



# **Protecting the Navy from Acquisition Fraud Through Detection, Deterrence and Recovery”**



# AIO Mission

- **Provide a Department of the Navy wide program to deter fraud to the maximum extent possible, detect fraud when and where it occurs, protect the Department from the effects of fraud, take appropriate action against those who commit fraud and recover fraudulent gains.**



# Why was AIO created?



- **“Fraud program not fully supported, failure to monitor significant cases, consider designating another centralized organization.”**  
~ Excerpts from DOD IG Report - July 1989
- **“Procurement fraud program is overly complex and its implementation involved too many contingencies, minimal oversight, lack of effective interchange between Navy and other DoD components, recommend transfer of procurement fraud program to OGC.”**  
~ Excerpts from DOD IG Report - March 1997



# Why was AIO Created?



- **“No organization was accountable for process results, resource constraints, lack of continuous awareness training, lack of effective response to DoDIG reports.”**

**~ Excerpts from DON Procurement Fraud Commission Report - May 2004**



# How Did DON Respond?

- **DON Procurement Fraud Commission proposed establishment of the DON Acquisition Integrity Office – May 2004**
- **SECNAV authorized creation of AIO – November 2004**
- **DON AIO officially organized - September 2005**



# Who is the Acquisition Integrity Office (AIO)?

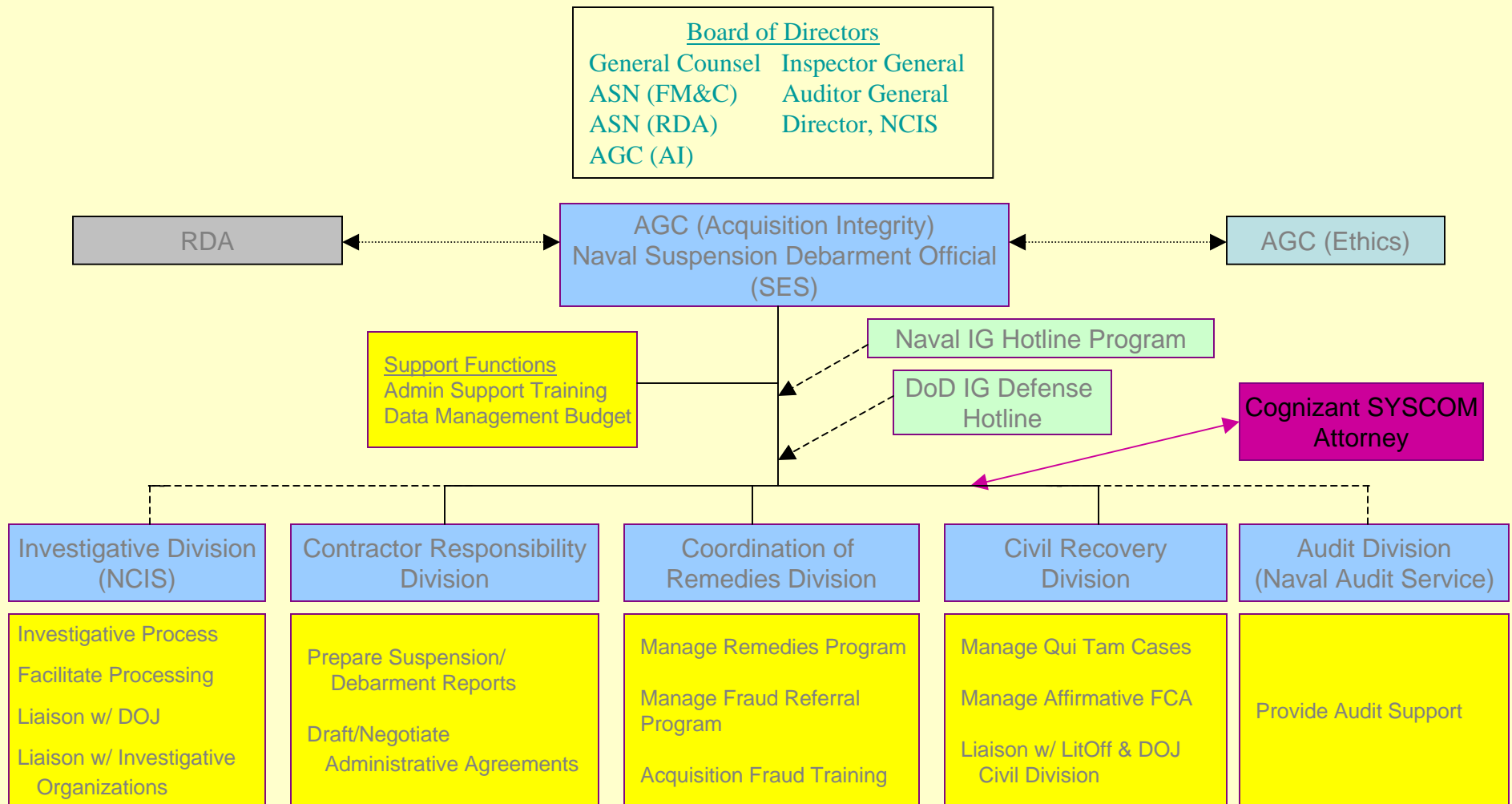
- Overall Management Authority and Centralized point of contact within DON for acquisition fraud matters
- Provision of legal services on acquisition fraud matters to SECNAV and throughout DON



» SECNAVINST 5430.92B (30 December 2005)



# Naval Acquisition Integrity Organization





# AIO Partners



- **Naval Criminal Investigative Service**
  - Conduct investigations
  - Aid in the prosecution of procurement fraud cases
- **Naval Audit Service**
  - Conduct audits to evaluate programs, activities, systems, procedures and any operations involving the expenditure of funds or utilization of resources





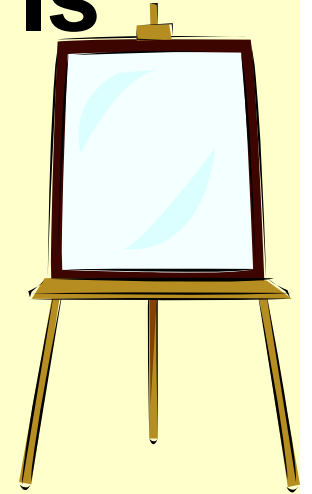
# AIO Partners



- **Naval Inspector General (NAVINSGEN)**
  - Ensures that AIO receives for action all acquisition fraud matters forwarded to NAVINSGEN
- **Department of Defense Inspector General – Defense Hotline**
  - Intake office for all DOD hotline calls that are forwarded to AIO for action



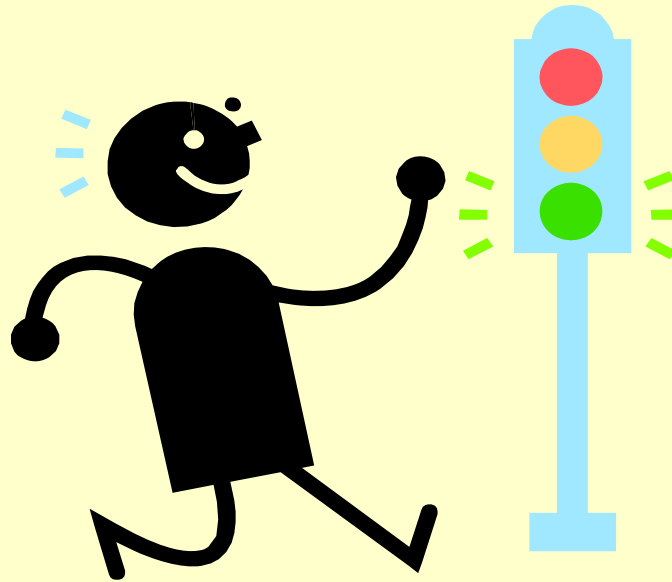
# Acquisition Fraud Training Is Key!



- **Training**
  - Acquisition fraud training for Contracting Officers, Specialist, Negotiators, and technical personnel
  - Acquisition fraud training for Government Contracts Attorneys
- **Fraud Awareness Training-** Provide acquisition fraud training in conjunction with NCIS Fraud Awareness Briefings
- **Fraud Alerts**
  - Hurricane Katrina and Resolution of Claims



**Let's Get Started!!!**





# Acquisition Fraud Schemes and Indicators





# What is Acquisition Fraud?

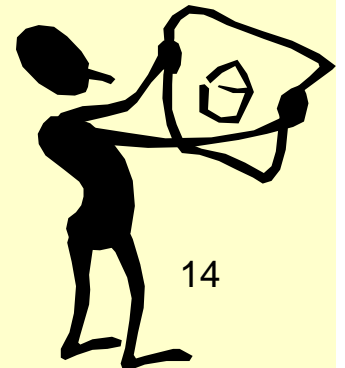
- Any **willful** means of **taking** or **attempting to take unfair advantage** of the **government** that occurs during the **acquisition of goods or services** for DON, including but not limited to: the offer, payment, giving or acceptance of bribes or the offer, giving or acceptance of gratuities; making of false statements, submission of false claims, or use of false weights or measures; evasion or corruption of inspectors and other officials; deceit either by suppression of the truth or misrepresentation of a material fact; adulteration or substitution of material; falsification of records and books of account; arrangements for secret profits, kickbacks, or commissions; and conspiracy to use any of these devices. It also includes those cases of conflict of interest, criminal irregularities, and unauthorized disclosure of official information, which is, connected with acquisition and disposal matters.

**SECNAVINST 5430.92B, 30 December 2005**



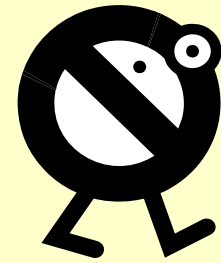
# Acquisition Fraud Schemes & Indicators Defined

- **What are acquisition fraud schemes?**
  - Methods or plans aimed at defrauding the Government
- **What are acquisition fraud indicators?**
  - Signals or clues that a contractor may be engaging in fraudulent conduct
    - Obvious
    - Subtle





# Collusive Bidding/ Anti-Trust



- **Suppliers/contractors agree to prohibit or limit competition and/or rig prices to:**
  - Increase the amount of business
  - Raise prices
- **Fraudulent practices to eliminate or restrain trade**



# Acquisition Fraud Indicators



- **Excessive prices**
- **Bids/proposals are very close in dollar amounts**
- **Protests alleging contractor collusion**
- **Bids/proposals very close to Government estimate (may indicate insider)**





# Bribery/Illegal Gratuities/ Kickbacks

- **Giving or receiving a thing of value**
  - To influence an official act
  - Because of a person's official position
  - Based on a percentage of contract award(s)





# Acquisition Fraud Indicators



- **Living beyond one's means, unexplained wealth**
- **Same Navy personnel writing justification and approval (J&A) and awarding the contract**
- **No supporting documentation in contract file or reported as lost/unavailable**
- **Numerous delivery orders paid on a contract, when it appears Navy is not receiving anything of value**



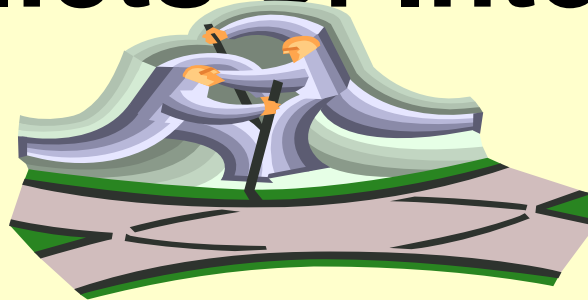
# Acquisition Fraud Indicators Cont'd

- **Poor or no established contractor procedures for awarding subcontracts through competition**
- **Poor documentation supporting award of contract/subcontract**
- **Non-award of contract to lowest bidder**
- **Kickback amount passed on to Government**
- **Non-qualified or unlicensed subcontractors working on prime contract**





# Conflicts of Interest



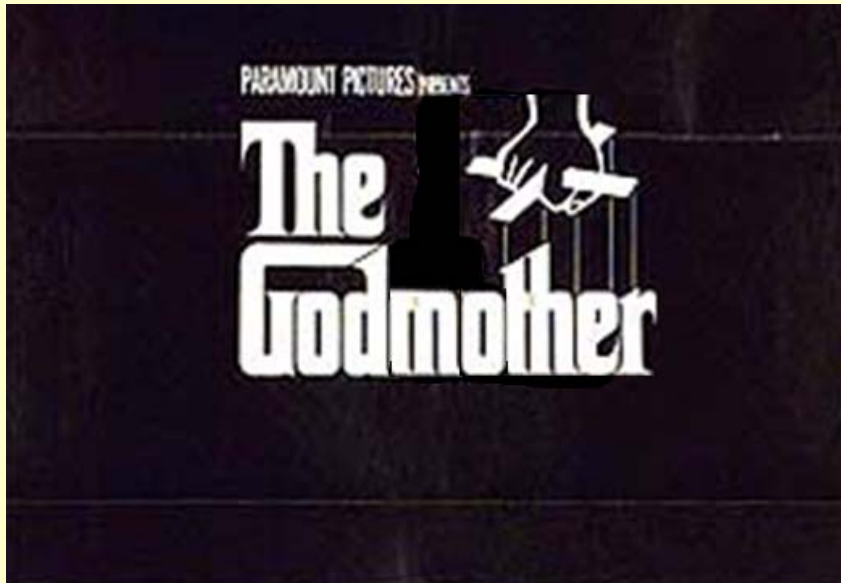
- **Personal**: Government personnel performing their official duties in a way that impacts their personal financial or economic interests, or those of immediate family members
- **Organizational (OCI)**: Same or affiliated companies performing production as well as testing and evaluation



# Acquisition Fraud Indicators



- **Government personnel providing proprietary information (company bid & proposal information) or source selection information, to one or a few competitors**
- **Numerous sole source contracts awarded to same contractor**
- **Poor or incomplete performance, but contractor continues to receive payments, more contracts, positive past performance**
- **Company X producing a weapon system, affiliate or subsidiary of company X testing and/or evaluating the weapon system**



*Starring Darlene Drueyun*



# **Cost Mischarging / Commingling of Contracts**

- **Improper allocation of costs**
- **Charging of unallowable costs**
- **Artificially inflating costs**
- **Improper billing of same expenses against several contracts.**
  - **All resulting in overcharging for goods and services**



# Acquisition Fraud Indicators

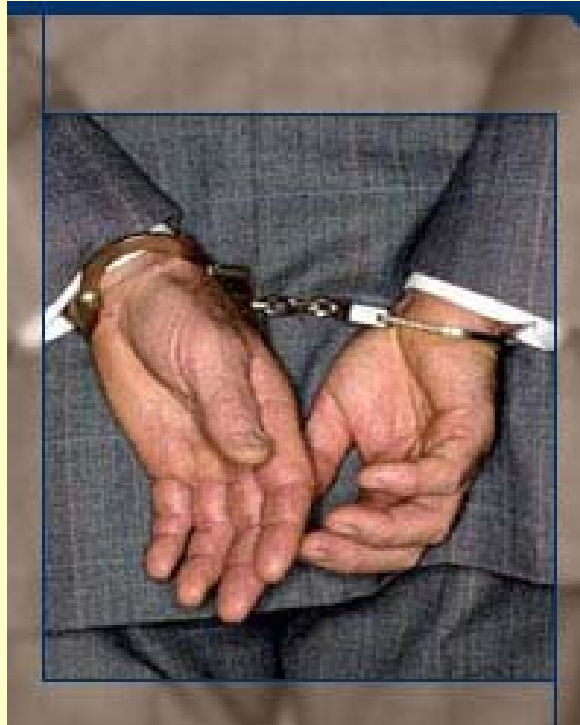


- **Duplicate billing for labor and/or material**
- **Billing un-incurred costs to Government contracts**
- **Contractor passing commercial business expenses to Government cost type contracts**
- **Continual cost overruns on cost type contracts**





# The Price of Fraud





# Defective Pricing

- **Failure to submit accurate, current, and complete cost or pricing data to the Government on negotiated contracts, modifications, and change orders**
- **Fixed price contracts when required**



# Acquisition Fraud Indicators



- **Proposal estimate which was the basis for negotiation is higher than supporting documentation with no credible explanation**
- **Continued failure to correct known system deficiencies**
- **Certification of false or misleading information**
- **Use out of date pricing**
- **Failure to provide Government “best” prices**



# Are YOU Looking For Fraud?





# **Unjustified Sole Source/ Excluding Qualified Bidders/ Rigged Specifications**

- **Improper award of a contract without competition or prior review/approval**
- **Contracting officials deliberately excluding qualified competitors**
- **Solicitation containing specifications tailored to meet qualifications of a particular bidder or supplier**



# Acquisition Fraud Indicators



- **Qualified competitors available**
- **Unnecessarily short time to perform**
- **Unnecessarily restrictive specifications**
- **Government specifications tailored to product specifications of one company**
- **Use of design specifications instead of performance specifications**



# Look for Fraud at All Levels!







# Unauthorized Product / Personnel Substitution

- **Intentional submission of goods and/or services that do not conform to contract specifications or requirements**
- **Without approval, substituting lesser qualified personnel**





# Acquisition Fraud Indicators



- **Lower quality materials provided and Government billed for premium materials**
- **Substitutions for “key personnel” (Bait & Switch) and Government not notified**
- **Contractor falsely certifies inspection and testing of material**
- **Intentionally omitting test(s) required by the contract.**
  - **Substitutions may affect material and labor costs**
  - **Equipment failure may implicate safety issues**



# NO SURPRISES?





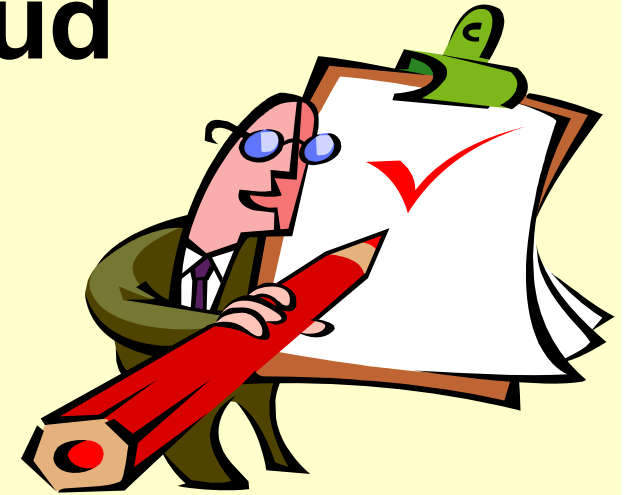
# **Purchase for Personal Use or Resale/ Phantom Vendor**

- **Purchase or requisition of items by Government employee for own use or resale**
- **Government personnel with accounts payable, or procurement responsibility, creating and/or approving invoices for fictitious companies in order to embezzle funds, or to personally appropriate the goods**



# Acquisition Fraud Indicators

- **Living beyond ones means**
- **Never/rarely taking leave**
- **No other Government activity does business with suspect company**
- **Many companies with the same address/telephone numbers**
- **Purchases unrelated to Government mission**





# **Contract Types Most Susceptible To Fraud**

- **Cost-Reimbursement**
- **Research & Development (R&D)**
- **Small Business & 8a**
- **Engineering & Support Services**
- **Sole Source**
- **Task Orders**
- **Time & Material**



# REMEDIES!!!





# Criminal Remedies

- **Bribery & Illegal Gratuities Act**
- **Major Fraud Act**
- **Mail & Wire Fraud Acts**
- **Trade Secrets Act**
- **Conspiracy to Defraud Government Act**
- **Conflict of Interest Act**



# Civil Remedies

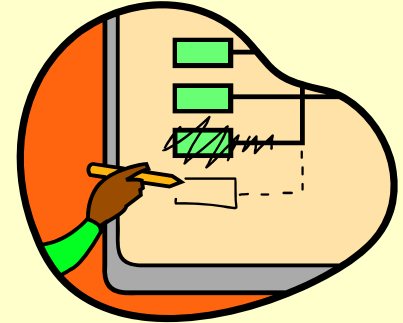
- **Anti-Kickback Act**
- **False Claims Act**
- **Anti-Trust Act**
- **Procurement Integrity Act**
- **Truth in Negotiations Act**





# Administrative & Contractual Remedies

- **Administrative:**
  - Suspension
  - Proposed Debarment
  - Debarment
  - Administrative Agreements
- **Contractual**
  - T4D, T4C, No Cost Termination
  - Cure Notice, Show Cause
  - Withhold Payment/Offsets





# Qui Tam Litigation



- **What is it?**
- **Why should you care?**

**900,000,000 Reasons**





# Qui Tam Litigation

- **False Claims Act has included provisions allowing lawsuits by private citizens on behalf of the U.S. since its original enactment in 1863**



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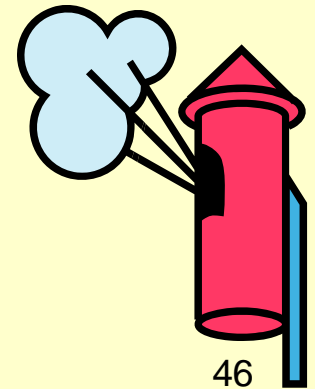
# Complaint Under Seal

- **Seal lasts for at least 60 days from Government receipt of both complaint and written disclosure**
- **Government has chance to investigate allegations and determine whether to intervene or decline**
- **Access limited to those who need to know**



# Whistleblower Protection

- **Protects whistleblowers who are discriminated against because they assist in the investigation or prosecution of an FCA case**
- **Entitled to:**
  - Reinstatement to position at former level
  - Double back pay
  - Interest on back pay
  - Special damages
  - Costs of litigation
  - Reasonable attorney's fees





# **Suspension and Debarment (S & D)**

- **FAR 9.4, DFARS 209.4,**
- **DFARS PGI 209.406-3**
  
- **Do business with “Responsible”  
contractors**
- **Protect the Navy**
- **Not punitive measure**



# Legal Effect of S&D

- **Immediately makes the contractor ineligible for new contracts or for federal assistance programs**
- **Ineligibility applies to All Executive Branch departments and agencies**
- **Ineligibility accomplished when the S&D official causes the contractor's name to be placed on the "Excluded Parties List System" or "EPLS," found at:  
<http://www.epls.gov/>**





# Administrative Agreements

**An agreement between an agency and a business entity which documents the existence of mitigating factors and other representations to the SDO. Company agrees to take certain actions for an agreed period to establish present responsibility.**





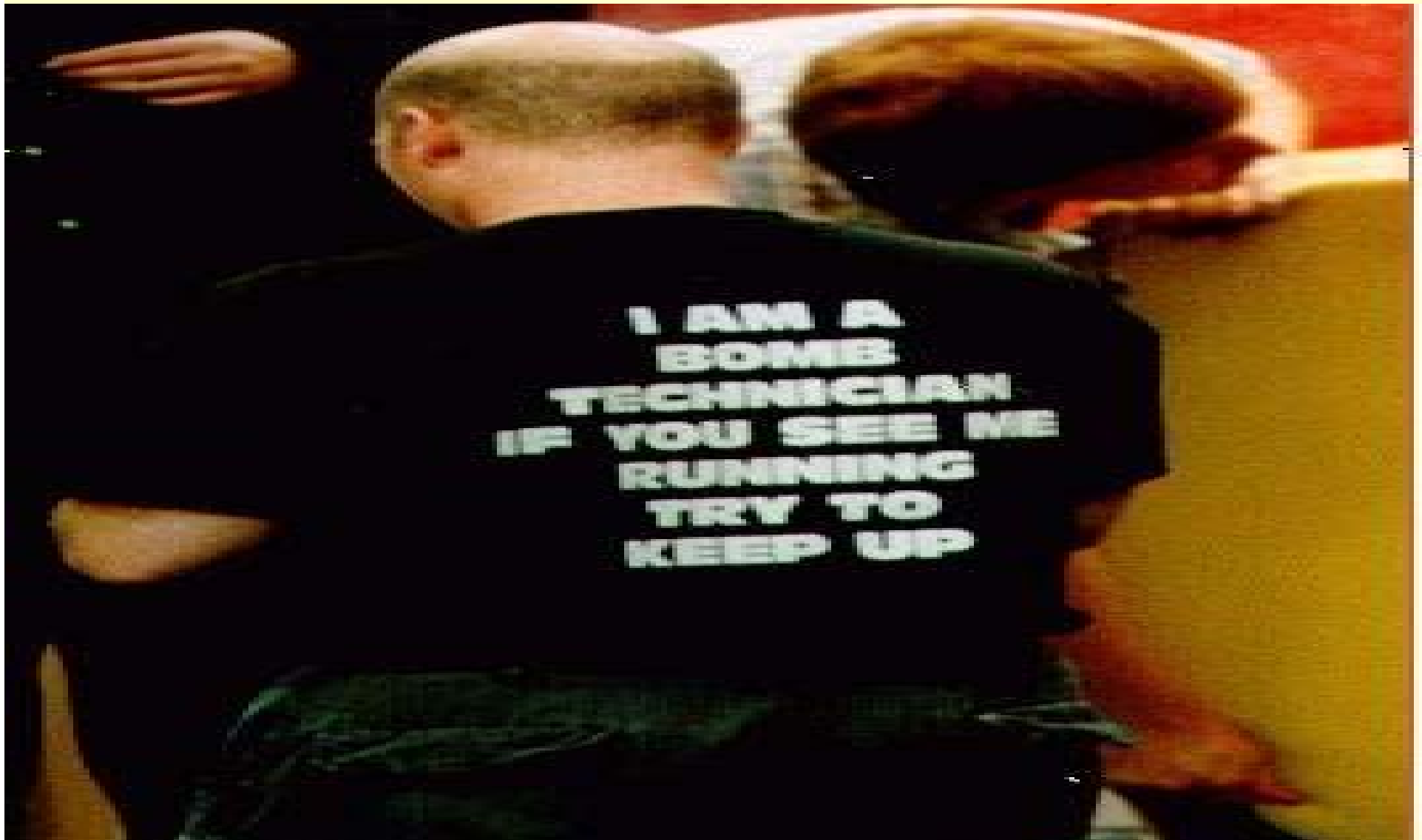
# Coordination of Remedies



- **Per DoD Directives, and DOJ policy, all investigations and litigation require**
  - **Parallel coordination of remedies**
  - **DOJ is lead agency for court litigation**



# We Need to Ensure Coordination...





# Coordination of Remedies

## Please Note.....

- **41 U.S.C. § 605(a) - Agency can not “settle, compromise, pay, or otherwise adjust any claim involving fraud”**
- **FAR 33.209 - If contractor unable to support any part of a claim due to misrepresentation or fraud, KO “shall refer” matter for investigation**



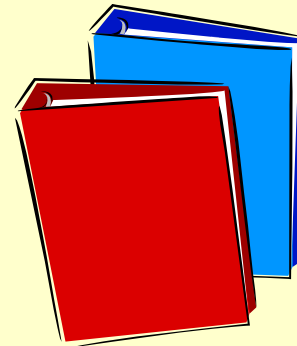
# AIO and IG Investigations: The Process





# Overview of Investigations Procedures

- **Fraud Referrals**
- **Investigation Report**
- **Correction Report**





# SECNAVINST 5430.92B

- **“The AGC AI shall task Echelon 2 activities to inspect, investigate and inquire into acquisition fraud matters...”**



» SECNAVINST (6)(a)(17) - 30 December 2005



# Fraud Referrals

- Referrals received via a command hotline, e-mail or DON personnel should be referred immediately to AIO for review
  - Integrated Agents
- Send referrals to: [AIO@navy.mil](mailto:AIO@navy.mil)
- AIO will forward the referral to NCIS liaison for review and acceptance or declination
- NAVAUDSVC







# Matters for NCIS Investigation

- **Misconduct involving criminal wrongdoing**
- **Cases involving significant monetary harm**
- **Violations of the UCMJ**





# Matters for IG Investigation

- **Misconduct of a non-criminal nature**
- **Violations of the Joint Ethics Regulations**
- **Actions of less significant monetary harm**





# What Happens if NCIS Declines to Investigate a Referral?





# Investigation Report

- **AIO will task an administrative investigation to an Echelon 1 or 2 IG's office**
- **Investigations and reports should be completed by the cognizant IG's office**
- **Send reports to: [AIO@navy.mil](mailto:AIO@navy.mil) upon completion of the investigation**



# The Role of the AIO Attorney

- **Serve as a liaison with the responsible IG's Office**
- **Provide legal support on acquisition fraud matters**
- **Review Investigation and Correction Reports for sufficiency**
- **Monitor corrections identified in the Correction Report**





# Correction Report



- **Addresses how the DON activity will remedy deficiencies identified in the Investigation Report.**
- **Completed by personnel with knowledge of the matter**
  - **Ex. Contracting Officer, Technical Personnel, IG Investigator, Program Manager, Legal Counsel and Command Administrative Representative**
- **Forward Correction Reports to AIO within 60 days upon conclusion of the investigation**

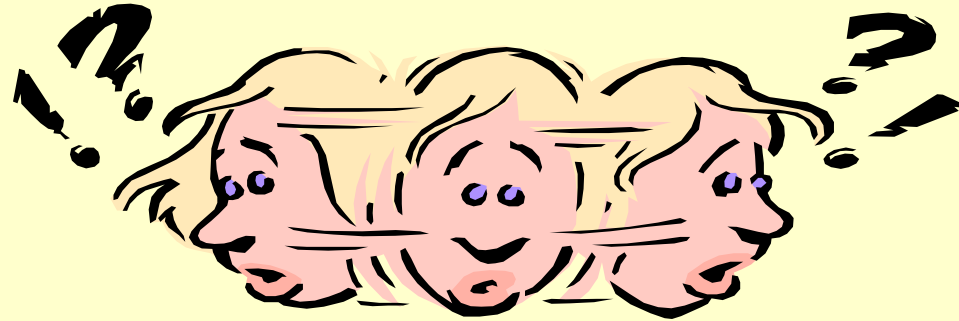


# Why Is Combating Acquisition Fraud Important to You!

- **Helps your activity achieve the Department of the Navy mission**
- **Facilitates the return of recovered funds to your program as allowable under statute or regulation**
- **Ensures the integrity of the government contracting process**
- **Ensures that the goods and services used by Navy personnel are of the highest quality and purchased at a fair price**



# Questions?



**Department of the Navy  
Acquisition Integrity Office  
720 Kennon Street SE Room 213/214  
Washington Navy Yard, DC 20374-5066  
202- 685-7000**





# Acquisition Fraud Schemes



# Acquisition Fraud Schemes

- **Collusive Bidding** – Suppliers and contractors agree to prohibit or limit competition and rig prices to increase the amount of business available to each participant
- **Bribery and Kickbacks** – Giving or receiving a thing of value to influence an official act



# Acquisition Fraud Schemes

- **Conflict of Interest** – Government personnel performing their official duties in a way that impacts their personal financial or economic interest
- **Commingling of Contracts** – Improper billing of expenses against several contracts
- **Cost Mischarging** – Improper allocation of costs, charging of unallowable costs, or artificially inflating costs resulting in overcharging for goods and services



# Acquisition Fraud Schemes

- **Defective Pricing** – Failure to submit current, complete and accurate cost or pricing data to the government on a negotiated contract
- **Excluding Qualified Bidders** – Contracting officials deliberately excluding qualified bidders
- **Failure to Meet Contract Specifications**  
Intentional failure to meet contract specifications but represent that the specifications have been met



# Acquisition Fraud Schemes

- **False Statements and Claims** – Knowingly and/or willfully submitting false statements or claims with the intent to mislead or defraud
- **Product Substitution** – Intentional submission of goods and/or services that do not conform to contract specifications or requirements
- **Purchase for Personal Use or Resale** – Purchase or requisition of items by a government employee to convert for own use or resale



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