



Defense Health Agency

ADMINISTRATIVE INSTRUCTION

NUMBER 7050.01
February 28, 2022

OGC

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

References: See Enclosure 1.

1. PURPOSE. This Defense Health Agency-Administrative Instruction (DHA-AI), based on the authority of References (a) and (b), and in accordance with the guidance of References (c) through (f), establishes the DHA's procedures to:

a. Implement the requirements of Reference (d).

b. Establish the Office of General Counsel (OGC) as DHA's centralized organization for the monitoring and coordinating of remedies in all significant procurement fraud cases.

c. Establish DHA procedures to coordinate, consider, and undertake, as necessary, proper and effective administrative and contractual remedies in instances of significant procurement fraud and corruption.

2. APPLICABILITY. This DHA-AI applies to the DHA.

3. POLICY IMPLEMENTATION. It is DHA's instruction, pursuant to References (a) through (d), to aggressively pursue all significant procurement fraud cases which affect DHA interests and to ensure that appropriate criminal, civil, contractual, and administrative remedies are taken in a coordinated and expeditious manner. The DHA will ensure monies lost to procurement fraud will be recovered for use by affected DHA programs to the extent allowable by law.

4. RESPONSIBILITIES. See Enclosure 2.

5. PROCEDURES. See Enclosure 3.

6. PROPONENT AND WAIVERS. The proponent of this publication is the OGC. When Activities are unable to comply with this publication the activity may request a waiver that must include a justification, including an analysis of the risk associated with not granting the waiver. The activity director or senior leader will submit the waiver request through their supervisory chain to the OGC to determine if the waiver may be granted by the Director, DHA or their designee.

7. RELEASABILITY. **Cleared for public release.** This DHA-AI is available on the Internet from the Health.mil site at: <https://health.mil/Reference-Center/Policies> and is also available to authorized users from the DHA SharePoint site at: <https://info.health.mil/cos/admin/pubs/SitePages/Home.aspx>.

8. EFFECTIVE DATE. This DHA-AI:

a. Is effective upon signature.

b. Will expire 10 years from the date of signature if it has not been reissued or canceled before this date in accordance with Reference (c).

/S/
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Director

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ENCLOSURE 1

REFERENCES

- (a) DoD Directive 5136.01, "Assistant Secretary of Defense for Health Affairs (ASD(HA))," September 30, 2013, as amended
- (b) DoD Directive 5136.13, "Defense Health Agency (DHA)," September 30, 2013
- (c) DHA-Procedural Instruction 5025.01, "Publication System," August 24, 2018
- (d) DoD Instruction 7050.05, "Coordination of Remedies for Fraud and Corruption Related to Procurement Activities," May 12, 2014, as amended
- (e) Title 48, Code of Federal Regulations, Chapter 1, Federal Acquisition Regulation
- (f) Title 48, Code of Federal Regulations, Chapter 2, Defense Federal Acquisition Regulation Supplement

ENCLOSURE 2
RESPONSIBILITIES

1. GENERAL COUNSEL (GC). The GC must:

- a. Have overall responsibility for the coordination of remedies in procurement fraud and corruption cases affecting DHA.
- b. Oversee OGC (DHA's centralized organization, per Reference (d), to review investigations of fraud or corruption related to DHA procurement activities) and establish procedures to monitor the progress of significant investigations.
- c. As necessary, coordinate with other agencies and DoD components regarding significant investigations.
- d. Provide full support to the designated lead centralized organizations in all procurement fraud and corruption cases involving allegations affecting DHA where DHA is not the lead centralized organization.
- e. Serve as the DHA Suspension and Debarment Official in accordance with Reference (f) Subpart 209.403 and, when appropriate, ensure suspension or debarment actions are taken as soon as practicable, including upon an indictment or conviction.
- f. Appoint a Chief, Acquisition Fraud Remedies (AFR) and assign attorneys and other personnel, as appropriate, to manage the DHA AFR program and to serve as Acquisition Fraud Counsel.

2. CHIEF, AFR. The Chief, AFR, must:

- a. Coordinate with the appropriate outside entities on remedies related to each investigation of significant procurement fraud or corruption cases affecting DHA.
- b. Establish procedures to regularly discuss with the Defense Criminal Investigative Service (DCIS) or other cognizant Defense Criminal Investigative Organizations (DCIOs) the status of significant investigations and appropriate remedies.
- c. Provide timely notice, advice, and support to contracting officers, program officials, and others involved in pursuing administrative or contractual remedies for fraud to ensure the prompt consideration of proper and effective remedies within DHA's purview.
- d. Develop a training program, in conjunction with DCIS and Deputy Assistant Director – DHA Contracting Activity (DAD-DHACA), to ensure that all contracting officers and contracting officer representatives receive procurement fraud awareness training annually.

- e. Receive reports of procurement fraud and corruption from sources including, but not limited to, DCIOs, the DHA Program Integrity Office, audit agencies, contracting officers, inspectors general of the executive branch, correspondence from the public, directors, employees, and contractors.
- f. Forward indicators of corruption, fraud, or allegations of criminal misconduct related to DHA acquisitions to the DHA Inspector General (IG) or DCIS as appropriate.
- g. Ensure the DCIO(s) and Department of Justice (DOJ) criminal and civil fraud offices (previously identified to the OGC as having interest in the matter) are notified in advance of all proposed administrative or contractual actions; notification provides the recipients the opportunity to identify potential adverse impact to the ongoing investigation.
- h. Ensure the Responsible Management Official and DHA Mission Assurance are notified in the instance of any substantiated findings of procurement-related fraud or corruption perpetrated by cleared personnel.
- i. Receive *qui tam* notices from the DOJ for cases involving procurement fraud; provide DHA's recommendations to the DOJ regarding *qui tam* intervention and the initiation, amendment, settlement, or withdrawal of actions filed by the United States which allege fraud or corruption involving DHA procurement activities.
- j. Serve as the approving DHA office for all DOJ requests for DHA witnesses, testimony, and related cooperation in procurement fraud cases and litigation; and serve as the approving authority for litigation requests from private parties in *qui tam* actions in which the government declined to intervene.

3. DIRECTOR, PROGRAM INTEGRITY DIVISION (PID). The Director, PID, must:

- a. Notify the Chief, AFR, directly upon the discovery of procurement fraud or corruption.
- b. Coordinate with the Chief, AFR, in cases of potential procurement fraud or corruption also involving healthcare fraud.
- c. Provide referrals to the Chief, AFR, for suspension or debarment action upon the completion of healthcare investigations relating to procurement fraud or corruption.
- d. Provide referrals to the Chief, AFR, for suspension or debarment action, on a case-by-case determination, when upon the completion of healthcare investigations, it is determined that further administrative action may be necessary to protect the government and/or is in the government's best interest.
- e. Provide support, as appropriate, to the Chief, AFR, during the consideration of suspension or debarment action based on PID referrals.

f. Ensure PID personnel are aware of the DHA AFR program, its role, its functions, and the relationship between the two offices.

4. DHA IG. The DHA IG must:

a. Notify the Chief, AFR, of Hotline complaints or reports of procurement fraud, corruption, or investigation discovery of procurement fraud or corruption.

b. Notify the Chief, AFR, of any coordination with other entities related to the investigation or disposition in cases related to procurement fraud or corruption.

c. Provide support, as appropriate, to the Chief, AFR, during the consideration of suspension or debarment action based on IG or DCIO investigations or referrals.

d. Report results of investigation, as appropriate, to the Chief, AFR, and/or DAD-DHACA, for matters referred to the OIG from the AFR program or the DAD-DHACA.

e. Ensure that DHA IG personnel are aware of the DHA AFR program, its role, its functions, and the relationship between OGC and the DHA IG.

f. Respond to requests and provide timely support to DCIS or other cognizant DCIOs throughout the investigation of procurement fraud and corruption (including collection of evidence and assessment of evidence), as necessary.

g. Provide an incident report to the Responsible Management Official in the instance of any substantiated findings of procurement-related fraud or corruption perpetrated by cleared personnel, for reporting to the DHA Mission Assurance.

5. DAD-DHACA. The DAD-DHACA must:

a. Coordinate with the GC, Chief AFR, DHA IG, and DCIS, as necessary, and promptly implement the contractual remedies appropriate to protect the interests of DHA program(s) and the government.

b. Provide support to the Chief, AFR, in the creation of case-specific procurement fraud remedies plans for incidents of significant procurement fraud.

c. Refer contracting personnel suspicions of procurement fraud and corruption to the DHA IG, DCIS, and the Chief, AFR, as appropriate.

d. Ensure all contracting officers and contracting officer representatives receive procurement fraud awareness training annually.

e. Ensure contracting personnel are aware of the DHA AFR program, its role, its functions, and the relationship between the OGC and DAD-DHACA.

f. Ensure that contracting officers or other referring acquisition personnel promptly notify the Chief, AFR, directly of the following:

(1) Any non-responsibility determination.

(2) Any indictment, conviction, or civil judgment (including those listed on required certifications, or those disclosed in accordance with Reference (e), FAR Section 3.1003 or Clause 52.203-13) relating to an offeror's or contractor's lack of integrity or business honesty, regardless of whether the indictment, conviction, or civil judgment involves a government contract.

(3) Any recommended or final termination for default or for cause.

(4) Any recommendation for debarment or suspension.

(5) Any debarred or suspended contractor who bids on a government contract (including those who indicate debarment or suspension on required certifications).

g. Respond to requests and provide timely support to investigative entities throughout the investigation of procurement fraud and corruption, as necessary.

ENCLOSURE 3

PROCEDURES

1. SUSPENSION AND DEBARMENTS. The DHA OGC AFR program follows the uniform procedures for suspension and debarment prescribed in Reference (f), Appendix H – Debarment and Suspension Procedures.

2. REFERRALS. Referrals for suspension or debarment may generally follow the guidance at Reference (f), Procedures, Guidance, and Information Subpart 209.4.

3. REMEDIES PLANS. Referrals in connection with a significant procurement fraud investigation will be accompanied by a remedies plan that addresses the requested administrative remedy (i.e., suspension or debarment).

4. CAUSES OTHER THAN FRAUD. The causes for suspension and debarment delineated in Reference (e), Subpart 9.4 are not exclusive to procurement fraud. Thus, some matters may be referred to the Suspension and Debarment Official that have no connection with a procurement fraud investigation. A Remedies Plan is not required for those referrals, e.g., referrals based on the contractor's history of poor performance.

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

AFR	Acquisition Fraud Remedies
DAD-DHACA	Deputy Assistant Director, Defense Health Agency Contracting Activity
DHA-AI	Defense Health Agency-Administrative Instruction
DCIO	Defense Criminal Investigative Organization
DCIS	Defense Criminal Investigative Service
DOJ	U.S. Department of Justice
GC	General Counsel
IG	Inspector General
OGC	Office of General Counsel
PID	Program Integrity Division

PART II. DEFINITIONS

Unless otherwise noted, these terms and their definitions are for the purposes of this DHA-AI.

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. This term is defined in Reference (d).

DCIO. DCIOs include: 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. This term is defined in Reference (d).

qui tam. A type of whistleblower lawsuit that is brought under the civil False Claims Act, 31 United States Code §3729 *et seq.*

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. This term is defined in Reference (d).

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. This term is defined in Reference (d).

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. This term is defined in Reference (d).

suspension or debarment actions. Actions taken pursuant to Reference (e) or other authority granted to the agency suspension and debarment official. As used in this DHA-AI, this term does not include any provider exclusion under Title 32, Code of Federal Regulations, Part 199.9.