ADMINISTRATIVE CHANGE 1 TO AFI 51-1101

Administrative changes to AFI 51-1101, The Air Force Procurement Fraud Remedies Program

OPR: SAF/GCR

References to Air Force Safety Center should be changed to Air Force Safety Center throughout the publication.

References to Ms. Mary L. Walker in the “Certified by” line should be replaced with Mr. Charles A. Blanchard to reflect the change in SAF/GC.

30 November 2011

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21 OCTOBER 2003

Law

THE AIR FORCE PROCUREMENT FRAUD REMEDIES PROGRAM

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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This instruction implements AFPD 51 - 11, *Coordination of Remedies for Fraud and Corruption Related to Air Force Procurement Matters,* by providing guidance for pursuing remedies in significant procurement fraud cases and other contractor responsibility matters. It implements Department of Defense Directive (DoDD) *7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities,* June 7, 1989; DoDD *5405.2, Release of Official Information in Litigation and Testimony by DoD Personnel as Witnesses,* July 23, *1985;* and DoDD *5505.5, Implementation of the Program Fraud Civil Remedies Act,* August 30, 1988. It is not applicable to the Air National Guard. **Attachment 1** is a glossary of abbreviations, acronyms, and terms. **Attachment 2** is a list of examples of criminal, civil, contractual and administrative remedies available in response to evidence of procurement fraud. **Attachment 3** is the remedies plan format.

Records Disposition: Ensure that all records created by this AFI are maintained and disposed of in accordance with AFMAN 37-139, "*Records Disposition Schedule.*"

SUMMARY OF REVISIONS

This issuance transfers overall responsibility for managing the Air Force Procurement Fraud Remedies Program from the Office of the Deputy Air Force General Counsel for Acquisition (SAF/GCQ) to the Deputy Air Force General Counsel for Contractor Responsibility (SAF/GCR); requires dedicated Acquisition Fraud Counsel to be designated at each installation; and provides an updated remedies plan format.

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Chapter 1

PURSUIT OF REMEDIES AND PREPARATION OF REMEDIES PLANS

1.1. Responsibilities and Authorities:

1.1.1. SAF/GCR shall:

1.1.1.1. Serve as the coordinating office for liaison among the Secretary of the Air Force, Air Staff offices, other DoD entities, the Department of Justice (DOJ), and other federal or state departments, agencies, or organizations in the coordination of remedies for significant procurement fraud cases (**Attachment 2**).

1.1.1.2. Provide to DOJ all recommendations concerning the initiation, amendment, settlement, or withdrawal of all civil actions filed by the United States which allege procurement fraud or corruption and involve the Air Force, with copies to the concerned Major Command (MAJCOM), Field Operating Agency (FOA), or Direct Reporting Unit (DRU), Acquisition Fraud Counsel (AFC) and Air Force Office of Special Investigations (AFOSI). This includes providing recommendations concerning all global settlements of actions alleging procurement fraud and involving the Air Force.

1.1.1.3. Establish policy for the Air Force Procurement Fraud Remedies Program.

1.1.1.4. Measure and evaluate the overall effectiveness of the Air Force Procurement Fraud Remedies Program.

1.1.1.5. Determine whether each remedies plan submitted by a MAJCOM, FOA, or DRU AFC is "Acceptable" or “Unacceptable.”

1.1.1.6. Provide MAJCOM, FOA, or DRU AFCs with coordinated Secretariat comments to remedies plans for appropriate action or consideration in the next remedies plan submission.

1.1.1.7. Serve as the release authority for remedies plans circulated outside the Air Force.

1.1.1.8. Assist the Air Education and Training Command (AETC); MAJCOM, FOA, and DRU commanders; AFOSI; and other investigative organizations in providing procurement fraud-related education.

1.1.1.9. Serve as the point of contact and approving authority for all litigation requests from private parties in *qui tam* actions involving the Air Force in which the government has declined to intervene.

1.1.2. MAJCOM, FOA, and DRU commanders shall ensure personnel under their command have adequate education and training in procurement fraud matters.

1.1.3. MAJCOM, FOA, and DRU staff judge advocates (SJA) shall administer the MAJCOM, FOA, and DRU procurement fraud remedies program and shall designate one or more MAJCOM, FOA, or DRU attorneys as permanent AFCs to assist in fulfilling this responsibility. In order to assure long-term stability to the procurement fraud remedies program, it is highly preferable to designate a civilian attorney as the AFC. A military attorney should be designated as the AFC only if there is a compelling reason to do so. If a civilian attorney is designated as the AFC, then performance as an AFC should be considered a key duty or critical element in that attorney’s performance plan or perfor-

mance evaluation. If a military attorney is designated as the AFC, then the attorney's performance of duties as the AFC should be considered as part of the attorney's overall performance rating.

1.1.4. MAJCOM, FOA, and DRU AFCs shall:

1.1.4.1. Coordinate with SAF/GCR and installation AFCs or commanders in all significant procurement fraud cases.

1.1.4.2. Review remedies plans prepared by subordinate units to ensure compliance with the standards established by this Instruction.

1.1.4.3. Provide feedback to installation AFCs as to the quality of each submitted remedies plan, including requests for clarification or additional information for appropriate action or consideration in the next remedies plan submission.

1.1.4.4. Forward timely, acceptable remedies plans prepared by subordinate units in accordance with the standards established by this instruction to SAF/GCR and in the format provided in **Attachment 3**.

1.1.4.5. Provide timely legal reviews and recommendations concerning settlement of procurement fraud cases which involve their installations, programs, or facilities when requested by SAF/GCR. Such recommendations should include input from each of the following, if applicable:

1.1.4.5.1. Lead investigating agent.

1.1.4.5.2. Affected program office.

1.1.4.5.3. DLA Fraud Counsel.

1.1.4.5.4. Contracting officer.

1.1.4.5.5. Defense Contract Audit Agency (DCAA).

1.1.5. Installation commanders shall:

1.1.5.1. Ensure that personnel under their command have adequate education and training in procurement fraud matters.

1.1.5.2. Refer to AFOSI all alleged criminal offenses within AFOSI's investigative responsibilities.

1.1.5.3. Provide testing support to AFOSI and other investigative agencies in significant procurement fraud cases involving allegations of defective products or product substitution concerning his or her installation. The concerned procurement program will bear all reasonable costs associated with such support.

1.1.6. Installation SJA's shall:

1.1.6.1. Administer the installation procurement fraud remedies program and shall designate an attorney to act as the permanent AFC to assist in fulfilling this responsibility. In accordance with **1.1.3.**, in order to assure long-term stability to the procurement fraud remedies program, it is highly preferable to designate a civilian attorney as the AFC. A military attorney should be designated as the AFC only if there is a compelling reason to do so. If a civilian attorney is designated as the AFC, then performance as an AFC should be considered a key duty or critical element in that attorney's performance plan or performance evaluation. If a military attorney is designated as

the AFC, then the attorney's performance of duties as the AFC should be considered as part of the attorney's overall performance rating.

1.1.6.2. Ensure timely preparation of an acceptable remedies plan for each significant procurement fraud case involving his or her installation. Remedies plans shall include the two attachments identified in **Attachment 3**, Remedies Plan Format, Section VI. The elements of the potential criminal and civil offenses shall be listed as early in the investigation as possible. As facts are developed, specific documents and statements that establish each element shall be listed in support of each element.

1.1.6.3. Support DOJ in criminal and civil proceedings arising from procurement fraud cases to the maximum extent practicable.

1.1.6.4. Ensure the confidentiality of procurement fraud investigations and controlled access to AFOSI investigative materials by permitting disclosure of such investigations and materials only with the consent of AFOSI.

1.1.6.5. Support Program Office, or other requiring organization, in exercising contract remedies.

1.1.6.6. Support the Air Force Suspending and Debarring Official (SDO) in exercising administrative remedies.

1.1.7. Installation AFCs shall:

1.1.7.1. Immediately conduct a thorough contract review of each significant procurement fraud case, and list each specific contract requirement that supports the remedy. (See **Attachment 3**, Section III.)

1.1.7.2. Prepare a comprehensive remedies plan using the format in **Attachment 3** and in accordance with the standards established by this Instruction for each significant procurement fraud case.

1.1.7.3. Forward timely, acceptable remedies plans to their MAJCOM, FOA, or DRU AFCs.

1.1.7.4. Provide timely legal reviews and recommendations concerning settlement of all procurement fraud cases involving their installations, programs, or facilities when requested by their MAJCOM, FOA, or DRU AFCs. Such recommendations should include input from each of the following, if applicable:

1.1.7.4.1. Lead investigating agent.

1.1.7.4.2. Affected program office.

1.1.7.4.3. DLA Fraud Counsel.

1.1.7.4.4. Contracting officer.

1.1.7.4.5. DCAA.

1.1.7.5. Provide timely advice and support to DOJ and AFOSI and other investigative agents in all procurement fraud cases on a continuing basis throughout the investigation. Such advice and support includes, but is not limited to, a detailed assessment of the contractual and evidentiary issues which may affect the successful criminal and civil prosecution of the case and the identification of applicable criminal, civil, contractual, and administrative remedies.

1.1.7.6. Advise investigating agents on all civil, contractual, or administrative actions proposed during the pendency of a criminal investigation or prosecution.

1.1.7.7. Coordinate with the appropriate DLA Fraud Counsel in all procurement fraud cases that involve Air Force contracts which are administered by DLA.

1.1.7.8. Engage in continuous communication with contracting officers, DOJ, AFOSI and DLA regarding the subject and coordination of the investigation. Such communication should be on a regular basis and not solely in preparation of the remedies plan.

1.1.7.9. Prepare victim impact statements for DOJ for use in sentencing proceedings.

1.1.7.10. Assist SAF/GCR and the responsible MAJCOM, FOA, and DRU AFCs in determining appropriate fund cites for the return of recoveries in procurement fraud cases to the affected Air Force installations or programs.

1.1.7.11. When feasible, accompany investigating agents when a final criminal or civil prosecutive decision is sought from DOJ in a significant procurement fraud case.

1.1.8. AFOSI shall:

1.1.8.1. Notify SAF/GCR immediately if unsure as to the appropriate AFC for any significant procurement fraud case.

1.1.8.2. Advise installation AFCs in the preparation of remedies plans for each significant procurement fraud case and the provision of recommendations concerning settlement of procurement fraud cases. Identify all contracts impacted by the suspected fraud and advise the AFC of the contract numbers as early as possible in the investigation.

1.1.8.3. Advise MAJCOM, FOA, or DRU AFCs in the review of remedies plans.

1.1.8.4. Provide SAF/GCR, the concerned installation AFCs, and the concerned contracting officer with a court-certified copy of any indictment, conviction, or civil judgment against the subject of an Air Force procurement fraud case in which AFOSI is involved within 30 working days of such action.

1.1.8.5. Except as provided for in **1.1.8.5.1.**, **1.1.8.5.2.**, and **1.1.8.5.3.**, provide copies of all Investigative Reports (IR's) to SAF/GCR and the concerned installation AFC in each procurement fraud case.

1.1.8.5.1. The concerned installation AFC and SAF/GCR shall be provided with all IRs for each procurement fraud case unless the provision of such reports raises serious operational security concerns as determined by the concerned AFOSI Region Commander on a nondelegable basis.

1.1.8.5.2. AFOSI shall provide all IRs to SAF/GCR and the concerned installation AFC to the maximum extent permitted by the lead investigative agency if such agency is not AFOSI.

1.1.8.5.3. AFOSI shall contact SAF/GCR immediately if directed by DOJ or another investigative agency not to provide IRs for any particular procurement fraud case. SAF/GCR shall resolve the matter with DOJ, or the other investigative agency, should the nondisclosure raise significant concerns to the Air Force.

1.1.8.6. Consult with the concerned installation AFC in all procurement fraud cases on a continuing basis throughout the investigation, except as provided for in **1.1.8.6.4.** Such consultation and

AFC support includes, but is not limited to, a detailed assessment of the contractual and evidentiary issues which may affect the successful criminal or civil prosecution of the case and identification of potentially applicable criminal, civil, contractual, and administrative remedies.

1.1.8.6.1. Except as provided for in **1.1.8.6.2.**, and **1.1.8.6.3.**, the concerned installation AFC shall provide this advice and support.

1.1.8.6.2. Either the concerned installation AFC or an attorney for the administering agency or department may provide this advice and support in cases where the alleged or confirmed fraud occurred during the performance of the contract at issue and another federal agency or department administers that contract. In such cases where someone other than the installation AFC provides this advice and support, AFOSI shall notify the installation AFC immediately as to the name, organization, and telephone number of that individual.

1.1.8.6.3. The concerned MAJCOM, FOA, or DRU AFC shall provide this advice and support in instances where the concerned AFOSI Region Commander and the AFOSI SJA jointly determine and inform SAF/GCR, in writing, that obtaining such advice and support from the installation AFC would impede the successful criminal or civil investigation or prosecution of a case.

1.1.8.6.4. AFC advice and support is not required in instances where the AFOSI Region Commander and the AFOSI SJA jointly determine and inform SAF/GCR, in writing, that obtaining such advice and support would impede the successful criminal or civil investigation or prosecution of a case.

1.1.8.6.4.1. In such cases, SAF/GCR shall notify the concerned MAJCOM, FOA, or DRU SJA, unless the investigation involves senior MAJCOM, FOA, or DRU personnel.

1.1.8.6.4.2. In such cases involving senior MAJCOM, FOA, or DRU personnel, SAF/GCR shall consult with AFOSI to determine appropriate action.

1.1.8.6.5. Obtaining advice and support from the concerned installation AFC; MAJCOM, FOA, or DRU AFC; or any other federal agency or department attorney does not constitute a requirement of command approval before coordination with DOJ.

1.1.8.7. Advise prosecutive authorities as to any known DoD office concerned about the adverse impact on a DoD mission that the prosecution of a case would create.

1.1.8.8. Advise the concerned installation AFC as to any adverse impact that contractual or administrative remedies being considered would have on an ongoing criminal investigation.

1.1.8.9. Refer all settlement offers from DOJ to SAF/GCR. Only SAF/GCR has the authority to recommend acceptance, modification, or rejection of such settlement offers on behalf of the Air Force.

1.1.9. Chief of Contracting Office shall:

1.1.9.1. Ensure that personnel under their command have adequate education and training in procurement fraud matters.

1.1.9.2. Refer to AFOSI all alleged criminal offenses within AFOSI's investigative responsibilities.

1.1.9.3. Refer to SAF/GCR evidence of all suspected significant procurement fraud matters, as well as evidence of nonresponsibility pursuant to DFARS 209.406-3.

1.1.9.4. Provide testing support to AFOSI and other investigative agencies in significant procurement fraud cases involving allegations of defective products or product substitution concerning his or her installation. The concerned procurement program will bear all reasonable costs associated with such support.

1.1.9.5. Engage in continuous communication with the AFC, SAF/GCR, DOJ, AFOSI and DLA regarding the subject and coordination of the investigation, and keep the first line AFC apprised of all communications. Such communication should be on a regular basis and not solely in preparation of the remedies plan.

1.1.9.6. The Contract Support Division (SAF/AQCX) of the Office of the Deputy Assistant Secretary for Contracting, Assistant Secretary of the Air Force for Acquisition shall review and submit timely comments on each remedies plan provided by SAF/GCR.

1.2. Procedures:

1.2.1. Opening of remedies plans.

1.2.1.1. SAF/GCR shall open remedies plans upon receipt of information of a significant procurement fraud case through notification by an installation commander, a contracting officer, an IR, or any other credible source. SAF/GCR may open a remedies plan for any other reason at its discretion.

1.2.1.1.1. Except as set forth in **1.2.1.1.2.**, the initial IR from AFOSI, all subsequent IRs, and any other document containing allegations of procurement fraud, must include the following elements, if known:

1.2.1.1.1.1. File number.

1.2.1.1.1.2. Date.

1.2.1.1.1.3. Name, unit, and telephone number of the reporting agent.

1.2.1.1.1.4. Status and purpose of the report.

1.2.1.1.1.5. Subject.

1.2.1.1.1.6. Summary of alleged offenses.

1.2.1.1.1.7. Affected contract numbers.

1.2.1.1.1.8. Affected programs.

1.2.1.1.1.9. Estimated dollar loss to the government.

1.2.1.1.1.10. Lead investigative agency and office.

1.2.1.1.1.11. Whether the allegations involve another service component or DoD entity.

1.2.1.1.1.12. Any restrictions on the discussion of case information with those charged with the evaluation and implementation of remedies.

1.2.1.1.2. In cases where the concerned AFOSI Region Commander or the head of another criminal investigative organization determines that the release of certain information would

jeopardize the successful prosecution of any case if released, the initial IR shall not contain such information.

1.2.1.2. SAF/GCR shall assign an appropriate suspense date for the preparation of each initial remedies plan. This suspense date is generally four months from the date on which SAF/GCR identifies the matter as a significant procurement fraud case.

1.2.1.3. Bringing a procurement fraud case to the attention of a DLA Fraud Counsel or other federal agency or department attorney does not relieve AFOSI from its responsibility to also inform SAF/GCR and the concerned installation AFC.

1.2.1.4. SAF/GCR shall consider delaying the opening of a remedies plan if the concerned AFOSI Region Commander or the head of another criminal investigative agency advises SAF/ GCR, in writing, that opening a remedies plan immediately would jeopardize the successful prosecution of the case.

1.2.1.4.1. The concerned AFOSI Region Commander must provide SAF/GCR with a written explanation of why the immediate opening of a remedies plan would jeopardize the successful prosecution of a case.

1.2.1.4.2. When SAF/GCR determines that opening a remedies plan could jeopardize the successful prosecution of a case, SAF/GCR shall place such cases on "HOLD" status until those initial concerns are resolved.

1.2.1.4.3. The concerned AFOSI Region Commander or the head of another criminal investigative agency shall inform SAF/GCR immediately, in writing, when those initial concerns have subsided.

1.2.1.5. The installation SJA and the MAJCOM AFC shall approve each initial remedies plan, and all subsequent updated plans.

1.2.2. Updating of remedies plans:

1.2.2.1. Except as provided for in **1.2.2.2.**, installation AFCs shall submit updated remedies plans for each significant procurement fraud case to SAF/GCR, through their MAJCOM, FOA, or DRU AFC, within 6 months of the suspense date for the last remedies plan unless otherwise directed by SAF/GCR.

1.2.2.2. Installation AFCs shall submit an updated plan to SAF/GCR through their MAJCOM, FOA, or DRU AFC within 30 working days of any of the following:

1.2.2.2.1. Indictment or conviction of or civil judgment against the remedies plan subject.

1.2.2.2.2. Suspension or debarment of the remedies plan subject, or an affiliate, by any agency other than the Air Force.

1.2.2.2.3. Congressional inquiry concerning the investigation being reported in the remedies plan.

1.2.2.2.4. Any other event which SAF/GCR, the concerned MAJCOM, FOA, or DRU AFC, or the installation AFC deems significant enough to warrant an early update.

1.2.2.3. Updated remedies plans shall contain all information previously reported.

1.2.2.4. The installation AFC shall underline or otherwise highlight all new or updated information in each remedies plan.

1.2.2.5. Updated remedies plans shall address all concerns previously raised by SAF/GCR, SAF/AQCX, or the concerned MAJCOM, FOA, or DRU AFC in response to the last plan.

1.2.3. Closure of remedies plans:

1.2.3.1. SAF/GCR has the sole authority to close remedies plans.

1.2.3.2. SAF/GCR shall close a remedies plan only after exhausting and monitoring through completion of all applicable criminal, civil, contractual, and administrative remedies, including suspension and debarment.

1.2.3.3. SAF/GCR shall provide written notification of the closure of a remedies plan to the concerned MAJCOM, FOA, or DRU AFC, who shall in turn provide such written notification to AFOSI and the concerned installation AFC.

1.2.4. Restrictions on the circulation of remedies plans.

1.2.4.1. The restrictive legend shown in **Attachment 3** shall appear in bold type on each page of a remedies plan.

1.2.4.2. SAF/GCR must approve any circulation of a remedies plan outside the Air Force. Before making this determination, SAF/GCR shall consult the concerned MAJCOM, FOA, or DRU AFC, DOJ, and AFOSI.

Chapter 2

QUI TAM AND PROCUREMENT FRAUD LITIGATION

2.1. SAF/GCR shall:

2.1.1. Serve as the central authority for receiving, coordinating, and responding to inquiries from within and outside the Air Force in all *qui tam* and procurement fraud actions ("fraud actions") involving the Air Force.

2.1.2. Provide to DOJ all recommendations concerning intervention by the government, and settlement, amendment, or dismissal of all fraud actions involving the Air Force with copies to the concerned MAJCOM, FOA, or DRU AFC and AFOSI.

2.1.3. Coordinate with the DLA Office of General Counsel if the fraud action involves Air Force contracts administered by DLA.

2.2. MAJCOM, FOA, and DRU AFCs shall:

2.2.1. Provide legal reviews and recommendations concerning intervention or settlement of all fraud actions which involve their installations or facilities when requested by SAF/GCR.

2.2.1.1. Such recommendations shall include the following elements:

2.2.1.1.1. A detailed assessment of whether any of the relator's allegations have merit, including the findings of investigators, auditors, program officials, and contracting personnel, if applicable.

2.2.1.1.2. An assessment of whether the government incurred damages as a result of the defendant's misconduct and an explanation of that assessment.

2.2.1.1.3. A quantification of any damages incurred by the government as a result of the defendant's misconduct and an explanation of that quantification.

2.2.1.2. Such recommendations should include input from each of the following, if applicable:

2.2.1.2.1. Lead investigating agent.

2.2.1.2.2. Affected program office.

2.2.1.2.3. DLA Fraud Counsel.

2.2.1.2.4. Contracting officer.

2.2.1.2.5. DCAA.

2.2.2. Inform SAF/GCR immediately if an extension of the government intervention deadline is necessary to provide a meaningful legal review and recommendation concerning intervention.

2.2.3. Inform SAF/GCR immediately if new information is discovered which supports a relator's allegations in cases where the government has already declined to intervene.

2.3. Installation AFCs shall :

2.3.1. Provide legal reviews and recommendations concerning intervention or settlement of all fraud actions involving their respective installations, programs, or facilities when requested by their MAJCOM, FOA, or DRU AFC.

2.3.1.1. Such recommendations shall include the following elements:

2.3.1.1.1. A detailed assessment of whether any of the relator's allegations have merit, including the findings of investigators, auditors, program officials, and contracting personnel, if applicable.

2.3.1.1.2. An assessment of whether the government incurred damages as a result of the defendant's misconduct and an explanation of that assessment.

2.3.1.1.3. A quantification of any damages incurred by the government as a result of the defendant's misconduct and an explanation of that quantification.

2.3.1.2. Such recommendations should include input from each of the following, if applicable:

2.3.1.2.1. Lead investigating agent.

2.3.1.2.2. Affected program office.

2.3.1.2.3. DLA Fraud Counsel.

2.3.1.2.4. Contracting officer.

2.3.1.2.5. DCAA.

2.3.2. Inform their MAJCOM, FOA, or DRU AFC immediately if an extension of the government intervention deadline is necessary to provide a meaningful legal review and recommendation concerning intervention.

2.3.3. Inform their MAJCOM, FOA, or DRU AFC immediately if new information is discovered pursuant to **2.4.1.**

2.4. AFOSI shall:

2.4.1. Respond directly to requests from DOJ and DoD/IG for investigative support concerning all fraud actions involving the Air Force.

2.4.2. Provide the following information, in addition to the elements set forth in **1.2.1.1.1.**, in each IR prepared for fraud actions:

2.4.2.1. Court docket number.

2.4.2.2. Date the *qui tam* seal was lifted, if applicable.

2.4.3. Advise MAJCOM, FOA, and DRU AFCs and installation AFCs in formulating recommendations concerning intervention or settlement of fraud actions.

Chapter 3

LITIGATION REQUESTS OF PRIVATE PARTIES IN *QUI TAM* ACTIONS INVOLVING THE AIR FORCE IN WHICH THE GOVERNMENT DECLINED TO INTERVENE

3.1. Official Information. Private *qui tam* litigants will have reasonable and impartial access to official information during discovery in cases involving the Air Force in which the government declined to intervene, unless that information is classified, privileged, or otherwise protected from public disclosure.

3.2. Requesting Information. The private *qui tam* litigant requesting such release of official information or testimony from Air Force personnel must set forth, in writing, the specific nature and relevance of the information or testimony sought.

3.3. Discovery Request . Any Air Force organization that receives a discovery request from private *qui tam* litigants for official information or testimony shall immediately forward the request to SAF/GCR for approval and forward an information copy of the request to the concerned MAJCOM, FOA, or DRU AFC.

3.4. Consultation. After consultation with DOJ, AFOSI, and the concerned installation AFC, SAF/GCR shall determine whether official information is released, whether Air Force personnel may appear and testify as witnesses in such litigation or be interviewed or contacted pursuant to such litigation, and whether any conditions are imposed concerning such release, appearance, or contact.

3.5. Types of Factors. In determining whether to approve such requests, SAF/GCR shall consider the following types of factors:

3.5.1. Whether the request is unduly burdensome or otherwise inappropriate under the applicable court rules.

3.5.2. Whether the disclosure or testimony is appropriate under the rules of procedure governing the case in which the request arose.

3.5.3. Whether the disclosure or testimony would violate a statute, executive order, regulation, or directive.

3.5.4. Whether the disclosure or testimony is appropriate or necessary under the relevant substantive law concerning privilege.

3.5.5. Whether the disclosure or testimony would constitute an unauthorized release of classified information.

3.5.6. Whether the disclosure or testimony would interfere with or undermine an ongoing enforcement proceeding, compromise constitutional rights, reveal trade secrets or similar confidential commercial or financial information, or otherwise be inappropriate under the circumstances.

3.6. SAF/GCR Approval. Air Force personnel will only produce, disclose, release, comment upon, or testify concerning those matters approved by SAF/GCR in writing.

3.7. Authorization. Air Force personnel shall not provide opinion or expert testimony including, but not limited to, the issues of liability or causation, concerning official DoD information, subjects, or activities unless authorized to do so by SAF/GCR in writing.

3.8. Official Information. Air Force personnel must consult with the concerned installation AFC before providing any statements or releasing any official information to private *qui tam* litigants.

Chapter 4

VOLUNTARY DISCLOSURE CASES

4.1. SAF/GCR shall:

4.1.1. Serve as the central authority for the Air Force to receive, coordinate, and respond to inquiries from within and outside the Air Force in all voluntary disclosure cases involving the Air Force, except as provided for in **4.4.1.**

4.1.2. Provide to DOJ on behalf of the Air Force all recommendations concerning the settlement of voluntary disclosure cases involving the Air Force with copies to the affected MAJCOM, FOA, or DRU AFC and AFOSI.

4.2. Inquiries. SAF/GCR shall respond directly to all inquiries from within and outside the Air Force relating to suspension or debarment of a contractor in all voluntary disclosure cases involving the Air Force or Air Force contractors.

4.3. Reviews and Recommendations. MAJCOM, FOA, DRU AFCs, and installation AFCs, when requested by their MAJCOM AFCs, shall provide legal reviews and recommendations concerning settlement of all voluntary disclosure cases which involve their installations or facilities when requested by SAF/GCR. Such recommendations should include input from each of the following, if applicable:

4.3.1. Lead investigative agency.

4.3.2. Affected program office.

4.3.3. DLA Fraud Counsel.

4.3.4. Contracting officer.

4.3.5. DCAA.

4.4. AFOSI shall:

4.4.1. Respond directly to requests from DOJ and other investigative agencies for investigative support in all voluntary disclosure cases involving the Air Force.

4.4.2. Advise MAJCOM, FOA, and DRU AFCs in formulating recommendations concerning settlement of voluntary disclosure cases.

Chapter 5

PROGRAM FRAUD CIVIL REMEDIES ACT CASES

5.1. Responsibilities and Authorities:

5.1.1. The Office of the Undersecretary of the Air Force (SAF/US) shall:

5.1.1.1. Serve as the Air Force Authority Head in all cases brought under the Program Fraud Civil Remedies Act of 1986 (PFCRA), Title 31, United States Code (U.S.C.) Sections 3801-3812.

5.1.1.2. Establish procedures for the conduct of all PFCRA administrative hearings.

5.1.1.3. Serve as the final authority in all appeals of decisions by Presiding Officers.

5.1.1.4. Approve or reject any offers of settlement or compromise in PFCRA cases involving the Air Force after the date on which the Presiding Officer renders an initial decision, except as provided for in DoD Directive 5505.5, section TT.

5.1.2. The Office of the General Counsel of the Air Force (SAF/GC) shall:

5.1.2.1. Advise and assist SAF/US in fulfilling its responsibilities as the Authority Head for the Air Force.

5.1.2.2. Obtain Presiding Officers as needed for hearings in PFCRA cases involving the Air Force.

5.1.3. SAF/GCR shall serve as the Air Force Reviewing Official for all PFCRA cases involving fraud on procurement contracts. As such, SAF/GCR shall:

5.1.3.1. Determine if adequate evidence of liability under PFCRA exists.

5.1.3.2. Approve or reject any offer of settlement or compromise in PFCRA cases involving the Air Force prior to the date on which the Presiding Officer makes an initial decision.

5.1.4. The Office of the Deputy General Counsel of the Air Force for Civilian Personnel and Fiscal Law (SAF/GCA) shall serve as the Air Force Reviewing Official for all PFCRA cases involving fraud by civilian Air Force employees. As such, SAF/GCA shall:

5.1.4.1. Determine if adequate evidence of liability under PFCRA exists.

5.1.4.2. Approve or reject any offer of settlement or compromise in PFCRA cases involving the Air Force prior to the date on which the Presiding Officer makes an initial decision.

5.1.5. The Office of the Deputy General Counsel (National Security & Military Affairs) (SAF/GCM) shall serve as the Air Force Reviewing Official for all PFCRA cases involving fraud by military Air Force employees. As such, SAF/GCM shall:

5.1.5.1. Determine if adequate evidence of liability under PFCRA exists.

5.1.5.2. Approve or reject any offer of settlement or compromise in PFCRA cases involving the Air Force prior to the date on which the Presiding Officer makes an initial decision.

5.1.6. DoD/IG:

5.1.6.1. Serves as the Investigating Official in all PFCRA cases.

5.1.6.2. Conducts investigations of all alleged PFCRA violations involving the Air Force.

5.1.6.3. Reports all findings and conclusions from such investigations to the Air Force Reviewing Official.

5.1.7. The Office of the Air Force Judge Advocate General (AF/JA) shall appoint an Air Force Representative for each case referred to the Air Force Reviewing Official by the Investigating Official. The Air Force Representative shall:

5.1.7.1. Review and summarize the evidence for each case referred to the Air Force Reviewing Official by the Investigating Official.

5.1.7.2. Provide a recommendation to the Air Force Reviewing Official as to whether adequate evidence of liability under PFCRA exists.

5.1.7.3. If the Air Force Reviewing Official finds that adequate evidence of liability under PFCRA exists, draft a complaint for the signature of the Reviewing Official.

5.1.7.4. Pursue all cases before a Presiding Officer including, but not limited to, the following tasks:

5.1.7.4.1. Filing of all pleadings.

5.1.7.4.2. Conducting discovery.

5.1.7.4.3. Presenting evidence at the hearing.

5.1.7.5. Negotiate all settlements or compromises on behalf of the Air Force prior to the date of the Presiding Officer's initial decision, subject to the approval of the Air Force Reviewing Official.

5.1.8. MAJCOM, FOA, and DRU commanders shall provide recommendations, documents, witnesses, and assistance, including funding for temporary duty, travel, and support, as needed by the Air Force Reviewing Official and the Air Force Representative to fulfill their respective functions.

5.2. Procedures:

5.2.1. Upon receipt of a PFCRA case from the Investigating Official, or from other sources, the Air Force Reviewing Official shall prepare a case file and forward the matter to the Air Force Representative for review.

5.2.2. The Air Force Representative shall review the case file, summarize the evidence, prepare a recommendation as to whether adequate evidence of liability under PFCRA exists, and return the case file to the Air Force Reviewing Official.

5.2.3. The Air Force Reviewing Official shall review the case file and the recommendation provided by the Air Force Representative in order to determine whether adequate evidence of liability under PFCRA exists.

5.2.3.1. If the Air Force Reviewing Official determines that adequate evidence of liability under PFCRA exists and that the case is worth pursuing, he or she will provide written notice of the intention to issue a complaint to the PFCRA designee within DOJ.

5.2.3.2. If the Air Force Reviewing Official determines that the case is not worth pursuing, he or she shall so inform DoD/IG.

5.2.4. Upon receipt of approval to proceed from the PFCRA designee within DOJ, the Air Force Reviewing Official shall instruct the Air Force Representative to draft a complaint.

5.2.5. The Air Force representative shall forward the complaint to the Air Force Reviewing Official for signature and service upon the defendant.

5.2.6. After serving the complaint, SAF/GC shall appoint a Presiding Officer under 5 U.S.C., Chapter 33, pursuant to the competitive examination process applicable to administrative law judges.

5.2.7. If the defendant answers the complaint within 30 days of service, the Air Force Reviewing Official shall file the complaint and answer with the Presiding Officer.

5.2.8. If the defendant does not answer the complaint within 30 days of service, the Air Force Reviewing Official may file the complaint with the Presiding Officer.

5.2.9. The Air Force Representative shall maintain all contacts with the defendant and Presiding Officer concerning the litigation of the case and settlement negotiations.

5.2.10. The Air Force Representative shall refer to the Air Force Reviewing Official all offers of settlement or compromise made prior to the Presiding Officer's initial decision.

5.2.11. The Air Force Reviewing Official has the sole authority to accept or reject any offer of settlement or compromise prior to the date on which the Presiding Officer renders an initial decision.

5.2.12. The Air Force Authority Head (SAF/US) shall review all appeals of a Presiding Officer's decision.

5.2.13. SAF/GC shall provide a copy of the defendant's appeal of the Presiding Officer's decision to the Air Force Representative, who may submit a brief in opposition.

5.2.14. To assist in deciding an appeal of the Presiding Officer's decision, SAF/GC shall provide the following to SAF/US:

5.2.14.1. The decision of the Presiding Officer.

5.2.14.2. The notice of appeal.

5.2.14.3. The record of the proceeding before the Presiding Officer.

5.2.14.4. Any brief in opposition to the appeal.

5.2.14.5. Any advice or recommendation deemed appropriate.

5.2.15. After the Air Force Authority Head makes a decision on the appeal, SAF/GC shall prepare a document reflecting that decision for the signature of SAF/US and serve notice of the decision to the parties.

5.2.16. The Air Force Authority Head has the sole authority to accept or reject any offer of settlement or compromise after the date on which the Presiding Officer renders an initial decision, except as provided for by DoD Directive *5505.5,* Section TT.

Chapter 6

SUSPENSION AND DEBARMENT

6.1. SAF/GCR shall:

6.1.1. Serve as the Air Force Suspending and Debarring Official (SDO). As such, SAF/GCR shall:

6.1.1.1. Consider in a timely manner all Air Force cases recommending the suspension or debarment of contractors or individuals.

6.1.1.2. Coordinate with all appropriate federal departments, agencies, and organizations before taking any suspension or debarment action against a contractor or individual.

6.1.1.3. Serve as the final authority for the Air Force in assessing and entering into an administrative agreement with a contractor or individual in lieu of suspension or debarment.

6.1.1.4. Provide timely results in all Air Force suspension and debarment actions.

6.1.2. SAF/GCR shall respond directly to all inquiries from within and outside the Air Force relating to suspension or debarment of a defendant in any procurement fraud action involving the Air Force.

6.2. SAF/AQC. The Office of the Deputy Assistant Secretary of the Air Force for Contracting (SAF/AQC), shall provide SAF/GCR, upon request, with program or contracting information necessary to clarify issues in any suspension or debarment case and inform SAF/GCR of any program concerns implicated by potential suspension or debarment of a contractor or individual.

6.3. Comments and Recommendations. MAJCOM, FOA, and DRU AFCs shall review all reports recommending suspension or debarment of a contractor or individual and provide timely comments and recommendations to SAF/GCR concerning each report.

6.4. Installation AFCs shall:

6.4.1. Assist contracting officers in the preparation of timely reports in accordance with this Instruction, Federal Acquisition Regulation (FAR) Subpart 9.4, *Debarment, Suspension, and Ineligibility,* current edition, Defense FAR Supplement (DFARS) Subpart 209.4, *Debarment, Suspension, and Ineligibility,* current edition, and Air Force FAR Supplement (AFFARS) Subpart *5309.4, Debarment, Suspension, and Ineligibility,* current edition, recommending suspension or debarment of a contractor, individual, or affiliate.

6.4.2. Forward each report recommending suspension or debarment of a contractor, individual, or affiliate to SAF/GCR.

6.4.3. Forward a copy of each report recommending suspension or debarment of a contractor individual, or affiliate to the cognizant MAJCOM, FOA, or DRU AFC and Chief of Contracting.

6.5. AFOSI shall:

6.5.1. Advise contracting officers in preparing reports recommending suspension or debarment of a contractor.

6.5.2. Obtain documentary or testimonial evidence, including releasable summaries of investigation and certified copies of criminal or civil action against the contractor, which is needed by the contracting officer, installation AFC, or SAF/GCR in any suspension or debarment action.

6.5.3. Inform SAF/GCR of any investigative concerns implicated by the potential suspension or debarment of a contractor.

Chapter 7

SAFETY ALERTS

7.1. Potential Hazard. AFOSI shall provide all information concerning a potential hazard to flight or product safety to SAF/GCR for informational purposes and to the Air Force Safety Agency for a safety determination.

7.2. Notifications. SAF/GCR shall forward all notifications of potentially defective products involving Air Force programs and weapon systems from DoD/IG to the Air Force Materiel Command Directorate of Safety (HQ AFMC/SES) and the Air Force Space Command Directorate of Safety (HQ AFSPC/SE), with a copy to the Technical Projects Division of the Air Force Materiel Command Directorate of Engineering and Technical Management (HQ AFMC/ENP).

7.3. HQ AFMC/SES; HQ AFSPC/SE. HQ AFMC/SES, or HQ AFSPC/SE when related to a space or missile system, shall forward all such notifications to the Air Force Safety Agency for a determination as to whether the alleged product defect presents a serious threat to the safety or health of Air Force personnel.

7.4. Alleged Product Defect. The Air Force Safety Agency shall determine whether the alleged product defect presents a serious threat to the safety or health of Air Force personnel.

7.4.1. The Air Force Safety Agency shall report its determinations to SAF/GCR, AFOSI, HQ AFMC/SES, or to HQ AFSPC/SE when related to a space or missile system.

7.4.2. If the Air Force Safety Agency determines that the alleged product defect presents a serious threat to the safety or health of Air Force personnel, HQ AFMC/SES, or HQ AFSPC/SE when related to a space or missile system, shall ensure that a safety alert is sent to the Government-Industry Data Exchange Program (GIDEP) with a copy of that alert to SAF/GCR and AFOSI.

7.4.3. Upon receipt of the safety alert, SAF/GCR may open a remedies plan for the matter.

7.5. Determinations. SAF/GCR shall report the Air Force Safety Agency's determinations to DoD/IG.

Chapter 8

PROCUREMENT FRAUD-RELATED EDUCATION

8.1. SAF/GCR shall:

8.1.1. Coordinate as needed with AETC to ensure that procurement fraud-related education and training opportunities exist for Air Force personnel.

8.1.2. Assist MAJCOM, FOA, and DRU commanders, AFOSI, and other federal departments and agencies in providing procurement fraud-related education.

8.2. Education and Training. MAJCOM, FOA, DRU, and AFOSI commanders shall ensure annually that personnel under their command have adequate education and training in procurement fraud matters.

MARY L. WALKER
The General Counsel

Attachment 1

GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION

References

10 U.S.C §13 2306 --*Truth in Negotiations Act*

10 U.S.C. §13 2307(e) -- *Suspension of Payments*

15 U.S.C. §1, -- *et seq.* -- *Sherman Antitrust Act*

18 U.S.C. §152 -- *Concealment of Assets*

18 U.S.C. §§201-208 -- Bribery, Gratuities, and Conflicts of Interest

18 U.S.C. §286 -- *Conspiracy to Defraud in Connection with Claims*

18 U.S.C. §287 -- *False Claims*

18 U.S.C. §371 -- *Conspiracy to Defraud*

18 U.S.C. §494 -- *Falsification of Contractors' Bonds, Bids, and Public Records*

18 U.S.C. §641 -- *Theft, Embezzlement, or Destruction of Public Money, Property, or Records*

18 U.S.C. §1001 -- *False Statements*

18 U.S.C. §1031 -- *Major Fraud Act*

18 U.S.C. §1341 -- *Mail Fraud*

18 U.S.C. §1343 -- *Wire Fraud*

18 U.S.C. §1505 -- *Obstruction of Proceedings*

18 U.S.C. §1516 -- *Obstruction of a Federal Audit*

18 U.S.C. §1905 -- *Trade Secrets Act*

18 U.S.C. §1956, *et. seq.* -- *Money Laundering*

18 U.S.C. §1961 *et seq.* --.*Racketeer Influenced and Corrupt Organizations*

31 U.S.C.§3713, *et seq.* -- *Priority of Government Claims in Bankruptcy*

31 U.S.C. §3729, *et seq*. -- *False Claims Act*

31 U.S.C.§3801, *et seq*. -- *Program Fraud Civil Remedies Act*

41 U.S.C. §51, *et seq* --*Anti-Kickback Act*

41 U.S.C. §604, *et seq*. -- *Forfeiture of Claims under Contract Disputes Act*

DoDD *5405.2, Release of Official Information in Litigation and Testimony by DoD Personnel as Witnesses,* July 23, *1985*

DoDD *5505.5, Implementation of the Program Fraud Civil Remedies Act,* August 30, 1988

DoDD *7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities,* June 7, 1989

AFMAN 37-139, *Records Disposition Schedule*

Abbreviations and Acronyms

AETC—Air Education and Training Command

AFC—Acquisition Fraud Counsel

AFFARS—Air Force FAR Supplement

AF/JA—Office of the Air Force Judge Advocate General

AFMC/ENP—Air Force Materiel Command Directorate of Engineering and Management (Technical Projects Division)

AFMC/SES—Air Force Materiel Command Directorate of Safety

AFOSI—Air Force Office of Special Investigations

AFSPC/SE—Air Force Space Command Directorate of Safety

ASBCA—Armed Services Board of Contract Appeals

AUSA—Assistant United States Attorney

CAGE—Contractor and Government Entity

DCAA—Defense Contract Audit Agency

DFARS—Defense FAR Supplement

DLA—Defense Logistics Agency

DoD—Department of Defense

DoDD—Department of Defense Directive

DoD/IG—Office of the Department of Defense Inspector General

DOJ—Department of Justice

DRU—Direct Reporting Unit

FAR—Federal Acquisition Regulation

FOA—Field Operating Agency

GIDEP—Government-Industry Data Exchange Program

HQ—Headquarters

IR—Investigative Report

MAJCOM—Major Command

PFCRA—Program Fraud Civil Remedies Act

SAF/AQC—Office of the Deputy Assistant Secretary for Contracting, Assistant Secretary of the Air Force for Acquisition

SAF/AQCX—Contract Support Division, Office of the Deputy Assistant Secretary for Contracting, Assistant Secretary of the Air Force for Acquisition

SAF/GC—Office of the Air Force General Counsel

SAF/GCA—Office of the Deputy General Counsel of the Air Force (Fiscal & Administrative Law)

SAF/GCM—Office of the Deputy General Counsel of the Air Force (National Security & Military Affairs)

SAF/GCR—Office of the Deputy General Counsel of the Air Force (Contractor Responsibility)

SAF/IGQ—Air Force Office of Complaints, Remedies, and Oversight

SAF/US—Office of the Under Secretary of the Air Force

SDO—Air Force Suspending and Debarring Official

SJA—Staff Judge Advocate

U.S.C.—United States Code

Terms

Acquisition Fraud Counsel (AFC)—An Air Force attorney (generally a civilian) appointed by the cognizant Staff Judge Advocate to permanently assist in the management, oversight, and operation of the procurement fraud remedies program for his or her command, installation, or program.

Air Force Personnel—Present and former United States Air Force military personnel; United States Air Force Academy cadets; present and former civilian employees of the Department of the Air Force, including non-appropriated fund activity employees; and non-United States nationals who perform services overseas under the provision of status of forces agreements for the United States Air Force.

Air Force Representative—Person assigned by AF/JA to conduct litigation on behalf of the Air Force in all cases in which the Reviewing Official determines that there is adequate evidence of liability under PFCRA.

Authority Head—Person who promulgates procedures for the conduct of administrative hearings and serves as the final authority for all appeals in PFCRA cases.

Chief of Contracting Office—Person with direct managerial responsibility for the operation of a contracting office. This may include the deputy chief or acting chief of the contracting office and the Contracting Squadron Commander.

Debarment—Action taken by a Debarring Official under FAR Subpart 9.4 to exclude a contractor from government contracting or government-approved subcontracting for a reasonable, specified period; a contractor so excluded is "debarred."

Fraud—Any intentional deception by an individual, corporation, partnership, or other entity which seeks to unlawfully deprive the Air Force of something of value or to secure from the Air Force a benefit, privilege, allowance, or consideration for which there is no entitlement.

Installation—An Air Force Base, Station, Center, other fixed location, or center as designated by a MAJCOM, FOA, or DRU. This definition includes Air Force Materiel Command and Air Force Space Command product centers.

Hold—Status of a significant procurement fraud case when a remedies plan is not opened immediately because of operational security reasons raised in writing by the concerned AFOSI Region Commander or the head of another criminal investigative agency.

Investigating Official—Person designated to investigate cases of alleged liability under PFCRA and to report all findings and conclusions of such investigations to the Reviewing Official.

Investigative Report—Any report generated by an investigative agency, including a Case Status Report, Serious Incident Report, Report of Investigation, or any other report of a similar nature.

Official Information—All information of any kind, however stored, that is in the custody or control of the Department of the Air Force, relates to information in the custody and control of the Air Force, or was acquired by Air Force personnel as part of their *official* duties or because of their official status within the department while such personnel were employed by or worked on behalf of the department or on active duty with the Air Force.

Presiding Officer—Person employed by DoD or detailed to DoD from another agency that conducts a PFCRA case hearing.

***Qui Tam* Action—**Suit filed under seal by a private party on behalf of the United States against a contractor alleging the submission of false claims to the government.

Relator—Person who files a *qui tam* action.

Remedies—Criminal, civil, contractual, and administrative actions that should be initiated by a commander or official having responsibility over a matter central to a significant procurement fraud case in order to protect the interests of the Air Force and to deter future incidents of fraudulent conduct.

Remedies Plan—Comprehensive, evolving plans prepared in accordance with this Instruction 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.

Reviewing Official—Person designated to determine if, based upon the findings and conclusions of the Investigating Official, there is adequate evidence of liability under PFCRA.

Significant Procurement Fraud Case—Alleged or confirmed instances of misconduct by a government contractor or individual which satisfy one or more of the following criteria:

-All procurement-related fraud cases which involve an alleged or actual loss to the Air Force of $100,000 or more.

- All corruption cases related to the Air Force procurement process, regardless of the dollar amount of loss involved. Corruption includes such fraudulent acts as conflicts of interest; the solicitation, offer, payment, or receipt of bribes, gratuities, kickbacks, or commissions; the unauthorized disclosure of procurement-related information; and collusion, bid rigging, price-fixing, or other anti-trust violations.

- All Air Force cases involving alleged or proven defective products or product substitution where the nature of the defect or substitution presents a serious hazard to health, safety, or operational readiness, regardless of the dollar amount of loss involved.

- All cases in which there is a significant Air Force interest as determined by SAF/GCR. Such cases include, but are not limited to those involving a congressional inquiry or substantial media attention.

Suspension—Action taken by a Suspending Official under FAR Subpart 9.4 to disqualify a contractor temporarily from government contracting and government-approved subcontracting; a contractor so disqualified is "suspended."

Voluntary Disclosure—A disclosure made voluntarily by a DoD to the DoD-IG seeking acceptance into the Voluntary Disclosure Program [Department of Defense Voluntary Disclosure Program, “A Description for the Process," IGDPH 5505.5, CIPO, April 1990.]

Attachment 2

EXAMPLES OF CRIMINAL, CIVIL, CONTRACTUAL, AND ADMINISTRATIVE REMEDIES AVAILABLE IN RESPONSE TO EVIDENCE OF PROCUREMENT FRAUD

Section A--Criminal and Civil Remedies

Truth in Negotiations Act --10 U.S.C §13 2306

Suspension of Payments --10 U.S.C. §13 2307(e)

Sherman Antitrust Act --15 U.S.C. §1, -- *et seq.*

Concealment of Assets --18 U.S.C. §152

Bribery, Gratuities, and Conflicts of Interest --18 U.S.C. §§201-208

Conspiracy to Defraud in Connection with Claims --18 U.S.C. §286

False Claims --18 U.S.C. §287

Conspiracy to Defraud --18 U.S.C. §371

Falsification of Contractors' Bonds, Bids, and Public Records --18 U.S.C. §494

Theft, Embezzlement, or Destruction of Public Money, Property, or Records -- 18 U.S.C. §641

False Statements --18 U.S.C. §1001

Major Fraud Act -- 18 U.S.C. §1031

Mail Fraud --18 U.S.C. §1341

Wire Fraud -- 18 U.S.C. §1343

Obstruction of Proceedings --18 U.S.C. §1505

Obstruction of a Federal Audit --18 U.S.C. §1516

Trade Secrets Act --18 U.S.C. §1905

Money Laundering --18 U.S.C. §1956, *et. seq.*

Racketeer Influenced and Corrupt Organizations --18 U.S.C. §1961 *et seq.*

Priority of Government Claims in Bankruptcy --31 U.S.C.§ 3713, *et seq*.

False Claims Act --31 U.S.C. §3729, *et seq*.

Program Fraud Civil Remedies Act --31 U.S.C.§3801, *et seq*.

Anti-Kickback Act -- 41 U.S.C. §51, *et seq*.

Forfeiture of Claims under Contract Disputes Act --41 U.S.C. § 604, *et seq*.

Section B--Contractual and Administrative Remedies

A. Termination for default

B. Termination for convenience

C. Termination for damages for gratuities

D. Unilateral price reduction

E. Deductive change order

F. Revocation of acceptance

G. Warranty or correction of defects

H. Recovery of reprocurement costs

I. Acceptance at a reduced price

J. Rescission

K. Reformation

L. Withholding of payment

M. Rejection of nonconforming Supplies or services

N. Disallowance of contract costs

0. Suspension of progress payments

P. First article disapproval and nonpayment of costs

Q. Recovery of nonrecurring costs for commercial sales

R. Stop work order

S. Cure notice

T. Show cause letter

U. Issue quality deficiency report

W. Liquidated damages

X. Technical data challenges

Y. Subcontract disapproval

Z. Other contract clauses providing remedies

AA. Suspension

BB. Debarment

CC. Truth in Negotiations Act --10 U.S.C §13 2306

DD. Suspension of Payments --10 U.S.C. §13 2307(e)

EE. Revocation of forward pricing agreement

FF. Refusal to employ fast pay procedures

GG. Refusal to authorize certificate of conformance

HH. Removal from qualified products list

II. Removal from approved manufacturers list

JJ. Heightened testing or inspection requirements

KK. Closer surveillance

LL. Termination of employment

MM. Recoupment of the value of any bribe or gratuity

NN Revocation of a contracting officer's warrant

Attachment 3

REMEDIES PLAN FORMAT

NAME OF PRIMARY SUBJECT OF INVESTIGATION

BASE PREPARING THE REMEDIES PLAN

OSI NUMBER

SECTION 1. ADMINISTRATIVE DATA

A. Date of plan:

B. Status of plan:

1. Initial or update (if "update," include revision number):
2. Closure recommended:
3. If "no," suspense date for next update:

C. Case number:

D. Investigative support

1. Lead investigative agency:
2. Other investigative agencies involved:
3. Date of most recent case report on which this plan is based:
4. Name and telephone number of principal case agent:

E. Subject(s) of allegation (include corporate name, corporate divisions, and individuals, if applicable):

F. Government officials involved in plan preparation:

1. Responsible commander and office symbol:
2. Name, telephone number, and office symbol of Acquisition Fraud Counsel:
3. Responsible MAJCOM:
4. Name, telephone number, and office symbol of DLA/DPRO attorney, if any:
5. Name, telephone number, and office symbol of other government officials involved in plan preparation.

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G. Contract administrative data:

1. Contract number(s):
2. Type of contract:

3. Dollar amount of contract:
4. Period of contract:
5. Phase of contract in which alleged wrongdoing took place:

   [ ] Contract formation [ ] Contract performance

6. Location where alleged offense took place:
7. Contractor Commercial and Government Entity Code (CAGE) code.

H. Audit support

1. Audit agency involved, if any:
2. Name and telephone number of principal auditor.

I. Cases arising out of *qui tam* actions

1. Is the case under seal? If so, explain what information is subject to the seal:
2. Name of relator(s):

SECTION II: ALLEGATIONS AND ADVERSE IMPACT STATEMENT

A. Allegations (as detailed as possible):

B. Adverse impact statement:

1. Affected weapons Systems or programs:
2. Is impact contractor-wide or contract specific:
3. Estimated loss:

C. Name, telephone number, and office symbol of the Air Force Safety Center Official who has determined there is a serious hazard to health, safety, or operational readiness in defective product or product substitution cases:

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ECTION III: CONTRACT REVIEW

A. List all contract violations which support pursuit of remedies. Include citations for the contract requirements (e.g., SOW, para IV(b), or MIL Q 9858A, para 4).

B. Name, telephone number, and office symbol of contracts attorney who performed the contract review:

C. Date of contract review completion:

SECTION IV: POTENTIALLY APPLICABLE REMEDIES

A. Criminal remedies:

1. Name and telephone number of AUSA responsible for criminal prosecution:

2. Has AUSA been briefed? If "no," why not?

3. Has AUSA accepted the case for criminal prosecution? If "no," why not?

4. Did AFC accompany AFOSI when a criminal prosecutive decision was sought from AUSA? If "no," why not?

5. Potential criminal violations:

[ ] False Claims, 18 U.S.C. §287

[ ] False Statements, 18 U.S.C. §1001

[ ] Wire Fraud, 18 U.S.C. §1343

[ ] Conspiracy to Defraud, 18 U.S.C. §371

[ ] Bribery, Gratuities, Conflicts of Interest, 18 U.S.C. §§201-208

[ ] The Major Fraud Act, 18 U.S.C. §1031

[ ] Mail Fraud, 18 U.S.C. §1341

[ ] Money Laundering, 18 U.S.C. §1956

[ ] Anti-Kickback Act. 41 U.S.C. §51

[ ] Conspiracy to Defraud in Connection with Claims, 18 U.S.C. §286

[ ] Other (Specify):

B. Civil remedies:

1. Name and telephone number of AUSA responsible for civil prosecution:

2. Has AUSA been briefed? If "no," why not?

3. Has AUSA accepted the case for civil prosecution? If "no," why not?

4. Did AFC accompany AFOSI when a civil prosecutive decision was sought from AUSA? If "no, " why not?

5. Potential civil violations:

[ ] False Claims 31 U.S.C. §3729

[ ] PFCRA, 31 U.S.C. §3801

[ ] Other (Specify):

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C. Contractual remedies:

1. What potentially applicable remedy-granting clauses are in the affected contract (include clause number and date, if applicable):

2. Are these clauses being invoked? If "no," why not?

3. Identify any potentially applicable common law contract remedies:

4. Has the subject contractor submitted any claims against the Air Force which overlap the subject matter of this remedies plan? If so, explain the overlap, state whether a final decision was issued, and provide the ASBCA or Court of Federal Claims docket number:

D. Administrative remedies:

1. Has a suspension or debarment package been prepared? If "no," why not? If "yes," assess the adverse mission impact, if any, if the subject is subsequently suspended or debarred.

2. Identify any other viable administrative remedies. Are they being pursued? If "no," why not?

SECTION V: MISCELLANEOUS COMMENTS AND INFORMATION (include copies of relevant documents)

A. Indictments (identify by subject):

B. Convictions (identify by subject):

C. Criminal sentences (identify for each subject):

D. Civil recoveries (identify by subject and include amounts and applicable funding citations):

E. Contractual/administrative recoveries (identify by subject, action taken, and amount of recovery):

F. Suspension (identify by subject):

G. Debarment (identify by subject and include period of debarment):

H. Congressional inquiries:

I. Significant media attention:

J. Other relevant information:

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SECTION VI. REMEDIES PLAN PARTICIPANTS

Name	Grade	Organization	Telephone No.
Acquisition Fraud Counsel			
Contracting Officer			
Investigating Agent			

[These are the minimum essential remedies plan participants. Other plan participants, if any, should also be included.]

[SIGNED] Staff Judge Advocate

2 Attachments (at a minimum):

1. Lead investigating agent's most current investigative report or summary [to be distributed only thorough legal and investigative channels]

2. Matching of criminal and civil offense elements to evidence produced to date [to be distributed only through legal and investigative channels]

SECTION VII: MAJCOM COORDINATION AND COMMENTS

[MAJCOM, FOA, or DRU Acquisition Fraud Counsels should include specific feedback concerning the overall quality of the submitted plan, including requests for clarification or additional information for appropriate action or consideration in the next plan update.]

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