

# UNIT 66: FRAUD AND EXCLUSION

*October 2003*

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<b>Duty</b>	Refer indications of fraud or other civil or criminal offenses to responsible officials.
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<b>Conditions</b>	Given indicators that contractor and/or other personnel have committed fraud or other civil or criminal offenses.
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<b>Overall Standard(s)</b>	Report all potential indicators of fraud and other civil or criminal offenses. Accurately identify the responsible official(s) and report to them through proper channels.
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October 2003

## Policies

<i>FAR</i>	<i>Agency Suppl.</i>	<i>Subject</i>
3.103-2(b)		Rejection of offers suspected of being collusive.
3.104-1 3.104-3 3.104-8		Definitions for procurement integrity.
3.104-11		Criminal and civil penalties, and further administrative remedies.
3.2		Contractor gratuities to Government personnel.
3.3		Reports of suspected antitrust violations.
3.4		Contingent fees.
3.502		Subcontractor kickbacks.
3.6		Contracts with Government employees or organizations owned or controlled by them.
3.7		Voiding or rescinding contracts.
3.9		Whistleblower protection for contractor employees.
9.4		Debarment, suspension, and ineligibility.
22.809		Enforcement of E.O. 11246.
49.106		Fraud and other criminal conduct.
52.203-2		Certificate of independent price determination.
52.203-3		Gratuities.
52.203-5		Covenant against contingent fees.
52.203-6		Restrictions on subcontractor sales to the Government.
52.203-7		Anti-kickback procedures.
52.203-8		Cancellation, rescission, and recovery of funds for illegal or improper activity.
52.203-10		Price or fee adjustment for illegal or improper activity.
52.203-11		Certification and disclosure regarding payments to influence certain Federal transactions.
52.203-12		Limitation on payments to influence certain Federal transactions.
52.209-5		Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters
52.212-4(r)		Compliance with laws unique to Government contracts.
52.214-4		False statements in bids.

## Other KSAs

1. Knowledge of Federal integrity statutes and regulations that apply to contracts and types of potential violations (e.g., false statements, false claims, conspiracy to defraud, tax law violations, bribery, illegal gratuities, conflicts of interest, antitrust violations, contingent fees).

# UNIT 66: FRAUD AND EXCLUSION

*October 2003*

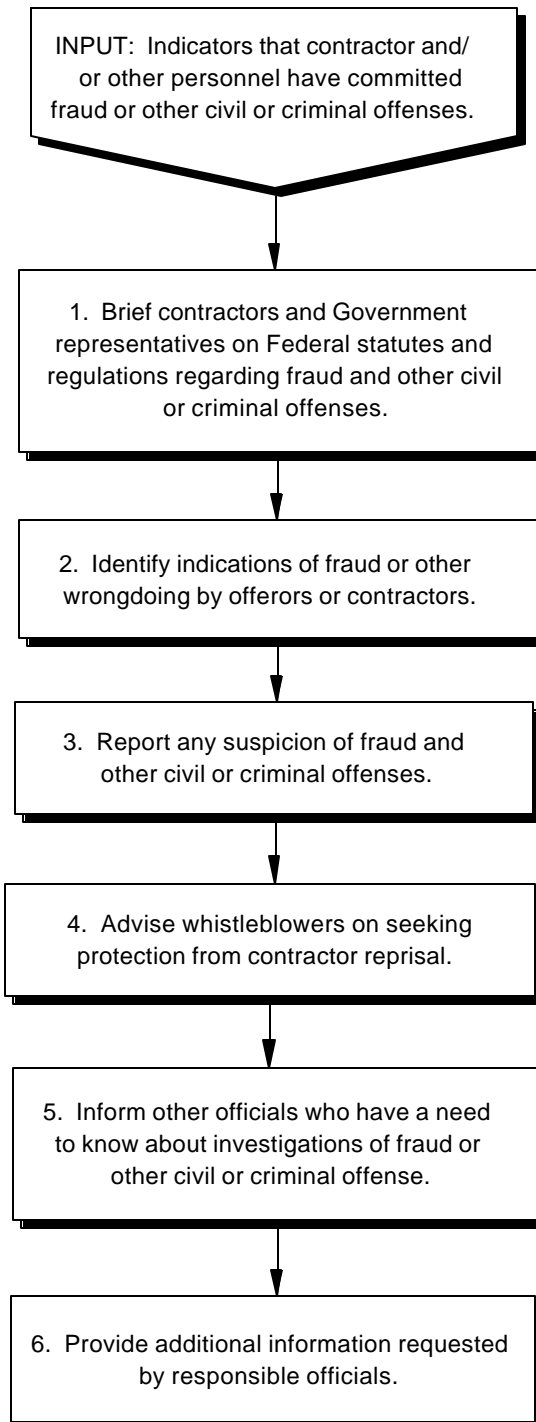
2. Knowledge of typical indicators of fraud (i.e., grounds for reasonable suspicion), such as false invoices, phantom contractors, falsification of Government furnished property records, unbalanced bidding, split purchases, repetitive defective pricing etc.
3. Knowledge of typical indicators of antitrust violations including those identified in FAR 3.303(c).
4. Knowledge of potential remedies and redress when contractors violate Federal statutes, in terms of the following hierarchy:
  - Criminal Penalties - fines, imprisonment.
  - Civil Penalties - False Claims Act, Disputes Act, Common Law Fraud, Voiding of Contract, forfeiture of claims.
  - Administrative Penalties - contract termination, price reductions, debarment or suspension, withholding of funds.
5. Knowledge of indicia of affiliation (evidence acceptable in case law that one company is in fact a front for another)
6. Knowledge of reporting channels (e.g., Inspector General hotlines) and responsible officials for different provisions of law and regulation.
7. Ability to communicate orally and in writing considering the audience and the complex nature of issues relating to allegations of fraud or other wrongdoing.
8. Ability to show understanding, courtesy, and tact in dealing with people who may have widely different perspectives concerning allegations of fraud or other wrongdoing.
9. Ability to conscientiously attend to the details involved in investigating allegations of fraud and other wrongdoing.
10. Ability to maintain the honesty and integrity of the acquisition process.

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**Other Policies and References (Annotate As Necessary):**

# UNIT 66: FRAUD AND EXCLUSION

*October 2003*



# UNIT 66: FRAUD AND EXCLUSION

October 2003

## Tasks

## Related Standards

<p>1. Brief contractors and Government representatives on Federal statutes and regulations regarding fraud and other civil or criminal offenses.</p>	<p>Reduce the chances for violation of laws out of ignorance by alerting Contracting Officer's Representatives (CORs) and contractors to acts of cheating or dishonesty that contribute to a loss or injury to the Government. A post-award conference is an excellent forum for such action. Examples of such acts include:</p> <ul style="list-style-type: none"><li>• Falsification of documents such as timecards or purchase orders;</li><li>• Charging personal expenses to Government contracts;</li><li>• Submitting false claims such as invoices for services not delivered;</li><li>• Intentional mischarging or misallocation of costs;</li><li>• Practices that violate antitrust laws (e.g. an industry price list);</li><li>• Deceit by suppression of the truth;</li><li>• Bribery;</li><li>• Corrupt payments which violate the Foreign Corrupt Practices Act;</li><li>• Theft;</li><li>• A Government employee acquiring a financial interest in or seeking employment with a contractor over which the employee exercises oversight;</li><li>• A Government employee owning or controlling a firm doing business with the Government;</li><li>• Kickbacks;</li><li>• Any unlawful or fraudulent acts resulting from accounting classification practices designed to conceal the true nature of expenses (e.g., classifying unallowable advertising or entertainment costs as office supplies);</li><li>• Product substitution;</li><li>• False certification that tests were performed;</li><li>or</li><li>• Any conspiracy to engage in, or use, the above acts.</li></ul>
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# UNIT 66: FRAUD AND EXCLUSION

October 2003

## Tasks

## Related Standards

2. Identify indications of fraud or other wrongdoing by offerors or contractors.	Indications of fraud or other wrongdoing are commonly identified though: <ul style="list-style-type: none"><li>• Allegations by:<ul style="list-style-type: none"><li>– Disgruntled participants;</li><li>– Company employees aware of the actions of others;</li><li>– Government employees (e.g. the cognizant auditor or COR);</li></ul></li><li>• Inconsistencies or inaccuracies in product or pricing information provided in quotes or offers; and</li><li>• Inconsistencies or inaccuracies in reports and other information submitted by the contractor during contract performance.</li></ul>
3. Report any suspicion of fraud and other civil or criminal offenses.	Report any suspicion of fraud or other wrongdoing in accordance with FAR, agency, or other appropriate policies.

# UNIT 66: FRAUD AND EXCLUSION

October 2003

## Tasks

## Related Standards

4. Advise whistleblowers on seeking protection from contractor reprisal.

Government contractors are prohibited from discharging, demoting or otherwise discriminating against an employee as a reprisal for disclosing information to a Member of Congress, or an authorized official of an agency or of the Department of Justice, relating to a substantial violation of law related to a contract (including the competition for or negotiation of a contract).

Advise any whistleblower who complains of reprisal:

- To file a written complaint with the agency Inspector General. The complaint must be signed and include:
  - The name of the contractor;
  - The contract number, if known; if not, a description reasonably sufficient to identify the contract(s) involved;
  - The substantial violation of law giving rise to the disclosure;
  - The nature of the disclosure giving rise to the discriminatory act; and
  - The specific nature and date of the reprisal.
- To review the Inspector General's report and submit a written response to the head of the agency or designee within 30 days.

If the head of the agency or designee determines that a contractor has subjected the employee to a reprisal, the contractor will be ordered to rectify the situation in accordance with FAR 3.906.

# UNIT 66: FRAUD AND EXCLUSION

October 2003

Tasks	Related Standards
5. Inform other officials who have a need to know about investigations of fraud or other civil or criminal offense.	Depending on the suspected violation, advise Government officials with a need to know, such as: <ul data-bbox="764 415 1398 636" style="list-style-type: none"><li>• Legal counsel.</li><li>• Requiring activity (after consultation with the Inspector General about what may be disclosed).</li><li>• Department of Labor for labor law violations.</li><li>• COR.</li></ul> Follow FAR, agency, or other appropriate procedures in informing the official(s) with a need to know.
6. Provide additional information requested by responsible officials.	Fully support investigation of any suspected fraud or other wrongdoing.