

DEPARTMENT OF THE ARMY
ST. LOUIS DISTRICT, CORPS OF ENGINEERS
210 TUCKER BLVD. NORTH
ST. LOUIS, MISSOURI 63101-1986

CELMS-OC

Regulation
No. 27-1-3

31 January 1989

Legal Services
PROCUREMENT FRAUD AND IRREGULARITIES PROGRAM

1. PURPOSE. This regulation establishes standardized procedures for a Procurement Fraud and Irregularities (PFI) Program.
2. APPLICABILITY. This regulation is applicable to all elements of the St. Louis District.
3. REFERENCE.
 - a. Department of Defense Federal Acquisition Regulation Supplement (DFARS) 9.472-2, 6 June 1986.
 - b. Army Federal Acquisition Regulation Supplement (AFARS) 9.472-2, 1 April 1988.
 - c. Army Regulation (AR) 27-40, 2 December 1987.
 - d. Engineer Circular (EC) 27-1-3, 1 May 1988.
4. POLICY.
 - a. Handling procurement fraud requires a multidisciplinary approach. Procurement fraud is a crime affecting the St. Louis District. District personnel act as a team to support the Command in the identification and handling of fraud cases.
 - b. Procurement Fraud Coordinating Committees serve as effective vehicles for implementing a fraud abatement program. Such committees should be composed of designated points of contact at each major organization within the District. Where organizations have designated points of contact with responsibility for fraud matters, communication is enhanced. First, personnel know where to obtain information; inquiries are not shuffled from office to office. Second, it is not necessary to sell people on the importance of the program with every new case; a designated point of contact should be aware of its importance. Third, personnel who work continuously with the Procurement Fraud Program gain the experience to take swift and effective action.

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c. It is the duty of District personnel to report instances of suspected procurement fraud to the appropriate individuals as identified herein. District personnel reporting such instances may be considered for monetary awards in keeping with applicable regulations if procurement fraud cases are successfully concluded on behalf of the Government.

5. SCOPE.

a. The Procurement Fraud Advisor (PFA) is an attorney appointed by the St. Louis District Counsel. The PFA will be responsible for management, supervision, and operation of the Procurement Fraud Program. The PFA has staff responsibility and is the Commander's Advisor on how to handle a procurement fraud case at the District level. PFAs will have a working knowledge of procurement law, criminal law, civil litigation, and familiarity with the relationship between various Government agencies in the acquisition and white collar crime areas. Formal training in these areas may be substituted with documented previous experience. Specialized advanced training to enhance/refine individual experts is encouraged and will be part of that person's Individual Development Plan (IDP). PFAs should avail themselves of technical in-house training.

b. Cases of procurement fraud will be handled expeditiously on all levels: Civil, criminal, administrative, and contractual. The PFA will telephonically advise the LMVD PFA and USACE PFI Coordinator and HQDA (DAJA-PF) of significant case developments at the earliest practical opportunity after appropriate coordination within the District. An effective working relationship is necessary between PFAs and all major organizations, particularly investigators, U.S. Attorneys, and auditors. Memoranda of Understanding may be executed where appropriate between these organizations and PFAs but they must be approved by PFI Coordinators.

c. Cases of procurement fraud will be initiated on an informal or formal basis. In the former instance, cases will arise based on information developed within the District; in the latter instance, initial development will occur outside the District. District Command responsibility will necessarily be greatest under informal cases in reaching decisions on the processing of such cases. Under formal case initiation, Command responsibility will be limited insofar as decision-making is reactive to information from outside sources. In either event, the Commander retains responsibility as District Engineer and/or Contracting Officer when administrative or contractual actions are required in response to a procurement fraud case.

6. PROCUREMENT FRAUD ADVISOR RESPONSIBILITIES.

a. Case Management -- Sources of Information for Initiation.

(1) Informal.

(a) Reports from persons or organizations within the Command, e.g., Procurement/Contracting Office, Construction Division, Engineering Division, Internal Review.

(b) Whistleblowers (either Government or Contractor).

(2) Formal.

(a) Reports from investigative agencies, such as the Defense Criminal Investigative Service, U. S. Army Criminal Investigation Command (USACIDC), or the Federal Bureau of Investigation (FBI).

(b) Reports from auditing agencies, such as the Army Auditing Agency, the Defense Contract Audit Agency, or the Government Accounting Office (GAO).

(c) Inquiries from higher headquarters.

b. Informal Case Management Initiation Procedures:

(1) Information from informal sources should be reduced to writing, either by the sources or by the PFA, with as much specificity as possible. At a minimum, that information should include that necessary to prepare a Procurement Flash Report when appropriate. (See AR 27-40, Chapter 8.)

(2) Information should be assessed to determine whether there are any violations of statute, regulation, policy, or contractual obligations as expeditiously as possible. The PFA will advise the Commander of the information in order to reach a Command decision on the disposition of the matter.

(3) If referral to USACIDC due to criminal violations is not warranted after Command review, the PFA will document the file outlining the reasons why referral is unwarranted.

(4) If referral to USACIDC is warranted, after Command review, the PFA will:

(a) Continue to advise the District Commander and/or Contracting Officer of the status of any investigation, Case Management Team recommendations, reports, remedies, etc., as needed.

(b) Forward assessment to USACIDC, in coordination with the District Security Office.

(c) Identify appropriate Command elements to participate in a Case Management Team.

(d) Assemble the Case Management Team (including the investigative agent and the Security Office) for the purpose of discussing

procedures and determining the validity of the allegations. The Case Management Team will be headed by the PFA. The Case Management Team may include representatives, as appropriate, from --

Army Audit Agency
Civilian Personnel Office
Competition Advocate
Comptroller
U. S. Army Criminal Investigation Command
Defense Contracting Audit Agency
Defense Criminal Investigative Service
Engineering Division
Inspector General
Internal Review and Control
Contracting Division
Construction Division (Including Residency)
LMVD Resident Audit Office
Operations Division
Security Office
Small Business Administration

(e) Initiate a Procurement Flash Report simultaneously to the LMVD PFA, USACE PFI Coordinator and HQDA (DAJA-PF). (See AR 27-40, Chapter 8.)

c. Formal Case Management Initiation Procedure.

(1) Advise the District Commander as in 6.b.(4)(a) above.

(2) Information from formal sources should be assessed to determine violations of statute, regulations, policy, or contractual publications as expeditiously as possible.

(3) If criminal investigation is warranted and the matter has not yet been referred, after Command review, refer the matter to USACIDC through District Security Office, as in 6.b.(4)(b). If criminal investigation is unwarranted, refer to 6.b.(3) above.

(4) Assemble Case Management Team as in 6.b.(4)(d) above.

(5) Initiate Procurement Flash Report as 6.b.(4)(e) above.

d. Case Management -- Coordination.

(1) Initiate Remedies Plan as required by AR 27-40, Chapter 8 in any case of significant procurement fraud, as determined by the PFA in coordination with LMVD PFA and USACE PFI Coordinator.

(2) If appropriate, develop Suspension/Debarment Report in accordance with DFARS 9.472-2 and AFARS 9.472-2.

(3) Review cases at least every 30 days. Maintain contact with USACIDC on status of investigation in coordination with District Security Office.

(4) If appropriate, initiate a Civil Litigation Report. (See AR 27-40, Para. 2-4.)

(5) Following referral of the matter for civil, criminal, or administrative remedies, the PFA will assist the cognizant organization (DA, Department of Justice (DOJ), Assistant U.S. Attorney) in the pursuit of that remedy. This may include preparing pleadings discovery, motion practice, or negotiating settlement agreements. Prior to any contractual or administrative action being taken in a matter where there is a DOJ Attorney/Assistant U.S. Attorney assigned, coordination will be accomplished with the LMVD PFA, USACE PFI Coordinator, HQDA (DAJA-PF), and the DOJ Attorney/Assistant U.S. Attorney.

e. Case Management -- Reporting. Duplication of reported information shall be avoided whenever possible. A single report, incorporating the requirements of both the Suspension/Debarment Report and the Civil Litigation Report will suffice. The four primary reports are as follows:

(1) Procurement Flash Reports.

(a) Prepare in accordance with AR 27-40, Chapter 8.

(b) Copies will be simultaneously transmitted to LMVD PFA, the USACE PFI Coordinator, and DAJA-PF.

(2) DFARS 9.472-2 Report - Suspension/Debarment. Consult this paragraph of the DFARS for a list of items required in each report.

(3) AFARS 9.472-2 Report. AFARS 9.472-2 requires as additional information:

(a) The name of the investigative agency that investigated either the facts reflected in the report or the report or other aspects of the contractor's dealings with the Government.

(b) Credit and financial reports on the contracts which are available, such as those produced by Dun and Bradstreet, Inc., to include the Duns number.

(c) One copy each should be sent simultaneously to LMVD PFA, the USACE PFI Coordinator, and HQDA (DAJA-PF). One copy is to be retained by the PFA and made available to the other Command elements as necessary.

(4) Civil Litigation Report. See paragraph 2-4 of AR 27-40 for contents of Civil Litigation Report. The PFA will include draft pleadings to assist in the initiation of action. The USACE PFI Coordinator may be contacted for assistance in these matters. PFAs should ensure that the USACE

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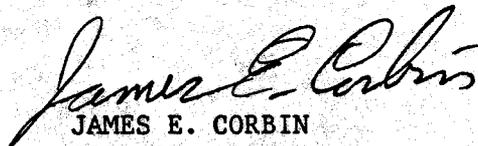
Coordinator is informed of contract related matters which may affect ongoing fraud investigation and/or civil actions to include:

- (a) Protests.
- (b) Novations.
- (c) Motions before the ASBCA or ENGBCA.
- (d) Pending contract claims.
- (e) Bankruptcy.
- (f) Terminations for default/unsatisfactory performance ratings.

7. TRAINING AND AWARENESS.

a. Formal, annual training in procurement fraud shall be conducted for all organizational elements involved in procurement activities. This training shall be geared toward a basic understanding of procurement fraud in order to facilitate identification and PFA notification of possible procurement fraud. The PFA shall be responsible for conducting of the training. Attendance at such training shall be mandatory once every two years.

b. Additional informal awareness measures shall also be implemented, i.e., procurement fraud related articles in Command newspapers/bulletins, fraud awareness posters, or distribution of DOD IG fraud related publications by the PFA in coordination with the Public Affairs and Security Offices.


JAMES E. CORBIN
COL, CE
Commanding

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