



**INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
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MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Revised Interim Guidance for Criminal Investigations
of Fraud Offenses

This memorandum issues the revised interim guidance for determining investigative responsibility for fraud offenses in the Department of Defense (attached). This guidance supersedes the interim guidance issued October 23, 1996, and is effective immediately.

In October 1999, the commanders and directors of the Defense Criminal Investigative Organizations were asked to work toward finding common ground in our efforts to finalize DoD Instruction (DoDI) 5505.2, Criminal Investigation of Fraud Offenses. The DoDI 5505.2 has been an interim instruction since June 9, 1995. The attached guidance comprises revisions that are supported by the commanders and directors.

Concurrently, we are reinitiating efforts to coordinate and reissue DoDI 5505.2, compatible with this interim guidance. The policy detailed in the attached guidance will remain in effect until such time DoDI 5505.2 is reissued or otherwise replaced.

Should you have any questions, please contact me or Mr. Charles W. Beardall, Deputy Assistant Inspector General, Criminal Investigative Policy and Oversight, at (703) 604-8804.

Donald Mancuso
Acting Inspector General

Attachment

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CRIMINAL INVESTIGATIONS OF FRAUD OFFENSES

INVESTIGATIVE RESPONSIBILITY FOR ALLEGATIONS OF FRAUD

1. Purpose: To ensure the Defense Criminal Investigative Organizations (DCIOs) effectively and efficiently accomplish the investigation of fraud cases in the Department of Defense (DoD).

a. The Inspector General Act of 1978, as amended (the Act), and implemented by DoD Directive (DoDD) 5106.1, "Inspector General of the Department of Defense," March 14, 1983, provides the Inspector General of the Department of Defense (IG, DoD) the authority to initiate, conduct and supervise such investigations in the DoD (including the Military Departments) as the Inspector General deems appropriate. The Act also requires that the IG, DoD, give particular regard to the activities of the Military Departments with a view toward avoiding duplication and ensuring efficient and effective coordination and cooperation.

b. Primary jurisdiction as used in this guidance does not preclude a DCIO from joining an investigation provided they contribute the necessary resources to actively and constructively participate in the investigation. In the event investigative responsibility cannot be resolved pursuant to this guidance, the Inspector General, DoD, will make the determination of which agency will investigate a specific procurement fraud matters.

2. Defense Criminal Investigative Service (DCIS) Primary Jurisdictional Responsibility. The DCIS has primary responsibility for investigating all allegations of fraud involving:

a. The Office of the Secretary of Defense (OSD) and its field activities.

b. The Joint Chiefs of Staff (JCS).

c. All contract and procurement actions awarded by Defense Agencies, their components and field activities, with the exception of those specified under paragraph 3 below.

d. All Defense Reutilization and Marketing Service (DRMS) and Defense Distribution Depot activities, with the exception of those specified under paragraph 3.c. below. The DCIS shall, except under exigent circumstances, notify, within 72 hours, the cognizant military criminal investigative organization (MCIO) office of the initiation of an investigation conducted under this provision regarding a DRMS or Defense Depot activity on any installation covered under subparagraph 3.c. below. Any notice to or briefing of the installation commander shall then only be accomplished by the DCIS with the participation of the cognizant MCIO.

e. All allegations of fraud committed by health care providers, to include "partnership agreement" situations, under TRICARE and fiscal intermediaries thereto. If allegations concern a provider on a specific military installation or activity, the appropriate MCIO will be notified.

f. Allegations of suspected violations of the Antikickback Enforcement Act of 1986 that are required to be reported by contractors under that statute whether or not reported by such contractors. If allegations concern a specific Military Department, the appropriate MCIO will be notified.

g. All kickbacks or bribery involving civilian employees of the OSD, JCS, and the Defense Agencies and their field activities.

h. Any allegations that the IG, DoD, pursuant to the Inspector General Act of 1978, as amended, considers appropriate for investigation by the DCIS.

3. The MCIO Areas of Primary Jurisdictional Responsibility. The MCIOs have primary responsibility for investigating all allegations of fraud involving:

a. All contract and procurement actions awarded by a Military Department, regardless of what organization administers the contract, with the exception of those specified in paragraph 4 below.

b. Allegations of fraud involving the Defense Finance and Accounting Service (DFAS) to the extent the allegations pertain to the DFAS providing services for a single post, camp, base, facility, or installation level activity of a Military Department, or pay and allowance or travel fraud by a civilian employee or Service member in a Military Department.

c. Activities of the DRMS and Defense Distribution Depots outside the United States (MCIO providing support to the host installation). Additionally, for any allegations resulting from a compromise of physical security of the DRMS, depot, or the host installation (e.g., break-ins, theft of property).

d. The activities of or at an individual installation or facility, especially those over which the installation commander has contracting authority or that affect the health, welfare and morale of Military Service personnel (or their dependents) assigned to that specific installation or facility, including circumstances where the allegations pertain to the activities of or at a military installation or facility supported by another installation or facility.

e. All matters regarding the Army and Air Force Exchange Service, the Navy Exchange Services Command, the Marine Corps Exchange at any level, and all nonappropriated fund activities within the Military Departments.

f. Allegations of fraud perpetrated against TRICARE, a fiscal intermediary or other health care providers or insurers by Military Service members, military retirees and dependents who have received, made claims for, or requested benefits or services under such programs or operations.

g. Construction contracts funded solely by one Military Department.

h. All DoD dependent schools outside of the United States.

i. Unified Combatant Commands including special operations forces low intensity conflicts organizations.

j. All Defense Energy Support Center (DESC) activities outside of the United States.

k. All NATO projects and expenditures by the DoD in connection with NATO projects or activities.

l. Except as provided in paragraph 2 above and 4 below, allegations of bribery of a Military Service member or civilian employee of a Military Department.

4. Other Jurisdictional Responsibility. The DCIS and MCIOs have responsibility for investigating allegations of fraud not otherwise specified in paragraphs 2 and 3 above, that involve:

a. Contracts awarded by a single Military Department in which the wrongdoing is alleged to have been committed by a contractor or subcontractor that has contracts with more than one DoD component. The determination of whether the contractor has contracts with more than one DoD component does not relate to either the specific allegation(s) or contract(s) to which the allegations pertain, but rather to the overall status of the contractor.

b. Top100 contractor. Inasmuch as the IG, DoD, has a continuing and substantial interest in investigations in which the subject is a Top 100 contractor or a subcontractor that is an affiliate of or owned by a Top 100 contractor, the DCIS will determine whether to participate in any investigation of a Top 100 contractor.

c. Violations of the antitrust laws.

d. All allegations of fraud in connection with contracts awarded or administered by the U.S. Army Corps of Engineers (USACE) where such contracts are funded by other than military construction budget monies.

5. The DCIOs shall establish, at the Headquarters level, an Agency Management Team (AMT) to resolve jurisdictional issues not resolved under paragraph 6 below. The AMT representatives will resolve disputes as specified in paragraph 10.

6. Jurisdictional Responsibility-Regional Management Teams (RMTs). The determination of how the responsibilities in paragraph 4 above, will be carried out shall be made in accordance with the following:

a. Except as noted in paragraph 7 below, the DCIOs shall establish RMTs at no higher than regional levels to address and resolve jurisdictional responsibility issues that may arise.

b. The members of each RMT shall be managers or supervisors with co-equal authority to make binding decisions regarding which organization(s) will conduct each investigation covered by paragraph 4 above.

c. All allegations of contract or procurement fraud covered by paragraph 4 above, received or developed by any DCIO will be forwarded within 72 hours of receipt to the appropriate RMT for a determination of which organization(s) will conduct the investigation. In addition, copies of all case initiation forms related to investigations covered by the provisions of this guidance will be provided to RMT members within 72 hours of initiation.

d. The DCIOs shall not open inquiries, preliminary investigations, or criminal intelligence files or make presentations to any prosecutive authorities regarding such allegations prior to forwarding the allegations to the appropriate RMT for determination of which DCIO(s) will investigate the allegations. Under exigent circumstances, a prosecutor may be consulted prior to referral to the RMT; however, the circumstances will be explained in detail and documented for the RMT should such action be taken.

e. The provisions of paragraphs 8 and 9 below, will be used by the RMT in determining which DCIO(s) will conduct the investigation.

f. Decisions reached by the RMT shall be made by consensus in applying the criteria provided in this guidance. In no case shall the decision be reached by a majority rule "vote."

g. A good faith effort will be made to resolve disputes at the local level. Disputes that cannot be resolved at that level will be resolved in accordance with paragraph 10 below.

h. The RMTs will hold, as a minimum, quarterly meetings in person to discuss issues of mutual interest.

7. Sensitive Compartmented Information (SCI) and Special Access Program (SAP) Fraud Investigations. Investigations of fraud allegations involving SCI and SAPs will be coordinated as follows:

a. The AMT will resolve jurisdictional issues for any investigation under paragraph 4 above involving SCI. The AMT representative of each DCIO shall possess the necessary level of clearances to participate in SCI matters.

b. The DoDD-O-5205.7, "Special Access Program (SAP) Policy," January 13, 1997, requires all instances of suspected fraud or corruption to be reported through appropriately cleared channels to the investigative organization designated in DoD Instruction 5505.2, "Criminal Investigations of Fraud Offenses," July 16, 1990. DoDD-O-5205.7 further requires that the DoD components report instances of suspected fraud to the IG, DoD. The DCIO responsible for providing investigative support to any SAP shall conduct such fraud investigations without referral to any RMT. However, the IG, DoD, must be advised, through DCIS Special Operations Program, of the initiation of any fraud investigation related to a SAP. As previously provided, the IG, DoD, may join any such investigation.

8. Joint Investigation Factors. Joint investigations may be considered under the following circumstances:

a. the alleged fraud involves and impacts substantially on the funding, programs, property or personnel (as subjects) of more than one DoD component;

b. the nature of the investigation requires the commitment of more resources than a single DCIO can reasonably provide to the investigation;

c. the DCIO will provide sufficient resources to actively contribute to the investigative team;

d. participation by more than one DCIO is required by DoD level policy or memorandum of understanding applicable to the circumstances of the case;

e. when an investigation of a TRICARE provider on a military installation raises quality of care issues;

f. the matter being investigated is considered to be of such importance to a Military Department that participation by more than one DCIO may avoid any appearance of lack of independence or possible command influence; and

g. the IG, DoD, has the authority to determine that any investigation will be conducted jointly or that the DCIS will be a joint participant in any joint investigation with any other DCIO(s).

9. Joint Investigation Operational Guidelines. When a joint investigation is appropriate under paragraph 8 above, the following guidelines will apply:

a. Substantive Activities Required. All DCIOs participating in the joint investigation will supply personnel to perform substantive and regular investigative activities in furtherance of the case. Failure to do so will result in termination of further joint participation of that DCIO. Every effort shall be made at the local RMT level to resolve the resource issue. If the resource issue cannot be resolved at the local level, the procedures in paragraph 10 below will be followed.

b. Management of Joint Investigations. Agents participating in a joint investigation will form an Investigative Management Team (IMT). The IMT and respective field managers will mutually agree on and be responsible for the overall management and direction of investigations, including case administration, reporting, and liaison with prospective prosecutors. The IMT has the responsibility for identifying investigative requirements and coordinating completion of investigative tasks, which may include the following:

(1) Notifying the centralized points of coordination for the affected DoD components and ensuring the centralized point of coordination is provided timely and all information needed to implement, update or revise a remedies plan.

(2) Originating and processing requests for electronic surveillance, search warrants, and similar investigative techniques requiring approval outside the DCIO.

(3) Establishing the format for preparation of reports of investigation, memoranda for record, memoranda of interview, witness statements and other related documentation.

(4) Reporting investigative outcomes for inclusion in the IG, DoD, Semiannual Report to the Congress in a timely and accurate fashion and any other required reporting (e.g., under National or Defense Incident Based Reporting Systems).

(5) Making formal and informal presentations of the case for prosecutive (civil and criminal) determinations.

(6) Preparing and submitting any referrals to the IG, DoD, for application of the Program Fraud Civil Remedies Act.

10. Resolving Disputes.

a. Any questions about or conflicts arising from the interpretation of this guidance, should be addressed initially by the appropriate RMT established under paragraph 5 above. Every effort should be made by the RMTs and senior field managers to resolve issues at the lowest level possible. Disputes will be handled by the AMT only after exhaustive efforts to resolve the issues at the local level.

b. The headquarters level AMT shall be responsible for resolving jurisdictional issues that cannot be resolved by the senior field managers. The members of this group shall be managers with co-equal authority to make binding decisions

c. Issues unresolved by the AMT will be brought to the attention of the DCIO commanders/directors. If the commanders/directors cannot resolve the dispute, the matter will be referred to the IG, DoD, for resolution.

11. Notice for Referrals Outside DoD. Allegations of fraud involving any programs, operations or personnel of the DoD shall not be referred to an investigative organization outside the DoD without prior notice to the IG, DoD, unless the referral is required by provisions of DoD Directive 5525.7, Implementation of the Memorandum of Understanding Between the Department of Justice and the Department of Defense Relating to the Investigation and Prosecution of Certain Crimes, January 22, 1985, or is otherwise specifically required by statute or regulation.

12. Delegations of Authority. With the exception of decisions regarding appeals to the IG, DoD, under paragraph 10 above, all authorities reserved to the IG, DoD, in this guidance may be delegated to such officials as the IG, DoD, deems appropriate.