



# ARMY PROCUREMENT FRAUD ADVISOR'S UPDATE



ISSUE 77 (JULY 2011)

## *Happy 236th Birthday US Army*

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#### *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



### UNITED STATES ARMY LEGAL SERVICES AGENCY (USALSA) TO RELOCATE TO FORT BELVOIR IN SEPTEMBER 2011.

The Army's Procurement Fraud Branch (PFB), part of the Contract and Fiscal Law Division (KFLD), will move to Fort Belvoir in September 2011 as part of the BRAC realignment. USALSA will be located in a new building, currently under construction, on the garrison. We hope that the transition will be seamless. PFB will keep Army Procurement Fraud and Irregularities Coordinators (PFICs) and Advisors (PFAs) advised of any changes impacting communications during the move.

### ARMY PROCUREMENT FRAUD COURSE SCHEDULED FOR 13-17 August 2012.

The course is scheduled for the week of 13-17 August at The Judge Advocate General's Legal Center and School (TJAGLCS) in Charlottesville, Virginia. All PFAs who have not attended the course should register for the course through the Army Training Requirements and Resources System (ATRRS). The course is offered only once every two years. Space is limited to 150 attendees, with Army and DoD attorneys afforded first priority. The course will focus on basic instruction for new fraud counsels. It will provide the tools necessary to fight procurement fraud in traditional and contingency environments. The course is

also available to investigators, contracting officers and paralegals as space permits.

### DOD WORKING GROUP PROCUREMENT FRAUD TRAINING SEMINAR.

On 12-14 April, over 100 DoD and DoJ attorneys, investigators, and auditors attended a three day training seminar at the Daytona Hilton. The annual seminar, held for the past seven years, facilitated discussion of issues related to coordination of procurement fraud remedies. This year, the keynote speaker was Mr. Tony West, Assistant Attorney General for the Civil Division, DoJ. Mr. West spoke about recent trends in the civil litigation of procurement fraud cases. He noted that the Government's contracting workforce has declined by half since the 1990s while the dollars spent on federal procurements have mushroomed to over \$160 billion. Consequently there has been a huge increase in litigation by private relators seeking recovery under the qui tam provisions of the False Claims Act. DoJ recently settled the largest war zone procurement fraud case with Louis Berger (a contractor primarily for USAID) for over \$70 million in civil and criminal fines and penalties. During this past year, DoJ saw significant increases in False Claims Act litigation and recoveries, disclosures filed by contractors (now over 400 disclosures), and fraud referrals by DCAA. DoJ has also filed several fraud counterclaims in the Court of Federal Claims.

A panel of Government and contractor executives including Mr. Richard Ginman, the Deputy Director of Defense Procurement and Acquisition Policy (DPAP) and the CEOs of two major defense contractors, Northrop Grumman and L-3, explained the recent accomplishments of their organizations in implementing effective ethics programs. The seminar also included presentations on Digital Forensics, Grant Fraud, the Mandatory Disclosure Program, Coordination of Remedies, and an Update on Iraq/Afghanistan Fraud Cases. There were workshops on the Federal



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

Awardee Performance and Integrity Information System (FAPIS), Records Management/Litigation Holds, the DoDIG Subpoena Program, and the DCAA Fraud Referral Program. The schedule included time for agency breakouts as well.

The seminar was planned by the Steering Committee of the DoD Procurement Fraud Working Group, chaired by Russ Geoffrey, Director, Contract Integrity Center, DCMA. Please contact Russ at [russell.geoffrey@dcma.mil](mailto:russell.geoffrey@dcma.mil) if you are interested in participating on the Steering Committee for the Working Group for the coming year. The group meets monthly beginning in September. Russ can also be reached at 617-753-4343.

**HAIL AND FAREWELL.** In addition to the move to Ft. Belvoir, we are in the midst of the changing of the guard as well at PFB. Starting with me, on 3 August 2011, I will retire from federal service after serving over 35 years with the Army as a civilian attorney. It has been a pleasure to work for The Office of the Judge Advocate General (March 1988-August 2011). I have particularly appreciated the opportunity to work with many excellent senior leaders and attorneys while serving as Chief, PFB since July of 2003. Best wishes and farewell to colleagues throughout DoD who have served with me in support of the fraud fighting mission.

We recently said farewell to attorney Brian Persico who accepted a position starting in June 2011 with the Special Inspector General for Afghanistan Reconstruction (SIGAR) as Deputy Senior Counsel for Investigations. Brian worked tirelessly to protect the Army from unscrupulous contractors in theatre. He completed hundreds of suspensions and debarments during five and a half years in the branch, and made a major contribution to the success of the Army's procurement fraud program. He will be missed!

In January 2011, we said farewell to LTC Francis Kiley, USAR, who retired from active duty after serving in PFB for a year. Frank helped us tremendously by quickly picking up a bunch of our new cases. Also in January 2011, we said a temporary farewell to PFB attorney Pamoline McDonald, who was mobilized for a year on active duty. Pam is expected to return to PFB in January 2012.

In January 2011, we welcomed two new attorneys to the branch. LTC Wayne Wallace, USAR, has criminal investigative experience with CID and civil litigation experience. Ms. Sarah Lee Ahn has valuable criminal defense experience. Both are already making an impact. (Mrs. McCommas)



**Christine S. McCommas**  
**Chief, PFB**  
**July 2003-2011**



**PFB, Gettysburg Staff Ride 2010**

**FRAUD COUNSEL'S CORNER**

**U.S. DISTRICT COURT JUDGE DISMISSES CONTRACTORS' LAWSUIT AGAINST THE U.S. ARMY SUSPENSION AND DEBARMENT OFFICIAL FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES.** On 17 June 2011, U.S. District Court Judge James Boasberg, USDC DC, dismissed the complaint filed by Ahmed and Rashid Popal and the Watan Group of Companies (respondents) to seek injunctive and declaratory relief against the Army Suspension and Debarment Official (SDO) based on the SDO's decision to propose them for debarment on 6 December 2010. The SDO proposed the debarments of Ahmed Rateb Popal, Rashid Popal based on admissions made to congressional investigators regarding the conduct of Watan Risk Management (WRM), an Afghan Private Security Company (PSC), in the performance of convoy escort operations between Kabul and Kandahar, Afghanistan. In addition, WRM personnel were alleged to have been in possession of weapons larger than those permitted by CENTCOM policy, including heavy machine guns and RPGs (rocket propelled grenades), failed to report use of force as part of convoy escort operations and made numerous payments to corrupt members of the Afghan government, the Afghan armed forces and other armed groups operating to ensure safe transit of convoys under their protection. Also, fourteen related companies, including the Watan Group and Kandahar Security Company, were proposed for debarment as imputees and affiliates.

In 2010, the House Subcommittee on National Security and Foreign Affairs published a report, entitled *Warlord, Inc.*, which revealed evidence that, while providing convoy escort for host nation trucking (HNT) contractors, respondents admittedly paid bribes ranging from \$1,000 to \$10,000 per month to Afghan officials and Afghan armed groups to ensure safe passage of convoys under their protection, especially while providing convoy escort along Route 1 between Kandahar and Kabul. In addition, the report revealed evidence that respondents violated the terms of the host nation trucking (HNT) contracts, by using heavy machine guns and rocket propelled grenades (RPGs) during convoy escort operations and failing to report to U.S. Forces-Afghanistan incidents involving use of those weapons. Based on the evidence produced in this report, the Army SDO proposed the respondents for debarment. Instead of exhausting their administra-

tive remedies to oppose final debarment, as provided under the Federal Acquisition Regulations (48 C.F.R. § 9.400 et seq), respondents filed a complaint in U.S. District Court in the District of Columbia, seeking a court declaration that the SDO acted arbitrarily and capriciously in proposing their debarments, and enjoining him from further proceeding in the debarment process. Specifically, respondents argued that by relying on the subcommittee report for their proposed debarments and placing them on the Excluded Parties List System (EPLS), the SDO had already made up his mind about their debarment; and therefore, it would be "futile" to proceed further in the debarment process.

In response, the Government filed a motion to dismiss the complaint. Citing the Administrative Procedures Act and the doctrine of finality, the Government argued that the Court had no jurisdiction to review an agency's decision before it is final. Since a proposed debarment is not a final debarment, and since respondents have failed to exhaust their administrative remedies to submit documents and request a hearing before the SDO to oppose final debarment, the Court has no jurisdiction to hear the case, and therefore, the case should be dismissed. Moreover, contrary to respondents' claim that it would be futile to proceed to a hearing to oppose debarment, based on their allegation that the SDO had pre-decided their final debarment, the Government provided statistics to show that in the last four years, the SDO terminated ten proposed debarments of contractors based on materials contained in their oral statements and written submissions. After hearing oral arguments on 14 June 2011, Judge Boasberg granted the Government's motion to dismiss the respondents' complaint. In his written opinion, the judge found that, although the SDO proposed respondents for debarment, there is no credible evidence to show that he pre-decided their final debarment. Citing a Declaration by Christine McCommas, Chief, Procurement Fraud Branch, the judge found that the evidence showed to the contrary; historically the SDO has terminated proposed debarments when warranted by the respondents' written submissions or oral presentations. Moreover, the judge held that respondents have failed to allow the debarment process to run its course so as to exhaust their administrative remedies under 48 C.F.R. § 9.400 et seq. The judge elaborated that, "Debarment is a four step process – issuance of notice, opportunity to respond, factual hearing, and

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final decision – half of which plaintiffs have yet to complete. Plaintiffs still have the opportunity... to invoke all of the remedial measures and mitigating factors for the Army to consider.” Accordingly, because the SDO has not made a final debarment decision, and respondents have not exhausted their administrative remedies to oppose final debarment, the judge dismissed the complaint as premature. Following this decision, respondents requested a hearing before the SDO in opposition to their debarment. The hearing will be held in July 2011. (LTC Wallace)

**THEATRE UPDATE: COMISAF's COUNTER-INSURGENCY CONTRACTING GUIDANCE.**

On 8 September 2010, the Commander, International Security Assistance Force (COMISAF), issued guidance regarding the role of contracting in the counter-insurgency (COIN) campaign in Afghanistan. The guidance sets out the commander's intent regarding contracting policies specific to the international efforts to stabilize Afghanistan and support the Afghan government. Contracting is the “commander's business” and efforts should be made to consider the effects on the local economy, the social networks present in Afghanistan and negative impacts on the rule of law by lack of oversight. As part of the overall COIN strategy, COMISAF considers contracting to be an integral part of the international effort in Afghanistan, resulting in the need for clear and consistent contracting priorities. The guidance sets out 11 principals that should guide commanders and contracting officers in the award of contracts in Afghanistan. This initial guidance was supplemented in a memorandum issued by COMISAF on 1 February 2011.

COMISAF's contracting guidance starts with the premise that commanders and contracting officers should understand the role of contracting in COIN. Contracts with Afghan contractors are important because the goods and services procured create employment and help develop a sustainable economy. Consistently contracting with patronage networks or contacting exclusively with established “powerbrokers” should be avoided to prevent negative perceptions that resources and contracting dollars are funneled by ISAF to one group at the expense of others. Contracts should be awarded to Afghan companies where possible, or, if Afghan prime contractors are unavailable, contracts should be performed by individual Afghans

and Afghan firms used as subcontractors where possible. This call to use Afghan employees and Afghan contractors requires greater oversight of the contracting process to ensure that local contractors are fully utilized in a manner that maximizes long-term growth potential and provides fair wages and prices.

Contractors performing contingency contracting should be clearly identified. Contingency contracting often involves the award of contracts to one or more subcontractors who actually perform the requirements of the contract. This tendency to subcontract the actual performance of contracts has, in the past, resulted in shoddy or incomplete performance by subcontractors who have not been vetted by the contracting officer due to the lack of privity with the Government. This lack of vetting has also allowed criminal networks and insurgents to divert contract funds from their intended purpose, frustrating the intent of many projects designed to improve the Afghan economy. The COIN contracting guidance calls on the contracting community to ensure proper vetting of contractors prior to the award of contracts and to provide for continued monitoring throughout the performance process.

Contracting should be integrated into the overall intelligence, plans and operations picture in the battle space. Commanders should utilize contracting to “exert a positive influence and to better accomplish our campaign objectives.” The establishment of COIN contracting management boards and the sharing of best practices, contractor performance and vetting information across ISAF and USFOR-A through the U.S. Central Command's Combined Information Data Network Exchange and International Distributed Unified Reporting Environment databases is encouraged as part of this process. Another important factor in this integration is the need to look beyond cost, schedule and performance and evaluate how the award of contracts can effect security operations, local power dynamics and insurgent support from the population.

The necessity to act on poor performance by contractors is also addressed by COMISAF. Appropriate actions include the suspension or debarment of a contractor and contract termination. In situations where there are “no alternatives to powerbrokers with links to criminal networks, it may be preferable to forgo the



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project.” While contractors are an important part of the team, none are indispensable.

The integration of contracting into the overall COIN campaign has been deemed by COMISAF to be an important part of the overall operations strategy of ISAF and USFOR-A. Additional information on COMISAF's COIN contracting guidance can be found online at <http://www.isaf.nato.int/from-the-commander/from-the-commander/comisafs-counterinsurgency-coin-contracting-guidance.html>. This site also contains links to information on COIN strategy, the implementation of COIN contracting principals by ISAF and USFOR-A and ongoing operations in Afghanistan. (Mr. Persico)

**ASBCA DENIES ARMY REQUEST TO STAY BOARD PROCEEDINGS DUE TO ONGOING FALSE CLAIMS ACT LITIGATION.** The decision by Armed Services Board of Contract Appeals (ASBCA) in *Kellogg Brown & Root Services, Inc.*, ASBCA Nos. 56358, 57151, (23 November 2010), denying the Army's request to stay proceedings, provides an opportunity to review the landscape when a contract appeal and civil fraud litigation cross paths. When allegations of fraud are intertwined with contract claims and/or disputes, the contracting officer is prohibited from resolving the underlying contract issue or settling the claim, and is precluded from making a final decision on a contractor's claim. The contracting officer may, however, suspend a contractor's payment if there are serious fraud allegations present. The contractor may appeal that decision to the ASBCA. The fraud issues are then placed before the ASBCA alongside the contract dispute, which may affect the FCA litigation. To remedy this apparent jurisdictional bind, the agency (on behalf of the DoJ) may request a stay of the pending Board proceedings for a definite, or indefinite period of time, or until the fraud litigation has been resolved by the DoJ.

In deciding whether to grant or deny the stay, the ASBCA will consider the following factors: (1) do the proceedings involve the same issues, facts or witnesses; (2) would the ongoing investigation be compromised by going forward with the appeals before the Board; (3) would the stay harm the non-moving party; (4) is the length of the requested stay reasonable.

In *Kellogg Brown & Root Services, Inc.* (KBR), the Board considered whether the above factors applied to the facts of the case and concluded that a stay of the proceedings was not warranted. In KBR, the Army suspended payment of the security costs incurred by KBR pending a fraud investigation. The investigation culminated in DOJ's filing of a FCA civil action against KBR on 1 April 2010. In April of 2008, KBR filed one of two appeals with the ASBCA to recover suspended payments. In ASBCA No. 56358, KBR seeks to recover the security costs incurred by its subcontractors related to operation of dining facilities. In ASBCA No. 57151, KBR seeks to recover the indirect costs incurred for the security services provided to KBR.

When evaluating the first factor, the Board agreed there were relevant similarities, but viewed them as very limited in scope in comparison to the FCA lawsuit, which encompassed broader issues beyond those raised in the appeals. The Board explained that the Army did not articulate a compelling reason why KBR should refrain from proceeding before the ASBCA to address issues unique to FCA liability, but not relevant to contract liability. It described the request for an indefinite stay as “drastic,” when other measures could be put in place, and noted that ASBCA No. 56358 was filed in April 2008, two years before the DoJ filed the FCA lawsuit. When addressing the second factor, a concern for an ongoing investigation, the Board noted that that was no longer an issue because the initial investigation was completed when the DoJ filed the FCA lawsuit. In deciding the third factor, the Board emphasized that simply asserting that no harm would flow to KBR was speculative. The Board defined the relevant inquiry as one which determines if there is a “fair possibility” that the proposed stay would harm KBR. While the Army argued that KBR would endure no harm in light of the billions of dollars it was reaping from the LOGCAP III contract, the ASBCA concluded that that was a mere speculative assertion, and reasoned that KBR is, in fact, harmed when the proceeds of the contract to which it may be entitled are withheld. The fourth factor is whether the duration of the requested stay is reasonable. Here, the Board explained that granting an indefinite stay in the absence of a pressing need is an abuse of discretion. The Board cited precedent in which it previously denied requests for indefinite stays to allow other litigation to

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proceed. Moreover, the Board reviewed civil case statistics and concluded that it takes 35.6 months, on average, from the time a case is filed until it is resolved at trial. The Board ruled that judicial efficiency would not justify an open-ended stay, especially when AS-BCA appeal No. 56358 was filed two years before the FCA complaint. (Ms. McCaffrey)

**NATIONAL PROCUREMENT AND GRANT FRAUD CONFERENCE.** On 15-18 November 2010, the National Procurement Fraud Task Force (NPFTF) held its Biennial National Procurement and Grant Fraud Conference in Philadelphia, Pennsylvania. The 2010 conference focused on the efforts of the Recovery Accountability and Transparency Board (RATB) to oversee the implementation of the \$787 billion in stimulus spending authorized by the American Recovery and Reinvestment Act of 2009 (Recovery Act). As part of the program, speakers and panels presented a variety of topics related to the investigation and prosecution of grant and procurement fraud cases with the goal of sharing best practices used by agencies throughout the Government. Specific topics that were discussed included suspension and debarment, investigative techniques for grant and procurement fraud cases, computer fraud and the role of auditors in investigations. Vice President Joe Biden delivered the keynote address and Rep. Darrell Issa of California, the future chairman of the House Committee on Oversight and Government Reform, was the conference's featured speaker.

A featured theme of the conference was the RATB's emphasis on the use of technology, data-mining and risk assessment to prevent fraud before loss occurs to the Government. To this end, the RATB established the Recovery Operations Center (ROC) in Washington, DC to serve as the focal point of gathering data and coordinating the efforts of the 29 Inspectors General directly involved in the Recovery program. In addition to operating a Recovery Board Hotline established to accept fraud and whistleblower complaints, the ROC is staffed by a data fusion team created to use a sophisticated in-house software capability to explore Recovery spending and analyze the thousands of contracts, grants and loans issued throughout the 50 states and U.S. territories. The goal, though difficult to achieve, is to spot irregularities, connections and patterns that reveal or suggest improprieties that point to a

high probability of fraud. Presenters explained that this new software solution is designed to give the RATB a way to focus limited resources on high-risk government programs where past activity suggests the likelihood of future risk. The program has the capacity to pinpoint other risk-related information, including regional crime rates and unemployment and high cost projects. Separately, the data fusion team analyzes public records and other "open-source" information to identify personal and business connections that might suggest fraud or irregularities. Investigators and analysts call these connections "non-obvious" relationships. Finally, the data fusion team initiates daily in-depth analysis to generate investigative and audit leads for federal oversight agencies, including Inspectors General.

In their addresses to the 500 attendees at the conference, Vice President Biden and Representative Issa noted that the ROC's scrutiny of spending in the early stages helps reduce fraud and waste down the line and serves as the model for future fraud detection and prevention programs.

Additional information about the NPFTF, its programs and the 2010 conference can be found at <http://www.justice.gov/criminal/npftf/>. Materials discussing Recovery Act spending, the RATB and the ROC can be found at <http://www.recovery.gov/Pages/default.aspx>. (Mr. Persico)



**SIGNIFICANT ACTIONS****DEBARMENTS (OCTOBER 2010-MARCH 2011)**

(1) Conspiracy (Coalition Provisional Authority, Al-Hillah, Iraq). On 22 October 2010, the Army SDO debarred Mr. William Driver based on the entry of a criminal judgment against him. The basis for the debarment was Mr. Driver's receipt of cash and other items of value on behalf of his spouse, LTC Deborah Harrison, as part of a conspiracy to fraudulently award contracts issued by the Coalition Provisional Authority in the Al Hillah region of Iraq during 2003 and 2004. (Mr. Persico)

(2) Conspiracy (Coalition Provisional Authority, Al-Hillah, Iraq). On 22 October 2010, the Army SDO debarred COL Curtis G. Whiteford based upon a criminal judgment entered against him to one count of conspiracy to commit bribery and interstate transportation of stolen property. Specifically, between September 2003 and July 2004, while COL Whiteford was assigned as Chief of Staff to the Coalition Provisional Authority – South Central Region, located in Al-Hillah, Iraq (CPA-SC), he participated in a conspiracy to fraudulently award multiple contracts and authorized cash payments despite defective or non-performance of contract terms. In exchange for these actions, COL Whiteford received cash payments, an automobile and other items of value. (Mr. Persico)

(3) Wire Fraud, False Statements, and False Representation (Alabama). On 22 October 2010, the Army SDO debarred Skyler Tarquin Smith and his company, NBC Tactical LLC. Mr. Smith pled guilty to wire fraud, false statements, and falsely representing himself to have been awarded several military badges, decorations, and medals. In addition, in response to a solicitation, Mr. Smith submitted a bid to sell ballistic vests, where he falsely stated that he was a Service Disabled Veteran Owned Small Business. Mr. Smith falsely represented that he had been awarded several badges, decorations, and medals, authorized by Congress for the U.S. Armed Forces, namely: the Purple Heart Medal, the Combat Infantry Badge, the Senior Parachutist Badge, the Air Assault Badge, and the Bronze Star Medal. (LTC Kiley)

(4) Conspiracy, Obstruction of an Agency Proceeding, and Mail Fraud (MEDCOM, Walter Reed Army

Medical Center, Maryland). On 29 October 2010, the Army SDO debarred Mr. Louis Pisani, Jr., and Mr. Leon L. Krachyna based on criminal judgments entered against them for participating in a conspiracy to fraudulently award Army contracts at Walter Reed Army Medical Center to Platinum Contractors, Inc. and Home Sweet Home Moving and Storage, Inc., for landscaping, moving services and repair services. On 1 February 2010 a criminal judgment was entered against Mr. Pisani based on his plea of guilty to one count each of conspiracy, obstruction of an agency proceeding and mail fraud. On 29 April 2010, Mr. Krachyna entered a plea of guilty to one count of conspiracy. Platinum Contractors, Inc. and Home Sweet Home Moving and Storage, Inc. were previously debarred from contracting with the Government on 25 September 2009. (Mr. Persico)

(5) Conspiracy to Defraud (USASMDC / Huntsville, Alabama). On 10 November 2010, the Army SDO debarred Douglas Harris Ennis based on his conviction for conspiring to defraud the United States. Mr. Ennis agreed to assist a contractor to obtain Government contracts in exchange for gratuities. (Ms. McCaffrey)

(6) Bribery, False Statements (ARCENT, Camp Arifjan, Kuwait). On 10 November 2010, the Army SDO debarred MAJ Christopher H. Murray, USA, based upon a criminal judgment entered against him. MAJ Murray entered a plea of guilty to four counts of bribery and one count of false statements. As part of this guilty plea, MAJ Murray admitted to receiving cash payments of \$245,000 from contractors in exchange for the award of contracts for goods and services during his deployment to Camp Arifjan, Kuwait. (Mr. Persico)

(7) Conspiracy, Theft of Government Property (MNF -I, Camp Liberty, Iraq). On 23 November 2010, the SDO debarred Lee W. Dubois, Robert Jeffrey, Bal Ram Shrewtha, and Elias Maalouf based on the entry of a criminal judgment against Mr. Dubois on one count of theft of Government property based on a scheme to steal fuel from the U.S. Army at Camp Liberty, Iraq. Mr. Dubois, Mr. Jeffrey, Mr. Shrewtha and Mr. Maalouf used fraudulent identification and documentation to enter a fuel storage area on multiple



**SIGNIFICANT ACTIONS (CONT FROM PAGE 8)**

occasions, resulting in the theft of 3,497,689 gallons of aviation fuel and 6,972,964 gallons diesel fuel, valued at approximately \$39,651,936. This fuel was later resold to third parties located in Baghdad, Iraq. Mr. Dubois' statement of facts was supported by the statement of facts given by Mr. Robert Young, another co-conspirator. Based on the statements of Mr. Dubois and Mr. Young, the SDO determined that, by a preponderance of the evidence, Mr. Jeffrey, Mr. Shrewtha and Mr. Maalouf should also be debarred. (Mr. Persico)

(8) Identity Theft (Maryland). On 23 November 2010, the SDO debarred Andre Everton Grant, aka "Andre Lennox Lewis" based on his guilty plea to computer fraud, access device fraud, and aggravated identity theft. Mr. Grant used the identity of another to open a fraudulent debit-card account at a federal credit union and then used the account for purchases and withdrawals of funds. Mr. Grant accessed the myPay accounts of service members and diverted payments from their accounts to his own accounts. In total, Mr. Grant stole or is otherwise responsible for \$187,659 in losses by numerous merchants and the U.S. Government for funds diverted from DFAS myPay accounts. (LTC Kiley)

(9) Conspiracy, Wire Fraud (Fort Benning, Georgia). On 23 November 2010, the SDO debarred Allen D. Thrower based on his conviction for wire fraud and conspiracy. Mr. Thrower's sister, Marie Ann Cimino, was previously debarred for misconduct related to the same incidents of criminal misconduct. She was the President and Chief Executive Officer of Military Service Support (MSS), a limited liability corporation, incorporated in 2004, and located in Ms. Cimino's single-family residence. Mr. Thrower was Chief of the Quality Support Division, Human Resources Directorate (HRD) at Fort Benning, Georgia. Mr. Thrower was responsible for preparing purchase requests and contract justifications and was responsible for reviewing contractor performance. Mr. Thrower and Ms. Cimino developed a scheme to obtain contracts for MSS. They concealed their family relationship, and Mr. Thrower falsely represented to contracting officials that MSS was highly recommended and experienced. As a result, MSS was awarded eight Army contracts, worth \$4.1 million, to perform services for the HRD. After MSS received

sole-source contracts for \$120,000 and \$450,000, Mr. Thrower recruited individuals to work for MSS at Fort Benning, and he supervised and certified their work. In January 2006, Mr. Thrower submitted a purchase request for a \$372,000 sole-source contract for MSS, and he received from MSS at least \$20,000 in checks, airline tickets, and lodging at a casino resort. In August 2006, Mr. Thrower submitted a purchase request for a \$740,000 contract for personnel services; he recommended MSS to the contracting official, despite its high bid; and MSS received the contract, which reached \$2,234,806 with options. (LTC Kiley)

(10) Bid Rigging (ARCENT, Camp Arifjan, Kuwait). On 9 December 2010, the SDO debarred Liberty Al Ahlia General Trading and Contracting Company WLL, International Quality Kitchens, Bronze Al Tawoos Al Afjan, Combat General Trading Co., Sebastian Joseph, N.K. Ismail, John Neapolian and Binu Thomas. The debarments were based on a determination that Mr. Joseph, Mr. Ismail, Mr. Neapolian and Mr. Thomas attempted to improperly influence the award of contracts by the U.S. Army, Area Support Group Kuwait (ASG-KU), for the purchase of neon signs, cereal dispensers and aquarium maintenance services. As part of this scheme, nearly identical bids were submitted to ASG-KU on behalf of Liberty Al Ahliya General Trading and Contracting Co. WLL (Liberty), International Quality Kitchens (IQK) and Bronze Al Tawoos Al Afjan (BATAA). Of these three companies, IQK is a subsidiary of Liberty and Mr. Neapolian admitted to investigators that a second, BATAA, does not exist. A review of other contracts awarded to Liberty showed that, on at least one occasion, Mr. Binu Thomas, another employee of Liberty, submitted a quote for the maintenance of aquariums at Camp Arifjan, Kuwait, under the name Combat General Trading Co. (Mr. Persico)

(11) Antitrust Conspiracy (SDDC, Scott AFB, Illinois). On 13 December 2010, the SDO debarred Mr. Peter A. Baci, Mr. R. Kevin Gill, Mr. Gregory Glova, Mr. Gabriel Serra, and Mr. Alexander G. Chisholm, shipping company executives of Horizon Lines LLC and Sea Star Lines LLC, based on their convictions and sentences for conspiracy to restrain trade. From May 2002 to April 2008, the executives sought to eliminate competition on the shipping lane between

**SIGNIFICANT ACTIONS (CONT FROM PAGE 9)**

the United States and Puerto Rico by raising prices, agreeing not to compete for one another's customers, agreeing to rig bids submitted to the Government and commercial buyers, and agreeing to fix the prices of rates, surcharges and other fees charges to customers. (Mr. Nelson)

(12) Nonperformance (USFK). On 16 December 2010, the USFK SDO debarred Seedtech Co and Mr. Chon, Do Jin. Seedtec Co., Inc. failed to perform a contract for installation of two video walls for the United States Marine Forces Korea. The contractor failed to meet the initial and extended delivery and installation dates for the materials ordered under the contract despite continual assurances of timely performance. Furthermore, Mr. Chon continued to verbally threaten and harass government employees after his termination. He was barred from all USFK installations and debarred from contracting for 15 years. (Mr. Chipps)

(13) Mail and Wire Fraud (U.S. Army Corps of Engineers, South Atlantic Division). On 3 January 2011, the SDO debarred Mr. William Miller II and his affiliates, First Florida Captive Holdings Corporation and AMS Capitol Holdings Corporation, d/b/a "Fidelity National," "AMS Surety Holdings Corp.," "AMS Surety," "American Management Systems," "AMS Investment Corporation," and "Upper Hudson National Insurance Company," based on Mr. Miller's conviction and sentence for wire and mail fraud. Beginning in March 2005 until April 2008, Mr. Miller fraudulently issued surety bonds with a face value of over \$530 million and received premium payments of over \$22.5 million while falsely representing that he or his companies were affiliated with legitimate insurance companies that provided surety bonds. (Mr. Nelson)

(14) Bribery, Unsatisfactory Performance (CCC, Camp Liberty, Iraq). On 20 January 2011, the SDO debarred Ammar Tariq Al-Jazrawi and Ammar Tariq Al-Jazrawi General Contracting Company (Al Jazrawi Company) based on evidence that Mr. Al-Jazrawi requested a CENTCOM Contracting Command (CCC) employee provide him with procurement sensitive information, including Government cost estimates and competitor bid information, in exchange for the promise of cash payments. On one occasion, Mr. Al-Jazrawi submitted a bid on behalf of Al-Jazrawi Com-

pany to provide recycling services to U.S. Forces - Iraq using a fictitious Government estimate provided to him by criminal investigators. In addition, on 18 August, CCC terminated for cause contract W91GEU-10-P-5035, a contract awarded to Al-Jazrawi Company for the management of municipal and bulk waste at Camp Victory, Iraq. This action was taken due to Al-Jazrawi Company's inability to follow procedures for the removal of militarily useful items from the Camp Victory landfill. (Mr. Persico)

(15) Gratuities and Kickbacks (USAREUR). The USAREUR SDO debarred Mr. Kurt James Meyer on 25 January 2011 and Mr. Karl-Heinz Betzholz on 18 January 2011. Mr. Betzholz and Mr. Meyer, former contract specialists with the Air Force 700th Contracting Squadron (700 CONS), were debarred based on the results of a joint German and US Air Force Office of Special Investigation (OSI) investigation of Autohaus Walter Kehry GmbH, also known as Kehry Renault Auto Dealership (Kehry Auto). The investigation revealed Kehry Auto paid Mr. Betzholz unusually high commission fees to facilitate Kehry Auto's contracts with 700 CONS. In turn, Mr. Betzholz paid Mr. Meyer over \$100,000 in commission fees for providing inside information regarding bid prices of other contractors who responded to solicitations. Mr. Meyer admitted to receiving the commissions and in April 2009, the Kaiserslautern District Court fined him € 11,200 for not claiming the commissions as income. (CPT Williams)

(16) False Claims (Fort Worth, Texas). On 24 February 2011, the SDO debarred Lisa Michelle Hall based on Ms. Hall's guilty plea to the charge of false claims for intentionally inflating the numbers of hours worked on the Blackhawk rewire project by Texas Aviation Services, a third tier subcontractor. Ms. Hall, a vice president of TAS, was responsible for preparing monthly invoices that were submitted to the Government. (Ms. Ahn)

(17) Theft of Government Property, Mail Fraud, and False Statements (Florida). On 3 March 2011, the SDO debarred Anthony Lorenzo Brooks and his company, Electronic Components & Fasteners North (ECFN) based on Mr. Brook's conviction for theft of government property. On 12 September 2007, the Army awarded a contract to ECFN for the purchase of

**SIGNIFICANT ACTIONS (CONT FROM PAGE 10)**

seven steam cleaners. Although the Army pre-paid Mr. Brooks \$65,800 for the steam cleaners, he never delivered them. On 6 January 2010, Mr. Brooks admitted to CID agents that he used the \$65,800 for an unrelated purpose, and never had the ability to complete the contract or provide a refund. (LTC Wallace)

(18) Bribery (Fort Hamilton, New York). On 3 March 2011, the SDO debarred Henry Maldonado and Darryl Jay Johnson based on their conviction for bribery of public officials. Mr. Maldonado and Mr. Johnson intentionally and corruptly demanded, sought, received, and accepted money and things of value in return for being influenced in the performance of their duties as moving agents for the transportation and storage of military goods at Fort Hamilton and surrounding areas of New York and New Jersey. (Mr. Nelson).

(19) Bribery (ASC/ Afghanistan). On 3 March 2011, the SDO debarred Daniel Lee Freeman based on his conviction for bribery and accepting illegal gratuities. From September 2004 through May 2009, Mr. Freeman accepted cash payments from individuals who represented entities which had been awarded Government subcontracts. The representative paid Mr. Freeman \$200,000. (Ms. McCaffrey)

(20) Bribery (USACE / New Orleans Louisiana). On 3 March 2011, the SDO debarred Raul J. Miranda on the basis of his guilty plea to bribery. Mr. Miranda met with a gravel and rock subcontractor and agreed to disclose confidential and source selection information in exchange for accepting 25 cents per cubic yard of sand and gravel sold under the contract. Since the contract required approximately 1,197,500 cubic yards of sand and gravel, Mr. Miranda was projected to receive approximately \$299,375 for the first phase of the construction contract. (Ms. McCaffrey)

(21) Gratuities/Kickbacks (USAREUR). On 16 March 2011, the USAREUR SDO debarred Bernhard Lehman, Wolfgang Scheurer, Thomas Magerl, Gisela Niedermeyer, Johann Schoierer, Florian Weigert and his company Metalbau-Weigert, Thomas Semmler and his company Holzbau Semmler GmbH, Bernd Fischer and Robert Ehrensberger. These debarments resulted from a scheme which involved widespread

abuse of trust by employees of the Department of Public Works in Hohenfels who fixed prices on job order contracts. The loss to the Government exceeded \$500,000. Instead of producing valid estimates of cost and materials for use in job order pricing, Army employees would inflate internal estimates and pass their inflated estimates to companies and individuals willing to provide kickbacks. The conspiring companies would then return inflated bids for task orders. The bids and inflated estimates formed the basis for overpayment. In addition, US employees received thousands of dollars of free home improvements. Employees of numerous companies, including a Bilfinger Berger Subsidiary, were implicated in the scheme. Bilfinger Berger (BBAG), the parent company, fired several employees, implemented reforms to improve corporate oversight and implemented a corporate ethics program. PFB entered into an Administrative Agreement (AA) with BBAG in September 2010. Unlike BBAG, none of the subcontractors offered an explanation, expressed remorse or offered to reform. The former US employees did not respond to their proposed debarments. (CPT Williams)

(22) Failure to Perform, (USAREUR). On 17 March 2011, the USAREUR SDO debarred Mr. Marcus Flowers and his company TLS Logistics. In 2008 Mr. Flowers abandoned a contract for linguist services in Eastern Europe. The contractor stopped paying employees and stopped taking calls from the contracting officer. He failed to respond to a cure notice. His last known address was revealed to be false. (CPT Williams).

(23) Conspiracy to Trafficking in Counterfeit Goods (Foothill, California). On 17 March 2011, the SDO debarred Policarpo Coronado Gamboa and his company, Sereton Technology, Inc. (Sereton) based on Mr. Gamboa's guilty plea to one count of conspiracy to trafficking in counterfeit goods. Sereton is a design and manufacturing company of memory upgrade products in PC Modules, workstations, notebooks and printers. Mr. Michael Ming Zhang (Mr. Zhang) arranged for the shipment of counterfeit "Sony" trademark memory sticks to the United States and Mr. Gamboa knowingly ordered and purchased approximately 19,000 of these counterfeit "Sony" trademark



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memory sticks from Mr. Zhang for sale to customers. (Ms. Ahn)

(24) False Claims (USAREUR). On 24 March 2011, the USAREUR SDO debarred three former Kellogg Brown & Root employees, Fidan Latifi, Uliks Buja, and Schkelzen Shurdhani. KBR internal investigations conducted a sting on several local national employees suspected of involvement in fraud. They caught the local nationals attempting to falsify \$1500 worth of supply orders on an Army cost reimbursement contract and fired the employees. (CPT Williams)

**ADMINISTRATIVE AGREEMENTS**

Daewoo Engineering & Construction Co., Inc. (USACE). On 26 October 2010, Daewoo entered into an Administrative Agreement (AA) with the Army. On 11 October 2010, the contractor paid \$51.2 million to resolve the largest counterclaim judgment in the U.S. Army Corps of Engineers' history. The payment satisfied in full the 2006 Court of Federal Claims fraud counterclaim judgment in *Daewoo V. United States* (73 FCR 547). The contractor also paid \$2,000 in discovery sanctions and \$600,000 in investigative costs. The case arose out of Daewoo's construction of a 53-mile road in the Republic of Palau under a Corps of Engineers contract. The judgment, based on the Government's counterclaim, resulted from a \$64 million inflated claim submitted by the contractor. The company has implemented an ethics and compliance program and taken remedial measures to insure that future claims will be properly submitted to the Government. As a result of the AA, the proposed debarment of the company by the Army SDO was terminated. (Mr. Nelson)



**PARTING SHOT:**

All photos courtesy of [www.army.mil](http://www.army.mil), unless otherwise identified.

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