



Acquisition Integrity Program (AIP)

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# **Acquisition Integrity Program Fraud Awareness Training (Tier 3)**

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November 2012

Kennedy Space Center



# Agenda / Topic Areas

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1. Introduction and Overview
2. Fraud Indicators and Conflict of Interest Issues
3. Investigative Process and Reporting
4. FAR Rule on Contractor Mandatory Disclosure
5. Coordination of Remedies
6. Recoveries



# Why Are You Here?

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You are in a **UNIQUE POSITION** that enables you to identify and combat fraud and potential fraud

# Why Should You Care?



***The time is always right  
to do what is right.***

***Martin Luther King, Jr.***

## Acquisition Integrity

- Commitment to Integrity
- Public needs faith in the integrity of our procurement system
- We need public support to fulfill NASA's vision for space exploration

# Why are You Here?



**FOX 26**

## Alvin Man Indicted on Allegations He Gave NASA Faulty Shuttle Part

Last Edited: Thursday, 13 Nov 2008, 9:42 PM CST  
Created: Thursday, 13 Nov 2008, 9:41 PM CST

HOUSTON -- As Space Shuttle Endeavour gets ready to launch Friday night, a NASA contractor is facing a 2-count federal indictment involving shuttle parts.

A federal grand jury indicted 60-year-old Richard Harmon, owner of Cornerstone Machining, Inc. in Alvin. He is charged with fraud and making a false statement.

Click here to see the full video story by FOX 26's Chris Stipes.



Space Shuttle Endeavour / AP

Before Endeavour launched in March 2008, a damaged part was discovered in the shuttle's payload bay. The damage reduced the structural strength of the part by approximately 40 percent. The indictment alleges the part was damaged during construction and Harmon attempted to fix it with a weld, but didn't tell anyone.

"There's no allegation he built the part poorly, he did not build the part to specifications and he tried to cover that up," said acting U.S. Attorney Tim Johnson.

According to the indictment, "if NASA had used the damaged PFIP as planned to secure cargo to the Endeavour the weld could have cracked open during flight, allowed cargo to come loose and possibly result in the loss of the spacecraft."

**FOX 26 News**

**Related Items**

[Links](#)

[More Info: Read the Indictment](#)

[More Houston News](#)

**Videos**



## Quality Control Fraud Example

- Prior to Endeavor's launch, damaged part discovered in shuttle's payload bay
- Damage reduced part's structural strength by 40%
- Indictment alleges:
  - Contractor did not build part to specifications and tried to cover it up
  - If NASA had used the damaged PFIP as planned to secure cargo to the Endeavour, weld could have cracked open during flight, allowing cargo to come loose, and possibly resulting in loss of the spacecraft
- Harmon pleaded guilty
- Harmon and Cornerstone Machining, Inc. debarred for 10 yrs



# How Does AIP Help NASA?

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- Handled over 150 acquisition and non-procurement fraud cases
- Recovered over \$120 million
- Significantly increased suspension and debarment actions for NASA:
  - Over 100 contractors/participants debarred, suspended, proposed for debarment, issued show cause letter, or entered into administrative agreements
  - Up from time period of 1996 to 2007 where only 18 contractors debarred



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# Fraud Indicators and Conflict of Interest Issues



# What is Fraud?

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Fraud is the misrepresentation of a material fact with the intent to deceive and includes:

- Deliberate omission of material facts
  - Reckless disregard for the facts
- Indicators are a clue or hint that an activity or event requires a closer examination

**Look for the lie!**

# Can Fraud Occur on NASA Contracts?



The screenshot shows a CNN Justice news article. The header is red with the "CNN Justice" logo and a search bar. Below the header is a navigation menu with categories: Politics, Justice, Entertainment, Tech, Health, Living, Travel, Opinion, iReport, Money, and Sports. The article title is "Florida professor, wife accused of stealing money from NASA" and the date is "February 25, 2009". The main text reads: "Federal authorities raided the office of a University of Florida professor, Samim Anghaie, and his wife, is suspected of defrauding NASA. The FBI searched the school's Innovative Nuclear Science Center, said university professor of radiological engineering. FBI spokesman Jeff Westcott would only confirm the U.S. attorney's office. Calls to the U.S. attorney's office were not returned." To the right of the text is a portrait of a man with glasses and a beard, wearing a suit and tie. The text "with by a to the ement" is partially visible on the right side of the image.

# Can Fraud Occur on NASA Contracts?



## New Era Technology, Inc. (NETECH), Dr. Samim Anghaie, and Sousan Anghaie

- Dr. Anghaie, is a former University of Florida nuclear professor (recognized as a leader in his field)
- His wife was the president of NETECH, and Dr. Anghaie was also identified as a Senior Scientist for NETECH
- Individuals each convicted of over 25 counts of fraud (mail/wire and conspiracy)
- The couple submitted fraudulent contract proposals to obtain government contracts by claiming that NETECH performed the research and analysis when the work was taken from:
  - (1) research projects, theses, and presentations of UF graduate and doctoral students and
  - (2) work performed at UF's Innovation Nuclear Space Power and Propulsion Institute, UF's Major Analytical Instrumentation Center, and a laboratory in Russia.
- The Anghaies also submitted fraudulent invoices to obtain reimbursement for payments made to employees who supposedly provided the research under the contracts.
- All placed on Excluded Parties List – cannot be awarded any contracts, grants, etc., with any federal agency

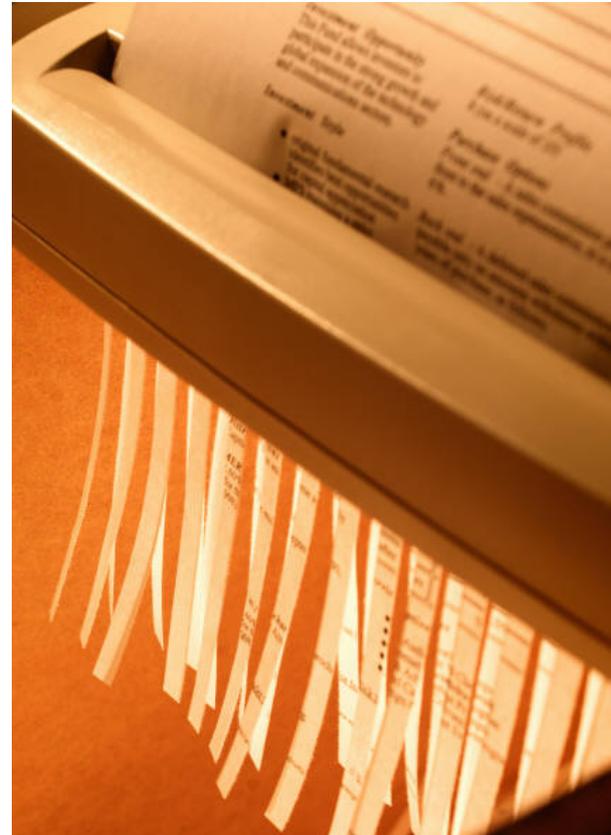


# Types of Fraud

## Pricing / Cost Fraud

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- False Statements
- False Claims
- Cost Mischarging
- Price Fixing
- Defective Pricing
- Progress Payments



# Grant Fraud Example – Mischarging

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## Yale University

- Focus of investigation:
  - Improper transfer of grant funds to accounts not specifically related to the purpose of the grant
  - Some researchers paid themselves for summer work even time and effort unrelated to the grant
- Over 30 agencies involved including NASA (over 140 NASA grants at issue)
- Yale settled for \$7.6 million

# Types of Fraud

## Quality Control Fraud

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- Product Substitution
- Counterfeit Parts
- False Testing
- False / Inaccurate Documentation



# Description and Origin of Counterfeit Parts



- Parts may be re-topped and/or re-marked to disguise parts differing from those offered by the original part manufacturer
- Defective parts scrapped by the original manufacturer may be salvaged and sold as compliant parts
- Previously used parts may be salvaged from scrapped assemblies and resold as new
- Refurbished devices represented as new product

Description Source: OSMA

# VisionTech Components – Impact of Counterfeit Parts



U.S. Department of Justice  
Ronald C. Machen Jr.  
*United States Attorney for the  
District of Columbia*

Judiciary Center  
555 Fourth St. N.W.  
Washington, D.C. 20530

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**PRESS RELEASE**

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FOR IMMEDIATE RELEASE  
Tuesday, October 25, 2011

For Information Contact:  
Public Affairs  
(202) 252-6933  
<http://www.justice.gov/usao/dc/index.html>

**Administrator of VisionTech Components, LLC Sentenced  
To 38 Months in Prison For Her Role in Sales of Counterfeit  
Integrated Circuits Destined to U.S. Military and Other Industries**  
*- Counterfeit Devices Were Sold to U.S. Navy and Defense Contractors -*

Administrator of Florida-based distributor sentenced to 38 months in prison in connection with sales of counterfeit high-tech devices destined to the U.S. military and other industries

First federal prosecution in a case involving the trafficking of counterfeit integrated circuits

Counterfeit integrated circuits can result in product or system failure or malfunction, and can lead to costly system repairs, property damage, and serious bodily injury, including death. They also raise national security concerns because their history is unknown.

According to government's evidence, company owner and others imported approximately 59,540 integrated circuits bearing counterfeit marks, including military-grade markings, from China and Hong Kong to U.S.



# Quality Control Fraud Example

DEFENDANT PLEADS GUILTY TO FALSIFYING TEST REPORTS OF METALS FOR USE IN SPACE PROGRAM

January 19, 2007

FOR IMMEDIATE RELEASE



- Subcontractor sold metals for use on NASA's orbiter fleet and critical ground support equipment
- When test results and specifications did not conform with customers' purchase order requirements, company altered:
  - Test certificates from metal testing laboratories
  - Mill reports of metals manufacturers
  - Certificates of compliance from metal distributors



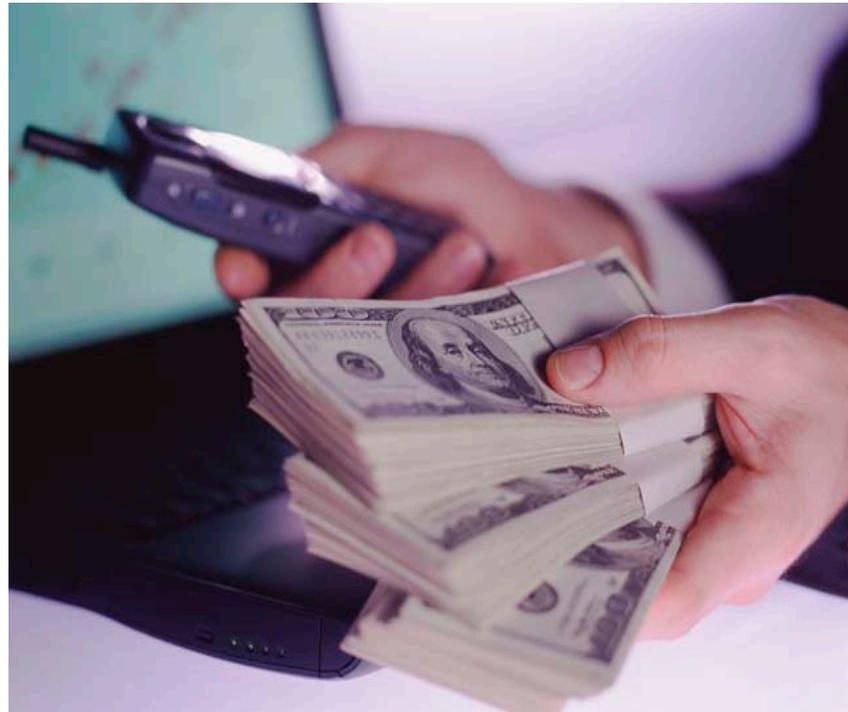
## **Jailhouse Blues**

- Owners, sales manager, and two administrative assistants were convicted – sentences ranged from over 2 years to probation and restitution ordered in excess of \$390k
- Company and owners debarred from working on any federal government contract

# Types of Fraud

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- Public Corruption
- Collusion
- Bid Rigging
- Bribery
- Kickbacks
- Theft



# Public Corruption Example

SPACE NEWS FROM THE WIRES/  
Space News Looks at Your World on the Web ...

Advertisement

**CASBAA  
Satellite  
Industry  
Forum 2012**  
At the Heart of  
Global Growth  
18 June 2012  
Shangri-La, Singapore

Fri, 19 November, 2010 | Submitted by AP via Baltimore Sun | in commentaries

## Former NASA Chief of Staff Gets 3 Years for Steering Contract [AP]

ShareThis

Former NASA chief of staff Courtney Stadd was sentenced Nov. 18 to 41 months in federal prison on a conspiracy charge related to a \$600,000 NASA remote-sensing study contract he steered toward a consulting client, the AP reported.



Courtney Stadd, former NASA chief of staff. Credit Photo by Jill DiPasquale

Enlarge Image

Stadd also was ordered to pay a \$7,500 fine and \$287,000 in restitution to NASA.

Stadd, 55, of Bethesda, Md., was convicted in 2009 of breaking ethics laws in steering nearly \$10 million in NASA funds to Mississippi State University — a consulting client — when the former chief of staff returned to NASA in mid-2005 for a two-month stint as a special government employee to help incoming NASA Administrator Mike Griffin reorganize the agency. He was fined \$2,500 and sentenced to three years of probation and six months of house arrest.

Last December, U.S. Attorney Donakt Burkhalter secured a nine-count indictment charging Stadd with conspiring with a NASA official to steer money to his consulting firm and submitting invoices for work he did not perform. During a court appearance in August before U.S. District Judge Sul Ozerden, Stadd pleaded guilty and admitted that beginning in 2004 he conspired with the NASA deputy engineer of programs, Liam Sarsfield, to allocate NASA funds to Mississippi State for a \$600,000 remote sensing study. Some \$450,000 of those funds was subcontracted to Stadd, who subsequently paid a newly retired Sarsfield \$87,000 for his work on the study. Stadd also admitted to submitting falsified invoices to Mississippi State and meeting with senior government officials to try to stop a NASA inspector general investigation of his activities, the U.S. Justice Department said in August.

Sarsfield pleaded guilty last November to a charge of conflict of interest and was sentence Sept. 27 to three years probation, fined \$5,000 and ordered to pay \$87,752 restitution to NASA.

MORE FROM THE WIRES/  
Former NASA Official Warns of  
Burdensome Requirements for Commercial

## Courtney Stadd

- Former NASA Chief of Staff
- Convicted in two cases
- Both Stadd and his company, Capitol Alliance Solutions, debarred for 5 years



# Performance Phase

## Public Corruption - Crown Roofing

- **Source** – Crown Manager bragging “has lock” on JSC roof contracts
- **Witnesses** – Allege that Crown bribed JSC employees with hookers and secret contracts and other gratuities
- **Investigation** – Reveals JSC COTR has personal company that obtained contracts from Crown in excess of \$290k while COTR was acting in official NASA capacity; Second COTR assists with Crown contracts and obtains \$40k.
- **Convictions** – Both NASA COTRs resigned from their positions with NASA and pleaded guilty to violating Federal Conflict of Interest law
- **Debarments** – COTRs debarred from federal government contracting





# Who Commits Fraud?

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People who commit fraud can be:

- Employees or Management
- Contractor Personnel or Government Employees

Companies can be held responsible for their employees and managers





# What are the Consequences of Fraud?

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- Adverse mission impact due to system failures
- Safety and possibly life threatening issues
- Substandard materials
  - “Getting less for what NASA paid”
  - Necessity for second purchase of materials
- Monetary loss to the Government and NASA programs
- Loss of public trust

# How Do You Detect Possible Fraud in the Acquisition Process?



## Phase 1: Identifying the Need or Requirement

### Fraud Indicators:

- Defining requirements improperly so that only certain contractors qualify
- Identifying time frames as critical when requirements are of questionable urgency

### Impact:

Decision to buy goods and services in excess of those actually needed and/or from selected sources

### What was Needed:



### What was Solicited:



# How Do You Detect Possible Fraud in the Acquisition Process?



## Phase 2: Pre-Solicitation Stage

### Example:

Collusion between government and contractor personnel to write restrictive or vague specifications



### Fraud Indicators:

- Contractor involvement in writing of specifications without proper precautions concerning conflicts of interest
- Restrictive conditions placed in solicitation documents that tend to restrict competition
- Statements of work and specifications designed to fit products or capabilities of single contractor
- Contractors provided with advance information or advice on a preferential or selective basis
- Splitting requirements to lower the cost to avoid supervision and oversight

# How Do You Detect Possible Fraud in the Acquisition Process?



## Phase 3: Solicitation

### Examples:

- Activities that diminish use of competition and keep government from obtaining goods and services at the best value
- Collusive bidding, kickbacks, or other anti-competitive activity

### Fraud Indicators:

- Excessive personnel or geographic limitations
- Selective revelation of information to certain contractor(s) but not all
- Excessive use of a single contractor in a competitive field
- Not adequately publicizing the procurement
- Government contracting or program personnel socializing with successful contractors
- Contracting or program personnel “recommending” a particular supplier or subcontractor
- Misrepresenting/ making false statements during the pre-award survey



# How Do You Detect Possible Fraud in the Acquisition Process?

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## Phase 4: Proposals

- **Bid rotation:** All contractors involved submit bids but agree to take turns on being the low bidder
  - Indication: A pattern for getting the award
  - Indication: Successful bidders agree to use other participating contractors as subcontractors.
- **Sporadic bidding:**
  - One or more competitors agree to refrain from bidding or agree to withdraw a previously low bid
- **Token bids:** Competitors submit bids that are too high to be acceptable to create the appearance of genuine competition (AKA “complimentary” or “shadow” bidding)
- **Market allocation:** Contractors agree not to compete in designated parts of the market
- **Change-order schemes:** Contractor submits a low bid to assure receiving the award while anticipating change orders (contract modifications) to be issued during the life of the contract

# How Do You Detect Possible Fraud in the Acquisition Process?



## Phase 5: Fraud in Contract Negotiation

### Example:

Using competitor's proprietary data to gain unfair advantage

### Fraud Indicator:

Disclosure of information resulting in a competitive advantage to one contractor over others

### Boeing probe intensifies over secret Lockheed papers

By David Bowermaster  
*Seattle Times aerospace reporter*

When Boeing fired a 60-year-old engineer named Ken Branch in 1999, he was cited for possessing proprietary Lockheed Martin rocket data in violation of company policy.

Boeing and Lockheed were rival contenders for an enormous Air Force rocket program that both considered key to their future military and space prospects. And Branch, who had previously worked for Lockheed, apparently brought the documents with him when he joined the competition. Despite the intense rivalry over the rocket program, Boeing promptly stated



[enlarge](#) THOM BAUR, BOEING / VIA BLOOMBERG NEWS, 2003

A Boeing Delta IV rocket launches from Cape Canaveral, Fla., on March 10, 2003. Later that year, the Air Force stripped Boeing of seven launches worth \$1 billion and reallocated them to Lockheed due to a growing scandal over alleged industrial espionage.

# How Do You Detect Possible Fraud in the Acquisition Process?



## Phase 6: Award

### Example:

Activities that compromise  
evaluation of the proposal

#### Past Performance Evaluation

- Technical Performance: **POOR**
- Contract Management: **POOR**
- Cost Performance: **POOR**

**RESULT: CONTRACT AWARD**

### Fraud Indicators:

- Poorly written source selection that does not adequately justify award
- Favoritism or bias in proposal, evaluation, or contract award
- Awards to contractors with poor histories of past performance or inadequate evaluation of a contractor's present responsibility
- Misrepresenting a firm's capabilities / qualifications
- Failure to fully disclose required information
- Disqualification of any qualified contractor
- Indication that contractor submitted false claims or false cost or pricing data

# How Do You Detect Possible Fraud in the Acquisition Process?



## Phase 7: Contract Performance and Administration

### Examples:

- Product Substitution
- Cost Mischarging
- Progress payment fraud

### Fraud Indicators:

- Serial numbers missing
- Inspection reports that appear altered by whiteouts
- Requests for payment that are inconsistent with earlier cost history
- History of frequent invoice/voucher errors, poor documentation, & claiming unallowable costs
- Little or no physical progress on the contract even though significant costs have been billed



Source: Genuine-Performance.com News Alert

# Contract Performance Phase

## Quality Control Issues

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### Testing Issues:

- Lack of time to test for the amount of equipment or parts to be tested
- Questionable testing claims
- Altered test reports
  - Minor discrepancies in typeface
  - “White out” sections
  - Handwritten portions of typed documents
- Non-operating test equipment
- Part failures after “100% Inspection and Testing”
- Subsequent test and inspection failures on products in performance-based contracts
- Commingled tested and untested items

Source: Army

# Contract Performance Phase

## Quality Control Issues



### Access Issues:

- Limited government access to production and storage facilities
- Unwillingness to mark or seal in presence of government representative
- Contractor efforts to hide records



Source: Army

# Contract Performance Phase

## Quality Control Issues

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### Documentation Issues:

- Non-availability of basic information such as documentation for quality reviews or cost verification
- Altered certifications and test reports
- Pre-signed certification or receipt forms
- Poor reproduction of certifications, illegible, or incomplete documentation

### Substitution Issues:

- Substitution of generic for brand name parts without notification
- Substitution of foreign parts for domestic items
- Use of lesser skilled labor than specified in the contract

Source: Army



# Quality Control Example

## Roger Day, One of America's Most Wanted Fugitives

▼ FUGITIVES

Search Fugitives

Browse by Last Name

Browse by Geography

AMW Dirty Dozen

FBI and Marshals Most Wanted

> MISSING CHILDREN

> MISSING PERSONS

> CAPTURES

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> SAFETY CENTER

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AMW CAPTURE DATA FILE FOR [REPORT A TIP >>](#)

Roger Charles Day Jr.

[Roberto Perez](#), [Jorge Arturo Rubio Robles](#), [Duane Hunt](#)

Capture #1027

WANTED FOR

[Fraud](#), [FED](#)

LATEST AIRING

April 26 2008

May 05 2008 (\*)

CAPTURED

LATEST UPDATE

**Accused Con Artist Picked Up In Cancun**

Roger Day, wanted for defrauding the Department of Defense out of \$8.4 million dollars in defense contracts, was picked up on August 2, 2008, in Cancun, Mexico.

[>>The Full Story](#)

More Con-Artists:

[>>Accused Con-Artist, Molester Remains At Large](#)

[>>State Prison Official Sought For Extortion And Racketeering](#)

Last updated August 08 2008

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[Cops Find Teen's Decapitated Body In NYC Subway Station](#)

[Police: Border Patrol Agent Murdered In Road Race Melee](#)

[Cops Save Former Child Star Beat Girlfriend To Death With Dumbbell](#)

YOU HAVE HELPED CATCH

1028

FUGITIVES TO DATE

- Sentenced to 105 years in prison
- Led role in leading an international conspiracy to defraud DoD of more than \$11.2 million by supplying nonconforming and defective parts for military aircraft, vehicles, and weapons systems
- Formed at least 18 separate companies that posed as legitimate contractors and collectively used a computer program to win nearly 1,000 lucrative contract awards for the various companies.

# Roger Day, Former America's Most Wanted Fugitive



- Shipped defective parts to the government on more than 300 of those contracts – in all known cases, parts could not be used for intended purpose

**Contract required a giant axle for vehicle.**  
**Here is what was provided:**



**Contract required an aircraft cockpit door latch**  
**Here is what was provided:**





# Personal Conflicts of Interest

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- 18 U.S.C. 208: Prohibits Government employees from engaging in official duties that could affect personal financial interests (including family and business)
  - Conflict of interest convictions have resulted in debarments (ex. Stadd and Biondolillo)
- Contracts/purchase orders tainted by conflict of interest can be voided/rescinded (FAR Subpart 3.7)
- May result in bid protests
- NOTE: Employee includes person working at NASA under an IPA (Intergovernment Personnel Act) Agreement or as a Special Government Employee

# Conflict of Interest Sample Scenarios

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- NASA employee uses official position to draft statement of work to continue his/her research with a contractor before he departs NASA
- NASA employee serving as a Contracting Officer Representative, who is personally and substantially involved with a procurement activity, uses that process to arrange for post employment with the contract awardee



# What Should I Do?

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IF: Actions as a government employee are going to:

- Help you get a non-government job
- Help a family member get government work
- Give an appearance of impropriety that you trying to steer work to family or friends

THEN: JUST DON'T TAKE THAT ACTION

Not Sure? Ask before proceeding

# Example – Excerpts from E-mail Messages from a Real NASA Case

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## From Head of Division to another NASA employee:

“[My spouse] would like to speak with [NASA personnel], endorsing the idea of spending stimulus money on [my spouse’s company/project]... It would be a great gesture on your part to throw your influence behind [my spouse] and it would go a long way to moving forward on past issues.”

**Question:** What would you do if you got this e-mail message?

# Example – Excerpts from E-mail Messages from a Real NASA Case

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## Response from NASA employee to Head of Division:

“I don’t feel I can ethically endorse funding [your spouse’s] effort based on this request. In my opinion, to personally influence funding to go to the [spouse] of a civil servant would leave me directly open to charges of misuse of NASA funds.

I have thought a lot about this matter, and this is the only course I feel I can take.”



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# Reporting and the Investigative Process



# Reporting Requirements

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## NPD 9800.1B

- All NASA employees are required to report any suspected crime, fraud, waste, abuse or mismanagement to the OIG (do not have to have all the details to report)
- NASA employees may ask for confidentiality and are not required to report their contacts with the OIG to their supervisors

# What Should You Do if You Suspect Fraud?



- OIG Hotline: 1-800-424-9183
- AIP Contact: (202) 358-2262



# Reporting Mechanisms

## Office of Inspector General



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Hotline

+ COMMUNICATING W/ THE OIG

- CYBERHOTLINE

### E-mail Report to the NASA OIG Cyberhotline

1. **Type of complaint:**  Criminal  Administrative  Civil

2. **NASA center affected:**

3. **NASA program affected:**

4. **Would you like your referral to be submitted anonymously?**  Yes  No  
(A "Yes" will block all information to your address. If "No", please provide your email address or other contact information below.)

5. **Your email address:**

6. **Details of your referral (required):**

[Replace this text with relevant and specific details, including: the identity of the person, company, or organization alleged to have engaged in crime, waste, fraud, abuse or mismanagement; a description of the alleged impropriety; contact information; dates of alleged wrongdoing; how you are aware of the alleged impropriety; the identity of potential witnesses; and the identity and location of supporting documentation.]

National Aeronautics and Space Administration

# It's Your Tax Money

## Report Crime, Fraud, Waste, and Abuse

**NASA Inspector General Hotline:**  
**1-800-424-9183**  
<http://oig.nasa.gov/hotline.html>  
PO Box 23089 | L'Enfant Plaza | Washington, DC 20026  
[www.nasa.gov](http://www.nasa.gov)

<http://www.hq.nasa.gov/office/oig/hq/cyberhotline.html>

# Who are my AIP Points of Contact?



- **Acting AIP Director and AIP Eastern Region Coordinator (HQ, GRC, GSFC, LaRC, KSC, and MSFC):**  
Monica Aquino-Thieman, (202) 358-1024, monica.aquino@nasa.gov
- **AIP Western Region Coordinator (ARC, DFRC, JSC, NMO/JPL, NSSC, and SSC):** Duc Nguyen, (202) 358-0774, duc.h.nguyen@nasa.gov
- **ARC:** Komal Sadhwani, (650) 604-2809, komal.sadhwani@nasa.gov
- **DFRC:** Chauncey Williams, (661) 276-2404, chauncey.c.williams@nasa.gov
- **GRC:** Kaprice Harris, (216) 433-5754, kaprice.harris@nasa.gov  
and Callista Puchmeyer, (216) 433-2737, callista.m.puchmeyer@nasa.gov
- **GSFC:** Marla Harrington, (301) 286-9277, marla.r.harrington@nasa.gov
- **KSC:** Sariah Adams, (321) 867-2659, sariah.m.adams@nasa.gov
- **JSC:** Robert Tepfer, (281) 483-1007, robert.a.tepfer@nasa.gov
- **LaRC:** Tom McMurry, (757) 864-3708, william.t.mcmurry@nasa.gov
- **MSFC:** Patricia Watson, (256) 544-0056, patricia.a.watson@nasa.gov
- **NMO/JPL:** Timothy Howell, (818) 354-2562, thowell@nasa.gov
- **NSSC:** Troy Taylor, (228) 813-6830, troy.d.taylor@nasa.gov
- **SSC:** Michael Harbart, (228) 688-2142, michael.d.harbart@nasa.gov



# How is AIP Different From OIG

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- OIG investigates fraud
- OIG is the focal point for referring fraud matters, including civil fraud matters to DOJ
- Employees may ask the OIG for confidentiality, which will be provided under the terms of the IG Act
- AIP supports fraud investigations
- AIP provides an additional avenue for reporting suspicions of fraud in acquisition process
- Part of the Office of General Counsel
- AIP will report suspected fraud or contractor irregularities to OIG
  - Source of information or allegations
  - Identification of criminal and civil statutes or regulations that may have been violated
  - Contract history - prior problems or dealings with the subject of the investigation that may have a bearing on the investigation

# Investigative Process

## Disclosing Information

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- Information related to investigation may be shared with Government personnel on a need-to-know basis only
- Remember:
  - It is possible that records including e-mail may be subpoenaed or released under FOIA or during litigation
  - Preserve all records (paper and electronic) related to the investigation until notified otherwise

# Investigative Process

What we need from you



- Ensure investigations remain confidential
- Ensure that no information is passed or “leaked” to contractors or others being investigated

## Results:

- Evidence Preserved
- Facts Clearly Established

## Note:

Penalties involved in violating policy



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# FAR Rule on Contractor Mandatory Disclosure



# What Does the FAR Disclosure Rule Require?

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- 3.1003 Requirements
  - Whether or not the clause at FAR 52.203 -13 is applicable, a contractor may be suspended and/or debarred for knowing failure by a principal to **timely** disclose to the Gov't., in connection with the award, performance, or closeout of a Gov't., contract performed by a contractor or a subcontract there under, credible evidence of a
    - A violation of Federal criminal law involving **fraud, conflict of interest, bribery or gratuity violations found in Title 18**
    - A violation of the civil **FCA**
    - Significant overpayments on the contract, other than overpayments resulting from contract financing payments as defined in 32.001.



# Online Reporting Form

- +Home
- Hotline
- + COMMUNICATING W/ THE OIG
- + CYBERHOTLINE
- CONTRACTOR DISCLOSURE

**Instructions:**

Fill in the form below. If you are unsure if this form applies or you have any questions, please contact Counsel to the Inspector General at [HQ-OIG-Counsel@mail.nasa.gov](mailto:HQ-OIG-Counsel@mail.nasa.gov)

## FAR Contractor Reporting Form

The purpose of this form is to allow the Contractor to notify, in writing, the agency Office of the Inspector General whenever the contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of the civil False Claims Act or a violation of Federal criminal law in connection with the award or performance of a contract or any related subcontract. The individual completing this form must be an officer or manager within the company for whom this report is being made and empowered to speak for the company by filling this report. If the information you wish to provide does not fall within these guidelines, please refer to the Inspector General Hotline/Fraud Reporting form.

Alternatively you may report by writing to the following address:

NASA Office of Inspector General  
PO Box 23089  
L'Enfant Plaza Station  
Washington, DC 20026

Your First Name:

Your Last Name:

Your Title:

Your Email:

Confirm Email:

Company Name:

Address 1:

Address 2:

City:

State/Province:

Zip/Postal Code:

Country:

Phone Number:

Fax Number:

**Relationship:**

My Company is the: (Prime or Sub)

- Prime
- Sub

I am reporting on: (Prime, Sub, Other)

- Prime
- Sub
- Other

If other, please specify:



# Online Reporting Form (continued)

- Sub
- Other

If other, please specify:

**Contract Information:**

Contract No:

Contract Officer Name:

Contract Officer Email:

**Incident**

Dollar Amount of Loss:

Loss Description:

Incident Date:

Which of the following best describes the reason for reporting this matter (check all that apply):

- Possible violation of civil False Claims Act
- Possible violation of Federal criminal law

**Comments**

Please provide a complete description of the facts and circumstances surrounding the reported incident, including names of individuals involved, dates, locations, how the matter was discovered, potential witnesses and their involvement, estimated monetary loss to the United States, and any corrective action taken by the company.

**Note:**

Submission of willful false statement may violate 18 USC 1001.

NAME:

Submit



+ NASA Privacy, Security, Notices  
+ OIG Disclaimer



Curator: Michael Campbell  
NASA Official: Lawrence Anderson  
Last Updated: 03/03/2009  
Last Reviewed: 12/03/2008



# What Does the FAR Rule Require?

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- FAR 9.406-2(b)(1)(vi) and FAR 9.407-2(a)(8)
  - Knowing failure to timely disclose credible evidence of any of the above violations remains a cause for suspension and/or debarment until 3 years after final payment on a contract.



# Overpayments

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A contractor approaches a CO and relates that his company has “inadvertently” double billed \$2 million in subcontractor costs and offers to “make it up” in billing for the next delivery or voluntarily refund the overpayment

What are the CO’s responsibilities?



# What Should the CO Do?

---

- 3.1003(b) - If the contracting officer is notified of possible contractor violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations...or a violation of the civil False Claims Act, the contracting officer **SHALL:**
  - Coordinate with OIG or
  - Take action IAW agency procedures
    - Coordinate per NPD 2086.1/Procurement Information Circular 08-12
    - COs and COTRs shall coordinate any contractor ethics issue or criminal violation with the AIP

Link for the Procurement Information Circular for 08-12 Contractor Ethics

- <http://www.hq.nasa.gov/office/procurement/regs/pic08-12.html>



# What the Contractor Must Do

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- Have an effective compliance program
- Have internal controls to alert management of fraud
- Report to the OIG, with a copy to the CO when it has credible evidence of fraud
- Cooperate with government investigations



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# Remedies



# What are the Remedies for Fraud?

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- **Criminal**

- Imprisonment
- Criminal fines/penalties

- **Civil**

- Damages
- Civil penalties

- **Administrative**

- Suspension
- Debarment
- Show Cause

- **Contractual**

- Termination for default
- Withholding of funds
- Disallowance of costs
- Loss of award fee
- Damages – monetary recovery
- Voiding/Rescinding contract
- Stop work order

**NOTE: Over 30 Possible Criminal and Civil Statutes Applicable to Procurement Fraud**



# Criminal Statute Example

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## Fraud Involving Aircraft or Space Parts (18 U.S.C. § 38)

For any aircraft or space vehicle part, law prohibits:

- Falsification or concealment of material fact
- Fraudulent representation, writing, certification, etc.
- Exportation, importation, introduction into U.S., selling, trading, or installation of part through fraudulent representation, writing, certification, etc.
- Attempts or conspiracy to commit above offenses

## Criminal Penalties:

- *Aviation quality* – Up to 15 years imprisonment and/or \$500,000 fine
- *Failure resulting in serious injury* – Up to 20 years imprisonment and/or \$1,000,000 fine
- *Failure resulting in death* – Up to possible life imprisonment and/or \$1,000,000 fine
- *Other circumstances* – Up to 10 years imprisonment and/or fine
- *Organizations*
  - Up to \$10,000,000 fine for aviation quality or other circumstances violation
  - Up to \$20,000,000 fine for serious injury or death

Other Remedies: Restrictions on future activities, dissolution of enterprise, divestiture of interest, criminal forfeiture, etc.



# What is Fraud Against the Government?

## False Claims Act – Commonly Used Civil Statute

- Provides civil remedies for submitting a false claim for payment by the government or making a false statement in order to obtain such payment

- **Remedies:**

- Treble damages (3 times the amount government was harmed)
- Civil penalties of \$5,500 to \$11,000 per false claim

- *Qui Tam* plaintiffs (whistleblowers) could receive between 15-30% of funds recovered from defendant
- Defendant pays successful plaintiff's expenses, attorney's fees, and costs
- Employment protection for whistleblowers including:
  - Reinstatement with same seniority status
  - Double back pay plus interest
  - Special damages
- Why use a Civil Statute: Lower Threshold to Prove Fraud Against Government
  - Burden of Proof: Preponderance of the evidence
  - **Specific intent to defraud is not required**



# American Grocers

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- Employee filed False Claims Act case (qui tam) against American Grocers for selling expired food and other wrongdoing
- Company owner and other company principles (including wife) indicted



# American Grocers: The Fraud

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- American Grocers purchased food products at “deal price” if they were near or past the end of their shelf life and sold them to DLA/military customers at full price.
- When products arrived at AG’s warehouse, the owner instructed employees to check expiration dates, if any, located on products.
- The owner instructed employees to eradicate and alter dates to conceal the true expiration date of the product.
- Dating information was often printed in ink or embossed on the package or outer box; the date was then removed at the owner’s instruction with acetone, spray paint, or a specialized, hand-held tool used to eradicate embossed product dates.



# American Grocers: The Fraud

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Additionally, American Grocers:

- Falsified Kosher certifications
- Falsified Halal certifications
- Falsified USDA health certifications



# Result

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- Samir Itani (AG owner): Criminal Conviction for Conspiracy to defraud the Government and Sentenced to 24 months incarceration and a fine of \$100,000
- False Claims Act case settled for \$15 million
- Debarment period of 15 years (until 2026) for all AG affiliated businesses, along with owner, wife, and children serving as company officers
  - Aggravating factor: changing the date on food for the warfighter
- Family still tries to do business with DoD and still applies to State for export licenses

# Relationship of Contractual Remedies to Fraud Cases

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Contractual remedies in a fraud case are the same as those available in a typical breach of contract case

## Note:

- 41 U.S.C. § 605(a) – Contracting Officer does not have the authority to “settle, compromise, pay, or otherwise adjust any claim involving fraud”
- Must coordinate with AIP prior to taking contractual remedies if there is a fraud investigation



# Types of Contractual Remedies

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- Termination
- Voiding/Rescission of Contract
- Warranties
- Payment Actions
  - Withhold Payments
  - Offsets of Payments
  - Disallowance of Contract Costs
  - Increased Payment Review
  - Progress Payments
- Inspections Clause
- Price Reduction
- Revocation of Acceptance
- Denial of Contractor Claims Warranties
- Product Actions
  - Correction of Defects
  - Product Rejection



# Contract Termination

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Two types:

- Convenience – Government Option
- Default – Must have a reason (Rare)

- Convenience Termination “T4C”
  - The GOVERNMENT, as sovereign, can unilaterally end a contract
  - NO Reason or Fault is necessary;
  - generally limits the contractor's recovery to cost incurred plus profit on work completed, and the costs of preparing the termination settlement proposal.
  - precludes the contractor from recovering anticipatory profit.
- Default Termination “T4D”
  - These actions are based upon contractor problems and failures
  - Cure Notice/Show Cause
  - C.O. determination - detailing basis for action
  - May affect future contracts and lead to suspension and debarment
  - **Fraud can be grounds for a T4D**

# Voiding and Rescinding Contracts

## 18 U.S.C. § 218/ FAR Subpart 3.7

- Agency may void and rescind any government contract where there is a final conviction for violating the federal conflict of interest and bribery provisions
- In addition, FAR Subpart 3.7 provides for rescission when the Agency head determines contractor bid/ proposal info or source selection info disclosed for money or advantage
- Example: Animated Earth and SSAI settlements





# Warranties- FAR 46.706

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- Where non-conforming product is supplied – the Government may invoke warranty provisions
  - Existence of defect
  - Defect within scope of warranty
  - Failure of product most probably caused by warranted defect
  - Defect occurred during warranty period
  - Required notice given to contractor under clause
- Activities
  - Order the contractor to repair or replace defective product
  - Retain the product at a reduced price
  - Correct the defect in-house or by contract
  - Permit equitable adjustment of contract price



# Payment Actions

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- Withhold Or Suspend Payments
- Offset Payments From Other Contracts
- Disallowance Of Costs
- Reduction In Progress Payments

Make certain that proper notice and all other procedures are followed **PRIOR** to taking action



# Payment Actions

## Withhold or Suspend Payments

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- Fraud related - FAR 32.006
  - The Government can reduce or suspend contract payments upon a determination that there is substantial evidence of fraud
  - Applies only to DOD and NASA
- Work related - FAR 32.006
  - The Government can withhold payments as a mechanism to become whole
  - Where work covered by invoice or payment request is not acceptable or complete, the Government can withhold part OR all of contract price or progress payments
  - Withhold limited to portion of unsatisfactory work with rational relationship between payment and work



# Payment Actions

## Disallowance of Costs

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- CO can disallow unsupported costs, before or after incurrence:
  - Written notice of costs, basis for disallowance
  - Contractor can respond w/in 60 days
  - CO reviews submission - either withdraws notice or affirms by decision
  - CO issues a Final Decision disallowing costs and giving appeal rights



# Payment Actions

## “Unallowable” Costs

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- There may be penalties for including unallowable costs in Indirect Cost Submissions to Government
- What is disallowed: Amount of the claimed Unallowable Cost
- The Penalty: Double penalties for costs previously determined to be unallowable

### Examples of Unallowable Costs:

- Alcohol
- Contract or legal costs incurred in defense of fraud allegations where there was a conviction or settlement
- Bad debts
- Entertainment costs



# Product Actions – Defects/Nonconformity

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## Correction of Defects:

- Where product has been tendered that is non-conforming, the Government may give the contractor an opportunity to correct or replace
  - Contracting Officer must be notified before any action is taken that affect contract terms
  - If within delivery period – no added cost
  - Government may also have the right to charge contractor for cost of re-inspection
- If the product has already been accepted and a nonconformity is discovered which is related to contractor fraud, acceptance may be REVOKED.
- Requirements include:
  1. Intent to Deceive,
  2. Misrepresentation of fact, and
  3. Government reliance on misrepresentation to its detriment



# Product Actions

Defective Performance BEFORE Required Delivery Date

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## Quality Management Systems

### Prior to Acceptance - Government Options:

1. Corrective Action Requests (CARs)(See ISO 9001:2000))
2. Termination for Default (Anticipatory Breach)
3. Grant Waiver or Deviation
  - **WAIVER:** Written authorization to accept an item that departs from specified requirements but is nevertheless considered suitable “as is” or after approved rework
  - **DEVIATION:** Written authorization granted prior to manufacture of an item, to depart from a particular performance or design requirement of a specification, drawing, or other standard



# Product Actions – Defective Performance

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- When you sign off on DD250s, make sure that you note that the product does not meet specifications and fails to comply
- Otherwise, omission may be considered a waiver



# Product Actions

Defective Performance AFTER Required Delivery Date

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## Government Options:

1. Reject
2. Accept at reduced price
3. Require Correction/Replacement - give notice of defects/time cure if product is in substantial compliance
4. Terminate for Default
5. Grant waiver

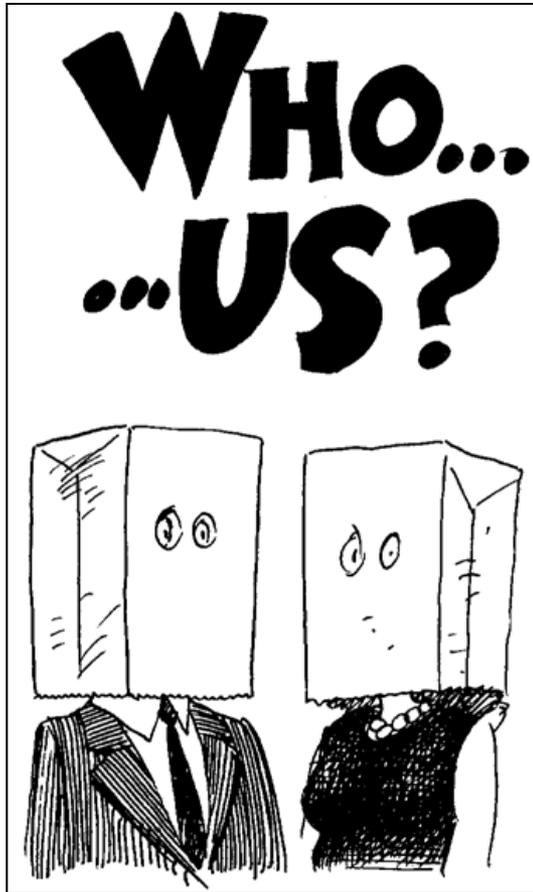


# Suspension and Debarment

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- Prohibits excluded parties from receiving government contracts, grants, and other types of federal assistance
- Discretionary action taken pursuant to FAR Subpart 9.4 or NonProcurement Common Rule (2 CFR Parts 180 and 1880)
- Action under either of these authorities has reciprocal and **governmentwide effect**
- Actions used to protect the government interest – “not to punish”
- NASA Suspending and Debarring Official (SDO) is the HQ Deputy General Counsel

# Who may be Suspended or Debarred?



- Any entity doing business with the Federal Government
  - Corporations, partnerships, and other business entities
  - Grant recipients, not for profit institutions, etc.
  - Individuals
  - Subcontractors
- **Automatically** includes all divisions, organizational elements, and operational components within a contractor/ participant **unless limited by the SDO's decision**

# What is Prohibited if a Contractor is Suspended or Debarred?

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- Okay to continue with contracts or subcontracts in existence at time of suspension, debarment, or proposed for debarment
- Government CANNOT:
  - Place orders exceeding guaranteed minimum under indefinite quantity contracts
  - Place orders under optional use Federal Supply Schedule contracts, blanket purchase agreements, or basic ordering agreements
  - Add new work, exercise options, or otherwise extend duration of current contracts or orders

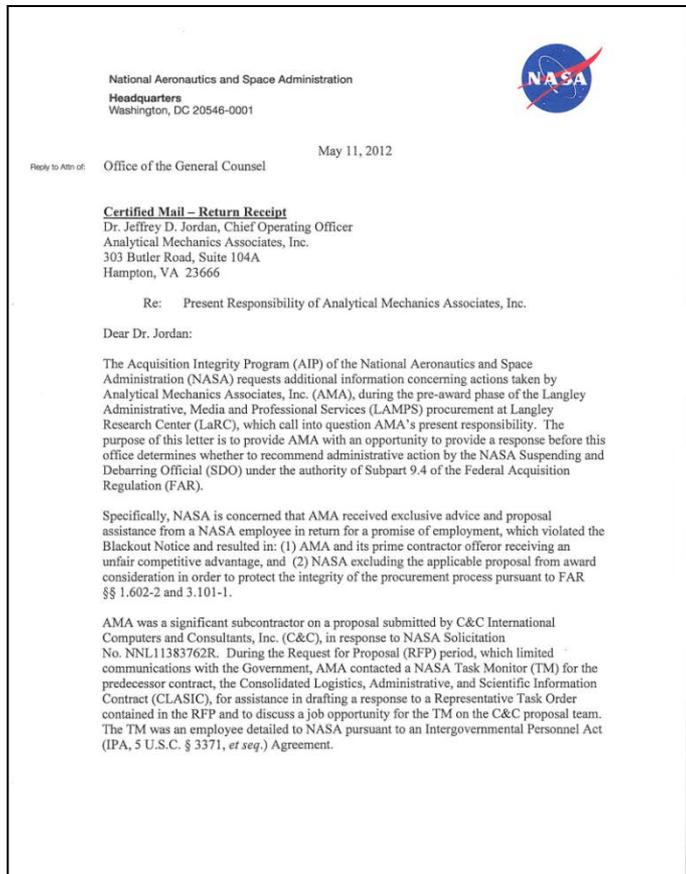
# Are There any Exceptions?

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- YES - Written compelling needs determination authorized by Agency head or designee (NASA designee is the Chief Acquisition Officer, which is the HQ Chief Financial Officer)
- Coordinate with AIP if you need to proceed with this route

# Use of Show Cause Letters



- In FY2011, only 11 agencies used show cause letters
- In FY2012, NASA AIP utilized this remedy for the first time in two cases
- Can be an effective way to ensure present responsibility of contractor

# Use of Administrative Agreements To Ensure Present Responsibility



## Morehouse College

Professor was the principal investigator on NASA and NSF grants and used grant money inappropriately (e.g. taking his wife on a trip to the Bahamas)

In addition to a settlement agreement of \$1.2 million, Morehouse agreed to implement a Compliance Program, which is designed to ensure that funds awarded to Morehouse by NASA and NSF will be managed appropriately and requires:

- (1) the appointment of a senior level administrator to oversee Morehouse's compliance
- (2) independent audits by Morehouse over the next five (5) years regarding expenditures of funds
- (3) submission of annual reports to NASA and NSF over the next five (5) years identifying any audit deficiencies and corrective actions taken.

UNITED STATES ATTORNEY'S OFFICE  
NORTHERN DISTRICT of GEORGIA

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NEWS

**MOREHOUSE SETTLES MISUSE-OF-FUNDS CASE**

FOR IMMEDIATE RELEASE  
August 4, 2011  
<http://www.justice.gov/usao/gan/>

CONTACT: Patrick Crosby  
(404) 581-6160  
FAX: (404) 581-6160

ATLANTA, GA—Atlanta-based Morehouse College has agreed to pay \$1.2 million to resolve a federal investigation of misuse of funds provided by the National Aeronautics and Space Administration ("NASA") and the National Science Foundation ("NSF") under grants which were awarded to promote enrollment in scientific fields of study by Morehouse students.

United States Attorney Sally Quillian Yates said of the agreement, "This settlement reflects the joint efforts of the United States Attorney's Office, NASA, NSF and Morehouse to resolve problems with misuse of federal grant funds by a former Morehouse employee. When funds are misused by individuals administering a grant – students – who are the intended beneficiaries – are among the real victims."



# How Do I Check if an Entity is Suspended or Debarred?

- Check [www.sam.gov](http://www.sam.gov)
- EPLS is now a legacy system incorporated into SAM

**SAM**  
System for Award Management

USER NAME:  PASSWORD:    
Forgot Username? Forgot Password? [Create an Account](#)

HOME SEARCH RECORDS DATA ACCESS GENERAL INFO HELP

**CREATE USER ACCOUNT**  
Your OIG information will not exist in SAM. You will need a new SAM User Account to register or update your entity records. You will also need to create a SAM User Account if you are a government official and need to create businesses or search for POC information.  
[Create User Account](#)

**REGISTER/UPDATE ENTITY**  
You can register your Entity (business, individual, or government agency) to do business with the Federal Government. If you are interested in registering or updating your Entity, you must first create a user account. Then, log in, select Register/Update Entity and follow the directions.

**SEARCH RECORDS**  
All records from OIG, FedReg, OIGCA, and EPLS, active or expired, were moved to SAM. You can search these records and filter your results. If you are a government user logged in with your SAM user account, you will automatically have access to POC information.

**WHAT IS SAM?**  
The System for Award Management (SAM) is a Federal Government owned and operated free web site that consolidates the capabilities in OIG, FedReg, OIGCA, and EPLS. Future phases of SAM will add the capabilities of other systems used in Federal procurement and awards programs.

**NEWS AND ANNOUNCEMENTS**  
Don't use my OIG information in SAM? Be fixed to create an account? Click [HERE](#) to find answers to these and other top questions.

**USER GUIDES/HELPFUL HINTS**  
Additional information, such as a full User Guide, Quick Start Guide, Helpful Hints, and Videos are available on the HELP tab.  
  
Service Desk  
URL: <http://www.SAM.gov>

**FORMER OIG REGISTRANTS**  
If you had an active record in OIG, you have an active record in SAM. This does not need to do anything in SAM at this time, unless a change in your business circumstances requires updates to your Entity records in order for you to be paid or to receive an award or you need to renew your Entity(s) prior to its expiration. SAM will send notifications to the registered user via email (to, go, and cc) 30 days prior to expiration of the Entity. To update or renew your Entity records in SAM you will need to create a SAM User Account and link it to your migrated Entity records. You do not need a user account to search for registered entities in SAM by trying the POC number or business name into the search bar.

SAM | System for Award Management v.10  
Note to all Users: This is a Federal Government computer system. Use of this system constitutes consent to monitoring at all times.

USA.gov



# How Do I Make a Suspension or Debarment Referral?

S1809.406 Debarment.  
1809.406-1 General.  
1809.406-3 Procedures.

(a) Any person may refer a matter to the SDO when there is information indicating that a contractor may lack business integrity or business honesty. The information should be referred promptly to the SDO, through the AIP Director, for consideration. The referral should contain the information which supports a lack of business integrity or business honesty.

(1) Use the following format when referring a matter to the SDO for consideration. To the extent practicable, provide all specified information.

(A) Point of contact for the activity making the report:

|           |  |
|-----------|--|
| Name      |  |
| Address   |  |
| Telephone |  |
| Number    |  |

(B) Contractor and Government entity info:

|             |  |
|-------------|--|
| Name        |  |
| (CAGE) code |  |
| DUNS number |  |
| Address     |  |

(C)

|                                       |  |
|---------------------------------------|--|
| Name of board members                 |  |
| Addresses of the members of the board |  |
| Principal officers                    |  |
| Partners                              |  |
| Owners                                |  |
| Managers                              |  |

(D)

|                                   |  |
|-----------------------------------|--|
| Name of all known affiliates      |  |
| Addresses of all known affiliates |  |

- Any person may refer a matter to the SDO when there is information indicating that a contractor may lack business integrity or business honesty
- Refer to NFS 1809.406-3



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# Recoveries



# How Much of the Recovered Funds May the Agency Retain?

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- **Actual Damages:** The Agency may retain the amount of money it actually overpaid due to the fraud.
- **Double or Treble Damages:** These are penalties. The Agency may not retain and must send to the Department of Treasury.

Agency recovers only once, even if there are multiple remedies or theories of recovery



# Which Agency Account is Credited with the Recovered Funds?

---



- Credit the appropriations that funded the contract by account and by fiscal year
- May require pro-rating across several accounts and fiscal years
- Cannot credit entire recovery to current accounts unless the contract was funded entirely from the current accounts
- Crediting funds to the wrong account improperly augments that account



# Why is Status of Appropriations Important?

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- Appropriations are open, expired, or closed:
  - **Open:** Currently available for new obligations
  - **Expired:** No longer available for new obligations. May use to adjust previous obligations made while the account was open.
  - **Closed:** No longer available for any purpose. All funds returned to Department of Treasury, including recovered funds credited to the account.



# True or False?

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If a NASA contract is not "open", any recoveries to that contract must go back to the US Treasury.

**The answer is False**



# How to Determine Which Accounts to Credit?

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- Investigators should know which contract was the subject of the fraud.
- Contracting Officer should find which accounts are cited on the contract.
- CFO should determine the status of the cited accounts and pro-rate across accounts if necessary.
- Check goes to CFO, to credit to Agency accounts and/or return to Treasury.



# How May the Agency use Recovered Funds?

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- The monies do not have to be used on the same contract that was the subject of the fraud.
- Monies are credited to the appropriation accounts that funded the contract, and may be used for any purposes otherwise permissible for those accounts.
- Importance of recovering funds quickly
  - Agency may only use recovered funds for new work if the appropriation to which they are credited is still open.
  - The faster fraud is discovered, and funds are recovered and properly credited, the more likely the credited accounts will still be open.

## What Should I Do?



- Promote integrity
- Look for the lie
- Recognize fraud indicators and irregularities
- Report potential wrongdoing (do not wait for proof)
- When in doubt, report suspicions
- Cooperate with OIG and AIP
- Keep information about investigations closely held