



Department of Defense **INSTRUCTION**

NUMBER 7050.05
May 12, 2014

IG DoD

SUBJECT: Coordination of Remedies for Fraud and Corruption Related to Procurement Activities

References: See Enclosure 1

1. **PURPOSE.** In accordance with the authority in DoD Directive (DoDD) 5106.01 (Reference (a)), this instruction:

a. Reissues DoD Instruction (DoDI) 7050.05 (Reference (b)) to establish policy, assign responsibilities, and prescribe procedures for the coordination of remedies that may be taken in response to evidence of procurement fraud stemming from criminal and administrative investigations of fraud or corruption related to DoD procurement activities.

b. Incorporates and cancels Contract Audit, Internal Audit and Criminal Investigations Joint Policy Memorandum (Reference (c)).

2. **APPLICABILITY.** This instruction applies to the OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense (IG DoD), the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this instruction as the "DoD Components").

3. **POLICY.** It is DoD policy that:

a. Each DoD Component will monitor, from its inception, all significant investigations of fraud or corruption related to procurement activities affecting its organization. The monitoring must ensure that all possible criminal, civil, contractual, and administrative remedies are identified to cognizant procurement and command officials and to Department of Justice (DOJ) officials, as appropriate, and that appropriate remedies are pursued expeditiously. This process must include coordination with all other affected DoD Components.

b. All investigations of fraud or corruption related to procurement activities will be reviewed by the centralized organization (see Glossary for definition) for the affected DoD Component to

determine and implement the appropriate contractual and administrative remedies to recover funds lost through fraud or corruption and to ensure the integrity of DoD programs and operations.

c. Appropriate criminal, civil, contractual, and administrative remedies must be taken expeditiously (See Enclosure 4 for listing of appropriate remedies). During an investigation and before prosecution or litigation, and when based in whole or in part on evidence developed during the investigation, contractual and administrative remedies will be taken only with the advance knowledge of the responsible Defense Criminal Investigative Organization (DCIO) and the appropriate legal counsel in the DoD and the DOJ. Contractual or administrative remedies may be taken before final resolution of the criminal or civil case only after coordination with the DCIO, and DOJ has been provided the opportunity to identify potential adverse impact to the ongoing criminal or civil case.

d. Notice of all significant allegations of fraud or corruption involving programs, persons, and organizations affiliated with the DoD will be provided to the centralized organization for the affected DoD Component in accordance with paragraph a of Enclosure 3 of this instruction.

(1) The exception to this notice requirement would be allegations of fraud or corruption investigated during the course of an ongoing undercover operation or investigation where such notice would reveal sensitive law enforcement sources and methods utilized, in order to prevent the compromise of the ongoing criminal or administrative investigation. This type of investigation would restrict reporting internally to the investigative organization conducting the undercover operation. This notice restriction also applies to audit organizations, if applicable, in accordance with paragraph 3c of Enclosure 12 of DoD Manual 7600.07-M (Reference (d)).

(2) Once specific allegations of fraud or corruption are separated and determined to no longer be a part of the ongoing undercover operation, notice will be promptly provided to the centralized organization by the investigative organization. The intent of this policy is to enable the sharing of information concerning procurement fraud at the earliest possible moment, with the centralized organization, to permit contractual recoveries within applicable appropriations law restrictions, while balancing the need for agent and operational safety.

e. All confirmed cases of counterfeit materiel will be investigated and remedies obtained under existing fraud, waste, and abuse authorities cited in Reference (a) and in accordance with Enclosure 3 of this instruction.

4. RESPONSIBILITIES. See Enclosure 2.

5. PROCEDURES

a. See Enclosure 3 for DCIO procedures.

b. See Enclosure 4 for remedies in response to evidence of procurement fraud.

c. See Enclosure 5 for actions to take in non-conforming product, defective product, product substitution, and counterfeit materiel investigations.

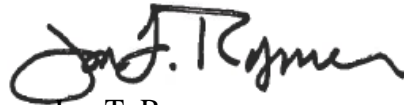
6. **RELEASABILITY. Unlimited.** This instruction is approved for public release and is available on the Internet from the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.

7. **EFFECTIVE DATE.** This instruction:

a. Is effective May 12, 2014.

b. Must be reissued, cancelled, or certified current within 5 years of its publication to be considered current in accordance with DoD Instruction 5025.01 (Reference (e)).

c. Will expire effective May 12, 2024 and be removed from the DoD Issuances Website if it hasn't been reissued or cancelled in accordance with Reference (e).



Jon T. Rymer
Inspector General

Enclosures

1. References
2. Responsibilities
3. DCIO Procedures
4. Remedies In Response to Evidence of Procurement Fraud
5. Actions to Take In Non-Conforming Product, Defective Product, Product Substitution, and Counterfeit Materiel Investigations

Glossary

TABLE OF CONTENTS

ENCLOSURE 1: REFERENCES.....5

ENCLOSURE 2: RESPONSIBILITIES.....6

 IG DOD.....6

 USD(AT&L).....6

 DOD COMPONENT HEADS.....7

 SECRETARIES OF THE MILITARY DEPARTMENT AND THE IG DOD8

ENCLOSURE 3: DCIO PROCEDURES9

ENCLOSURE 4: REMEDIES IN RESPONSE TO EVIDENCE OF
PROCUREMENT FRAUD13

 REMEDIES FOR CRIMINAL ACTIVITIES13

 CIVIL REMEDIES14

 Statutory14

 Non-Statutory/Common Law.....14

 REMEDIES FOR CONTRACT FRAUD.....14

 ADMINISTRATIVE REMEDIES15

ENCLOSURE 5: ACTIONS TO TAKE IN NON-CONFORMING PRODUCT, DEFECTIVE
PRODUCT, PRODUCT SUBSTITUTION, AND COUNTERFEIT MATERIEL
INVESTIGATIONS17

 DCIOs17

 CENTRALIZED ORGANIZATIONS17

 DESIGNATED LEAD DOD COMPONENT17

GLOSSARY19

 PART I: ABBREVIATIONS AND ACRONYMS19

 PART II: DEFINITIONS.....19

TABLE.....10

 Sources of Information Relating to Government Contractors10

ENCLOSURE 1

REFERENCES

- (a) DoD Directive 5106.01, "Inspector General of the Department of Defense (IG DoD)," April 20, 2012
- (b) DoD Instruction 7050.05, "Coordination of Remedies for Fraud and Corruption Related to Procurement Activities," June 4, 2008 (hereby cancelled)
- (c) Contract Audit, Internal Audit and Criminal Investigations Joint Policy Memorandum Number 2, "Coordination by Audit and Investigative Organizations in Cases Involving Allegations of Fraud," April 24, 1987, (hereby cancelled)
- (d) DoD Manual 7600.07-M, "DoD Audit Manual," February 13, 2009
- (e) DoD Instruction 5025.01, "DoD Directives Program," September 26, 2012, as amended
- (f) DoD Instruction 5505.15, "DoD Contractor Disclosure Program," June 16, 2010, as amended
- (g) DoD Instruction 5505.02, "Criminal Investigations of Fraud Offense," August 29, 2013
- (h) DoD Instruction 4140.01, "DoD Supply Chain Materiel Management Policy," December 14, 2011
- (i) DoD Instruction 4140.67, "Counterfeit Prevention Policy," April 26, 2013
- (j) Rules 6(e) and 32(i)(4)(B) of the Federal Rule of Criminal Procedure, December 1, 2010
- (k) Title 18, United States Code
- (l) Federal Acquisition Regulation (FAR), current edition
- (m) Defense Federal Acquisition Regulation Supplement (DFARS), current edition¹
- (n) Title 41, United States Code
- (o) Title 15, United States Code
- (p) Title 31, United States Code
- (q) Title 28, United States Code
- (r) Title 10, United States Code
- (s) Section 818 of Public Law 112-81, "National Defense Authorization Act for Fiscal Year 2012," December 31, 2011
- (t) DoD Directive 5505.5, "Implementation of the Program Fraud Civil Remedies Act," August 30, 1988
- (u) Office of Federal Procurement Policy (OFPP), Policy Letter 91-3, "Reporting Nonconforming Products," April 9, 1991²

¹ Available at <http://www.acq.osd.mil/dpap/dars/dfars/go/current/index.html>

² Available at http://www.whitehouse.gov/omb/procurement_policy_letter_91-3/

ENCLOSURE 2

RESPONSIBILITIES

1. IG DOD. In addition to the responsibilities in sections 3 and 4 of this enclosure, the IG DoD:

a. Monitors implementation of, and compliance with, the provisions of this instruction.

b. Requests, when necessary and as described in section 2 of this enclosure and section 3 of Enclosure 5 of this instruction, that the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) designate one of the affected DoD Components (identified as having interest in the matter) to be the lead DoD Component regarding significant investigations of fraud or corruption.

c. Manages the DoD Contractor Disclosure Program in accordance with DoDI 5505.15 (Reference (f)) and receives contractor disclosures from DoD contractors and subcontractors, refers contractor disclosures determined to be of a criminal nature to the appropriate DCIO for investigation in accordance with DoDI 5505.02 (Reference (g)), and ensures timely investigations of contractor disclosure matters referred to those organizations and other information provided by a disclosing DoD contractor or subcontractor.

d. Ensures the DoD Component heads are notified of fraud affecting their Component, even if the fraud does not meet the threshold for significant investigations of fraud or corruption as defined in the Glossary of this instruction. Additionally, the DCIO and other DoD law enforcement or security authorities, will be notified of all incidents at the earliest opportunity in accordance with DoDI 4140.01 (Reference (h)) and DoDI 4140.67 (Reference (i)).

2. USD(AT&L). The USD(AT&L):

a. Upon request from the IG DoD, based on more than one affected DoD Component, designates one of the affected DoD Components to serve as the lead DoD Component (see paragraph 1b of this enclosure). In such a case, the USD(AT&L) will direct the other affected DoD Component(s) to support the designated lead DoD Component, as described in section 3 of Enclosure 5 of this instruction.

b. Acts as the principal point of contact for all matters relating to the prevention, detection, reporting, and disposition of counterfeit materiel, including counterfeit risk mitigation, in accordance with References (h) and (i).

c. Requires that training materials are developed on fraud and corruption in the procurement process and that all procurement and procurement-related training includes instruction on fraud and corruption appropriate for the duration and nature of the training.

3. DOD COMPONENT HEADS. The DoD Component heads:

a. Designate a centralized organization to monitor the progress of each significant investigation affecting its organization, and to take action necessary to ensure the coordination of criminal, civil, contractual, and administrative remedies.

b. Direct their affected centralized organization(s) to fully support the designated lead centralized organization, in all cases involving allegations affecting more than one DoD Component, in accordance with paragraph 2a of this enclosure.

c. Establish procedures for coordination of criminal, civil, contractual, and administrative remedies in connection with investigations of fraud or corruption related to procurement activities.

d. Establish procedures requiring the centralized organization(s) to discuss regularly with the assigned DCIO(s) issues such as the status of significant investigations.

e. Establish procedures requiring that all proper and effective administrative and contractual remedies available to the DoD are, when found applicable and appropriate, considered and undertaken promptly by the necessary DoD officials (e.g., commanders, program officials, and contracting officers). Any suspension or debarment actions should begin as soon as practicable, including, upon an indictment or conviction. The centralized organization(s) will ensure that the DCIO(s), and DOJ criminal and civil fraud offices (previously identified to the centralized organization(s) as having interest in the matter), are notified in advance of all proposed actions, providing the opportunity to identify potential adverse impact to the ongoing investigation.

f. Establish procedures to ensure that a case-specific comprehensive remedies plan is developed for each significant investigation. Those procedures will include the participation of the appropriate DCIO(s) and centralized organization(s). Other participants could include DOJ criminal and civil fraud offices, applicable audit agencies, office of inspectors general, etc. The specific comprehensive remedies plan should advise, at the earliest possible moment, when the opportunity exists for contractual recoveries within applicable appropriations, and any proposed action by the centralized organization(s) should be vetted with the participants.

g. Establish procedures to ensure that in significant investigations, when the adverse impact on a DoD mission can be determined, such adverse impact is identified and documented by the centralized organization(s) and used in the development of the remedies plan required in paragraph 3f of this enclosure.

(1) This information will be furnished to the DCIO responsible for the investigation, and used by the centralized organization(s) in the development and preparation of victim impact statement(s) for use in sentencing proceedings, at the request of the DOJ and as provided for in Rule 32(i)(4)(B) of the Federal Rule of Criminal Procedure (Reference (j)) and section 3771 of Title 18, United States Code (U.S.C.) (Reference (k)).

(2) Some examples of adverse impact on a DoD mission are endangerment of personnel or property, monetary loss, denigration of program or personnel integrity, compromise of the procurement process, counterfeit materiel, and reduction or loss of mission readiness.

h. Establish procedures enabling the centralized organization(s) to ensure that safety and readiness issues are examined and appropriately addressed for all cases in which a notice is required in accordance with paragraph a of Enclosure 3 of this instruction. The minimum procedures to be followed by the centralized organization(s) are in Enclosure 5.

i. Direct that the appropriate authorized official of an agency (see Glossary for definition) within the DoD Component is provided sufficient information (not including information subject to Rule 6(e) of Reference (j) or contained in court sealed documents or under court orders) to evaluate risk, preserve evidence, determine if further inquiry is warranted on their part to prevent reoccurrence and/or detect other possible fraud within their activity, and otherwise take actions to protect the government's interests.

j. Establish procedures to ensure that any findings of procurement-related fraud or corruption, perpetrated by cleared personnel, results in an incident report being submitted to the appropriate adjudication facility for an assessment and determination of continuing eligibility for a security clearance.

4. SECRETARIES OF THE MILITARY DEPARTMENT AND THE IG DOD. In addition to the responsibilities in section 3 of this enclosure, the Secretaries of the Military Departments and the IG DoD, or their designees, establish procedures ensuring that their respective DCIO follow the guidance in Enclosure 3 of this instruction.

ENCLOSURE 3

DCIO PROCEDURES

The DCIO for each Military Department and the IG DoD will, in support of all significant investigations of fraud or corruption related to procurement activities affecting its organization:

a. Immediately notify in writing the centralized organization(s) of the start of all significant investigations, except as indicated in paragraph 3d(1) of this instruction. Initial notification must include:

(1) Case title (name of DoD contractor or subcontractor and corresponding Data Universal Numbering System (DUNS) number).

(2) Case control number.

(3) Investigative agency.

(4) Office of primary responsibility (name and telephone number of the investigating official).

(5) Date opened.

(6) Factual basis for the investigation.

(7) Suspected offense(s).

b. Immediately notify the Defense Security Service of any investigation that develops evidence that would impact on DoD-cleared industrial facilities or personnel.

c. Make simultaneous presentations, whenever possible, of all fraud and corruption investigations to the criminal and civil sections of the appropriate United States Attorney's Office or the Criminal Division and the Civil Division, DOJ.

d. For all significant investigations, immediately share all available non-grand jury investigative information with the centralized organization(s).

(1) DCIOs are encouraged to use non-grand jury investigative techniques whenever possible to share non-grand jury investigative information with the centralized organization(s), allowing use in civil, administrative, and contractual remedies.

(2) Grand jury investigative techniques (i.e., the use of grand jury testimony and grand jury subpoenas) should be used only when other investigative techniques have proven

unsuccessful or are deemed inappropriate based upon specific circumstances associated with the investigation.

e. Discuss regularly with the centralized organization(s) such issues as the status of significant investigations and their coordination with prosecution authorities. If the DCIO has prepared any documents summarizing the current status of the investigation, to include completed reports of investigation, such documents will be provided to the centralized organization(s) in accordance with the established reporting requirements of the DCIO.

f. Provide any court records, documents, or other evidence of fraud or corruption related to procurement activities to the appropriate procurement officials, commanders, and suspension and debarment authorities, when such information is needed to allow consideration of applicable remedies. Such information will be provided expeditiously to enable the suspension and debarment authority to consider suspension and debarment action in a timely manner in accordance with the applicable remedies listed in Enclosure 4 of this instruction.

g. Immediately provide prosecution authorities information on any adverse impact on a DoD mission gathered in accordance with paragraph 3h of this enclosure. Such information also can be used in preparing a victim-impact statement for use in sentencing proceedings.

h. Gather at the earliest practical point in the investigation, and whenever possible without reliance on grand jury subpoenas, relevant information on responsible individuals and the organizational structure, finances, and contract history of DoD contractors or subcontractors under investigation for fraud or corruption related to procurement activities, in order to facilitate the criminal investigation. Compile any civil, contractual, or administrative remedies that may be taken. See Table for examples of available sources of such information.

Table. Sources of Information Relating to Government Contractors

Type of Information	Possible Sources
Contractor certificates, location, dollar value, type, number of contracts, past performance information, and current eligibility for federal contracts.	Defense Contract Management Agency (DCMA) Defense Contract Audit Agency Federal Procurement Data System Next Generation (FPDS-NG) “Contract Action Report” (CAR) on contracts DCMA administers. (A determination as to the contract history of any DoD contractor with initial contract awards exceeding \$25,000 can be made through a review of the FPDS-NG database, as prescribed by Federal Acquisition Regulation (FAR) subpart 4.6 (Reference (1)); and Defense Federal Acquisition Regulation Supplement (DFARS) subpart 204.6, and

Table. Sources of Information Relating to Government Contractors, Continued

	<p>DFARS PGI 204.6 (Reference (m))).</p> <p>System for Award Management (SAM)</p> <p>Federal Funding Accountability and Transparency Act Sub-Award Reporting System</p> <p>Federal Awardee Performance and Integrity Information System</p> <p>Standard Procurement System program at their respective contracting headquarters</p>
<p>Financial status of corporation, history of corporation, owners, officers, and executive compensation.</p>	<p>Dun and Bradstreet Reports and DUNS number</p> <p>Corporate filings with the Secretary of State, of the state of incorporation</p> <p>SAM</p> <p>Securities and Exchange Commission Electronic Data Gathering, Analysis, and Retrieval system for publicly traded corporations (See http://www.sec.gov/edgar/searchedgar/companysearch.html)</p> <p>Federal Energy Regulatory Commission (for energy companies)</p> <p>Commodity Futures Trading Commission</p> <p>Small Business Administration (SBA) (for small businesses)</p> <p>Government Accountability Office (bid protests and contractors indebted to the government)</p> <p>“List of Contractors Indebted to the United States” (maintained, published, and distributed by the Defense Finance and Accounting Service)</p>
<p>Security clearance background information on facility and officers.</p>	<p>Defense Security Service</p>
<p>Performance history of contractor.</p>	<p>Local contracting officers</p> <p>DCMA pre-award surveys</p>

Table. Sources of Information Relating to Government Contractors, Continued

	SBA Certificate of Competency records SAM Federal Awardee Performance & Integrity Information System Past Performance Information Retrieval System Excluded Parties List System
Name, location, offense alleged, and previous investigative efforts involving DCMA awarded or DCMA-administered contracts.	DCMA Automated Criminal Case Management System. (Available through field offices of the DCMA Contract Integrity Center)
Bid protests, litigation, and bankruptcy involving DCMA awarded or DCMA administered contracts.	Field offices of the DCMA General Counsel office
Name, location, previous quality issues, offenses alleged, and previous investigative efforts involving Defense Logistics Agency (DLA)-awarded or DLA-administered contracts.	DLA Automated Criminal Case Management System or Defense Logistics Agency Criminal Incident Reporting System (available through Fraud Counsel located in each DLA Buying Center's General Counsel's office)
Bid protests, litigation, and bankruptcy awards involving DLA contracts.	Available through fraud counsel located in each DLA Buying Center's General Counsel's office

i. Provide timely notice to other cognizant DCIO(s) of evidence of fraud affecting other DoD Components.

j. Ascertain the impact upon any ongoing investigation or prosecution of any contractual or administrative remedies being considered, and advise the appropriate centralized organization(s) of any adverse impact.

k. Obtain a "Contract Action Report" located at https://www.fpds.gov/fpdsng_cms/index.php, on every investigation into non-conforming products, defective products, product substitution and counterfeit materiel. Timely notification will be made to the centralized organization(s) identified as having contract actions or performing contract management services with the subject of the investigation.

l. Coordinate criminal investigations with the appropriate investigative and enforcement offices in federal and State departments, agencies, and commissions that are or may be conducting investigations into similar or related misconduct.

ENCLOSURE 4

REMEDIES IN RESPONSE TO EVIDENCE OF PROCUREMENT FRAUD

1. REMEDIES FOR CRIMINAL ACTIVITIES (by listed infraction and corresponding U.S.C. remedy, non-exhaustive list)
 - a. Bribery (section 201 of Reference (k)).
 - b. Conspiracy (section 371 of Reference (k)).
 - c. Conspiracy to Defraud the Government with Respect to Claims (section 286 of Reference (k)).
 - d. Criminal Anti-Kickback Statute (section 8701-8707 of Title 41, U.S.C. (Reference (n))).
 - e. Criminal False Claims (section 287 of Reference (k)).
 - f. False Statements (section 1001 of Reference (k)).
 - g. Fraud and Related Activity in Connection with Computers (section 1030 of Reference (k)).
 - h. Fraud Involving Aircraft or Space Vehicle Parts (section 38 of Reference (k)).
 - i. Mail Fraud and Wire Fraud (sections 1341-1343 of Reference (k)).
 - j. Major Fraud Act (section 1031 of Reference (k)).
 - k. Misuse of an Access Device (section 1029 of Reference (k)).
 - l. Obstruction of a Federal Audit (section 1516 of Reference (k)).
 - m. Obstruction of an Administrative Proceeding (section 1505 of Reference (k)).
 - n. Obstruction of Justice (section 1503 of Reference (k)).
 - o. Procurement Integrity Act (sections 2102-2107 of Reference (n)).
 - p. Restrictions on Former Officers, Employees, and Elected Officials of the Executive and Legislative Branches and Acts Affecting a Personal Financial Interest (sections 207, 208, and 216 of Reference (k)).
 - q. Sherman Antitrust Act (sections 1-7 of Title 15, U.S.C. (Reference (o))).

r. Theft of Government Property (section 641 of Reference (k)).

2. CIVIL REMEDIES

a. Statutory

- (1) Anti-Kickback Act (sections 8701 et seq., of Reference (n)).
- (2) Civil False Claims Act (sections 3729 et seq. of Title 31, U.S.C. (Reference (p))).
- (3) Contract Disputes Act (sections 7101-7109 of Reference (n)).
- (4) Federal Debt Collection Procedures Act (sections 3001-3308 of Title 28, U.S.C. (Reference (q))).
- (5) Forfeiture of Fraudulent Claims (section 2514 of Reference (q)).
- (6) Gratuities (section 2207, of Title 10, U.S.C. (Reference (r))).
- (7) Procurement Integrity Act (sections 2101-2107 of Reference (n)).
- (8) Truth in Negotiations Act (section 2306a of Reference (p)).
- (9) Voiding Contracts (section 218, of Reference (k)).
- (10) Prohibition on Contracting with the Enemy in the United States Central Command Theater of Operations (section 841 of Public Law 112–81 (Reference (s))).
- (11) Restrictions on Former Officers, Employees, and Elected Officials of the Executive and Legislative Branches (sections 207, 208, and 216 of Reference (k)).

b. Non-Statutory/Common Law

- (1) Conversion.
- (2) Fraud or deceit.
- (3) Money paid under mistake of fact.
- (4) Unjust enrichment.

3. REMEDIES FOR CONTRACT FRAUD (by listed infraction and corresponding U.S.C. or regulatory remedy)

- a. Breach of contract (FAR 52.233-4 of Reference (l)).
- b. Breach of warranty (FAR subpart 46.7 of Reference (l)).
- c. Correction of defects (FAR 46.702, 46.706, and 52.246-17 through 52.246-21 of Reference (l)).
- d. Denial of claims submitted by contractors (FAR 33.210 of Reference (l)).
- e. Disallowance of contract costs (FAR subpart 42.8 of Reference (l)).
- f. Enforcement of payment bond, performance bond and/or guarantee agreement (FAR 28.102-3, 28.103-2 and 32.304-4, respectively of Reference (l)).
- g. Offset of payments due to contractor from other contracts or in accordance with the Anti-Kickback Act (sections 8701, et seq., of Reference (n) and FAR 52.203-7 of Reference (l)).
- h. Price reduction (FAR 52.203-10 of Reference (l)).
- i. Rescission or cancellation of the contract (FAR 52.203-8 of Reference (l)).
- j. Reformation (FAR 33.205 of Reference (l)).
- k. Refusal to accept nonconforming goods (FAR 8.406-3 and 46.407 of Reference (l)).
- l. Removal of the contractor from automated solicitation or payment system.
- m. Revocation of acceptance (FAR 8.406-2 of Reference (l)).
- n. Termination of contract for default (FAR subpart 49.4 of Reference (l)).
- o. Termination of the contract pursuant to section 2207 of Reference (r).
- p. Unique requirements regarding terms and conditions for commercial items (FAR subpart 12.4 of Reference (l)).
- q. Withholding of payments to contractor, or reducing fee or price for non-performance or unmet contractual requirements (FAR subpart 46.1 and 46.6, and FAR 52.212-4 respectively of Reference (l)).

4. ADMINISTRATIVE REMEDIES

- a. Contract modifications (unilateral), in writing (FAR part 43 of Reference (l)).

- b. The Program Fraud Civil Remedies Act of 1986 (sections 3801-3812 of Reference (p)), implemented in accordance with DoDD 5505.5 (Reference (t)).
- c. Prohibitions and disqualifications of Government personnel for violations of procurement integrity (FAR 3.104 of Reference (l)).
- d. Remove contractor or subcontractor from Qualified Products List, Qualified Manufacture's List, Qualified Suppliers List, or similar preferred government source list (FAR 9.207 of Reference (l)).
- e. Review of contract administration and payment controls (FAR part 42 of Reference (l)).
- f. Suspension or debarment of contractor or contractor employees and inclusion in SAM Exclusions (FAR 9.404 of Reference (l), and Appendix H of DFARS (Reference (m))).
- g. Termination of contract, in whole in in part, for inability to proceed due to security classification or requirements (FAR 52.204-2 of Reference (l)).
- h. Termination of contracting officer appointment (FAR 1.603-4 of Reference (l)).

ENCLOSURE 5

ACTIONS TO TAKE IN NON-CONFORMING PRODUCT, DEFECTIVE PRODUCT,
PRODUCT SUBSTITUTION, AND COUNTERFEIT MATERIEL INVESTIGATIONS

(All in support of and in accordance with Reference (h), Reference (i), and the Office of Federal Procurement Policy Letter 93-1 (Reference (u)))

1. DCIOs. In all cases involving allegations of non-conforming product(s), defective product(s), product substitution, or counterfeit materiel, the DCIOs will:

- a. Immediately notify the appropriate centralized organization(s) of the initiation of the investigation.
- b. Continue to provide to the centralized organization(s) any information developed during the course of the investigation that indicates a suspect product(s) has been, or might be, provided to the DoD.
- c. Require that any request for testing of the suspect product(s) is provided to the centralized organization(s).

2. CENTRALIZED ORGANIZATIONS. In all cases involving allegations of non-conforming product(s), defective product(s), product substitution or counterfeit materiel, the centralized organization(s) will:

- a. Review the notice of the investigation immediately after receiving it from the DCIO to determine any potential safety or readiness issues indicated by the suspected fraud in accordance with paragraph 3g of Enclosure 2 of this instruction.
- b. Notify all appropriate safety, procurement, and program officials of the existence of the investigation.
- c. Ensure that the affected DoD Component(s) provides the DCIO with full testing support to completely identify the non-conforming or defective nature of the suspect product(s) (the appropriate procurement program will assume costs associated with the testing).
- d. Prepare a comprehensive victim impact statement describing the adverse impact of the fraud on DoD programs for use in any criminal, civil, contractual, or administrative remedies related to the matter in accordance with paragraph 3g of Enclosure 2 of this instruction.

3. DESIGNATED LEAD DOD COMPONENT. In all cases involving allegations of non-conforming product(s), defective product(s), product substitution(s) or counterfeit materiel that affect more than one DoD Component, the designated lead DoD Component will identify a lead centralized organization. If the lead DoD Component fails to identify a lead centralized

organization, the DCIO responsible for the investigation will notify the IG DoD. The IG DoD will request USD(AT&L) to appoint a lead centralized organization.

- a. The DoD Component(s) affected by the misconduct will provide the lead centralized organization with all of the information needed to prepare a complete and thorough victim impact statement as required by paragraph 3g of Enclosure 2 of this instruction.
- b. The lead centralized organization will ensure that information on the fraud is provided to all other affected centralized organization(s) and determine whether non-DoD Government organization(s) are also affected, taking the lead for the DoD in coordinating with those other government organization(s).
- c. The lead centralized organization will ensure compliance with the requirements of section 2 of this enclosure and assume responsibility for preparing a comprehensive victim impact statement as required by paragraph 3g of Enclosure 2 of this instruction. Other centralized organization(s) will cooperate with and support the lead centralized organization.
- d. At the conclusion of the undercover portion of the investigation, the lead centralized organization will release appropriate information on the non-conforming product, defective product, product substitution, or counterfeit materiel to the Government-Industry Data Exchange Program in accordance with References (i) and (s).

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

CAR	Contract Action Report
DCIO	Defense Criminal Investigative Organization
DCMA	Defense Contract Management Agency
DFARS	Defense Federal Acquisition Regulation Supplement
DLA	Defense Logistics Agency
DoDD	DoD Directive
DoDI	DoD Instruction
DOJ	Department of Justice
DUNS	Data Universal Numbering System
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System Next Generation
IG DoD	Inspector General of the Department of Defense
SBA	Small Business Administration
SAM	System for Award Management
U.S.C.	United States Code
USD(AT&L)	Under Secretary of Defense for Acquisition, Technology, and Logistics

PART II. DEFINITIONS

Unless otherwise noted, these terms and their definitions are for the purpose of this instruction.

authorized official of an agency. Defined in FAR 3.901 of Reference (1).

centralized organization. The organization within a DoD Component responsible for monitoring and ensuring the coordination of criminal, civil, administrative, and contractual remedies for each significant investigation of fraud or corruption related to procurement activities affecting the DoD Component.

contractor disclosure. A written disclosure by a DoD contractor or subcontractor to the Office of the IG DoD of the existence of credible evidence that the contractor or subcontractor has

committed a violation of References (k) or (p) in connection with the award, performance, or closeout of a contract or any subcontract thereunder, in accordance with Reference (f).

counterfeit materiel. Defined in Reference (i) (in place of definition from Reference (h)).

defective product. A product or the component of a product that fails to function or operate in accordance with the terms of a contract, its specifications or drawings, or with applicable federal or military specifications.

DCIO. The U.S. Army Criminal Investigation Command, the Naval Criminal Investigative Service, the Air Force Office of Special Investigations, and the Defense Criminal Investigative Service.

DUNS. A database system developed and regulated by Dun & Bradstreet that assigns a unique numeric identifier, referred to as a “DUNS number,” to a single business entity (DoD contractor or subcontractor).

non-conforming product. A product or the component of a product that has not been manufactured, assembled, tested, or inspected in accordance with the terms of a contract, its specifications, or drawings, including military specifications.

product substitution. Substitution of a product or a component of a product that does not fully comply with all contract requirements.

remedies. Actions that should be initiated by a commander or official having responsibility over a matter central to a significant procurement fraud case to protect DoD interests and to deter future incidents of fraudulent conduct.

remedies plans. Comprehensive, evolving plans prepared for pursuing all applicable remedies in significant procurement fraud cases. These plans are updated periodically to report new information and provide the status and success of all applicable remedies.

significant investigations of fraud or corruption related to procurement activities (significant investigations). Fraud investigations involving an alleged loss of \$500,000 or more; all investigations of corruption involving bribery, gratuities, or conflicts of interest; all defective product, non-conforming product, counterfeit materiel, or product substitution investigations; and investigations otherwise determined to be significant by the cognizant agency official.