

## §516.57

as witnesses will be forwarded to the SJA of the command exercising general court-martial jurisdiction over the unit to which the individual is assigned, attached, or employed. The SJA will determine the following:

(1) Whether a consideration listed in §516.47(a)(1) through (a)(3) applies.

(2) Whether the information requested is releasable under the principles established in §516.43 through §516.46.

(3) Whether the approval of the American Embassy should be obtained because the person is attached to the Embassy staff or a question of diplomatic immunity may be involved.

(b) *United States has an interest in the litigation.* If the SJA determines that the United States has an interest in the litigation, the commander may authorize the interview or order the individual's attendance in a temporary duty status. The United States will be deemed to have an interest in the litigation if it is bound by treaty or other international agreement to ensure the attendance of such personnel.

(c) *United States has no interest in the litigation.* If the SJA determines that the United States does not have an interest in the litigation, the commander may authorize the interview or the appearance of the witness under the principles established in §516.47 through §516.50.

(d) *Witnesses located outside the requester's country.* If the requested witness is stationed in a country other than the requester's, the matter will be referred to Litigation Division.

## Subpart H—Remedies in Procurement Fraud and Corruption

### §516.57 Purpose.

This subpart delineates the policies, procedures, and responsibilities for reporting and resolving allegations of procurement fraud or irregularities (PFI) within DA. It implements DOD Directive 7050.5. (See appendix D to this part.)

### §516.58 Policies.

(a) Procurement fraud and irregularities will be promptly and thoroughly addressed whenever encountered. Reports will be initiated in a timely man-

## 32 CFR Ch. V (7-1-09 Edition)

ner and will be supplemented as appropriate.

(b) Investigations will be monitored to see that interim corrective action is taken and that final action is taken as expeditiously as possible.

(c) This regulation establishes the Procurement Fraud Division (PFD), U.S. Army Legal Services Agency, as the single centralized organization within the Army to coordinate and monitor criminal, civil, contractual, and administrative remedies in significant cases of fraud or corruption relating to Army procurement.

(d) The key elements of the Army's procurement fraud program follow: centralized policy making and program direction; fraud remedies coordination; decentralized responsibility for operational matters, such as reporting and remedial action; continuous case monitorship by PFD from the initial report until final disposition; and, command-wide fraud awareness training.

(e) Remedies for PFI will be pursued in a timely manner and properly coordinated with other agencies. Every effort will be made to support criminal investigation and prosecution of fraudulent activity.

(f) A specific remedies plan will be formulated for each significant case of fraud or corruption involving procurement.

(g) Coordination on the status and disposition of cases will be maintained between PFD, OTJAG, PFI Coordinators at MACOMs, and Procurement Fraud Advisers at subordinate commands. Coordination of procurement and personnel actions will be accomplished with investigative agencies as required by those agencies.

(h) Training which relates to fraud and corruption in the procurement process is a significant element of this program.

### §516.59 Duties and procedures.

(a) TJAG has overall responsibility for the coordination of remedies in procurement fraud and corruption within the Army. This responsibility has been delegated to PFD. Functions of PFD will include the following:

(1) Serving as the single centralized organization in the Army to monitor

## Department of the Army, DoD

## § 516.59

the status of, and ensure the coordination of, criminal, civil, contractual, and administrative remedies for each significant case of fraud or corruption.

(2) Receiving reports of procurement fraud and corruption from any source including, but not limited to the following: DOD criminal investigative organizations; audit agencies; contracting officers; inspectors general of the executive branch; correspondence from the public; and, commanders. This provision does not repeal any other reporting requirement but establishes PFD as a recipient of PFI information at the earliest possible time.

(3) Establishing a monitoring system within OTJAG for all cases of fraud and corruption that relate to Army procurement.

(4) Discussing regularly with the U.S. Army Criminal Investigation Command (USACIDC) or the assigned DOD criminal investigative organization the current status of significant fraud or corruption cases and their coordination with prosecutive authorities.

(5) Ensuring that all criminal, civil, contractual, and administrative remedies are considered in each significant fraud or corruption case and that timely and applicable remedies are undertaken by commanders, contracting officers, and suspension and debarment authorities. For example, consideration of suspension or debarment of a contractor or individual should normally be initiated within 30 days of indictment or conviction.

(6) Coordinating, as appropriate, with other DOD components affected by a significant fraud or corruption case being monitored by the Army.

(7) Developing, with the responsible DOD investigative organization, Procurement Fraud Coordinators and Advisers, and other involved agencies, a specific comprehensive remedies plan for each significant fraud or corruption case.

(8) *Coordinating remedies with DOJ.* In the case of ongoing criminal investigations, coordinate remedies through, or with the prior knowledge of, the DOD criminal investigative organization responsible for the case.

(9) In significant fraud or corruption cases, identifying and documenting any known adverse impact on a DOD mis-

sion, and including the information in any remedies plan.

(10) Providing the appropriate DOD criminal investigative organization with information concerning final remedies as a result of an investigation by that organization.

(11) Receiving notifications from criminal investigative agencies concerning substituted, defective, and counterfeit hardware in which a serious hazard to health, safety or operational readiness is indicated; ensuring that appropriate safety, procurement and program officials are informed in accordance with enclosure 3 of DOD Directive 7050.5. PFD will specifically ensure that contract reviews (DD 350 reports) and adverse impact statements (See § 516.64(c)(2) are prepared, and that such information is used to determine if further inquiry is warranted to prevent reoccurrence and to detect other possible fraud. Impact statements will not be released to prosecutive agencies until reviewed by PFD. When appropriate, PFD will coordinate with other DOD agencies to establish a lead agency for victim impact statements in multi-DOD agency cases.

(b) The Commanding General, USACIDC, will take the following actions:

(1) Notify PFD of any investigations involving fraud or corruption related to procurement activities.

(2) Notify other DOD component criminal investigative organizations when investigations involving fraud or corruption affect that component. This includes evidence of fraud by a contractor, subcontractor, or employee of either, on current or past contracts with, or affecting, that component.

(3) Notify the Defense Investigative Service of any investigations that develop evidence which affects DOD cleared industrial facilities or personnel.

(4) Determine the effect on any ongoing investigations or prosecutions of any criminal, civil, contractual, or administrative actions being considered by a centralized organization and advise of any adverse impact.

(5) Promptly provide commanders, contracting officers, Procurement Fraud Advisers, and suspension and debarment authorities, when needed to

## § 516.60

allow consideration of applicable remedies, any court records, documents, or other evidence of fraud or corruption from ongoing or completed criminal investigations. In cases of indictment or conviction of a contractor or individual, the information will be provided in time for initiation, if appropriate, of suspension or debarment action within 30 days of the indictment or conviction.

(6) Provide prosecutive authorities and centralized organizations with timely information on the adverse impact on a DOD mission of fraud or corruption that relates to DOD procurement activities. This information will be obtained from individuals such as the head of the contracting agency, appropriate commanders, and staff agencies. Some examples of adverse impact on a DOD mission are endangerment of personnel or property, monetary loss, compromise of the procurement process, or reduction or loss of mission readiness.

(7) Discuss regularly with Procurement Fraud Advisers the status of significant investigations of fraud or corruption and their coordination with prosecutive authorities and provide documents and reports resulting from the investigations.

(c) Commanders of service schools conducting procurement or procurement-related training (such as The Judge Advocate General's School, the U.S. Military Police School, and the U.S. Army Logistics Management Center) will ensure the following:

(1) All procurement and procurement-related training includes a period of instruction on fraud and corruption in the procurement process. The length of the period of instruction will be appropriate to the duration and nature of the training.

(2) Training materials are developed to support that training.

(3) Training materials developed will be sent to MACOM PFI Coordinators.

(d) MACOM commanders and heads of contracting activities will ensure the following:

(1) Substantial indications of fraud or corruption relating to Army contracts or Army administered contracts are reported promptly to the supporting

## 32 CFR Ch. V (7-1-09 Edition)

USACIDC element and the Procurement Fraud Division.

(2) Information provided includes reports by contracting officers under DFARS 209.406-3.

### § 516.60 Procurement fraud and irregularities programs at MACOMs.

(a) Command counsel and SJAs at MACOMs will develop a program and appoint an attorney as PFI Coordinator for their command. Chief counsel and SJAs at commands with procurement advisory responsibility will appoint an attorney as a Procurement Fraud Adviser (PFA) to manage the PFI program at their installations as well.

(b) Provision may be made for activities not having sufficient attorney assets to obtain assistance from nearby installations that have a PFA.

(c) Reports and recommendations will be transmitted through command channels to the PFI coordinator for the affected MACOM.

(d) Command counsel, chief counsel, and SJAs will exercise supervisory authority to ensure effective operation of the fraud program and coordination of remedies within their organizations.

(e) The MACOM PFI Coordinator will have overall responsibility for the design and implementation of the MACOM's procurement fraud program.

(f) PFAs and PFI Coordinators will coordinate with the appropriate local CID or Defense Criminal Investigative Service (DCIS) activity to assure the prompt notification and coordination of all Procurement Fraud cases.

### § 516.61 Reporting requirements.

(a) Typical fraud indicators during the procurement cycle are listed in figure D-1, appendix G, to this part. The mere presence of one or more of these indicators does not, by itself, require reporting under paragraph b of this section. Reports should be submitted if there is a reasonable suspicion of procurement fraud or irregularity or the procuring agency refers the matter for investigation.

(b) "Procurement Flash Reports" will be transmitted by FAX directly to PFD whenever a PFI Coordinator or PFA receives notice of a PFI involving