

## Department of the Army, DoD

## § 516.66

(3) The impact upon combat readiness and safety.

(4) Consideration of each criminal, civil, contractual, and administrative remedy available, and documentation of those remedies, either planned, in progress, or completed.

(5) Restrictions on the pursuit of any remedies such as grand jury information or possible compromise of the investigation.

(d) When remedies plans are received by PFD they will be coordinated with the headquarters of the appropriate DOD criminal investigative organization involved.

(e) Testing necessary to support the investigation and remedies plan should comply with figure H-3, appendix G, to this part.

### § 516.65 Litigation reports in civil recovery cases.

(a) All substantiated PFI cases will be evaluated by PFAs to determine whether it is appropriate to recommend civil recovery proceedings.

(b) Recovery should be considered under both statutory and common law theories, including but not limited to the following:

- (1) False Claims Act, 31 USC 3729.
- (2) Anti-Kickback Act, 41 USC 51.
- (3) Sherman Act, 15 USC 1-7.
- (4) Racketeer Influenced and Corrupt Organizations Act, 18 USC 1961-1968.
- (5) Common law fraud.
- (6) Unjust enrichment.
- (7) Constructive trust.

(8) Cases where contracts have been procured in violation of the conflict of interest statute, 18 USC 218. See *K&R Engineering Co. v. United States*, 616 F.2d 469 (Ct. Cl., 1980).

(c) When civil recovery appears possible, PFD should be consulted to determine if a litigation report is necessary. If requested by PFD, the report should summarize the available evidence and applicable theories of recovery and be prepared under § 516.23 of this part. To avoid unnecessary duplication of effort, recovery reports may include and make liberal references to other reports previously prepared on a given case such as the DFARS 209.406-3 (48 CFR 209.406-3) report.

(d) The MACOM PFI coordinator and PFA will monitor all civil fraud recovery

efforts throughout the command and will provide training and technical assistance as required. Status reports of all civil fraud recovery efforts will be provided through channels as required by PFD.

### § 516.66 Administrative and contractual actions.

(a) The following remedial options should be considered in response to confirmed fraudulent activity:

- (1) Contractual.
    - (i) Termination of contract for default.
    - (ii) Nonaward of contract based upon a finding of contractor nonresponsibility. (If this appears to be a valid option, a DFARS 209.406-3 (48 CFR 209.406-3) report must be prepared where contractor nonresponsibility is based on lack of integrity).
    - (iii) Rescission of contract.
    - (iv) Revocation of acceptance.
    - (v) Use of contract warranties.
    - (vi) Withholding of payments to contractor. In the case of withholding pursuant to DFARS 2032.173, the Chief, PFD, is the Army Remedy Coordinating Official.
    - (vii) Offset of payments due to contractor from other contracts.
    - (viii) Revocation of facility security clearances.
    - (ix) Increased level of quality assurance.
    - (x) Refusal to accept nonconforming goods.
    - (xi) Denial of claims submitted by contractors.
    - (xii) Removal of contract from automated solicitation or payment system.
  - (2) Administrative.
    - (i) Change in contracting forms and procedures.
    - (ii) Removal or reassignment of government personnel.
    - (iii) Review of contract administration and payment controls.
    - (iv) Revocation of warrant of contracting officer.
    - (v) Suspension of contractor.
    - (vi) Debarment of contractor.
- (b) In cases which are pending review or action by DOJ, PFAs should coordinate with the DOJ attorney handling the case prior to initiating any contractual or administrative remedy. In

## §516.67

the case of ongoing criminal investigations, this coordination will be accomplished through the appropriate DOD criminal investigation organization.

### **§516.67 Overseas cases of fraud or corruption.**

(a) Commanders of overseas major commands will establish procedures, similar to this regulation and consistent with the DFARS, and regulations and directives of their respective unified commands, for reporting and coordination of available remedies in overseas procurement fraud and corruption cases involving foreign firms and individuals. Overseas major commands will also maintain liaison with PFD and provide periodic reports of remedies coordination results.

(b) Overseas suspension and debarment actions are governed by DFARS 209.403 (48 CFR 209.403). The names of all firms and individuals suspended or debarred will be expeditiously forwarded to PFD for inclusion on the List of Parties Excluded From Federal Procurement or NonProcurement Programs.

(c) Overseas cases of fraud or corruption related to the procurement process that involve U.S. firms or U.S. citizens may be referred to PFD for coordination of remedies under this regulation.

### **§516.68 Program Fraud Civil Remedies Act (PFCRA).**

(a) PFCRA was enacted on 21 October 1986 (Public Law 99-509) and implemented by DOD on 30 August 1988 (DOD Directive 5505.5). (See appendix E to this part.)

(b) PFCRA expands the capability of the government to deter and recover losses from false, fictitious or fraudulent claims and statements. It is also applicable to program fraud and provides an administrative remedy in addition to those otherwise available to the Army in procurement fraud or pay and entitlements fraud cases.

(c) As part of the Army implementation, the Secretary of the Army's duties and responsibilities under PFCRA as Authority Head are delegated to the Army General Counsel. The Chief, Intellectual Property Law Division, is the Army's Reviewing Official within

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

the meaning of PFCRA. Army implementation also requires DA to follow the policies and procedures prescribed in enclosure 2 of DOD Directive 5505.5. (See appendix E to this part.)

(d) The DOD Inspector General (IG) is the Investigating Official within DOD. The duties of this position will be performed by the Assistant IG For Investigations. This individual is vested with the authority to investigate all allegations of liability under PFCRA. That authority includes the power to task subordinate investigative agencies to review and report on allegations that are subject to PFCRA. If the Investigative Official concludes that an action under PFCRA is warranted in an Army case, the official will submit a report containing the findings and conclusions of such investigation through PFD to the Army Reviewing Official.

(e) Pursuant to DOD IG guidance, USACIDC will forward appropriate cases that appear to qualify for resolution under PFCRA to the Investigating Official in a timely manner. Additionally, USACIDC will forward current information regarding the status of remedies pending or concluded. USACIDC may obtain remedies information by coordinating with PFD and the cognizant command.

(f) In pay and entitlement or transportation operation fraud cases, USACIDC will coordinate with the Office of the Secretary of the Army, Financial Management, Review and Oversight Directorate (SAFM-RO), to determine the status of any pending or proposed action under the Debt Collection Act. This information, in addition to information obtained under §517.68(e), will be forwarded with appropriate cases to the Investigating Official.

(g) In those cases where the Investigating Official has submitted a report to the Army Reviewing Official for action under PFCRA, PFD will, at the direction of the Reviewing Official, prepare all legal memoranda as necessary to transmit the Reviewing Official's intention to issue a complaint. As part of this responsibility PFD will do the following: coordinate with the affected command or agency to ensure that all appropriate remedies have been considered; evaluate the overall potential benefits to the Army; and, ensure that