



ARMY PROCUREMENT FRAUD ADVISOR'S UPDATE



ISSUE 76 (OCTOBER 2010)

U
S
A
R
M
Y
C
O
N
T
R
A
C
T
&
F
I
S
C
A
L
L
A
W
D
I
V
I
S
I
O
N



INSIDE THIS EDITION

Message From The Chief, PFB	2
Fraud Counsel's Corner	4
Significant Actions	5
Parting Shots	10

Mission of the Procurement Fraud Branch

The Procurement Fraud Branch (PFB) is part of the Contract and Fiscal Law Division, U.S. Army Legal Services Agency. PFB is the Army's single centralized organization with the mission to coordinate and monitor the status of all criminal, civil, contractual, and administrative remedies in cases of fraud or corruption relating to Army procurements. The Procurement Fraud Advisor's Newsletter has been published since September of 1989 on a quarterly basis to advise Army Procurement Fraud Advisors (PFAs) on the latest developments in procurement fraud and remedies coordination. The Update is also distributed electronically to other Government fraud counsel at their request.



MESSAGE FROM THE CHIEF, PROCUREMENT FRAUD BRANCH



FY 10 Statistics. FY 10 was a record-breaking year for the Army Procurement Fraud Program with 992 cases, 133 suspensions, 170 proposed debarments, 125 debarments, and 8 administrative agreements. The Army Suspension and Debarment Officials (SDOs) in Korea and Europe contributed a total of 64 suspensions, proposed debarments, and debarments to these numbers. Within DoD, the Army had the second highest number of actions (suspensions, proposed debarments, and debarments) with 428. DLA was first in actions this year with 475 actions (100 of those actions involved suspensions of affiliated companies of a single company – Public Warehousing Company). The Air Force came in third for the year with a total of 365 actions. The Navy had 95 actions.

The Army continues to have a significant number of fraud cases originating from contracting activities in Iraq, Kuwait and Afghanistan. As of 30 September 2010, there were 163 active cases from Iraq/Kuwait and 61 active cases from Afghanistan. In FY 10, there were 102 suspensions, proposed debarments, and debarments resulting from cases in Southwest Asia, approximately a quarter of Army FY 10 actions.

In the coming year, we anticipate a steady stream of new referrals from investigations related to contracting activities in Afghanistan. We are staffed to be

able to handle these actions expeditiously. There is currently no backlog of actions awaiting decisions by the Army SDO.

USALSA Fraud Recovery Project Receives Top Honors. The Army Fraud Recovery Project received the top Army Lean Six Sigma award for FY 10. The Secretary of the Army and Vice Chief of Staff of the Army selected the project titled “Army Procurement Fraud Recovery in a Wartime Environment” to receive the Enterprise Level Project Sponsor Award on 15 October 2010. The award was presented by the Undersecretary of the Army to the team led by Ron Jones, Office of the Assistant Secretary of the Army, Financial Management and Comptroller (ASA FM&C) Black Belt/Senior Financial Management Analyst. The project established a process to ensure recovery of Army procurement funds resulting from court settlements in fraud cases. On 1 June 2010, a memorandum of understanding (MOU), establishing an inter-agency agreement to ensure the timely return of procurement fraud funds to Army command accounts before funds expire, was reached by the Defense Finance & Accounting Service (DFAS), Department of Justice (DoJ) and the Department of Army. ASA FM&C and the Office of The Judge Advocate General, United States Army Legal Services Agency, Contract and Fiscal Law Division (OTJAG-USALSA-KFLD-PFB) led the Lean Six Sigma (LSS) project that resulted in the MOU.

A copy of the MOU providing details of the new procedure is attached to this update. All PFAs should read the MOU to become familiar with the new process.

The review of the fraud recovery process began in 2003 when the USALSA Commander asked AAA to review practices associated with collection of Army fraud recoveries. After AAA audits revealed the complexities and weaknesses of the collection proc-

MESSAGE FROM CHIEF, PROCUREMENT FRAUD BRANCH (CONT FROM PAGE 2).

ess, and several in-house attempts to revise the process were made, PFB invited additional organizations, to include ASA (FM&C), CID, DoJ and DFAS to a workshop in September 2007 to consider a team approach to solve the problem. ASA (FM&C) provided the technical expertise needed to develop the MOU through the LSS process. Before the project began, collections took an average of 912 days, which resulted in funds cancelling before they could be returned to the Army accounts. Using the new process, \$14.6 million has been returned to fund owners so far and the processing time has been reduced to an average of 57 days. DFAS has indicated the process will be highlighted as a “best practice” for all of DoD. PFB Attorneys Christine McCommas and Angelines McCaffrey were members of the LSS team.

The problem was that United States Attorneys’ offices were sending fraud recovery funds to DFAS without an identification tag. DFAS was “parking the money” for long periods of time because it could not identify where to send it. Through the LSS study, it was determined that a “tag” needed to be attached to the money when the case is filed with the court. The PFB case number is now attached to the fund cite information forwarded by United States Attorneys’ offices to DFAS so DFAS knows where the money goes. In addition, an accounts receivable form was developed by ASA FM&C for use by PFAs to notify the coordinator at ASA FM&C that a case has been filed with money due to the Government. All this is set out in more detail in the MOU.

PFAs must identify funds involved in fraud litigation early in the process and provide sufficient information to United States Attorneys’ offices so that DFAS, ASA FM&C, and PFB may accurately track the recovery. A form is attached to the MOU for use by PFAs in tracking funds. Contact Ms. McCaffrey at Angelines.McCaffrey@us.army.mil if you have questions about the MOU or the form.

LEAP CEREMONY OCT 2010

“Photo Courtesy of ASA(FM&C)”

Left to right:

Dr. Evelitsa Schweizerhof, LSS Master Black Belt; Dr. Katherine Thompson, SES, LSS Deployment Director; Mr. Daniel Myung, LSS Master Black Belt; Mr. Robert Speer, Political Appointee, Principal Deputy Assistant Secretary (FM&C); Mr. Ron Jones, LSS Black Belt and Team Lead; Mr. Snookie Parker, LSS Master Black Belt; Ms. Chris McCommas, OTJAG Team Member; Mr. Ross Fontana, LSS Black Belt; and Ms. Elizabeth Gillette, Department of Justice Team Member.

FRAUD COUNSEL'S CORNER

Mandatory Disclosure of Criminal Violations and Civil Fraud when the Contractor has Credible Evidence. An important change to the Federal Acquisition Regulations (FAR) became effective on 12 December 2008, when it became mandatory for contractors on certain government contracts to report criminal activities on their contracts. This change has led to a significant increase in self-reporting by government contractors.

Before 2008, there was only a voluntary disclosure program. From 1986 to 2008, under this program, there were 476 disclosures, which resulted in a total of \$497 million in recoveries. During the first three years of the voluntary program, there were about 30 to 40 disclosures annually; however, over time the number of disclosures tapered off. In the final years of the voluntary program, there were fewer than ten disclosures a year. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council determined that the voluntary disclosure program was not generating sufficient referrals, and this led, after a significant period of public comment, to the adoption of the mandatory requirements.

As stated in FAR 52.203-13, contractors are now required to report in writing to the appropriate Office of Inspector General, with a copy to the contracting officer, when they have "credible evidence" of violations of Federal criminal law (fraud, conflicts of interest, bribery, gratuities) or violations of the civil False Claims Act by one of its principals, employees, agents or subcontractors. Contractors are also required to report significant contract overpayments.

Under the new requirement, government solicitations and contracts expected to exceed \$5,000,000, with a performance period of 120 days or more, must contain the clause set forth at FAR 52.203-13. Further, contractors and subcontractors that have this clause in their contracts must "flow it down" to all subcontractors with subcontracts greater than \$5 million and a performance period of 120 days or more.

Originally, commercial-item contracts and contracts to be performed outside the United States were to be exempted from the new requirements in FAR 52.203-13. However, in June 2008, Congress changed that with enactment of the "Close the Contractor Fraud Loophole Act."

The new mandatory reporting rule provides for suspension or debarment of a contractor for the knowing failure

by a "principal," until three years after final payment on the contract, to make a timely disclosure. A principal is "an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of a subsidiary, division, or business segment; and similar positions)."

In addition to requiring the disclosure of credible evidence of certain activities, FAR 52.203-13 mandates that contractors: have a written code of business ethics and conduct; provide a copy of the code to each employee; promote compliance with the code; establish a business ethics and business conduct awareness program; and establish a system of internal controls to facilitate the discovery of improprieties in contracts and ensure that corrective action is taken.

Under FAR 52.203-13, contractors are to provide "full cooperation," which means disclosure to the Government of information sufficient to identify the nature and extent of the offense and the individuals responsible. However, it does not foreclose a contractor's rights. It does not waive the contractor's attorney-client privilege, and contractor officials do not waive their Fifth Amendment Rights. It does not restrict a contractor from conducting an internal investigation, and it does not prevent the contractor from defending itself as to the contract or the potential offense.

How is the new program working? As of 28 October 2010, 302 disclosures have been received by the DOD Inspector General (DoDIG). Of the 302 disclosures, 67 have been referred for investigation to investigative agencies. Four cases have resulted in criminal prosecutions and convictions of individuals employed by companies making the disclosures. Two of the cases involved significant amounts of money. One case involved theft of Government property worth more than \$400,000. Another involved embezzlement of more than \$200,000. According to the DoDIG Program Manager, Ms. Lynn McCormick, all disclosures are carefully reviewed by DoJ criminal and civil attorneys at Headquarters DoJ. Many disclosures involve labor mischarging by contractor employees. Questions about the program may be directed to Ms. Lynn McCormick, Contractor Disclosure Program Manager, DoDIG, at 703-604-8711 or frances.mccormick@dodig.mil.

(LTC Frank Kiley)

SIGNIFICANT ACTIONS**Debarments**

(1) Bribery and Money Laundering (Forward Operating Base, Warrior, Kirkuk, Iraq). On 1 July 2010, the SDO debarred Ronald Joseph Radcliffe from contracting with the Government based on his conviction for bribery and conspiracy to commit money laundering. Mr. Radcliffe was deployed, as Master Sergeant (MSG) Radcliffe, with the 25th Infantry Division (Light), as a supply officer at the Forwarding Operating Base Warrior, Kirkuk, Iraq. MSG Radcliffe used his position to steer the award of Government contracts to a Government contractor in exchange for cash payments. Mr. Radcliffe was sentenced to serve 40 months in prison, followed by three years on supervised release, and was ordered to pay a fine of \$30,000 and an assessment of \$200. (Ms. McCaffrey)

(2) False Statements (TACOM/DCMA Denville, New Jersey). On 14 July 2010, the Army SDO debarred Mr. Lawrence Norman on the basis of his guilty plea and conviction for making and using a false document and concealing a material fact from DoD. Mr. Norman was a Quality Assurance Representative (QAR) for DCMA, where he reported false testing results in order to pass inspection standards on gas filters used in the M1A1 and M1A2 Abrams main Battle Tanks. Mr. Norman was sentenced to four years of probation, including six months of home confinement with electronic monitoring, and \$133,920 in restitution. (Mr. Nelson)

(3) Bribery (Camp Liberty, Iraq). On 14 July 2010, the SDO debarred Austin Scott Key based on his guilty plea to bribery, theft, and money laundering. Mr. Key was a former Army captain responsible for procurement in Baghdad, Iraq. He accepted bribes from contractors in exchange for fuel and committed thefts of Government property. Mr. Key was sentenced to 24 months of imprisonment followed by two years of supervised release, forfeiture of \$108,000, community service, and a \$600 assessment. (LTC Kiley)

(4) False Claims. On 27 July 2010, the SDO debarred LTC (Ret.) Richard Gorka based on his conviction for false claims. Gorka falsified travel vouch-

ers for three years while on active duty. He created a scheme in which he was able to have a house he owned managed by a trust company rented back to him. Gorka pled guilty a false claim and was sentenced to probation for thirty-six months, restitution in the amount of \$25,000, and special assessment in the amount of \$100. (CPT Shah)

(5) Bribery (Coalition Provisional Authority (CPA), South Central Region, Iraq). On 28 July 2010, the SDO debarred LTC Michael Brian Wheeler based on his conviction after a trial on conspiracy to defraud the United States. While deployed with the CPA, LTC Wheeler conspired to award contracts to fictitious contractors and then paid them despite defective performance. LTC Wheeler was sentenced to 42 months confinement, three years of supervised release, restitution of \$1,200 and a \$100 special assessment. (Mr. Persico)

(6) Conspiracy to Defraud and Bribery / (USASMDC, Alabama). On 20 August 2010, the Army SDO debarred Michael Lee Cantrell based upon his conviction for conspiring to defraud the United States and bribing a public official. Mr. Cantrell was an employee of the United States Army Space and Missile Defense Command (USASMDC). From 2000 to 2005, Mr. Cantrell was employed as the Director, Joint Center for Technology Integration (JCTI), and from 2005 to April 2007, he was the Director of the Integrated Capabilities Management Directorate (ICMD) at USASMDC. Mr. Cantrell, in his capacity as the Director, JCTI and ICMD, and his co-conspirators devised a scheme to defraud the Government by obtaining money through fraudulent pretenses and by using interstate wire transfers to distribute the fraudulently obtained funds. He was sentenced to serve a term of 60 months of imprisonment, followed by a term of 36 months of supervised release, and ordered to pay \$2,500,000 in restitution to the Department of Defense and \$358,145 in restitution to the Internal Revenue Service. (Ms. McCaffrey)

(7) Bribery (JCC/Bagram AFB, Afghanistan). On 27 August 2010, the Army SDO debarred James Paul Clifton based on his conviction for bribery of a public official. His sentence included imprisonment for 40

SIGNIFICANT ACTIONS (CONT FROM PAGE 5)

months and supervised release for three years. (Ms. McDonald)

(8) Bribery, Conspiracy, Gratuities and Theft (Tobyhanna, Pennsylvania). On 27 August 2010, the Army SDO debarred Derrick Jackson based on his conviction after jury trial for bribery, conspiracy, gratuities and theft of Government property. His sentence included imprisonment for 60 months, supervised release for three years and \$80,000 restitution. (Ms. McDonald)

(9) Bribery (USACE). On 27 August 2010, the Army SDO debarred Manuel E. Arriaza and his company "Manny the Plumber," aka "Manny Construction," based on Mr. Arriaza's admission to special agents of the Defense Criminal Investigative Service (DCIS) that he bribed Alejandro Rivera, a maintenance director with JWK International, which served as a prime contractor for the U.S. Army Corps of Engineers. According to DCIS interview reports, Mr. Arriaza admitted that he paid bribes to Mr. Rivera on two occasions, in the amounts of \$3,000 and \$2,000, in order to obtain subcontracts. Mr. Arriaza also prepared a sworn statement admitting the bribery. (LTC Kiley)

(10) Bribery (ASG-Kuwait). On 1 September 2010, the Army SDO debarred William Rondell Collins based on his guilty plea to bribery and unlawfully supplementing his government salary. Collins was employed by the U.S. Army with the Area Support Group-Kuwait, which procures, leases, and maintains off-post housing for government employees and military service members stationed at Camp Arifjan. Collins was a "Housing Specialist," who managed, supervised and provided recommendations regarding off-post housing contracts. In July 2009, Collins solicited a monthly fee of approximately \$1,400 from an Egyptian businessman in return for Collins' agreement to consult with the businessman about performance and renewal of a contract. Collins accepted at least four \$1,400 payments from the businessman between July 2009 and October 2009. In addition, between July 2009 and December 2009, Collins solicited a monthly payment of approximately \$963 from the businessman in exchange for drafting and submitting an inflated off-post apartment lease to the United States for approval. On 13 December 2009, Mr.

Collins received from the businessman a payment of \$5,775, which represented a six-month advance on the scheme. The Court imposed judgment and sentenced Mr. Collins to 42 months of imprisonment, followed by three years of supervised release; in addition, the Court ordered Mr. Collins to forfeit \$5,775 and to pay a fine of \$1,725. (LTC Kiley)

(11) Theft of Government Property (RRAD, Texas). On 1 September 2010, the Army SDO debarred Bernice Faye Ward based on her guilty plea to theft of Government funds. At the time of her offense, Ward was an employee and supervisor at the Red River Army Depot in Bowie County, Texas. Ward was the supervisor of "S.T.," "A.J.," "C.S.," and "W.A.," all of whom worked at Red River Army Depot. Ward was authorized to direct the work of these employees and to certify their time records. On 2 April 2009, Ward directed the four employees to assist her in transporting furniture and appliances to her son's duty station at Fort Hood, near Killeen, Texas. Ward directed the four employees to call into work and report that they were sick and would be taking sick leave. On 13 April 2009, however, Ward certified that each of the four employees was present and working at Red River Army Depot on 2 April 2009, and that each was entitled to receive pay for that day. As a result of her false certifications, Ward converted to the use of the four employees funds of the United States to which they were not entitled. The total loss to the United States from Ward's false certification of pay entitlement was approximately \$1,103. The Court sentenced Ward to one-year of probation and ordered her to pay \$1,103 in restitution and a \$25 special assessment. In addition, as part of her plea agreement, Ward agreed to resign from her government position. (LTC Kiley)

(12) Violation of Export Laws (Massachusetts/China). On 13 September 2010, the SDO debarred Bo Li for three years. On 17 December 2009, a federal grand jury in Massachusetts indicted Mr. Li and four co-defendants (Zhen Zhou Wu; Yufeng Wei; Chitron Electronics, Inc.; and Chitron Electronics Company Limited) for conspiring to violate U.S. export laws and illegally exporting defense articles and Commerce Department controlled equipment. The grand jury also indicted Mr. Wu and Ms. Wei for filing false shipping documents to conceal material facts

SIGNIFICANT ACTIONS (CONT FROM PAGE 6)

from the U.S. Government and aiding and abetting. In addition, the grand jury indicted Ms. Wei for immigration fraud. On 5 April 2010, Mr. Li pleaded guilty to making false statements on shipping documents. On 17 May 2010, a jury convicted Mr. Wu, Ms. Wei, and Chitron Electronics, Inc. of conspiring to violate U.S. export laws during ten years and illegally exporting defense articles and Commerce Department controlled electronic equipment from the U.S. to China. Chinese military entities received the equipment. The jury also convicted Mr. Wu and Ms. Wei of filing false shipping documents and aiding and abetting. In addition, the jury convicted Ms. Wei of immigration fraud. On 22 July 2010, the Court sentenced Mr. Li to eleven months of imprisonment, thirty-six months of supervised release, and payment of a \$1,000 fine and a \$100 special assessment. Sentencing for Mr. Wu, Ms. Wei, and Chitron Electronics, Inc. is set for 21 September 2010. The Court entered a contempt order against Chitron Electronics Company Limited after it did not appear, and fined it \$1.9 million. (LTC Kiley)

(13) Conspiracy and Bribery of a Public Official (USACE / Kabul, Afghanistan). On 16 September 2010, the Army SDO debarred Dinorah Cobos, Raymond Azar and Pro Sima International based on their convictions for bribery and conspiracy. Azar pled guilty to conspiracy to bribe a public official and was sentenced to six months confinement and restitution. Cobos pled guilty to conspiracy to commit bribery and bribery of a public official and was sentenced to two years' confinement and restitution. Pro Sima International pled guilty to conspiracy to commit bribery and bribery of a public official and received a Restitution Judgment in the amount of \$150,000 and a fine of \$750,000. (Ms. McDonald)

(14) Conflict of Interest (MEDCOM/Ft. McPherson, Georgia). On 28 September 2010, the Army SDO debarred Timothy Thomas, Sr. based on his conviction for conflicts of interest. Mr. Thomas is a former Government official who performed work for a Government contractor while still employed by the Government. He was sentenced to one year probation. (Ms. McDonald)

(15) Procurement Integrity Act Violation (USASOC/ Las Vegas, Nevada, Ft. Bragg, North Carolina). On 28 September 2010, the Army SDO debarred Ronald Lien

based on the findings of an AR 15-6 investigation which concluded that Mr. Lien provided a Government contractor with source selection documents without authorization and then lied about his involvement in providing the documents. (Ms. McDonald)

(16) Theft of Government Property by Contractor (Walter Reed Army Medical Center). On 30 September 2010, the Army SDO debarred Ronnita Nicole Dunbar based on her conviction for theft of government property. Dunbar was a government contractor employed at the Walter Reed Army Medical Center (WRAMC) as an administrative assistant in the Department of Surgery. As part of her duties, Dunbar used the Defense Travel System (DTS) to make travel arrangements for doctors and residents within her department. She set up itineraries, booked airline and hotel reservations, recorded travel expenses, and arranged for payments. Around June 2007, Dunbar began fraudulently accessing the DTS. Using the user profiles of actual doctors and residents at WRAMC, she created fictitious travel authorizations. Dunbar changed the electronic money transfers from their accounts to her account and submitted false receipts to hide the thefts. Later, Dunbar began creating fictitious user profiles and travel authorizations, and had the money wired to her account. In one case, Dunbar opened a prepaid credit card in the user's name and changed the authorized electronic fund transfer from the user's authorized account to the account at the credit card company. In 2007 and 2008, Dunbar used DTS to create and process twenty-two fictitious travel reservations, stealing a total of about \$165,477. In each case, Dunbar spent the stolen funds on personal expenses. On 26 August 2010, the Court imposed judgment and sentenced Dunbar to imprisonment for twelve months and one day, followed by thirty-six months of supervised release. The Court ordered her to pay restitution of \$165,477, and to pay a special assessment of \$100. (LTC Kiley)

(17) Defective Products (Camp Adder, Tallil, Iraq). On 22 September 2010, the Army SDO debarred Oday Al Kareem, Desert Moon Company, Ameer S. Fadhel, Amwaj Al-Neel Company, Maytham Jassim Mohammad and Baladi Company based on their submission of false claims and the delivery of non-conforming goods to the Army at Camp Adder, Tallil, Iraq. The debarments are based upon a finding that

SIGNIFICANT ACTIONS (CONT FROM PAGE 7)

Desert Moon Company, Baladi Company and Amwaj Al-Neel Company provided non-conforming generators and heating, ventilation and air conditioning (HVAC) units as part of purchase orders W91GXE-09-P-0076 and W91GXE-09-P-0161. Upon inspection of the generators and HVAC units, it was determined that data labels and packaging for these items had been altered to mislead the Army into believing that it had received conforming goods. As a result of these alterations, payments totaling \$4,504,970 were made to Baladi Company and Amwaj Al-Neel Company in February and August 2009. (Mr. Persico)

(18) Conspiracy, Bribery (ARCENT, Camp, Arifjan, Kuwait). On 28 September 2010, the Army SDO debarred Mr. Shaher Nabih Fawzi Audah, a.k.a. Shaher Fawzi, Allied Arms Company, Ltd., Defense Consulting and Contracting Group, L.L.C. and Allied Arms Company, W.L.L. based on their participation in a scheme to make cash payments to contracting officers for the purpose of fraudulently obtaining calls against blanket purchase agreements (BPA) for the supply of bottled water and other items to the Army at Camp Arifjan, Kuwait. The SDO determined that, by a preponderance of the available evidence, Mr. Audah, Allied Arms Company, Ltd., and Allied Arms Company, W.L.L. made payments totaling \$3,130,000 to MAJ John L. Cockerham, Ms. Melissa Cockerham and MAJ James Momon between 2005 and 2007. During this same period, Allied Arms Company, Ltd., and Allied Arms Company, W.L.L. received 17 BPA calls, valued at \$39,800,584. Defense Consulting and Contracting Group, L.L.C., a company operated by Mr. Audah, was also debarred as an affiliate and imputer of his actions, as well as those of Allied Arms Company, Ltd., and Allied Arms Company, W.L.L. (Mr. Persico)

(19) Major Fraud, False Statement and Conspiracy (TACOM). On 30 September 2010, the Army SDO debarred Brett Halpin and David Sward based on their convictions for conspiracy. The conspirators, former corporate officers of Parmatic Filter Corporation, fabricated parts for filters used in the M-1 tank for first article testing and masked their activities with false documentation. Mr. Sward pled guilty to conspiracy to defraud the United States, and withholding information on a crime. Mr. Sward was sentenced to

three years of probation, six months of home confinement, and a \$5,000 fine. Mr. Halpin also pled guilty to conspiracy to defraud the United States, and was sentenced to three years of probation, six months of home confinement, \$133,920 criminal restitution, and a \$30,000 fine. (Mr. Nelson)

(20) Making False Statements, Money Laundering, Wire and Mail Fraud (NETCOM/Laurel, Maryland). On 30 September 2010, the Army SDO debarred Dejuan Fountain, Rafael C. Simmons and Rodney A. Mathis based on their convictions for making false statements, money laundering, and mail and wire fraud. Fountain, Simmons and Mathis devised a scheme to defraud several factoring companies by getting them to advance money to their companies – Omega Rho International, The Hiram Group, LLC, The Hiram Group of Texas, Abeona Systems and Simmons Enterprises - in exchange for assignment of payments on fictitious Government contracts. Fountain, an active duty warrant officer, made false representations to the factoring companies that he was a disbursement officer for the Army. The companies were also debarred. (Ms. McDonald)

Administrative Agreements

(1) Bribery (Bagram AFB, Afghanistan). On 1 July 2010, the Army entered into an Administrative Agreement (AA) with Afghan International Transportation, a/k/a Afghan International Trucking (AIT) in lieu of debarment. The Army SDO proposed AIT for debarment on 10 December 2009, based on the criminal information and plea of former Army Staff Sergeant, James Paul Clifton, to bribery of a public official. AIT offered Sergeant Clifton gifts and money in exchange for receiving additional work providing trucking services at Bagram AFB in Afghanistan. On 25 June 2010, AIT pled guilty to bribery of public officials. The company paid a fine of \$3,360,000 and an assessment of \$400. AIT subsequently implemented a compliance and ethics program and made significant changes to establish its present responsibility. (Ms. McDonald)

(2) Rocky Mountain Instrument Co. On 1 July 2010, the Army entered into an AA with Rocky Mountain Instrument Co. (RMI) in lieu of debarment. On 17

SIGNIFICANT ACTIONS (CONT FROM PAGE 8)

March 2010, RMI was criminally charged in the illegal export of prisms and technical data related to military optical instruments and applications. The criminal information charged that between 1 April 2005, and 11 October 2007, RMI willfully exported and caused to be exported the prisms and technical data to recipients in the Republic of Turkey, the Republic of Korea, the People's Republic of China, and the Russian Federation, without first obtaining a license or authorization to do so from the U.S. Department of State. On 7 April 2010, the Army suspended RMI from Government contracting. On 22 June 2010, RMI pled guilty to the criminal information. As part of the plea agreement, RMI agreed to pay a money judgment of \$1 million, representing a forfeiture of proceeds from the violations. On 2 July 2010, the Army removed the company from the list of suspended contractors after RMI made significant changes to establish its present responsibility. On 14 October 2010, RMI and the United States signed a civil settlement agreement whereby RMI agreed to pay an additional \$1 million. (LTC Kiley)

(3) Bilfinger Berger AG. On 13 September 2010, the Army SDO signed an agreement with a large German construction company. A subsidiary of the company, HSG, which has contracts with the Army, is currently under investigation by German authorities for kickbacks and bribery. The parent corporation, BBAG, implemented an ethics and compliance program over the course of the past year and reorganized the company so that only one subsidiary, BBGS, is responsible for all Government contracting. The HSG subsidiary is no longer entering into new contracts with the Government. The Air Force was originally the lead agency for DOD but decided to withdraw in May 2010 from negotiations after the subsidiary that was debarred by the Air Force, BBH, ceased doing business with the Government. The AA was coordinated with OTJAG legal offices in USAREUR. (Mrs. McCommas)



PARTING SHOTS:

All photos courtesy of www.army.mil, unless otherwise identified.

PFB Staff:

Chris McCommas (Chief, Procurement Fraud Branch)

Angelines McCaffrey (Attorney Fraud Advisor)

Brian Persico (Attorney Fraud Advisor)

Trevor Nelson (Attorney Fraud Advisor)

Pamoline McDonald (Attorney Fraud Advisor)

LTC Francis Kiley (Attorney Fraud Advisor)

MAJ Susana Watkins (DOJ, Trial Attorney)

CPT Rina Shah (Attorney Fraud Advisor)

Belinda Fentress (Paralegal)

Co-Editors:

Chris McCommas

Sheryl Washington

**UNITED STATES ARMY LEGAL
SERVICES AGENCY**

Contract & Fiscal Law Division
Procurement Fraud Branch
Department of the Army
901 North Stuart Street, Suite 500C
Arlington, VA 22203

Phone: (703) 696-1542
Fax: (703) 696-1559
E-mail: pfb@hqda.army.mil

WE'RE ON THE WEB!

[HTTP://
WWW.JAGCNET.ARMY.MIL/
ARMYFRAUD](http://WWW.JAGCNET.ARMY.MIL/ARMYFRAUD)





REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY
FINANCIAL MANAGEMENT AND COMPTROLLER
109 ARMY PENTAGON
WASHINGTON DC 20310-0109

JUN 01 2010

**MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE DEFENSE
FINANCE AND ACCOUNTING SERVICE (DFAS), THE DEPARTMENT OF THE
ARMY, THE DEPARTMENT OF JUSTICE (DOJ), AND THE U.S. COURTS**

SUBJECT: Collection of Army Procurement Fraud Recovery Funds

1. Purpose/Scope. Establish an inter-agency understanding to ensure the timely return of procurement fraud funds to Army command accounts before funds cancel. Scope is collections resulting from DOJ civil and criminal cases.

2. Dates of Performance: 1 October 2009 thru 30 September 2012.

3. References:

- a. U.S. Army Audit Agency Report A-2007-0161-FFM, Follow-up Audit of the Army Criminal and Civil Fraud Recovery Process.
- b. FY 2009 Army Chief Financial Officer Strategic Plan.
- c. Lean Six Sigma (LSS) Project #LD09299, Improving Financial Management of the Army Procurement Fraud Recovery Process.

4. Definitions:

a. Canceled Funds. Means "closed/canceled accounts," which are defined in the Glossary of the Department of Defense Financial Management Regulation (DODFMR) as follows: "An appropriation that has been closed in accordance with 31 U.S.C 1551-1557. This term also includes an appropriation that otherwise would have been closed by 31 U.S.C. 1551-1557, but has not been closed by the Department of Treasury because the appropriation has a negative balance. When balances are canceled, the amounts are not available for obligation or expenditure for any purpose."

b. Court Decision. For civil cases the court decision can be a judgment or settlement. For criminal cases the decision will be a restitution judgment.

c. Commands. Major organizational units of the U.S. Army which are either: a) the Procurement Activity that issued the contract(s) covered by the court decision or, b) the Customer Activity who had the requirement and funded the contracts(s) covered by the court decision. In some cases the Procurement Activity and the Customer Activity are the same entity. Because Federal Acquisition Regulation Part 17.5, Interagency Acquisitions Under the Economy Act (31 U.S.C. 1535) and the Economy Act itself

allows for the placement of orders between agencies, the Procurement Activity and the Customer Activity could belong to any federal agency and not just the Army.

d. Lines of Accounting (LOAs). The detailed appropriation(s) or account(s) cited on the contract(s) covered by the court decision. If the funds have not canceled, this information is used to collect the funds back to their originating appropriation(s) or account(s). If the funds have canceled, they are returned to the U.S. Treasury through the Canceled/Closed Appropriations Account.

e. Department of Justice (DOJ) Financial Litigation Units (FLUs). Within the Department of Justice, the U.S. Attorney's Offices' Financial Litigation Units (FLUs) enforce and collect criminal judgments and civil judgments or settlements.

f. Department of Justice (DOJ) Debt Collection Management Debt Accounting Operations Group (DAOG). Within the Department of Justice, the Debt Collection Management Debt Accounting Operations Group (DAOG) processes and disburses civil collection payments to government agencies.

5. Background. An audit report (Reference 3a) identified problems in the timely return of recovered funds to Army accounts. Once the Department of Defense received the Army funds from DOJ, the process took an average of over 900 days and a significant portion of the funds canceled during that time. The audit report recommended that procedures be developed. A strategic plan (Reference 2) incorporated the audit's recommendations to develop procedures and resolve funds awaiting disposition in DFAS suspense accounts. Subsequent to the audit, the Office of the Judge Advocate General (OTJAG) and the Office of the Assistant Secretary of the Army (Financial Management and Comptroller) (OASA(FM&C)) agreed to jointly sponsor a LSS Project to resolve the issues cited in the audit report and strategic plan. The LSS project formed an interagency workgroup that developed and tested the procedures cited in this MOU. The LSS project had two main goals: to increase by 100% the timely collection of funds from suspense accounts, and to reduce the cycle time to collect the funds into the Army accounts from 900 to a range of 30 to 60 days.

6. Agreement/Administrative Procedures. This MOU provides interagency understanding on existing actions and procedures to be enhanced or established. An interagency Standing Operating Procedures (SOP) will provide more detailed procedures. If action is required by more than one agency, the agency responsible to lead or initiate the action is shown first. If action is jointly accomplished, the joint agencies are shown.

a. Fraud Recovery Monitor. OASA(FM&C) will establish a fraud recovery monitor to help monitor and coordinate the collection of Army funds. If appropriate, the monitor role may be assigned or delegated to another Army activity.

b. Case Identification (ID) Number. OTJAG's Procurement Fraud Branch (PFB), located in the U.S. Army Legal Services Agency, Contract and Fiscal Law Division, will

generate a Case ID Number when a case file is opened in its database. The OTJAG PFB attorney and the Army Procurement Fraud Advisor (PFA) attorney at the Army Procurement Activity that issued the contract(s) under investigation are the lead Army personnel to work with DOJ personnel.

c. Coordination. When DOJ begins formulating the Government's draft position and court decision document(s), the DOJ Assistant US Attorney responsible for the case generally contacts the Army Procurement Fraud Advisor (PFA) attorney handling the case to discuss the draft position. As part of the coordination, the PFA attorney will: 1) provide OTJAG's Case ID Number, and 2) request information on the draft decision, subject to court restrictions. The PFA attorney will then contact the OTJAG PFB attorney and OASA(FM&C) monitor to inform them of the coming decision. The PFA attorney will also initiate a work group of Army resource management and other personnel to begin to research and determine how the restitution was calculated, the command(s), contract(s), lines of accounting, dollar amounts involved, and if the funds have canceled or not. At the time the settlement/judgment decision is entered by the court, the PFA attorney will initiate an Army Procurement Fraud Recovery Collection / Accounts Receivable Form (enclosure one) which will include the OTJAG Case ID Number on the form. The PFA attorney will fax or email the form to the DOJ FLU.

d. OTJAG Monthly Report. PFB will provide a monthly report to the other Army agencies and DFAS which includes the status of all cases where a disposition (criminal or civil judgment/settlement) has been issued/filed. The case status will include the contractor or defendant's name, date the disposition was issued/filed, the name of the PFB attorney assigned to the case, the name, phone number and email address of the DOJ attorney assigned to the case, and the estimated dollar amount of the decision.

e. Investigative Agencies. Investigative agencies (for example the U.S. Army Criminal Investigation Division (CID) or Defense Criminal Investigative Service) are actively involved in the case from inception. Within CID, this MOA applies to the Major Procurement Fraud Unit (MFPU). When the court's decision is imminent (30-60 days prior), the MFPU agent assigned to the case will contact the OTJAG PFB attorney and OASA(FM&C) monitor to inform them of the coming decision and provide enough information so the PFB attorney can identify which case(s) in the OTJAG database are involved. If necessary, the investigative agent may be asked to obtain documents.

f. Accounts Receivable/Standard Document Number. Based on information obtained in paragraphs 6c, Coordination, DFAS will continue to perform the accounting function and post accounts receivable transactions and all related collections. The efficiency of this accounting function will be enhanced by the information generated, which includes using the Case ID Number as part of the accounts receivable Standard Document Number. If an accounts receivable cannot be established prior to receipt of funds at DFAS, a journal voucher will be used to process the collection, as is done today.

g. Agency File Number and Disbursement of Funds. For civil cases, the FLU is responsible to collect and record payments and DAOG is responsible to disburse funds to the appropriate agency. For criminal cases, DOJ is responsible to collect funds; but the U.S. Court is responsible to record payments and disburse funds to the appropriate agency. For civil cases, when disbursing funds to DFAS, DAOG will provide OTJAG's Case ID Number as the Agency File Number. For criminal cases, when disbursing funds to DFAS, the U.S. Court will provide OTJAG's Case ID Number as the Agency File Number. At the time this MOU was signed, DAOG used the Intra-Governmental Payment and Collection (IPAC) system (see paragraph 6i below) to disburse funds, while the U.S. Courts issued a U.S. Treasury check to disburse funds.

h. Central DFAS Office to Receive Collections. DFAS currently has a Debt Management Office (DMO) that serves as the centralized office for processing DOJ collections. The DMO will continue to serve in this capacity, utilizing the information described in paragraph 6c. This agreement is applicable to contract and vendor pay debts only. Individual out-of-service debts originating from personnel pay activities will be reviewed for improvements at a subsequent time. The other agencies will use codes or other mutually agreed upon methods to help DFAS differentiate between contract-related recoveries and all others.

i. IPAC Locator Codes and Addresses. For civil cases, DOJ's DAOG uses the Treasury standard system known as IPAC to electronically transmit funds to other agencies. To facilitate paragraphs 6g and 6h, DFAS will provide the FLUs and DAOG with a current IPAC code list and use our best efforts to communicate any changes to the IPAC.

j. DFAS Accounts Receivable Processes. DFAS will continue to record and post accounts receivable transactions, utilizing the information provided, and post collections to the proper appropriations, thereby increasing the availability of funds.

k. Interagency SOP. The OASA (FM&C) monitor will develop an interagency SOP. This SOP will assist with the agency interaction and improve the sharing of information necessary to ensure the timely return of procurement fraud funds to Army command accounts before funds cancel.

l. Interagency Points-of-Contact (POC). Enclosure two lists key POCs at the headquarters level. To facilitate communication, the OASA(FM&C) monitor will develop a more detailed list and include it in the SOP.

m. Responsible, Accountable, Consulted, Informed (RACI) Action Item or Task List. As part of the LSS project, the interagency workgroup developed a mutually agreed upon RACI list. The list identified the lead agency for each action item or task and depicts at a high-level how the agencies will work together on the task. The list was also the outline for this MOU.

n. Criminal Cases and U.S. Court Responsibilities. For criminal cases, the U.S. District Court is responsible for receipting criminal debt payments and disbursing restitution funds to the appropriate victim. Currently, the U.S. District Court issues a Treasury check to disburse restitution to victims. Per paragraph 6b, the OTJAG's Procurement Fraud Branch will generate a Case ID Number when a case file is opened. When a criminal case has been adjudicated in a Federal District Court, the Procurement Fraud attorney handling the case will initiate an Army Procurement Fraud Recovery Collection / Accounts Receivable Form, which will include the OTJAG Case ID Number on the form. The Army will fax or email the form to the U.S. District Court. The Court will include the OTJAG Case ID Number on each restitution check disbursed to DFAS for that particular case. If space permits on the check, the Court will include the defendant's first name and last name. If the Court does not have the OTJAG Case ID Number, the Court should contact the Army Procurement Fraud attorney handling the case to obtain the necessary form.

7. Effective date. 1 June 2010.

Monica

MONICA MALIA

LSS Project Sponsor & Acting Chief,
Cost and Resource Integration Division
Office of the Assistant Secretary of the Army
(Financial Management & Comptroller)

18 Aug 09

(Date)

James K. Podolak

JAMES PODOLAK

Director, Major Procurement Fraud Unit
U.S. Army Criminal Investigation Command

18 Aug 09

(Date)

ECB 4 for

CYNTHIA B. GARCIA

Director, Accounting Mission Area
Defense Finance & Accounting Service

5/21/2010

(Date)

Charles Glenn

CHARLES GLENN

Controller

Accounting & Financial Systems Division ;
Administrative Office of U.S. Courts

9/24/09

(Date)

Holley O'Brien

HOLLEY O'BRIEN

Director, Debt Collection Management Staff
Justice Management Division
Department of Justice

March 18, 2010

(Date)

A. Helm

ANTHONY HELM

COL, U.S. Army

Chief, Contract and Fiscal Law Division
U.S. Army Legal Services Agency

20 AUG 09

(Date)

L L L

LAURIE LEVIN

Assistant Director

Financial Litigation Staff

Department of Justice

2/23/10

(Date)

Edna J. Knight

EDNA J. KNIGHT

Central Site Director - Indianapolis

Defense Finance & Accounting Service

5/26/2010

(Date)

Army Procurement Fraud Recovery Collection / Accounts Receivable Form

Instructions: This form provides information needed by DFAS to record and collect Army procurement fraud recoveries. It can be used for either civil recoveries (Part 4a) which are disbursed by DOJ, or criminal recoveries (Part 4b) which are disbursed by the District Court. The procurement fraud attorney working the case will initiate the form, completing Parts 2, 3, 4, 5, 7 and as much of Part 6 that is known when the Court makes the decision or collection. The procurement fraud attorney will then forward the form concurrently to DOJ or the Court and ASA(FM&C). Next, DOJ or the Court will check the appropriate box in Part 1, fill in Court information still needed in Parts 2,3, 4, 6 and forward the form to the DFAS office where payment was sent. If DFAS receives the funds without Part 6 being completed, then the Army command that issued the contract(s) is the lead to complete Part 6. If you have questions on completing the form, call Mr. Ron Jones, the ASA(FM&C) monitor, at (703) 692-5887.

Part 1 Remit To Information

Agency Code: **DEFB**Agency Location Code: **00006551**
☐ **IPAC (Electronic Funds Transfer)**

Mail IPAC printout, this form and other

documents to:

DFAS-Columbus

Attention: DFAS-CO/JAIAC

Columbus Center, Building 21

P.O. Box 182317

Columbus, Ohio 43218-2317

☐ **U.S Treasury Check**

Mail checks, this form & other documents to:

DFAS- Columbus

Attention: DFAS-CO/JAIAC

P.O. Box 979049

St. Louis, MO 63197-9000

(Include OTJAG Case ID Number on check)

If sending documents by fax or scanned email, send to:

DFAS Point of Contact: **Marian Watson**, marian.watson@dfas.mil, Phone (614) 693-8693, Fax (216) 367-3455

Part 2 Case Numbers

Court Case Number

CDCS Number (civil only)

OTJAG Case ID/
Agency File Number**21FRDP**

Part 3 Defendant / DOJ / Court Information

Defendant/
Contractor Name

Contract Number

Delivery Order Numbers
(if applicable)

Federal Judicial District

DOJ Attorney

(name, email, phone number)

FLU Representative / Court Financial

Administrator (name, email, phone number)

Part 4a Civil Settlements (Actual/Compensatory Damages)

Actual/
Compensatory
Damages Ordered

Date of Order

Initial Lump
Sum AmountMonthly Payment
Amount
(if applicable)Date First
Payment DueAmount of
this Payment

Enclosure One

Explanation of Debt	
---------------------	--

Part 4b Criminal Judgments (Restitution)					
Restitution Amount Ordered		Date of Order		Initial Lump Sum Amount	
Monthly Payment Amount (if applicable)		Date First Payment Due		Amount of this Payment	
Explanation of Debt					

Part 5 Investigative Agency			
Investigative Agency Case Number (if known)		Special Agent Name/ Office	
Email Address		Phone Number	

Part 6 Payment / Collection Information	Amount
Gross Payment	
Less collection fee (Civil Cases only)	
Net Payment	
Accounting Classification/Appropriation Data (attach additional sheets if needed)	
Total Collected	

Part 7 Other Points of Contact				
Role	Organization	Name	Email Address	Phone Number
OTJAG Procurement Fraud Attorney				
Command Procurement Fraud Attorney (if known)				
Command Resource Manager (if known)				

Enclosure Two
Key Interagency Points-of-Contact

For Army:

- Ron Jones, OASA(FM&C), (703) 692-5887, ronald.h.jones@us.army.mil
- Angelines McCaffrey, OTJAG, (703) 696-1554, angelines.mccaffrey@us.army.mil
- Frank Robey, USACIDC, (703) 806-0479, marion.robey@us.army.mil

For DFAS:

- Ed Bright, DFAS Indianapolis, (317) 510-4558, ed.bright@dfas.mil
- Andy Durewicz, DFAS Columbus, (614) 693-0798, andrew.durewicz@dfas.mil

For DOJ:

- Darrell Curtis, DOJ, (801) 325-3215, darrell.curtis2@usdoj.gov
- Leslie Bournes, DOJ, (202) 616-1867, leslie.c.bournes@usdoj.gov

For the U.S. Courts:

- Alvin Dixon, U.S. Courts, (202) 502-2228, Alvin_dixon@ao.uscourts.gov
- Michele Makle, U.S. Courts, (202) 502-2231, michele_makle@ao.uscourts.gov