



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON, DC 20350-1000

SECNAVINST 5430.92B
OGC
30 Dec 2005

SECNAV INSTRUCTION 5430.92B

From: Secretary of the Navy

Subj: ASSIGNMENT OF RESPONSIBILITIES TO COUNTERACT ACQUISITION
FRAUD, WASTE, AND RELATED IMPROPRIETIES WITHIN THE
DEPARTMENT OF THE NAVY

Ref: (a) DOD Directive 7050.5 of 7 Jun 89
(b) DOD Instruction 5505.2 of 6 Feb 03
(c) DOD Directive 5525.7 of 22 Jan 85
(d) DOD Instruction 5240.4 of 22 Sep 92
(e) DOD Instruction 5505.3 of 21 Jun 02
(f) SECNAVINST 5520.3B
(g) SECNAVINST 7510.7E
(h) SECNAVINST 5200.35D
(i) SECNAVINST 5430.25D
(j) SECNAVINST 5430.27A
(k) SECNAVINST 5430.57F

1. Purpose. To affirm Department of the Navy (DON) policy to eliminate acquisition fraud, waste, and related improprieties from the DON and, in implementation of this policy, to set forth responsibilities of DON officials, DON personnel and the DON Acquisition Integrity Office (AIO) including management, direction and coordination of responsibilities of auditing, inspection, and investigative components of the DON. This instruction is a complete revision and should be read in its entirety. This instruction implements reference (a).

2. Cancellation. SECNAVINST 5430.92A.

3. Background

a. Fraud, waste, and related improprieties, such as theft or misuse of government property and conflicts of interest, are serious matters which increase costs to the government and reduce resources available to support the Operating Forces.

30 Dec 2005

b. Historically, the DON combated fraud, waste, and related improprieties through the traditional chain-of-command structure. This structure vested absolute authority and accountability in commanding officers. Management actions were reviewed by audit, inspection, and investigation systems. This concern for accountability with public resources is embodied in U.S. Navy Regulations, Articles 0702 and 1138-1141; and has been stated recently in many different DON directives.

c. In December 1978, the President tasked the heads of executive departments and agencies to develop comprehensive plans to use audit and investigation functions to eliminate waste, fraud, and error in government programs. In May 1983, the Secretary of Defense (SECDEF) required all services to designate a single point-of-contact for contract fraud matters. In implementation of the President's policy, the SECDEF's requirements, and in the interests of emphasis and clarity, these measures and responsibilities are herein set forth.

d. In September 2005, the Secretary of the Navy (SECNAV) instituted the Department of the Navy Acquisition Integrity Office (AIO) as the central point of contact on all acquisition fraud matters.

4. Definitions. As used in this instruction, the following definitions apply:

a. DON. DON is composed of the Office of the Secretary of the Navy; Office of the Chief of Naval Operations; Headquarters, Marine Corps; the entire operating forces and reserve components; all field activities, headquarters, forces, bases, installations, activities and functions under the control or supervision of the Secretary of the Navy; and the Coast Guard when it is operating as a service in the Navy.

b. DON Personnel. All U.S. military personnel serving in the DON and all civilian employees of the DON (including those in non-appropriated fund activities).

c. Acquisition. "Acquisition" means the acquiring by contract supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources,

30 Dec 2005

award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract. The term includes, but is not limited to: the determination of requirements for supplies and services; the test, evaluation, qualification, or selection of particular products or services; the preparation and adoption of procurement specifications and standards; and the award and the administration of Government contracts. These items encompass all appropriated or non-appropriated funded contracts, including research and development contracts, cooperative agreements, other transactions, and grants.

d. Acquisition Fraud. Any willful means of taking or attempting to take unfair advantage of the government that occurs during the acquisition of goods or services for DON, including but not limited to: the offer, payment, or acceptance of bribes or the offer, giving or acceptance of bribes or the offer, giving or acceptance of gratuities; making of false statements, submission of false claims, or use of false weights or measures; evasion or corruption of inspectors and other officials; deceit either by suppression of the truth or misrepresentation of a material fact; adulteration or substitution of material; falsification of records and books of account; arrangements for secret profits, kickbacks, or commissions; and conspiracy to use any of these devices. It also includes those cases of conflict of interest, criminal irregularities, and unauthorized disclosure of official information, which is, connected with acquisition and disposal matters.

e. Property Disposal. The term includes, but is not limited to: sale, lease, donation, exchange and abandonment of property for which the DON is responsible.

f. Fraud. Any willful means of taking or attempting to take unfair advantage of the government, including but not limited to: the offer, payment, or acceptance of bribes or the offer, giving or acceptance of bribes or the offer, giving or acceptance of gratuities; making of false statements, submission of false claims, or use of false weights or measures; evasion or corruption of inspectors and other officials; deceit either by suppression of the truth or misrepresentation of a material fact; adulteration or substitution of material; falsification of records and books of account; arrangements for secret profits, kickbacks, or commissions; and conspiracy to use any of these devices. It also includes those cases of conflict of interest,

30 Dec 2005

criminal irregularities, and unauthorized disclosure of official information that is connected with acquisition and disposal matters.

5. Policy. The policy of the DON is to properly manage, free of acquisition fraud, waste, and related improprieties, the resources of the United States entrusted to the DON and, by vigorous action, to detect, deter and eliminate acquisition fraud, waste, and related improprieties whenever they occur. All personnel shall be vigilant to the possibility of such illegal or improper acts, and shall report to proper authority, per U.S. Navy regulations, the existence of any improprieties. Commanding officers and others in authority shall cause inquiries or investigations into such reports to be initiated and, if confirmed by inquiry or investigation, take or cause to be taken disciplinary action or administrative action as will best effectuate the above stated policy. Audit, inspection, and investigative components of the DON will discharge their assigned responsibilities to detect, deter, and eliminate acquisition fraud, waste, and related improprieties occurring within DON.

6. Action

a. Assistant General Counsel (Acquisition Integrity). The Assistant General Counsel (Acquisition Integrity), AGC(AI), under the direction of the SECNAV and the General Counsel (GC) shall:

(1) Manage, direct and coordinate acquisition fraud matters throughout DON.

(2) Provide oversight to assure that the DON follows consistent policies and practices in all cases involving acquisition fraud matters.

(3) Track, report, and coordinate investigations for all acquisition fraud matters within DON.

(4) Manage the Acquisition Integrity Office, establish goals and objectives for AIO and implement those goals, coordinate efforts with governmental counterparts, liaison with

congressional staffs and work with senior industry officials.
(AIO is organizationally part of the Office of General Counsel)

(5) Act as the centralized organization within DON to monitor and ensure the coordination of criminal, civil, administrative, and contractual remedies for all cases including investigations of acquisition fraud, waste, and related improprieties related to acquisition activities affecting DON. As the centralized organization for acquisition fraud matters, AIO is the single point-of-contact for all acquisition fraud matters.

(6) Receive all reports concerning acquisition fraud and coordinate remedies concerning these cases with appropriate officials and organizations. Evaluate all cases for appropriate investigative action including a cost/benefit analysis.

(7) Ensure that a comprehensive remedies plan is developed by the responsible commander, with the participation of Naval Criminal Investigative Service (NCIS) or other affected investigative organizations for each acquisition fraud case.

(8) Ensure all remedies are considered and that applicable ones are undertaken promptly by the commanders, program officials, and contracting officers responsible for such actions, after coordination with the Defense Criminal Investigative Organizations (DCIOs) or prosecuting officials, if appropriate. Ensure that recommendations concerning suspension and debarment actions are prepared and provided in a timely manner to enable the suspension and debarment authority to initiate action based upon an indictment or conviction or to process fact-based suspensions and debarments.

(9) Ensure that for cases when safety or adverse impact on a Department of Defense (DOD) mission can be determined, that such adverse impact is identified and documented, and appropriate safety, procurement, and program officials are notified and kept apprised of developments. Ensure this information is used to develop a remedies plan for each investigative case. Some examples of adverse impact on the DOD mission are: endangerment of personnel or property, monetary loss, denigration of program or personal integrity, compromise

30 Dec 2005

of the procurement process, and reduction or loss of mission readiness.

(10) Discuss regularly with the NCIS and other assigned DCIOs such issues as the current status of cases and their coordination with prosecutive authorities. Ensure coordination of activities with other DOD components affected by a case.

(11) Report incidents, by situation reports or periodic summary reports, as appropriate, to SECNAV, fully advising Chief of Naval Operations (CNO) and Commandant of the Marine Corps (CMC) about incidents occurring at activities under their respective command and control.

(12) Prepare reports on acquisition fraud matters for submission by SECNAV as may be required by the Congress or the Executive branch of Government, including the Office of the Secretary of Defense.

(13) Develop acquisition fraud training materials to be utilized in acquisition fraud training of DON personnel.

(14) Coordinate litigation matters with AGC (Litigation).

(15) Maintain liaison with the Department of Justice (DOJ) and coordinate the referral of appropriate cases for criminal, civil, or other legal action in the areas specified in reference (i). Coordinate such liaison in advance with the appropriate criminal investigative organization in those cases where a criminal investigation is pending.

(16) Evaluate structural barriers affecting monetary recoveries in all cases resulting in loss to DON and propose legislative reforms to maximize recovery of assets to DON.

(17) Task Echelon 2 activities to inspect, investigate and inquire into acquisition fraud matters within DOD so as to include the assessment of programs for the detection and

30 Dec 2005

elimination of acquisition fraud, waste, and related improprieties.

b. Director, Naval Criminal Investigative Service. The Director, Naval Criminal Investigative Service (NCIS), per references (b) through (f), shall:

(1) Conduct criminal investigations pertaining to acquisition fraud and provide a copy of the report of investigation to the AGC(AI) and commander or commanding officer concerned.

(2) Conduct criminal intelligence operations related to acquisition fraud per reference (f).

(3) Conduct acquisition fraud investigative surveys upon the request of the AGC(AI), Naval Inspector General (NAVINSGEN), or other Inspectors General, as appropriate.

(4) Advise and coordinate with the Federal Bureau of Investigation (FBI), Defense Criminal Investigative Service (DCIS), prosecution and debarment authorities, and other civilian and military law enforcement agencies with respect to ongoing acquisition fraud criminal investigations, per references (a) through (f).

(5) Provide written notification to the AGC(AI), in a timely fashion, of the initiation of all acquisition fraud investigations. Such notification shall include the case title, case control number, office of primary responsibility, date opened, predication, and suspected offense(s).

(6) Discuss acquisition fraud cases and provide pending or complete reports or summaries of these cases to the AGC (AI) on a regular basis. Discussions and reports should provide assessments of any impact that civil, contractual, or administrative actions under consideration may have on any ongoing investigation or prosecution.

(7) Provide copies of acquisition fraud investigative reports to the AGC(AI) where the investigation discloses the existence of conditions that would be of concern during the performance of audits.

(8) Support the development of acquisition fraud training materials.

(9) Coordinate acquisition fraud investigative or administrative referrals received from DOD elements with DON components, as appropriate.

(10) Provide copies of reports to DON components in all cases involving acquisition fraud, waste, and related improprieties associated with acquisition and disposal throughout the DON, as appropriate. Excepted are reports for which distribution is restricted due to grand jury proceedings or other circumstances requiring that the report not be disseminated.

(11) Coordinate matters primarily involving military personnel with the Department of Justice (DOJ) in appropriate cases and maintain liaison with that agency, keeping CNO and CMC informed, as appropriate. In cases involving civilian personnel, contractors, or contractor employees, referral and liaison will be coordinated with the GC, AGC (AI) and JAG. Coordinate such liaison in advance with the appropriate criminal investigative organization in those cases where a criminal investigation is pending.

c. Auditor General of the Navy. The Auditor General of the Navy (Director, Naval Audit Service (NAVAUDSVC)), while conducting audits per reference (g), evaluates programs, activities, systems, procedures, and other operations involving the expenditure of funds, utilization of resources, or accomplishment of management objectives. Accordingly, the Auditor General shall:

(1) Assign appropriate priority to the scheduling of audits into programs and areas subject to acquisition fraud, waste, and related improprieties.

(2) Be mindful during the conduct of such audits of the potential for acquisition fraud, waste, and related improprieties.

(3) Report suspected acquisition fraud to NCIS.

(4) Provide final reports of audit findings and recommendations to appropriate commanders, commanding officers and management officials and the Naval Inspector General. Audit findings pertaining to acquisition fraud shall be provided to AGC(AI).

(5) Advise the Under Secretary of the Navy and AGC(AI) in cases where the Auditor General determines that there has been an inadequate final management response to a significant audit finding recommendation, which finding or recommendation involves acquisition fraud matters.

d. Assistant Secretary of the Navy (Financial Management and Comptroller). The Assistant Secretary of the Navy (Financial Management and Comptroller) ASN(FM&C) has responsibilities, which include budgeting, accounting and the development of accounting systems, disbursing, and financing. In addition, ASN(FM&C) provides policy guidance on the DON Management Internal Controls Program (reference (h) pertains). Accordingly, ASN(FM&C) shall:

(1) Periodically review the adequacy of accounting, disbursing, financing, and budgeting systems to detect and minimize acquisition fraud, waste, and related improprieties.

(2) Advise the AGC(AI) concerning the results of investigations or adjudications, which indicate potential acquisition fraud.

e. General Counsel of the Navy. The General Counsel (GC) of the Navy shall provide legal advice and counsel to the DON in matters regarding acquisition fraud, waste, and related improprieties, per reference (i). AGC(AI) serves under the supervision and guidance of the GC. DON OGC attorneys supporting Headquarters and field commands shall:

(1) Provide legal support to acquisition clients tasked with developing a remedies plan.

(2) Coordinate with AIO on acquisition fraud matters.

f. Acquisition Integrity Office Board of Directors. The Acquisition Integrity Office Board of Directors (AIO BOD) is comprised of the major stakeholders in the acquisition process. The stakeholders include: General Counsel, Assistant Secretary of the Navy (Research, Development and Acquisition), Assistant Secretary of the Navy (Financial Management and Comptroller), Naval Inspector General, Auditor General of the Navy, Director Naval Criminal Investigative Service, and the AGC(AI). The AIO BOD shall:

(1) Provide general oversight and guidance to the AIO.

(2) Ensure communication within DON.

(3) Recommend resources for AIO.

(4) Assure compliance with AIO policies and processes within DON.

(5) Approve AIO policy changes.

g. Judge Advocate General. The Judge Advocate General (JAG), Deputy Judge Advocate General (DJAG) or Director, Judge Advocate Division, Headquarters, Marine Corps, as appropriate, shall provide legal advice and counsel to Navy or Marine Corps officials in matters regarding acquisition fraud, waste, and related improprieties per all matters within JAG area of responsibility, as set forth in the Uniform Code of Military Justice, the Manual for Courts-Martial, the Manual of the Judge Advocate General, and reference (j). Additionally, appropriate Judge Advocates shall:

(1) Provide legal resources to convening authorities for the administration of military justice.

30 Dec 2005

(2) Coordinate matters involving acquisition fraud, waste, and related improprieties in the JAG area of responsibility with other federal agencies, as appropriate.

(3) Advise the AGC(AI) and Naval Inspector General concerning all investigations conducted pursuant to the Manual of the Judge Advocate General into incidents of acquisition fraud, waste, and related improprieties.

h. Naval Inspector General. The Naval Inspector General (NAVINSGEN), per reference (k), shall:

(1) Forward all acquisition fraud related hotline complaints to AIO for coordination.

i. Other DON Officials, Commanders, and Commanding Officers. All DON personnel shall govern their conduct in accordance with the Joint Ethics Regulations. All commanding officers and others in positions of authority within the uniformed Naval services shall govern themselves per Title 10, U.S. Code 5947 and Article 1102, U.S. Navy Regulations. Commanding officers shall, per Article 0702, U.S. Navy Regulations, be responsible for economy within their commands and require rigid compliance with the regulations governing the receipt, accounting, and expenditure of money and materials. Moreover, officials in positions of authority shall:

(1) Request NCIS conduct criminal investigations into major crimes pertaining to acquisition fraud, waste, and related improprieties, as appropriate, per references (b) and (f).

(2) Ensure that corrective disciplinary or administrative action is taken, including such actions as may be appropriate notwithstanding a declination of prosecution by civilian law enforcement officials.

(3) Furnish information as requested by the AGC(AI) and other DOD officials who may request such information in the lawful exercise of their authority.

30 Dec 2005

(4) Ensure that all personnel under their authority are familiar with Articles 1139 and 1140, U.S. Navy Regulations, requiring reports of offenses committed by DON personnel.

(5) Provide recommendations for suspension and debarment actions to the AGC(AI) in a timely manner to enable AIO to initiate action upon indictment or conviction.

(6) Establish an acquisition fraud point of contact for each Command or Service.

j. DON Personnel. DON Personnel shall conform to standards of conduct prescribed by the Uniform Code of Military Justice, U.S. Navy Regulations, United States Code, Joint Ethics Regulations and the lawful directives and orders of their superiors, and promptly report infractions of the same to the proper authority per U.S. Navy Regulations. In this regard, "proper authority" shall include the immediate superior of the person submitting the report or his/her commander or commanding officer, but if either are implicated, an appropriate inspector general, a Special Agent of the Naval Criminal Investigative Service, the DOD or Navy Hotlines, or any other portion of the DOD or Naval Inspector General. All DON personnel shall cooperate with official investigations of possible violations.

k. Remedies Plan. The responsible action commander will draft a comprehensive remedies plan when tasked by AGC(AI). The responsible action commander is the commander primarily responsible for taking judicial, contractual, or administrative action. In the case of multiple responsible action commanders, AIO will establish the coordination of remedies. AIO will provide the basic requirements and format of this plan. If the responsible action commander chooses to add information, this is permissible as long as the basic format of the report is not changed. The plan must be typed and sent through the responsible chain of command to reach AIO within 60 days from the date of the remedies plan request. Remedies plans must be updated in a timely manner as the matters covered by the plan change or remedies are completed. If investigation or litigation is pending, remedies must be coordinated in advance of implementation with the appropriate investigative or prosecutive officials.

(1) Representatives from the commander's legal staff, contracting offices, and NCIS, or other appropriate criminal

30 Dec 2005

investigative organization, shall assist in preparation of the plan and participate in its execution. A representative from contracting will not be required if AIO determines that the case does not have any contracting interests.

(2) The responsible action commander may add additional representatives if their participation will enhance the effectiveness of the remedies process.

7. Report. The reporting requirements contained herein are exempt from reports controlled by SECNAVINST 5214.2B.

Alberto J. Mora
General Counsel of the Navy

Distribution:
Electronic only, via Navy Directives Website
<http://neds.daps/dla.mil>