

**AIR FORCE MATERIEL COMMAND
PROCUREMENT FRAUD INDICATORS
HANDBOOK**



**Air Force Materiel Command Law Office
Acquisition Integrity Division**

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PREFACE

Most government contractors are honest and diligently perform their contracts. However, historically there have always been people that have tried to defraud the Government, and human nature being what it is, we must always be vigilant. As Ben Franklin put it, “There is no kind of dishonesty into which otherwise good people more easily and more frequently fall than that of defrauding the government.” As a result, a credible and robust Acquisition Integrity Program is essential to the viability of the Air Force Acquisition System; a system that deters future fraud and identifies and enforces remedies to correct existing fraud. In such critical work, fraud indicators are a valuable tool.

This handbook provides an extensive, though not exhaustive, list of procurement fraud indicators. The list was compiled from a wide variety of Air Force, DoD and other agency sources.¹ In addition, some items are derived directly from recent experience. It is not possible to have a complete list of fraud indicators because the ways in which fraud can be committed are limited only by one’s imagination. But, once a method is devised—be it clever or plain stupid—an indicator eventually pops up to detect it. The indicators contained herein are tried, true and derived from experience.

What exactly are fraud indicators? They are simply signals or clues that a contractor (or government employee) may be engaging in fraudulent conduct against the Government. It is important to keep in mind that the presence of a fraud indicator does not necessarily mean that fraud is afoot. An indicator may reflect a legitimate business practice. However, the presence of one or more indicators raises a red flag, and should not be ignored.

The indicators in this handbook are categorized into three parts: (1) indicators prior to contract award, (2) indicators after contract award, and (3) indicators of fraud by government employees. In addition, the handbook provides a great source of reference materials in its appendices: Appendix A contains fraud reporting resources. Appendix B contains a list of handbooks discussing substantive fraud issues. Appendix C and D contain a list of statutes, regulations and contract remedies. Finally, Appendix E contains a substantive discussion on fraud in submission of contractor claims against the Government—a newly covered area for indicators!

If in the performance of your duties you see these indicators or others that cause you to suspect that a contractor has cheated the government, you can contact the Air Force Materiel Command Law Office Acquisition Integrity Division at (937) 904-5752, DSN 674-5752. (See Appendix A)

For comments, questions or suggestions regarding the contents herein please contact Ms. Sharon A. Curp, Air Force Acquisition Fraud Counsel, AFMCLO/JAF at (937) 904-5754, DSN 674-5754 or via email at sharon.curp@wpafb.af.mil.

¹ Sources include: Army, Navy, DoD Inspector General, Air Force Office of Special Investigations, Air Force Audit Agency, DCMA, DCAA, non-DoD agency sources, such as the State Department and the United States Agency for International Development (USAID), Office of the Inspector General, Office of Investigators.

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PART I—FRAUD INDICATORS PRIOR TO CONTRACT AWARD

A. Indicators during Award Process

1. Fraud in the needs determination for goods or services

- a. Need determinations for items currently scheduled for disposal or procurement, or which have predetermined reorder levels
- b. Excessive purchase of “expendables” such as drugs or auto parts
- c. Inadequate or vague need assessment
- d. Frequent changes in the need assessment or determination
- e. Mandatory stock levels and inventory requirements appear excessive
- f. Items appear to be unnecessarily declared excess or sold as surplus, while same items are being reprocured
- g. It appears that an item or service is being purchased more as a result of aggressive marketing efforts rather than in response to a valid requirement
- h. Need determination appears to be unnecessarily tailored in ways that can only be met by certain contractors
- i. Items and services are continually obtained from the same source due to an unwarranted lack of effort to develop second source

2. Fraud in the development of statement of work and specifications

- a. Statements of work and specifications appear to be intentionally written to fit the products or capabilities of a single contractor, or specifications are made so restrictive that they effectively exclude competing firms
- b. Statements of work, specifications, or sole source justifications developed by or in consultation with a preferred contractor
- c. Information concerning requirements and pending contracts is released only to preferred contractors
- d. Allowing companies and industry personnel who participated in the preparation of bid packages/solicitations to perform on those same contracts or subsequent contracts in either a prime or subcontractor capacity

- e. Release of information by firms or personnel participating in design or engineering to companies competing for prime contract
- f. Prequalification standards or specifications appear designed to exclude otherwise qualified contractors or their products
- g. Requirements appear split up to allow for rotating bids, giving each contractor his or her “fair share”
- h. Requirements appear split up to meet small purchase requirements or to avoid higher levels of approval that would be otherwise required
- i. Bid specifications or statement of work appear inconsistent with the items described in the general requirements or need determination
- j. Specifications appear so vague that a reasonable comparison of estimates would be difficult and/or facilitate steering a contract to a favored contractor
- k. Specifications appear inconsistent with previous procurements of similar items or services
- l. Specifications that do not include (specific) work site locations
- m. Setting an unnecessarily short time to perform
- n. Setting unnecessarily restrictive specifications
- o. Use of design specifications instead of performance specifications where performance specifications are appropriate
- p. No need for the work to be performed or for the item described in the specification
- q. Specification or statement of work unnecessarily requires the use of a proprietary process (a means of unfairly restricting competition)
- r. Complex procedures require a “middle man” to do paperwork/mediate

3. Fraud during the pre-solicitation phase

- a. Sole source justifications appear unnecessary or poorly supported
- b. Statements justifying sole source or negotiated procurements appear inadequate, incredible or falsified

- c. Solicitation documents appear to contain unnecessary requirements which tend to restrict competition.
- d. Approval of a justification for less than full and open competition based upon improper reasons, inaccurate facts, false documents, signed by unauthorized officials, or required levels of review were deliberately bypassed
- e. Contractors or their representatives appear to have received advanced information related to the proposed procurement on a preferential basis
- f. Failing to perform market research to determine evaluation factors, contracting method, and whether commercial items or non-developmental items would meet the Government's needs
- g. Failing to state requirement functionally to the maximum extent possible
- h. Splitting requirements to use simplified acquisition procedures in order to avoid review and approval procedures
- i. Using statements of work, specifications, or sole source justifications developed by or in consultation with a contractor who will be permitted to compete in the procurement
- j. Failure to prepare a government estimate
- k. Estimate is prepared after solicitations are requested
- l. Pre-solicitation documents indicate purchases from a specific firm

4. Fraud during the solicitation phase

- a. Procurement appears to be processed or restricted to exclude, impede or hamper any qualified contractor
- b. The time for submission of bids or proposals appears to be unnecessarily limited so that only those with advance information have adequate time to prepare bids or proposals, or an apparent unnecessary extension of time to give a contractor more time to prepare their proposal
- c. Information concerning the procurement has apparently been revealed only to certain contractors, without being revealed to all prospective competitors
- d. Bidders conferences are conducted in a way that apparently invites bid rigging, price fixing, or other improper collusion between contractors

- e. There is an apparent intentional failure to timely publish appropriate notice of the solicitation
- f. Solicitation appears vague as to the details such as time, place and manner of submitting acceptable bids
- g. There is evidence of improper communications or social contact between contractors and government personnel
- h. Controls over the number and destination of bid packages sent to interested bidders appear inadequate
- i. Indications that government personnel or their families may own stock or have some other financial interest in either a contractor or subcontractor
- j. Indications that government personnel are discussing possible employment for themselves or a family member with a contractor or subcontractor or indications that a proposal for future employment from a contractor or subcontractor to a government employee or his or her family members has not been firmly rejected
- k. Indications that any contractor has received special assistance in preparation of his or her bid or proposal
- l. It appears that a contractor is given an expressed or implied reference to a specific subcontractor
- m. Failure to amend solicitation to reflect necessary changes, clarifications or modifications
- n. Failure to assure that a sufficient number of potential competitors are aware of the solicitation
- o. "Referring" a contractor to a specific subcontractor expert, or source of supply.
- p. Improper communication with contractor representatives at trade or professional meetings
- q. Solicitation includes bid schedule items with low demand

5. Fraud during the submission of bids and proposals

- a. Improper acceptance of a late bid

- b. Documents, such as receipts, appear falsified to obtain acceptance of a late bid
- c. Improperly attempting to change a bid after other bidders' prices are known
- d. Indications mistakes have been deliberately planted in a bid to support correction after bid opening
- e. Withdrawal by a low bidder who may later become a subcontractor to a higher bidder who gets the contract
- f. Apparent collusion or bid rigging among the bidders (See Part I. D.)
- g. Bidders apparently revealing their prices to each other
- h. Required contractor certifications appear falsified; certifications include:
 - 1. Small business certification
 - 2. Minority business certification
 - 3. Information provided to other agencies to support special status
 - 4. Certification of independent price determination
 - 5. Buy-American Act certification
 - 6. Manufacturer's certificate of warranty
- i. Revealing to one offeror the identity of other offerors
- j. Revealing to one offeror the content of another offeror's proposal
- k. Falsification of information concerning contractor qualifications, financial capability, facilities, ownership of equipment and supplies, qualifications of personnel and successful performance of previous jobs, etc.
- l. Respected, well-qualified company refuses to do business/offer bid
- m. Bids appear to drop when a new/infrequent bidder submits a bid
- n. Some contractors bid frequently but never win

6. Fraud during the evaluation of bids and proposals

- a. Deliberately losing or discarding bids of certain contractors
- b. Improperly disqualifying the bids or proposals of certain qualified contractors
- c. Accepting apparently nonresponsive bids from preferred contractors
- d. Unusual or unnecessary contacts between government personnel and contractors during solicitation, evaluation, and negotiation
- e. Any unauthorized release of procurement information to a contractor or to non-government personnel
- f. Any apparent favoritism in the evaluation of the bid or proposal of a particular contractor
- g. Apparent bias in the evaluation criteria or in the attitude or actions of the members of the evaluation panel
- h. Selecting evaluation factors and sub-factors that are not derived from the market place and do not accurately reflect the Government's requirements
- i. Selecting evaluation factors and sub-factors that unfairly give preference to a particular contractor
- j. Revealing to one offeror the ranking or evaluation of other offerors
- k. Revealing an offeror's solution, technology, or intellectual property to another offeror
- l. Failure to adequately and appropriately protect source selection information
- m. Knowingly furnishing source selection information to offerors
- n. Revealing an offeror's price and/or pricing data without that offeror's permission
- o. Failing to analyze the cost realism and reasonableness of each offeror's proposal when a cost reimbursement contract is anticipated
- p. Eliminating an offeror or offerors from the competitive range before rating each offeror against all solicitation evaluation criteria

- q. Failure to hold communications with offerors whose past performance information is the determining factor preventing them from being placed within the competitive range
- r. Failure to document the competitive range determination and the supporting rationale in the contract file
- s. Failure to notify offerors promptly in writing when their proposals are excluded from the competitive range
- t. Source selection decision that is inconsistent with the stated solicitation evaluation factors and subfactors; or a source selection decision that fails to adequately explain the rationale for award
- u. Bids or proposals containing any suspicious documents (from prime and/or subcontractor), for example, documents from competing firms containing similar or identical:
 - 1. Company names
 - 2. Handwriting/signatures
 - 3. Company stationery
 - 4. Invoice numbers (in sequence)
 - 5. Telephone numbers
 - 6. Addresses
- v. An odd company name for a vendor may suggest that the firm may not provide the type of service or product being solicited

7. Fraud in the negotiation of a contract

- a. "Back-dated" or after-the-fact justifications may appear in the contract file or may be signed by persons without the authority to approve a noncompetitive procurement
- b. Information given to one contractor which is not given to others which give that contractor a competitive advantage
- c. Improper release of information to unauthorized persons (e.g., prices in proposals, technical data or characteristics of proposals, identity or rank of competing proposals, proprietary data or trade secrets, and/or government price estimates)

- d. Weakening the Government's negotiating position through disclosures to the contractor selected for award
- e. Contractor misrepresentation of its costs during negotiations
- f. Any indication that a contractor has provided false cost or pricing data, or has omitted/failed to provide required cost or pricing data
- g. Failure of government personnel to obtain and rely upon a Certificate of Current Cost or Pricing Data when required
- h. Approval of less than full and open competition by an unauthorized person or for an improper reason (a reason other than one of the authorized exceptions to the requirement for full and open competition)
- i. Inadequate evaluation of contractor's present responsibility, including ignoring or failing to obtain information regarding a contractor's record of business ethics and integrity; failure to check the Excluded Parties List System (EPLS) at <http://www.epls.gov/>

8. Fraud in the award of the contract

- a. Award to a contractor who is not the lowest responsible, responsive bidder in a sealed bid acquisition
- b. Disqualification of any qualified bidder
- c. Allowing a low bidder to withdraw without justification
- d. Failure to forfeit bid bonds when a contractor withdraws improperly
- e. Material changes in the contract at the time of award
- f. Awards made to contractors with an apparent history of poor performance
- g. Awards made to the lowest of a very few bidders without consideration of re-advertising or without adequate publicity
- h. Awards made that include items other than those contained in bid specifications in a sealed bid acquisition
- i. Awards made without adequate documentation of all pre-award and post-award actions including all understandings or oral agreements

- j. Release of advanced information concerning the award of a major contract (Such a release increases the potential for illegal insider trading in the stock of both winning and losing contractors)
- k. Inadequate evaluation of contractor's present responsibility, including ignoring or failing to obtain information regarding a contractor's record of business ethics and integrity
- l. Unrealistic contract price
- m. Contract award price is consistently very close to government estimate
- n. Improper award of a contract without competition or prior review/approval
- o. Award of more than one contract for either concurrent work on what appears to be one project or for the same item
- p. Numerous emergency contracts awarded without competition

9. Fraud during post-award process

- a. Failure to notify each offeror whose proposal was in the competitive range but not selected for award within 3 days after the date of contract award
- b. Failure to brief an unsuccessful offeror when the unsuccessful offeror had made a written request for debriefing within 3 days after the offeror received notice of contract award
- c. Modifying the contract shortly after award in order to make material changes in the requirements or scope of work
- d. Unsuccessful bidders become subcontractors after award

B. Defective Pricing

- 1. Indications of falsification or alteration of supporting data; any suspicious documents
- 2. Failure to update cost or pricing data even though it is known that costs or prices have decreased
- 3. Failure to make complete disclosure of known data to responsible contracting personnel

4. Distortion of the overhead accounts or base line information by transferring charges or accounts that have a material impact on government contracts
5. Failure to correct known system deficiencies which lead to defective pricing
6. Protracted delay in release of data to the Government to preclude possible price reductions
7. Repeated denial by the responsible contractor employees of the existence of historical records that are subsequently found
8. Repeated defective pricing involving similar patterns or conditions
9. Utilization of unqualified personnel to develop cost or pricing data used in estimating process
10. Employment of people known to have previously perpetrated fraud against the Government
11. Specific knowledge that is not disclosed regarding significant cost issues that will reduce proposal costs (This may be reflected in revisions in the price of a major subcontract, settlement of union negotiations that result in lower increases on labor rates, etc.)
12. Proposal estimate which was the basis for negotiation is higher than supporting documentation with no credible explanation
13. Certification of false or misleading information
14. Failure to update cost or pricing data when change occurs prior to agreement on contract price
15. Known use of out-of-date pricing
16. Failure to provide the Government the "best" prices
17. Creating and submitting fictitious documents
18. Failing to disclose internal documents on vendor discounts
19. Nondisclosure of actual costs for follow-up contracts
20. High incidence of defective pricing
21. Contingencies not disclosed

22. Cost estimates not based on total material requirements
23. A significant variance between proposed and negotiated vendor/subcontractor prices
24. Changing contract type for vendors or subcontractors after contract award
25. High percentage of sole source (noncompetitive) subcontract awards with poor explanations/documentation
26. Contractor using higher budgetary/planning quote to support proposal or negotiations knowing that a lower firm quote has been or will be submitted on request
27. In preparing its bid/proposal, contractor obtains a variety of "courtesy bids" from its potential vendors/suppliers; then, the contractor uses the higher "courtesy bids" to support its bid, proposal or negotiations knowing that other lower bids from its vendors/suppliers are or will be available ("Courtesy bids" can also increase the lowest bid)
28. Failure to disclose the existence of a decrement factor or historical negotiation experience with vendors
29. Failure to disclose decreases in subcontracting prices even though some parts of the subcontracts are still under negotiation
30. Pattern of subcontractor employees buying contractor employees lunches, dinners and/or other items (Individual items may be of low value, but the aggregate value of all items is fairly material)
31. Pattern of switching from make to buy or vice versa without proper notification to the Government
32. Documented lower vendor price but still propose to make instead of buy the part or item
33. Intentionally duplicating/double counting costs by proposing or claiming as direct and indirect
34. Proposing obsolete/unnecessary items
35. Including in proposals or claims inflated rates for items such as insurance or workmen's compensation
36. Purging proposal files of documents showing other vendors with lower prices than the vendor selected

37. Failing to disclose excess inventory that is used on later contracts
38. Refusing to provide requested data that show lower costs
39. Planning to use an intercompany division to perform part of the contract but proposing an outside vendor or another division (or vice versa)
40. Suppressing internal/external studies or reports which may affect proposed costs, e.g., more efficient equipment, manufacturing processes, etc.
41. Commingling work orders to hide productivity improvements
42. Withholding information on batch purchases
43. Proposed labor not based on existing work force; massive new hires needed; new hire labor rates significantly lower than proposed
44. Different supporting documentation for the same items with varying unit prices for no obvious reason

C. Price Fixing

1. Agreements among contractors to adhere to published price lists
2. Agreements among contractors to establish, adhere to or eliminate discounts
3. Agreement among contractors not to advertise prices
4. Agreement among contractors to maintain specified price differentials based on quantity, type or size of the product
5. Agreements to raise prices by a specified amount

D. Collusive Bidding / Bid Rigging

1. Same contractor has been low bidder multiple times
2. Extreme differences in winning bid and other bidders; inexplicably large gap between the winning bid and all other bids
3. Pattern develops for winning bids, e.g., certain bidder always wins a particular type of service or a fixed pattern of winning bidders
4. Winning bidder repeatedly subcontracts to companies that submitted higher bids

5. Identical calculation errors in bids
6. Identical bids
7. Fewer companies submit bids (deliberate withholding of bids)
8. Contractor's qualifications (financial and/or capabilities) appear falsified
9. Vague terms used to bid based solely on management's rough estimates
10. Repetitive non-compliance with contractor's published estimating practices
11. Bidders who are qualified and capable of performing but who fail to bid, with no apparent reason (A situation where fewer competitors than normal submit bids typify this situation. This could indicate a deliberate scheme to withhold bids.)
12. Certain contractors always bid against each other or conversely certain contractors do not bid against one another
13. The successful bidder repeatedly subcontracts work to companies that picked up bid packages and could have bid as prime contractors but did not
14. Different groups of contractors appear to specialize in federal, state or local jobs exclusively (This might indicate a market division by class of customer.)
15. There is an apparent pattern of low bids regularly reoccurring, such as corporation "x" always being the low bidder in a certain geographical area or in a fixed rotation with other bidders
16. Failure of original bidders to rebid, or an identical ranking of the same bidders upon rebidding, when original bids were rejected as being too far over the government estimate
17. A certain company appears to be bidding substantially higher on some bids than on other bids with no logical cost differences to account for the increase, i.e., a local company is bidding higher prices for an item to be delivered locally than for delivery to points farther away
18. Bidders that ship their product a short distance bid more than those who must incur greater expense by shipping their product long distances
19. Identical bid amounts on a contract line item by two or more contractors. Some instances of identical line item bids are explainable, as suppliers often quote the same prices to several bidders. But a large number of identical bids on any service-related item should be viewed critically

20. Bidders frequently change prices at about the same time and/or raise (or decrease) prices by the same increment
21. Joint venture bids where either contractor could have bid individually as a prime (Both had technical capability and production capacity.)
22. Any incidents suggesting direct collusion among competitors, such as the appearance of spelling errors in two or more competitive bids or the submission by one firm of bids for other firms
23. Competitors regularly socialize or appear to hold meetings, or otherwise get together in the vicinity of procurement offices shortly before bid filing deadlines
24. Assertions by employees, former employees or competitors that an agreement to fix bids and prices otherwise restrain trade exists
25. Bid prices appear to drop whenever a new or infrequent bidder submits a bid
26. Competitors exchange any form of price information among themselves; this may result from the existence of an "industry price list" or "price agreement" to which contractors refer in formulating their bids, or it may take other subtler forms such as discussions of the "right price"
27. Any reference by bidders to "association price schedules," "industry price schedules," "industry suggested prices," "industry-wide prices" or "market-wide prices"
28. A bidder's justification for a bid price or terms offered because they follow the industry or industry leader's pricing or terms; this may include a reference to following a named competitor's pricing or terms
29. Any statements by a representative of a contractor that his company "does not sell in a particular area" or that "only a particular firm sells in that area"
30. Statements by a bidder that it is not their turn to receive a job or conversely that it is another bidder's turn
31. Only one bid is submitted
32. One bid is significantly, inexplicably lower than all others
33. Bid protests (formal or informal) alleging contractor collusion
34. Bids are very close on nonstandard items with no suggested retail price
35. A company conducts business under several names

36. There is a correlation between the contractors that win bids and the size of the contracts
37. Bids all contain excessive prices
38. Bids are very close in overall dollar amounts, or very close to government estimate, or no logical cost variance to account for large bid differences
39. Certain companies come in high on some bids, low on others
40. Subcontractors pick up bid packages but do not submit bids
41. Same bids for shipping both short and long distance

E. Fraud in the inducement of contract award

1. Contractor intentionally underbids contract to obtain award
2. Contractor misrepresents its years of experience in a particular area of expertise
3. Contractor misrepresents the qualifications of its personnel, or the number of qualified personnel on staff
4. Contractor misrepresents the existence, type and/or quantity of equipment it has on hand to perform the contract
5. Contractor misrepresents the existence of size of its facilities
6. Contractor exaggerates the capabilities of its product or extent of its capability to perform a service

PART II—FRAUD INDICATORS AFTER CONTRACT AWARD

A. Fraud in Contractor Accounting

1. **Invoicing Issues / False Invoices**
 - a. Type face that differs on an invoice
 - b. Invoicing for services which could/should not have been performed as claimed
 - c. Cost/pricing data submitted through different or multiple channels

- d. Payment requests which are inconsistent with previous cost reports
- e. Failure to pay subcontractors/suppliers after invoice for these costs
- f. Unsubstantiated delays in liquidating progress payments
- g. Invoicing for costs that are not part of or required for contract performance
- h. Invoicing for significant amounts with little or no progress on contract performance
- i. History of frequent invoice/voucher errors, poor documentation and/or claiming unallowable costs
- j. Frequent turnover of individuals preparing invoices and payment requests
- k. Excessively low prices compared to competition
- l. Payments made to addresses other than the official address on the contract
- m. No traceability of parts
- n. Original documents frequently not available for review
- o. Different supporting documentation for the same items with varying unit prices for no obvious reason
- p. Complaints received from suppliers or subcontractors that they are being paid late or in partial, incomplete payments
- q. Duplicate invoices are submitted on same contract

2. Cost Mischarging

a. Labor Mischarging

- 1. Transfer of labor costs from a fixed price contract to a cost contract
- 2. Transfer of labor costs from a commercial contract to a government cost contract
- 3. Time and charges do not agree with contractor billing to the Government
- 4. Original time cards are destroyed/hidden and new time cards are prepared for auditor's benefit

5. Employee signatures on time cards are carbon copies and/or signed in advance
6. Time card entries do not match individual employee cards, logs, etc. and/or filled out in pencil
7. Changes are made to individual time cards
8. Inability of contractor to immediately provide time cards upon demand
9. Time and/or charge cards that show consistent erasures or alterations
10. Time cards made out by the supervisor and not by the individual employee, and/or time cards filled in at the end of the pay period
11. Unreasonable number of employees working on same project during the same labor shift
12. Excessive or unusual labor charges by home office personnel
13. Abrupt and/or significant changes in labor costs for no apparent reason
14. Labor time and charges inconsistent with project progress
15. Low level/skill work charged to high level/skill wage earners
16. Employee's time charged differently than associated travel costs
17. Specific employees identified as "key" not working on the contract
18. Skills of employees do not match contract requirements
19. Employees typically charged as indirect are being charged as direct to the contract
20. A disproportionate percentage of employees charging indirect
21. Large number of employees reclassified from direct to indirect or vice versa
22. Same employees constantly reclassified from direct to indirect or vice versa

23. Double billing, i.e., charging employees full-time to two or more jobs
24. Irregular contractor work hours
25. Distinctive charging patterns for labor hours
26. Decrease in labor charges to projects/contracts in overrun or near ceilings
27. Actual hours and dollars consistently at or near budgeted amounts
28. Task-by-task billings consistently at the ceiling level established in the contract; an exception would be if the contract/work order specifies how many hours to bill
29. Proposed labor not based on existing work force (Massive new hires needed. New hire labor being billed to the Government at rates significantly lower than proposed.)
30. Employee's skills do not match the skill requirements as specified for their labor category
31. Partners', officers', supervisors' and/or other high level employees' time being charged in noncompliance with the contract terms or with the company's established accounting policies and procedures
32. Changes in the company's labor charging policies and procedures depending on the type of contract (fixed-price, cost-type, T&M or commercial)
33. Repeated non-compliance with CAS 402, "Consistency in Allocating Cost Incurred for the Same Purpose" for labor
34. Significant differences between proposed and actual unit costs or quantities with no corresponding changes in work scope, job requirements, or labor
35. New cost centers appearing on supporting data
36. Decrease in indirect expense pools
37. Transfers to any work order number or labor costs incurred before the number was established

38. Transfers to any type of holding or expense account, except for routine processing in which charges to a nonexistent code are suspended for immediate error correction
39. Increased production labor hours with no corresponding increases in materials used or units shipped, unless this arises from loss of learning
40. Changes in the labor-charging relationships between certain tasks or types of labor
41. Significant increases in charging to a cost-reimbursable account may indicate that costs of unallowable rework are being mischarged

b. Material Mischarging

1. Using material on commercial contract but charging to government contract
2. Failure to disclose excess inventory
3. Failure to monitor inventory
4. Charging inferior materials at full price
5. Double billing for materials
6. Reassignment of material from fixed-price to cost-type contracts or vice versa
7. Product substitution
8. Transfer of cost of material from ongoing jobs to open work orders for items previously delivered
9. Transfer of cost of material from ongoing job to open work orders for items scheduled for delivery in the distant future
10. Transfer of material at costs substantially different (higher or lower) than actual
11. Mass transfer of material costs from one job order to various other job orders; no physical inventory is left on the original job order, but it still has costs charged to it (may also have situation with essentially unchanged labor and ODC charges)

12. Transfer of material costs to a “billable” contract or funding appropriation from one that cannot be billed on
13. Materials ordered and charged in excess of contract requirements
14. Initial billings for actual material costs far in excess of the negotiated material costs
15. Later billings showing a downward adjustment in material costs as labor/overhead costs increase
16. Transfers of material costs via any type of holding or suspense account
17. Repetitive noncompliance with the contractor’s disclosed bidding/estimating practices
18. No reporting of residual/excess materials
19. Mass transfers to scrap accounts
20. Mass transfer to an inventory write-off account
21. A disproportionate increase in the proposed scrap factor
22. A disproportionate increase in the inventory write-off account
23. Large quantity of, or significant costs for, “found” parts

c. Hiding costs

1. Shifting costs from Independent Research and Development (IR&D) and, Bid and Proposal (B&P) accounts
2. Shifting costs from fixed-price Government or commercial contracts
3. Shifting costs from or to cost-type Government contracts
4. Shifting costs from or to indirect accounts
5. Shifting costs to any type of holding or suspense account

6. Shifting costs from one contract line item or work order to another line item or work order on the same contract but with different appropriations
7. Shifting costs between government contracts of one or more agencies
8. Shifting costs between government contracts and commercial work
9. Any improper allocation of costs

d. Including unallowable costs

1. Costs included in the Contractor's submissions which are expressly unallowable
2. Costs included in the submission which were determined to be unallowable/non-reimbursable prior to the submission and specified as such in a written document, such as (1) a DCAA Form 1, "Notice of Contract Costs Suspended and/or Disapproved," which was not appealed by the contractor or withdrawn by the DCAA, (2) a contracting officer's final decision that was not appealed, or (3) Armed Services Board of Contract Appeals (ASBCA) ruling which upheld the disallowance
3. Mutually agreed to unallowable costs, including directly associated costs. The mutual agreement must be in writing and specify, in detail, what costs are to be unallowable in the future and have occurred prior to the submission
4. Costs that were verbally agreed to or conceded to as unallowable if (1) the agreement occurred prior to the submission in question, (2) the process involved bidding rates, billing rates or a prior year's final indirect rates, and (3) the contractor changed the account that the cost were charged to in an apparent attempt to hide or conceal the costs

e. Other red flags

1. Weak or lack of internal controls which allow multiple opportunities to adjust charges, e.g., duplicate employee cards
2. Significant differences between proposed and actual costs or quantities with no changes in the scope of work or requirements

3. Billings consistently at the ceiling established in the contract (except in cases where the contract states the number of hours to bill)
4. Distinctive or unusual charging patterns
5. Sudden, significant shifts in charging
6. Decrease in charges to projects/contracts in overrun or near ceilings
7. Actual hours and dollars consistently at or near budgeted amounts
8. Use of adjusting journal entries to shift costs between contracts, IR&D, commercial work
9. Significant increases or decreases in charging to sensitive accounts such as scrap, rework, inventory write-off or rework
10. Double counting costs as both direct and indirect
11. Work performed for other divisions excluded from G&A (overhead) base
12. Specialized/dedicated equipment is capitalized as contract reaches target or ceiling
13. Change in contractor's name or payee
14. Payments to assignee terminated without notice
15. One person authorized to both order and receive goods and services
16. Inadequate technical or quality surveillance processes, reliance on Certificates of Compliance from unknown suppliers
17. Poor control over government-furnished equipment
18. Use of government-furnished equipment on commercial work
19. Irregular record entries for government-furnished stock
20. Government-furnished materials not properly reimbursed
21. Brokers/distributors with no expertise or quality controls

22. Significantly lower prices than competition with no explanation
23. Frequent complaints by users of supplies or services
24. Many companies with same address/telephone numbers
25. Inclusion of unreasonable costs
26. Artificially inflating costs
27. Improper billing of same expenses against several contracts
28. Billing un-incurred costs
29. Continual cost overruns on cost type contracts
30. Operating costs at different locations are markedly different
31. Recent purchases of items written off as scrap, obsolete or excess, especially from the same vendor
32. Repurchasing the same items written off as scrap, obsolete or excess from the buyer of the items
33. Original documentation consistently unavailable for the auditor's review
34. Consistently poor, illegible copies of supporting documentation
35. Different supporting documents provided for the same item with unit prices varying widely for no obvious reason
36. Changes to the original documentation that do not appear to be authentic, such as different print or incorrect spelling
37. Information on the original document does not match information obtained from third party sources, such as confirmation letters to vendors/subcontractors or assist audits
38. Repetitive, significant noncompliance with CAS and/or the contractor's Disclosure Statement
39. Charging personal expenses to government contracts

40. Contractor manipulation of performance measurement data in order to receive maximum award fee potential
41. Contractor fails to certify or falsifies its Certificate for Final Indirect Costs (FAR 42.703-2; 10 U.S.C. § 2324h) (Applies even if the unallowable cost was never paid. FAR 42.709-1. For false certification, the individual also may have violated the False Statements Act, 18 U.S.C. § 1001, which is a felony.)

3. Uncompensated Overtime

- a. Professional staff required to work a significant amount of unpaid overtime on a variety of projects both direct and indirect
- b. Salaried employees only charging the first 8 hours worked during any day for an extended period
- c. A pattern of management-directed unpaid overtime with employee bonus based on the extra hours worked
- d. Overrun contracts/projects worked on only during unpaid hours
- e. Encouraging employees to work significant unpaid overtime while not recording the hours in direct conflict with company policy
- f. Cost-type government contracts worked during the first 8 hours and fixed-price or commercial contract work performed only during the unpaid hours

4. Professional / Consulting Fees

- a. No formal signed agreements or contracts; however, large sums paid for “services rendered” based on invoices with few specifics
- b. Formal agreements or contracts exist but are vague as to services to be rendered, and no other documented support, such as detailed invoices, trip reports or studies, exists to justify the expenses
- c. Services paid for were used to improperly obtain, distribute or use information or data protected by law or regulation
- d. Services paid for were intended to improperly influence the content of a solicitation, the evaluation of a proposal or quotation, the selection of sources for contract award or the negotiation of a contract, modification, or claim; it does not matter whether the award is by the Government, prime or any sub-tier contractor

- e. Services paid for were obtained or performed in some way that violated a statute or regulation prohibiting improper business practices or conflict of interest

5. Progress Payments

- a. Contractor uses progress payments on one contract to fund another government contract
- b. Contractor uses progress payment to fund work on commercial contract
- c. Contractor requests progress payment for costs not actually incurred
- d. Contractor requests progress payment for work not actually performed
- e. Contractor requests progress payment for materials that have not been purchased
- f. Contractor is experiencing cash flow problems
- g. Progress payment request does not appear to coincide with contractor's plan and capability to perform the contract
- h. Progress payment request does not appear to coincide with the actual percentage of completion of construction project
- i. Progress payment request does not appear to coincide with the quantity of supplies delivered
- j. Progress payment request does not appear to coincide with the level or amount of service performed
- k. Supporting documents missing or unavailable for review
- l. Only copies of documents (no originals) are available for review
- m. Slow in paying suppliers or nonpayment to suppliers or employees or Government
- n. Undue delay in liquidating progress payments

6. Fast Pay

- a. Contractor submits an invoice requesting payment for supplies that have not been shipped or delivered

- b. Contractor does not ship or deliver the quantity of supplies that are indicated on invoice
- c. No correlation between claim for payment and delivery of goods
- d. Lack of communication between paying and receiving points
- e. Failure to ship goods after payment
- f. Receiving goods later than would be expected if goods were mailed when claimed
- g. Shipping non-conforming goods after payment
- h. Invoice had been forged or altered in some way to appear that the goods were shipped
- i. Shipment date is on weekend date or holiday

7. Estimate at Completion (EAC) issues

- a. The EACs for billing or contract performance differ from other internal financial EAC projections without reasonable explanations
- b. Significant extensions to the contract delivery schedule with no increase in the EAC and the contractor has no acceptable explanation for why costs will not increase
- c. Little or no physical progress even though significant costs have been billed and the contract delivery schedule indicates that significant physical progress should have occurred
- d. No supporting documentation for calculation of EACs or cost of undelivered work
- e. Continued work performance problems identified by either the Government or the contractor, but no adjustments made to the EAC
- f. The EAC calculated based on out-of-date delivery schedule
- g. Billing for deliverables never received by the Government
- h. Transfer of costs between various funding appropriations or other work orders that control the contractor's ability to be reimbursed

8. Issues with contractor's accounting system

- a. Excessive changes in contractor's accounting standards, practices, principles or disregard for Generally Accepted Accounting Principles (GAAP)
- b. Excessive or unjustified changes in accounting personnel (maybe an attempt to prevent employees from learning too much)
- c. Failure or refusal to allow an independent audit
- d. Subtle attempts to direct or influence the audit or investigation (may be an attempt to hide problems)
- e. Lack of an adequate accounting system
- f. Excessive destruction of controlled documents (invoices, time cards, receipts etc.)
- g. Excessive number of photocopies of supporting documents, or excessive number of documents with "white-out" or similar correction fluid (supporting documents such as invoices, vouchers, time cards, receipts)
- h. Excessive number of business checks made out to cash or to individuals
- i. High volume of unexplained cash transactions
- j. Contractor establishes an extremely high number of control accounts which use the "earned value" method known as Level of Effort (LOE) although a discrete measure could be used (Setting up LOE accounts of this magnitude can mask measurable progress.)

9. Indicators in the contractor's computer data files

- a. **What to search for:**
 - 1. Duplicate payments
 - 2. Inventory credit balances
 - 3. Duplicate address files: payroll, vendor, pension, and health care
 - 4. High exposure transactions: large health claim payments/write-offs
 - 5. Duplicate bank account numbers in direct deposit payroll systems

6. Repetitive accounts, names or addresses in high-exposure transactions

b. What to match:

1. Vendor address to employee address
2. Vendor address to former employee address
3. Inventory quantity and dollars to prior years
4. Inventory levels to tank capacity
5. Employee addresses to payment addresses
6. Current payment listing to vendor master list
7. Current table files used in financial programs to previous table files
8. Accounts payable to past due accounts receivable
9. Employee addresses to addresses of past due accounts
10. Date of computer password use to employee time off

c. What to analyze:

1. Use of override transactions
2. File maintenance on employee accounts
3. Employee overtime
4. Sales returns after the end of an accounting period
5. Voids and refunds using employee passwords or ID numbers

d. Listings to look for:

1. Large payments to individuals
2. Vehicles with high maintenance cost

e. Identify suspicious areas:

1. Inventory scrapped, then reordered

2. Accounts with large dollar amounts
3. Post office boxes as shipping addresses
4. General ledger and files: receivables/deposits/bank accounts

B. Adjustment of Labor Standards

1. High labor efficiency (hours, usage) variance
2. Seemingly unrelated tasks and steps on a statement of work
3. For similar tasks, relatively higher standard hours on cost reimbursable work
4. Labor standards not updated when contractor updates its technology
5. Old, outdated labor standards used to support changes, modifications or proposals
6. No supporting documentation for actual or proposed standards
7. Variances are always in the same direction (this may indicate obsolete standards; however the propriety of disposition of the variance should be reviewed and the impact of a significant one-way variance should be analyzed)
8. Duplicate employee identification cards for the same time period
9. Lack of a clear audit trail to verify the propriety of labor charges
10. Weak internal controls over adjustment of labor charges
11. Improper allocation of variances over dissimilar work
12. Proposed standards for the same work differ based on the type of contract or work order the standards will be charged to (ex: lower standards used to charge commercial work versus negotiated government contracts)

C. Adjustment of Material Standards

1. High material quantity (efficiency, usage) variance
2. Work orders, etc. containing material charges which appear to be unrelated to the task
3. Use of noncurrent materials standards, frequently evidenced by “one-sided” variances (all in the same direction, usually unfavorable)

4. Unavailability of documentation supporting proposed or existing standards
5. Lack of a clear audit trail to verify the propriety of materials charges
6. Weak internal controls over adjustments to materials charges

D. Fraud in the manufacturing process

1. Transfers of materials

- a. Transfers from ongoing jobs to open work orders for items previously delivered
- b. Transfers from ongoing jobs to open work orders for items scheduled for delivery in the distant future
- c. Transfers from government contracts (job orders) to commercial job orders
- d. Transfers from cost-type job orders to fixed-price job orders
- e. Transfer of costs that differ substantially (higher or lower) than actual costs
- f. Mass transfers from one job order to various other job orders
- g. Transferring or downgrading serviceable materials to scrap

2. Unexplained discrepancies affecting the volume of materials

- a. No physical inventory is left on the original job order, but it still has costs charged to the job order
- b. Significant increases or decreases to a sensitive account, such as scrap rework, inventory write-off or rework
- c. Recent purchases of items written off as scrap, obsolete, or excess, especially from the same vendor
- d. Repurchasing the same items written off as scrap, obsolete, or excess from the buyer of the items
- e. Excessive purchase of “expendables”
- f. Inadequate or vague need-assessment

- g. Stock levels and inventory requirements appear excessive
- h. Items appear to be declared unnecessary or sold as surplus while same or similar items are being purchased
- i. Poor internal controls over physical inventories
- j. Significant costs for “found” parts
- k. No reporting of residual or excess materials

3. Nonconforming or defective materials

- a. Use of substandard grade materials
- b. Substitution of materials
- c. Excluding required materials
- d. Subjecting materials to improper forming process which degrades the structural integrity of the material
- e. Use of improper and/or unapproved processing techniques

E. Quality Control

1. Testing

- a. Test equipment that is frequently non-operational
- b. Altered test reports or certifications: minor discrepancies in typeface, “whited-out” sections, handwritten portions of typed documents, other alterations
- c. Altered test procedures
- d. Lack of or insufficient test equipment
- e. Lack of time to test for the amount of pieces to be tested or rushed testing to meet deadline
- f. Test results vary little between pieces tested; lab tests yield identical results or have no bell-shaped curve

- g. Complete failure to test, inadequate testing or intentionally omitting test procedures
- h. Failure to perform tests using the required procedures and/or adding improper procedures
- i. Use of lesser skilled labor than originally represented or anticipated
- j. Subsequent test and inspection failures on products in performance-based contracts
- k. Questionable testing claims—Example 1: Two tests at the same time using the same equipment; Example 2: 72-hour test over 2 days (48 hrs)
- l. Company X producing a weapon system, and affiliate or subsidiary of Company X is testing and/or evaluating the weapon system
- m. Contractor falsely certifies testing of material
- n. Improperly calibrated equipment used for testing, or for acceptance testing
- o. Non-availability of basic information
- p. Discrepancies between observations and reported facts or test and inspection results

2. Inspection Issues

- a. Commingled tested and untested items
- b. “Salting” the lots, i.e., sample parts are prepared and waiting for inspection. Later, non-conforming or non-inspected parts are substituted
- c. Contractor resistance to mark, stamp or seal in the presence of government quality assurance representative
- d. Contractor limits government access to production and storage facilities
- e. Major work schedule changes without notice
- f. Contractor falsely certifies inspection of material
- g. Unqualified or inexperienced personnel assigned to monitor processes (lack of skilled inspectors or test equipment operators)

3. Certification Issues

- a. Certification forms that have been pre-signed, indicating that actual verification was not performed
- b. Comingling of tested and untested parts or “salting” of lots
- c. Contractor hides or fails to disclose records or supporting documents
- d. Failure of product after 100% inspection and testing
- e. Poor reproduction of certifications, illegible or incomplete documents
- f. False certifications of conformance

4. Part Discrepancies

- a. Parts markings are inconsistent, varying in color, type set or texture, or do not appear in the same location from part to part
- b. Part’s manufacturer information is inconsistent with the Purchase Order specifications
- c. Parts are marked with new date codes but appear in older packaging
- d. Parts showing signs of oxidation, dirt, sand, scratches or other non-conformances
- e. Inadequate or no traceability of parts

F. Product Substitution

- 1. Substituting generic parts when brand-name parts were required
- 2. Use of inferior quality raw materials
- 3. Substitution of foreign-made parts when domestic parts were required
- 4. Substitution of counterfeit or look-alike goods made from non-qualified parts or from non-specification materials
- 5. Sale of surplus or used parts as new
- 6. Providing untrained workers when skilled technicians or skilled trades or “key personnel” were required

7. Remarketing/repackaging products and/or parts
8. Boxes delivered with part of the label consistently obliterated (“Made in Hong Kong” marked out)
9. Commodities, parts or component parts which are consistently defaced in the same area (metal, wood files or tools with grind marks or wooden hammer handles with sanding marks)
10. Machines with I.D. or specification plates removed
11. Use of materials that have not been tested as required by contract specifications
12. Non-delivery of supplies paid for pursuant to fast pay procedures
13. Multiple commodities where some appear different from others (2 dozen hacksaw blades with the first and last blade in package made in the United States and the remainder made in China)
14. Any commodity purchased domestically, but originally shipped from a foreign port
15. Missing source origin documentation
16. Malfunction of item shortly after award (pattern of chronic malfunctions of new equipment delivered by a particular contractor)
17. Large volume of complaints from front line product users
18. Significantly lower prices than competition with no explanation
19. Brokers/distributors with no expertise or quality controls

G. Fraud during performance

1. Contractor repeatedly shipping short to the Government
2. Contractor repeatedly fails to meet delivery dates, completion dates or other contract requirements and nothing is done to force compliance with the contract terms
3. Contractor is focused on manufacturing and generating claims against the Government
4. Increase in claims for reimbursement

5. Contractor is engaged in a letter writing campaign against the contracting officer instead of focusing on performing the work required under the contract
6. Contractor repeatedly attempts to delay performance without valid reason
7. Unaccountable funds
8. Theft or conversion of government property
9. Persons being too cooperative
10. Uncharacteristic willingness to settle claims
11. Suspicious trends
12. Inadequate, altered or missing documentation
13. Supporting records are unavailable or are not produced promptly
14. Photocopied original reports on file (i.e., no original documents available, only photocopies), or non-serial numbered transactions
15. Unauthorized personnel with access to construction site
16. Straight bills of lading
17. Contractors are not required to return excess material
18. Materials are provided to the contractor even though the contractor is being paid to provide them (office space, furniture, word processors)
19. Contract documents, including test reports, are altered, backdated or modified to cover deficiencies
20. Contractor does not regularly reconcile its accounts relative to contract payments, daily transactions and/or inventory
21. Fictitious or inordinate timeframes and dates are entered on contractor records (e.g., gasoline, vehicle maintenance, inspection or receiving reports)
22. Abnormal increase in the consumption of fuel or supply items
23. Poor physical security (conditions such as poor warehouse lighting, insecure storage areas, and private vehicles (trucks/vans) permitted to park adjacent to storage areas)

24. Overstatement of shipment weights
25. Failure to conduct inventories or alteration of inventory records
26. Excessive parts replacement in vehicle maintenance
27. Contractor substitutes “key personnel” during performance and does not notify the Government of change
28. Unqualified or inexperienced personnel (contractor or government personnel) assigned to monitor services contractor performs
29. Failure to maintain stock consumption records for government-furnished property or materials in the possession of the contractor
30. Contractor uses government-furnished equipment on commercial work
31. Schedule irregularities (contractor could be cutting corners to catch up)
32. Unvarying patterns in small purchase abstracts
33. Deficiencies in complex systems
34. Contractor submits change proposals drafted by government personnel to contracting officer
35. Repeated instances of the use of estimated costs when actual incurred costs from the accounting records more accurately reflect the contract adjustment for which the Government is liable

H. Fraud in submission of contractor claims against the Government

(See Appendix E)

1. Certifications

- a. Failure or refusal to sign and provide the required DFARS 252.243-7002 certification for Requests for Equitable Adjustments (REAs)
- b. Failure or refusal to sign and provide the required Contract Disputes Act claim certifications, *see* 41 U.S.C § 605(c) (1) and FAR 33.207

2. Bid Preparation Documentation

- a. Failure or refusal to disclose pre-bid documentation in conjunction with a claim

- b. Claiming pre-bid documentation is proprietary or contains trade secrets
- c. Refusal to permit copying of pre-bid documentation
- d. Alleging that pre-bid documentation is valueless to the company and was destroyed routinely

3. Intense interest in seemingly secondary matters

- a. Intense interest by the contractor in relief-granting clauses, particularly early in the performance period before many problems would normally become evident
- b. Questions from a contractor regarding interpretations of contract terms that could have been, and should have been, raised pre-bid
- c. Intense interest by a contractor in obscure provisions of a contract seemingly unrelated to ongoing performance, particularly where the provisions suggest potential Government liability

4. Refusal or delay in auditing incurred costs

- a. Unwillingness to allow or delay in supporting Government audit of claims and/or incurred costs
- b. Unwillingness or claimed inability to produce auditable accounting records related to work performed, equipment costs, supplies, overhead accounts and labor costs
- c. Allegations by a contractor that Government audit is unnecessarily duplicative of work done by the contractor's own accountant
- d. Allegations by a contractor that its cost records are proprietary or contain trade secrets, or are located in a remote, inaccessible location or were damaged beyond legibility
- e. Claims that are captioned as ones for "lost profits" or that request "declaratory judgment"

5. Witness Tampering

- a. Contractor is unable or unwilling to produce key witnesses who logically would have had knowledge of claim matters in dispute
- b. Key witnesses no longer work for the company and the company alleges their current whereabouts are unknown

- c. Recent contact by employer of former employees who were fired or who quit concurrently with the claim
- d. Contractor employees/witnesses who supply all critical evidentiary testimony regarding the claim, even for claim areas seemingly unrelated to the employee's duty position

6. Claims "Experts"

- a. Contractor claims or legal "experts" who attempt to intimidate contracting, inspection, program, engineering or other government employees
- b. Contractor claims or legal "experts" who show only superficial knowledge of the facts of the dispute but who are nonetheless certain of the validity of the claim
- c. Contractor claims or legal "experts" who drop names of politicians, academicians or current or former high-level government officials in order to influence claim decisions

7. Inept Employees / Disappearing subcontractors and/or financing

- a. Contractor employees that appear inept or shady, insular or paranoid, and seemingly have nothing productive to do, leaving plenty of time for them to write claims letters and play "gotcha" with government employees over every detail of the contract (See Appendix E, Section H)
- b. Sudden disappearance from the scene of a contractor's legitimate partners, subcontractors, vendors and/or financing

8. Animosity toward Government employees

- a. Contractors who personalize business disputes, demonizing government employees
- b. Contractors who appeal to higher level government employees for relief from decisions based on the applicable facts and law, frequently alleging a vendetta by lower level government workers

I. Bribery/Kickbacks

1. Contractor—faulty management structure and policies

- a. Poor contractor internal controls over key functional areas, such as purchasing, receiving and storing

- b. Lack of separation of duties between purchasing and receiving
- c. Lack of separation of duties in the purchasing department, e.g. rotation of buyers to prevent familiarity with specific vendors
- d. None or few policies on ethical business practices
- e. Poor enforcement of existing policies on conflicts of interest or acceptance of gratuities
- f. Purchasing employees maintaining a standard of living obviously exceeding their income

2. Subcontractors

- a. Instances of buyers or other employees circumventing established procedures for competition of subcontracts
- b. Poor or no established contractor procedures for competition of subcontracts
- c. Poor documentation to support award of subcontracts
- d. Lack of competitive awards to subcontractors
- e. Non-award of subcontract to lowest bidder
- f. Non-qualified or unlicensed subcontractors working for prime

3. Vendors

- a. A one-time payment for services or materials usually bought from another vendor
- b. Frequent or apparently unnecessary visits by vendors
- c. Vendors entertaining buyers
- d. Gossip and rumors about vendor's relationships with buyers
- e. Continued or excessive use of a single vendor in a competitive field despite poor performance, delay or difficulty with the vendor
- f. Apparent pricing in excess of industry standards

- g. Unexplained and/or undocumented disqualification of vendors
 - h. Vendors increasing invoices
 - i. Fictitious vendors
 - j. Apparent vendor favoritism
 - k. Brokers/distributors with no expertise or quality controls
 - l. Vendor's address matches contractor employee's address; SSN/EIN or telephone numbers match
 - m. Paid vendors not on vendor list or not in phone book, multiple addresses for same vendor
 - n. Unusual or odd supplier relationship
 - o. Reorders after high rate of rejections
- 4. Contractor's attempts to improperly influence Government Contracting personnel**
- a. Contractor offers monetary payment or other compensation in exchange for favorable consideration in contract award or oversight during performance
 - b. Frequent and apparently unnecessary visits by contractor to purchasers
 - c. Shoptalk/water cooler discussions akin to abnormally close contractor/purchaser relationships
 - d. Contractor entertains purchasers

PART III—FRAUD BY GOVERNMENT EMPLOYEES

A. Bribery, Kickbacks and Gratuities

- 1. Contractor offers monetary payment or other compensation in exchange for favorable consideration in contract award or oversight during performance
- 2. Frequent use of contractor despite quality, cost or performance problems
- 3. Excessive use of a single contractor in a competitive field

4. Unexplained or unnecessary disqualification of competitors
5. Apparent excessive pricing for items or services supplied
6. Apparent favoritism of contractor by buyer
7. Government employee appearing to live beyond means, unusual or extravagant behavior or spending, unexplained wealth; abrupt change in government employee's lifestyle
8. Lack of management support/encouragement to employees to be acutely aware of potential bribe overtures and to report such overtures immediately
9. Lack of management support in any effort to assist investigators in obtaining evidence of the offense
10. Treatment of less blatant attempts at bribery as ordinary occupational hazards or as routine innuendos which are easily ignored or dismissed
11. Failure to report bribe offers or attempted bribe offers
12. Failure to hold contractor responsible for meeting contract specifications, complying with contract procedures or requirements
13. Failure to hold contractor responsible for meeting delivery or completion dates
14. Failure to obtain adequate consideration due from the contractor for adjustments to the contract terms
15. Appearance of close personal relationship with contractor employee(s); contractor employee exhibits interest in government contracting personnel beyond mere civility and professional purpose
16. Government employee or member of their immediate family has a direct financial interest with the contractor or contractor affiliate, such as stock ownership, officer of corporation or employment of immediate family member
17. Uncharacteristic behavior by employee or coworker
18. Failure to monitor contract performance
19. Unusual or extravagant amount of mail sent to particular government employee
20. Unusual patterns of taking leave

21. Significant increase in contract price after award without corresponding increase in work
22. Government employee refuses promotion, leave or job change
23. Same government employee writing justification and approval (J&A) and awarding the contract
24. Government contract files are incomplete or missing required documents
25. Contract documents are altered, backdated, or modified to cover deficiencies
26. Numerous delivery orders are paid on a contract, when it appears the Government is not receiving anything of value
27. Non-award of contract to the lowest bidder and/or poor documentation or no documentation supporting award of contract
28. Contractor continues to receive performance awards or positive past performance ratings even though contractor provides poor or incomplete performance
29. Options continue to be exercised, notwithstanding poor contractor performance
30. Inadequate documentation of contract violations
31. Failure to enforce normal contractual requirements such as labor checks on construction contracts, starting dates, insurance requirements and contract completion dates

B. Collusion with the contractor

1. Frequent use of contractor despite quality, cost or performance problems
2. Excessive use of a single contractor in a competitive field
3. Unexplained or unnecessary disqualification of competitors
4. Apparent excessive pricing for items or services supplied
5. Apparent buyer favoritism for a particular contractor
6. Government employee appearing to live beyond means, unusual or extravagant behavior or spending, unexplained wealth
7. Failure to hold contractor responsible for meeting contract specifications, complying with contract procedures or requirements

8. Failure to hold contractor responsible for meeting delivery or completion dates
9. Failure to obtain adequate consideration due from the contractor for adjustments to the contract terms
10. Appearance of close personal relationship with contractor employee(s); contractor employee exhibits interest in government contracting personnel beyond mere civility and professional purpose
12. Government employee or member of their immediate family has a direct financial interest with the contractor or contractor affiliate, such as stock ownership, officer of corporation or employment of immediate family member
13. Permitting contractors (architect engineers, design engineers, other firms or individuals) that participated in the development of statements of work, specifications or the preparation of the invitations for bid or proposals, to bid on or be involved with the prime contract or any subcontractors
14. Failure to monitor contract performance; slow enforcement of contract provisions
15. Materials are provided to the contractor even though the contractor is being paid to provide them (office space, furniture, word processors)
16. Contractors are paid twice for the same items/services and there is no attempt to recoup the overpayments
17. Government employee performs part of contracted work
18. Government contract files are incomplete or missing required documents
19. Contract documents are altered, backdated, or modified to cover deficiencies
20. Government supplies and/or equipment are being shipped to non-government addresses
21. Granting unjustified or uncompensated deviations in contract requirements
22. Government employee consistently initiates actions without proper prior approval
23. Unusual patterns of taking leave
24. Allowing contractor improper access to government computers or data
25. Actions that tend to obstruct an audit trail

26. Significant increase in contract price after award without corresponding increase in work
27. Duplicate contract payments
28. Permitting excessive change orders during performance and/or issuing excessive contract modifications without containing appropriate release language
29. Government employee refuses promotion, leave or job change
30. No other Government activity does business with suspect company
31. Awarding contract unrelated to government mission
32. Frequent complaints by users of supplies or services
33. Unreconciled inspection progress reports and invoices
34. Contactor overtime not verified
35. Contract not “downsized” after units required were reduced
36. Reimbursable materials not reviewed for fair and competitive prices
37. Civil Engineer records not reviewed before approving payments
38. Payments authorized without receipt of services statement
39. Payments made to other than the official “remit to” address

C. Conflicts of Interest

1. Government employee or member of their immediate family has a direct financial interest with the contractor or contractor affiliate, such as stock ownership, officer of corporation or employment of immediate family member
2. Appearance of close personal relationship with contractor employee(s)
3. Contractor employee exhibits interest in government contracting personnel beyond mere civility and professional purpose
4. Failure of government employee to disclose interests in the company or affiliate
5. Frequent use of contractor despite quality, cost or performance problems
6. Excessive use of a single contractor in a competitive field

7. Numerous sole source contracts awarded to same contractor
8. Unexplained or unnecessary disqualification of competitors
9. Apparent excessive pricing for items or services supplied
10. Apparent favoritism of contractor by buyer
11. Government employee appearing to live beyond means, unusual or extravagant behavior or spending, unexplained wealth
12. Failure to hold contractor responsible for meeting contract specifications, complying with contract procedures or requirements
13. Failure to hold contractor responsible for meeting delivery or completion dates
14. Failure to obtain adequate consideration due from the contractor for adjustments to the contract terms
15. Contractor is wholly owned or controlled by a government employee, family member, or business associate (awarding contract to a business associate who is involved with government employee in a separate business partnership, creates the appearance of impropriety)
16. Government personnel providing proprietary information (company bid/proposal information) or source selection information to one or more competitors

D. Personal Use

1. Contract, purchase or requisition of items by government employee for resale or personal use
2. 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

E. International Merchant Purchase Authorization Card (IMPAC)

1. Unauthorized purchases
2. Too many card holders within activity or unit
3. Purchases exceed demand and normal consumption rates
4. Card holders take cards home, on leave, or on temporary duty

5. Splitting requirements over 2 or more days
6. Purchase of items available through the supply system
7. Exceeding card dollar limit
8. Poor supervisory controls over card usage
9. Not accounting for purchases or to whom the cards were issued
10. Purchases returned for cash to stores that do not require receipts
11. Failure to turn in free products obtained with purchases

FRAUD REPORTING RESOURCES

I. AIR FORCE

Air Force Inspector General

1.800.538.8429

<https://www.ig.hq.af.mil/>

Air Force Office of Special Investigations (OSI)

<http://www.osi.andrews.af.mil/>

**Air Force Materiel Command Law Office, Acquisition Integrity Division
(937) 904-5752, DSN 674-5752**

II. OTHER AGENCIES

A. HOT LINE NUMBERS:

Department of Justice

1.800.869.4499

<http://www.usdoj.gov/oig/>

Department of Defense

1.800.424.9098

<http://www.dodig.osd.mil/hotline/whatrept.htm>

<http://www.dodig.osd.mil/hotline/fwacompl.htm>

US Army Inspector General

1.800.752.9747

<http://wwwpublic.ignet.army.mil/>

Naval Inspector General

1.800.522.3451

NAVIGHotlines@navy.mil

<http://www.ig.navy.mil/>

Inspector General United States Marine Corps

1.866.243.3887

ORGMB.IGMC.HOTLINE@nmci.usmc.mil

<http://hqinet001.hqmc.usmc.mil/ig>

Special IG - Iraq Reconstruction

1.866.301.2003

<http://www.sigir.mil/inspection/hotline/hotline.aspx>

NASA

1.800.424.9183

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

Small Business Administration

1.800.767.0385

<http://www.sba.gov/IG/hotline.html>

Defense Logistics Agency

1.800.411.9127

<https://www.dla.mil/dcia/complaint/default.asp>

B. DOD INVESTIGATIVE AGENCIES

DoD Inspector General (DoD IG)

<http://www.dodig.osd.mil/INV/DCIS/fraudalt.htm>

Defense Criminal Investigative Service (DCIS)

<http://www.dodig.osd.mil/INV/DCIS/programs.htm>

Naval Criminal Investigative Service (NCIS)

<http://www.ncis.navy.mil/>

Inspector General United States Marine Corps (IGMC)

<http://hqinet001.hqmc.usmc.mil/ig>

Army Criminal Investigation Command (CID)

<http://www.cid.army.mil/>

III. WHISTLEBLOWER INFO

U.S. Department of Labor

<http://www.osha.gov/dep/oia/whistleblower/index.html>

Government Accountability Project

<http://www.whistleblower.org/template/index.cfm>

National Whistleblower Center

<http://www.whistleblowers.org/>

Qui Tam Info Center

<http://www.quitaminfocenter.com/>

HANDBOOKS

The handbooks below are provided as a resource for additional reference material. These resources offer in-depth substantive discussion for particular fraud indicator areas and specialized topics in procurement fraud.

Handbook for Fraud Indicators for Contract Auditors (2003)

INSPECTOR GENERAL HANDBOOK 7600.3

DoDIG “Handbook on Fraud Indicators for Contract Auditors,” (IGDH 7600.3, dated March 31, 1993)

<http://www.dodig.osd.mil/PUBS/igdh7600.pdf>

Air Force Audit Agency Handbook 65-109, "Fraud and Waste Indicators," December 1997

AUDIT AGENCY HANDBOOK 65-109

AIR FORCE AUDIT AGENCY

<https://www.afaq.af.mil/domainck/custassist/65-109.pdf>

DoD Inspector General: Handbook on Indicators of Fraud in DoD Procurement (June 1987)

<http://www.phslegal.com/Fedcon/fedc0196.htm>

Air Force Guide on Government & Contractor Relationships, October 2006:

<https://www.my.af.mil/gcss-af/USAF/AFP40/d/1075940151/Files/5303/gcr-guide-oct06.doc>

U.S. Army Logistics Management College, “Procurement Fraud,” ALM-31-6082c, 2006,
www.almc.army.mil/ledd/8a-f17/Adobe/Fraud.pdf.)

A Guide to Auditing Defense Acquisition Programs Critical Program Management Elements (1998)

<http://www.dodig.mil/Audit/pmeguide.html>

DCMA Reporting Fraud Waste & Abuse - DCMA Handbook

http://guidebook.dcma.mil/81/processinfo_inputs.htm

Ethics Counselor Handbook (2005): Office of the General Counsel Standards of Conduct Office

http://www.dod.mil/dodgc/defense_ethics/resource_library/2005Deskbook/

United States Agency for International Development (USAID) Office of Inspector General/Investigations – Fraud Indicators:

www.usaid.gov/oig/hotline/fraud_awareness_handbook_052201.pdf

STATUTES AND REGULATIONS

CIVIL FRAUD STATUTES

- 31 U.S.C. § 3729-3733 False Claims
- 28 U.S.C. § 2514 Forfeiture of Fraudulent Claims
- 10 U.S.C. § 2306a Cost or Pricing Data: Truth in Negotiations (TINA)
- 10 U.S.C. § 2324h Allowable Costs Under Defense Contracts (Certification Requirements)
- 10 U.S.C. § 2307(e), (i) Contract Financing (Suspension of payments)
- 41 U.S.C. § 604 Contract Disputes Act, Fraudulent Claims
- 41 U.S.C. § 423 Procurement Integrity Act
- 10 U.S.C. § 2533a Berry Amendment
- 15 U.S.C. § 7264a Code of Ethics for Senior Financial Officers (Sarbanes-Oxley Act 2002)
- 15 U.S.C. § 646-650 Aid to Small Businesses
- 31 U.S.C. § 3713, *et seq.* Priority of Government Claims in Bankruptcy
- 31 U.S.C. § 3801, *et seq.* Program Fraud Civil Remedies Act

CRIMINAL FRAUD STATUTES

- 18 U.S.C. § 1001 False Statements Act
- 18 U.S.C. § 287 False, Fictitious or Fraudulent Claims
- 18 U.S.C. § 494 Contractors' Bonds, Bids and Public Records (Falsification of)
- 18 U.S.C. § 201 Bribery of Public Officials and Witnesses
- 18 U.S.C. § 1505 Obstruction of Proceedings Before Departments, Agencies, and Committees
- 18 U.S.C. § 1516 Obstruction of Federal Audit

18 U.S.C. § 152 Concealment of assets; false oaths and claims; bribery

18 U.S.C. § 1341 Frauds and Swindles (Mail Fraud)

18 U.S.C. § 1343 Fraud by Wire, Radio or Television (Wire Fraud)

18 U.S.C. § 201-208 Bribery, Graft and Conflicts of Interest

18 U.S.C. § 1905 Disclosure of Confidential Information (Trade Secrets Act)

18 U.S.C. § 1832 Theft of Trade Secrets

18 U.S.C. § 641 Public Money, Property or Records (Theft, Embezzlement or Destruction of)

41 U.S.C. § 51-58 Anti-kickback Act

15 U.S.C. § 1 Sherman Antitrust Act

18 U.S.C. § 371 Conspiracy to Commit Offense or to Defraud the United States

18 U.S.C. § 286 Conspiracy to Defraud the Government with Respect to Claims

18 U.S.C. § 38 Fraud Involving Aircraft or Space Vehicle Parts in Interstate or Foreign Commerce

18 U.S.C. § 1031 Major Fraud Against the United States

18 U.S.C. § 1961, *et seq.* Racketeer Influenced and Corrupt Organizations (RICO)

18 U.S.C. § 2314 Transportation of Stolen Goods, Securities, Moneys

18 U.S.C. § 1956-1957 Laundering of Monetary Instruments

UNIFORM CODE OF MILITARY JUSTICE (UCMJ)

10 U.S.C. § 881, Art. 81. Conspiracy

10 U.S.C. § 882, Art. 82. Solicitation

10 U.S.C. § 907, Art. 107. False official statements

10 U.S.C. § 921, Art. 121. Larceny and wrongful appropriation

10 U.S.C. § 932, Art. 132. Frauds against the United States

10 U.S.C. § 933, Art. 133. Conduct unbecoming an officer and a gentleman

10 U.S.C. § 934, Art. 134. General article

REGULATIONS

FAR 3, DFARS 203, and AFFARS 5303--Improper Business Practices and Personal Conflicts of Interest.

FAR 9, DFARS 209, and AFFARS 5309—Contractor Qualifications

DoD Instruction 7050.05 - Coordination of Remedies for Fraud and Corruption Related to Procurement Activities, June 4, 2008

DoD Instruction 5505.2 - Criminal Investigations of Fraud Offenses

DoD Instruction 7600.02 – “Audit Policies,” April 27, 2007

DoD Instruction 7600.6 - "Audit of Nonappropriated Fund Instrumentalities and Related Activities," January 16, 2004

DoD Directive 7600.10 - "Audits of States, Local Governments, and Non-Profit Organizations," March 17, 2004 (certified current as of October 18, 2006)

AFI 51-1101, AF Procurement Fraud Program: Provides guidance for pursuing remedies in significant procurement fraud cases and other contractor responsibility matters. Ch 6 Suspension & Debarment. Fraud Remedies Plan (over \$100K cases) - Attachment 3.

AFPD 51-11 Coordination of Remedies for Fraud and Corruption Related to AF Procurement Matters: Very short overview; most of meat on program is in AFI 51-1101.

AFI 51-601, Gifts to the Department of AF: Does not cover gifts from foreign sources.

AFI 51-901, Gifts from Foreign Governments

SAF/OS Memo, October 25, 2005: Most recent memo on Potential Post-Employment Ethics Liability of Requirements Personnel

AF MPs, June 2006 (SAF AQC): MP 5303.104-6 (Disqualification from SS), MP 5303.602 (Processing exceptions to FAR 3.601—Awarding a contract to a business owned/controlled by Government employee), and MP 5303.7 (Voiding/rescinding contracts)

CONTRACTUAL AND ADMINISTRATIVE REMEDIES

Termination for default
Termination for convenience
Termination for damages for gratuities
Unilateral price reduction
Deductive change order
Revocation of acceptance
Warranty or correction of defects
Recovery of reprocurement costs
Acceptance at a reduced price
Rescission
Reformation
Withholding of payment
Rejection of nonconforming supplies or services
Disallowance of contract costs
Suspension of progress payments
First article disapproval and nonpayment of costs
Recovery of nonrecurring costs for commercial sales
Stop work order
Cure Notice
Show Cause letter
Issue quality deficiency report
Liquidated damages
Technical data challenges
Subcontract disapproval
Other contract clauses providing remedies
Suspension
Debarment
Truth in Negotiations Act—10 U.S.C § 2306
Suspension of Payments—10 U.S.C. § 2307(e)
Revocation of forward pricing agreement
Refusal to employ fast pay procedures
Refusal to authorize certificate of conformance
Removal from qualified products list
Removal from approved manufacturers list
Heightened testing or inspection requirements
Closer surveillance
Termination of employment
Recoupment of the value of any bribe or gratuity
Revocation of a contracting officer's warrant

FRAUD IN THE SUBMISSION OF CONTRACTOR CLAIMS

A. INTRODUCTION

Fraudulent claims may arise when contractors underbid a contract or when performance is failing and blame of, and additional compensation from, the Government are going to be necessary to “get well.” The next step might well involve false statements in order to substantiate questionable claims. In the claims arena, proof of a false statement and intent might be easier to prove than is normally the case. This is because contract claims and requests for equitable adjustment typically require certification by the contractor in conjunction with its request for additional payment.

B. CERTIFICATION

Contractors are required by DFARS 252.243-7002 to certify Requests for Equitable Adjustment (REAs) that exceed the simplified acquisition threshold as follows:

DFARS 252.243-7002 REQUESTS FOR EQUITABLE ADJUSTMENT (MAR 1998) states, in pertinent part:

(b) In accordance with 10 U.S.C. 2410(a), any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the Contractor:

. . .

(c) The certification in paragraph (b) of this clause requires full disclosure of all relevant facts, including—

(1) Cost or pricing data if required in accordance with subsection 15.403-4 of the Federal Acquisition Regulation (FAR); and

(2) Information other than cost or pricing data, in accordance with subsection 15.403-3 of the FAR, including actual cost data and data to support any estimated costs, even if cost or pricing data are not required.

In addition to the DFARS certification of Requests for Equitable Adjustment, the Contract Disputes Act, 41 U.S.C. § 605 (c) (1) requires that, for claims of more than \$100,000, the contractor must certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of its knowledge and belief, that the amount requested accurately reflects the contract adjustment for which the contractor believes the government is liable, and that the certifier is duly authorized to certify the claim on behalf of the contractor.

Finally, in addition to the above cited certification requirements, the Contract Disputes Act, Section. 604, has the following to say with respect to fraudulent claims:

If a contractor is unable to support any part of his claim and it is determined that such inability is attributable to misrepresentation of fact or fraud on the part of the contractor, he shall be liable to the Government for an amount equal to such unsupported part of the claim in addition to all costs to the Government attributable to the cost of reviewing said part of his claim. Liability under this subsection \1\ shall be determined within six years of the commission of such misrepresentation of fact or fraud.

C. BID PREPARATION DOCUMENTATION

To verify the authenticity of claims a primary concern of the Government should be to obtain copies of all pre-bid documentation. (Bid documents are typically contained in the official contract file under Tab 16 for unsuccessful offers and Tab 17 for the successful offer. Pre-bid documents such as the contractor's working papers/info may be obtained in some instances voluntarily from the contractor in response to the contracting officer's request for additional information in support of the contractor's claim, or if the contractor is uncooperative, through discovery during litigation.) Typically such pre-bid documents will show the offeror's bidding strategy, all assumptions and interpretations built into its bid, its detailed cost calculations and projections, as well as the bidder's reliance, if any, on Government representations or misrepresentations regarding the work involved. Failure or refusal to produce pre-bid proposal preparation documentation should immediately alert contracting and legal personnel to the possibility of a fraudulent claim.

Some ploys used by contractors to avoid identification and production of such documents include allowing the contracting officer to "see" the documents but not permit him or her to retain or to copy them. Contractors may also allege that the documentation is proprietary or contains trade secrets. They may also allege that such documents were valueless after contract award and so were discarded in the normal course of business. (Query: How would a company be able to identify the specific reason for a profit or loss on a contract unless it kept detailed records of the bidding strategy and the assumptions, calculations and projections built into each component of its bid? In addition, why would a company discard all the underlying work that went into a bid when it likely would use the same data to bid for changed work, or for the same work in the next contract cycle, or for similar work on other contracts?) In reality and for the above reasons, any remotely sophisticated contractor treats bid preparation documentation as gold and zealously retains and guards it for future reference. Failure or refusal to promptly produce bid preparation materials is a key fraudulent claim indicator. The Government should relentlessly pursue such materials as soon as a claim or Request for Equitable Adjustment (REA) is filed. After commencement of legal proceedings, Government attorneys should file appropriate discovery requests, requests for admission, subpoenas, motions to compel and, finally, motions for sanctions, negative inferences and/or evidentiary or issue preclusion. Pre-bid documents are that important.

D. INTENSE INTEREST IN SEEMINGLY SECONDARY MATTERS

Claim reviewers should also be alert to a contractor's intense interest in relief granting clauses, particularly early in contract performance, which might indicate that the contractor recognized a problem in the solicitation but kept quiet and bid low while planning to get well by submitting a contract claim soon after award. Questions directed to contracting personnel early in performance and before one would imagine a problem had arisen can be questionable, e.g., "What constitutes a workorder?" or "How are workorders to be counted for purpose of the Variation in Workload Clause?" (Query: Why weren't such questions raised pre-bid?)

As well, questions concerning seemingly unimportant clauses might signal a contractor with a claim searching for a cause. They might also signal that the company (or a "claims expert) has microscoped all areas of the contract to find the basis of a claim. In one case, a contractor who had been on a construction site for over a year began to show intense interest in environmental clauses immediately after a contract modification had re-baselined performance and schedule. The modification also added new environmental clauses insisted upon by the contractor. Since the contractor had been on the site for so long, Government personnel didn't suspect that any "new" environmental problem was afoot. Immediately after the modification was signed and performance was supposed to restart, they found out different.

E. REFUSAL OR DELAY IN AUDITING INCURRED COSTS

Another frequent ploy regarding fraudulent contractor claims involves unwillingness or refusal by a contractor to permit Government audit of its incurred cost records. Contracting officials responding to a claim or REA should almost always immediately request a thorough audit of the claim by DCAA or Agency auditors. A key fraud indicator in this arena is the unwillingness or claimed inability to produce auditable accounting records related to work performed, equipment costs, supplies, overhead accounts and labor costs. Since it is implausible for a contractor to argue that it doesn't accumulate and account for costs or do routine bookkeeping, fraudulent contractors may resort to "slow rolling" auditors to prevent them from doing their job. Or a contractor may argue that such audit is unnecessary or duplicative of work done earlier by the Government or by someone else such as the contractor's own accountant.

As above, fraudulent contractors might also claim that their incurred cost records are proprietary or contain trade secrets. Some have claimed that accounting records are stored in a remote location (another state) or were damaged in a natural disaster (flood or fire), or fail to produce the records as agreed because of the intervening press of urgent business or personal issues (childbirth).

A final fraud indicator in this area might be a claim that is captioned as one for "lost profits" or one that asks for "declaratory judgment" presumably because such claims do not require certification or audit of incurred costs since the contractor is not asking for the return of money it has already spent. In the area of claim auditing, Government officials should be very alert to the above tactics and always ask themselves why any contractor with a legitimate claim wouldn't be all too willing, and even eager, to have its cost records audited to support its losses

suffered through alleged Government fault. Anything less than full, immediate production of cost records and full cooperation in auditing of the records should be cause for concern.

F. WITNESS TAMPERING

Contractors who file questionable or fraudulent claims frequently have a witness problem. Knowledgeable employees might well be squeamish about what is going on and unwilling to put their credibility, or more, on the line for the company. They may quit, or ask for reassignment, or let the company know that they do not want to become involved. They may have been let go for “unrelated” reasons. A possible fraud indicator in the claims arena is therefore a contractor’s inability or unwillingness to produce key witnesses or witnesses who logically should have knowledge of the matters involved in the claim. The claimant may allege that the employee no longer works for the company and the company has no knowledge of their current whereabouts.

If the Government is able to locate a former witness by its own efforts, the witness may then indicate that they have recently been contacted by their former employer and may even have been offered re-employment. It’s amazing how old disputes can be settled and friendly relationships re-established when a large amount of money is at stake! Old transgressions may have been forgiven, the reasons for termination forgotten, and memories sharpened as to the claimed matters. Government agents are well advised to pin down witness testimony (by sworn deposition or statement if possible) as soon as possible. Ex-employees should be contacted if appropriate, preferably before the person is contacted by the contractor. Again, contrast such questionable contractor behavior with legitimate contractors who are only too happy and able to produce employees or former employees to support their contentions.

A final fraud indicator related to witnesses involves a contractor who has one or two “key” witnesses. Conspiracies and lies typically beget the need for further lies, requiring witnesses to testify to an ever expanding set of questionable facts. Government agents should be alert to situations where, every time corroboration is needed of additional facts to support a further questionable contention, the same person or persons is trotted out to allege that they have the necessary information and knowledge. Such behavior may indicate that no one else is foolish enough to risk the penalties associated with lying or perjury to support a fraudulent claim. Those that manufactured the original fraudulent claim, or were willing to tell the first lie, may be caught in the necessity to tell an unforeseen and ever increasing web of lies to in order to keep the claim afloat. If it weren’t so underhanded it would almost be comedic to watch the same person or persons step forward over and over again to fill in crucial, sometimes unrelated, facts or testimony. Even they may have a hard time keeping a straight face after awhile!

G. CLAIMS “EXPERTS”

Claims experts (or any other type of expert), by themselves, do not make a claim fraudulent. In the right circumstance their arrival on the scene may be entirely appropriate. But Government agents should be alert to attempts to intimidate Government personnel through use of high-priced experts trying to throw around their weight. A possible indication of fraud could be experts who show only superficial knowledge of the facts and history of the dispute but are

absolutely certain the claim is valid. They may dismiss the Government's position as "irrelevant" or "unsophisticated." One contractor informed the CO that she would have to learn to play by "Wall Street's rules."

They may drop names of their firms, academic or political connections, or even former or current high ranking Government officials who are their friends and associates. In fact, they may themselves be former high ranking Government officials. Government agents should work hard to avoid intimidation and veiled threats from such sources, and rely instead on common sense and facts that frequently need no expert "interpretation."

H. INEPT EMPLOYEES

Contractors are only as good as their employees. Successful contractors hire and retain productive, professional employees. These employees in turn make money for their employers. Contrast such situation with contractors who seemingly have hired every inexperienced, shady character they can find. A possible indicator of contractor fraud may be when contractor workers appear to be insular and paranoid, and seemingly have nothing better to do than spend all their time working claim matters and attempting to play "gotcha" with Government employees. Relationships with Government inspectors, contracting personnel and others may become extremely strained as the contractor employees are engaged in seemingly bizarre activities unrelated to accomplishing the contract yet never seem to want to call an end to the hostilities. Funny, but it does happen. What else are they going to fill their time with if not productive work?

Inexperienced, otherwise unemployable persons may owe all their loyalty (and their livelihood) to the company owner and may be willing to say or do anything to protect and line the pockets of the person who was willing to give them a job, including supporting fraudulent claims. Contractors who somehow have landed a Government contract may be unable to perform due to the caliber of the people they have hired. When ruin knocks on the door and the house of cards is ready to fall, the owner may call in the same people who caused the problem to support a fraudulent claim against the Government. Such inept contractors may be unwilling or unable to proceed with other work on the contract, or another project elsewhere, possibly because no one else will hire them or their inept workforce. A possible fraud indicator therefore is a contractor with an untrained, inexperienced workforce with no productive work to keep them busy and all the time in the world to work on claim matters.

A related fraud indicator may be a situation involving the sudden disappearance of legitimate partners, subcontractors, vendors, etc. Legitimate business people do not want their good name and reputation associated with fraudulent business practices or claims. If they find out about such issues they will frequently find a reason to cut ties with the offender as expeditiously as possible. Unexplained departure of business partners might also be an indicator of fraud.

I. ANIMOSITY TOWARDS GOVERNMENT EMPLOYEES

Contractors who personalize business disputes may also be involved in fraudulent conduct. Many initially hope and believe their claim will be given a quick and cursory review followed by a big check in the mail. They may also believe that Government employees are across-the-board stupid and lazy and therefore are disappointed and angry when their claim allegations and Government blame are questioned or rejected. They may institute a letter writing campaign in an attempt to overwhelm the Government with the burden of additional, non-productive work.

They may rail against the Contracting Officer, Contract Administrator, engineer or inspector who, “just don’t get it.” By impugning the Government personnel the contractor may attempt to distract attention away from the facts of the case and serve as the explanation for why the Government doesn’t want to pay their ostensibly legitimate claim. Intransigent Government employees also give the contractor a cover reason for appealing to allegedly more reasonable or enlightened individuals (higher-ups, politicians, media, etc.) who will understand the “unique” issues raised by the claim. As a side benefit, these outside individuals frequently don’t have the time or motivation to get bogged down in a tedious sifting of the facts. The contractor may seek to show that the matter has been mishandled from the start and needs a fresh look by someone for who speed and finality may be the paramount concerns. Contracting and legal officials should be alert to the possibility of personalization of the dispute and maintain a professional distance between themselves and the issues and tactics of the contractor. In the meantime, they should understand that such tactics might be the cover for more questionable conduct by the contractor.

J. THE POWERS AND LIMITATIONS OF THE ASBCA AND CONTRACTING OFFICER AUTHORITY ON CONTRACTOR CLAIMS INVOLVING FRAUD

While the previous sections have alerted the reader to fraud indicators associated with the presentation and pursuit of contractor claims and/or requests for equitable adjustment, it is important to know and understand that agency heads (including Contracting Officers) may NOT settle compromise, pay or otherwise adjust any claim involving fraud. 41 U.S.C. § 605(a); FAR 33.209 and 33.210. Legislative history also reflects intent to similarly limit agency boards, to include the Armed Services Board of Contract Appeals (ASBCA).

If a claim involves possible civil or criminal fraud, the U.S. Department of Justice may prosecute the matter in federal court and if so, a claim before the ASBCA will be stayed, pending the outcome of the proceeding, or even dismissed for lack of jurisdiction if the issues are the subject of pending, or the outcome of, federal litigation. The ASBCA has consistently held that it cannot determine whether or not fraud was committed on a contract, as that determination is reserved for the Federal District Courts.

A Contracting Officer presented with a contractor claim, which may be in whole or in part tainted by fraud may take certain actions within his/her authority, however caution must be exercised beforehand and any such action (i.e., refusing payment, suspending progress payments, terminating negotiations, determining the contractor to be nonresponsible, suspension or

debarment proposal, or termination for default) must be carefully analyzed only after a complete investigation of the facts to ensure the action is appropriate under the specific circumstances. This requires full coordination with legal and investigative advisors.