

Report to Congress
Section 889 of the FY 2018 NDAA
Report on Defense Contracting Fraud



Office of the Under Secretary of Defense
for Acquisition and Sustainment

December 2018

1. Background

Section 889 of the National Defense Authorization Act for Fiscal Year 2018, Public Law 115-91, requires the Department of Defense (DoD) to submit a report on defense contracting fraud, not later than 180 days after the enactment of the Act. The report herein addresses the four elements required in the law, to include: 1) a summary of fraud-related criminal convictions, civil judgments, or settlements over the previous five fiscal years; 2) a listing of contractors that within the previous five fiscal years performed contracts for DoD and were debarred or suspended from Federal contracting based on a criminal conviction for fraud; 3) an assessment of the total value of the Department's contracts entered into for the previous five fiscal years with contractors that have been indicted for, settled charges of, been fined by any Federal department or agency for, or have been convicted of fraud in connection with any contract or other transaction within the Federal Government; and 4) recommendations by the DoD Inspector General or other appropriate DoD Official on how to penalize contractors repeatedly involved in fraud in connection with any contract or other transaction, including updates to Departmental implementation of any previous recommendations. The data in this report covers fiscal years 2013-2017.

The Department submitted two interim reports to congressional defense committees on this reporting requirement. The second interim, dated October 31, 2018, indicated the Department expected to submit the report by the end of the 1st quarter of FY 2019.

The Department submitted a similar report to Congress on contracting fraud on October 18, 2011, as requested in the Explanatory Statement (page 72) accompanying H.R. 3326, the Department of Defense Appropriations Act, 2010 (Public Law 111-118). The report covered a 10 year period, fiscal years 2001-2010.

2. Discussion

- a. General. DoD Instruction 7050.05, Coordination of Remedies for Fraud and Corruptions Related to Procurement Activities, provides policy to DoD in dealing with allegations of procurement fraud. Consistent with the policy, DoD Components are required to monitor, from its inception, all significant investigations of fraud and corruption related to procurement activities affecting its organization. This monitoring is designed to focus DoD Components attention on two general courses of action.

The first course of action entails a range of contractual and administrative actions that DoD Components may use to protect the Government as investigations into possible fraudulent behavior develop. These administrative and contractual actions are discretionary and should remain so. Contracting Officers and Suspension and Debarment Officials must retain the ability to engage early rather than relying upon debarments after convictions since convictions generally occur many years after the misconduct and permit too much time to pass before the Government's interest is adequately protected. For example, if the allegations appear serious, DoD Components will likely plan to acquire required goods and services from alternative sources and minimize possible lost time should the allegations be proven. Even before allegations of fraud are fully investigated and prosecuted, DoD Components have a limited ability to take immediate action with the contractor (subject to the concurrence of law enforcement and

prosecutors) and apply appropriate contractual remedies, such as, but not limited to, termination for default; non-award of a contract based upon the contracting officer's finding of non-responsibility; rescission of the contract; revocation of acceptance; use of contract warranties, possible withholding or offset of payments; refusal to accept non-conforming goods; denial of contractor claims, etc. In the suspension and debarment context, prior to any conviction, it is often possible to engage with the contractor either with a show cause action, suspension, or proposed debarment and, through these processes, work with the contractor to ensure that the Government is protected in any future dealings with the contractor.

The second course of action involves criminal and civil remedies for contractor misconduct. Holding contractors accountable civilly and criminally for fraud falls solely under the purview of the Department of Justice (DoJ) (e.g., Contract Disputes Act of 1978; Executive Order 6166, dated June 10, 1933). As such, DoD Components generally refer fraud matters to the DoJ to initiate cases, when appropriate, and work with the DoJ to assist in prosecuting these cases.

A criminal conviction often results in a debarment but not automatically. Suspension and debarment are not considered punishments (see Federal Acquisition Regulation (FAR) Subpart 9.402) but are actions taken to protect the Government in future contracting actions when the contracting officer makes a separate determination with regard to present responsibility. Contractors suspended, proposed for debarment or debarred are precluded from receiving future contract awards or extensions absent agency findings of compelling reasons. In appropriate circumstances, the agency may enter into an Administrative Compliance Agreement with a convicted contractor in lieu of a suspension or debarment. Administrative agreements require the contractor to adequately address and correct the underlying conditions that form the basis of a potential exclusion from contracting and take any additional steps necessary to demonstrate the contractor's present responsibility through measures such as implementation of codes of ethical conduct, employee training, and measures such as independent oversight through a monitor or ombudsman to ensure long term correction of conduct or performance issues and help ensure present responsibility in future actions.

While the Government needs protection from contractors found to be not responsible during the period of their suspension or debarment, it should be noted that after those periods expire, contractors return to eligibility and are, generally, considered responsible like any other contractor. This is, of course, subject to the contracting officer's separate, and independent determination of responsibility under FAR Subpart 9.1, wherein the original misconduct may remain a factor.

- b. Summary of fraud-related criminal convictions over the previous five fiscal years: During the five year reporting period, there were 1,059 cases resulting in a criminal conviction of 1,087 defendants. The cases reported involved 678 defendants as individual persons and 409 defendants as business entities. As a result of the criminal convictions, a total of \$368,670,055 was recovered in fines and penalties; \$370,194,702 was recovered through restitution; and \$53,361,358 was recovered through forfeiture of property.

- c. Summary of fraud-related civil judgments or settlements over the previous five fiscal years: During the five year reporting period, there were 443 cases resulting in civil judgments or settlements involving 546 defendants or respondents. The cases reported involved 111 individual persons and 435 business entities subject to civil judgments or settlements. A total of \$5,858,180,290 was recovered in civil judgments and settlements.
- d. Listing of contractors that, within the previous five fiscal years, performed contracts for DoD and were debarred or suspended from Federal contracting based on a criminal conviction for fraud: During the five year reporting period, there were 9 contractor entities that were identified falling into this category, performing 469 contract actions with a net contract value of negative (-) \$1,529,965.73, as a result of contract terminations and de-obligations following criminal conviction. The following are a listing of the identified contractors:
- 1) Advanced Solutions for Tomorrow, Inc.
 - 2) B&J Multi Service Corporation
 - 3) Matthews Manufacturing, Inc.
 - 4) Nova Datacom, LLC
 - 5) NP Precision, Inc.
 - 6) Quantell, Inc.
 - 7) Tab Construction Company, Inc.
 - 8) Megabyte Electronics, Inc.
 - 9) Skedco, Inc.
- e. Assessment of the total value of the Department's contracts entered into for the previous five fiscal years with contractors that have been indicted for, settled charges of, been fined by any Federal department or agency for, or have been convicted of fraud in connection with any contract or other transaction within the Federal Government: The total number of individuals or entities indicted for, settled charges of, been fined by any Federal department or agency for, or have been convicted of procurement fraud, involved 168 contractors. The total number of contract actions is 15,963,513 with a total value of contract obligations equal to \$334,305,246,152. Of the total number of contract actions, 94 percent are from one business entity, while 76 percent of the total contract obligations are from two major defense companies. The remaining 165 contractors accounted for 4 percent of the total contract actions and 24 percent of the total contract obligations.
- f. Recommendations by the Department's Inspector General, or appropriate Department of Defense Official, on how to penalize contractors repeatedly involved in fraud in connection with contracts or other transactions, including updates to previous recommendations that have been implemented by the Department: As a result of its criminal investigations, the DoD Office of Inspector General (DoD OIG) does not recommend specific penalties for contractors involved in fraud on contracts or other transactions. However, DoD OIG audit and evaluation reports have consistently made recommendations seeking refunds for contract overpayments; identifying needs to renegotiate contracts to receive best value; improving competition where found lacking; identifying whether the DoD received fair and reasonable pricing of parts; and addressing suspension and disbarment, as appropriate. DoD OIG audit and evaluation reports that

find inappropriate actions on the part of DoD employees may also recommend that management “consider all appropriate administrative remedies available.”

In addition, the DoD OIG’s Defense Criminal Investigative Service (DCIS) conducts criminal investigations related to DoD programs and operations. DCIS refers allegations of alleged fraud to the DoJ and United States Attorney’s Offices (USAOs) for potential criminal prosecution or civil litigation. The DoJ and USAOs determine penalties for cases that resolve through plea or settlement and the judicial branch determines penalties for cases that proceed to trial. When appropriate, DCIS also provides suspension and department officials the results of investigations for action they deem appropriate.

3. Methodology

In developing this report, the DoJ – Criminal and Civil Divisions, DoD OIG Defense Criminal Investigative Service (DCIS) and the military department equivalent investigative authorities, provided a listing of business entities and individuals identified as a legal party in fraud-related criminal convictions and civil judgments or settlements over the previous five fiscal years.

In order to further analyze the impact the fraud-related criminal convictions and civil judgments or settlements on Defense contracts, the Department utilized data from the System for Award Management, the Federal Procurement Data System – Next Generation, the Past Performance Information Retrieval System, and the Federal Awardee Performance and Integrity Information System.

In order to ascertain any recommendations provided by the DoD OIG, or appropriate Department of Defense Official, regarding how to penalize contractors repeatedly involved in procurement related fraud, the Department conducted a search of DoD OIG reports at <http://www.dodig.mil/reports.html/> and included relevant information in this report.

The DoD-wide Procurement Fraud Working Group also performed a technical review and coordinated on this report. The DoD-wide Procurement Fraud Working Group was established in January 2005 to develop a closer working relationship among the relevant DoD activities and agencies involved in the identification, investigation, and prosecution of contractor fraud. Specifically, the DoD-wide Procurement Fraud Working Group provides a forum of information exchange, legislative/policy development, and continuing education with regard to current issues, future national trends, investigative strategies, appropriate remedies and enforcement problems in the procurement fraud arena.

The DoD-wide Procurement Fraud Working Group includes representatives of the Office of the Secretary of Defense, Departments of the Army, Navy, and Air Force, the DoD Office of the Inspector General, the Defense Contract Audit Agency, the Defense Contract Management Agency, the Defense Logistics Agency, the Defense Security Service, the Department of Justice, the National Aeronautics and Space Agency, the Special Inspector General for Afghanistan Reconstruction and others.



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MAY 08 2019

Ref: 19-F-0581

Steven Aftergood
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Dear Mr. Aftergood:

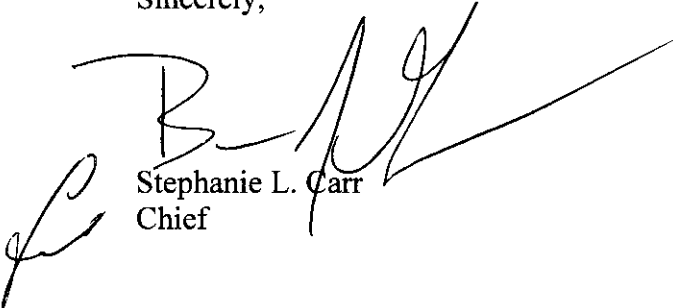
This is the final response to your January 11, 2019 Freedom of Information Act (FOIA) request, a copy of which is enclosed for your convenience. We received your request on January 11, 2019, and assigned it case number 19-F-0581. We ask that you use this number when referring to your request.

The Under Secretary of Defense for Acquisition and Sustainment, a component of the Office of the Secretary of Defense (OSD), conducted a search of their records systems and located one document, totaling 11 pages, determined to be responsive to your request. This information is appropriate for release in its entirety, without excision.

This constitutes a full grant of your request, and closes your case file in this office. There are no assessable fees associated with this response.

I trust that this information fully satisfies your request. If you need further assistance or would like to discuss any aspect of your request, please do not hesitate to contact the Action Officer assigned to your request, Bethlehem Addis, at bethlehem.addis.civ@mail.mil or (571) 372-0424. Our FOIA Public Liaison is also available to assist you and may be reached at (571) 372-0462.

Sincerely,


Stephanie L. Carr
Chief

Enclosures:
As stated