



# ARMY PROCUREMENT FRAUD ADVISOR'S UPDATE

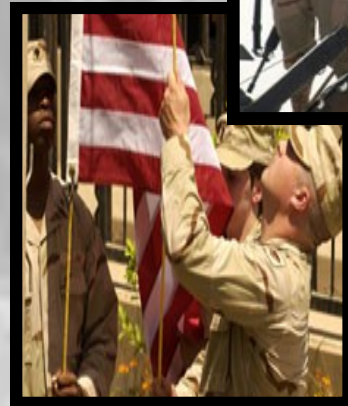


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## INSIDE THIS EDITION

Message From The Chief, PFB	2
Fraud Counsel's Corner	4
Article: Pilot Process To Speed Collection Of Fraud Recovery	6
Significant Actions	7
Parting Shot	17



### Mission

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 CHIEF, PROCUREMENT FRAUD BRANCH



### Message from the Chief, PFB

#### **Army Procurement Fraud Advisors (PFAs) Play an Increasingly Vital Role in the Litigation of Procurement Fraud Cases.**

For over two decades, the Army Procurement Fraud Branch (PFB) has established and maintained a liaison with the Department of Justice (DoJ) to accomplish criminal and civil litigation, coordinate administrative and contractual actions, and respond to DoJ requests for information and assistance. As part of that mission, PFB relies heavily on nearly 250 Army Procurement Fraud Advisors (PFAs) located at individual commands, to respond directly to DoJ requests for information and assistance in individual cases. The role of the Army's PFAs, described in AR 27-40, consists of the reporting, monitoring and coordinating/assisting in the resolution of

fraud cases affecting Army procurements. The "coordinating/assisting" role is the role that I wish to address in this article, in view of the fact that requests for coordination with DoJ are increasing in scope and complexity. In addition, I would like to discuss what PFAs can expect in the way of requests for assistance in the coordination process in the coming year.

Due to the tremendous increase in civil False Claims Act (FCA) litigation (including qui tam litigation), PFAs may expect to be requested by DoJ/PFB to assist in resolution of a FCA case. According to DoJ, the client agency's recommendation is required at each step of the litigation process, to include the filing of the case, DoJ intervention in the case, and the settlement of the case. PFB expects PFAs to provide recommendations after discussions with contracting personnel and investigators. In most cases, DoJ provides a brief legal analysis of the case before asking for the agency's concurrence. If the agency disagrees with the DoJ attorney's recommendation, the decision

gets bumped to a higher level decision maker. For example, the amount of the Government's claim may require the approval of the Assistant Attorney General for the Civil Division. Were the agency to disagree (which is rare, but it happens), the approval memo would go to the Associate Attorney General.

PFAs may be asked by PFB to respond to requests for information and appearances of witnesses in cases filed by qui tam relators where DoJ has declined to intervene or where DoJ has intervened. Those requests are governed by the Army's "Touhy" regulations found at AR 27-40, Chapter 7. Touhy regulations govern the response of agency employees to a demand for evidence. In most cases, the local Staff Judge Advocate (SJA) or advisor should be able to respond directly to the requestor with the information. If the SJA or local advisor is unable to resolve the matter, the matter will be referred to PFB for approval or action, pursuant to AR 27-40, para 7-3 (a) (8).

PFAs may also expect to be

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

asked to retain records in agency-wide litigation. Retention of electronically stored records is now a requirement in most litigation. The duty to preserve electronically stored information (ESI) is an issue of growing importance given the rise of electronic documents in all organizations. In December 2006, the Federal Rules of Civil Procedure were amended to explicitly include ESI in the discovery process. In July of 2007, the DoJ Civil Division published a "Guide for Federal Government Attorneys to Electronic Discovery and the Preservation Obligation." Once a party reasonably expects litigation, it must suspend its routine document retention/destruction policy and put in place a "litigation hold" to ensure the preservation of potentially relevant documents. Courts have exacted judgments against parties failing to preserve ESI. The DoJ Civil Division now routinely issues "litigation hold" letters in new and ongoing civil cases to notify Government agencies of their obligation to retain and preserve ESI. For example, recently DoJ asked the Army to issue an Army-wide notice retaining electronic records relating to a 2004 qui tam litigation concerning several large Government contractors. PFB is in the process of notifying Army commands and the acquisition community about the "litigation hold." In

turn, individual PFAs at several local commands are taking action to retain and preserve their ESI. Preservation efforts are necessary under the amended Federal Rules; they are also tedious and time consuming.

PFAs play a vital role in criminal litigation as well. The DoJ Criminal Division now notifies all agency "victims" of court proceedings, pursuant to 18 USC § 3371 (Crime Victims' Rights Act of 2004) relating to criminal actions. Agency personnel are initially identified by investigatory agents who provide information to DoJ about agency victims. PFAs, once identified as individuals knowledgeable about criminal litigation at their "victim" agencies, provide input to the DoJ Criminal Division and to United States Attorneys' Offices in the form of "victim impact statements" after criminal convictions. Pursuant to the "Attorney General Guidelines for Victim and Witness Assistance" (May 2005), the victim agency may confer with the probation officer in preparation of the presentence investigatory report. Investigatory agents rely on victim impact statements prepared by PFAs in calculating restitution due in individual cases.

In conclusion, in today's "up tempo" climate, PFAs do much more than report and

monitor fraud cases as they coordinate actions with DoJ/PFB. They play an increasingly vital role to protect Army interests in all aspects of procurement fraud litigation of both civil and criminal cases, from inception to final action, as those cases move through the litigation process. (Mrs. Christine S. McCommas)



This picture appeared on [www.army.mil](http://www.army.mil)

## FRAUD COUNSEL'S CORNER

**Allison Engine and the False Claims Act.** On 9 June 2008, the U.S. Supreme Court rendered a unanimous decision in Allison Engine Company, Inc. v. United States ex rel. Sanders, 553 U.S. \_\_\_\_ (2008), a qui tam action that addressed a number of controversial issues arising under Sections 3729(a)(2) and 3729(a)(3) of the False Claims Act (FCA).

The Allison Engine defendants were a number of subcontractors, involved in the construction of destroyers for the U.S. Navy, that eventually submitted invoices for payment to the prime contractor shipyards, and allegedly issued Certificates of Conformance falsely certifying that their work was completed in accordance with Navy specifications. The trial court summarily dismissed the relators' suit on the basis that the defendants had not presented their subject invoices directly to the Government. The Sixth Circuit Court of Appeals reversed the trial court, holding that the defendants could be found liable for false claims even though their invoices for payment were presented only to private entities, since those entities would ultimately be paying the invoices with Government funds.

Citing the express language of Section 3729(a)(2) of the

FCA, the Allison Engine court rejected the Sixth Circuit's interpretation of the FCA as being too expansive. The court stated that the FCA was designed to combat fraud perpetrated **against the Federal Government**, and that the Sixth Circuit's holding could conceivably lead to the imposition of liability on a defendant for a false claim made to a private entity, such as a university, as long as that entity used Federal funds to pay the claim. Since entities such as universities are often the recipients of Federal grant monies, those that defraud them might improperly run afoul of the FCA. The Allison Engine court provided accordingly:

...a person must have the purpose of getting a false or fraudulent claim 'paid or approved by **the Government**' in order to be liable under Section 3729(a)(2). Additionally, getting a false or fraudulent claim 'paid ... by the Government' is not the same as getting a false or fraudulent claim paid using 'government funds.' (Cite omitted). Under Section 3729(a)(2), a defendant must intend that **the Government itself** pay the claim. (Emphasis added).

Recognizing that the above language might lead to some confusion over the potential liability of subcontractors that present false claims to prime contractors, the court further held that there is no requirement to show that a subcontractor presented such a claim directly to the Government for FCA liability to attach. The Allison Engine court further provided:

What Section 3729(a)(2) demands is not proof that the defendant caused a false record or statement to be presented or submitted to the Government but that the defendant made a false record or statement for the purpose of getting 'a false or fraudulent claim paid or approved by the Government.' **Therefore, a subcontractor violates Section 3729(a)(2) if the subcontractor submits a false statement to the prime contractor intending for the statement to be used by the prime contractor to get the Government to pay its claim.** (Emphasis added).

The Allison Engine plaintiffs also brought a claim under Section 3729(a)(3) of the FCA, which imposes liability on those who conspire "to defraud the Government by getting a false or fraudulent claim allowed or paid." The court treated this claim much in the same manner it treated that which was brought under Section 3729

**FRAUD COUNSEL'S CORNER (CONT'D FROM PAGE 4)**

(a)(2), holding as follows:

Under Section 3729 (a)(3), it is not enough for a plaintiff to show that the alleged conspirators agreed upon a fraud scheme that had the effect of causing a private entity to make payments using money obtained from the Government. Instead, it must be shown that the conspirators intended to 'defraud the Government.' Where the conduct that the conspirators are alleged to have agreed upon involved the making of a false record or statement, it must be shown that the conspirators had the purpose of 'getting' the false record or statement to bring about the Government's payment of a false or fraudulent claim. It is not necessary to show that the conspirators intended the false record or statement to be presented directly to the Government, but it must be established that they agreed that the false record or statement would have a material effect on the Government's decision to pay....

in the business community cause to relax as companies that do business strictly with Federal grantees now no longer risk liability under the FCA; however, any companies that serve as subcontractors on Government projects now clearly face potential liability in the event they engage in certain fraudulent activity. (Mr. Jeffrey Csokmay, Attorney Advisor)

**The 2008 Defense Industry Initiative Ethics 101 Workshop and Best Practices Forum.**

The workshop, sponsored by the Defense Industry Initiative on Business Ethics and Conduct (DII), was held on 26-27 June 2008, in Washington D.C. DII is an organization comprised of companies that provide systems, professional services, weapons, technology, supplies and construction to the U.S. Department of Defense (DoD). The DII conference was widely attended with over 300 participants representing DoD contractors, DoD and DoJ personnel, as well as several other Government agencies. The topics discussed were: Relevance of Ethics to Company Operation; Best Practices Sharing from Europe; GAO Report on 'Revolving Door' – Post Government Employment; Implementation of the New Requirements and Emerging Government Ethics Issues; and Ethics and the Federal Government

Practitioner. Several breakout sessions offered attendees the option of attending their choice of training sessions covering the following topics: Globalization - Selected Regulatory and Compliance Issues; Communications Best Practices; Managing Ethics Cases – Case Management and Investigations; Global Focus – Cultural Differences; Practical Tips for Training; Data, Data, Data – How to Effectively Gather It, Synthesize It, and Communicate It to Improve Your Program; Training Best Practices – Leadership Training; and Achieving Best Practices on a Limited Budget.

While this was my first time attending the DII conference, I was very impressed by the apparent commitment of participating DoD contractors to ensure their employees adhere to the highest ethical standards. I found the breakout sessions insightful with regard to policy and procedures DoD contractors are utilizing to ensure employees are operating safely within the ethical standards in the Government procurement process. These sessions allowed attendees to share information, for example, on how best to tackle ethical issues raised by their employees on DoD contract related issues. Larger contractors shared information with smaller contractors on how to better structure their

Allison Engine will give some

**FRAUD COUNSEL'S CORNER (CONT'D FROM PAGE 5)**

ethics compliance programs, while smaller contractors demonstrated how they accomplished more with less resources. One takeaway from the workshop breakout sessions is that while the goal of having an ethically compliant program across DoD contracting is the same, the means by which it is accomplished varies depending on company structure, size, and resources. Another takeaway is that the one constant in a good ethics program across all organizations, irrespective of all other factors, is the commitment from the top leadership in the organization to foster an ethical culture. The participating DoD contractors seemed to be on board with these principles.

Given the overall enthusiasm of the DII conference participants, it appears the organization is well on its way to accomplish its stated objectives of implementing the highest standards of business ethics and principles of conduct under federal procurement policy and law. (Mr. Trevor Nelson, Attorney Advisor)

**ARTICLE: PILOT PROCESS TO SPEED COLLECTION OF FRAUD RECOVERY FUNDS**

As part of a joint Lean Six Sigma (LSS) project, the Procurement Fraud Branch and the Office of the Assistant Secretary of the Army (Financial Management and Comptroller) (ASA(FM&C)) completed an Interagency Workshop on 6 August in Crystal City, Virginia. Participating agencies included the Department of Justice, the Defense Finance & Accounting Service (DFAS), and the Army Materiel Command. The workshop developed a pilot process to establish accounts receivable when a court issues a decision resulting in either a criminal judgment or civil settlement.

The pilot process will include the PFB case number and other digits as a financial tracking number and accounts receivable number. Workshop results will be announced by formal ASA (FM&C) memo tasking all Army commands to provide points of contact and participate in pilot testing from 1 September through 31 December 2008.

If your command has a case that is close to a decision, and financial collection is imminent (defined as within the next three months), please report the case to Mr. Ron Jones, the ASA (FM&C) Fraud Recovery monitor and LSS team lead, at (703) 692-5887 or [Ronald.Jones@conus.army.mil](mailto:Ronald.Jones@conus.army.mil). Mr. Jones will then track the case to ensure a smooth and quick return of the funds to your command once DFAS receives them. The PFB LSS team member is Ms. Angelines McCaffrey, (703) 696-1554.

## SIGNIFICANT ACTIONS

### Significant Actions (April 2008-June 2008)

#### Suspensions

(1) Smuggling and Transporting Illegal Immigrants (Fort Lewis, Washington). On 21 April 2008, the Army Suspension and Debarment Official (SDO) suspended Ramon's Flooring & Carpet Installations, Inc. (Ramon's), and its owner, Ramon L. Maldonado. The suspensions were based on an indictment filed in the U.S. District Court for the District of Washington, against Ramon L. Maldonado and Ramon's. It charged each with using the forced labor of illegal immigrants; conspiring to smuggle and transport illegal immigrants across the border; aiding and abetting in the smuggling of illegal immigrants; and concealing and harboring an illegal immigrant for financial gain. (Mr. Nelson)

(2) Conspiracy to Commit Fraud (AMC, Rock Island, Illinois). On 21 April 2008, the Army SDO suspended Robert J. Spadaro, the general manager of Parmatic Filter Corporation (Parmatic), which was previously suspended on 2 June 2006, along with company officials, John Parkinson, Brett Halpin, William Schwartz, and David Sward. On 25 March 2008, Mr.

Spadaro pled guilty to conspiracy to defraud the Government. Parmatic was awarded two Department of Defense (DoD) contracts to manufacture 9,600 gas-particulate filters. The contracts were valued in excess of \$6 million. After DoD rejected the defective filters, Mr. Spadaro and his co-conspirators submitted manufactured sample filters for testing, as purported randomly-selected production run filters. They also falsified Government documents pertaining to the sample filters, in order to cover up and conceal the fact that the sample filters were hand-selected and specifically manufactured. On 25 March 2008, the U.S. Attorney filed a criminal information against Mr. Spadaro in the U.S. District Court for the District of New Jersey. The information charged Mr. Spadaro with conspiracy to defraud the United States by means of materially false and fraudulent pretenses, representations, and promises, in the procurement of property and services as a prime contractor with the United States. (Mr. Nelson)

(3) Conspiracy and Major Fraud (USACE/MEDCOM). On 5 May 2008, the Army SDO suspended Aaron Terry, Timothy Thomas, James McMann, and Eric Auyang from contracting with the Government on the basis of the criminal indict-

ment filed against them on 16 April 2008 in the U.S. District Court, Northern District of Georgia. In 1996, Terry and McMann formed two joint venture partnerships to bid on Army medical facility construction contracts: Global Engineering and Construction Joint Venture partnership (GJV) and the Medical Construction and Maintenance Joint Venture partnership (MEDCAM JV). The joint ventures were ultimately successful bidders in several multi-year, multi-million dollar medical facility construction contracts.

Terry and McMann allegedly provided gifts in the form of cash, paid travel expenses, and provided other gifts to Timothy Thomas and Eric Auyang in exchange for confidential Government procurement information in order to give Terry and McMann a competitive advantage in the bidding process. Timothy Thomas was a civilian employee of the U.S. Army Medical Command, located at Fort McPherson, Georgia, from approximately September 1994 through approximately December 2001. His duties included oversight and review of medical facility construction contracts. Timothy Thomas also oversaw and reviewed the work of a USACE civilian employee, Eric Auyang, who was based in Mobile, Alabama, but involved in the procurement decision-

**SIGNIFICANT ACTIONS (CONT'D FROM PAGE 7)**

making process.

The prime contractors, Global, Inc., and Global LLC, and the joint venture partnerships, were suspended along with the indicted individuals. All of the subcontractors who were involved in the joint venture partnership – Choctaw Contractors; Commercial & Industrial Electronics, Inc.; J & J Maintenance; James Lane Air Conditioning and Plumbing; and Robert Lloyd Electric Co., were sent show cause letters on 14 May 2008. (MAJ McDonald)

(4) Bribery (Madigan Army Medical Center/Fort Lewis, Washington). On 15 May 2008, the Army SDO suspended Gilbert Allen Surita and the company which employed him, Big G's, from contracting with any agency in the Federal Government. On 30 November 2007, Gilbert Allen Surita, after waiving the right to be charged by indictment, pled guilty to a criminal information filed against him in the U.S. District Court, Western District of Washington. The information charged Gilbert Allen Surita, who was employed by Big G's, with paying a bribe to aid in the commission of fraud on the United States. (Ms. McCaffrey)

(5) Theft (AMC/Lake City Army Ammunition Plant, Independence, Missouri). On

23 May 2008, the Army SDO suspended Charles Osborn and Timothy Langevin on the basis of the indictment filed against them on 14 April 2008 in the U.S. District Court for the Western District of Missouri, charging them with conspiracy, and sabotage – destruction of war material. Specifically, the indictment alleges that between 27 September 2007 and 28 March 2008, while employed at the Lake City Army Ammunition Plant, Independence, Missouri, Charles Osborn and Timothy Langevin stole 16,528 pounds of copper “bullet cups” used in the manufacture of 7.62mm ammunition for sale as scrap metal to Fusselman Storage Company. These bullet cups, had they been used in the ammunition manufacturing process, would have resulted in the production of approximately 1.5 million rounds of ammunition. (Mr. Persico)

(6) Wire Fraud (FOB Falcon, Iraq). On 23 May 2008, the Army SDO suspended Ali Jabak and Liberty Jabak and Liberty's Construction Co., LLC. (Liberty). The suspensions were based on the indictment filed against Ali and Liberty Jabak on 24 January 2008 in the U.S. District Court for the Eastern District of Kentucky, charging them with conspiracy, wire fraud, conspiracy to commit money laundering

and money laundering. Ali Jabak was formerly employed as a U.S. Army contractor at FOB Falcon, Baghdad, Iraq, between 18 March 2006 and 10 August 2007. He was an Arabic interpreter working at the Camp Victory Regional Contracting Center. Following Ali Jabak's return from Iraq in August 2007, he allegedly used the e-mail address of an Iraqi contractor, and caused the Army to transfer \$595,000 to a bank account opened by Liberty Jabak in the name of her construction company, Liberty. Subsequently, Ali and Liberty Jabak, in an effort to conceal these proceeds, transferred approximately \$575,000 to bank accounts owned by Ali Jabak's family in Beirut, Lebanon. (Mr. Persico)

(7) False Statements (Picatinny Arsenal, New Jersey). On 23 May 2008, the Army SDO suspended Ben-Ami Kadish based on the filing of a criminal complaint on 21 April 2008, in the U.S. District Court for the Southern District of New York, alleging that between August 1979 and July 1985, he used his position as an Army employee at Picatinny Arsenal, New Jersey, to provide classified documents to agents of the Israeli Government. In addition, Ben-Ami Kadish is accused of attempting to conceal from investigators his relationship with a former employee of the Israeli con-



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

sulate in New York, New York. Ben-Ami Kadish is charged with conspiracy, gathering or delivering defense information to a foreign government, making a false statement, and engaging in misleading conduct to hinder, delay, or prevent communication of information relating to the commission and possible commission of a federal offense. (Mr. Persico)

(8) Wire Fraud and Money Laundering (TACOM/Warren, Michigan). On 9 June 2008, the Army SDO suspended Newcon International, Ltd. (d/b/a Newcon Optik), Mender Beker, Arie Prilik, Ally Rudy, and Stins Coman. The suspensions were based on the 7 December 2007 indictment of Newcon International, Mender Beker and Arie Prilik filed in the U.S. District Court for the Northern District of California. The indictment alleged an attempted interference with the performance of a sub-contract to provide night vision goggles to the Iraqi Army. Specifically, Mender Beker and Arie Prilik, acting on behalf of Newcon International, attempted to provide cash payments to representatives of the subcontract awardee to halt the performance of the subcontract. Once performance was halted, Mender Beker and Arie Prilik intended to have the Government purchase night vision goggles from

Newcon International to meet the needs of the Iraqi Army, albeit at a substantially higher cost than the original subcontract price for the same goggles. Mender Beker, Arie Prilik, and Newcon were charged with two counts each of wire fraud. Mender Beker and Arie Prilik were each charged with one count of money laundering. All were suspended. Ally Rudy and Stins Coman, due to their positions with Newcon International, were suspended as affiliates and imputees of Mender Beker, Arie Prilik, and Newcon International. (Mr. Persico)

(9) Bribery (Joint Contracting Command, Iraq/Afghanistan). On 14 June 2008, the Army SDO suspended Raman International, Inc., d/b/a Raman Corporation, a Texas-based company engaged in the provision of non-durable goods and construction materials to Coalition Forces in Iraq. On 23 January 2008, Raman International and its manager in Iraq, Elie Samir Chidiac, were indicted in the U.S. District Court for the Western District of Oklahoma on two counts of conspiracy to commit bribery in violation of 18 U.S.C. § 371, based on allegations that between 1 April 2006 and 1 February 2007, Mr. Chidiac, on behalf of Raman International, provided cash payments and other items of value to an Army contracting

officer at Camp Victory, Iraq, in exchange for the fraudulent award of Government contracts. Both Mr. Chidiac and Raman International were suspended pursuant to FAR 9.407-2(a)(1), (3) and (7), as well as FAR 9.407-2(c). In addition, Mike Atallah, and Marta Atallah, Chief Executive Officer and Treasurer, respectively, of Raman International were suspended as imputees of the actions of Mr. Chidiac and Raman International, in accordance with FAR 9.406-5(b). (Mr. Persico)

(10) Conspiracy (FOB Gunner, Taji Air Base, Iraq). On 17 June 2008, the Army SDO suspended CPT Cedar Lanmon, as a result of the filing of a criminal complaint against him in the U.S. District Court for the Western District of Washington. The complaint alleged that, in exchange for cash, rugs and furniture, CPT Lanmon provided assistance in the award of Government contracts during deployments to Iraq in 2004 and 2006. CPT Lanmon was charged with one count of conspiracy to commit bribery, smuggling, mail fraud, wire fraud and money laundering. (Mr. Persico and Mr. Malecz)

(11) Bribery, Money Laundering (Joint Contracting Command (Iraq/Afghanistan)). On 23 June 2008, the Army SDO suspended Metin Atilan, his

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

companies PMA Services Supply and Construction, L.L.C., and Kayteks General Services Co., as well as Theodore Q. Williams, Mezin Kacar, Ozgen Kacar, and Ayfer Atilan. The suspensions were based on the criminal indictment filed on 10 June 2008 against Ayer Atilan in the U.S. District Court for the Southern District of Ohio. The indictment charged Ayer Atilan with conspiracy to provide illegal payments to a public official and wire fraud. The indictment alleged that Ayer Atilan solicited the assistance of an undercover investigator in the award of a contract for 353 residential trailers in Iraq, valued at \$10,000,000 by offering to pay him \$30,000 in exchange for his assistance. Atilan also offered to pay an additional ten percent of the contract price to the undercover investigator after the award was made to Atilan's companies, PMA Services Supply and Construction, L.L.C. and Kayteks General Services Co. Based on the allegations made against Ayer Atilan, Theodore Q. Williams, Mezin Kacar, and Ozgen Kacar, were suspended. Ayfer Atilan, PMA Services Supply and Construction, L.L.C., and Kayteks General Services Co. were also suspended as affiliates and imputees of Ayer Atilan and Theodore Q. Williams. (Mr. Persico)

**Proposed Debarments**

(1) Bribery (USFK). On 3 June 2008, the USFK SDO proposed for debarment Sewon Comprehensive Company (Sewon), and the following corporate officers: the President, Jin Hyang Won; Vice President, Hoon Lee; Managing Director, Won Swung Kwon; and Vice Chief, Chae Man Song. On 1 October 2007, Mr. Won told CID he paid Mr. Hwang Choi Chu of the Department of Public Works (DPW) \$150,000 over several years to assist Won in obtaining Government contracts for his company, Sewon. This information was corroborated by Mr. Song and recordings of conversations between Mr. Won and Mr. Hwang. However, Mr. Hwang disputes this allegation and maintains that Mr. Won was investing in Mr. Hwang's company when he paid him the funds. (Mr. Chipps)

(2) Bribery (USFK). On 12 June 2008, the USFK SDO proposed for debarment Doosan Co. (Doosan), and its President, Cheon Geun Lee. On 12 February 2008, Mr. Lee offered U.S. Army Sergeant Seong Won Kim a bribe of about \$100. Doosan, as a subcontractor of Dongbu Corp., provides general trucking services to USFK. SGT Kim oversees Doosan's delivery of aircraft parts to K-16 airfield. From

December 2007 through the beginning of February 2008, SGT Kim reported problems with Doosan's performance on the contract. In particular, Doosan often failed to deliver the parts on time, and mishandled the delivery of sensitive aircraft parts. On 12 February 2008, Mr. Lee met with SGT Kim to discuss the current delivery problems. During the meeting, Mr. Lee offered to buy SGT Kim lunch. When SGT Kim refused the offer, Mr. Lee left an envelope of about \$100 on his desk and asked him to call the trucking company if he encountered any problems, before contacting the 25<sup>th</sup> Transportation Brigade. On 11 April 2008, USACID interviewed Mr. Lee who admitted to offering the money to SGT Kim, but described it as an offer to pay for lunch due to the inconvenience his driver may have caused SGT Kim. Lee further denied having asked SGT Kim for favors related to contract performance. (Mr. Chipps)

(3) Gratuities (USAREUR). On 20 June 2008, the USAREUR SDO proposed for debarment Sauter Bau GmbH, Bernd Sauter, Hans-Jurgen Dinkel, and CC Kuchenstudio GmbH & Co. KG (Firm CC). During a German tax evasion investigation of Bernd Sauter GmbH, German authorities searched files at CC Kuchenstudio GmbH & Co.

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

KG (Firm CC) and discovered documentation of deliveries made to a German local national who was employed at USAG Mannheim, which were ordered by Sauter Bau yet invoiced by Firm CC to USAG Mannheim. Mr. Dinkel allegedly received a 2,800 Euro electric range in December 2002 and a 900 Euro coffee machine in December 2003, both provided by Firm CC based on instructions from Sauter Bau and billed to USAG Mannheim contracts. Furthermore, Sauter Bau's business records reveal that Mr. Dinkel received meals from Sauter Bau three times in 2004 and nine times in 2005. Mr. Dinkel's employment with the USAG Mannheim was terminated. (CPT Meketen)

(4) Fraudulent Certificates (USAREUR). On 20 June 2008, the USAREUR SDO proposed for debarment SER.MAN.SRL, Giorgio Apostolo Peruzzi, and Francesca Restano. SER.MAN.SRL is a building maintenance and construction company, and its principal officers, Mr. Peruzzi and Ms. Restano, were proposed for debarment for submitting fraudulent official certificates of compliance with Italy's system of statutory social security contributions in order to obtain several Government contracts. Italian officials confirmed that the

certifications were forgeries. (CPT Meketen)

(5) Conspiracy to Commit Bribery (USACE/Hintonville, Mississippi). On 23 June 2008, the Army SDO proposed for debarment Mitchell Kendrix, Paul Nelson, Lamar Wade Covington and Covington Logging and Tree Service (CLTS). On 5 December 2005, a complaint was filed in the U.S. District Court, for the Southern District of Mississippi, against Mr. Kendrix and Mr. Nelson, charging them with conspiracy to commit bribery. On 23 March 2007, a complaint was filed against CLTS, charging it with making false claims against the Government. On 26 June 2007, Mr. Covington, as the sole owner of CLTS, accepted a guilty plea on behalf of CLTS. The U.S. Army Corps of Engineers (USACE) hired CLTS as a contractor to pick up and discard debris left from Hurricane Katrina. Mr. Kendrix was the Quality Assurance Representative (QAR) for the USACE, responsible for documenting the size of loads the contractors described on the load tickets they used to document their work and request payment. As the QAR, Mr. Kendrix used his position to solicit bribes from subcontractors at the Hintonville, MS, site. Mr. Kendrix falsified eight or nine tickets for Mr. Nelson,

who was employed by CLTS and received \$20 for each ticket. Mr. Nelson indicated that his employer, Mr. Covington, was aware of the scheme, and he even admitted to submitting the load tickets to the Government for payment despite knowing of the scheme. (MAJ McDonald)

(6) Wire Fraud (U.S. Army Test and Evaluation Command/Alabama). On 23 June 2008, the Army SDO proposed for debarment Jeffrey H. Stayton, William C. Childree, and Maverick Aviation. On 29 February 2008, Mr. Stayton and Mr. Childree, President of Maverick Aviation, Inc. (Maverick), were both found guilty of wire fraud. Mr. Stayton was also convicted of obstruction of justice. As a result of the convictions, Mr. Stayton was sentenced to 63 months confinement, a fine of \$61,071, and was ordered to pay an assessment of \$300. Mr. Childree received 27 months confinement, a fine of \$61,071, and was ordered to pay an assessment of \$200. (MAJ Woolverton)

## Debarments

(1) False Statements (United States Property Office, Missouri). On 7 May 2008, the Army SDO debarred Edward H. Artis, Jr., and his company, A2 Computers, LLC, based on alle-

**SIGNIFICANT ACTIONS (CONT'D FROM PAGE 11)**

gations of fraud and false statements made when providing IT equipment to the Army under the "GSA Advantage" program. Mr. Artis, acting through A2 Computers, allegedly impersonated a U.S. Government employee for the purpose of defrauding a subcontractor, failed to pay at least one subcontractor for approximately \$117,000 of computer equipment, and made unauthorized charges on a Government purchase card in the amount of \$71,728. In addition, Mr. Artis did not disclose prior criminal convictions for conspiracy to defraud the Government, wire fraud, and federal probation violations in accordance with the requirements of FAR 52.209-5. A2 Computers was debarred as an affiliate and imputee of Mr. Artis' actions. (Mr. Persico)

(2) Theft of Public Funds (Corbin, Kentucky). On 15 May 2008, the Army SDO debarred William C. Polly. William C. Polly was an Active Guard Reserve Soldier assigned to the 3-397<sup>th</sup> Cavalry, 1<sup>st</sup> Brigade, 100<sup>th</sup> Division, Corbin, Kentucky. On 3 December 2007, in the U.S. District Court for the Eastern District of Kentucky, Polly pled guilty to stealing public funds. The theft occurred when he receipted for and used unauthorized military pay and allowances during the time he was absent without leave and deserted

the Army. On 3 March 2008, Polly was convicted and sentenced to serve 10 months confinement; three years of supervised release, thereafter, and was ordered to pay \$86,696 in criminal restitution. Polly was debarred from contracting with the Government until 26 March 2011. (Mr. Nelson)

(3) Wire Fraud (Ft. Bliss, Texas). On 9 June 2008, the Army SDO debarred Saul Granados and Lilia Delgadillo from contracting with the Government based upon their pleas of guilty to one count each of wire fraud in the U.S. District Court for the Western District of Texas. Mr. Granados and Ms. Delgadillo both admitted to participation in a scheme to defraud the Government by using their positions at the Ft. Bliss, Texas, Defense Finance and Accounting Service (DFAS) office to submit false pay adjustments, payable to their personal bank accounts, using the identities of deployed Soldiers. Mr. Granados pled guilty on 14 September, 2007, and was sentenced on 29 January 2008 to three years probation, \$29,585 in forfeitures to the U.S. Treasury, and a \$100 special assessment. Ms. Delgadillo pled guilty on 2 November 2007, and was sentenced on 30 January 2008 to 33 months confinement, 3 years supervised release, restitution of \$698,180 to DFAS,

forfeiture of her residence and vehicle to the U.S. Treasury, and a \$100 special assessment. (Mr. Persico and Mr. Malecz)

(4) Bribery (Camp Arifjan/Kuwait). On 15 June 2008, the Army SDO debarred Peleti Peleti from contracting with any agency in the Federal Government until 17 June 2012. On 20 February 2008, Mr. Peleti was convicted in the U.S. District Court for the Central District of Illinois on the basis of the criminal information filed against him on 12 January 2007. The information charged Peleti Peleti with receiving a bribe and bulk cash smuggling. On 9 February 2007, Peleti pled guilty as charged, and on 20 February 2008 was sentenced to be imprisoned for 28 months on each of counts 1 and 2, to run concurrently; thereafter to serve two years on supervised release on each of counts 1 and 2, to run concurrently; and to pay a fine of \$7,500 and a special assessment of \$200. Mr. Peleti was also determined to be subject to asset forfeiture. (Ms. McCaffrey)

### **Administrative Compliance Agreements**

(1) (USAREUR). On 15 April 2008, the Army SDO signed an Administrative Compliance Agreement with Bramson House, Inc.

**SIGNIFICANT ACTIONS (CONT'D FROM PAGE 12)**

(Bramson). Bramson is a family-owned company in the business of making and installing window treatments and bed ensembles. It was incorporated in 1974 in the State of New York, and its corporate headquarters is located in Freeport, New York. In December 2003, Stephen Potoski, Director of Contracting at the Edelweiss Lodge and Resort (ELR), Armed Forces Recreation Center (AFRC), Garmisch, Germany, awarded Bramson an Army contract for the purchase of draperies and guest room bedspreads for the ELR. After the contract was awarded, Stephen Potoski and Ellis Abramson (former President of Bramson) met in Freeport, New York, where they agreed to inflate the amount of the fabric and hardware line items in the contract for the bedding and draperies, submit the inflated line items to Stephen Potoski for approval, and then split the difference between the actual line items and the inflated line items. On 1 December 2006, the Army proposed Abramson and Bramson for debarment. In May 2007, the new President and founder of Bramson met with the Army SDO and PFB during a present responsibility hearing. Thereafter, the Army SDO determined that the terms and conditions of the Agreement, if met by Bramson House, provided adequate assurances that the

interests of the Government would be sufficiently protected to discontinue the proposed debarment, and preclude the debarment of Bramson. (Ms. McCaffrey)

### **Show Cause Letters / Requests For Information**

(1) Sioux Manufacturing Corp. On 12 May 2008, the Army SDO sent Sioux Manufacturing Corp. (Sioux), a show cause letter based upon a May 2008 civil settlement of \$1.9M allegations raised in a qui tam complaint filed on 15 May 2006 in the U.S. District Court for North Dakota, Northern Division. The complaint alleged that Sioux did not comply with certain specifications detailed in its contract with the Government. In particular, Sioux was obliged to manufacture Personnel Armor System Ground Troops (PASGT) military helmets with the existing military specification of 35 x 35 yarns per square inch thread count, standard weave density, in its construction of complete PASGT helmets, or its manufacture of Kevlar helmet cloth for the pattern sets provided to UNICOR. The strength of a finished Kevlar product depends on the density of the weave used in the manufacturing process. Sioux's weave practice was deficient, which potentially affected an esti-

mated two million PASGT helmets. In response to the show cause letter, counsel for Sioux met the Army SDO and PFB to discuss its written response to the show cause letter. (Mr. Nelson).

(2) Choctaw Contractors, Commercial & Industrial Electronics, Inc.; J & J Maintenance; James Lane Air Conditioning and Plumbing, and Robert Lloyd Electric Co. (USACE/MEDCOM). See discussion on page 7. (MAJ McDonald)

(3) SJC Industries (TACOM/Warren Michigan). On 13 May 2008, PFB sent SJC Industries a show cause letter after receiving information alleging that Marquis, Inc., its subsidiary, attempted to engage in product substitution while performing a subcontract on a TACOM contract, a Foreign Military Sales contract. The contract included the supply of 12 ambulances to the Kuwaiti Armed Forces. SJC and Marquis are accused of attempting to provide ambulances manufactured to the specifications of its "McCoy Miller" product line, instead of ambulances manufactured to the specifications of its "Marquis Cadet" line. The Marquis Cadet ambulances met contract specifications, while the McCoy Miller ambulances were of a lower quality, potentially resulting in a cost savings to SJC and Marquis. The show

**SIGNIFICANT ACTIONS (CONT'D FROM PAGE 13)**

cause letter requested that the company respond to these allegations and other allegations that the management of both companies knew of these actions and attempted to conceal the substitution from the prime contractor. (Mr. Persico)

(4) Fussleman Salvage Company (Lake City Ammunition Plant, Missouri). On 22 May 2008, PFB sent the Fussleman Salvage Company of Moberly, Missouri, a show cause letter based upon the 14 April 2008 indictments of Charles Osborn and Timothy Langevin in the U.S. District Court for the Western District of Missouri, on charges of conspiracy, and sabotage – destruction of war material. See discussion on page 8 .

The show cause letter requests information about the company's knowledge of the actions of Timothy Langevin and Charles Osborn, its procedures for purchasing scrap metal and any other mitigating information. (Mr. Persico)

(5) National Design Group (Ft. Detrick, Maryland). On 11 June 2008, PFB sent show cause letters to National Design Group, Steven Burton, and Michael A. Hall regarding allegations that Mr. Burton and Mr. Hall attempted to offer a cash payment to a grants administrator at the Henry M. Jack-

son Foundation for the Advancement of Military Medicine. Allegedly, Mr. Burton and Mr. Hall made this offer as the result of receiving a subcontract for remodeling work at Ft. Detrick, Maryland. (Mr. Persico and Mr. Malacz)

(6) Advanced Technology Materials, Inc. PFB sent ATMI a show cause letter on 16 June 2008 asking it to address the issue of its present responsibility. An investigation conducted by DCAA indicated that Advanced Technology Materials, Inc. (ATMI) overbilled the Government in its performance of a certain contract it entered into with the Army. Pursuant to this contract, ATMI's billings were to be based on actual hours of direct effort worked, at an hourly rate of \$62.14, and that 16,093 direct hours had to be worked in order for ATMI to bill for the full contract value of \$1 million. DCAA's subject investigation determined that ATMI billed the Government for the \$1 million, but only documented 10,167 hours of direct effort. ATMI went on to settle the matter with DoJ for \$185,000 in March of 2008. ATMI argued that language in its settlement agreement with DoJ precluded the Army from pursuing any administrative actions in this matter. PFB countered in a second letter to ATMI that the Army was not a party to the settlement

agreement, and that DoJ does not have authority to unilaterally waive an executive agency's right to pursue administrative actions in cases involving fraud. PFB then again invited ATMI to provide evidence that it is a responsible contractor. ATMI and PFB conducted a telephone conference addressing ATMI's responsibility. PFB concluded ATMI adequately addressed the problems that led to the DOJ settlement. The case is closed. (Mr. Csokmay)

(7) Gear Wizzard Inc. On 18 June 2008, PFB sent a show cause letter to Gear Wizzard, Inc. (GWI) requesting that it demonstrate why it should not be debarred. Investigations conducted by CID and DCIS indicated that GWI knowingly provided nonconforming parts to the Government on two U.S. Army TACOM contracts that required original equipment/parts from a specific manufacture, namely DANA parts. The investigations resulted in a settlement agreement between GWI and DoJ, whereby GWI tendered \$222,046 to preclude any formal litigation. In response to the show cause letter, GWI provided adequate evidence of its current responsibility. The crux of its problem in this matter was its reliance on a vendor that supplied some nonconforming parts. GWI no longer uses this vendor and has contin-

**SIGNIFICANT ACTIONS (CONT'D FROM PAGE 14)**

ued to perform satisfactorily on other Army contracts. GWI fully cooperated in this matter, dutifully responded to all official inquiries, and made restitution to the Government. (Mr. Csokmay)

(8) Gulf Catering Company (Kuwait). On 25 June 2008, the Army Procurement Fraud Branch sent Gulf Catering Company (GCC) a show cause letter. The letter was based on the allegation raised in a sworn statement provided to the U.S. Army Criminal Investigation Command in July 2006, in relation to an investigation of bribery and fraud in the procurement of Government contracts in Iraq. Specifically, it was alleged that GCC provided \$50,000 to a public official on behalf of GCC in return for the award of a contract in Iraq. (Ms. McCaffrey)

(9) First Kuwaiti Trading Company (Kuwait). On 12 May 2008, the Army SDO sent First Kuwaiti Trading Company (FKTC) a letter requesting information. The letter was based on a criminal information filed against Anthony J. Martin in the U.S. District Court, Central District of Illinois, charging Mr. Martin with entering into a kickback agreement with Company A. Although the criminal information and the subsequent plea agreement did not identify Company A, these documents did indi-

cate that Anthony J. Martin awarded subcontract GU49-KU-S00167 to Company A in June 2003, in the amount of approximately \$44,672,273. The company which held subcontract GU49-KU-S00167 was FKTC. (Ms. McCaffrey)

### Compelling Reasons Determinations

(1) National Air Cargo Holdings, Inc. On 22 May 2008, the Army SDO approved a compelling reasons determination, allowing the U.S. Army Medical Materiel Center, Europe (USAMMCE), to continue to do business with National Air Cargo Holdings, Inc. (NACH) and its affiliated companies for up to 60 days, despite existing proposed debarment against NACH, which the Air Force SDO imposed. USAMMCE requested 60 days in which to qualify a substitute carrier to meet mission requirements for the shipping of Class VIII medical supplies from Germany to USCENTCOM areas of operations, to include Iraq, Afghanistan, Kuwait, and Djibouti. On 21 May 2008, the Air Force SDO proposed for debarment NACH, its subsidiary companies, and various corporate officers debarment on the basis of NACH's October 2007 guilty plea (material false statement) in the U.S. District Court for the Western District of New

York. (Mr. Nelson)

(2) IBM. On 1 April 2008, the Environmental Protection Agency (EPA) suspended IBM. The suspension was based on allegations that IBM violated the Procurement Integrity Act when it bid on an EPA contract in March 2006. IBM is the prime contractor for all of the operational requirements of soldier civilian voluntary education programs and services in support of the Army Continuing Education System (ACES). The total estimated value of the contract is \$312 million. On 1 April 2008, a task order was scheduled to be issued under the ACES contract. After the EPA notified IBM of its suspension, the Contracting Center of Excellence (CCE) issued a letter to IBM suspending its contract for GoArmyEd support services to the Army. As a result, the GoArmyEd portal was shut down and all related ACES support services were discontinued. On 3 April 2008, the Army Contracting Agency (ACA) submitted a request for a compelling reasons determination to continue to do business with IBM for the purpose of the company's participation in the operations and maintenance support activities for the GoArmyEd portal. The Army SDO found that ACA provided compelling reasons to continue to do business with IBM, and ACA was able

**SIGNIFICANT ACTIONS** (CONT'D FROM PAGE 15)

to exercise the 1 April 2008 option. (MAJ McDonald)

### Termination of Suspensions

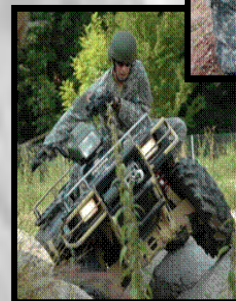
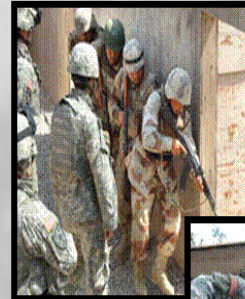
In June 2008, the Army SDO terminated the suspensions of Managed Subcontractor's International, Inc., Brent Tumey, and Valerie Colby. The suspensions were based on an indictment filed in 2006 in the U.S. District Court for the Western District of Missouri, but the court later dismissed the indictment in April 2008. (Ms. McCaffrey)

### Response to AAA Audit

Army Audit Agency (AAA) Fraud Recoveries Audit Closed. AAA closed this audit in June 2008 after ASA (FM&C) agreed to accept coordination responsibility for Army fraud recoveries with DFAS as part of an ongoing Lean Six Sigma study. Through the Lean Six Sigma process, ASA (FM&C) will develop information on how the fraud recovery process works, and identify ways to improve the process so that more recoveries may be returned to Army commands. The Lean Six Sigma study is expected to be completed in December 2008. PFB continues to assist ASA (FM&C) with the study. (Ms. McCaffrey)

### Training

8th Procurement Fraud Course. On 28-30 May 2008, 115 students attended the 8th Procurement Fraud Course at TJAGLCS. The focus of the course was to provide basic fraud instruction to installation attorneys. The Contract and Fiscal Law Department ran the course jointly with the Procurement Fraud Branch. This year, there were 18 guest speakers from a variety of agencies, including the Department of Justice. PFB attorneys Christine McCommas, Angelines McCaffrey, Brian Persico, and MAJ Art Coulter presented blocks of instruction. Students also heard from investigators, agency Suspension and Debarment Officials, and contractors' attorneys. Most students were from DoD legal offices. The U.S. Army Corps of Engineers sent the largest group of Army attorneys, with 12 attendees. Outside of the Army, the Air Force was the largest group, with 19 attendees. The course was taped and is available on the Judge Advocate General's University website (JAGU). The JAGU web address is <https://jag.learn.army.mil/webapps/portal/frameset.jsp> and you will need an AKO login and password to access the site. (Mrs. McCommas)



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**PARTING SHOT: REENLISTMENT CEREMONY & 4TH OF JULY CELEBRATION**



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