

**BY ORDER OF THE  
SECRETARY OF THE AIR FORCE**



**DEPARTMENT OF THE AIR FORCE  
INSTRUCTION 51-1101**

**4 OCTOBER 2021**

**AIR FORCE MATERIEL COMMAND  
Supplement**

**10 OCTOBER 2023**

**Law**

**ACQUISITION INTEGRITY PROGRAM**

**COMPLIANCE WITH THIS PUBLICATION IS MANDATORY**

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**ACCESSIBILITY:** Publications and forms are available on the E-Publishing website at [www.e-Publishing.af.mil](http://www.e-Publishing.af.mil) for downloading or ordering

**RELEASABILITY:** There are no releasability restrictions on this publication

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OPR: SAF/GCR

Certified by: SAF/GC  
(Mr. Craig Smith)

Supersedes: AFI51-1101, 19 October 2017

Pages: 21

**(AFMC)**

OPR: USAF AFMCLO/CL

Certified by: USAF AFMCLO/CL  
(Mr. Thomas F. Doyon)

Supersedes: AFI5101101\_AFMCSUP, 26 June 2019

Pages: 2

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This instruction implements Department of the Air Force Policy Directive (DAFPD) 51-11, *Remedies for Fraud and Corruption Affecting Procurement and Nonprocurement Transactions*, by providing guidance for pursuing remedies in significant fraud and corruption cases affecting procurement and nonprocurement transactions, and related matters. It provides guidance and additional responsibilities pertaining to Department of Defense Instruction (DoDI) 7050.05, *Coordination of Remedies for Fraud and Corruption Related to Procurement Activities*; and Department of Defense Directive (DoDD) 5405.2, *Release of Official Information in Litigation and Testimony by DoD Personnel as Witnesses*. It conforms to Department of the Air Force Instruction (DAFI) 23-101, *Materiel Management Policy*, and to DAFI 51-301, *Civil Litigation*, and supports the implementation of Public Law (PL) 112-239, Section 861, *Requirements and Limitations for Suspension and Debarment Officials of the Department of Defense*, the Department of State, and the United States Agency for International Development, Subpart 9.4 of the Federal Acquisition Regulation (FAR), Debarment, Suspension and Ineligibility, and Title 2 of the *Code of Federal Regulations* (CFR), Part 1125, *Nonprocurement Debarment and Suspension*. In the

event an Air Force matter arises under DoDD 5505.5, *Implementation of the Program Fraud Civil Remedies Act*, the Air Force General Counsel's Office will consult with the Office of the Secretary of Defense to ensure Air Force implementation conforms with the most current policy guidance at that time. This publication applies to the United States Space Force, regular Air Force, the Air Force Reserve, and the Air National Guard. The authorities to waive wing/unit level requirements in this publication are identified with a tier ("T-0, T-1, T-2, T-3") number following the compliance statement. Compliance with the attachments in this publication is not mandatory.

See DAFI 33-360, *Publications and Form Management*, for a description of the authorities associated with the tier numbers. Submit requests for waivers through the chain of command to the appropriate tier waiver approval authority, or alternately, to the requester's commander for non-tiered compliance items. Refer recommended changes and questions about this publication to the Office of the Deputy General Counsel of the Air Force, Contractor Responsibility & Conflict Resolution (SAF/GCR) using Air Force Form 847, Recommendation for Change of Publication; route Air Force Form 847 from the field through the appropriate functional chain of command. This publication may be supplemented at any level, but all supplements must be routed to the office of primary responsibility listed above for coordination prior to certification and approval.

This instruction requires the collection and or maintenance of information protected by the Privacy Act of 1974 authorized by DoDD 5400.11, DoD Privacy Program. The applicable SORN F071 AF OSI D, Investigative Information Management System is available at <http://dpcl.o.defense.gov/Privacy/SORNs.aspx>. Ensure that all records created as a result of processes prescribed in this publication are maintained in accordance with DAFI 33-322, *Records Management and Information Governance Program*, and disposed of in accordance with the Air Force Records Disposition Schedule, which is located in the Air Force Records Information Management System.

**(AFMC)** This supplement sets out the specific roles and responsibilities of the Procurement Fraud Law Division of the Air Force Materiel Command Law Office (AFMCLO/JAF) as contemplated by DAFI 51-1101, paragraphs 1.6.3, 1.6.4, 1.7.1 and 1.7.2. As such, this supplement implements AFMC policy of a centralized organizational legal structure to address the Command's unique acquisition mission and thereby the inherent risk of substantial loss due to procurement fraud. AFMCLO/JAF's centralization herein increases the Command's ability to leverage specialized legal expertise in significant dollar, highly complex systems/sustainment contract fraud cases, coordinate with outside agencies, advocate for and structure resolutions that preserve AFMC prerogatives. This does not apply to the Air National Guard, Air Force Reserve, or United States Space Force. Ensure that all records created as a result of processes prescribed in this publication are maintained IAW AFI 33-322, *Records Management and Information Governance Program*, and disposed of IAW Air Force Records Information Management System Records Disposition Schedule. Refer recommended changes and questions about this publication to OPR using the DAF Form 847, *Recommendation for Change of Publication*; route DAF Forms 847 from the field through the appropriate functional chain of command. This publication may be supplemented at any level, but all Supplements must be routed to the OPR of this publication for coordination prior to certification and approval. Submit requests for waivers through the chain of command to the appropriate Tier waiver approval authority, or alternately, to the Publication OPR for non-tiered compliance items.

***SUMMARY OF CHANGES***

This document has been substantially revised and needs to be completely reviewed. Major changes include re-naming the Procurement Fraud Remedies Program as the Acquisition Integrity Program, to more accurately reflect the program's mission and improve ease of recognition by using the same naming convention used by sister programs at other agencies such as the National Aeronautical and Space Administration and the Department of the Navy. It relieves Acquisition Fraud Counsels (AFCs) of the requirement to transmit all remedies plans to SAF/GCR. It updates language to reflect application to the Space Force, adds the requirement for the Office of Special Investigations (OSI) to provide fraud recoveries data to SAF/GCR for each fiscal year, adds procedures for processing information demands and requests, removes language regarding the opening and closing of cases, and adds language regarding nonprocurement transactions.

**(AFMC)** This document has been substantially revised and needs to be completely reviewed. Major changes include: AFMC policy implementation of a centralized organizational legal structure to address the Command's unique acquisition mission and thereby the inherent risk of substantial loss due to procurement fraud; AFMCLO/JAF being responsible for providing training for all AFMC Installation Acquisition Fraud Counsel; AFMCLO/JAF AFC conducting quarterly Fraud Working Groups at AFMC installations with assistance of installation AFC; and identifies the requirements in evaluating discovery requests.

## Chapter 1

### ROLES AND RESPONSIBILITIES

#### 1.1. SAF/GCR shall.

1.1.1. Serve as the centralized organization, in accordance with DoDI 7050.05, *Coordination of Remedies for Fraud and Corruption Related to Procurement Activities*, paragraph 3a, and DAFPD 51-11, 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 Department of the Air Force (DAF).

1.1.2. Perform the centralized organization review and notification responsibilities delineated in DoDI 7050.05, *Coordination of Remedies for Fraud and Corruption Related to Procurement Activities*, Enclosure 5, for cases involving allegations of non-conforming products, defective products, product substitution and/or counterfeit materiel. SAF/GCR may request the Office of Special Investigations (OSI) agent to perform such notification responsibilities on its behalf.

1.1.3. Receive qui tam notices from the Department of Justice (DOJ) and distribute to the AFCs.

1.1.4. Establish DAF positions with respect to fraud or corruption related criminal and civil litigation, including qui tam litigation, affecting procurement and nonprocurement transactions; provide DAF recommendations to the DOJ regarding intervention and the initiation, amendment, settlement, or withdrawal of actions filed by the United States which allege fraud or corruption involving DAF procurement or nonprocurement transactions.

1.1.5. Serve as the approving DAF office for all DOJ requests for DAF witnesses, testimony and related cooperation in fraud or corruption matters involving procurement or nonprocurement transactions; serve as the approving DAF office for demands and requests from private parties in qui tam litigation in which the government declined to intervene, and for demands and requests from private parties in other fraud or corruption related litigation involving procurement or nonprocurement transactions.

1.1.6. Review remedies plans as appropriate.

1.1.7. Provide substantive resources as appropriate for AFCs, and OSI agents, to support their execution of fraud remedies related education and training pursuant to this instruction.

1.1.8. Chair the DAF Acquisition Integrity Working Group, with responsibility for improving coordination of remedies for fraud and corruption affecting DAF procurement and nonprocurement transactions. The working group is not a risk management forum.

1.1.9. Execute, through the Deputy General Counsel (SAF/GCR), the functions and authorities of the Suspending and Debarring Official for the DAF.

#### 1.2. The Office of the Judge Advocate General, Civil Law Directorate (AF/JAC) shall.

1.2.1. Coordinate as appropriate with SAF/GCR regarding the implementation of this instruction, and provide a representative to the DAF Acquisition Integrity Working Group. (T-1).

1.2.2. Designate a lead AFC in cases affecting multiple Major Commands (MAJCOMs), Field Commands (FLDCOMS), Field Operating Agencies (FOAs) or Direct Reporting Units (DRUs), and review remedies plans, as appropriate. (T-1).

1.2.3. Provide fraud remedies related education and training, as appropriate, to AFCs, OSI agents, acquisition professionals, and other program stakeholders. (T-1).

1.2.4. In coordination with the cognizant Staff Judge Advocates, exercise functional oversight of judge advocates acting as AFC (T-1).

1.2.4.1. Provide field support and advice, as needed, to AFCs. (T-1).

1.2.4.2. Liaise with AFCs and SAF/GCR and, as necessary, with DOJ, on qui tam cases. (T-1).

1.2.4.3. Advise and support, as needed, with qui tam discovery, including AFCs who receive litigation hold or document requests from DOJ attorneys or document requests from qui tam litigants. (T-1).

1.2.4.4. Provide reach back legal support to headquarters OSI and to OSI agents on fraud and corruption investigations affecting procurement and nonprocurement transactions. (T-1).

### **1.3. OSI Detachment Commanders (or equivalents) shall:**

1.3.1. Provide significant Investigative Reports, including information regarding significant developments, to AFC, with a copy to SAF/GCR, except as provided in DoDI 7050.05 paragraph 3(d)(1). (T-0).

1.3.2. Notify the AFC, AF/JAC and SAF/GCR of all cases involving allegations of non-conforming products, defective products, product substitution and counterfeit materiel, as prescribed in DoDI 7050.05, Enclosure 5. (T-0). When requested by SAF/GCR to do so on its behalf, perform the notification responsibilities delineated in DoDI 7050.05, Enclosure 5, for such cases. (T-1).

1.3.3. Receive from the Department of Defense Inspector General's Office (DoD/IG) contractor disclosures arising under *Federal Acquisition Regulation* clause 52.203-13 (See [www.DoDIg.mil/programs/CD/index.html](http://www.DoDIg.mil/programs/CD/index.html)). (T-0). Evaluate and, as appropriate, investigate such disclosures, and provide associated case notifications and support as provided in this instruction. (T-0).

1.3.4. Support AFCs in the coordination and execution of all remedies, obtaining access to evidence, the preparation of remedies plans and the formulation of recommendations regarding intervention, settlement and related litigation matters. (T-0).

1.3.5. Respond directly to requests from DOJ, DoD/IG, AF/JAC and SAF/GCR for investigative support concerning all fraud and corruption matters involving DAF procurement and nonprocurement transactions and inform the AFC. (T-0).

1.3.6. Coordinate with AFCs in preparing cases for presentation to DOJ attorneys. Present cases to DOJ attorneys jointly with AFCs when practicable. (T-0).

1.3.7. For all DAF fraud or corruption cases, or cases where the DAF has a substantial interest, promptly provide all indictments, criminal information, criminal judgments, civil complaints,

including sealed qui tam complaints, civil settlement offers and civil judgements from DOJ to SAF/GCR and the cognizant AFC. (T-1).

1.3.8. Assist AFCs in providing fraud remedies related education and training. (T-1).

1.3.9. Provide, through headquarters OSI to AF/JAC and SAF/GCR, data pertaining to the recoveries achieved from all fraud and corruption cases affecting DAF procurement and nonprocurement transactions, including recoveries achieved through contractual remedies (i.e., recoveries achieved outside of litigation), for the preceding fiscal year, on an annual basis, not later than 15 November of each year. (T-1).

**1.4. MAJCOM, FLDCOM, FOA, DRU and Installation Commanders (or civilian equivalents) shall:**

1.4.1. Ensure appropriate personnel under their command receive fraud remedies related education and training. Such education and training are provided by the servicing Staff Judge Advocate's office. (T-2).

1.4.1. (AFMC) AFMCLO/JAF Acquisition Fraud Counsel (AFC) will assist in providing necessary procurement fraud training for appropriate personnel at AFMC installations.

1.4.2. Provide OSI full testing support to completely identify the non-conforming or defective nature of suspect products, as required by DoDI 7050.05, *Coordination of Remedies for Fraud and Corruption Related to Procurement Activities*, Enclosure 5. (T-0).

**1.5. MAJCOM, FLDCOM, FOA, DRU and Installation Staff Judge Advocates shall:**

1.5.1. Appoint an AFC in writing. (T-1).

1.5.1. (AFMC) In order to ensure continuity in fraud cases that often span several years, Staff Judge Advocates should appoint civilian attorneys to fulfill the role of Acquisition Fraud Counsel (AFC) whenever practicable, with their AFC duties included in their performance plan.

1.5.2. Ensure AFCs receive fraud remedies education and training. (T-1).

1.5.2. (AFMC) AFMCLO/JAF Acquisition Fraud Counsel will assist in providing necessary procurement fraud training for AFMC Installation Acquisition Fraud Counsel.

**1.6. MAJCOM, FLDCOM, FOA and DRU AFCs shall:**

1.6.1. Coordinate with Staff Judge Advocates and AFCs within their respective commands in accordance with command procedures. (T-1).

1.6.2. Provide fraud remedies related education and training for appropriate MAJCOM, FLDCOM, FOA and DRU personnel. (T-1).

1.6.3. (Added-AFMC) Within AFMC, also perform the responsibilities in [paragraph 1.7.2](#).

1.6.4. (Added-AFMC) The AFMCLO/JAF Division Chief shall assign a JAF Acquisition Fraud Counsel to work with each AFMC installation. With allowances for imbalances in workloads or extended absences, that AFMC AFC shall perform the responsibilities in [paragraph 1.7.2](#) for significant fraud cases that occur at their assigned AFMC installation. AFMCLO/JAF shall be responsible for all significant fraud cases occurring at AFMC installations, cases that relate to AFMC contracts, or cases that involve AFMC funds.

AFMCLO/JAF shall also maintain statistics reflecting the impact of fraud remedies on the Command.

**1.7. Installation AFCs shall:**

1.7.1. Coordinate with and provide advice and support to MAJCOM, FLDCOM, FOA, and DRU AFCs, in accordance with command procedures. (T-2).

1.7.1. (AFMC) AFMC Installation Fraud Counsel shall:

1.7.1.1. (Added-AFMC) Shall coordinate with and provide local support to the AFMCLO/JAF assigned AFC, from case inception to case resolution, including locating documents, arranging witness interviews, and assisting with the discovery and litigation process as requested.

1.7.1.2. (Added-AFMC) Assist the AFMCLO/JAF AFC in organizing quarterly Fraud Working Groups, ancillary training, and office courtesy calls.

1.7.1.3. (Added-AFMC) Provide assistance to base-level AFOSI on fraud investigations that are not significant fraud cases as defined in [Attachment 1](#).

1.7.2. Also perform the following responsibilities, unless the superior MAJCOM, FLDCOM, FOA, or DRU Staff Judge Advocate withholds such responsibility:

1.7.2. (AFMC) AFMCLO/JAF Fraud Counsel will perform the following responsibilities:

1.7.2.1. Receive and evaluate significant investigative reports and other relevant case documentation from OSI, and qui tam notices from SAF/GCR through AF/JAC, and execute case processing in accordance with this instruction. (T-2).

1.7.2.2. Coordinate with and provide advice and support to all case stakeholders in coordination with AF/JAC, including SAF/GCR, OSI, DOJ, the Defense Contract Management Agency, the Defense Contract Audit Agency, and the program management office and the contracting office for the affected contract, from case inception to case closure. (T-2).

1.7.2.3. Provide fraud remedies related education and training for appropriate Installation personnel. (T-2).

1.7.2.4. (Added-AFMC) Prepare legal proof analysis to assist OSI in procuring necessary evidence and to assist DOJ/Assistant United States Attorney in evaluating case and preparing for trial.

1.7.2.5. (Added-AFMC) AFMCLO/JAF AFC shall conduct quarterly Fraud Working Groups at AFMC installations with the assistance of installation AFC.

1.7.2.6. (Added-AFMC) Ensure safety and readiness issues are communicated to SAF/GCR, in coordination with AF/JAC's Acquisition Integrity Branch, for action in accordance with DoDI 7050.05, *Coordination of Remedies for Fraud and Corruption Related to Procurement Activities*.

1.7.2.7. (Added-AFMC) AFMCLO/JAF AFC shall prepare Present Responsibility Determination requests for consideration by SAF/GCR, in coordination with AF/JAC's Acquisition Integrity Branch, in appropriate cases.



1.7.2.8. **(Added-AFMC)** AFMCLO/JAF AFC shall perform the AFC duties as set forth in **Chapter 2** CASE PROCESSING with the assistance of AFMC Installation AFC as needed.

**1.8. Chiefs of the Contracting Office (see Attachment 1) shall:**

1.8.1. Ensure personnel under their supervision receive fraud remedies related education and training. Such education and training is provided by the office of the servicing Staff Judge Advocate. (T-2).

1.8.1. **(AFMC)** AFMCLO/JAF AFC will assist in providing necessary procurement fraud training for AFMC contracting personnel in conjunction with quarterly Fraud Working Groups.

1.8.2. Ensure personnel under their supervision proactively refer fraud indicators to OSI and the AFC, and support OSI and the AFC in the pursuit of all remedies to the extent practicable and appropriate. (T-1).

1.8.3. Assist commanders in ensuring the provision to OSI of full testing support to completely identify the non-conforming or defective nature of suspect products. Support cognizant program officials, as appropriate, in ensuring the concerned procurement program will bear all reasonable costs associated with such support, as required by DoDI 7050.05, Enclosure 5. (T-0).

1.8.4. Ensure Air Force Visual Aid 51-1, Fraud Indicators Poster, is posted in an appropriate location within the contracting office. (T-3).

1.8.5. Support AFC and cognizant program officials in identifying and making available, as appropriate, program funds in order to support litigation requirements of affected programs (e.g., production of documents and witnesses). (T-3).



## Chapter 2

### CASE PROCESSING

#### 2.1. General.

2.1.1. Substantive resources regarding procurement fraud remedies, including the Air Force Procurement Fraud Remedies Guidebook, can be found at the SAF/GCR intranet site on the Air Force Portal at <https://www.my.af.mil>.

2.1.2. AFCs may use the Contractor Responsibility Information System software tool to assist with case processing in accordance with this chapter. The software tool may be accessed at <https://www.cris.hq.af.mil>.

2.1.3. AFCs shall coordinate with and provide support, as appropriate, to all case stakeholders in coordination with AF/JAC, including SAF/GCR, OSI, DOJ, the Defense Contract Management Agency, the Defense Contract Audit Agency, and the program management office and the contracting office for the affected contract or instrument, from case inception to case resolution. (T-1).

##### 2.1.4. Case Inception.

2.1.4.1. When the AFC becomes aware of a significant investigation as defined in this instruction, the AFC shall develop an initial remedies plan as required by DoDI 7050.05, *Coordination of Remedies for Fraud and Corruption Related to Procurement Activities*, Enclosure 2, paragraphs 3(f) and (g). (T-0). A remedies plan template can be found at [Attachment 2](#); it is only a template and its precise use is not required in all cases. A remedies plan may also be developed for investigations involving nonprocurement transactions.

2.1.4.2. When a case affects multiple MAJCOMs, FLDCOMs, FOAs or DRUs, the AFC should proactively communicate and collaborate with the AFC of other affected activities to determine a reasonable method for case coordination, to include consensus designation of an appropriate lead AFC. Lead counsel may be the counsel whose installation or activity has the greatest financial equity or greatest command interest in the matter under investigation, although other considerations may be pertinent as well. AFC may also request in writing that AF/JAC designate a lead AFC in a particular case.

##### 2.1.5. Case Updates.

###### 2.1.5.1. AFCs shall:

2.1.5.1.1. Promptly inform AF/JAC of significant case developments when they occur and, if requested, provide a copy of the remedies plan to SAF/GCR. (T-1). AF/JAC shall promptly provide updates and, if requested, remedies plans, to SAF/GCR. (T-1).

2.1.5.1.2. Update the remedies plan as appropriate, to include identifying and documenting adverse mission impacts, and preparing agency victim impact statements. (See DoDI 7050.05, *Coordination of Remedies for Fraud and Corruption Related to Procurement Activities*, Encl. 2, paragraph 3(g) and Encl. 5, paragraph 2(d)). (T-0).

##### 2.1.6. Case Remedies.

2.1.6.1. AFCs shall:

2.1.6.1.1. Follow the procedures at DoDI 7050.05, *Coordination of Remedies for Fraud and Corruption Related to Procurement Activities*, paragraph 3c, when pursuing contractual or administrative remedies (e.g., suspension or debarment) prior to the resolution of ongoing litigation, or prior to the commencement of litigation but during an ongoing DOJ investigation. (T-0).

2.1.6.1.2. Promptly inform AF/JAC and the cognizant OSI agent of any remedies and recoveries achieved, to include contractual remedies executed by the contracting officer (including non-monetary remedies) and the transmittal of funds to either the Air Force, the Space Force or the US Treasury as a consequence of case settlement or other resolution. AF/JAC shall inform SAF/GCR of any remedies and recoveries. (T-0).

**2.2. Special Considerations Regarding Litigation.**

2.2.1. AFCs shall:

2.2.1.1. Provide through AF/JAC, at appropriate litigation milestones or upon request by SAF/GCR, written analyses and recommendations concerning fraud and corruption related litigation involving procurement or nonprocurement transactions affecting the AFC's installation (assigned to the AFC), including with respect to intervention and settlement. Such analyses and recommendations shall assess the merits of the case and the quantification of damages, and include the input of all case stakeholders. (T-1).

2.2.1.2. Coordinate with OSI in preparing cases for presentation to DOJ attorneys. (T-1). Present cases to DOJ attorneys jointly with OSI, when practicable. (T-1).

2.2.1.3. Initiate, manage, monitor, resolve and close litigation holds throughout case processing, as appropriate. (T-1). See for reference DAFI 51-301 Chapter 4. This includes qui tam litigation, qui tam litigation in which the government declined to intervene, and other fraud or corruption litigation involving procurement or nonprocurement transactions.

**2.3. Litigation demands and requests.**

2.3.1. DAF activities that receive demands or requests from private qui tam litigants, or from private litigants in other fraud or corruption related litigation affecting procurement or nonprocurement transactions, shall send such demands or requests to the AFC and to SAF/GCR. See DAFI 51-301, *Civil Litigation*, paragraphs 3.6 and 3.8, for assessment criteria for demands and requests. SAF/GCR determines 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. (T-1).

2.3.1. (AFMC) AFMCLO/JAF AFC and AFMC Installation AFC shall, in coordination with AF/JAC's Acquisition Integrity Branch, assist SAF/GCR in evaluating such discovery requests using the following guidance:

2.3.1.1. (Added-AFMC) Ensure the request is in writing and specifically identifies the nature and relevance of the information or testimony sought.

2.3.1.2. (Added-AFMC) Determine whether the request is unduly burdensome or otherwise inappropriate under the applicable court rules.

2.3.1.3. **(Added-AFMC)** Determine whether the disclosure or testimony is appropriate under the rules of procedure governing the case in which the request arose.

2.3.1.4. **(Added-AFMC)** Determine whether the disclosure or testimony would violate a statute, executive order, regulation, or directive.

2.3.1.5. **(Added-AFMC)** Determine whether the disclosure or testimony is appropriate or necessary under the relevant substantive law concerning privilege.

2.3.1.6. **(Added-AFMC)** Determine whether the disclosure or testimony would constitute an unauthorized release of classified information or controlled unclassified information.

2.3.1.7. **(Added-AFMC)** Determine whether the disclosure or testimony would interfere with or undermine an ongoing enforcement proceeding; or criminal, civil or administrative investigation; compromise constitutional rights; reveal trade secrets; or similar confidential commercial or financial information; or otherwise be inappropriate under the circumstances.

2.3.2. DAF organizations and personnel will only produce, disclose, release, comment upon, or testify concerning those matters approved by SAF/GCR in writing. (T-1).

2.3.3. DAF military and civilian 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. (T-1).

## **2.4. Special Considerations Regarding Suspension and Debarment.**

2.4.1. SAF/GCR follows the uniform procedures for suspension and debarment prescribed in FAR Subpart 9.4 and DFARS, *Defense Federal Acquisition Supplement*, current edition, Appendix H – Debarment and Suspension Procedures, and the procedures in 2 CFR § 1125, Nonprocurement Debarment and Suspension, as applicable.

2.4.2. Referrals for suspension or debarment may generally follow the guidance at DFARS, *Defense Federal Acquisition Supplement*, Procedures, Guidance and Information Subparts 209.406- 3(i) - (iv). See also *Air Force Federal Acquisition Supplement*, Subpart 5309.406-3(a).

2.4.3. The causes for suspension and debarment delineated in *Federal Acquisition Regulation* 9.4 are not exclusive to fraud or corruption. Thus, some matters may be referred to the Suspending and Debarring Official that have no connection with a fraud or corruption investigation. These matters may include, for example, instances of poor performance or nonperformance of a procurement or nonprocurement transaction (See the causes for suspension and debarment in *Federal Acquisition Regulation*, Subpart 9.4 and Title 2, *Code of Federal Regulations*, Part 1125).

2.4.4. AFC who refer a case for suspension or debarment which is also a significant procurement fraud case should ensure other procurement fraud remedies, including contractual remedies, are appropriately analyzed in a remedies plan, as required by DoDI 7050.05, *Coordination of Remedies for Fraud and Corruption Related to Procurement Activities*. (T-0). Substantive resources regarding suspension and debarment, including the Interagency Suspension and Debarment Case Law Compendium, can be found at the SAF/GCR intranet site on the Air Force Portal at <https://www.my.af.mil>.

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Acting General Counsel

(AFMC)

MR. RONALD R. RATTON, SES  
Command Counsel, Air Force Materiel Command

**Attachment 1****GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

PL 112-239, Section 861, *Requirements and Limitations for Suspension and Debarment Officials of the Department of Defense, the Department of State, and the United States Agency for International Development*, 2 January 2013

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

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

DoDI 7050.05, *Coordination of Remedies for Fraud and Corruption Related to Procurement Activities*, 7 July 2020

DAFPD 51-11, *Remedies for Fraud and Corruption Affecting Procurement and Nonprocurement Transactions*

DAFI 51-301, *Civil Litigation*, 2 October 2018

DAFI 33-322, *Records Management and Information Governance Program*, 23 March 2020

DAFI 33-360, *Publications and Forms Management*, 21 October 2020

AFVA 51-1, *Fraud Indicators Poster*, 15 September 2016

FAR 9.4, *Debarment, Suspension and Ineligibility*, 10 March 2021

FAR Clause 52.203-13, *Contractor Code of Business Ethics and Conduct*, June 2020

2 CFR § 1125, *Non-procurement Debarment and Suspension*, 26 June 2007

DFARS 209.403, *Debarment, Suspension and Ineligibility*, 23 November 2020

AFFARS 5309.4, *Debarment, Suspension, and Ineligibility*, 12 May 2021

***Prescribed Forms***

None

***Adopted Forms***

AF Form 847, *Recommendation for Change of Publication*

***Abbreviations and Acronyms***

**AF**—Air Force

**AFC**—Acquisition Fraud Counsel

**AF/JAC**—The Office of the Judge Advocate General, Civil Law Directorate

**CFR**—Code of Federal Regulations

**DAF**—Department of the Air Force, consisting of the Air Force and the Space Force

**DAFI**—Department of the Air Force Instruction

**DAFPD**—Department of the Air Force Policy Directive

**DFARS**—Defense Federal Acquisition Regulation Supplement

**DoD**—Department of Defense

**DoDD**—Department of Defense Directive

**DoD/IG**—Department of Defense Inspector General

**DOJ**—Department of Justice

**DRU**—Direct Reporting Unit

**FAR**—Federal Acquisition Regulation

**FOA**—Field Operating Agencies

**FLDCOM**—Field Commands

**MAJCOM**—Major Commands

**PL**—Public Law

**OSI**—Office of Special Investigations

**SAF/GCR**—Office of the Deputy General Counsel of the Air Force, Contractor Responsibility and Conflict Resolution

**SORN**—System of Records Notice

### *Office Symbols*

**(Added-AFMC) AFMCLO/JAF**—Air Force Materiel Command Law Office, Procurement Fraud Law Division

### *Terms*

**AFC**—A DAF attorney appointed by the Staff Judge Advocate to execute the AFC responsibilities delineated in this instruction for his or her command, installation, or program.

**Administrative Remedies**—See DoDI 7050.05, Enclosure 4.

**Chief of the 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. See AFFARS, *Air Force Federal Acquisition Regulation Supplement*, Subpart 5302.1.

**Civil Remedies**—See DoDI 7050.05, *Coordination of Remedies for Fraud and Corruption Related to Procurement Activities*, Enclosure 4.

**Contractor**—Any legal entity or individual that directly or indirectly, submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a government contract, including a contract for carriage under government or commercial bills of lading, or a subcontract under a government contract; or conducts business, or reasonably may be expected to conduct business, with the government as an agent or representative of another contractor. See *Defense Federal Regulation Supplement*, Subpart 9.403.

**Contractor Responsibility Information System**—Optional software application tool used by AFCs and SAF/GCR to comply with reporting and monitoring requirements under this instruction and DoDI, 7050.05, *Coordination of Remedies for Fraud and Corruption Related to Procurement Activities*. See <https://www.cris.hq.af.mil>.

**Contractual Remedies**—See DoDI 7050.05, *Coordination of Remedies for Fraud and Corruption Related to Procurement Activities*, Enclosure 4.

**Criminal Remedies**—See DoDI 7050.05, *Coordination of Remedies for Fraud and Corruption Related to Procurement Activities*, Enclosure 4.

**Demand**—As used in DAFI 51-1101, paragraph 2.2.2, see DAFI 51-301, paragraph 3.3.2 (an attorney or court-issued subpoena, order, or other command of a court of competent jurisdiction, or other specific authority, for testimony of Covered Personnel or for the production, disclosure, or release of Official Information).

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

**Installation**—A Department of the Air Force or Joint Base (DAF controlled), Station, Center, other fixed location, or center as designated by a MAJCOM, FLDCOM, FOA, or DRU. Examples include Joint Base Andrews, the Air Force Installation and Mission Support Center, the Air Force Installation Contracting Center, and the Space Systems Command.

**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.

**Nonprocurement transaction**—A transaction such as a grant or cooperative agreement. For further definition and explanation, see 2 CFR § 180.970(a) and 2 CFR § 180.215.

**(Added-AFMC) Present Responsibility Determination**—A recommendation submitted by AFMCLO which requests the Department of the Air Force Suspension and Debarment Official debar or suspend a contractor in accordance with Federal Acquisition Regulation (FAR) Part 9.406 and 9.407, and/or Title 2 of the Code of Federal Regulations (CFR), Part 1125, Nonprocurement Debarment and Suspension.

***Qui tam***—Suit filed under seal by a private party on behalf of the United States against an entity alleging the submission of false claims to the government in accordance with the provisions of the Civil False Claims Act (Title 31 U.S.C. Sections 3729 through 3733).

**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 DAF and to deter future incidents of fraudulent conduct. Remedies may also be initiated when nonprocurement transactions are affected.

**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. Remedies plans may also be developed when nonprocurement transactions are affected.

**Request**—As used in DAFI 51-1101 at paragraph 2.2.2, see DAFI 51-301, paragraph 3.3.7 (an informal request to interview Covered Personnel; have Covered Personnel provide a declaration,



affidavit, or testimony; or for the production, disclosure, or release of Official Information). For additional information regarding the term “Covered Personnel” in this context, see DAFI 51-301, paragraph 3.3.1.

**Significant Investigation**—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 SAF/GCR.

**Suspension and Debarment Official (SDO) for the Department of the Air Force**—The Deputy General Counsel, Contractor Responsibility and Conflict Resolution (SAF/GCR) is designated, as documented in DAFPD 51-11, as the Suspension and Debarment Official for the Department of the Air Force. See also 2 CFR § 1125.930; 2 CFR § 1125.1010 and DFARS 209.403(1); PL 112-239 (Section 861, FY13 National Defense Authorization Act). The Suspension and Debarment Official for the Department of the Air Force is the Suspension and Debarment Official for the Air Force and Space Force.

**Attachment 2****REMEDIES PLAN TEMPLATE****Figure A2.1. Remedies Plan Template.****SECTION 1. GENERAL**

1.1. NAME OF PRIMARY SUBJECT OF INVESTIGATION:

1.2. BASE PREPARING THE REMEDIES PLAN:

1.3. OSI FILE NUMBER:

**SECTION 2. ADMINISTRATIVE DATA**

2.1. Date of plan:

2.2. Status of plan:

2.3. Initial or update (if "update," include revision number):

2.3.1. Closure recommended:

2.3.1.1 If "no," suspense date for next update:

2.4. Contractor Responsibility Information System Case number:

2.5. Investigative support:

2.6. Lead investigative agency:

2.6.1. Other investigative agencies involved:

2.7. Date of most recent case report on which this plan is based:

2.8. Name and telephone number of principal case agent:

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

2.10. Government officials involved in plan preparation:

2.11. Responsible commander and office symbol:

2.12. Name, telephone number, and office symbol of AFC:

2.13. Responsible MAJCOM:

2.14. Name, telephone number, and office symbol of other government officials involved in plan preparation.

**SECTION 3. CONTRACT ADMINISTRATIVE DATA:**

- 3.1. Contract number(s):
- 3.2. Type of contract:
- 3.3. Dollar amount of contract:
- 3.4. Period of contract:
- 3.5. Phase of contract in which alleged wrongdoing took place: Contract formation / Contract performance
- 3.6. Location where alleged offense took place:
- 3.7. Contractor Commercial and Government Entity Code:
- 3.8. Audit support:
- 3.9. Audit agency involved, if any:
- 3.10. Name and telephone number of principal auditor.
- 3.11. Cases arising out of qui tam actions:
- 3.12. Is the case under seal? If so, explain what information is subject to the seal:
- 3.13. Name of relator(s):
- 3.14. Has the AFC verified with GCR which federal agency has lead for purposes of administrative remedies? If so, identify the lead agency. See Federal Acquisition Regulation 9.402(d).

**SECTION 4. ALLEGATIONS AND ADVERSE IMPACT STATEMENT**

- 4.1. Allegations (as detailed as possible):
- 4.2. Adverse impact statement:
- 4.3. Affected weapons systems or programs:
- 4.4. Is impact contractor-wide or contract specific?
- 4.5. Estimated loss:

**SECTION 5. CONTRACT REVIEW**

- 5.1. List all contract violations which support pursuit of remedies. Include citations for the contract requirements.
- 5.2. Name, telephone number, and office symbol of attorney who performed the contract review:
- 5.3. Date of contract review completion:

## SECTION 6. POTENTIALLY APPLICABLE REMEDIES

6.1. The following elements shall be supplemented by the AFC's written analysis of potentially applicable remedies, copies of relevant documentation, and any other information that may be requested by SAF/GCR. The written analysis shall indicate whether the AFC assesses a remedy to be actionable, i.e., currently supported by available evidence in light of applicable legal criteria.

6.2. Criminal remedies:

6.2.1. Name and telephone number of Assistant US Attorney (AUSA) responsible for criminal prosecution:

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

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

6.4. Did AFC accompany OSI when a criminal prosecution decision was sought from AUSA? If "no," why not?

6.5. Potential criminal violations:

☐ False Claims, 18 U.S.C. § 287

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

☐ False Statements, 18 U.S.C. § 1001

☐ Mail Fraud, 18 U.S.C. § 1341

☐ Wire Fraud, 18 U.S.C. § 1343

☐ Money Laundering, 18 U.S.C. § 1956

☐ Conspiracy to Defraud, 18 U.S.C. § 371

☐ Anti-Kickback Act, 41 U.S.C. § 8701 et seq.

☐ Bribery, Gratuities, Conflicts of Interest,

☐ Conspiracy to Defraud in Connection 18 U.S.C. §§ 201-208 with Claims, 18 U.S.C. § 286

☐ Other (Specify):

6.6. Civil remedies:

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

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

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

6.8. Did AFC accompany OSI when a civil prosecution decision was sought from AUSA? If "no," why not?

6.9. Potential civil violations:

☐ False Claims 31 U.S.C. § 3729

☐ Other (Specify):

6.10. Contractual remedies:

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

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

6.13. Identify any potentially applicable common law contract remedies:

6.14. 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:

6.15. Administrative remedies:

6.16. 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.

6.17. Identify any other viable administrative remedies. Are they being pursued? If “no,” why not?

Referrals for suspension or debarment may generally follow the guidance at DFARS PGI 209.406-3(i) - (iv). See also AFFARS 5309.406-3(a).

## **SECTION 7. MISC. COMMENTS AND INFORMATION (include copies of relevant documents)**

7.1. Indictments (identify by subject):

7.2. Convictions (identify by subject):

7.3. Criminal sentences (identify for each subject):

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

7.5. Contractual/administrative recoveries, including dollars protected by contractual remedies that may otherwise not be readily quantifiable (identify by subject, action taken, and amount):

7.6. Suspension (identify by subject):

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

7.8. Congressional inquiries:

7.9. Significant media attention:

7.10. Small business status:

7.11. Other relevant information:

**SECTION 8. REMEDIES PLAN PARTICIPANTS**

8.1. Name:

8.2. Grade:

8.3. Organization:

8.4. Telephone Number:

8.5. AFC:

8.6. Contracting Officer:

8.7. Investigating Agent:

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

[SIGNED]

8.8. AFC

8.9. Two Attachments (minimum):

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

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

**SECTION 9. MAJCOM/FLDCOM COORDINATION AND COMMENT**

9.1. MAJCOM, FLDCOM,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.