to improve conduct and performance and to ensure present responsibility and a good Government business partner in future actions.

While the Government needs protection from contractors found to be not responsible during the period of their suspension or debarment, it should be noted that after those periods expire, contractors return to eligibility and are, generally, considered responsible like any other contractor. This is, of course, subject to the contracting officer's separate, independent determination of responsibility under FAR Subpart 9.1, wherein the original misconduct may remain a factor. Accordingly, receipt of contracts and the associated funding will be reflected in the tables.

2. Settlements/Judgments

For the 10-year period, the DoJ identified more than 300 DoD companies that entered into settlement agreements or had civil judgments rendered against them. Table 2A identifies the dollars associated with the settlements and/or judgments, the dollars subsequently obligated to them, and the total dollars obligated to them over the 10-year period. It should be noted that the data that the DoJ provided did not differentiate between settlements and civil judgments; however, we understand that the vast majority are settlements. Further, with regard to these civil cases, it is important to note that a single settlement or judgment may appear in this table multiple times, listed under each entity that shares liability for the settlement or judgment amount. Therefore, the settlement and judgment amounts appearing in this table cannot be added to calculate the total U.S. recoveries from DoD contractors during the period. Note also that liability for the settlement or judgment amount listed for a particular entity may be shared jointly and severally with other entities.

DCIO data identified additional contractors for the period 2007-2009 that were not in the DoJ database and, as explained previously, we have included that information in this report as well in Table 2B, along with the dollars the DoD obligated subsequent to the settlements/civil judgments.

There is a presumption that when judgments have been entered or civil settlements have been agreed upon, the contractors (not having exhibited other problems) have returned to eligibility and are generally considered responsible like any other contractor, subject again to the contracting officer's separate, independent determination of responsibility under FAR Subpart 9.1. Accordingly, follow-on awards of contracts and the associated funding will be reflected in the tables.

Table 3 identifies those contractors whose names appeared on the settlement/judgment list (Table 2B) who were suspended or debarred as a result of fraudulent activities.

3. Parent Company Obligations

Table 4 contains the obligations to the "parent" company for any company that was identified in the DoJ and DCIO data and which also appeared on the annual DoD top 100 contractor list.

D. Methodology

In discussions with congressional staff, the DoD and the DoDIG explained the DoD's difficulties associated with addressing fraud issues on contracts awarded by other Federal departments or agencies. As a result of those discussions, it was initially determined that the report would be limited to fraud issues associated with DoD contracts and that the information would be collected from the Defense Criminal Investigative Organizations (DCIOs). It also was agreed that the timeframe for which the data would be gathered would be 3 years.² The DoD expressed concern over the fact that, given a 10-year time frame, contractors will have merged, changed names, or dissolved, thus making it very difficult to track or correlate them to the current DoD contractor community of more than 235,000 contractors. It also was agreed that the focus would be on convictions, civil settlements, and judgments. Indictments were not to be included because indictments may be dismissed or otherwise not result in a conviction.

Finally, it was agreed that in order to make the data more manageable, the threshold for reporting convictions, civil judgments, and settlements would be limited to those contract actions that were valued at more than \$1,000,000. It should be noted, however, that data below that threshold was provided and is included in this report. These agreements were set forth in an interim draft report that was provided to the congressional defense committees on April 5, 2010. The DoD faced many challenges in developing this report and discussed those difficulties during subsequent meetings with the congressional staff. During those discussions, it was decided that the DoD would provide 10 years of data, as requested by the Explanatory Statement (ES), and that the data would be obtained through the Department of Justice (DoJ). The DoJ provided the information to the DoD to the extent that the data was available. As a result, the information

² As discussed below, the data gathering was later expanded to cover the entire 10-year period.

contained in this report on specific fraud-related actions over the 10-year period is based on information provided by the DoJ. The DoJ data was then used to obtain the 10 years of obligation data from the Federal Procurement Data System (FPDS). An informal release of information to congressional staffers included the 3 years of data (2007-2009) provided by the DCIOs versus the 10 years of DoJ data. We have included that DCIO information on criminal convictions, settlements, and judgments in this report for completeness.

In discussions with the DoJ, the DoD reports that there may be several reasons that some of the cases identified by the DCIOs were not also included on the lists provided to the DoD by the DoJ. For example, the case management system used by the U.S. Attorneys' offices does not identify defendants by their status as Government contractors. In addition, that database tends to identify cases by the "lead charge." As such, a case involving bid-rigging, for example, may not appear as a "fraud" case. In addition to the above, the difference between the data provided by the DoJ and the DCIOs may be attributed to other factors, including how the data was categorized in the DoJ databases. As an example, a case could have been categorized as a bribery matter instead of a procurement fraud issue. The DoJ ensuring that all cases involving some type of "fraud-related" matters were reported would require opening up thousands of indictments and case files – a matter not practical in terms of time and resources.

Federal contracting processes and the FPDS utilize the Dun and Bradstreet Data Universal Numbering System (DUNS) to identify contractors awarded specific contract actions and associated obligated dollars. The DoJ data did not contain any DUNS or other physical address identifiers for the named companies. Additionally, the DoJ database does not keep track of corporate lineage. Using the DoJ-provided information as a starting point, the DoD used the FPDS to search for the obligation data associated with the identified companies by the names provided. Without the DUNS identifier, it is difficult for the DoD to guarantee that all data associated with a particular company has been captured. Moreover, the possibility exists that without the DUNS identifier an entity may have been identified and erroneously included in the data collection.

Although not requested by the ES, congressional staff requested that the Department provide the obligation data for the parent company for all "offending" companies for the 10-year period as well. The Department does not have a license with Dun & Bradstreet and therefore, does not have access to the "family tree" for all the companies on the DoJ list. Furthermore, the parental tree is an annual "snapshot" in time for a given year. It does not address which components/subsidiaries are no longer parts of the parent corporations or address mergers and acquisitions that have taken place over the 10-year period. The Department's annual top 100 DoD contractor list does, however, identify the "parent company." To the extent that any of the companies identified on the DoJ list and the DCIO list were included on the annual top 100 DoD contractors list for the past 10 years, the DoD used this list to identify the obligation data for the parent company. Obviously, many of the companies on the DoJ list are small companies that do not appear on the top 100 DoD contractors list, and in those instances, only the obligations for the identified company that matched the same name were provided.

A further clarification regarding the data is necessary. As stated above, the DoJ data included only the name of the company, for example, "Beck." The FPDS does not include any information on Beck. There is information on Beck & Beck Service; Beck & Hofer

Construction; Beck Associates PC; Beck Bus Transportation Corp; Beck Development Group; LLC; Beck Electric Supply; Beck Engineering; and Beck Gebadereinigung Und Dien and Beck Packaging Corporation. In this case, since there is no way to determine which company is identified, no obligation data was included as nothing could be directly attributable to “Beck” as an entity. However, when a similar situation exists for a company like General Dynamics, where no specific entity was identified, but the name is unique enough to distinguish the vendor as one that is routinely a DoD top 100 contractor, we gathered all data on General Dynamics Corporation.

It should also be noted that in many instances, the investigative activity that led to the convictions, civil settlements or judgments was an ongoing effort spanning several years. Since the information in the FPDS reflects obligated dollars, the DoD has included only the dollars obligated subsequent to the disposition date for the fraud-related issue. If more than one fraud related incident was reported, each instance was identified; however, the obligations data reflect total dollars obligated after the first incident, along with all obligations for the 10-year period.

E. DoDIG Review

The information obtained from the DoJ, as well as the information previously collected from the Defense Criminal Investigative Organizations, was provided to the DoDIG, specifically to the Deputy Inspector General’s Office of Policy and Oversight, as required by the ES. The DoDIG planned to focus only on the DCIO data provided to the Department for the period 2007-2009 and on the methodology that the DCIOs used to collect that information. Accordingly, the DCIOs were requested to provide the instructions/regulations pertaining to their collection/recording of recoveries, indictments and convictions to the DoDIG. Upon receipt of the documents, the DoDIG reviewed the following:

- a. Databases used by the DCIOs to record Recoveries, Indictments and Convictions (RIC);
- b. Documents required for validation of RIC;
- c. Responsibility for inputting RIC into DCIO database;
- d. DCIO levels of validation/verification of RIC;
- e. Input of RIC into DCIO database;
- f. If DCIO RIC data are periodically validated. And if so, how often; and
- g. DCIO’s process for insuring that RIC is not claimed by another DCIO or duplicated.

The DoDIG findings are contained in Attachment 2.

F. Actions the Department has taken to strengthen Department policies and safeguards against contractor fraud.

As highlighted in the interim report, the Department has taken a number of actions to improve awareness and safeguards with regard to contractor fraud. Some of the major efforts are discussed below:

Panel on Contracting Integrity

Section 813 of the John Warner National Defense Authorization Act for FY 2007 directed the Department of Defense to establish a Panel on Contracting Integrity consisting of senior leaders representing a cross section of the DoD. The Panel's purpose was twofold: (1) review progress made by the DoD to eliminate areas of vulnerability of the defense contracting system that allow fraud, waste, and abuse to occur, and (2) recommend changes in law, regulations, and policy to eliminate the areas of vulnerability.

The Under Secretary of Defense for Acquisition, Technology and Logistics established the Panel on Contracting Integrity by a February 16, 2007, memorandum. The Panel was established with representatives from the Military Departments, Defense agencies, and other DoD organizations. The Panel meets on a quarterly basis, and the working subcommittees that support the Panel meet as required to accomplish their activities. To date, and in accordance with the requirements of Section 813, the Panel has submitted three annual reports to Congress describing its progress.

Initially, the Panel focused on the areas of vulnerability in the defense contract systems that the U.S. Government Accountability Office (GAO) identified in its report, "Contract Management: DoD Vulnerability to Contracting Fraud, Waste and Abuse" (GAO-06-838R), as well as findings from the DoDIG and recommendations from the Procurement Fraud Working Group. The Panel also reviewed the findings of the March 2005 Defense Science Board Task Force "Management Oversight in Acquisition Organizations," and the issues raised by the Commission on Army Acquisition and Program Management (the Gansler Commission).

Originally, the Panel was supported by 10 subcommittees that identified 21 initial actions for implementation in 2008. Attachment 3 contains an extract of the 2007 Report to Congress that identifies the membership of the Panel at that time and also contains a list of the subcommittees and their Chairs. Twenty of the 21 initial Panel action items were accomplished. The remaining item, a legislative proposal to clarify what constitutes a commercial item, was prepared for submission to the Office of Management and Budget.

Currently, the Panel includes 13 subcommittees, all pursuing the central theme of eliminating areas of vulnerability in the defense contracting system that allow fraud, waste, and abuse to occur. Key to the fraud topic area was the work performed by subcommittee 8, chaired by the DoDIG and supported by the military audit or investigative agencies. The subcommittee's efforts included:

- Updating the Procurement Fraud Handbook and adapting 20 contract-related scenarios from the Handbook on Fraud for Contract Auditors and Indicators of Fraud in DoD Procurement in 2008;
- Creating a Web site on procurement fraud information to increase awareness of procurement fraud and fraud indicators in October 2008. (www.dodig.mil/Inspections/APO/fraud/Index.htm) The DoDIG has recently added new scenarios to the Web site and plans to update the guidance based on recent changes to the GAO's Yellow Book of Auditing Standards;

- Creating a Defense Acquisition University (DAU) training module on Procurement Fraud Indicators, which includes information on risk mitigation – CLM 049;
- Hosting a DoD Procurement Fraud Conference at DAU in June 2009;
- Developing and airing Web video cast to increase overall awareness of procurement fraud and indicators of such fraud; and
- Drafting and publishing an article on procurement fraud indicators in the March-April 2009 issue of the “AT&L Journal.”

Additionally, the Panel on Contracting Integrity Subcommittee 10 is recommending the creation of a DoD-specific program fraud-civil remedy to redress fraud in DoD procurement programs and acquisitions. This administrative remedy (i.e., non-judicial remedy) would permit DoD agencies and the Military Departments, subject to DoJ approval, to impose penalties and assessments on contractors who make false claims and statements to DoD agencies or the Military Departments.

Procurement Fraud Working Group

In January 2005, the DoD-wide Procurement Fraud Working Group was established to develop a closer working relationship among the relevant DoD activities and agencies involved in the identification, investigation, and prosecution of contractor fraud. Specifically, the Working Group provides a forum of information exchange, legislative/policy development, and continuing education with regard to current issues, future national trends, investigative strategies, appropriate remedies and enforcement problems in the procurement fraud arena. The Working Group also enhances inter-agency coordination, communication, and cooperation with the Department of Justice (DoJ), the National Aeronautics and Space Administration (NASA), and other Government agencies combating procurement fraud.

The Working Group has conducted annual training seminars since March of 2005 with the most recent seminar held in April 2011. These seminars provide an opportunity for sharing best practices among investigative and acquisition professionals, and include expert presentations and group discussions – all seeking to provide practical solutions to contract integrity problems encountered in the field. Membership and attendance includes the DoD, NASA, the DoJ, and other civilian attorneys, investigators, and auditors. The Working Group’s steering group meets monthly. Steering Committee members are also members of various committees of the DoJ’s Financial Fraud Enforcement Task Force and provide a liaison between the two groups to ensure the consideration of DoD interests. In the past, the Working Group has sought to gain acquisition personnel involvement in the annual conference and has the current goal of expanding this effort to obtain broader participation.

In addition to the training seminar, the Working Group has instituted webcasts through the Defense Acquisition University to provide additional continuing education to the procurement fraud enforcement community. Topics covered include the use of DODIG subpoenas. Upcoming topics include grant fraud awareness and contractor disclosures. Finally,

the Working Group also redrafted DoD Instruction 7050.05, "Coordination of Remedies for Fraud and Corruptions Related to Procurement Activities," to help ensure more effective coordination of remedies in procurement fraud matters.

Coordination with Other Federal Organizations

The DoD works closely with the Financial Fraud Enforcement Task Force, under the leadership of the DoJ, to identify and stop procurement fraud, most recently in Iraq and Afghanistan. DoD representatives participate in the Task Force meetings and exchanges of information.

The DoD will continue to work with the Office of Federal Procurement Policy (OFPP) to recommend changes to laws, regulations, and policy that would serve to clarify or strengthen issues identified through the work of the Panel on Contracting Integrity.

Ethics Regulations and Policy Training

The DoD has initiated several changes to the Federal Acquisition Regulation (FAR) and the Department of Defense FAR Supplement (DFARS) to update the acquisition regulations pertaining to ethics in contracting. The Defense Acquisition Regulations (DAR) Council, in concert with Civilian Agency Acquisition Council, proposed an amendment to the FAR to address a Contractor Code of Ethics and Business Conduct and a requirement for contractors and their subcontractors participating in contracts over a certain dollar threshold to post an Office of the Inspector General Fraud Hotline poster. The Councils published the proposed rule in February 16, 2007, under FAR Case 2006-007, to obtain public comments, and, subsequently, published a final rule on November 23, 2007, with an effective date of December 24, 2007. A separate DFARS Case 2010-D026, specifically identifying the requirement to display a DoD Inspector General Fraud Hotline Poster was published as a final rule on September 16, 2011.

In addition, the DAR Council initiated a proposed FAR revision to require contractors to establish and maintain internal controls to detect and prevent fraud in their contracts, and to notify the Office of the Inspector General and contracting officers immediately whenever they become aware of contract fraud. The FAR Council published the proposed rule under FAR Case 2007-006 on November 14, 2007, with public comments due by January 14, 2008. A final rule was published on November 12, 2008, with an effective date of December 12, 2008. DFARS Case 2011-D006 made an administrative change to the DFARS to provide the address of the DoD Office of Inspector General and the Department's centralized collection point for fraud information.

The DoD Standards of Conduct Office reviews the mandatory annual ethics training yearly to ensure that it is current and relevant. The DoD provides the "Employee's Guide to the Standards of Conduct" online.

Furthermore, the DoD added to the DFARS 209.571, Organizational Conflicts of Interest (OCI) in Major Defense Acquisition Programs (MDAPs), as required by section 207 of the Weapons Systems Acquisition Reform Act of 2009. The rule provides uniform guidance requirements for OCI and tightens existing requirements for OCI by contractors in MDAPs. The

Department is also supporting the OFPP and the FAR team that is proposing changes to the FAR under case 2011-001, "Organizational Conflicts of Interest and Contractor Access to Nonpublic Information." The FAR Case attempts to address the current needs of the acquisition community with regard to OCI. It also separately addresses the issue of unequal access to information. The goal of this rule is to highlight the importance of avoiding or mitigating OCI or potential OCI, which may among other things, lead to potential fraud, waste and abuse issues.

Finally, the DoD recently administered a values-based ethics survey to approximately 240,000 DoD personnel, civilian, and military (active and reserve), including all 125,000 acquisition corps personnel. The purpose of the survey was to determine the culture of the entire DoD from a value-based perspective versus a rules-based perspective. Assessment of the results is complete and the next step will be to implement a values-based ethics training program, based on the results and recommendations of the survey.

Reporting Fraud

DoD personnel can report fraud to any of several sites such as the DoDIG Defense Hotline, the Defense Contract Management Agency's FraudNet, the Defense Logistics Agency's Hotline Program, the Army's Criminal Investigation Command, the Navy's Criminal Investigative Service, and the Air Force's Office of Special Investigations. The offices of the Suspension and Debarment Officers provide training and methods of reporting suspected fraud.

G. Recommendations

The ES also requested the DoD include recommendations for penalties for contractors who are repeatedly involved in contract fraud allegations. The DoD has a number of existing remedies with respect to contractor wrongdoing as identified in DoD Instruction 7050.05, "Coordination of Remedies for Fraud and Corruptions Related to Procurement Activities." In addition to the criminal, civil penalties, and sanctions prescribed by Congress, the DoD and all other Federal agencies have numerous contractual and administrative remedies available, including suspension and debarment, if it is determined that it is not in the DoD's best business interests to contract with a particular company.

It is not clear, however, that these remedies are sufficient. The DoD's Panel on Contracting Integrity will review again the administrative and legal penalties already in place to deter and punish fraud when it is detected and to protect the Government from dealing with contractors that have engaged in fraudulent activities. The Panel will have the opportunity to review the findings and data contained in this report to assist in its assessment. However, our main effort is detection and prevention. At the heart of improving our ability to detect and prevent fraud is an adequately staffed and capable acquisition workforce, to include audit and contract management personnel. One of the core functions of the Panel is to ensure that we are taking actions to increase awareness and training with regard to uncovering fraudulent contracting acts. Over the past 2 years, we have significantly expanded the awareness training of our acquisition workforce to become more vigilant in identifying potential fraudulent acts. However, there is more work to be done, which is why the Secretary of Defense has steadfastly maintained that we will continue to increase the size and the capability of our acquisition

workforce, especially including contracting and auditing skills, to ensure the interests of the taxpayers and our Warfighters are protected.

Beyond that, the DoD is considering making the use of the Purchase Card On-Line System (PCOLS) a mandatory tool for all DoD components. PCOLS manages the issuance and maintenance of Government purchase cards and data mining and provides program risk assessment capability. Some of the key features of PCOLS are: (1) PCOLS uses the DoD Common Access Card to positively identify users and links them to defined roles in a hierarchy to grant systems access and privileges; (2) PCOLS links to the Defense Enrollment Eligibility Reporting System (DEERS), a system operated by the Defense Manpower Data Center to identify when cardholders or billing officials leave so that purchase card accounts associated with them may be systemically cancelled; (3) All DoD purchase card transactions are data mined looking to identify fraud, waste, and abuse – those transactions receiving a “high risk” score are referred to supervisors for review; and (4) PCOLS will provide a risk assessment of a command’s purchase card program based on ratio(s) of high-risk transactions to total number of transactions and the ratio of cardholders to billing officials.

We will also ensure that the workforce receives training and guidance on the use of the new Federal Awardee Performance and Integrity Information System (FAPIS). FAPIS consolidates all data that contracting officers currently use when making their responsibility determinations, thus enabling contracting officers “across the Government” to monitor the integrity and performance of entities performing federal contracts, grants, and cooperative agreements. This new database responds to the continuing need for greater insight into potential contractors’ integrity and business ethics and the Department needs to ensure that the contracting community utilizes that information in its award decisions.

FAPIS imposes a duty on both Government contractors and the Government by requiring contractors to disclose additional information to the Government and contracting officers to consider all available information when making responsibility determinations prior to obligating funds. This information will include criminal convictions, civil judgments, and administrative proceedings. In fact, it will contain much of the type of information requested by the ES. Contracting officers are required to provide terminations for default and cause to FAPIS. Contractors may be suspended, proposed for debarment or debarred upon sufficient evidence of fraud. Suspension and debarment officials may also enter into an administrative agreement with contractors in lieu of a suspension or debarment which specifically identifies corrective actions a contractor must undertake to rectify a given situation. These administrative agreements are also placed in FAPIS.

Additionally, we will recommend that the DoDIG direct the DCIOs to periodically check the FAPIS database for accuracy and completeness of contractor disclosed information.

Finally, as noted above, we recognize that there is always more work to be done, to ensure the interests of the Department of Defense, the taxpayers, and our Warfighters are protected.

Attachments:

- (1) Tables: **(See disc)**
 - (a) Table 1A – Criminal Convictions Reported by the DoJ
 - (b) Table 1B – Additional Criminal Convictions Reported by the Defense Criminal Investigative Organizations
 - (c) Table 2A – Judgments/Settlements as Reported by the DoJ
 - (d) Table 2B – Additional Judgments/Settlements as Reported by the Defense Criminal Investigative Organizations
 - (e) Table 3 – Suspension/Debarments Associated with Judgments/Settlements
 - (f) Table 4 – Parent Company Obligations
- (2) DoDIG Findings
- (3) Extract of Panel on Contracting Integrity 2007 Report to Congress

Contracting Fraud Case Action Review

1. Introduction

The Joint Explanatory Statement accompanying the Department of Defense (DoD) Appropriations Act for FY 2010 (Public Law 111-118) required the Secretary of Defense, in coordination with the DoD Inspector General (IG), to report to the congressional defense committees on contracting fraud. The language stipulated that the report include an assessment of the total value of DoD contracts entered into with contractors that have been indicted for, settled charges of, been fined by a Federal department or agency for, or been convicted of fraud in connection with any contract or other transaction entered into the Federal Government over the past ten years. The report must also include recommendations for penalties for contractors who are repeatedly involved in contract fraud allegations as well as actions the Department has taken to strengthen Department policies and safeguards against contractor fraud. The report was to be submitted by March 14, 2010.

Due to the breadth and scope of this requirement, the Department met with appropriate congressional staff in an effort to agree upon a more manageable data collection. Based on those discussions, it was determined that the Department's immediate focus will be on fraud issues associated with DoD contracts for the past three years with a threshold for reporting on matters worth \$1,000,000 or greater. An interim report outlining the Department's approach to this congressional reporting requirement was submitted to Congress on April 5, 2010.

To ensure that all organizations were gathering the same information, the definition of fraud as defined in DoD Instruction 5505.2, Criminal Investigations of Fraud Offenses, dated February 6, 2003, was used.

Excerpt from DoD Instruction 5505.2, Enclosure 2 (Definitions), Paragraph E2.1.2

E2.1.2. Fraud. Any intentional deception designed to deprive the United States unlawfully of something of value or to secure from the United States a benefit, privilege, allowance, or consideration to which he or she is not entitled. Such practices include:

- E2.1.2.1. Offering payment or accepting bribes or gratuities.
- E2.1.2.2. Making false statements.
- E2.1.2.3. Submitting false claims
- E2.1.2.4. Using false weights or measures.
- E2.1.2.5. Evading or corrupting inspectors or other officials.
- E2.1.2.6. Deceiving either by suppressing the truth or misrepresenting material fact.
- E2.1.2.7. Adulterating or substituting materials.

- E2.1.2.8. Falsifying records and books of accounts.
- E2.1.2.9. Arranging for secret profits, kickbacks or commissions.
- E2.1.2.10. Conspiring to use any of these devices.
- E2.1.2.11. Conflict of interest cases, criminal irregularities, and the unauthorized disclosure of official information relating to procurement and disposal matters.

The Office of the Under Secretary of Defense for Acquisition, Technology and Logistics collected data from the Air Force Office of Special Investigations (AFOSI), Defense Criminal Investigative Service (DCIS), Naval Criminal Investigative Service (NCIS) and the United States Army Criminal Investigation Command (USACIDC), hereafter referred to as the Defense Criminal Investigative Organizations (DCIOs) pertaining to contractor fraud convictions and the dollar value of the contracts involved.

The DoD Office of Inspector General (OIG), Investigative Policy and Oversight Directorate, reviewed the process and methodologies utilized by DCIOs for recording and reporting of fraud case actions (i.e., actions taken against DoD contractors that have been indicted, settled charges of, or been convicted of fraud in connection with any contract entered into with the DoD) to determine whether the processes and methodologies were reliable.

2. Summary

The DoD OIG reviewed the DCIO methodology and processes used in accounting and reporting fraud case actions associated with major procurement fraud investigations. The DCIOs have reliable processes and methodology to report fraud case actions. This determination was based upon a review of DCIO instructions, training programs and interviews of DCIO program managers. The DCIOs use standard coding terminology with similar definitions and processes for fraud case action reporting and recording the data into their investigative management databases. The recording and reporting of fraud case actions has always been an integral part of the various DCIO case management systems. Each DCIO has established training designed to ensure their personnel understand how to report fraud case actions. Ultimately, the DCIO special agents input the information directly into their respective databases, with supervisory review and verification. Additionally, the DCIOs have processes in place to validate and oversee that fraud case action reporting is accurate. However, there is not a common Department-wide database for recording fraud case actions. In addition, there is no standard on how to report fraud case actions during joint investigations of more than one DCIO or joint investigations between the DCIOs and other federal law enforcement agencies (e.g., Federal Bureau of Investigation) to prevent duplicate reporting of the same fraud case action.

3. Review of DCIO Fraud Case Action Reporting Policies

The DoD OIG reviewed DCIOs' policies, instructions, and directives regarding fraud case action reporting, specifically found in AFOSI Manual 71-122, NCIS Manuals for Investigation (NIS-3) and Fraud Investigations (NIS-6), CID Regulation 195-1, and the DCIS Special Agents Manual. DCIO Fraud Program Managers and/or Subject Matter Experts were interviewed regarding their respective processes for recording and reporting fraud case actions. Shown below are the questions and answers from the methodology and process review:

a. **How are fraud case actions defined?** The definitions of fraud case actions used by each agency were generally in agreement, but it was noted that there is no current single source for that definition. The DCIOs define fraud case actions based upon the results of judicial dispositions. They refer to DoDI 7050.5, "Coordination of Remedies for Fraud and Corruption Related to Procurement Activities," and DoDI 7750.6, "Information Requirements for Semi-Annual Report to Congress," for guidance on reporting information related to significant fraud investigations. DCIS and AFOSI further promulgate internal policy documents that define fraud case action (see appendices), while NCIS and USACID incorporate fraud case action definitions into process and database tools, but rely solely on the DOD guidance documents as policy. The DCIOs agreed that a single DOD issuance that defines fraud case actions would be beneficial.

b. **Do the DCIOs train their special agents on how to report fraud case actions?** Reporting fraud case actions is part of the curriculum in the DCIO basic and advanced investigative training courses. Additional training is provided to agents during DCIO fraud conferences and during on-the-job training. However, according to the DCIO program managers, the most pertinent fraud case action training came during an agent's on-the-job training.

c. **What database(s) are used to record fraud case actions?** There is no single DCIO Department-wide database for reporting fraud case actions. Each DCIO reports fraud case actions in their electronic investigative information database. AFOSI reports fraud case actions into I2MS (Information and Investigations Management System). NCIS reports fraud case actions into the Consolidated Law Enforcement Operations Center database. USACIDC reports fraud case actions into the Army Criminal Investigation and Criminal Intelligence System and submits status reports through their chain of command on a DA Form 4833. DCIS reports fraud case actions into their Investigative Data System and also submits Significant Incident Reports through their chain of command.

d. What documents are required for verification of fraud case actions? The fraud case action is input into the DCIO's investigative database when the DCIO case agents receive a hard copy of supporting documentation with the results of judicial disposition from the U.S. Attorneys' Office and/or the Staff Judge Advocate's Office. Examples of supporting documentation include criminal judgments, final order of forfeiture, civil settlements, court martial dispositions and payments recouped through contractual channels etc.

e. Who maintains responsibility for inputting fraud case actions into database? Case agents are responsible for entering fraud case action data into their respective investigative databases, recording the fraud case action, and filing paperwork regarding fraud case actions into their case files. Each DCIO has a process for review and oversight of fraud case actions but in general includes the case agent's supervisor, unit leadership, second echelon and/or regional command level supervision, and HQ fraud program management.

f. What is the frequency of input of fraud case actions into database? The DCIO case agent inputs the fraud case action into their investigative database within three to five days of receipt of judicial disposition.

g. What are the levels of validation/verification of fraud case actions? The case agent is responsible for inputting the fraud case action information into the respective DCIOs investigative database. The case agent's immediate supervisor or special-agent-in-charge is then responsible for verification that the data is accurate and properly input. DCIO headquarters performs additional verification of fraud case actions at least every six months.

h. Is the fraud case action data periodically validated? If so, how often? Many similarities were found in how the individual DCIOs track, report and account for fraud case actions. In general, the processes related to fraud case actions are inherently tied into the administrative processes relating to the initiation, reporting and closure of fraud investigations. In all cases, fraud case action reporting is driven by receipt of hard copy documentation validating a fraud case action. That documentation is included in the agencies case file, the retention of which is mandated by rules governing retention of criminal investigations case files. In general, fraud case action reporting must occur within 3 - 5 days of receipt. Each agency maintains its own electronic investigative information database, however; only AFOSI's database includes electronic copies of entire case files. DCIS, NCIS and USACIDC databases contain key data points regarding investigations used for management and reporting purposes, including data regarding fraud case action. All of these databases are used to track, compile and report fraud case actions and statistics, including those provided externally to DoD and Congress.

i. **What is the process for insuring that fraud case actions is not duplicated or claimed by another DCIO?** There is no specific DoD guidance or process to prevent duplicate reporting of fraud case actions from joint investigations. A DOD issuance regarding fraud case action could provide clarity on how to report and de-conflict fraud case actions in joint investigations.

4. Interviews

- a. Agency: Defense Criminal Investigative Service (DCIS)
Date: August 17, 2011
Location: HQ DCIS, Arlington, VA
Interviewed: HQ DCIS Fraud Policy Program Manager and Operations Staff

- b. Agency: Air Force Office of Special Investigations (AFOSI)
Date: August 19, 2011
Location: HQ AFOSI, Quantico, VA
Interviewed: HQ AFOSI Fraud Program Managers

- c. Agency: U.S. Army Criminal Investigation Command (USACIDC)
Date: August 19, 2011
Location: HQ USACIDC, Quantico, VA
Interviewed: HQ USACIDC Operations Director and Fraud Program Manager

- d. Agency: Naval Criminal Investigation Service (NCIS)
Date: August 19, 2011
Location: HQ NCIS, Quantico, VA
Interviewed: HQ NCIS Fraud Program Managers

5. Conclusion

All DCIOs maintain training programs and internal oversight for reporting fraud case actions. They also have similar definitions and reporting processes for fraud case actions. However, there is no specific DoD guidance that prevents duplicate reporting of fraud case actions during joint investigations. This matter will be addressed during the Defense Enterprise-wide Working Group and policy guidance will be incorporated in DoDI 5505.02, "Criminal Investigations of Fraud Offenses."

Appendices

- A. Fraud Case Action Definitions Provided By DCIS (See attached)
- B. Fraud Case Action Definitions Provided By AFOSI (See attached)

APPENDIX A

FRAUD CASE ACTION DEFINITIONS -- DCIS

1. **Recoveries.** All recoveries with a monetary value to include:
 - a. **Fines, Penalties, Forfeitures and Restitution.** This includes all criminal and civil monies as a result of judicial disposition (courts martial, pre-trial diversion, conviction, Article 32, etc) Examples of supporting documentation would be criminal judgments, final order of forfeiture, civil settlements, etc.
 - b. **Recovered Government Property.** This is defined as government property only physically obtained from investigative efforts. The value is determined at the time the property was seized (not acquisition value).
 - c. **Administrative Remedies.** These are any recoveries directly resulting from the investigation as an administrative finding (i.e., payments recouped or a reduction of cost through contracting channels, Article 15 UCMJ (Nonjudicial), etc.).
 - d. **Civil Recoveries.** These include any recoveries resulting from a civil settlement or judgment.
2. **Adjudicative Charges.** These include Federal, state, local and foreign court criminal indictments, filings of criminal information, civil suits, pretrial diversion agreements and courts martial charges preferred.
3. **Adjudicative Convictions.** These include the results of criminal trials (civilian or military) ending in judgments or a defendant's signed plea agreement that has been accepted by the court.

APPENDIX B

FRAUD CASE ACTION DEFINITIONS -- AFOSI

1. **Recoveries.** All recoveries with a monetary value to include:
 - a. **Fines, Forfeitures and Restitution.** This includes all penalties imposed as a result of judicial disposition (courts martial, pre-trial diversion, conviction, Article 15)
 - b. **Property Recoveries or Seizures.** These include property (including cash and other negotiable instruments) physically obtained from investigative efforts.
 - c. **Administrative Remedies.** These are any recoveries directly resulting from the investigation (i.e., payments recovered through contracting channels, etc.). This does not include fines, forfeitures, restitution or investigative recoveries described as Property Recoveries or Seizures.
 - d. **Civil Recoveries.** These include any recoveries resulting from a civil settlement or judgment.

2. **Indictments.** These include Federal, state, local and foreign court criminal indictments, filings of criminal information, and courts martial charges preferred.

3. **Convictions.** These include the results of criminal trials (civilian or military) ending in judgments or sentences that the accused is guilty.

Panel on Contracting Integrity Membership













	Position	Organization
	Panel Chairman/ Deputy Under Secretary of Defense (Acquisition and Technology)	Office of the Under Secretary of Defense (Acquisition, Technology & Logistics) (OUSD(AT&L))
	Executive Director/ Director, Defense Procurement and Acquisition Policy (DPAP)	OUSD(AT&L)
	Deputy Assistant Secretary of the Army (Policy & Procurement) (DASA(P&P))	Department of the Army
	Deputy Assistant Secretary of the Navy, (Acquisition & Logistics Management) (DASN(A&LM))	Department of the Navy
	Chief of Staff, DASN(A&LM)	Department of the Navy
	Deputy Assistant Secretary of the Air Force (Contracting)	Department of the Air Force
	Director	Defense Contract Audit Agency (DCAA)
	Director, Human Capital Initiatives	OUSD(AT&L)
	Component Acquisition Executive	Defense Logistics Agency (DLA)
	Deputy General Counsel (Acquisition & Logistics)	DoD Office of the General Counsel
	Deputy Director, DPAP/Program Acquisition and Contingency Contracting (PACC)	OUSD(AT&L)
	Acquisition Executive	US Special Operations Command (USSOCOM)

Figure 2. Panel on Contracting Integrity Membership (page 1 of 2)



Panel on Contracting Integrity Membership, continued

	Position	Organization
	Deputy General Counsel	Department of the Air Force
	Director of Contracting	Missile Defense Agency (MDA)
	Assistant General Counsel (Acquisition Integrity)	Department of the Navy Office of the General Counsel
	Director	Defense Contract Management Agency (DCMA)
	General Counsel	DCMA
	Assistant Inspector General (Acquisition and Contract Management)	DoD Office of the Inspector General Representatives from: Department of the Army IG Department of the Navy IG Department of the Air Force IG
	Chief of Staff	Department of Defense Advanced Research Projects Agency (DARPA)
	Deputy Director, Acquisitions & Contracts	National Geospatial Intelligence Agency (NGA)
	Chief of Procurement	Department of Defense Education Activity (DoDEA)
	Director, Acquisition	US Transportation Command (USTRANSCOM)
	Deputy Senior Acquisition Executive	National Security Agency (NSA)
	Director for Procurement	Defense Information Systems Agency (DISA)
	Chief, Health Planning Operations	Assistant Secretary of Defense (Health Affairs)/ TRICARE Management Agency (TMA)

Figure 2. Panel on Contracting Integrity Membership (page 2 of 2)

