
**THE DEPARTMENT OF DEFENSE
VOLUNTARY DISCLOSURE
PROGRAM**

A DESCRIPTION OF THE PROCESS



**INSPECTOR GENERAL
DEPARTMENT OF DEFENSE**

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The Department of Defense Voluntary Disclosure Program - A
Description of the Process

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ATTACHMENTS

INSTRUCTIONS FOR RECIPIENTS.

The following changes to IGDPH 5505.50, "The Department of Defense Voluntary Disclosure Program - A Description of the Process," April 1990, are authorized.

Write-In Changes:

- a. Page 1, paragraph A.1. - Replace Assistant Inspector General for Criminal Investigations Policy and Oversight (AIG-CIPO) with Assistant Inspector General for Policy and Oversight (AIG-PO).
- b. Pages 2, 5, 6, 7, 9, 10, 12, 13, 14, 15, and 16 - Replace AIG-CIPO with AIG-PO in all instances.
- c. Page 14, paragraph 17b. - Replace OAIG-CIPO with OAIG-PO.
- d. Appendix A, 5th page, last paragraph - Replace address with the following:

Office of the Assistant Inspector General for Policy and Oversight
ATTN: CIPO
400 Army Navy Drive, Room 723
Arlington, VA 22202-2884
(703) 604-8700

FOR THE INSPECTOR GENERAL:



Nicholas T. Lutsch
Assistant Inspector General for
Administration and Information Management

WHEN PRESCRIBED ACTION HAS BEEN TAKEN, THIS TRANSMITTAL SHOULD BE FILED WITH THE BASIC DOCUMENT.



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-2884

FOREWORD

APR 23 1990

The Voluntary Disclosure Program is considered by the Department of Defense to be a cornerstone of self-governance by Defense contractors and a manifestation of cooperative relations between Government and industry. The commitment to the Voluntary Disclosure Program by Defense management remains strong. This is evidenced by the recent Defense Management Report to the President which emphasized the continued need for voluntary disclosure.

The Voluntary Disclosure Program is not an amnesty or immunity program, but rather a means by which Defense contractors can bring to light potential civil or criminal fraud matters. Those matters of a purely administrative nature, of course, shall not be included in the Program. In return for disclosing potential fraud and cooperating in any Government audit and investigation of the matter, the Government generally allows the contractor the opportunity to conduct an internal investigation which the Government then attempts to verify in an expedited manner. The Department of Defense further agrees generally not to initiate administrative actions until its verification process is completed.

Coordination of information is essential to the effective and expeditious resolution of the matter. By keeping all responsible Government parties informed of the status of the matter, problems identified may be more quickly resolved. Government representatives are then better equipped to determine what, if any, criminal, civil, and administrative remedies are appropriate.

The pamphlet "The Department of Defense Voluntary Disclosure Program - A Description of The Process" describes general guidelines, policy, and processes used by Department of Defense and Department of Justice personnel who share the responsibility in the resolution of fraud matters. The process described in the pamphlet is intended to allow for flexibility, when needed, in the audit, investigations, and verification of matters brought into the Voluntary Disclosure Program.

Susan J. Crawford
Susan J. Crawford
Inspector General

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VOLUNTARY DISCLOSURE PROGRAM
A DESCRIPTION OF THE PROCESS**

The purpose of this pamphlet is solely to describe the process used by the Department of Defense and the Department of Justice in the Administration of the Department of Defense Voluntary Disclosure Program. This pamphlet does not, nor should be relied on, to create, confer, or grant any rights, benefits, privileges, or protections enforceable at law or in equity by any person, business, or entity in either civil, criminal, administrative, or other matters. This pamphlet does not in any way limit the lawful litigative prerogatives of the Department of Defense and Department of Justice.

**INSPECTOR GENERAL
DEPARTMENT OF DEFENSE**

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A. PURPOSE

1. The Department of Defense (DoD) encourages Defense contractors to adopt a policy of voluntarily disclosing potential civil or criminal fraud matters affecting their corporate contractual relationship with the DoD as a central part of their corporate self-governance and to enhance contractor responsibility under the Federal Acquisition Regulations. The policy is described in letters from the Deputy Secretary of Defense to Defense contractors, dated July 24, 1986, and August 10, 1987 (Appendix A). The Assistant Inspector General for Criminal Investigations Policy and Oversight (AIG-CIPO), Office of the Inspector General, DoD, is the designated point of contact for voluntary disclosures of potential criminal or civil fraud issues. Matters not involving fraud should be presented to the appropriate contracting officer or Defense Contract Audit Agency (DCAA) auditor.

2. The disclosures are made with no advance agreement regarding possible DoD resolution of the matter and with no promises regarding potential civil or criminal actions by the Department of Justice (DOJ). Prompt voluntary disclosure, full cooperation, complete access to necessary records, restitution, and adequate corrective actions are key indicators of an attitude of contractor integrity even in the wake of disclosures of potential criminal liability.

3. The DoD Voluntary Disclosure Program is intended to afford contractors the means to report self-policing activities. It provides a framework for Government verification of the matters voluntarily disclosed and an additional means for a coordinated evaluation of administrative, civil, and criminal actions appropriate to the situation.

4. This pamphlet identifies the participating DoD and DOJ organizations and describes the process by which voluntary disclosures are reported, verified, and acted on. The complete process for managing voluntary disclosures is depicted in a flowchart (Appendix B).

B. ORGANIZATIONAL FUNCTIONS

Summary

The organizations listed below have the following functions under the DoD Voluntary Disclosure Program:

1. Office of Assistant Inspector General for Criminal Investigations Policy and Oversight (AIG-CIPO)

The AIG-CIPO receives the initial disclosure, makes a preliminary determination as to whether the disclosure satisfies the requirements of the DoD Voluntary Disclosure Program, coordinates the execution of the standard Voluntary Disclosure Agreement, assigns the matter to a Defense criminal investigative organization (DCIO) for verification, assigns the matter to a suspension and debarment authority, and coordinates the matter with the DOJ for potential civil and criminal action. The AIG-CIPO also serves as the focal point for the dissemination of general information concerning the Voluntary Disclosure Program, is responsible for administering the Program, and coordinates administrative action within the DoD.

2. Defense Criminal Investigative Organizations (DCIOs)

The U.S. Army Criminal Investigation Command (USACIDC), the Naval Investigative Service (NIS), the Air Force Office of Special Investigations (AFOSI), and the Defense Criminal Investigative Service (DCIS) are the Defense criminal investigative organizations (DCIOs) that conduct investigations under the Program. One DCIO will serve as the lead investigative agency. Following admission into the DoD Voluntary Disclosure Program, the lead DCIO in coordination with other DCIOs when appropriate, conducts an investigation to verify the accuracy and completeness of the matter(s) disclosed. The lead DCIO, may request the Defense Contract Audit Agency (DCAA) to conduct a verification audit that will generally be based on the contractor's internal report of investigation. The lead DCIO coordinates its activities with the AIG-CIPO, the DOJ, the DCAA, and the cognizant suspension and debarment authority.

3. Defense Contract Audit Agency

The DCAA will , in most instances, be requested by the lead DCIO to conduct a verification audit of the matter(s) disclosed. The audit normally begins following receipt of the contractor's internal report of investigation and focuses on those matter(s) disclosed in the internal report of investigation not covered by a previous audit.

4. DoD Suspension and Debarment Authorities

A Military Department or Defense Agency has lead agency responsibility for any suspension or debarment determination resulting from the matter(s) disclosed. The decision whether or not to initiate suspension or debarment action takes into consideration, among other things, the Government verification of the contractor's disclosure, the contractor's cooperation, the adequacy of corrective action, and restitution.

5. The Department of Justice

a. The Department of Justice Guidelines regarding the Voluntary Disclosure Program set forth complete guidance for the Department of Justice on referral, investigation and prosecution of voluntary disclosure matters.

b. The Defense Procurement Fraud Unit (Unit) in the Fraud Section, Criminal Division, DOJ, is the point of contact within the DOJ to oversee voluntary disclosure matters. The Unit reviews all voluntary disclosure matters.

(1) The Unit conducts, or refers to the appropriate U.S. Attorney's Office to conduct, whatever preliminary inquiry is deemed necessary to determine whether there is specific credible evidence suggesting prosecutable violations of Federal laws. If such evidence exists, the matter will be investigated.

(2) The United States Attorney's Office notifies and obtains the concurrence of the Unit prior to any decision to prosecute or decline prosecution of a volunteer corporation.

c. (1) In deciding whether to prosecute, where the law and evidence is otherwise sufficient to initiate prosecutive action, the prosecutor considers among other factors, the truthfulness, completeness, and timeliness of the

disclosure; the quality and quantity of the information provided therein; whether a compliance program, including preventive measures, was in place prior to the illegal activity; the extent of the fraud; the pervasiveness of the fraud; the level of the corporate officials involved in the fraud; the degree, extent, quality, and timeliness of the contractor's cooperation in the verification of the disclosure; and the remedial action taken by the contractor.

(2) The determination of whether to initiate or decline prosecution is the sole responsibility of the Department of Justice in accordance with the recommended criteria set forth in the DOJ Voluntary Disclosure Guidelines.

d. The Civil Division, Department of Justice, is responsible for determining whether to seek civil fraud damages in voluntary disclosure matters.

C. DESCRIPTION OF PROCESS

1. The Initial Disclosure

a. **The AIG-CIPO** - Defense contractors wishing to make a disclosure as part of the DoD Voluntary Disclosure Program should be directed to the Assistant Inspector General for Criminal Investigations Policy and Oversight (AIG-CIPO), telephone ~~(703) 604-1234~~ (703) 604-8710.

b. **Confirmation Letter** - When the initial contact with the AIG-CIPO is made by telephone, the contractor will be asked to send a letter confirming the information presented.

2. Case Control Number

Control Number - A control number is assigned to each voluntary disclosure (e.g., CIPO 012). The control number is reflected on all communications between the AIG-CIPO, the Military Departments, the Defense Agencies, and the DOJ. The control number is not intended to replace any internal DCIO or DOJ assigned case identification number.

3. Preliminary Acceptance

a. **Criteria** - A matter will be preliminarily accepted into the DoD Voluntary Disclosure Program if the AIG-CIPO determines that:

(1) the contractor disclosed sufficient information as defined in paragraph C.3.b. below, and

(2) the disclosure was not triggered by the contractor's recognition that the potential criminal or civil fraud matter or the underlying facts were about to be discovered by the Government through audit, investigation, contract administration efforts, or reported to the Government by third parties. One factor in determining whether the requirement has been met is whether the Government had prior knowledge of the matter(s) disclosed.

b. Sufficient Information

(1) Information sufficient for preliminary acceptance into the DoD Voluntary Disclosure Program requires the contractor to disclose, at a minimum, the contractor's name, the corporate division(s) affected, the location of the affected division(s), the Defense Agency(ies) and Military Department(s) affected if known, and the nature and description of the potential fraud. The contractor should also provide, if known, the DoD component with contract administration responsibility, along with the contract number and type, and the estimated financial impact to the Government. Sufficient information should include the nature, effect, time period, and any proposed remedy for the defect, as well as the identification of all end users if the matter disclosed involves defective products or testing,

(2) Since the DoD recognition of a contractor as a "volunteer" depends on the disclosure not being triggered by the contractor's recognition that the potential civil or criminal fraud matter or the underlying facts were about to be discovered by or disclosed to the Government, the AIG-CIPO must have sufficient information regarding the disclosure to do the following:

(a) Conduct an inquiry to learn if the Government had prior knowledge of the matter disclosed by matching factual information from existing investigations and audits with the new disclosure (see paragraph C.6. below).

(b) Determine whether to delay the audit and investigation until the contractor's report of investigation has been received (see paragraph C.13. below).

(c) Determine whether later identified matters are within the scope of the original disclosure.

c. Date of Preliminary Acceptance - The date on which the contractor discloses sufficient information in accordance with paragraphs C.3.a. and b. above, is the date on which the matter is determined to have been preliminarily accepted into the DoD Voluntary Disclosure Program. When the standard Voluntary Disclosure Agreement (hereafter referred to as the "XYZ Agreement," Appendix C) is executed, the date of admission into the DoD Voluntary Disclosure Program relates back to the date of preliminary acceptance.

4. Failure to Disclose Information

The AIG-CIPO may refuse to admit a matter into the DoD Voluntary Disclosure Program if the AIG-CIPO determines that the contractor knowingly failed to disclose relevant available information, and such information is obtained through other sources.

5. Notification Requirements Relating to Defective Products and Testing

When a disclosure concerns defective products or testing, the lead DCIO promptly notifies the affected Military Department(s) and Defense Agency(ies) of any potential safety or operational hazards. This notification is required by DoD Directive 7050.5, "Coordination of Remedies for Fraud and Corruption Related to Procurement Activities," June 7, 1989.

6. Inquiry for Prior Government Knowledge

a. Initiation of Inquiry - Based on the information supplied by the contractor, the AIG-CIPO conducts an inquiry to determine whether the Government had prior knowledge of the matter disclosed. The inquiry is neither binding nor conclusive as to whether the disclosure was triggered by the contractor's recognition that the underlying facts of the potential fraud were about to be discovered by the Government, or as to whether the matter should be admitted into the DoD Voluntary Disclosure Program. Rather, it is one factor considered in making a preliminary determination whether to admit the matter.

b. Inquiry Assignment - Once sufficient information is provided by the contractor, the AIG-CIPO conducts an initial inquiry to determine whether the Government had prior knowledge of the matter disclosed. In most instances, the following inquiries are made:

(1) DCIO Inquiry - A DCIO is requested to conduct a Defense Central Index of Investigations (DCII) check for open cases that could incorporate the matter(s) disclosed. When appropriate, the DCIO may be requested to make further inquiries to DCIO field offices as to the matter(s) disclosed.

(2) DCAA Inquiry - The DCAA representative to the DPFU is asked to determine whether the matter(s) disclosed is:

(a) a matter presently proposed for audit by DCAA where notification has been given to the company;

(b) a matter that is presently or has been the subject of a DCAA audit; or

(c) a matter in which the DCAA has issued an audit report or report of suspected irregularity. The DCAA is also asked to provide information regarding the nature and scope of the audit to determine whether the DCAA audit activities could incorporate the matter(s) disclosed.

(3) Federal Bureau of Investigation (FBI) Inquiry - The FBI representative to the DPFU is requested to determine whether there is an ongoing or previously conducted FBI investigation that could incorporate the matter(s) disclosed.

(4) Defense Procurement Fraud Unit (DPFU) Inquiry - The DPFU is requested to determine whether there are any ongoing or previously conducted criminal investigations or litigation that could incorporate the matter(s) disclosed. If the matter(s) disclosed suggest possible antitrust implications, the DPFU is asked to determine whether there are any ongoing or previously conducted antitrust investigations or litigation that could impact on the disclosure.

(5) Civil Division, DOJ, Inquiry - The Civil Division, DOJ, is requested to determine whether there are any ongoing or previously conducted civil investigations or litigation, including False Claims Act qui tam suits (31 USC 3729 et. seq.), in which the matter(s) disclosed could be incorporated.

(6) Suspension and Debarment Inquiry - The cognizant suspension and debarment authority is requested to determine whether there are any ongoing or prior suspension and debarment actions that could involve the matter(s) disclosed.

(7) Other Inquiries - When appropriate, other Inspectors General and investigative agencies may be contacted to inform them of matters that may

impact on their programs or operations, or determine whether they are aware of any investigations or litigation that may impact on the matter(s) disclosed.

7. Notification of Preliminary Acceptance

When a decision is made to preliminarily accept a matter into the DoD Voluntary Disclosure Program, the contractor is advised in writing (Appendix D). The letter explains that the contractor's continued participation in the program is contingent on prompt execution of the standard XYZ Agreement, compliance with the terms of the XYZ Agreement, and compliance with the requirements set forth in the Deputy Secretary of Defense letter of July 24, 1986. The standard XYZ Agreement is enclosed with the letter. Copies of the letter are forwarded to the DPFU; the Civil Division, DOJ; the assigned DCIO(s); the DCAA; and the cognizant suspension and debarment authority.

8. Matters Rejected

The contractor is advised in writing if the matter is rejected from inclusion in the Voluntary Disclosure Program (Appendix E). The letter, however, encourages the contractor to cooperate in the Government audit and investigation. Copies of the letter are forwarded to the DPFU; the Civil Division, DOJ; the DCIO(s); the DCAA; and the cognizant suspension and debarment authority.

9. XYZ Agreement

The standard XYZ Agreement is used in all disclosure matters absent compelling circumstances requiring deviation. The XYZ Agreement should be signed promptly by an authorized director or officer of the contractor, preferably within two weeks of receipt, and returned to the AIG-CIPO. When signed by all required signatories, copies are sent to the DPFU; the Civil Division, DOJ; the assigned DCIO(s); the DCAA; and the cognizant suspension and debarment authority.

10. Failure to Sign XYZ Agreement

The AIG-CIPO will attempt to resolve any outstanding issues concerning the XYZ Agreement. In the event the contractor refuses to sign the XYZ Agreement or makes demands that are unacceptable to the Government, the AIG-CIPO will advise the contractor in writing of the removal of the matter from the DoD Voluntary Disclosure Program (Appendix F). Copies of the letter are forwarded to

the DPFU; the Civil Division, DOJ; the DCIO(s); the DCAA; and the suspension and debarment authorities.

11. Notification of Admission into the Voluntary Disclosure Program

Following execution of the XYZ Agreement, the AIG-CIPO notifies the contractor in writing confirming the admission of the matter into the DoD Voluntary Disclosure Program (Appendix G). The contractor, if it has not already done so, will be asked to inform the AIG-CIPO within ten days of the execution of the XYZ Agreement whether a written report will be provided describing the results of the contractor's internal investigation. In addition, the contractor is informed that any written report should be submitted within 60 days of the initial disclosure. The AIG-CIPO's confirmation letter will identify the responsible DCIO(s), the cognizant suspension and debarment authority, and the points of contact within each. Copies of the letter are sent to the DPFU; the Civil Division, DOJ; the responsible DCIO(s); the DCAA; and the cognizant suspension and debarment authority.

12. Contractor Internal Report of Investigation

a. Internal Investigation - The contractor determines whether an internal investigation will be conducted. While the Government does not require such an investigation, it generally is in the best interest of the contractor to conduct their own investigation and submit a report describing the results.

b. Timely Completion of Report - Contractors choosing to provide CIPO with a written report describing the results of their internal investigation are requested to submit their report within 60 days of the initial disclosure. If the contractor is unable to complete the report within 60 days, the contractor should request an extension of time. The AIG-CIPO will determine if and on what basis an interim report(s) should be provided.

c. Distribution of Report - The AIG-CIPO sends to the contractor a letter confirming receipt of the contractor's internal report of investigation (Appendix H), and distributes copies (with restrictive markings to protect proprietary/sensitive contents) to the assigned DCIO(s); the DPFU; the Civil Division, DOJ; the DCAA (if the disclosure relates to contract fraud); and the assigned suspension and debarment authority. When appropriate, the DPFU

distributes a copy to a U.S. Attorney for prosecutive review. The Civil Division, DOJ, forwards a copy to any U.S. Attorney involved in related civil litigation.

13. Government Actions Pending Contractor Internal Investigation

a. Timing of Government Investigation - As a general rule, the Government does not begin the verification process or conduct its own audit or investigation until it has received the contractor's internal report of investigation. The Government, however, reserves the right to begin its own audit or investigation at any time. Under certain circumstances, the contractor may be asked to discontinue or limit its internal investigation.

b. Statute of Limitations - During completion of the contractor's internal investigation, if the Government determines that the criminal or civil statute of limitations will expire as to the matter disclosed, or any part thereof, within one year after submission of the contractor's report, the Government, at its option, may request the contractor to waive the statute of limitations for a period it deems appropriate. Refusal to waive the statute of limitations will be considered in evaluating the cooperation of the contractor.

14. Verification

a. Investigative Plan - Following receipt of the contractor's internal report, the designated DCIO(s) begins the verification process. The verification audit and investigation are given sufficiently high priority to allow for its expedited completion. The DCIO prepares a written investigative plan and coordinates it with the criminal prosecutor assigned to the matter, and the Civil Division, DOJ. The plan focuses the investigation, serves as a roadmap for the DCIO(s), and provide a means for the DCIO(s) to track the progress and ensure timely completion of the verification process.

b. DCAA Verification Audit - The DCIO(s), in most instances, request the DCAA to conduct a verification audit. The DCAA auditor assigned to the matter is briefed on the investigative plan to ensure a coordinated effort. If sufficient information is available and the circumstances warrant, the DCIO(s) may begin its own investigation prior to completion or in conjunction with the audit.

c. **Scope of Verification Audit and Investigation** - The scope of the verification audit and investigation focus specifically on the matters disclosed by the contractor, and include the quantification of the Government losses and potential civil forfeitures under the False Claims Act. Unrelated fraud allegations developed during the verification process are pursued by the initiation of an independent audit or investigation in accordance with normal procedures unless their relationship to the matter disclosed is so commingled as to prevent their severance. Such allegations are not treated as part of the Voluntary Disclosure Program without prior coordination with the AIG-CIPO.

15. Contractor's Cooperation During the Verification

The contractor's cooperation is essential to the verification audit and investigation. Problems regarding the contractor's cooperation that cannot be readily resolved by the DCIO field agent and the DCAA auditor (e.g., refusal to supply records or allow interviews), are promptly brought to the attention of the respective headquarters of the DCIO(s) and the DCAA for resolution. Where the contractor's cooperation is unsatisfactory, the headquarters of the DCIO and/or the DCAA promptly notify the AIG-CIPO in an attempt to resolve the issue. The AIG-CIPO will, in turn, notify the DPFU of the unsatisfactory cooperation. When appropriate, the AIG-CIPO, with the assistance of the Office of the General Counsel, DoD, will attempt to resolve the problem with counsel representing the contractor.

16. Use of Subpoenas

The DoD Voluntary Disclosure Program assumes contractor cooperation. Should subpoenas for documents be necessary, it is standard procedure to use Inspector General subpoenas rather than grand jury subpoenas. Prior to the issuance of a grand jury subpoena in a voluntary disclosure matter, the assigned DCIO agent promptly notifies the DCIO headquarters, which in turn, notifies the AIG-CIPO.

17. Defense Criminal Investigative Organizations (DCIOs) Case Management and Progress Reports

a. **Progress Report** - The DCIO headquarters monitor all voluntary disclosure matters assigned to their organization to ensure adequate progress and expeditious completion. The DCIOs forward a progress report for each

voluntary disclosure investigation every 90 days to the AIG-CIPO (Appendix I). On receipt of the 90-day progress report, the AIG-CIPO forwards a copy to the DPFU; the Civil Division, DOJ; and the DCAA. The progress reports separately summarize each ongoing investigation, incorporating the following information:

(1) subject(s), including corporate name, affected division(s), and affected location(s);

(2) the investigative organization assigned case number, the CIPO assigned disclosure control number, and the DCIO(s) field office assigned to conduct the investigation;

(3) an initial summary, including allegations, Military Departments and Defense Agencies affected, the time frame in which the allegation occurred, the identification of contracts under investigation, the status of the contracts, and the contractor's estimated cost impact to the Government;

(4) matters involving defective products or testing include a description of the defect, the effect on health or safety, the time period involved, notice to the users, and corrective action taken;

(5) updates include all newly acquired information including prosecutive status (both civil and criminal), new cost impact figures calculated by either the contractor or the DCAA, changes in the scope of the investigation, new allegations raised, or allegations determined to be unfounded;

(6) other significant information to be reported includes declination of prosecution, criminal indictment, use of subpoenas, and any problems arising during the audit and investigation such as poor cooperation or need for subpoenas;

(7) date audit was completed and date the investigation was closed;
and

(8) monies offered by the corporation, accepted by the Government, including checks, credits, or other offsets.

b. Progress Report Reviews - Each DCIO schedules a meeting at a location of its choice within 14 days of the progress report to review the status and planned actions of each open investigation. Attendees at the meeting may include a representative from the OAIG-CIPO; the DCIO; Office of General Counsel, DoD; the DPFU; and Civil Division, DOJ.

18. Payments by Contractors

a. Required Coordination with the Civil Division, DOJ - Collection of any civil damages for all DoD voluntary disclosure matters is the responsibility of the Civil Division, DOJ. Unsolicited payments, restitution, or any other funds representing the contractor's estimate of the cost impact of the matters disclosed are coordinated with the Civil Division, DOJ, and the DPFU prior to acceptance. While it should be determined if the contractor is willing to make restitution, specific requests for payment are coordinated with the Civil Division, DOJ, and the DPFU. When it is agreed that payment is appropriate, contractors desiring to pay restitution or make good faith reimbursements are instructed to provide a check to the AIG-CIPO made payable to "the Treasurer of the United States."

b. Other Required Coordination - The Civil Division, DOJ consults with the criminal prosecutor assigned to the matter, the AIG-CIPO, and the suspension and debarment official, and determines whether immediate payment by the contractor would be in the Government's best interests with respect to its potential civil remedies.

c. Requirements Affecting Good Faith Reimbursements - When determined that an unsolicited payment will be accepted or a payment will be solicited and accepted, the acceptance is conditioned on a written agreement with the contractor that provides:

(1) acceptance of the payment does not constitute the Government's agreement as to the contractor's ultimate civil or criminal liability for the matter(s) disclosed, and

(2) acceptance shall not prejudice the Government's right to obtain additional damages, fines, and penalties for the matter(s) disclosed.

19. Removal of a Matter from the DoD Voluntary Disclosure Program

a. Reason for Removal - The AIG-CIPO may remove a matter from the DoD Voluntary Disclosure Program at any time during the verification process if:

(1) the disclosure is determined not to meet the Program requirements as set forth in the Deputy Secretary of Defense letter of July 24, 1986, or

(2) the contractor has violated the terms of the signed XYZ Agreement.

b. Notice of Removal - Prior to removing a matter from the Voluntary Disclosure Program, the AIG-CIPO will notify the contractor in writing of the proposed decision to remove the matter, and may provide the contractor an opportunity to respond (Appendix J). A copy of the letter is sent to all DCIOs, suspension and debarment authorities, the DPFU, the Civil Division, DOJ, and the DCAA. The decision to remove is at the sole discretion of the AIG-CIPO.

20. Case Completion

a. Records Required - A matter administered under the DoD Voluntary Disclosure Program is closed when the following documents have been provided to the AIG-CIPO:

(1) Notification by the designated DCIO(s) that both the audit and investigation are completed and the matter is closed. The notification identifies the DCAA final dollar impact determination to the Government, the final settlement, and the manner in which the losses were recovered or otherwise resolved.

(2) A letter from the DPFU either confirming the declination of criminal prosecution or indicating the results of any prosecutive actions taken.

(3) A letter from the Civil Division, DOJ, declining civil litigation or indicating the results of civil litigation or settlements.

(4) A letter from the DPFU indicating the results of any prosecutive actions or settlements if the Antitrust Division, DOJ, is involved in the investigation, or a U.S. Attorney has reviewed the matter for potential antitrust violations.

(5) A letter from the designated suspension and debarment authority advising the AIG-CIPO in writing of any action taken or to be taken as to suspension or debarment of the contractor or persons within the contractor's organization.

b. Notification that the Matter is Closed - The AIG-CIPO notifies the DoD contractor in writing that the matter(s) administered under the Voluntary Disclosure Program is closed when the appropriate documents mentioned in paragraph C.20.a.(1) through (5) are received (Appendix K).

APPENDIX A



THE DEPUTY SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

24 JUL 1986

Dear :

During the past few years, public and congressional interest in the Department of Defense management of its programs and operations has remained intense. This is nowhere more true than in the acquisition area. These issues continue to command our personal attention and involvement. Many of the problems in the acquisition area came to light because of audits and investigations conducted by the Department of Defense. We are committed to detecting and eliminating inefficiency and improper practices in our acquisition process; we believe that most Defense contractors have institutional commitments to these same goals.

To demonstrate this commitment, a number of major Defense contractors have adopted a policy of voluntarily disclosing problems affecting their corporate contractual relationship with the Department of Defense. These disclosures are made by the contractor, without an advance agreement regarding possible Department of Defense resolution of the matter. The contractors understand the Department's view that early voluntary disclosure, coupled with full cooperation and complete access to necessary records, are strong indications of an attitude of contractor integrity even in the wake of disclosures of potential criminal liability. We will consider such cooperation as an important factor in any decisions that the Department takes in the matter.

I encourage you to consider adopting a policy of voluntary disclosure as a central part of your corporate integrity program. Matters not involving potential criminal issues should be presented to the appropriate contracting officer or Defense Contract Audit Agency auditor. Matters involving potential criminal or civil fraud issues should be directed to the Deputy Inspector General, Department of Defense.

35052

A description of the Department of Defense program for voluntary disclosures is enclosed herewith for your consideration.

I believe that your corporate commitment to complete and timely disclosures of irregularities, regardless of their magnitude, is essential to increasing confidence in our ability to provide for the national defense effectively and efficiently.

Sincerely,



William H. Taft, IV

Enclosure

(Identical letters sent to the attached
Defense contractors)

Department of Defense Program for Voluntary
Disclosures of Possible Fraud by
Defense Contractors

Background

Officials within the Department of Defense (DoD) have been approached by a number of contractors to determine the conditions and agreements that might be structured with the Government if a contractor sought to disclose voluntarily information that might expose the contractor to liability under Federal statutes relating to criminal and civil fraud. From the Department's perspective, the voluntary disclosure of information otherwise unknown to the Government, and contractor cooperation in an ensuing investigation, offers a number of significant advantages:

- o the Government is likely to recoup losses of which it might otherwise be unaware;
- o limited detection assets within the Government are augmented by contractor resources;
- o consideration of appropriate remedies can be expedited by both DoD and Department of Justice when adversarial tensions are relaxed;
- o voluntary disclosure and cooperation are indicators of contractor integrity; and
- o contractors engaging in voluntary disclosure are more likely to institute corrective actions to prevent recurrence of disclosed problems.

Requirements on Contractors

Department of Defense recognition of a contractor as a "volunteer" will depend on four key factors:

1. The disclosure must not be triggered by the contractor's recognition that the underlying facts are about to be discovered by the Government through audit, investigation, or contract administration efforts or reported to the Government by third parties.

2. The disclosure must be on behalf of the business entity, in contrast to admissions by individual officials or employees.

3. Prompt and complete corrective action, including disciplinary action and restitution to the Government where appropriate, must be taken by the contractor in response to the matters disclosed.

4. After disclosure, the contractor must cooperate fully with the Government in any ensuing investigation or audit.

Defining DoD expectations of "cooperation" in any situation will depend on the individual facts or circumstances underlying the disclosure. However, DoD may enter into a written agreement with any contractor seeking to make a voluntary disclosure where such an agreement will facilitate follow-on action without improperly limiting the responsibilities of the Government. This agreement, which may be coordinated with the Department of Justice, will describe the types of documents and evidence to be provided to DoD and will resolve any issues related to interviews, privileges, or other legal concerns which may affect the DoD ability to obtain all relevant facts in a timely manner.

Department of Defense Actions

If a contractor is recognized as a "volunteer" based on the preceding criteria, the DoD is prepared to undertake the following:

1. Identify one of the Military Departments or the Defense Logistics Agency as the cognizant DoD component to represent DoD for suspension/debarment purposes, i.e., to assess contractor integrity in light of the disclosures. Early identification of the appropriate DoD component will permit the contractor, from the outset of its cooperation, to provide relevant information relating to contractor integrity and management controls, e.g., internal controls, corrective measures, or disciplinary action taken as a result of the information disclosed.

2. The DoD, through the Office of the Inspector General and in cooperation with the Department of Justice, will seek to expedite the completion of any investigation and audit conducted in response to a voluntary disclosure, thereby minimizing the period of time necessary for identification of remedies deemed appropriate by the Government.

3. Advise the Department of Justice of the complete nature of the voluntary disclosure, the extent of contractor cooperation and the types of corrective action instituted by the contractor. As always, any determinations of appropriate criminal and civil fraud sanctions will be the ultimate prerogative of the Department of Justice.

Commencing a Voluntary Disclosure

Since initial judgments as to appropriate investigative and audit resources will be necessary in any voluntary disclosure involving possible fraud, the initial contact with the DoD on fraud-related disclosures should be with the Office of the Inspector General.

While the Office of the Inspector General will be the initial point of contact for fraud-related disclosures, other DoD components are expected to be advised or involved as circumstances warrant. Besides the Office of General Counsel, DoD, and the appropriate suspension/debarment authority, other DoD components that expectedly would be advised, or involved, in voluntary disclosures are the Office of the Assistant Secretary of Defense (Acquisition and Logistics) and the Defense Contract Audit Agency.

The Office of the Inspector General element that will serve as the initial point of contact is:

Assistant Inspector General for Criminal Investigations
Policy and Oversight
400 Army Navy Drive
Room 723
Arlington, Virginia 22202
Telephone: (703) 604-8711



THE DEPUTY SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

AUG 10 1987

Dear :

As a result of Department of Defense encouragement to Defense contractors to adopt a voluntary disclosure policy as one aspect of corporate self-governance programs, several issues have arisen which merit comment.

Does the Department of Defense require disclosure and self-investigation?

Except for the requirement contained in the 1986 amendments to the Antikickback Act, our position is that we encourage disclosure as a manifestation of general corporate integrity and as part of contractor self-governance programs. Consistent with recommendations of the Packard Commission and the Defense Industry Initiatives, we intend to encourage voluntary disclosure without legally or contractually mandating them. Accordingly, the decision to conduct an internal investigation of a matter disclosed to the Department of Defense is within the sole discretion of the contractor and is not required under our program of encouragement. While we believe that a contractor's internal inquiry will likely expedite resolution of the matter, we are prepared to conduct independent inquiries of all disclosed matters regardless of whether the contractor has performed its own internal investigation.

When may a contractor making a voluntary disclosure obtain a formal opinion regarding suspension and debarment?

When a voluntary disclosure involving possible fraud is made, a final determination by the Department of Defense regarding suspension and debarment will include consideration of the Government's completed investigation to verify the disclosure. Therefore, the Department of Defense will not initiate suspension or debarment based on a voluntary disclosure prior to verification of the disclosed facts. Of course, this policy would not apply if it becomes apparent that

a contractor has acted in bad faith in making a disclosure, as for example by knowingly failing to disclose relevant facts or by concealing other unlawful acts.

Will the Department of Defense recognize contractor cooperation in Department of Defense investigations not resulting from voluntary disclosures?

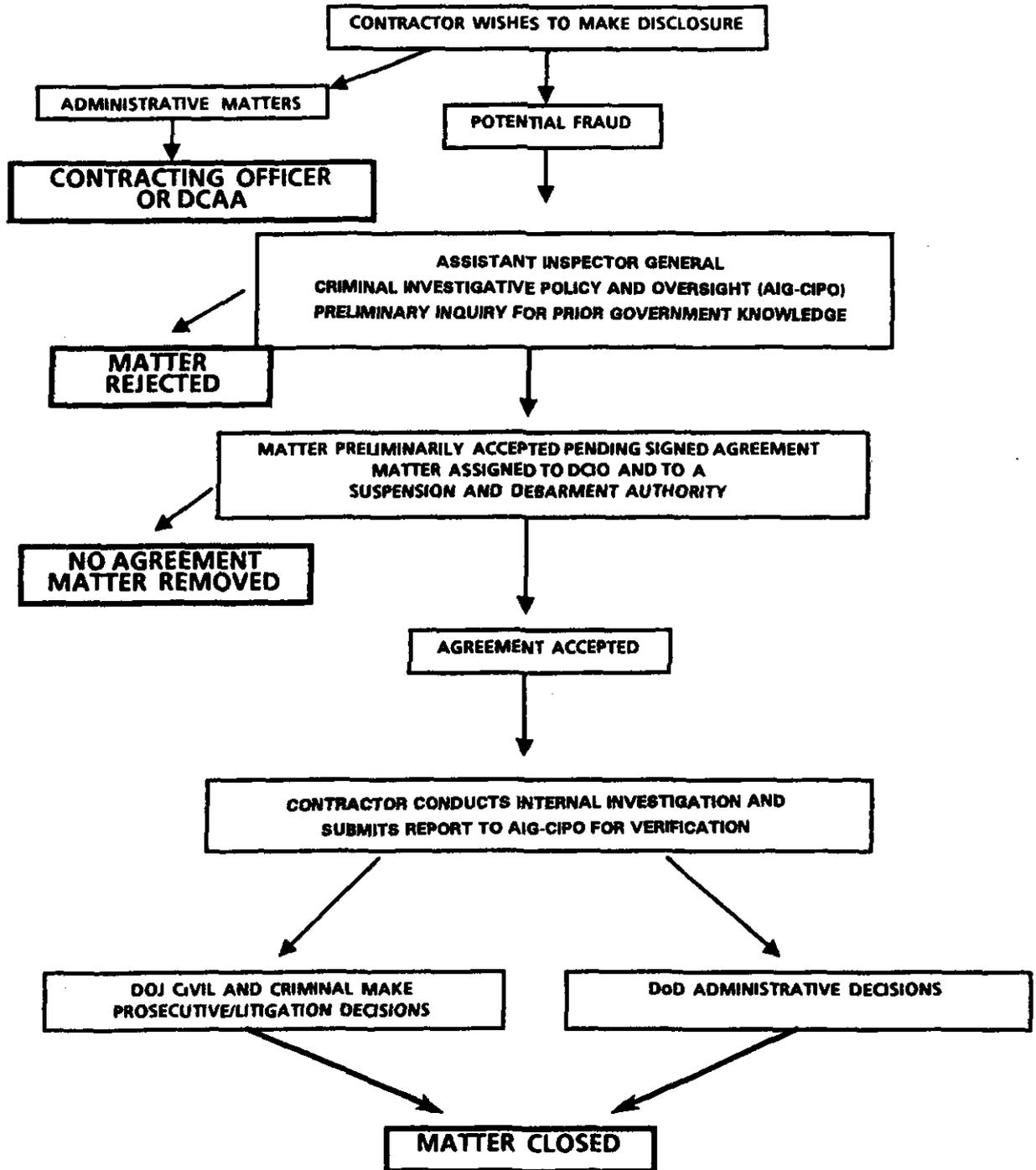
We realize that even with the most comprehensive self-governance programs, contractors may not detect every matter which adversely impacts on their business relationships with the Department of Defense. The Government likely will continue to identify contract-related problems through its audit and investigative operations. We encourage contractors committed to self-governance to cooperate in the Department of Defense-initiated investigations and to institute corrective and remedial measures as they become appropriate. We will ensure that determinations regarding suspension and debarment reflect consideration of the contractor's achievements in ensuring corporate integrity regardless of whether a particular case arises from a voluntary disclosure by the contractor or from another source. In addition, the Department of Defense will provide the Department of Justice with appropriate information concerning the effectiveness of contractor cooperation, corrective action and self-governance in the specific matter, as well as in general.

We continue to believe that a commitment by contractors to effective programs of self-governance, including disclosure, is vital to the Department of Defense.

Sincerely,

William H. Taft, IV

APPENDIX B



APPENDIX C

Revised 5/5/89
(Updated 2/1/93)

AGREEMENT BETWEEN

XYZ COMPANY

AND

INSPECTOR GENERAL, DEPARTMENT OF DEFENSE

Pursuant to this Agreement executed by and between XYZ Corporation (hereafter the "Company") and the Inspector General of the Department of Defense (hereafter the "IG-DoD"):

WHEREAS, the Company informed the IG-DoD on (date) that it is voluntarily disclosing information concerning (subject _____); and

WHEREAS, the Company asserts that this disclosure is not triggered by the Company's recognition that the underlying facts were about to be discovered by the Government through audit, investigation, or contract administration efforts or reported to the Government by third parties; and

WHEREAS, this disclosure is made solely on behalf of the business entity; and

WHEREAS, this disclosure is made at the initiative of the Company to demonstrate its commitment to corporate integrity and self governance; and

WHEREAS, the United States Government has made no representations regarding disposition of this matter other

than those previously made in the July 24, 1986 and August 10, 1987 letters of Deputy Secretary of Defense Taft (with attachments), and the guidance set forth in the July 17, 1987 Department of Justice (DOJ) Guidelines (hereafter the "DOJ Guidelines") regarding the Voluntary Disclosure Program (attached); and

WHEREAS, the Company understands that continued participation in the Voluntary Disclosure program is conditioned on the Company cooperating fully with the Government in any audit or investigation resulting from this disclosure; and

WHEREAS, a Military Department or the Defense Logistics Agency will be assigned lead agency responsibility for any suspension or debarment determination resulting from information in this disclosure; and

WHEREAS, the Defense Procurement Fraud Unit (hereafter, the "Unit") in the Fraud Section, Criminal Division, Department of Justice, is the contact point in the DOJ to oversee voluntary disclosure matters and to determine whether there is specific credible evidence suggesting prosecutable violations of federal laws; and

WHEREAS, the Company understands that, at the conclusion of the Government's verification investigation, the prosecutive decision made by the Defense Procurement Fraud Unit, or by the United States Attorney's office with

the concurrence of the Unit, to which a voluntary disclosure matter has been referred, shall be based, in part, upon complete, candid and timely disclosure; and the degree, extent, quality and timeliness of cooperation as more fully set forth in the July 17, 1987 DOJ Guidelines; and

WHEREAS, the Company understands that the Commercial Litigation Branch of the Civil Division will assess the matter to determine whether violations of the False Claims Act and related common law theories are apparent and initiate such action as may be appropriate based on its conclusions;

WHEREAS, the Company and the IG-DoD desire to resolve the matters set forth in this disclosure in a timely manner; and

WHEREAS, the persons executing this Agreement are authorized by their respective parties to execute the Agreement on their behalf;

NOW THEREFORE, in consideration of the following covenants, the Company and the IG-DoD agree as follows:

A. Disclosure to the Government by the Company of Results of its Internal Investigation

1. The Company shall determine whether an internal investigation will be conducted. It is understood that any internal investigation is the result of the Company's independent decision to conduct the internal investigation

for its own purposes and not at the direction of the Government.

2. If the Company conducts an internal investigation, the Company shall determine if it will submit to the IG-DoD a written report describing the results of the Company's internal investigation. The Company shall notify the IG-DoD within ten days of the IG-DoD's execution of this agreement whether a written report will be provided.

3. Notwithstanding any other provision in this agreement, the Company shall do the following:

a) if it conducts an internal investigation, and whether or not it submits a report to the Government pursuant to paragraph A.2., above, determine the cost impact to the Government resulting from the matters disclosed, and submit to the Government a good faith statement of the cost impact and any supporting audit reports, auditing work papers, exhibits and all analytical documents; and

b) if it submits a written report pursuant to paragraph A.2., above, include in the report a list of all individuals interviewed and the subject matter of each interview.

4. If the Company notifies the IG-DoD that it will provide a written report, the IG-DoD will allow the Company a reasonable period of time to conduct an internal

(a) a description of the position in the Company currently and at the time of the matter disclosed as to all individuals interviewed:

(b) a statement of each occasion on which individuals were interviewed;

(c) a description of files, documents and records reviewed;

(d) a summary of auditing activity undertaken, and a summary of the appropriate documents in support of the cost impact determination, which documents and information in support of the cost impact determination shall be produced pursuant to paragraph A.3., above;

(4) a detailed statement of the facts, including the identity and role of employees involved in the matter disclosed.

b. If, after reviewing the Company's report and supporting materials, the DOJ or IG-DoD believes that it is necessary that the Government obtain further details beyond that provided in the report and supporting materials, concerning information provided by any individual interviewed by the Company on any occasion, or concerning any other aspect of the report, it shall so advise the

Company and give the Company the opportunity to promptly provide supplemental information.

c. The Company understands, in accordance with the DOJ Voluntary Disclosure Guidelines, that its declination to provide the supplemental information may affect DOJ's ability to verify the disclosure and DOJ's evaluation of the Company's cooperation.

6. The Company contends that the attorney-client privilege and the attorney work-product privilege may attach to certain information, documents, communications, and notes, memoranda, recordings, or detailed descriptions of interviews, whether or not voluntarily submitted in connection with this disclosure or in connection with the submission of any of the supplemental information. The Company presently intends to preserve these privileges and the Government recognizes that they may assert them, to the extent they may exist. The Government reserves the right to agree or disagree with the asserted applicability of these privileges in any given instance. The Government will not contend that the Company's production of the report and its underlying documents, or the furnishing of additional information relating to this disclosure will constitute a waiver of the attorney-client and work-product privileges as may be applicable.

7. The report and other information disclosed shall be used by the Government as it deems appropriate in any criminal, civil, administrative or contractual proceedings arising out of disclosed or related matters, subject to any legal objection to that use, otherwise available in the particular proceeding, asserted by the Company and subject to the restrictions in use in criminal and civil proceedings set forth in paragraph A.8 below.

8. The Department of Justice agrees that the report will not be used as an admission by a party-opponent, who is the disclosing Company, or subsidiary or business unit thereof, in any criminal or civil proceeding arising out of the disclosure or related matters; except, said report can be used as authorized by the Federal Rules of Evidence in a prosecution for false statements based upon the contents of the report, obstruction of justice, misprision of a felony, or conspiracy relating thereto. As used herein, report shall mean solely the narrative summary submitted by the Company. Any attached documents, audit work papers, supporting exhibits, analytical documents and notes, memoranda or recordings of interviews may be used by the Government in accordance with the Federal Rules of Evidence. The Department of Justice may make derivative use of the report and may use the report for impeachment purposes in any criminal or civil proceeding against the Company. The

Government may make any use of the report it deems appropriate in any criminal, civil, or administrative matter against an individual.

9. The Company recognizes that any report and other information disclosed to the Government will be subject to verification audit and investigation. The verification will be focused on the matters disclosed by the Company and will include the quantification of Government losses. Unrelated fraud allegations developed during the verification process may, at the Government's option, be pursued by the initiation of an independent audit or investigation. Such allegations shall not be treated as part of the Voluntary Disclosure Program without prior coordination with the Assistant Inspector General for Criminal Investigative Policy and Oversight.

B. Cooperation in Government's Investigation

The Company agrees to cooperate with the Government's investigation as follows:

1. The Company shall provide the Government, consistent with paragraphs A.5 and A.6, access to and copies of all documents and information, not previously provided, which the Government might deem to be relevant. The Company shall produce necessary records without issuance of subpoenas or other compulsory process by the Government.

The parties may agree that the production of records be made pursuant to the issuance of a subpoena.

2. Notwithstanding paragraph B.1, above, the Government reserves the right to seek compulsory production of Company information relating to this disclosure pursuant to any other means, including the issuance of Inspector General subpoenas, grand jury subpoenas, and civil process, if necessary to the Government's investigation or resolution of issues arising therein. The Company reserves the right to assert any valid legal objection to such process.

3. If documents deemed necessary to the Government's investigation or resolution of issues related to the Company's disclosure are not in the possession, custody or control of the Company, the Company will seek to identify the location of such documents not in its possession or control, and will take such actions as may be appropriate in assisting the Government to obtain such documents.

4. The Company shall arrange for a Corporate point of contact for the purpose of addressing matters arising under this Agreement.

5. The Company shall provide such technical assistance as the Government may reasonably request, including assistance in audit, contracting, financial management, computer analysis and technical areas.

6. The Government may elect to conduct employee interviews relating to the subject matter of the disclosure. The Company shall, at the Government's option, provide appropriate office space at its facilities, and shall allow its employees to attend these interviews. The Government reserves the right to conduct interviews other than at the Company facility. Company management shall not attend these interviews. Company counsel shall not attend these interviews unless requested to do so by the Government or by the employee. The Company shall not compel or require the employee to have Company counsel present. If the employee elects to have Company counsel present in a non-representational capacity, the Government reserves the right not to conduct the interviews, or to ensure that the employee's decision to have the Company's counsel present has not been mandated or unduly influenced by Company policy, procedure, or practice. By this paragraph, neither the Company nor the Government intends to limit employees' rights to decline to be interviewed, to obtain legal counsel of their own selection at the expense of the Company or to be accompanied by such counsel at any interviews conducted by the Government with respect to this matter. If the employee elects to be represented by Company counsel and to have Company counsel present, the Government reserves the right to ensure that no conflict-of-interest exists in the

representation of the company and the employee. If the Government is not satisfied that conflict-free counsel is present, it may take appropriate action, including but not limited to, not conducting the interview, requesting independent counsel or ensuring that there is an appropriate waiver of conflict-free counsel from each employee.

C. Restrictions on Department of Defense Disclosure

1. The Department of Defense, to the extent permitted by law and regulations, will safeguard and treat information obtained pursuant to this Agreement as confidential where the information has been marked "confidential" or "proprietary" by the Company. To the extent permitted by law and regulations, such information will not be released by the Department of Defense to the public pursuant to a Freedom of Information Act (FOIA) request, 5 U.S.C. 552 et. seq., without prior notification to the Company.

2. The Government may transfer documents provided by the Company to any department or agency within the Executive Branch if the information relates to matters within the organization's jurisdiction.

3. When the supporting documents furnished by the Company pursuant to this agreement are no longer needed, the Government agrees to return the originals to the Company, if requested by the Company.

IN WITNESS WHEREOF, the Company and the IG-DoD have caused this Agreement to be executed by their duly authorized representatives.

COMPANY

FOR THE DEPARTMENT OF DEFENSE

Assistant Inspector General
for Criminal Investigative
Policy and Oversight

DATE: _____

DATE: _____

CONCUR:

FOR THE DEPARTMENT OF JUSTICE

Chief, Defense Procurement
Fraud Unit

DATE: _____

Memorandum



Subject

DEPARTMENT OF JUSTICE GUIDELINES RE:
DEPARTMENT OF DEFENSE
VOLUNTARY DISCLOSURE PROGRAM

Date

JUL 17 1987

To All United States Attorneys

From


William C. Hendricks III
Chief, Fraud Section
Criminal Division

On behalf of William F. Weld, Assistant Attorney General Criminal Division, I am providing each of you with five advance copies of this Department's guidelines on referral, investigation and prosecution of Department of Defense cases involving contractors who have voluntarily disclosed procurement-related problems. These guidelines will be published for inclusion in the United States Attorneys' Manual in the near future. Should more copies be needed for distribution within your office and its branches, please contact the Defense Procurement Fraud Unit within this office at (FTS) 786-4600.

DEPARTMENT OF JUSTICE GUIDELINES REGARDING
DEPARTMENT OF DEFENSE VOLUNTARY DISCLOSURE PROGRAM

Introduction

In July 1986, the Department of Defense (DOD) initiated the Volunteer Disclosure Program designed to encourage self-policing and voluntary disclosure by defense contractors of procurement related problems. These guidelines are designed to describe the process relating to the referral, investigation and prosecution of cases generated in DOD's Program. More complete information is available through the Fraud Section of the Criminal Division, Department of Justice (DOJ).

Requirements on Contractors

The DOD's recognition of a contractor as a "volunteer" depends on four key factors:

A. Disclosure must not be triggered when the underlying facts are about to be discovered by the government through audit, investigation or other means.

B. Disclosure must be on behalf of the business entity; benefits of voluntary disclosure do not ensure to individuals but only to the corporation.

C. Prompt and complete corrective action, including disciplinary action and restitution to the government, must be taken by the contractor in response to the matters disclosed.

D. After disclosure the contractor must cooperate fully in any ensuing investigation or audit.

Department of Defense Actions

The DOD has designated its initial contact point for its program as the Office of the Inspector General. If a contractor is recognized as a volunteer based on the preceding criteria, the DOD will undertake the following:

A. Identify one of the Military Departments or the Defense Logistics Agency as the cognizant DOD component to represent the DOD for suspension/debarment purposes, i.e., to assess contractor integrity in light of the disclosures.

B. Seek through the DOD Office of the Inspector General (OIG) and in cooperation with the DOJ to resolve any investigation and audit conducted in response to a voluntary disclosure at the earliest time, consistent with other workload demands.

C. Advise the DOJ of the complete nature of the voluntary disclosure, the extent of contractor cooperation and the types of corrective action instituted by the contractor. The DOD recognizes that determination of criminal and civil sanctions is always the ultimate prerogative of the DOJ.

Law Enforcement Objectives

The DOJ objective in the defense procurement fraud area is to bring prosecutions that will have a deterrent effect while at the same time make prosecutive judgments that encourage contractors to initiate compliance programs. Deterrence is a significant factor in prosecuting corporations, particularly defense contractors. Through prosecution, conviction and punishment, other contractors are put on notice of what constitutes illegal activity and are encouraged, where appropriate, to modify their behavior to conduct business in a non-criminal manner. Prosecution creates an incentive for management to establish both preventive measures and clear standards of right and wrong for their employees.

On the other hand, contractors that make serious and responsible efforts to comply with the law and to disclose misconduct promptly and forthrightly should not be discouraged from those practices by prosecutive policies. In some situations, a weighing of the factors for and against prosecution may result in a decision that law enforcement objectives would not be furthered by prosecution of contractors that have made serious and responsible efforts to comply with the law.

Department of Justice Procedures

Fraud Section's Defense Procurement Fraud Unit

The Fraud Sections' Defense Procurement Fraud Unit (Unit) is the contact point in the DOJ to oversee voluntary disclosure matters. The responsibilities of the Unit include the following:

A. The Unit will review all referrals made to the DOJ by the OIG in connection with the Voluntary Disclosure Program.

B. Upon receipt of the referral from the DOD, the Unit will conduct or refer to an appropriate United States Attorney to conduct whatever preliminary inquiry is deemed necessary to determine whether there is specific credible evidence suggesting prosecutable violations of federal laws.

C. If the Unit determines that specific credible evidence of criminal conduct does not exist, the preliminary inquiry will be closed. The closing of a preliminary inquiry does not necessarily constitute a criminal declination. An inquiry may be reinstated by the Unit at any time for any reason it deems to be appropriate.

D. If the Unit determines that specific credible evidence of criminal conduct exists, the referred matter will be investigated.

E. Matters involving an impact on the government of \$100,000 or more or where the fraud had posed a substantial threat to safety or our National Security will be retained by the Unit or referred to an appropriate United States Attorney's office. The Unit will advise the relevant United States Attorney(s) of all matters, whether or not retained by the Unit. Cases referred under this paragraph to United States Attorney(s) will be monitored by the Unit on two bases: (1) for periodic status reports provided by the United States Attorneys and (2) for review of proposed prosecutions. (See United States Attorneys' Responsibilities below.)

F. All other matters will be referred to an appropriate United States Attorney's office for prosecutive decision.

United States Attorneys' Responsibilities

The United States Attorneys' offices will periodically notify the Unit of the status of investigations (see E and F above) of corporations referred to them that have participated in the DOD Voluntary Disclosure Program. Prior to any decision to prosecute or to decline prosecution of a volunteer corporation, United States Attorneys' offices will notify and obtain the concurrence of the Unit (providing a summary of the evidence,

proposed theories of criminal liability and proposed charges in the case).

Criteria for Prosecuting Volunteer Corporations

Where the law and evidence would otherwise be sufficient for prosecution, the following factors should be included among those considered, on a case by case basis, in determining whether to prosecute a volunteer corporation:

A. Voluntary Disclosure

A candid and complete disclosure will be a factor in the prosecutive decision. In this regard consideration should be given to whether the contractor came forward promptly after discovering the illegal activity. Consideration should also be given to the quantity and quality of information provided by the corporation.

B. Contractor's Preventive Measures

The existence of a compliance program is a significant factor. It must include preventive measures and be in place prior to commencement of the illegal activity.

Compliance programs may vary among contractors but the following questions should be asked in evaluating any program: Did the contractor have a strong institutional policy against the type of illegal activity which occurred? Had reasonable safeguards been developed and implemented to prevent the illegal

activity from occurring? Such safeguards might include, but not necessarily be limited to, training, fraud awareness programs, creation of ombudsmen, installation of employee hotlines, etc. Did the contractor have regular procedures, such as compliance and internal audit reviews, to evaluate, to detect and to remedy the circumstances that led to the commission of the fraud? Was the corporation's program more than a mere pronouncement of the importance of complying with the law?

Investigations often disclose that the decision to engage in improper activity resulted from the contractor delegating to a manager the responsibility to make entirely discretionary determinations regarding allocating costs to government contracts. The contractor then argues that actions involving significant costs to the government were done by managers without knowledge or advice of others. One measure of a meaningful compliance program is an effective mechanism to permit complex or questionable contractual or accounting decisions to be brought to the attention of higher managers or to those with expertise (accountants, attorneys, contract specialists) for review and approval as to the propriety of managers' actions.

C. Extent of Fraud

The extent of the fraud may be measured in several ways. It may be determined by the financial benefit to the corporation and the corresponding dollar loss to the government. It may also be determined by the consequential harm to the government as a

result of corrective actions that must be taken. Where the government has been sold a defective product, for example, the cost of locating, removing and installing a new part may be much greater than the contract amount.

D. Pervasiveness of the Fraud

Pervasive fraud may indicate systemic corporate participation in or condonation of criminal behavior. It may also indicate the lack of a meaningful compliance program. The measurement of this factor may include, but should not be limited to, the number of corporate employees participating in the criminal activities, the number of corporate departments involved, the number of transactions and the duration of the criminal conduct.

E. Level of Corporate Employee

Where upper-level corporate managers commit criminal conduct, the corporation may be said to have a higher degree of criminal responsibility. The prosecution of the corporation may force those in positions of higher corporate responsibility to act to prevent recurrence of illegal conduct by others.

If meaningful preventive measures had been taken by the corporation and if only lower-level employees participated in the illegal activities, the law enforcement objectives of prosecuting

the corporation may, in some cases, be outweighed by the inhibiting effect on future corporate compliance with the DOD Voluntary Disclosure Program.

F. Cooperation by Corporation

The degree and timeliness of corporate cooperation should be considered. Any corporation that holds itself out as a volunteer should be prepared to cooperate with the government in making the results of its investigation available to investigators and prosecutors. In addition to providing the government with the results of its investigation, cooperation should also be measured by the extent and quality of corporate assistance in the government's investigation.

G. Remedial Action

Effective remedial action is crucial to any compliance program. For example, did the company have an effective system of discipline for employees who violate company policies for legal and ethical conduct? Did the disciplinary system establish an awareness in other employees that criminal conduct would not be condoned?

In determining whether the disciplinary system is meaningful, the employee's financial compensation should also be reviewed. In certain instances, although some disciplinary action was taken, financial bonuses or incentive compensation for

the culpable employees was not affected. Such a result would not be viewed as a meaningful remedial action program.

In addition to disciplinary action, the corporation should take remedial action in other ways. It should institute measures to prevent criminal conduct from occurring in the future by strengthening weaknesses in existing compliance programs and by correcting accounting deficiencies. It should also be willing to make restitution or otherwise make the United States whole for any harm caused by the criminal actions.

H. Culpable Corporate Employees

The voluntary disclosure program relates only to the potential prosecution of the corporate entity and does not affect prosecutorial decisions regarding senior management or other employees or individuals.

I. Independence of the DOJ Determination

The DOJ will make prosecutive and other decisions after giving consideration to the criteria described above. These decisions, however, will be independent of any related determinations made by the DOD.

The above described criteria are provided to give guidance to United States Attorneys and do not establish any rights for corporations being reviewed under the Voluntary Disclosure program.

Legal Liability of Corporations

Vicarious Liability of Corporations

There is no federal statute defining corporate criminal liability. The development of principles governing such liability is almost exclusively through case law. Criminal liability based upon the doctrine of respondeat superior has been the rule in federal courts since the Supreme Court decided New York Central Hudson River Railroad Co. v. United States, 212 U.S. 481, 493-94 (S.D.N.Y. 1909). Under this doctrine a corporation may be held vicariously liable for the criminal acts of its agents acting within the scope of their employment if the agents are acting on behalf of the corporation. United States v. Automated Medical Laboratories Inc., 770 F.2d 399, 407 (4th Cir. 1985); United States v. Basic Construction Co., 711 F.2d 570-73 (4th Cir. 1983); United States v. Demauro, 581 F.2d 50, 53 (2d Cir. 1978); United States v. Hilton Hotels Corporation, 467 F.2d 1000, 1004-1007 (9th Cir. 1972), cert. denied, 409 U.S. 1125 (1973); United States v. American Radiator & Standard Sanitary Corp., 433 F.2d 174; 204-05 (3rd Cir. 1970); Standard Oil Company of Texas v. United States, 307 F.2d 120, 127 (5th Cir. 1962).

Even though the employee acted outside the scope of his or her employment and without any purpose to benefit the corporation, the corporation may be held liable for adopting the criminal conduct by subsequent corporate action (or possibly inaction). Continental Baking Co. v. United States, 281 F.2d 137 (6th Cir. 1960).

Requirement of Intent to Benefit the Corporation

In order for the corporation to be liable for crimes involving a mental element it is necessary that the agent act with the intent to benefit the corporation. United States v. Lebar, 521 F. Supp. 203 (M.D. Pa. 1981), aff'd, 688 F.2d 826 (3rd Cir.), cert. denied, 103 S. Ct. 260 (1982); United States v. Hilton Hotels, supra, (Sherman Act antitrust violations); Standard Oil Co. of Texas v. United States, supra, (switching production among oil leases in violation of Hot Oil Act); United States v. Automated Medical Laboratories, Inc., supra, (false documents to FDA); United States v. Cincotta, 689 F.2d 238, 241-42 (1st Cir. 1983) (conspiracy to defraud, false claim, false statement); United States v. Gold, 743 F.2d 800, 822-23 (11th Cir. 1984) (medicare fraud).

Corporate Criminal Liability May Be Based on Actions of Low Level Employees

The doctrine of respondeat superior applies regardless of the status or level of the employee in the corporate structure. It ". . . is the function delegated to the corporate officer or agent which determines his power to engage the corporation in a criminal transaction." CIT Corp. v. United States, 150 F.2d 85, 89 (9th Cir. 1945).

Examples of cases where lower level employees have subjected the corporation to criminal liability include:

Salesmen - United States v. George Fish, 154 F.2d 798, 801 (2d Cir. 1946), cert. denied, 328 U.S. 869 (1946); United States v. Gibson Products, Inc., 426 F. Supp. 768 (S.D. Tex. 1976).

Clerical workers - United States v. Riss & Co., Inc., 262 F.2d 245 (8th Cir. 1958).

Truck drivers - United States v. Harry L. Young & Sons, 464 F.2d 1295 (10th Cir. 1972); Texas-Oklahoma Express, Inc. v. United States, 429 F.2d 100 (10th Cir. 1970).

Laborers - United States v. Dye Construction Co., 510 F.2d 78 (10th Cir. 1975).

Corporate Criminal Liability May Apply Even Though
Actions of the Employee Are Against Corporate
Policy and Contrary to Express Instruction

If an employee is acting within the scope of his employment, courts have held that the employee's conduct will bind the corporation even if his conduct was specifically forbidden by corporate instructions or policies and occurred despite a good faith effort by the corporation to prevent the crime. United States v. Hilton Hotels Corp., supra; United States v. Automated Medical Laboratories, Inc., supra; United States v. Basic Construction Co., supra; United States v. American Radiator and Standard Sanitary Corp., supra; United States v. Beusch, 596 F.2d 871, 878 (9th Cir. 1979).

Corporate Liability Extends to the Criminal Acts of Corporate Subsidiaries and Divisions

Corporate liability for the criminal acts of a subsidiary or division are governed by the same principles that apply to a corporation's liability for the acts of its employees. United States v. Wilshire Oil Co. of Texas, 427 F. 2d 969 (10th Cir. 1971), cert. denied, 400 U.S. 829 (1970); United States v. Ira S. Bushey & Sons, Inc., 363 F. Supp. 110, 119 (D. Vt.), aff'd, 487 F.2d 1393 (2d Cir. 1973), cert. denied, 417 U.S. 976 (1974).

Corporate Criminal Liability Applies Even Though No Individual is Prosecuted

Although it is only the acts of individual corporate agents that can be asserted against the corporation in order to find corporate criminal liability, it is not necessary that the individual agent or employee be prosecuted in order to convict the corporation. United States v. Bank of New England, No. 86-1334 (1st Cir. June 10, 1987), United States v. General Motors Corp., 121 F.2d 376 (7th Cir. 1941), cert. denied, 314 U.S. 618 (1941). It is also not necessary to prove a specific employee acted criminally, only that some agent of the corporation committed the violation. United States v. American Stevedores, Inc., 310 F.2d 47, 48 (2d Cir. 1962), cert. denied, 83 S. Ct. 552 (1963).

Collective Knowledge

Under the doctrine of collective knowledge, the requisite knowledge need not be imputed to the corporation from a single

individual, but may be established by imputing to the corporation the aggregate or collective knowledge of the employees or agents as a group. Under this doctrine a corporation may be found guilty of a crime even though no single employee had been or could have been guilty of the crime. The doctrine has generally been limited to prosecutions under the regulatory provisions of the Interstate Commerce Act where a corporate defendant is deemed to have knowledge of a regulatory violation if the means were present by which the company could have detected infractions. United States v. T.I.M.E.-D.C. Inc., 381 F. Supp. 730, 740-41 (W.D. Va. 1974) (knowingly permitting ill truck drivers to operate a motor vehicle); United States v. Sawyer Transport, Inc., 337 F. Supp. 29, 30-31 (D. Minn. 1971), aff'd, 463 F.2d 175 (8th Cir. 1972) (maintaining false drivers' logs); Inland Freight Lines v. United States, 191 F.2d 313, 315 (10th Cir. 1951) (maintaining false drivers' logs); Steere Tank Lines, Inc. v. United States, 330 F.2d 719 (5th Cir. 1963) (maintaining false drivers' logs).

The collective knowledge doctrine has recently been applied to charges under the Currency Transaction Reporting Act at 31 U.S.C. §§5311-22 and Treasury Regulations promulgated pursuant to that Act for failure to file Currency Transaction Reports (CTRs) for customer currency transactions exceeding \$10,000. United States v. Bank of New England, supra.

"Corporations compartmentalize knowledge, subdividing the the elements of specific duties and operations into smaller components. The aggregate of these components constitutes the corporation's knowledge of a particular operation. It is irrelevant whether employees administering one component of an operation know the specific activities of employees administering another aspect of the operation." United States v. Bank of New England, supra.

Proof of Willfulness

Willfulness entails a voluntary, intentional, and specific intent to disregard, to disobey the law with a bad purpose to violate the law. A jury cannot convict for accidental, mistaken or inadvertent acts or omissions. With respect to regulatory statutes, the Supreme Court has defined willfulness as a disregard for the governing statute and an indifference to its requirements. Trans World Airlines, Inc. v. Thurston, 469 U.S. 111 (1985). A willful failure to comply with the regulatory requirements can be proven by evidence of flagrant organizational indifference by a corporation to its obligations. United States v. Bank of New England, supra.

Civil False Claims Act

On the civil side, whether to pursue a case based upon the False Claims Act is governed by many of the same considerations outlined above. There are occasions, however, where it may be

appropriate to proceed civilly even though the case may be declined criminally. The False Claims Act Amendments of 1986, P.L. 99-562, increase the damages the United States is entitled to recover from double damages to triple damages and the forfeiture amount from \$2,000 per false claim to not less than \$5,000 and not more than \$10,000 per false claim. However, if, prior to becoming aware of an ongoing investigation into a matter, a person provides appropriate investigating officials with all the information in his or her possession about the fraud within 30 days of discovery and fully cooperates with the government's investigation, the court may award no more than double (rather than triple) damages.

KEY ELEMENTS IN CONTRACTOR VOLUNTARY DISCLOSURES RELATED TO FRAUD

In order for a voluntary disclosure of improper or illegal practices to be truly effective, and in order for the contractor and DoD to be completely assured that these practices have been fully identified and rectified, it is essential that any internal examination undertaken by the contractor addresses certain important issues. The contractor should be prepared to share information regarding its resolution of these issues as part of its disclosure to DoD.

A. Nature of the Improper or Illegal Practice

A full examination of the practice should be conducted to include:

1. Source of the practice (e.g., lack of internal controls; circumvention of corporate procedures or Government regulations)
2. Description of the practice, to include:
 - a. Corporate divisions affected.
 - b. Government contracts affected.
 - c. Detailed description as to how the practice arose and continued.
3. Identification of any potential fraud issues raised by the practice and relevant documentation.
4. Time period when the practice existed.
5. Identification of corporate officials and employees who knew of, encouraged or participated in the practice.
6. Estimate of the dollar impact of the practice on DoD and other Government agencies.

B. Contractor Response to the Improper or Illegal Practice

1. Description of how the practice was identified.
2. Description of contractor efforts to investigate and document the practice (e.g., use of internal or external legal and/or audit resources).

3. Description of actions by the contractor to halt the practice.

4. Description of contractor efforts to prevent a reoccurrence of the practice, (e.g., new accounting or internal control procedures, increased internal audit efforts, increased supervision by higher management, training).

5. Description of disciplinary action taken against corporate officials and employees who were viewed as culpable or negligent in the matter, or who were viewed as not having exercised proper management responsibility.

6. Description of appropriate notices, if applicable, provided to other Government agencies, (e.g., Securities and Exchange Commission and Internal Revenue Service).

C. Conclusion

1. List and description of supporting investigative, audit and legal information to be provided to the Government as part of voluntary disclosure, including reports of interviews, audits and audit working papers.

2. Assurance that contractor is willing to reimburse Government for any damages suffered, including restitution and payment of Government costs to resolve the matters disclosed.

3. Assurance of contractor's full cooperation with Government audit/investigative efforts to resolve contractor's voluntary disclosure information, to include access to corporate records, promises and personnel.

APPENDIX D



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202

(Criminal Investigations
Policy and Oversight)

SAMPLE

Mr. Brian Smith
General Counsel
ABC Corporation
333 James Plaza
Boston, MA 22394

Dear Mr. Smith:

This confirms receipt of your letter, dated April 3, 1988, disclosing potential cost mischarging by the ABC Corporation at its ABG Division in Boston, MA. The letter states the potential mischarging occurred between 1985 and 1987 on a Defense Logistics Agency-administered contract for cables used in the sky missile.

The letter also states that the disclosure was not triggered by concern that the matter or the facts underlying the disclosure were about to be discovered by the Government. Based on that information, the matter is being preliminarily accepted into the Voluntary Disclosure Program. I am enclosing a standard Voluntary Disclosure Agreement to be signed by an authorized director or officer of the corporation.

Participation in the Voluntary Disclosure Program is contingent on prompt execution of the standard Voluntary Disclosure Agreement. Continued participation in the Program is contingent on the ABC Corporation adhering to the provisions of the agreement. Please inform me within ten days whether a written report will be provided describing the results of your internal investigation. I further ask that you contact me prior to making any refunds, credits, or payments to the Government concerning the voluntary disclosure.

If you have any questions, please call me at (202) 694-1234.

Sincerely,

Assistant Inspector General for
Criminal Investigations Policy and Oversight

cc with enclosure:

Mr. Michael West, DOJ Criminal Division
Mr. Gordon Birch, DOJ Civil Division
Mr. John Henry, DCAA
Mr. Dave Bens, AFOSI
Mr. Gerald Banks, DLA

APPENDIX E



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202

(Criminal Investigations
Policy and Oversight)

Mr. Brian Smith
General Counsel
ABC Corporation
333 James Plaza
Boston, MA 22394

SAMPLE

Dear Mr. Smith:

The March 3, 1988 disclosure by the ABC Corporation regarding cost mischarging at its ABG Division has been reviewed. As part of the review, we discovered an ongoing Air Force Office of Special Investigations (AFOSI) investigation of the ABC Corporation at its ABG Division concerning cost mischarging which relates to the matter disclosed.

Based on our review, a determination has been made that the disclosure does not meet the requirements set forth in the Deputy Secretary of Defense letter of July 24, 1986. Nonetheless, the ABC Corporation is encouraged to cooperate in the audit and investigation. The corporation's cooperation is a factor which will be considered in the ultimate resolution of the matter.

I have notified the Defense Procurement Fraud Unit (DPFU), the Defense Contract Audit Agency (DCAA), the AFOSI, and the Defense Logistics Agency (DLA) of the matter and of the ABC Corporation commitment of cooperation.

If you have any questions, please call me at (202) 694-1234.

Sincerely,

Assistant Inspector General for
Criminal Investigation Policy and Oversight

cc: Mr. Michael West, DOJ Criminal Division
Mr. Gordon Birch, DOJ Civil Division
Mr. John Henry, DCAA
Mr. Dave Bens, AFOSI
Mr. Gerald Banks, DLA

APPENDIX F



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202

(Criminal Investigations
Policy and Oversight)

Mr. Brian Smith
General Counsel
ABC Corporation
333 James Plaza
Boston, MA 22394

SAMPLE

Dear Mr. Smith:

In our letter of May 18, 1988, the ABC Corporation was informed that one criteria for admission into the Voluntary Disclosure Program is prompt execution of the standard Voluntary Disclosure Agreement.

I have been informed that the ABC Corporation continues to seek changes to the standard agreement that are unacceptable to the Government. If the ABC Corporation is unwilling to accept the terms of the standard agreement within the next two weeks, the matter will be removed from the Voluntary Disclosure Program. If you have any questions, please call me at (202) 694-1234.

Sincerely,

Assistant Inspector General for
Criminal Investigations Policy and Oversight

cc: Mr. Michael West, DOJ Criminal Division
Mr. Gordon Birch, DOJ Civil Division
Mr. John Henry, DCAA
Mr. Dave Bens, AFOSI
Mr. Gerald Banks, DLA

APPENDIX G



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202

(Criminal Investigations
Policy and Oversight)

Mr. Brian Smith
General Counsel
ABC Corporation
333 James Plaza
Boston, MA 22394

SAMPLE

Dear Mr. Smith:

Enclosed is a fully executed copy of the ABC Corporation, ABG Division, Voluntary Disclosure Agreement. The matter is being assigned to the Air Force Office of Special Investigations (AFOSI) for investigative purposes. Your point of contact at the AFOSI is Mr. Dave Bens who may be reached at (202) 692-1029. The Defense Logistics Agency (DLA) is the assigned suspension and debarment authority. Your contact at the DLA is Mr. Gerald Banks who may be reached at (202) 474-6022.

You indicated in your letter of March 3, 1988, that you intend to submit a written report describing the results of your internal investigation. We ask that you submit the report within 60 days of the initial disclosure. Please coordinate with this office if a problem arises in meeting the schedule.

If you have any questions, please call me at (202) 694-1234.

Sincerely,

Assistant Inspector General for
Criminal Investigations Policy and Oversight

cc with enclosure:

Mr. Michael West, DOJ Criminal Division
Mr. Gordon Birch, DOJ Civil Division
Mr. John Henry, DCAA
Mr. Dave Bens, AFOSI
Mr. Gerald Banks, DLA

APPENDIX H



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202

(Criminal Investigations
Policy and Oversight)

Mr. Brian Smith
General Counsel
ABC Corporation
333 James Plaza
Boston, MA 22394

RAMDIE

Dear Mr. Smith:

This confirms receipt of the ABC Corporation final report of investigation concerning cost mischarging at its ABG Division in Boston, MA. I have forwarded copies of the report to the Air Force Office of Special Investigations, the Defense Logistics Agency, the Department of Justice, and the Defense Contract Audit Agency. If you have any questions, please call me at (202) 694-1234.

Sincerely,

Assistant Inspector General for
Criminal Investigations Policy and Oversight

cc with enclosure:

Mr. Michael West, DOJ Criminal Division
Mr. Gordon Birch, DOJ Civil Division
Mr. John Henry, DCAA
Mr. Dave Bens, AFOSI
Mr. Gerald Banks, DLA

APPENDIX I

VOLUNTARY DISCLOSURE NINETY-DAY
INVESTIGATIVE PROGRESS REPORT

SUBJECT	ABC CORPORATION
DIVISION	ABG Division
LOCATION	Boston MA
DCIO CASE NUMBER	884391829M231
CIPO CASE NUMBER	CIPO 076
DATE OPENED	1/23/86
FIELD OFFICE	Boston
GOVERNMENT ESTIMATED LOSS	\$1 million
CORPORATION ESTIMATED LOSS	\$750,000
MONIES RECOVERED TO-DATE	\$750,000

SAMPLE

The matter was brought as a voluntary disclosure to the AIG-CIPO on October 12, 1986 by the law firm of Daniels and Morris, located in Washington, D.C. Matter disclosed include two types of irregularities at the ABC Corporation's wholly owned subsidiary, ABG, Incorporated, located in Boston, MA.

The first involves payments to a number of vendors for goods that were never delivered to the ABG Division. The invoices were approved for payment by William Henderson, Manager for Administration, the second ranking executive at ABG until he was dismissed on November 3, 1986.

The materials were to be used in radar devices installed in the AA-Z helicopters sold to the Army between the years 1981 and 1985. The materials were in fact installed on commercial contracts. There is no evidence that the safety of existing helicopters has been compromised. The contracts were all fixed price contracts. The ABC Corporation auditors estimate the impact to the Government relating to the first allegation as \$250,000.

The second area under investigation concerns expense account abuses, primarily by Henderson and Barry Graft, Senior Vice President for Advertising. The ABC Corporation estimates the loss at \$500,000.

Henderson was discharged for cause following an internal investigation and his admission to the corporate attorneys of his false billings. Graft quit for unknown reasons prior to the initiation of the investigation. Graft has not been interviewed.

On January 23, 1987, the ABC Corporation sent its internal report of investigation concerning both matters to the AIG-CIPO; who in turn assigned the matter to the DCIS. The DCIS, in coordination with the USACIDC, opened an investigation into the matters based on the voluntary disclosure. On January 29, 1987, the DCAA, at the request of the DCIS, began its audit.

SAMPLE

UPDATES:

March 21, 1987

On March 6, 1987, a meeting was held between the ABC Corporation, the DPFU, the DCIS, the USACIDC, and the DCAA to discuss additional documents requested by DCIS. Interviews have been scheduled.

June 15, 1987

Fifteen interviews have been conducted, and the initial allegations in both matters have been substantiated. The DCAA has indicated that the Government losses may be \$500,000.

September 10, 1987

The ABC Corporation has submitted a check in the amount of \$750,000 to the contracting officer. Coordination was established with the Civil Division, Department of Justice. Copies of the check have been sent to the AIG-CIPO, the DCAA and DLA. The DCAA reviews have shown that materials were taken from the Apache program and used in commercial contracts, and the DCAA revised its loss impact estimate to \$1 million. The DCAA is continuing its audit into the personal expense matters. The ABC Corporation is fully cooperating and has submitted its followup interview notes held by outside counsel.

December 20, 1987

A former program manager has made additional allegations of labor mischarging outside the information contained in the initial disclosure. He estimates (neither documented nor substantiated) alleged losses to the Government in excess of \$5 million over five years, in addition to the matters disclosed by the ABC Corporation. The new allegations concern the YY missile program. The program manager has refused to discuss further his involvement without a grant of immunity. A determination has been made to investigate the new allegations concerning the YY program as a separate investigation. The ABC Corporation is still fully cooperating in the audit and investigation.

March 10, 1988

The DCAA audit is complete, with a cost impact to the Government of \$1 million on the two matters originally disclosed. The DPFU is considering prosecuting Henderson and Graft. No action will be taken by the DLA against either the ABC Corporation or the ABG Division concerning either suspension or debarment. Anticipate concluding all interviews by March 20, 1988 and the investigation by March 31, 1988.

APPENDIX J



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202

(Criminal Investigations
Policy and Oversight)

Mr. Brian Smith
General Counsel
ABC Corporation
333 James Plaza
Boston, MA 22394

SAMPLE

Dear Mr. Smith:

Repeated attempts to resolve differences regarding access to employees of the ABC Corporation by Government investigators has resulted in an impasse. This is contrary to the terms of the Voluntary Disclosure Agreement and the contractor requirements set forth in the Deputy Secretary of Defense letter of July 24, 1986. The matter is, therefore, being removed from the Voluntary Disclosure Program.

I have so notified the Defense Procurement Fraud Unit, the Defense Contract Audit Agency, the Air Force Office of Special Investigations, and the Defense Logistics Agency.

If you have any questions, please call me at (202) 694-1234.

Sincerely,

Assistant Inspector General for
Criminal Investigations Policy and Oversight

cc: Mr. Michael West, DOJ Criminal Division
Mr. Gordon Birch, DOJ Civil Division
Mr. John Henry, DCAA
Mr. Dave Bens, AFOSI
Mr. Gerald Banks, DLA

APPENDIX K



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202

(Criminal Investigations
Policy and Oversight)

Mr. Brian Smith
ABC, International
333 James Plaza
Boston, MA 22394

SAMPLE

Dear Mr. Smith:

I have been informed that the Government investigation of the ABC Corporation voluntary disclosure of cost mischarging at its ABG Division has been completed. I am, therefore, closing the matter under the Voluntary Disclosure Program. I wish to thank the ABC Corporation for its cooperation in the verification of the matters disclosed. If you have any questions, please call me at (202) 694-1234.

Sincerely,

Assistant Inspector General for
Criminal Investigation Policy and Oversight

cc: Mr. Michael West, DOJ Criminal Division
Mr. Gordon Birch, DOJ Civil Division
Mr. John Henry, DCAA
Mr. Dave Bens, AFOSI
Mr. Gerald Banks, DLA

**INSPECTOR GENERAL
PUBLICATIONS SYSTEM TRANSMITTAL**

NUMBER	TITLE	DATE
IGDPH 5505.50 Change 1	The Department of Defense Voluntary Disclosure Program - A Description of the Process	FEB - 7 1996

ATTACHMENTS

INSTRUCTIONS FOR RECIPIENTS.

The following changes to IGDPH 5505.50, "The Department of Defense Voluntary Disclosure Program - A Description of the Process," April 1990, are authorized.

Write-In Changes:

- a. Page 1, paragraph A.1. - Replace Assistant Inspector General for Criminal Investigations Policy and Oversight (AIG-CIPO) with Assistant Inspector General for Policy and Oversight (AIG-PO).
- b. Pages 2, 5, 6, 7, 9, 10, 12, 13, 14, 15, and 16 - Replace AIG-CIPO with AIG-PO in all instances.
- c. Page 14, paragraph 17b. - Replace OAIG-CIPO with OAIG-PO.
- d. Appendix A, 5th page, last paragraph - Replace address with the following:

Office of the Assistant Inspector General for Policy and Oversight
ATTN: CIPO
400 Army Navy Drive, Room 723
Arlington, VA 22202-2884
(703) 604-8700

FOR THE INSPECTOR GENERAL:



Nicholas T. Lutsch
Assistant Inspector General for
Administration and Information Management

WHEN PRESCRIBED ACTION HAS BEEN TAKEN, THIS TRANSMITTAL SHOULD BE FILED WITH THE BASIC DOCUMENT.

THE DEPARTMENT OF DEFENSE VOLUNTARY DISCLOSURE PROGRAM

A DESCRIPTION OF THE PROCESS



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-2884

FOREWORD

APR 23 1990

The Voluntary Disclosure Program is considered by the Department of Defense to be a cornerstone of self-governance by Defense contractors and a manifestation of cooperative relations between Government and industry. The commitment to the Voluntary Disclosure Program by Defense management remains strong. This is evidenced by the recent Defense Management Report to the President which emphasized the continued need for voluntary disclosure.

The Voluntary Disclosure Program is not an amnesty or immunity program, but rather a means by which Defense contractors can bring to light potential civil or criminal fraud matters. Those matters of a purely administrative nature, of course, shall not be included in the Program. In return for disclosing potential fraud and cooperating in any Government audit and investigation of the matter, the Government generally allows the contractor the opportunity to conduct an internal investigation which the Government then attempts to verify in an expedited manner. The Department of Defense further agrees generally not to initiate administrative actions until its verification process is completed.

Coordination of information is essential to the effective and expeditious resolution of the matter. By keeping all responsible Government parties informed of the status of the matter, problems identified may be more quickly resolved. Government representatives are then better equipped to determine what, if any, criminal, civil, and administrative remedies are appropriate.

The pamphlet "The Department of Defense Voluntary Disclosure Program - A Description of The Process" describes general guidelines, policy, and processes used by Department of Defense and Department of Justice personnel who share the responsibility in the resolution of fraud matters. The process described in the pamphlet is intended to allow for flexibility, when needed, in the audit, investigations, and verification of matters brought into the Voluntary Disclosure Program.

Susan J. Crawford
Susan J. Crawford
Inspector General

**INSPECTOR GENERAL
PUBLICATIONS SYSTEM TRANSMITTAL**

NUMBER

IGDPH 5505.50
Change 1

TITLE

The Department of Defense Voluntary Disclosure Program - A
Description of the Process

DATE

FEB - 7 1996

ATTACHMENTS

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Office of the Assistant Inspector General for Policy and Oversight
ATTN: CIPO
400 Army Navy Drive, Room 723
Arlington, VA 22202-2884
(703) 604-8700

FOR THE INSPECTOR GENERAL:



Nicholas T. Lutsch
Assistant Inspector General for
Administration and Information Management

WHEN PRESCRIBED ACTION HAS BEEN TAKEN, THIS TRANSMITTAL SHOULD BE FILED WITH THE BASIC DOCUMENT.



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-2884

FOREWORD

APR 23 1990

The Voluntary Disclosure Program is considered by the Department of Defense to be a cornerstone of self-governance by Defense contractors and a manifestation of cooperative relations between Government and industry. The commitment to the Voluntary Disclosure Program by Defense management remains strong. This is evidenced by the recent Defense Management Report to the President which emphasized the continued need for voluntary disclosure.

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Susan J. Crawford
Susan J. Crawford
Inspector General

**THE DEPARTMENT OF DEFENSE
VOLUNTARY DISCLOSURE PROGRAM
A DESCRIPTION OF THE PROCESS**

The purpose of this pamphlet is solely to describe the process used by the Department of Defense and the Department of Justice in the Administration of the Department of Defense Voluntary Disclosure Program. This pamphlet does not, nor should be relied on, to create, confer, or grant any rights, benefits, privileges, or protections enforceable at law or in equity by any person, business, or entity in either civil, criminal, administrative, or other matters. This pamphlet does not in any way limit the lawful litigative prerogatives of the Department of Defense and Department of Justice.

**INSPECTOR GENERAL
DEPARTMENT OF DEFENSE**

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A. PURPOSE

1. The Department of Defense (DoD) encourages Defense contractors to adopt a policy of voluntarily disclosing potential civil or criminal fraud matters affecting their corporate contractual relationship with the DoD as a central part of their corporate self-governance and to enhance contractor responsibility under the Federal Acquisition Regulations. The policy is described in letters from the Deputy Secretary of Defense to Defense contractors, dated July 24, 1986, and August 10, 1987 (Appendix A). The Assistant Inspector General for Criminal Investigations Policy and Oversight (AIG-CIPO), Office of the Inspector General, DoD, is the designated point of contact for voluntary disclosures of potential criminal or civil fraud issues. Matters not involving fraud should be presented to the appropriate contracting officer or Defense Contract Audit Agency (DCAA) auditor.

2. The disclosures are made with no advance agreement regarding possible DoD resolution of the matter and with no promises regarding potential civil or criminal actions by the Department of Justice (DOJ). Prompt voluntary disclosure, full cooperation, complete access to necessary records, restitution, and adequate corrective actions are key indicators of an attitude of contractor integrity even in the wake of disclosures of potential criminal liability.

3. The DoD Voluntary Disclosure Program is intended to afford contractors the means to report self-policing activities. It provides a framework for Government verification of the matters voluntarily disclosed and an additional means for a coordinated evaluation of administrative, civil, and criminal actions appropriate to the situation.

4. This pamphlet identifies the participating DoD and DOJ organizations and describes the process by which voluntary disclosures are reported, verified, and acted on. The complete process for managing voluntary disclosures is depicted in a flowchart (Appendix B).

B. ORGANIZATIONAL FUNCTIONS

Summary

The organizations listed below have the following functions under the DoD Voluntary Disclosure Program:

1. Office of Assistant Inspector General for Criminal Investigations Policy and Oversight (AIG-CIPO)

The AIG-CIPO receives the initial disclosure, makes a preliminary determination as to whether the disclosure satisfies the requirements of the DoD Voluntary Disclosure Program, coordinates the execution of the standard Voluntary Disclosure Agreement, assigns the matter to a Defense criminal investigative organization (DCIO) for verification, assigns the matter to a suspension and debarment authority, and coordinates the matter with the DOJ for potential civil and criminal action. The AIG-CIPO also serves as the focal point for the dissemination of general information concerning the Voluntary Disclosure Program, is responsible for administering the Program, and coordinates administrative action within the DoD.

2. Defense Criminal Investigative Organizations (DCIOs)

The U.S. Army Criminal Investigation Command (USACIDC), the Naval Investigative Service (NIS), the Air Force Office of Special Investigations (AFOSI), and the Defense Criminal Investigative Service (DCIS) are the Defense criminal investigative organizations (DCIOs) that conduct investigations under the Program. One DCIO will serve as the lead investigative agency. Following admission into the DoD Voluntary Disclosure Program, the lead DCIO in coordination with other DCIOs when appropriate, conducts an investigation to verify the accuracy and completeness of the matter(s) disclosed. The lead DCIO, may request the Defense Contract Audit Agency (DCAA) to conduct a verification audit that will generally be based on the contractor's internal report of investigation. The lead DCIO coordinates its activities with the AIG-CIPO, the DOJ, the DCAA, and the cognizant suspension and debarment authority.

3. Defense Contract Audit Agency

The DCAA will , in most instances, be requested by the lead DCIO to conduct a verification audit of the matter(s) disclosed. The audit normally begins following receipt of the contractor's internal report of investigation and focuses on those matter(s) disclosed in the internal report of investigation not covered by a previous audit.

4. DoD Suspension and Debarment Authorities

A Military Department or Defense Agency has lead agency responsibility for any suspension or debarment determination resulting from the matter(s) disclosed. The decision whether or not to initiate suspension or debarment action takes into consideration, among other things, the Government verification of the contractor's disclosure, the contractor's cooperation, the adequacy of corrective action, and restitution.

5. The Department of Justice

a. The Department of Justice Guidelines regarding the Voluntary Disclosure Program set forth complete guidance for the Department of Justice on referral, investigation and prosecution of voluntary disclosure matters.

b. The Defense Procurement Fraud Unit (Unit) in the Fraud Section, Criminal Division, DOJ, is the point of contact within the DOJ to oversee voluntary disclosure matters. The Unit reviews all voluntary disclosure matters.

(1) The Unit conducts, or refers to the appropriate U.S. Attorney's Office to conduct, whatever preliminary inquiry is deemed necessary to determine whether there is specific credible evidence suggesting prosecutable violations of Federal laws. If such evidence exists, the matter will be investigated.

(2) The United States Attorney's Office notifies and obtains the concurrence of the Unit prior to any decision to prosecute or decline prosecution of a volunteer corporation.

c. (1) In deciding whether to prosecute, where the law and evidence is otherwise sufficient to initiate prosecutive action, the prosecutor considers among other factors, the truthfulness, completeness, and timeliness of the

disclosure; the quality and quantity of the information provided therein; whether a compliance program, including preventive measures, was in place prior to the illegal activity; the extent of the fraud; the pervasiveness of the fraud; the level of the corporate officials involved in the fraud; the degree, extent, quality, and timeliness of the contractor's cooperation in the verification of the disclosure; and the remedial action taken by the contractor.

(2) The determination of whether to initiate or decline prosecution is the sole responsibility of the Department of Justice in accordance with the recommended criteria set forth in the DOJ Voluntary Disclosure Guidelines.

d. The Civil Division, Department of Justice, is responsible for determining whether to seek civil fraud damages in voluntary disclosure matters.

C. DESCRIPTION OF PROCESS

1. The Initial Disclosure

a. **The AIG-CIPO** - Defense contractors wishing to make a disclosure as part of the DoD Voluntary Disclosure Program should be directed to the Assistant Inspector General for Criminal Investigations Policy and Oversight (AIG-CIPO), telephone ~~(703) 604-1234~~ (703) 604-8710.

b. **Confirmation Letter** - When the initial contact with the AIG-CIPO is made by telephone, the contractor will be asked to send a letter confirming the information presented.

2. Case Control Number

Control Number - A control number is assigned to each voluntary disclosure (e.g., CIPO 012). The control number is reflected on all communications between the AIG-CIPO, the Military Departments, the Defense Agencies, and the DOJ. The control number is not intended to replace any internal DCIO or DOJ assigned case identification number.

3. Preliminary Acceptance

a. **Criteria** - A matter will be preliminarily accepted into the DoD Voluntary Disclosure Program if the AIG-CIPO determines that:

(1) the contractor disclosed sufficient information as defined in paragraph C.3.b. below, and

(2) the disclosure was not triggered by the contractor's recognition that the potential criminal or civil fraud matter or the underlying facts were about to be discovered by the Government through audit, investigation, contract administration efforts, or reported to the Government by third parties. One factor in determining whether the requirement has been met is whether the Government had prior knowledge of the matter(s) disclosed.

b. Sufficient Information

(1) Information sufficient for preliminary acceptance into the DoD Voluntary Disclosure Program requires the contractor to disclose, at a minimum, the contractor's name, the corporate division(s) affected, the location of the affected division(s), the Defense Agency(ies) and Military Department(s) affected if known, and the nature and description of the potential fraud. The contractor should also provide, if known, the DoD component with contract administration responsibility, along with the contract number and type, and the estimated financial impact to the Government. Sufficient information should include the nature, effect, time period, and any proposed remedy for the defect, as well as the identification of all end users if the matter disclosed involves defective products or testing,

(2) Since the DoD recognition of a contractor as a "volunteer" depends on the disclosure not being triggered by the contractor's recognition that the potential civil or criminal fraud matter or the underlying facts were about to be discovered by or disclosed to the Government, the AIG-CIPO must have sufficient information regarding the disclosure to do the following:

(a) Conduct an inquiry to learn if the Government had prior knowledge of the matter disclosed by matching factual information from existing investigations and audits with the new disclosure (see paragraph C.6. below).

(b) Determine whether to delay the audit and investigation until the contractor's report of investigation has been received (see paragraph C.13. below).

(c) Determine whether later identified matters are within the scope of the original disclosure.

c. Date of Preliminary Acceptance - The date on which the contractor discloses sufficient information in accordance with paragraphs C.3.a. and b. above, is the date on which the matter is determined to have been preliminarily accepted into the DoD Voluntary Disclosure Program. When the standard Voluntary Disclosure Agreement (hereafter referred to as the "XYZ Agreement," Appendix C) is executed, the date of admission into the DoD Voluntary Disclosure Program relates back to the date of preliminary acceptance.

4. Failure to Disclose Information

The AIG-CIPO may refuse to admit a matter into the DoD Voluntary Disclosure Program if the AIG-CIPO determines that the contractor knowingly failed to disclose relevant available information, and such information is obtained through other sources.

5. Notification Requirements Relating to Defective Products and Testing

When a disclosure concerns defective products or testing, the lead DCIO promptly notifies the affected Military Department(s) and Defense Agency(ies) of any potential safety or operational hazards. This notification is required by DoD Directive 7050.5, "Coordination of Remedies for Fraud and Corruption Related to Procurement Activities," June 7, 1989.

6. Inquiry for Prior Government Knowledge

a. Initiation of Inquiry - Based on the information supplied by the contractor, the AIG-CIPO conducts an inquiry to determine whether the Government had prior knowledge of the matter disclosed. The inquiry is neither binding nor conclusive as to whether the disclosure was triggered by the contractor's recognition that the underlying facts of the potential fraud were about to be discovered by the Government, or as to whether the matter should be admitted into the DoD Voluntary Disclosure Program. Rather, it is one factor considered in making a preliminary determination whether to admit the matter.

b. Inquiry Assignment - Once sufficient information is provided by the contractor, the AIG-CIPO conducts an initial inquiry to determine whether the Government had prior knowledge of the matter disclosed. In most instances, the following inquiries are made:

(1) DCIO Inquiry - A DCIO is requested to conduct a Defense Central Index of Investigations (DCII) check for open cases that could incorporate the matter(s) disclosed. When appropriate, the DCIO may be requested to make further inquiries to DCIO field offices as to the matter(s) disclosed.

(2) DCAA Inquiry - The DCAA representative to the DPFU is asked to determine whether the matter(s) disclosed is:

(a) a matter presently proposed for audit by DCAA where notification has been given to the company;

(b) a matter that is presently or has been the subject of a DCAA audit; or

(c) a matter in which the DCAA has issued an audit report or report of suspected irregularity. The DCAA is also asked to provide information regarding the nature and scope of the audit to determine whether the DCAA audit activities could incorporate the matter(s) disclosed.

(3) Federal Bureau of Investigation (FBI) Inquiry - The FBI representative to the DPFU is requested to determine whether there is an ongoing or previously conducted FBI investigation that could incorporate the matter(s) disclosed.

(4) Defense Procurement Fraud Unit (DPFU) Inquiry - The DPFU is requested to determine whether there are any ongoing or previously conducted criminal investigations or litigation that could incorporate the matter(s) disclosed. If the matter(s) disclosed suggest possible antitrust implications, the DPFU is asked to determine whether there are any ongoing or previously conducted antitrust investigations or litigation that could impact on the disclosure.

(5) Civil Division, DOJ, Inquiry - The Civil Division, DOJ, is requested to determine whether there are any ongoing or previously conducted civil investigations or litigation, including False Claims Act qui tam suits (31 USC 3729 et. seq.), in which the matter(s) disclosed could be incorporated.

(6) Suspension and Debarment Inquiry - The cognizant suspension and debarment authority is requested to determine whether there are any ongoing or prior suspension and debarment actions that could involve the matter(s) disclosed.

(7) Other Inquiries - When appropriate, other Inspectors General and investigative agencies may be contacted to inform them of matters that may

impact on their programs or operations, or determine whether they are aware of any investigations or litigation that may impact on the matter(s) disclosed.

7. Notification of Preliminary Acceptance

When a decision is made to preliminarily accept a matter into the DoD Voluntary Disclosure Program, the contractor is advised in writing (Appendix D). The letter explains that the contractor's continued participation in the program is contingent on prompt execution of the standard XYZ Agreement, compliance with the terms of the XYZ Agreement, and compliance with the requirements set forth in the Deputy Secretary of Defense letter of July 24, 1986. The standard XYZ Agreement is enclosed with the letter. Copies of the letter are forwarded to the DPFU; the Civil Division, DOJ; the assigned DCIO(s); the DCAA; and the cognizant suspension and debarment authority.

8. Matters Rejected

The contractor is advised in writing if the matter is rejected from inclusion in the Voluntary Disclosure Program (Appendix E). The letter, however, encourages the contractor to cooperate in the Government audit and investigation. Copies of the letter are forwarded to the DPFU; the Civil Division, DOJ; the DCIO(s); the DCAA; and the cognizant suspension and debarment authority.

9. XYZ Agreement

The standard XYZ Agreement is used in all disclosure matters absent compelling circumstances requiring deviation. The XYZ Agreement should be signed promptly by an authorized director or officer of the contractor, preferably within two weeks of receipt, and returned to the AIG-CIPO. When signed by all required signatories, copies are sent to the DPFU; the Civil Division, DOJ; the assigned DCIO(s); the DCAA; and the cognizant suspension and debarment authority.

10. Failure to Sign XYZ Agreement

The AIG-CIPO will attempt to resolve any outstanding issues concerning the XYZ Agreement. In the event the contractor refuses to sign the XYZ Agreement or makes demands that are unacceptable to the Government, the AIG-CIPO will advise the contractor in writing of the removal of the matter from the DoD Voluntary Disclosure Program (Appendix F). Copies of the letter are forwarded to

the DPFU; the Civil Division, DOJ; the DCIO(s); the DCAA; and the suspension and debarment authorities.

11. Notification of Admission into the Voluntary Disclosure Program

Following execution of the XYZ Agreement, the AIG-CIPO notifies the contractor in writing confirming the admission of the matter into the DoD Voluntary Disclosure Program (Appendix G). The contractor, if it has not already done so, will be asked to inform the AIG-CIPO within ten days of the execution of the XYZ Agreement whether a written report will be provided describing the results of the contractor's internal investigation. In addition, the contractor is informed that any written report should be submitted within 60 days of the initial disclosure. The AIG-CIPO's confirmation letter will identify the responsible DCIO(s), the cognizant suspension and debarment authority, and the points of contact within each. Copies of the letter are sent to the DPFU; the Civil Division, DOJ; the responsible DCIO(s); the DCAA; and the cognizant suspension and debarment authority.

12. Contractor Internal Report of Investigation

a. Internal Investigation - The contractor determines whether an internal investigation will be conducted. While the Government does not require such an investigation, it generally is in the best interest of the contractor to conduct their own investigation and submit a report describing the results.

b. Timely Completion of Report - Contractors choosing to provide CIPO with a written report describing the results of their internal investigation are requested to submit their report within 60 days of the initial disclosure. If the contractor is unable to complete the report within 60 days, the contractor should request an extension of time. The AIG-CIPO will determine if and on what basis an interim report(s) should be provided.

c. Distribution of Report - The AIG-CIPO sends to the contractor a letter confirming receipt of the contractor's internal report of investigation (Appendix H), and distributes copies (with restrictive markings to protect proprietary/sensitive contents) to the assigned DCIO(s); the DPFU; the Civil Division, DOJ; the DCAA (if the disclosure relates to contract fraud); and the assigned suspension and debarment authority. When appropriate, the DPFU

distributes a copy to a U.S. Attorney for prosecutive review. The Civil Division, DOJ, forwards a copy to any U.S. Attorney involved in related civil litigation.

13. Government Actions Pending Contractor Internal Investigation

a. Timing of Government Investigation - As a general rule, the Government does not begin the verification process or conduct its own audit or investigation until it has received the contractor's internal report of investigation. The Government, however, reserves the right to begin its own audit or investigation at any time. Under certain circumstances, the contractor may be asked to discontinue or limit its internal investigation.

b. Statute of Limitations - During completion of the contractor's internal investigation, if the Government determines that the criminal or civil statute of limitations will expire as to the matter disclosed, or any part thereof, within one year after submission of the contractor's report, the Government, at its option, may request the contractor to waive the statute of limitations for a period it deems appropriate. Refusal to waive the statute of limitations will be considered in evaluating the cooperation of the contractor.

14. Verification

a. Investigative Plan - Following receipt of the contractor's internal report, the designated DCIO(s) begins the verification process. The verification audit and investigation are given sufficiently high priority to allow for its expedited completion. The DCIO prepares a written investigative plan and coordinates it with the criminal prosecutor assigned to the matter, and the Civil Division, DOJ. The plan focuses the investigation, serves as a roadmap for the DCIO(s), and provide a means for the DCIO(s) to track the progress and ensure timely completion of the verification process.

b. DCAA Verification Audit - The DCIO(s), in most instances, request the DCAA to conduct a verification audit. The DCAA auditor assigned to the matter is briefed on the investigative plan to ensure a coordinated effort. If sufficient information is available and the circumstances warrant, the DCIO(s) may begin its own investigation prior to completion or in conjunction with the audit.

c. Scope of Verification Audit and Investigation - The scope of the verification audit and investigation focus specifically on the matters disclosed by the contractor, and include the quantification of the Government losses and potential civil forfeitures under the False Claims Act. Unrelated fraud allegations developed during the verification process are pursued by the initiation of an independent audit or investigation in accordance with normal procedures unless their relationship to the matter disclosed is so commingled as to prevent their severance. Such allegations are not treated as part of the Voluntary Disclosure Program without prior coordination with the AIG-CIPO.

15. Contractor's Cooperation During the Verification

The contractor's cooperation is essential to the verification audit and investigation. Problems regarding the contractor's cooperation that cannot be readily resolved by the DCIO field agent and the DCAA auditor (e.g., refusal to supply records or allow interviews), are promptly brought to the attention of the respective headquarters of the DCIO(s) and the DCAA for resolution. Where the contractor's cooperation is unsatisfactory, the headquarters of the DCIO and/or the DCAA promptly notify the AIG-CIPO in an attempt to resolve the issue. The AIG-CIPO will, in turn, notify the DPFU of the unsatisfactory cooperation. When appropriate, the AIG-CIPO, with the assistance of the Office of the General Counsel, DoD, will attempt to resolve the problem with counsel representing the contractor.

16. Use of Subpoenas

The DoD Voluntary Disclosure Program assumes contractor cooperation. Should subpoenas for documents be necessary, it is standard procedure to use Inspector General subpoenas rather than grand jury subpoenas. Prior to the issuance of a grand jury subpoena in a voluntary disclosure matter, the assigned DCIO agent promptly notifies the DCIO headquarters, which in turn, notifies the AIG-CIPO.

17. Defense Criminal Investigative Organizations (DCIOs) Case Management and Progress Reports

a. Progress Report - The DCIO headquarters monitor all voluntary disclosure matters assigned to their organization to ensure adequate progress and expeditious completion. The DCIOs forward a progress report for each

voluntary disclosure investigation every 90 days to the AIG-CIPO (Appendix I). On receipt of the 90-day progress report, the AIG-CIPO forwards a copy to the DPFU; the Civil Division, DOJ; and the DCAA. The progress reports separately summarize each ongoing investigation, incorporating the following information:

(1) subject(s), including corporate name, affected division(s), and affected location(s);

(2) the investigative organization assigned case number, the CIPO assigned disclosure control number, and the DCIO(s) field office assigned to conduct the investigation;

(3) an initial summary, including allegations, Military Departments and Defense Agencies affected, the time frame in which the allegation occurred, the identification of contracts under investigation, the status of the contracts, and the contractor's estimated cost impact to the Government;

(4) matters involving defective products or testing include a description of the defect, the effect on health or safety, the time period involved, notice to the users, and corrective action taken;

(5) updates include all newly acquired information including prosecutive status (both civil and criminal), new cost impact figures calculated by either the contractor or the DCAA, changes in the scope of the investigation, new allegations raised, or allegations determined to be unfounded;

(6) other significant information to be reported includes declination of prosecution, criminal indictment, use of subpoenas, and any problems arising during the audit and investigation such as poor cooperation or need for subpoenas;

(7) date audit was completed and date the investigation was closed;
and

(8) monies offered by the corporation, accepted by the Government, including checks, credits, or other offsets.

b. Progress Report Reviews - Each DCIO schedules a meeting at a location of its choice within 14 days of the progress report to review the status and planned actions of each open investigation. Attendees at the meeting may include a representative from the OAIG-CIPO; the DCIO; Office of General Counsel, DoD; the DPFU; and Civil Division, DOJ.

18. Payments by Contractors

a. Required Coordination with the Civil Division, DOJ - Collection of any civil damages for all DoD voluntary disclosure matters is the responsibility of the Civil Division, DOJ. Unsolicited payments, restitution, or any other funds representing the contractor's estimate of the cost impact of the matters disclosed are coordinated with the Civil Division, DOJ, and the DPFU prior to acceptance. While it should be determined if the contractor is willing to make restitution, specific requests for payment are coordinated with the Civil Division, DOJ, and the DPFU. When it is agreed that payment is appropriate, contractors desiring to pay restitution or make good faith reimbursements are instructed to provide a check to the AIG-CIPO made payable to "the Treasurer of the United States."

b. Other Required Coordination - The Civil Division, DOJ consults with the criminal prosecutor assigned to the matter, the AIG-CIPO, and the suspension and debarment official, and determines whether immediate payment by the contractor would be in the Government's best interests with respect to its potential civil remedies.

c. Requirements Affecting Good Faith Reimbursements - When determined that an unsolicited payment will be accepted or a payment will be solicited and accepted, the acceptance is conditioned on a written agreement with the contractor that provides:

(1) acceptance of the payment does not constitute the Government's agreement as to the contractor's ultimate civil or criminal liability for the matter(s) disclosed, and

(2) acceptance shall not prejudice the Government's right to obtain additional damages, fines, and penalties for the matter(s) disclosed.

19. Removal of a Matter from the DoD Voluntary Disclosure Program

a. Reason for Removal - The AIG-CIPO may remove a matter from the DoD Voluntary Disclosure Program at any time during the verification process if:

(1) the disclosure is determined not to meet the Program requirements as set forth in the Deputy Secretary of Defense letter of July 24, 1986, or

(2) the contractor has violated the terms of the signed XYZ Agreement.

b. Notice of Removal - Prior to removing a matter from the Voluntary Disclosure Program, the AIG-CIPO will notify the contractor in writing of the proposed decision to remove the matter, and may provide the contractor an opportunity to respond (Appendix J). A copy of the letter is sent to all DCIOs, suspension and debarment authorities, the DPFU, the Civil Division, DOJ, and the DCAA. The decision to remove is at the sole discretion of the AIG-CIPO.

20. Case Completion

a. Records Required - A matter administered under the DoD Voluntary Disclosure Program is closed when the following documents have been provided to the AIG-CIPO:

(1) Notification by the designated DCIO(s) that both the audit and investigation are completed and the matter is closed. The notification identifies the DCAA final dollar impact determination to the Government, the final settlement, and the manner in which the losses were recovered or otherwise resolved.

(2) A letter from the DPFU either confirming the declination of criminal prosecution or indicating the results of any prosecutive actions taken.

(3) A letter from the Civil Division, DOJ, declining civil litigation or indicating the results of civil litigation or settlements.

(4) A letter from the DPFU indicating the results of any prosecutive actions or settlements if the Antitrust Division, DOJ, is involved in the investigation, or a U.S. Attorney has reviewed the matter for potential antitrust violations.

(5) A letter from the designated suspension and debarment authority advising the AIG-CIPO in writing of any action taken or to be taken as to suspension or debarment of the contractor or persons within the contractor's organization.

b. Notification that the Matter is Closed - The AIG-CIPO notifies the DoD contractor in writing that the matter(s) administered under the Voluntary Disclosure Program is closed when the appropriate documents mentioned in paragraph C.20.a.(1) through (5) are received (Appendix K).

APPENDIX A



THE DEPUTY SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

24 JUL 1986

Dear :

During the past few years, public and congressional interest in the Department of Defense management of its programs and operations has remained intense. This is nowhere more true than in the acquisition area. These issues continue to command our personal attention and involvement. Many of the problems in the acquisition area came to light because of audits and investigations conducted by the Department of Defense. We are committed to detecting and eliminating inefficiency and improper practices in our acquisition process; we believe that most Defense contractors have institutional commitments to these same goals.

To demonstrate this commitment, a number of major Defense contractors have adopted a policy of voluntarily disclosing problems affecting their corporate contractual relationship with the Department of Defense. These disclosures are made by the contractor, without an advance agreement regarding possible Department of Defense resolution of the matter. The contractors understand the Department's view that early voluntary disclosure, coupled with full cooperation and complete access to necessary records, are strong indications of an attitude of contractor integrity even in the wake of disclosures of potential criminal liability. We will consider such cooperation as an important factor in any decisions that the Department takes in the matter.

I encourage you to consider adopting a policy of voluntary disclosure as a central part of your corporate integrity program. Matters not involving potential criminal issues should be presented to the appropriate contracting officer or Defense Contract Audit Agency auditor. Matters involving potential criminal or civil fraud issues should be directed to the Deputy Inspector General, Department of Defense.

35052

A description of the Department of Defense program for voluntary disclosures is enclosed herewith for your consideration.

I believe that your corporate commitment to complete and timely disclosures of irregularities, regardless of their magnitude, is essential to increasing confidence in our ability to provide for the national defense effectively and efficiently.

Sincerely,



William H. Taft, IV

Enclosure

(Identical letters sent to the attached
Defense contractors)

Department of Defense Program for Voluntary
Disclosures of Possible Fraud by
Defense Contractors

Background

Officials within the Department of Defense (DoD) have been approached by a number of contractors to determine the conditions and agreements that might be structured with the Government if a contractor sought to disclose voluntarily information that might expose the contractor to liability under Federal statutes relating to criminal and civil fraud. From the Department's perspective, the voluntary disclosure of information otherwise unknown to the Government, and contractor cooperation in an ensuing investigation, offers a number of significant advantages:

- o the Government is likely to recoup losses of which it might otherwise be unaware;
- o limited detection assets within the Government are augmented by contractor resources;
- o consideration of appropriate remedies can be expedited by both DoD and Department of Justice when adversarial tensions are relaxed;
- o voluntary disclosure and cooperation are indicators of contractor integrity; and
- o contractors engaging in voluntary disclosure are more likely to institute corrective actions to prevent recurrence of disclosed problems.

Requirements on Contractors

Department of Defense recognition of a contractor as a "volunteer" will depend on four key factors:

1. The disclosure must not be triggered by the contractor's recognition that the underlying facts are about to be discovered by the Government through audit, investigation, or contract administration efforts or reported to the Government by third parties.

2. The disclosure must be on behalf of the business entity, in contrast to admissions by individual officials or employees.

3. Prompt and complete corrective action, including disciplinary action and restitution to the Government where appropriate, must be taken by the contractor in response to the matters disclosed.

4. After disclosure, the contractor must cooperate fully with the Government in any ensuing investigation or audit.

Defining DoD expectations of "cooperation" in any situation will depend on the individual facts or circumstances underlying the disclosure. However, DoD may enter into a written agreement with any contractor seeking to make a voluntary disclosure where such an agreement will facilitate follow-on action without improperly limiting the responsibilities of the Government. This agreement, which may be coordinated with the Department of Justice, will describe the types of documents and evidence to be provided to DoD and will resolve any issues related to interviews, privileges, or other legal concerns which may affect the DoD ability to obtain all relevant facts in a timely manner.

Department of Defense Actions

If a contractor is recognized as a "volunteer" based on the preceding criteria, the DoD is prepared to undertake the following:

1. Identify one of the Military Departments or the Defense Logistics Agency as the cognizant DoD component to represent DoD for suspension/debarment purposes, i.e., to assess contractor integrity in light of the disclosures. Early identification of the appropriate DoD component will permit the contractor, from the outset of its cooperation, to provide relevant information relating to contractor integrity and management controls, e.g., internal controls, corrective measures, or disciplinary action taken as a result of the information disclosed.

2. The DoD, through the Office of the Inspector General and in cooperation with the Department of Justice, will seek to expedite the completion of any investigation and audit conducted in response to a voluntary disclosure, thereby minimizing the period of time necessary for identification of remedies deemed appropriate by the Government.

3. Advise the Department of Justice of the complete nature of the voluntary disclosure, the extent of contractor cooperation and the types of corrective action instituted by the contractor. As always, any determinations of appropriate criminal and civil fraud sanctions will be the ultimate prerogative of the Department of Justice.

Commencing a Voluntary Disclosure

Since initial judgments as to appropriate investigative and audit resources will be necessary in any voluntary disclosure involving possible fraud, the initial contact with the DoD on fraud-related disclosures should be with the Office of the Inspector General.

While the Office of the Inspector General will be the initial point of contact for fraud-related disclosures, other DoD components are expected to be advised or involved as circumstances warrant. Besides the Office of General Counsel, DoD, and the appropriate suspension/debarment authority, other DoD components that expectedly would be advised, or involved, in voluntary disclosures are the Office of the Assistant Secretary of Defense (Acquisition and Logistics) and the Defense Contract Audit Agency.

The Office of the Inspector General element that will serve as the initial point of contact is:

Assistant Inspector General for Criminal Investigations
Policy and Oversight
400 Army Navy Drive
Room 723
Arlington, Virginia 22202
Telephone: (703) 604-8711



THE DEPUTY SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

AUG 10 1987

Dear :

As a result of Department of Defense encouragement to Defense contractors to adopt a voluntary disclosure policy as one aspect of corporate self-governance programs, several issues have arisen which merit comment.

Does the Department of Defense require disclosure and self-investigation?

Except for the requirement contained in the 1986 amendments to the Antikickback Act, our position is that we encourage disclosure as a manifestation of general corporate integrity and as part of contractor self-governance programs. Consistent with recommendations of the Packard Commission and the Defense Industry Initiatives, we intend to encourage voluntary disclosure without legally or contractually mandating them. Accordingly, the decision to conduct an internal investigation of a matter disclosed to the Department of Defense is within the sole discretion of the contractor and is not required under our program of encouragement. While we believe that a contractor's internal inquiry will likely expedite resolution of the matter, we are prepared to conduct independent inquiries of all disclosed matters regardless of whether the contractor has performed its own internal investigation.

When may a contractor making a voluntary disclosure obtain a formal opinion regarding suspension and debarment?

When a voluntary disclosure involving possible fraud is made, a final determination by the Department of Defense regarding suspension and debarment will include consideration of the Government's completed investigation to verify the disclosure. Therefore, the Department of Defense will not initiate suspension or debarment based on a voluntary disclosure prior to verification of the disclosed facts. Of course, this policy would not apply if it becomes apparent that

a contractor has acted in bad faith in making a disclosure, as for example by knowingly failing to disclose relevant facts or by concealing other unlawful acts.

Will the Department of Defense recognize contractor cooperation in Department of Defense investigations not resulting from voluntary disclosures?

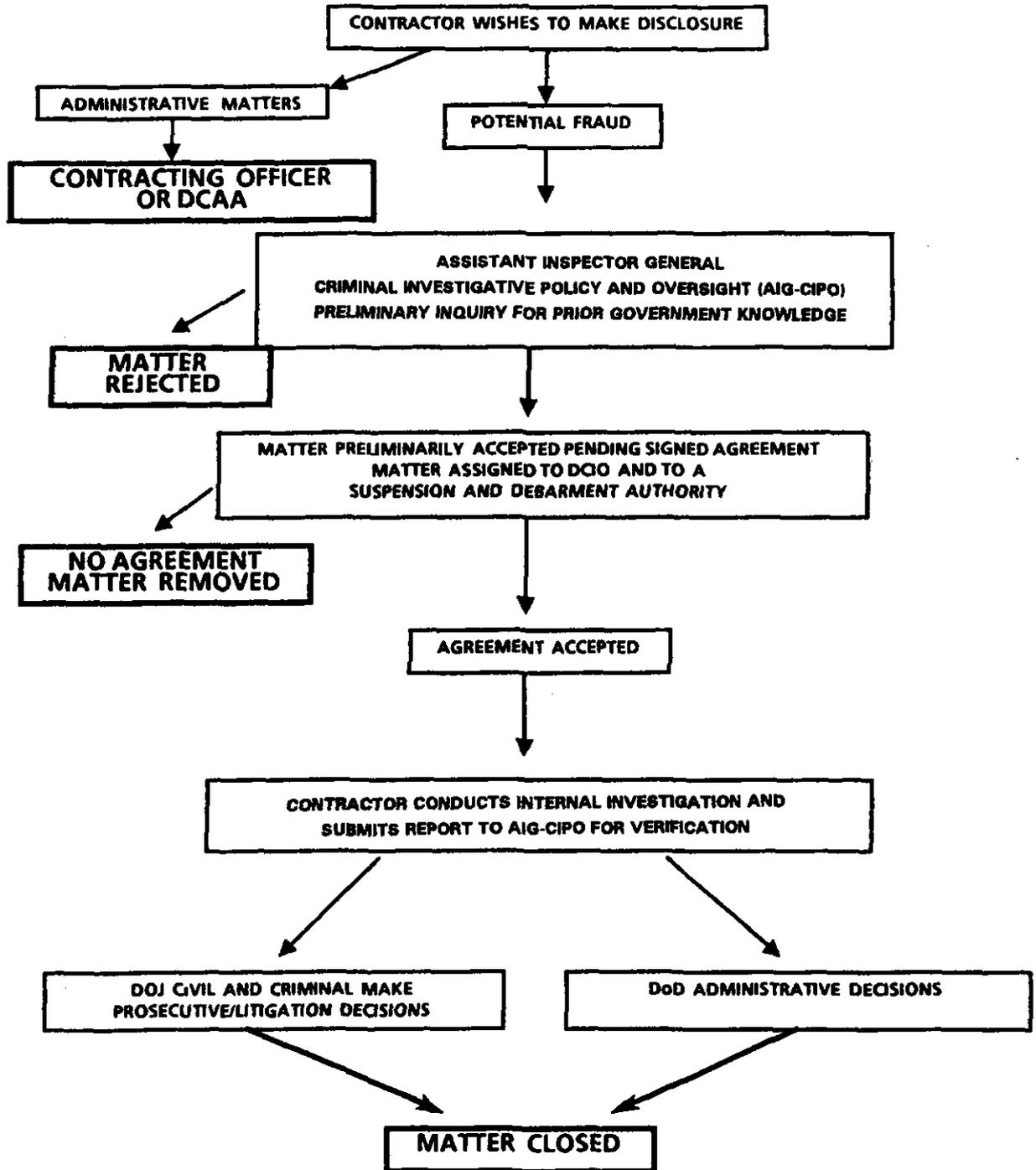
We realize that even with the most comprehensive self-governance programs, contractors may not detect every matter which adversely impacts on their business relationships with the Department of Defense. The Government likely will continue to identify contract-related problems through its audit and investigative operations. We encourage contractors committed to self-governance to cooperate in the Department of Defense-initiated investigations and to institute corrective and remedial measures as they become appropriate. We will ensure that determinations regarding suspension and debarment reflect consideration of the contractor's achievements in ensuring corporate integrity regardless of whether a particular case arises from a voluntary disclosure by the contractor or from another source. In addition, the Department of Defense will provide the Department of Justice with appropriate information concerning the effectiveness of contractor cooperation, corrective action and self-governance in the specific matter, as well as in general.

We continue to believe that a commitment by contractors to effective programs of self-governance, including disclosure, is vital to the Department of Defense.

Sincerely,

William H. Taft, IV

APPENDIX B



APPENDIX C

Revised 5/5/89
(Updated 2/1/93)

AGREEMENT BETWEEN

XYZ COMPANY

AND

INSPECTOR GENERAL, DEPARTMENT OF DEFENSE

Pursuant to this Agreement executed by and between XYZ Corporation (hereafter the "Company") and the Inspector General of the Department of Defense (hereafter the "IG-DoD"):

WHEREAS, the Company informed the IG-DoD on (date) that it is voluntarily disclosing information concerning (subject _____); and

WHEREAS, the Company asserts that this disclosure is not triggered by the Company's recognition that the underlying facts were about to be discovered by the Government through audit, investigation, or contract administration efforts or reported to the Government by third parties; and

WHEREAS, this disclosure is made solely on behalf of the business entity; and

WHEREAS, this disclosure is made at the initiative of the Company to demonstrate its commitment to corporate integrity and self governance; and

WHEREAS, the United States Government has made no representations regarding disposition of this matter other

than those previously made in the July 24, 1986 and August 10, 1987 letters of Deputy Secretary of Defense Taft (with attachments), and the guidance set forth in the July 17, 1987 Department of Justice (DOJ) Guidelines (hereafter the "DOJ Guidelines") regarding the Voluntary Disclosure Program (attached); and

WHEREAS, the Company understands that continued participation in the Voluntary Disclosure program is conditioned on the Company cooperating fully with the Government in any audit or investigation resulting from this disclosure; and

WHEREAS, a Military Department or the Defense Logistics Agency will be assigned lead agency responsibility for any suspension or debarment determination resulting from information in this disclosure; and

WHEREAS, the Defense Procurement Fraud Unit (hereafter, the "Unit") in the Fraud Section, Criminal Division, Department of Justice, is the contact point in the DOJ to oversee voluntary disclosure matters and to determine whether there is specific credible evidence suggesting prosecutable violations of federal laws; and

WHEREAS, the Company understands that, at the conclusion of the Government's verification investigation, the prosecutive decision made by the Defense Procurement Fraud Unit, or by the United States Attorney's office with

the concurrence of the Unit, to which a voluntary disclosure matter has been referred, shall be based, in part, upon complete, candid and timely disclosure; and the degree, extent, quality and timeliness of cooperation as more fully set forth in the July 17, 1987 DOJ Guidelines; and

WHEREAS, the Company understands that the Commercial Litigation Branch of the Civil Division will assess the matter to determine whether violations of the False Claims Act and related common law theories are apparent and initiate such action as may be appropriate based on its conclusions;

WHEREAS, the Company and the IG-DoD desire to resolve the matters set forth in this disclosure in a timely manner; and

WHEREAS, the persons executing this Agreement are authorized by their respective parties to execute the Agreement on their behalf;

NOW THEREFORE, in consideration of the following covenants, the Company and the IG-DoD agree as follows:

A. Disclosure to the Government by the Company of Results of its Internal Investigation

1. The Company shall determine whether an internal investigation will be conducted. It is understood that any internal investigation is the result of the Company's independent decision to conduct the internal investigation

for its own purposes and not at the direction of the Government.

2. If the Company conducts an internal investigation, the Company shall determine if it will submit to the IG-DoD a written report describing the results of the Company's internal investigation. The Company shall notify the IG-DoD within ten days of the IG-DoD's execution of this agreement whether a written report will be provided.

3. Notwithstanding any other provision in this agreement, the Company shall do the following:

a) if it conducts an internal investigation, and whether or not it submits a report to the Government pursuant to paragraph A.2., above, determine the cost impact to the Government resulting from the matters disclosed, and submit to the Government a good faith statement of the cost impact and any supporting audit reports, auditing work papers, exhibits and all analytical documents; and

b) if it submits a written report pursuant to paragraph A.2., above, include in the report a list of all individuals interviewed and the subject matter of each interview.

4. If the Company notifies the IG-DoD that it will provide a written report, the IG-DoD will allow the Company a reasonable period of time to conduct an internal

(a) a description of the position in the Company currently and at the time of the matter disclosed as to all individuals interviewed:

(b) a statement of each occasion on which individuals were interviewed;

(c) a description of files, documents and records reviewed;

(d) a summary of auditing activity undertaken, and a summary of the appropriate documents in support of the cost impact determination, which documents and information in support of the cost impact determination shall be produced pursuant to paragraph A.3., above;

(4) a detailed statement of the facts, including the identity and role of employees involved in the matter disclosed.

b. If, after reviewing the Company's report and supporting materials, the DOJ or IG-DoD believes that it is necessary that the Government obtain further details beyond that provided in the report and supporting materials, concerning information provided by any individual interviewed by the Company on any occasion, or concerning any other aspect of the report, it shall so advise the

Company and give the Company the opportunity to promptly provide supplemental information.

c. The Company understands, in accordance with the DOJ Voluntary Disclosure Guidelines, that its declination to provide the supplemental information may affect DOJ's ability to verify the disclosure and DOJ's evaluation of the Company's cooperation.

6. The Company contends that the attorney-client privilege and the attorney work-product privilege may attach to certain information, documents, communications, and notes, memoranda, recordings, or detailed descriptions of interviews, whether or not voluntarily submitted in connection with this disclosure or in connection with the submission of any of the supplemental information. The Company presently intends to preserve these privileges and the Government recognizes that they may assert them, to the extent they may exist. The Government reserves the right to agree or disagree with the asserted applicability of these privileges in any given instance. The Government will not contend that the Company's production of the report and its underlying documents, or the furnishing of additional information relating to this disclosure will constitute a waiver of the attorney-client and work-product privileges as may be applicable.

7. The report and other information disclosed shall be used by the Government as it deems appropriate in any criminal, civil, administrative or contractual proceedings arising out of disclosed or related matters, subject to any legal objection to that use, otherwise available in the particular proceeding, asserted by the Company and subject to the restrictions in use in criminal and civil proceedings set forth in paragraph A.8 below.

8. The Department of Justice agrees that the report will not be used as an admission by a party-opponent, who is the disclosing Company, or subsidiary or business unit thereof, in any criminal or civil proceeding arising out of the disclosure or related matters; except, said report can be used as authorized by the Federal Rules of Evidence in a prosecution for false statements based upon the contents of the report, obstruction of justice, misprision of a felony, or conspiracy relating thereto. As used herein, report shall mean solely the narrative summary submitted by the Company. Any attached documents, audit work papers, supporting exhibits, analytical documents and notes, memoranda or recordings of interviews may be used by the Government in accordance with the Federal Rules of Evidence. The Department of Justice may make derivative use of the report and may use the report for impeachment purposes in any criminal or civil proceeding against the Company. The

Government may make any use of the report it deems appropriate in any criminal, civil, or administrative matter against an individual.

9. The Company recognizes that any report and other information disclosed to the Government will be subject to verification audit and investigation. The verification will be focused on the matters disclosed by the Company and will include the quantification of Government losses. Unrelated fraud allegations developed during the verification process may, at the Government's option, be pursued by the initiation of an independent audit or investigation. Such allegations shall not be treated as part of the Voluntary Disclosure Program without prior coordination with the Assistant Inspector General for Criminal Investigative Policy and Oversight.

B. Cooperation in Government's Investigation

The Company agrees to cooperate with the Government's investigation as follows:

1. The Company shall provide the Government, consistent with paragraphs A.5 and A.6, access to and copies of all documents and information, not previously provided, which the Government might deem to be relevant. The Company shall produce necessary records without issuance of subpoenas or other compulsory process by the Government.

The parties may agree that the production of records be made pursuant to the issuance of a subpoena.

2. Notwithstanding paragraph B.1, above, the Government reserves the right to seek compulsory production of Company information relating to this disclosure pursuant to any other means, including the issuance of Inspector General subpoenas, grand jury subpoenas, and civil process, if necessary to the Government's investigation or resolution of issues arising therein. The Company reserves the right to assert any valid legal objection to such process.

3. If documents deemed necessary to the Government's investigation or resolution of issues related to the Company's disclosure are not in the possession, custody or control of the Company, the Company will seek to identify the location of such documents not in its possession or control, and will take such actions as may be appropriate in assisting the Government to obtain such documents.

4. The Company shall arrange for a Corporate point of contact for the purpose of addressing matters arising under this Agreement.

5. The Company shall provide such technical assistance as the Government may reasonably request, including assistance in audit, contracting, financial management, computer analysis and technical areas.

6. The Government may elect to conduct employee interviews relating to the subject matter of the disclosure. The Company shall, at the Government's option, provide appropriate office space at its facilities, and shall allow its employees to attend these interviews. The Government reserves the right to conduct interviews other than at the Company facility. Company management shall not attend these interviews. Company counsel shall not attend these interviews unless requested to do so by the Government or by the employee. The Company shall not compel or require the employee to have Company counsel present. If the employee elects to have Company counsel present in a non-representational capacity, the Government reserves the right not to conduct the interviews, or to ensure that the employee's decision to have the Company's counsel present has not been mandated or unduly influenced by Company policy, procedure, or practice. By this paragraph, neither the Company nor the Government intends to limit employees' rights to decline to be interviewed, to obtain legal counsel of their own selection at the expense of the Company or to be accompanied by such counsel at any interviews conducted by the Government with respect to this matter. If the employee elects to be represented by Company counsel and to have Company counsel present, the Government reserves the right to ensure that no conflict-of-interest exists in the

representation of the company and the employee. If the Government is not satisfied that conflict-free counsel is present, it may take appropriate action, including but not limited to, not conducting the interview, requesting independent counsel or ensuring that there is an appropriate waiver of conflict-free counsel from each employee.

C. Restrictions on Department of Defense Disclosure

1. The Department of Defense, to the extent permitted by law and regulations, will safeguard and treat information obtained pursuant to this Agreement as confidential where the information has been marked "confidential" or "proprietary" by the Company. To the extent permitted by law and regulations, such information will not be released by the Department of Defense to the public pursuant to a Freedom of Information Act (FOIA) request, 5 U.S.C. 552 et. seq., without prior notification to the Company.

2. The Government may transfer documents provided by the Company to any department or agency within the Executive Branch if the information relates to matters within the organization's jurisdiction.

3. When the supporting documents furnished by the Company pursuant to this agreement are no longer needed, the Government agrees to return the originals to the Company, if requested by the Company.

IN WITNESS WHEREOF, the Company and the IG-DoD have caused this Agreement to be executed by their duly authorized representatives.

COMPANY

FOR THE DEPARTMENT OF DEFENSE

Assistant Inspector General
for Criminal Investigative
Policy and Oversight

DATE: _____

DATE: _____

CONCUR:

FOR THE DEPARTMENT OF JUSTICE

Chief, Defense Procurement
Fraud Unit

DATE: _____

Memorandum



Subject

DEPARTMENT OF JUSTICE GUIDELINES RE:
DEPARTMENT OF DEFENSE
VOLUNTARY DISCLOSURE PROGRAM

Date

JUL 17 1987

To All United States Attorneys

From


William C. Hendricks III
Chief, Fraud Section
Criminal Division

On behalf of William F. Weld, Assistant Attorney General Criminal Division, I am providing each of you with five advance copies of this Department's guidelines on referral, investigation and prosecution of Department of Defense cases involving contractors who have voluntarily disclosed procurement-related problems. These guidelines will be published for inclusion in the United States Attorneys' Manual in the near future. Should more copies be needed for distribution within your office and its branches, please contact the Defense Procurement Fraud Unit within this office at (FTS) 786-4600.

DEPARTMENT OF JUSTICE GUIDELINES REGARDING
DEPARTMENT OF DEFENSE VOLUNTARY DISCLOSURE PROGRAM

Introduction

In July 1986, the Department of Defense (DOD) initiated the Volunteer Disclosure Program designed to encourage self-policing and voluntary disclosure by defense contractors of procurement related problems. These guidelines are designed to describe the process relating to the referral, investigation and prosecution of cases generated in DOD's Program. More complete information is available through the Fraud Section of the Criminal Division, Department of Justice (DOJ).

Requirements on Contractors

The DOD's recognition of a contractor as a "volunteer" depends on four key factors:

A. Disclosure must not be triggered when the underlying facts are about to be discovered by the government through audit, investigation or other means.

B. Disclosure must be on behalf of the business entity; benefits of voluntary disclosure do not ensure to individuals but only to the corporation.

C. Prompt and complete corrective action, including disciplinary action and restitution to the government, must be taken by the contractor in response to the matters disclosed.

D. After disclosure the contractor must cooperate fully in any ensuing investigation or audit.

Department of Defense Actions

The DOD has designated its initial contact point for its program as the Office of the Inspector General. If a contractor is recognized as a volunteer based on the preceding criteria, the DOD will undertake the following:

A. Identify one of the Military Departments or the Defense Logistics Agency as the cognizant DOD component to represent the DOD for suspension/debarment purposes, i.e., to assess contractor integrity in light of the disclosures.

B. Seek through the DOD Office of the Inspector General (OIG) and in cooperation with the DOJ to resolve any investigation and audit conducted in response to a voluntary disclosure at the earliest time, consistent with other workload demands.

C. Advise the DOJ of the complete nature of the voluntary disclosure, the extent of contractor cooperation and the types of corrective action instituted by the contractor. The DOD recognizes that determination of criminal and civil sanctions is always the ultimate prerogative of the DOJ.

Law Enforcement Objectives

The DOJ objective in the defense procurement fraud area is to bring prosecutions that will have a deterrent effect while at the same time make prosecutive judgments that encourage contractors to initiate compliance programs. Deterrence is a significant factor in prosecuting corporations, particularly defense contractors. Through prosecution, conviction and punishment, other contractors are put on notice of what constitutes illegal activity and are encouraged, where appropriate, to modify their behavior to conduct business in a non-criminal manner. Prosecution creates an incentive for management to establish both preventive measures and clear standards of right and wrong for their employees.

On the other hand, contractors that make serious and responsible efforts to comply with the law and to disclose misconduct promptly and forthrightly should not be discouraged from those practices by prosecutive policies. In some situations, a weighing of the factors for and against prosecution may result in a decision that law enforcement objectives would not be furthered by prosecution of contractors that have made serious and responsible efforts to comply with the law.

Department of Justice Procedures

Fraud Section's Defense Procurement Fraud Unit

The Fraud Sections' Defense Procurement Fraud Unit (Unit) is the contact point in the DOJ to oversee voluntary disclosure matters. The responsibilities of the Unit include the following:

A. The Unit will review all referrals made to the DOJ by the OIG in connection with the Voluntary Disclosure Program.

B. Upon receipt of the referral from the DOD, the Unit will conduct or refer to an appropriate United States Attorney to conduct whatever preliminary inquiry is deemed necessary to determine whether there is specific credible evidence suggesting prosecutable violations of federal laws.

C. If the Unit determines that specific credible evidence of criminal conduct does not exist, the preliminary inquiry will be closed. The closing of a preliminary inquiry does not necessarily constitute a criminal declination. An inquiry may be reinstated by the Unit at any time for any reason it deems to be appropriate.

D. If the Unit determines that specific credible evidence of criminal conduct exists, the referred matter will be investigated.

E. Matters involving an impact on the government of \$100,000 or more or where the fraud had posed a substantial threat to safety or our National Security will be retained by the Unit or referred to an appropriate United States Attorney's office. The Unit will advise the relevant United States Attorney(s) of all matters, whether or not retained by the Unit. Cases referred under this paragraph to United States Attorney(s) will be monitored by the Unit on two bases: (1) for periodic status reports provided by the United States Attorneys and (2) for review of proposed prosecutions. (See United States Attorneys' Responsibilities below.)

F. All other matters will be referred to an appropriate United States Attorney's office for prosecutive decision.

United States Attorneys' Responsibilities

The United States Attorneys' offices will periodically notify the Unit of the status of investigations (see E and F above) of corporations referred to them that have participated in the DOD Voluntary Disclosure Program. Prior to any decision to prosecute or to decline prosecution of a volunteer corporation, United States Attorneys' offices will notify and obtain the concurrence of the Unit (providing a summary of the evidence,

proposed theories of criminal liability and proposed charges in the case).

Criteria for Prosecuting Volunteer Corporations

Where the law and evidence would otherwise be sufficient for prosecution, the following factors should be included among those considered, on a case by case basis, in determining whether to prosecute a volunteer corporation:

A. Voluntary Disclosure

A candid and complete disclosure will be a factor in the prosecutive decision. In this regard consideration should be given to whether the contractor came forward promptly after discovering the illegal activity. Consideration should also be given to the quantity and quality of information provided by the corporation.

B. Contractor's Preventive Measures

The existence of a compliance program is a significant factor. It must include preventive measures and be in place prior to commencement of the illegal activity.

Compliance programs may vary among contractors but the following questions should be asked in evaluating any program: Did the contractor have a strong institutional policy against the type of illegal activity which occurred? Had reasonable safeguards been developed and implemented to prevent the illegal

activity from occurring? Such safeguards might include, but not necessarily be limited to, training, fraud awareness programs, creation of ombudsmen, installation of employee hotlines, etc. Did the contractor have regular procedures, such as compliance and internal audit reviews, to evaluate, to detect and to remedy the circumstances that led to the commission of the fraud? Was the corporation's program more than a mere pronouncement of the importance of complying with the law?

Investigations often disclose that the decision to engage in improper activity resulted from the contractor delegating to a manager the responsibility to make entirely discretionary determinations regarding allocating costs to government contracts. The contractor then argues that actions involving significant costs to the government were done by managers without knowledge or advice of others. One measure of a meaningful compliance program is an effective mechanism to permit complex or questionable contractual or accounting decisions to be brought to the attention of higher managers or to those with expertise (accountants, attorneys, contract specialists) for review and approval as to the propriety of managers' actions.

C. Extent of Fraud

The extent of the fraud may be measured in several ways. It may be determined by the financial benefit to the corporation and the corresponding dollar loss to the government. It may also be determined by the consequential harm to the government as a

result of corrective actions that must be taken. Where the government has been sold a defective product, for example, the cost of locating, removing and installing a new part may be much greater than the contract amount.

D. Pervasiveness of the Fraud

Pervasive fraud may indicate systemic corporate participation in or condonation of criminal behavior. It may also indicate the lack of a meaningful compliance program. The measurement of this factor may include, but should not be limited to, the number of corporate employees participating in the criminal activities, the number of corporate departments involved, the number of transactions and the duration of the criminal conduct.

E. Level of Corporate Employee

Where upper-level corporate managers commit criminal conduct, the corporation may be said to have a higher degree of criminal responsibility. The prosecution of the corporation may force those in positions of higher corporate responsibility to act to prevent recurrence of illegal conduct by others.

If meaningful preventive measures had been taken by the corporation and if only lower-level employees participated in the illegal activities, the law enforcement objectives of prosecuting

the corporation may, in some cases, be outweighed by the inhibiting effect on future corporate compliance with the DOD Voluntary Disclosure Program.

F. Cooperation by Corporation

The degree and timeliness of corporate cooperation should be considered. Any corporation that holds itself out as a volunteer should be prepared to cooperate with the government in making the results of its investigation available to investigators and prosecutors. In addition to providing the government with the results of its investigation, cooperation should also be measured by the extent and quality of corporate assistance in the government's investigation.

G. Remedial Action

Effective remedial action is crucial to any compliance program. For example, did the company have an effective system of discipline for employees who violate company policies for legal and ethical conduct? Did the disciplinary system establish an awareness in other employees that criminal conduct would not be condoned?

In determining whether the disciplinary system is meaningful, the employee's financial compensation should also be reviewed. In certain instances, although some disciplinary action was taken, financial bonuses or incentive compensation for

the culpable employees was not affected. Such a result would not be viewed as a meaningful remedial action program.

In addition to disciplinary action, the corporation should take remedial action in other ways. It should institute measures to prevent criminal conduct from occurring in the future by strengthening weaknesses in existing compliance programs and by correcting accounting deficiencies. It should also be willing to make restitution or otherwise make the United States whole for any harm caused by the criminal actions.

H. Culpable Corporate Employees

The voluntary disclosure program relates only to the potential prosecution of the corporate entity and does not affect prosecutorial decisions regarding senior management or other employees or individuals.

I. Independence of the DOJ Determination

The DOJ will make prosecutive and other decisions after giving consideration to the criteria described above. These decisions, however, will be independent of any related determinations made by the DOD.

The above described criteria are provided to give guidance to United States Attorneys and do not establish any rights for corporations being reviewed under the Voluntary Disclosure program.

Legal Liability of Corporations

Vicarious Liability of Corporations

There is no federal statute defining corporate criminal liability. The development of principles governing such liability is almost exclusively through case law. Criminal liability based upon the doctrine of respondeat superior has been the rule in federal courts since the Supreme Court decided New York Central Hudson River Railroad Co. v. United States, 212 U.S. 481, 493-94 (S.D.N.Y. 1909). Under this doctrine a corporation may be held vicariously liable for the criminal acts of its agents acting within the scope of their employment if the agents are acting on behalf of the corporation. United States v. Automated Medical Laboratories Inc., 770 F.2d 399, 407 (4th Cir. 1985); United States v. Basic Construction Co., 711 F.2d 570-73 (4th Cir. 1983); United States v. Demauro, 581 F.2d 50, 53 (2d Cir. 1978); United States v. Hilton Hotels Corporation, 467 F.2d 1000, 1004-1007 (9th Cir. 1972), cert. denied, 409 U.S. 1125 (1973); United States v. American Radiator & Standard Sanitary Corp., 433 F.2d 174; 204-05 (3rd Cir. 1970); Standard Oil Company of Texas v. United States, 307 F.2d 120, 127 (5th Cir. 1962).

Even though the employee acted outside the scope of his or her employment and without any purpose to benefit the corporation, the corporation may be held liable for adopting the criminal conduct by subsequent corporate action (or possibly inaction). Continental Baking Co. v. United States, 281 F.2d 137 (6th Cir. 1960).

Requirement of Intent to Benefit the Corporation

In order for the corporation to be liable for crimes involving a mental element it is necessary that the agent act with the intent to benefit the corporation. United States v. Lebar, 521 F. Supp. 203 (M.D. Pa. 1981), aff'd, 688 F.2d 826 (3rd Cir.), cert. denied, 103 S. Ct. 260 (1982); United States v. Hilton Hotels, supra, (Sherman Act antitrust violations); Standard Oil Co. of Texas v. United States, supra, (switching production among oil leases in violation of Hot Oil Act); United States v. Automated Medical Laboratories, Inc., supra, (false documents to FDA); United States v. Cincotta, 689 F.2d 238, 241-42 (1st Cir. 1983) (conspiracy to defraud, false claim, false statement); United States v. Gold, 743 F.2d 800, 822-23 (11th Cir. 1984) (medicare fraud).

Corporate Criminal Liability May Be Based on Actions of Low Level Employees

The doctrine of respondeat superior applies regardless of the status or level of the employee in the corporate structure. It ". . . is the function delegated to the corporate officer or agent which determines his power to engage the corporation in a criminal transaction." CIT Corp. v. United States, 150 F.2d 85, 89 (9th Cir. 1945).

Examples of cases where lower level employees have subjected the corporation to criminal liability include:

Salesmen - United States v. George Fish, 154 F.2d 798, 801 (2d Cir. 1946), cert. denied, 328 U.S. 869 (1946); United States v. Gibson Products, Inc., 426 F. Supp. 768 (S.D. Tex. 1976).

Clerical workers - United States v. Riss & Co., Inc., 262 F.2d 245 (8th Cir. 1958).

Truck drivers - United States v. Harry L. Young & Sons, 464 F.2d 1295 (10th Cir. 1972); Texas-Oklahoma Express, Inc. v. United States, 429 F.2d 100 (10th Cir. 1970).

Laborers - United States v. Dye Construction Co., 510 F.2d 78 (10th Cir. 1975).

Corporate Criminal Liability May Apply Even Though
Actions of the Employee Are Against Corporate
Policy and Contrary to Express Instruction

If an employee is acting within the scope of his employment, courts have held that the employee's conduct will bind the corporation even if his conduct was specifically forbidden by corporate instructions or policies and occurred despite a good faith effort by the corporation to prevent the crime. United States v. Hilton Hotels Corp., supra; United States v. Automated Medical Laboratories, Inc., supra; United States v. Basic Construction Co., supra; United States v. American Radiator and Standard Sanitary Corp., supra; United States v. Beusch, 596 F.2d 871, 878 (9th Cir. 1979).

Corporate Liability Extends to the Criminal Acts of Corporate Subsidiaries and Divisions

Corporate liability for the criminal acts of a subsidiary or division are governed by the same principles that apply to a corporation's liability for the acts of its employees. United States v. Wilshire Oil Co. of Texas, 427 F. 2d 969 (10th Cir. 1971), cert. denied, 400 U.S. 829 (1970); United States v. Ira S. Bushey & Sons, Inc., 363 F. Supp. 110, 119 (D. Vt.), aff'd, 487 F.2d 1393 (2d Cir. 1973), cert. denied, 417 U.S. 976 (1974).

Corporate Criminal Liability Applies Even Though No Individual is Prosecuted

Although it is only the acts of individual corporate agents that can be asserted against the corporation in order to find corporate criminal liability, it is not necessary that the individual agent or employee be prosecuted in order to convict the corporation. United States v. Bank of New England, No. 86-1334 (1st Cir. June 10, 1987), United States v. General Motors Corp., 121 F.2d 376 (7th Cir. 1941), cert. denied, 314 U.S. 618 (1941). It is also not necessary to prove a specific employee acted criminally, only that some agent of the corporation committed the violation. United States v. American Stevedores, Inc., 310 F.2d 47, 48 (2d Cir. 1962), cert. denied, 83 S. Ct. 552 (1963).

Collective Knowledge

Under the doctrine of collective knowledge, the requisite knowledge need not be imputed to the corporation from a single

individual, but may be established by imputing to the corporation the aggregate or collective knowledge of the employees or agents as a group. Under this doctrine a corporation may be found guilty of a crime even though no single employee had been or could have been guilty of the crime. The doctrine has generally been limited to prosecutions under the regulatory provisions of the Interstate Commerce Act where a corporate defendant is deemed to have knowledge of a regulatory violation if the means were present by which the company could have detected infractions. United States v. T.I.M.E.-D.C. Inc., 381 F. Supp. 730, 740-41 (W.D. Va. 1974) (knowingly permitting ill truck drivers to operate a motor vehicle); United States v. Sawyer Transport, Inc., 337 F. Supp. 29, 30-31 (D. Minn. 1971), aff'd, 463 F.2d 175 (8th Cir. 1972) (maintaining false drivers' logs); Inland Freight Lines v. United States, 191 F.2d 313, 315 (10th Cir. 1951) (maintaining false drivers' logs); Steere Tank Lines, Inc. v. United States, 330 F.2d 719 (5th Cir. 1963) (maintaining false drivers' logs).

The collective knowledge doctrine has recently been applied to charges under the Currency Transaction Reporting Act at 31 U.S.C. §§5311-22 and Treasury Regulations promulgated pursuant to that Act for failure to file Currency Transaction Reports (CTRs) for customer currency transactions exceeding \$10,000. United States v. Bank of New England, supra.

"Corporations compartmentalize knowledge, subdividing the the elements of specific duties and operations into smaller components. The aggregate of these components constitutes the corporation's knowledge of a particular operation. It is irrelevant whether employees administering one component of an operation know the specific activities of employees administering another aspect of the operation." United States v. Bank of New England, supra.

Proof of Willfulness

Willfulness entails a voluntary, intentional, and specific intent to disregard, to disobey the law with a bad purpose to violate the law. A jury cannot convict for accidental, mistaken or inadvertent acts or omissions. With respect to regulatory statutes, the Supreme Court has defined willfulness as a disregard for the governing statute and an indifference to its requirements. Trans World Airlines, Inc. v. Thurston, 469 U.S. 111 (1985). A willful failure to comply with the regulatory requirements can be proven by evidence of flagrant organizational indifference by a corporation to its obligations. United States v. Bank of New England, supra.

Civil False Claims Act

On the civil side, whether to pursue a case based upon the False Claims Act is governed by many of the same considerations outlined above. There are occasions, however, where it may be

appropriate to proceed civilly even though the case may be declined criminally. The False Claims Act Amendments of 1986, P.L. 99-562, increase the damages the United States is entitled to recover from double damages to triple damages and the forfeiture amount from \$2,000 per false claim to not less than \$5,000 and not more than \$10,000 per false claim. However, if, prior to becoming aware of an ongoing investigation into a matter, a person provides appropriate investigating officials with all the information in his or her possession about the fraud within 30 days of discovery and fully cooperates with the government's investigation, the court may award no more than double (rather than triple) damages.

KEY ELEMENTS IN CONTRACTOR VOLUNTARY DISCLOSURES RELATED TO FRAUD

In order for a voluntary disclosure of improper or illegal practices to be truly effective, and in order for the contractor and DoD to be completely assured that these practices have been fully identified and rectified, it is essential that any internal examination undertaken by the contractor addresses certain important issues. The contractor should be prepared to share information regarding its resolution of these issues as part of its disclosure to DoD.

A. Nature of the Improper or Illegal Practice

A full examination of the practice should be conducted to include:

1. Source of the practice (e.g., lack of internal controls; circumvention of corporate procedures or Government regulations)
2. Description of the practice, to include:
 - a. Corporate divisions affected.
 - b. Government contracts affected.
 - c. Detailed description as to how the practice arose and continued.
3. Identification of any potential fraud issues raised by the practice and relevant documentation.
4. Time period when the practice existed.
5. Identification of corporate officials and employees who knew of, encouraged or participated in the practice.
6. Estimate of the dollar impact of the practice on DoD and other Government agencies.

B. Contractor Response to the Improper or Illegal Practice

1. Description of how the practice was identified.
2. Description of contractor efforts to investigate and document the practice (e.g., use of internal or external legal and/or audit resources).

3. Description of actions by the contractor to halt the practice.

4. Description of contractor efforts to prevent a reoccurrence of the practice, (e.g., new accounting or internal control procedures, increased internal audit efforts, increased supervision by higher management, training).

5. Description of disciplinary action taken against corporate officials and employees who were viewed as culpable or negligent in the matter, or who were viewed as not having exercised proper management responsibility.

6. Description of appropriate notices, if applicable, provided to other Government agencies, (e.g., Securities and Exchange Commission and Internal Revenue Service).

C. Conclusion

1. List and description of supporting investigative, audit and legal information to be provided to the Government as part of voluntary disclosure, including reports of interviews, audits and audit working papers.

2. Assurance that contractor is willing to reimburse Government for any damages suffered, including restitution and payment of Government costs to resolve the matters disclosed.

3. Assurance of contractor's full cooperation with Government audit/investigative efforts to resolve contractor's voluntary disclosure information, to include access to corporate records, promises and personnel.

APPENDIX D



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202

(Criminal Investigations
Policy and Oversight)

SAMPLE

Mr. Brian Smith
General Counsel
ABC Corporation
333 James Plaza
Boston, MA 22394

Dear Mr. Smith:

This confirms receipt of your letter, dated April 3, 1988, disclosing potential cost mischarging by the ABC Corporation at its ABG Division in Boston, MA. The letter states the potential mischarging occurred between 1985 and 1987 on a Defense Logistics Agency-administered contract for cables used in the sky missile.

The letter also states that the disclosure was not triggered by concern that the matter or the facts underlying the disclosure were about to be discovered by the Government. Based on that information, the matter is being preliminarily accepted into the Voluntary Disclosure Program. I am enclosing a standard Voluntary Disclosure Agreement to be signed by an authorized director or officer of the corporation.

Participation in the Voluntary Disclosure Program is contingent on prompt execution of the standard Voluntary Disclosure Agreement. Continued participation in the Program is contingent on the ABC Corporation adhering to the provisions of the agreement. Please inform me within ten days whether a written report will be provided describing the results of your internal investigation. I further ask that you contact me prior to making any refunds, credits, or payments to the Government concerning the voluntary disclosure.

If you have any questions, please call me at (202) 694-1234.

Sincerely,

Assistant Inspector General for
Criminal Investigations Policy and Oversight

cc with enclosure:

Mr. Michael West, DOJ Criminal Division
Mr. Gordon Birch, DOJ Civil Division
Mr. John Henry, DCAA
Mr. Dave Bens, AFOSI
Mr. Gerald Banks, DLA

APPENDIX E



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202

(Criminal Investigations
Policy and Oversight)

Mr. Brian Smith
General Counsel
ABC Corporation
333 James Plaza
Boston, MA 22394

SAMPLE

Dear Mr. Smith:

The March 3, 1988 disclosure by the ABC Corporation regarding cost mischarging at its ABG Division has been reviewed. As part of the review, we discovered an ongoing Air Force Office of Special Investigations (AFOSI) investigation of the ABC Corporation at its ABG Division concerning cost mischarging which relates to the matter disclosed.

Based on our review, a determination has been made that the disclosure does not meet the requirements set forth in the Deputy Secretary of Defense letter of July 24, 1986. Nonetheless, the ABC Corporation is encouraged to cooperate in the audit and investigation. The corporation's cooperation is a factor which will be considered in the ultimate resolution of the matter.

I have notified the Defense Procurement Fraud Unit (DPFU), the Defense Contract Audit Agency (DCAA), the AFOSI, and the Defense Logistics Agency (DLA) of the matter and of the ABC Corporation commitment of cooperation.

If you have any questions, please call me at (202) 694-1234.

Sincerely,

Assistant Inspector General for
Criminal Investigation Policy and Oversight

cc: Mr. Michael West, DOJ Criminal Division
Mr. Gordon Birch, DOJ Civil Division
Mr. John Henry, DCAA
Mr. Dave Bens, AFOSI
Mr. Gerald Banks, DLA

APPENDIX F



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202

(Criminal Investigations
Policy and Oversight)

Mr. Brian Smith
General Counsel
ABC Corporation
333 James Plaza
Boston, MA 22394

SAMPLE

Dear Mr. Smith:

In our letter of May 18, 1988, the ABC Corporation was informed that one criteria for admission into the Voluntary Disclosure Program is prompt execution of the standard Voluntary Disclosure Agreement.

I have been informed that the ABC Corporation continues to seek changes to the standard agreement that are unacceptable to the Government. If the ABC Corporation is unwilling to accept the terms of the standard agreement within the next two weeks, the matter will be removed from the Voluntary Disclosure Program. If you have any questions, please call me at (202) 694-1234.

Sincerely,

Assistant Inspector General for
Criminal Investigations Policy and Oversight

cc: Mr. Michael West, DOJ Criminal Division
Mr. Gordon Birch, DOJ Civil Division
Mr. John Henry, DCAA
Mr. Dave Bens, AFOSI
Mr. Gerald Banks, DLA

APPENDIX G



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202

(Criminal Investigations
Policy and Oversight)

Mr. Brian Smith
General Counsel
ABC Corporation
333 James Plaza
Boston, MA 22394

SAMPLE

Dear Mr. Smith:

Enclosed is a fully executed copy of the ABC Corporation, ABG Division, Voluntary Disclosure Agreement. The matter is being assigned to the Air Force Office of Special Investigations (AFOSI) for investigative purposes. Your point of contact at the AFOSI is Mr. Dave Bens who may be reached at (202) 692-1029. The Defense Logistics Agency (DLA) is the assigned suspension and debarment authority. Your contact at the DLA is Mr. Gerald Banks who may be reached at (202) 474-6022.

You indicated in your letter of March 3, 1988, that you intend to submit a written report describing the results of your internal investigation. We ask that you submit the report within 60 days of the initial disclosure. Please coordinate with this office if a problem arises in meeting the schedule.

If you have any questions, please call me at (202) 694-1234.

Sincerely,

Assistant Inspector General for
Criminal Investigations Policy and Oversight

cc with enclosure:

Mr. Michael West, DOJ Criminal Division
Mr. Gordon Birch, DOJ Civil Division
Mr. John Henry, DCAA
Mr. Dave Bens, AFOSI
Mr. Gerald Banks, DLA

APPENDIX H



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202

(Criminal Investigations
Policy and Oversight)

Mr. Brian Smith
General Counsel
ABC Corporation
333 James Plaza
Boston, MA 22394

RAMDIE

Dear Mr. Smith:

This confirms receipt of the ABC Corporation final report of investigation concerning cost mischarging at its ABG Division in Boston, MA. I have forwarded copies of the report to the Air Force Office of Special Investigations, the Defense Logistics Agency, the Department of Justice, and the Defense Contract Audit Agency. If you have any questions, please call me at (202) 694-1234.

Sincerely,

Assistant Inspector General for
Criminal Investigations Policy and Oversight

cc with enclosure:

Mr. Michael West, DOJ Criminal Division
Mr. Gordon Birch, DOJ Civil Division
Mr. John Henry, DCAA
Mr. Dave Bens, AFOSI
Mr. Gerald Banks, DLA

APPENDIX I

VOLUNTARY DISCLOSURE NINETY-DAY
INVESTIGATIVE PROGRESS REPORT

SUBJECT	ABC CORPORATION
DIVISION	ABG Division
LOCATION	Boston MA
DCIO CASE NUMBER	884391829M231
CIPO CASE NUMBER	CIPO 076
DATE OPENED	1/23/86
FIELD OFFICE	Boston
GOVERNMENT ESTIMATED LOSS	\$1 million
CORPORATION ESTIMATED LOSS	\$750,000
MONIES RECOVERED TO-DATE	\$750,000

SAMPLE

The matter was brought as a voluntary disclosure to the AIG-CIPO on October 12, 1986 by the law firm of Daniels and Morris, located in Washington, D.C. Matter disclosed include two types of irregularities at the ABC Corporation's wholly owned subsidiary, ABG, Incorporated, located in Boston, MA.

The first involves payments to a number of vendors for goods that were never delivered to the ABG Division. The invoices were approved for payment by William Henderson, Manager for Administration, the second ranking executive at ABG until he was dismissed on November 3, 1986.

The materials were to be used in radar devices installed in the AA-Z helicopters sold to the Army between the years 1981 and 1985. The materials were in fact installed on commercial contracts. There is no evidence that the safety of existing helicopters has been compromised. The contracts were all fixed price contracts. The ABC Corporation auditors estimate the impact to the Government relating to the first allegation as \$250,000.

The second area under investigation concerns expense account abuses, primarily by Henderson and Barry Graft, Senior Vice President for Advertising. The ABC Corporation estimates the loss at \$500,000.

Henderson was discharged for cause following an internal investigation and his admission to the corporate attorneys of his false billings. Graft quit for unknown reasons prior to the initiation of the investigation. Graft has not been interviewed.

On January 23, 1987, the ABC Corporation sent its internal report of investigation concerning both matters to the AIG-CIPO; who in turn assigned the matter to the DCIS. The DCIS, in coordination with the USACIDC, opened an investigation into the matters based on the voluntary disclosure. On January 29, 1987, the DCAA, at the request of the DCIS, began its audit.

SAMPLE

UPDATES:

March 21, 1987

On March 6, 1987, a meeting was held between the ABC Corporation, the DPFU, the DCIS, the USACIDC, and the DCAA to discuss additional documents requested by DCIS. Interviews have been scheduled.

June 15, 1987

Fifteen interviews have been conducted, and the initial allegations in both matters have been substantiated. The DCAA has indicated that the Government losses may be \$500,000.

September 10, 1987

The ABC Corporation has submitted a check in the amount of \$750,000 to the contracting officer. Coordination was established with the Civil Division, Department of Justice. Copies of the check have been sent to the AIG-CIPO, the DCAA and DLA. The DCAA reviews have shown that materials were taken from the Apache program and used in commercial contracts, and the DCAA revised its loss impact estimate to \$1 million. The DCAA is continuing its audit into the personal expense matters. The ABC Corporation is fully cooperating and has submitted its followup interview notes held by outside counsel.

December 20, 1987

A former program manager has made additional allegations of labor mischarging outside the information contained in the initial disclosure. He estimates (neither documented nor substantiated) alleged losses to the Government in excess of \$5 million over five years, in addition to the matters disclosed by the ABC Corporation. The new allegations concern the YY missile program. The program manager has refused to discuss further his involvement without a grant of immunity. A determination has been made to investigate the new allegations concerning the YY program as a separate investigation. The ABC Corporation is still fully cooperating in the audit and investigation.

March 10, 1988

The DCAA audit is complete, with a cost impact to the Government of \$1 million on the two matters originally disclosed. The DPFU is considering prosecuting Henderson and Graft. No action will be taken by the DLA against either the ABC Corporation or the ABG Division concerning either suspension or debarment. Anticipate concluding all interviews by March 20, 1988 and the investigation by March 31, 1988.

APPENDIX J



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202

(Criminal Investigations
Policy and Oversight)

Mr. Brian Smith
General Counsel
ABC Corporation
333 James Plaza
Boston, MA 22394

SAMPLE

Dear Mr. Smith:

Repeated attempts to resolve differences regarding access to employees of the ABC Corporation by Government investigators has resulted in an impasse. This is contrary to the terms of the Voluntary Disclosure Agreement and the contractor requirements set forth in the Deputy Secretary of Defense letter of July 24, 1986. The matter is, therefore, being removed from the Voluntary Disclosure Program.

I have so notified the Defense Procurement Fraud Unit, the Defense Contract Audit Agency, the Air Force Office of Special Investigations, and the Defense Logistics Agency.

If you have any questions, please call me at (202) 694-1234.

Sincerely,

Assistant Inspector General for
Criminal Investigations Policy and Oversight

cc: Mr. Michael West, DOJ Criminal Division
Mr. Gordon Birch, DOJ Civil Division
Mr. John Henry, DCAA
Mr. Dave Bens, AFOSI
Mr. Gerald Banks, DLA

APPENDIX K



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202

(Criminal Investigations
Policy and Oversight)

Mr. Brian Smith
ABC, International
333 James Plaza
Boston, MA 22394

SAMPLE

Dear Mr. Smith:

I have been informed that the Government investigation of the ABC Corporation voluntary disclosure of cost mischarging at its ABG Division has been completed. I am, therefore, closing the matter under the Voluntary Disclosure Program. I wish to thank the ABC Corporation for its cooperation in the verification of the matters disclosed. If you have any questions, please call me at (202) 694-1234.

Sincerely,

Assistant Inspector General for
Criminal Investigation Policy and Oversight

cc: Mr. Michael West, DOJ Criminal Division
Mr. Gordon Birch, DOJ Civil Division
Mr. John Henry, DCAA
Mr. Dave Bens, AFOSI
Mr. Gerald Banks, DLA

THE DEPARTMENT OF DEFENSE
VOLUNTARY DISCLOSURE PROGRAM
A DESCRIPTION OF THE PROCESS

The purpose of this pamphlet is solely to describe the process used by the Department of Defense and the Department of Justice in the Administration of the Department of Defense Voluntary Disclosure Program. This pamphlet does not, nor should be relied on, to create, confer, or grant any rights, benefits, privileges, or protections enforceable at law or in equity by any person, business, or entity in either civil, criminal, administrative, or other matters. This pamphlet does not in any way limit the lawful litigative prerogatives of the Department of Defense and Department of Justice.

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE

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A. PURPOSE

1. The Department of Defense (DoD) encourages Defense contractors to adopt a policy of voluntarily disclosing potential civil or criminal fraud matters affecting their corporate contractual relationship with the DoD as a central part of their corporate self-governance and to enhance contractor responsibility under the Federal Acquisition Regulations. The policy is described in letters from the Deputy Secretary of Defense to Defense contractors, dated July 24, 1986, and August 10, 1987 (Appendix A). The Assistant Inspector General for Criminal Investigations Policy and Oversight (AIG-CIPO), Office of the Inspector General, DoD, is the designated point of contact for voluntary disclosures of potential criminal or civil fraud issues. Matters not involving fraud should be presented to the appropriate contracting officer or Defense Contract Audit Agency (DCAA) auditor.

2. The disclosures are made with no advance agreement regarding possible DoD resolution of the matter and with no promises regarding potential civil or criminal actions by the Department of Justice (DOJ). Prompt voluntary disclosure, full cooperation, complete access to necessary records, restitution, and adequate corrective actions are key indicators of an attitude of contractor integrity even in the wake of disclosures of potential criminal liability.

3. The DoD Voluntary Disclosure Program is intended to afford contractors the means to report self-policing activities. It provides a framework for Government verification of the matters voluntarily disclosed and an additional means for a coordinated evaluation of administrative, civil, and criminal actions appropriate to the situation.

4. This pamphlet identifies the participating DoD and DOJ organizations and describes the process by which voluntary disclosures are reported, verified, and acted on. The complete process for managing voluntary disclosures is depicted in a flowchart (Appendix B).

B. ORGANIZATIONAL FUNCTIONS

Summary

The organizations listed below have the following functions under the DoD Voluntary Disclosure Program:

1. Office of Assistant Inspector General for Criminal Investigations Policy and Oversight (AIG-CIPO)

The AIG-CIPO receives the initial disclosure, makes a preliminary determination as to whether the disclosure satisfies the requirements of the DoD Voluntary Disclosure Program, coordinates the execution of the standard Voluntary Disclosure Agreement, assigns the matter to a Defense criminal investigative organization (DCIO) for verification, assigns the matter to a suspension and debarment authority, and coordinates the matter with the DOJ for potential civil and criminal action. The AIG-CIPO also serves as the focal point for the dissemination of general information concerning the Voluntary Disclosure Program, is responsible for administering the Program, and coordinates administrative action within the DoD.

2. Defense Criminal Investigative Organizations (DCIOs)

The U.S. Army Criminal Investigation Command (USACIDC), the Naval Investigative Service (NIS), the Air Force Office of Special Investigations (AFOSI), and the Defense Criminal Investigative Service (DCIS) are the Defense criminal investigative organizations (DCIOs) that conduct investigations under the Program. One DCIO will serve as the lead investigative agency. Following admission into the DoD Voluntary Disclosure Program, the lead DCIO in coordination with other DCIOs when appropriate, conducts an investigation to verify the accuracy and completeness of the matter(s) disclosed. The lead DCIO, may request the Defense Contract Audit Agency (DCAA) to conduct a verification audit that will generally be based on the contractor's internal report of investigation. The lead DCIO coordinates its activities with the AIG-CIPO, the DOJ, the DCAA, and the cognizant suspension and debarment authority.

3. Defense Contract Audit Agency

The DCAA will , in most instances, be requested by the lead DCIO to conduct a verification audit of the matter(s) disclosed. The audit normally begins following receipt of the contractor's internal report of investigation and focuses on those matter(s) disclosed in the internal report of investigation not covered by a previous audit.

4. DoD Suspension and Debarment Authorities

A Military Department or Defense Agency has lead agency responsibility for any suspension or debarment determination resulting from the matter(s) disclosed. The decision whether or not to initiate suspension or debarment action takes into consideration, among other things, the Government verification of the contractor's disclosure, the contractor's cooperation, the adequacy of corrective action, and restitution.

5. The Department of Justice

a. The Department of Justice Guidelines regarding the Voluntary Disclosure Program set forth complete guidance for the Department of Justice on referral, investigation and prosecution of voluntary disclosure matters.

b. The Defense Procurement Fraud Unit (Unit) in the Fraud Section, Criminal Division, DOJ, is the point of contact within the DOJ to oversee voluntary disclosure matters. The Unit reviews all voluntary disclosure matters.

(1) The Unit conducts, or refers to the appropriate U.S. Attorney's Office to conduct, whatever preliminary inquiry is deemed necessary to determine whether there is specific credible evidence suggesting prosecutable violations of Federal laws. If such evidence exists, the matter will be investigated.

(2) The United States Attorney's Office notifies and obtains the concurrence of the Unit prior to any decision to prosecute or decline prosecution of a volunteer corporation.

c. (1) In deciding whether to prosecute, where the law and evidence is otherwise sufficient to initiate prosecutive action, the prosecutor considers among other factors, the truthfulness, completeness, and timeliness of the

disclosure; the quality and quantity of the information provided therein; whether a compliance program, including preventive measures, was in place prior to the illegal activity; the extent of the fraud; the pervasiveness of the fraud; the level of the corporate officials involved in the fraud; the degree, extent, quality, and timeliness of the contractor's cooperation in the verification of the disclosure; and the remedial action taken by the contractor.

(2) The determination of whether to initiate or decline prosecution is the sole responsibility of the Department of Justice in accordance with the recommended criteria set forth in the DOJ Voluntary Disclosure Guidelines.

d. The Civil Division, Department of Justice, is responsible for determining whether to seek civil fraud damages in voluntary disclosure matters.

C. DESCRIPTION OF PROCESS

1. The Initial Disclosure

a. The AIG-CIPO - Defense contractors wishing to make a disclosure as part of the DoD Voluntary Disclosure Program should be directed to the Assistant Inspector General for Criminal Investigations Policy and Oversight (AIG-CIPO), telephone ~~(202) 694-1234~~ (703) 604-8710.

b. Confirmation Letter - When the initial contact with the AIG-CIPO is made by telephone, the contractor will be asked to send a letter confirming the information presented.

2. Case Control Number

Control Number - A control number is assigned to each voluntary disclosure (e.g., CIPO 012). The control number is reflected on all communications between the AIG-CIPO, the Military Departments, the Defense Agencies, and the DOJ. The control number is not intended to replace any internal DCIO or DOJ assigned case identification number.

3. Preliminary Acceptance

a. Criteria - A matter will be preliminarily accepted into the DoD Voluntary Disclosure Program if the AIG-CIPO determines that:

(1) the contractor disclosed sufficient information as defined in paragraph C.3.b. below, and

(2) the disclosure was not triggered by the contractor's recognition that the potential criminal or civil fraud matter or the underlying facts were about to be discovered by the Government through audit, investigation, contract administration efforts, or reported to the Government by third parties. One factor in determining whether the requirement has been met is whether the Government had prior knowledge of the matter(s) disclosed.

b. Sufficient Information

(1) Information sufficient for preliminary acceptance into the DoD Voluntary Disclosure Program requires the contractor to disclose, at a minimum, the contractor's name, the corporate division(s) affected, the location of the affected division(s), the Defense Agency(ies) and Military Department(s) affected if known, and the nature and description of the potential fraud. The contractor should also provide, if known, the DoD component with contract administration responsibility, along with the contract number and type, and the estimated financial impact to the Government. Sufficient information should include the nature, effect, time period, and any proposed remedy for the defect, as well as the identification of all end users if the matter disclosed involves defective products or testing,

(2) Since the DoD recognition of a contractor as a "volunteer" depends on the disclosure not being triggered by the contractor's recognition that the potential civil or criminal fraud matter or the underlying facts were about to be discovered by or disclosed to the Government, the AIG-CIPO must have sufficient information regarding the disclosure to do the following:

(a) Conduct an inquiry to learn if the Government had prior knowledge of the matter disclosed by matching factual information from existing investigations and audits with the new disclosure (see paragraph C.6. below).

(b) Determine whether to delay the audit and investigation until the contractor's report of investigation has been received (see paragraph C.13. below).

(c) Determine whether later identified matters are within the scope of the original disclosure.

c. Date of Preliminary Acceptance - The date on which the contractor discloses sufficient information in accordance with paragraphs C.3.a. and b. above, is the date on which the matter is determined to have been preliminarily accepted into the DoD Voluntary Disclosure Program. When the standard Voluntary Disclosure Agreement (hereafter referred to as the "XYZ Agreement," Appendix C) is executed, the date of admission into the DoD Voluntary Disclosure Program relates back to the date of preliminary acceptance.

4. Failure to Disclose Information

The AIG-CIPO may refuse to admit a matter into the DoD Voluntary Disclosure Program if the AIG-CIPO determines that the contractor knowingly failed to disclose relevant available information, and such information is obtained through other sources.

5. Notification Requirements Relating to Defective Products and Testing

When a disclosure concerns defective products or testing, the lead DCIO promptly notifies the affected Military Department(s) and Defense Agency(ies) of any potential safety or operational hazards. This notification is required by DoD Directive 7050.5, "Coordination of Remedies for Fraud and Corruption Related to Procurement Activities," June 7, 1989.

6. Inquiry for Prior Government Knowledge

a. Initiation of Inquiry - Based on the information supplied by the contractor, the AIG-CIPO conducts an inquiry to determine whether the Government had prior knowledge of the matter disclosed. The inquiry is neither binding nor conclusive as to whether the disclosure was triggered by the contractor's recognition that the underlying facts of the potential fraud were about to be discovered by the Government, or as to whether the matter should be admitted into the DoD Voluntary Disclosure Program. Rather, it is one factor considered in making a preliminary determination whether to admit the matter.

b. Inquiry Assignment - Once sufficient information is provided by the contractor, the AIG-CIPO conducts an initial inquiry to determine whether the Government had prior knowledge of the matter disclosed. In most instances, the following inquiries are made:

(1) DCIO Inquiry - A DCIO is requested to conduct a Defense Central Index of Investigations (DCII) check for open cases that could incorporate the matter(s) disclosed. When appropriate, the DCIO may be requested to make further inquiries to DCIO field offices as to the matter(s) disclosed.

(2) DCAA Inquiry - The DCAA representative to the DPFU is asked to determine whether the matter(s) disclosed is:

(a) a matter presently proposed for audit by DCAA where notification has been given to the company;

(b) a matter that is presently or has been the subject of a DCAA audit; or

(c) a matter in which the DCAA has issued an audit report or report of suspected irregularity. The DCAA is also asked to provide information regarding the nature and scope of the audit to determine whether the DCAA audit activities could incorporate the matter(s) disclosed.

(3) Federal Bureau of Investigation (FBI) Inquiry - The FBI representative to the DPFU is requested to determine whether there is an ongoing or previously conducted FBI investigation that could incorporate the matter(s) disclosed.

(4) Defense Procurement Fraud Unit (DPFU) Inquiry - The DPFU is requested to determine whether there are any ongoing or previously conducted criminal investigations or litigation that could incorporate the matter(s) disclosed. If the matter(s) disclosed suggest possible antitrust implications, the DPFU is asked to determine whether there are any ongoing or previously conducted antitrust investigations or litigation that could impact on the disclosure.

(5) Civil Division, DOJ, Inquiry - The Civil Division, DOJ, is requested to determine whether there are any ongoing or previously conducted civil investigations or litigation, including False Claims Act qui tam suits (31 USC 3729 et. seq.), in which the matter(s) disclosed could be incorporated.

(6) Suspension and Debarment Inquiry - The cognizant suspension and debarment authority is requested to determine whether there are any ongoing or prior suspension and debarment actions that could involve the matter(s) disclosed.

(7) Other Inquiries - When appropriate, other Inspectors General and investigative agencies may be contacted to inform them of matters that may

impact on their programs or operations, or determine whether they are aware of any investigations or litigation that may impact on the matter(s) disclosed.

7. Notification of Preliminary Acceptance

When a decision is made to preliminarily accept a matter into the DoD Voluntary Disclosure Program, the contractor is advised in writing (Appendix D). The letter explains that the contractor's continued participation in the program is contingent on prompt execution of the standard XYZ Agreement, compliance with the terms of the XYZ Agreement, and compliance with the requirements set forth in the Deputy Secretary of Defense letter of July 24, 1986. The standard XYZ Agreement is enclosed with the letter. Copies of the letter are forwarded to the DPFU; the Civil Division, DOJ; the assigned DCIO(s); the DCAA; and the cognizant suspension and debarment authority.

8. Matters Rejected

The contractor is advised in writing if the matter is rejected from inclusion in the Voluntary Disclosure Program (Appendix E). The letter, however, encourages the contractor to cooperate in the Government audit and investigation. Copies of the letter are forwarded to the DPFU; the Civil Division, DOJ; the DCIO(s); the DCAA; and the cognizant suspension and debarment authority.

9. XYZ Agreement

The standard XYZ Agreement is used in all disclosure matters absent compelling circumstances requiring deviation. The XYZ Agreement should be signed promptly by an authorized director or officer of the contractor, preferably within two weeks of receipt, and returned to the AIG-CIPO. When signed by all required signatories, copies are sent to the DPFU; the Civil Division, DOJ; the assigned DCIO(s); the DCAA; and the cognizant suspension and debarment authority.

10. Failure to Sign XYZ Agreement

The AIG-CIPO will attempt to resolve any outstanding issues concerning the XYZ Agreement. In the event the contractor refuses to sign the XYZ Agreement or makes demands that are unacceptable to the Government, the AIG-CIPO will advise the contractor in writing of the removal of the matter from the DoD Voluntary Disclosure Program (Appendix F). Copies of the letter are forwarded to

the DPFU; the Civil Division, DOJ; the DCIO(s); the DCAA; and the suspension and debarment authorities.

11. Notification of Admission into the Voluntary Disclosure Program

Following execution of the XYZ Agreement, the AIG-CIPO notifies the contractor in writing confirming the admission of the matter into the DoD Voluntary Disclosure Program (Appendix G). The contractor, if it has not already done so, will be asked to inform the AIG-CIPO within ten days of the execution of the XYZ Agreement whether a written report will be provided describing the results of the contractor's internal investigation. In addition, the contractor is informed that any written report should be submitted within 60 days of the initial disclosure. The AIG-CIPO's confirmation letter will identify the responsible DCIO(s), the cognizant suspension and debarment authority, and the points of contact within each. Copies of the letter are sent to the DPFU; the Civil Division, DOJ; the responsible DCIO(s); the DCAA; and the cognizant suspension and debarment authority.

12. Contractor Internal Report of Investigation

a. Internal Investigation - The contractor determines whether an internal investigation will be conducted. While the Government does not require such an investigation, it generally is in the best interest of the contractor to conduct their own investigation and submit a report describing the results.

b. Timely Completion of Report - Contractors choosing to provide CIPO with a written report describing the results of their internal investigation are requested to submit their report within 60 days of the initial disclosure. If the contractor is unable to complete the report within 60 days, the contractor should request an extension of time. The AIG-CIPO will determine if and on what basis an interim report(s) should be provided.

c. Distribution of Report - The AIG-CIPO sends to the contractor a letter confirming receipt of the contractor's internal report of investigation (Appendix H), and distributes copies (with restrictive markings to protect proprietary/sensitive contents) to the assigned DCIO(s); the DPFU; the Civil Division, DOJ; the DCAA (if the disclosure relates to contract fraud); and the assigned suspension and debarment authority. When appropriate, the DPFU

distributes a copy to a U.S. Attorney for prosecutive review. The Civil Division, DOJ, forwards a copy to any U.S. Attorney involved in related civil litigation.

13. Government Actions Pending Contractor Internal Investigation

a. Timing of Government Investigation - As a general rule, the Government does not begin the verification process or conduct its own audit or investigation until it has received the contractor's internal report of investigation. The Government, however, reserves the right to begin its own audit or investigation at any time. Under certain circumstances, the contractor may be asked to discontinue or limit its internal investigation.

b. Statute of Limitations - During completion of the contractor's internal investigation, if the Government determines that the criminal or civil statute of limitations will expire as to the matter disclosed, or any part thereof, within one year after submission of the contractor's report, the Government, at its option, may request the contractor to waive the statute of limitations for a period it deems appropriate. Refusal to waive the statute of limitations will be considered in evaluating the cooperation of the contractor.

14. Verification

a. Investigative Plan - Following receipt of the contractor's internal report, the designated DCIO(s) begins the verification process. The verification audit and investigation are given sufficiently high priority to allow for its expedited completion. The DCIO prepares a written investigative plan and coordinates it with the criminal prosecutor assigned to the matter, and the Civil Division, DOJ. The plan focuses the investigation, serves as a roadmap for the DCIO(s), and provide a means for the DCIO(s) to track the progress and ensure timely completion of the verification process.

b. DCAA Verification Audit - The DCIO(s), in most instances, request the DCAA to conduct a verification audit. The DCAA auditor assigned to the matter is briefed on the investigative plan to ensure a coordinated effort. If sufficient information is available and the circumstances warrant, the DCIO(s) may begin its own investigation prior to completion or in conjunction with the audit.

c. Scope of Verification Audit and Investigation - The scope of the verification audit and investigation focus specifically on the matters disclosed by the contractor, and include the quantification of the Government losses and potential civil forfeitures under the False Claims Act. Unrelated fraud allegations developed during the verification process are pursued by the initiation of an independent audit or investigation in accordance with normal procedures unless their relationship to the matter disclosed is so commingled as to prevent their severance. Such allegations are not treated as part of the Voluntary Disclosure Program without prior coordination with the AIG-CIPO.

15. Contractor's Cooperation During the Verification

The contractor's cooperation is essential to the verification audit and investigation. Problems regarding the contractor's cooperation that cannot be readily resolved by the DCIO field agent and the DCAA auditor (e.g., refusal to supply records or allow interviews), are promptly brought to the attention of the respective headquarters of the DCIO(s) and the DCAA for resolution. Where the contractor's cooperation is unsatisfactory, the headquarters of the DCIO and/or the DCAA promptly notify the AIG-CIPO in an attempt to resolve the issue. The AIG-CIPO will, in turn, notify the DPFU of the unsatisfactory cooperation. When appropriate, the AIG-CIPO, with the assistance of the Office of the General Counsel, DoD, will attempt to resolve the problem with counsel representing the contractor.

16. Use of Subpoenas

The DoD Voluntary Disclosure Program assumes contractor cooperation. Should subpoenas for documents be necessary, it is standard procedure to use Inspector General subpoenas rather than grand jury subpoenas. Prior to the issuance of a grand jury subpoena in a voluntary disclosure matter, the assigned DCIO agent promptly notifies the DCIO headquarters, which in turn, notifies the AIG-CIPO.

17. Defense Criminal Investigative Organizations (DCIOs) Case Management and Progress Reports

a. Progress Report - The DCIO headquarters monitor all voluntary disclosure matters assigned to their organization to ensure adequate progress and expeditious completion. The DCIOs forward a progress report for each

voluntary disclosure investigation every 90 days to the AIG-CIPO (Appendix I). On receipt of the 90-day progress report, the AIG-CIPO forwards a copy to the DPFU; the Civil Division, DOJ; and the DCAA. The progress reports separately summarize each ongoing investigation, incorporating the following information:

(1) subject(s), including corporate name, affected division(s), and affected location(s);

(2) the investigative organization assigned case number, the CIPO assigned disclosure control number, and the DCIO(s) field office assigned to conduct the investigation;

(3) an initial summary, including allegations, Military Departments and Defense Agencies affected, the time frame in which the allegation occurred, the identification of contracts under investigation, the status of the contracts, and the contractor's estimated cost impact to the Government;

(4) matters involving defective products or testing include a description of the defect, the effect on health or safety, the time period involved, notice to the users, and corrective action taken;

(5) updates include all newly acquired information including prosecutive status (both civil and criminal), new cost impact figures calculated by either the contractor or the DCAA, changes in the scope of the investigation, new allegations raised, or allegations determined to be unfounded;

(6) other significant information to be reported includes declination of prosecution, criminal indictment, use of subpoenas, and any problems arising during the audit and investigation such as poor cooperation or need for subpoenas;

(7) date audit was completed and date the investigation was closed;
and

(8) monies offered by the corporation, accepted by the Government, including checks, credits, or other offsets.

b. Progress Report Reviews - Each DCIO schedules a meeting at a location of its choice within 14 days of the progress report to review the status and planned actions of each open investigation. Attendees at the meeting may include a representative from the OAIG-CIPO; the DCIO; Office of General Counsel, DoD; the DPFU; and Civil Division, DOJ.

18. Payments by Contractors

a. Required Coordination with the Civil Division, DOJ - Collection of any civil damages for all DoD voluntary disclosure matters is the responsibility of the Civil Division, DOJ. Unsolicited payments, restitution, or any other funds representing the contractor's estimate of the cost impact of the matters disclosed are coordinated with the Civil Division, DOJ, and the DPFU prior to acceptance. While it should be determined if the contractor is willing to make restitution, specific requests for payment are coordinated with the Civil Division, DOJ, and the DPFU. When it is agreed that payment is appropriate, contractors desiring to pay restitution or make good faith reimbursements are instructed to provide a check to the AIG-CIPO made payable to "the Treasurer of the United States."

b. Other Required Coordination - The Civil Division, DOJ consults with the criminal prosecutor assigned to the matter, the AIG-CIPO, and the suspension and debarment official, and determines whether immediate payment by the contractor would be in the Government's best interests with respect to its potential civil remedies.

c. Requirements Affecting Good Faith Reimbursements - When determined that an unsolicited payment will be accepted or a payment will be solicited and accepted, the acceptance is conditioned on a written agreement with the contractor that provides:

(1) acceptance of the payment does not constitute the Government's agreement as to the contractor's ultimate civil or criminal liability for the matter(s) disclosed, and

(2) acceptance shall not prejudice the Government's right to obtain additional damages, fines, and penalties for the matter(s) disclosed.

19. Removal of a Matter from the DoD Voluntary Disclosure Program

a. Reason for Removal - The AIG-CIPO may remove a matter from the DoD Voluntary Disclosure Program at any time during the verification process if:

(1) the disclosure is determined not to meet the Program requirements as set forth in the Deputy Secretary of Defense letter of July 24, 1986, or

(2) the contractor has violated the terms of the signed XYZ Agreement.

b. Notice of Removal - Prior to removing a matter from the Voluntary Disclosure Program, the AIG-CIPO will notify the contractor in writing of the proposed decision to remove the matter, and may provide the contractor an opportunity to respond (Appendix J). A copy of the letter is sent to all DCIOs, suspension and debarment authorities, the DPFU, the Civil Division, DOJ, and the DCAA. The decision to remove is at the sole discretion of the AIG-CIPO.

20. Case Completion

a. Records Required - A matter administered under the DoD Voluntary Disclosure Program is closed when the following documents have been provided to the AIG-CIPO:

(1) Notification by the designated DCIO(s) that both the audit and investigation are completed and the matter is closed. The notification identifies the DCAA final dollar impact determination to the Government, the final settlement, and the manner in which the losses were recovered or otherwise resolved.

(2) A letter from the DPFU either confirming the declination of criminal prosecution or indicating the results of any prosecutive actions taken.

(3) A letter from the Civil Division, DOJ, declining civil litigation or indicating the results of civil litigation or settlements.

(4) A letter from the DPFU indicating the results of any prosecutive actions or settlements if the Antitrust Division, DOJ, is involved in the investigation, or a U.S. Attorney has reviewed the matter for potential antitrust violations.

(5) A letter from the designated suspension and debarment authority advising the AIG-CIPO in writing of any action taken or to be taken as to suspension or debarment of the contractor or persons within the contractor's organization.

b. Notification that the Matter is Closed - The AIG-CIPO notifies the DoD contractor in writing that the matter(s) administered under the Voluntary Disclosure Program is closed when the appropriate documents mentioned in paragraph C.20.a.(1) through (5) are received (Appendix K).

APPENDIX A



THE DEPUTY SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

24 JUL 1986

Dear :

During the past few years, public and congressional interest in the Department of Defense management of its programs and operations has remained intense. This is nowhere more true than in the acquisition area. These issues continue to command our personal attention and involvement. Many of the problems in the acquisition area came to light because of audits and investigations conducted by the Department of Defense. We are committed to detecting and eliminating inefficiency and improper practices in our acquisition process; we believe that most Defense contractors have institutional commitments to these same goals.

To demonstrate this commitment, a number of major Defense contractors have adopted a policy of voluntarily disclosing problems affecting their corporate contractual relationship with the Department of Defense. These disclosures are made by the contractor, without an advance agreement regarding possible Department of Defense resolution of the matter. The contractors understand the Department's view that early voluntary disclosure, coupled with full cooperation and complete access to necessary records, are strong indications of an attitude of contractor integrity even in the wake of disclosures of potential criminal liability. We will consider such cooperation as an important factor in any decisions that the Department takes in the matter.

I encourage you to consider adopting a policy of voluntary disclosure as a central part of your corporate integrity program. Matters not involving potential criminal issues should be presented to the appropriate contracting officer or Defense Contract Audit Agency auditor. Matters involving potential criminal or civil fraud issues should be directed to the Deputy Inspector General, Department of Defense.

35052

A description of the Department of Defense program for voluntary disclosures is enclosed herewith for your consideration.

I believe that your corporate commitment to complete and timely disclosures of irregularities, regardless of their magnitude, is essential to increasing confidence in our ability to provide for the national defense effectively and efficiently.

Sincerely,



William H. Taft, IV

Enclosure

(Identical letters sent to the attached
Defense contractors)

Department of Defense Program for Voluntary
Disclosures of Possible Fraud by
Defense Contractors

Background

Officials within the Department of Defense (DoD) have been approached by a number of contractors to determine the conditions and agreements that might be structured with the Government if a contractor sought to disclose voluntarily information that might expose the contractor to liability under Federal statutes relating to criminal and civil fraud. From the Department's perspective, the voluntary disclosure of information otherwise unknown to the Government, and contractor cooperation in an ensuing investigation, offers a number of significant advantages:

- o the Government is likely to recoup losses of which it might otherwise be unaware;
- o limited detection assets within the Government are augmented by contractor resources;
- o consideration of appropriate remedies can be expedited by both DoD and Department of Justice when adversarial tensions are relaxed;
- o voluntary disclosure and cooperation are indicators of contractor integrity; and
- o contractors engaging in voluntary disclosure are more likely to institute corrective actions to prevent recurrence of disclosed problems.

Requirements on Contractors

Department of Defense recognition of a contractor as a "volunteer" will depend on four key factors:

1. The disclosure must not be triggered by the contractor's recognition that the underlying facts are about to be discovered by the Government through audit, investigation, or contract administration efforts or reported to the Government by third parties.
2. The disclosure must be on behalf of the business entity, in contrast to admissions by individual officials or employees.

3. Prompt and complete corrective action, including disciplinary action and restitution to the Government where appropriate, must be taken by the contractor in response to the matters disclosed.

4. After disclosure, the contractor must cooperate fully with the Government in any ensuing investigation or audit.

Defining DoD expectations of "cooperation" in any situation will depend on the individual facts or circumstances underlying the disclosure. However, DoD may enter into a written agreement with any contractor seeking to make a voluntary disclosure where such an agreement will facilitate follow-on action without improperly limiting the responsibilities of the Government. This agreement, which may be coordinated with the Department of Justice, will describe the types of documents and evidence to be provided to DoD and will resolve any issues related to interviews, privileges, or other legal concerns which may affect the DoD ability to obtain all relevant facts in a timely manner.

Department of Defense Actions

If a contractor is recognized as a "volunteer" based on the preceding criteria, the DoD is prepared to undertake the following:

1. Identify one of the Military Departments or the Defense Logistics Agency as the cognizant DoD component to represent DoD for suspension/debarment purposes, i.e., to assess contractor integrity in light of the disclosures. Early identification of the appropriate DoD component will permit the contractor, from the outset of its cooperation, to provide relevant information relating to contractor integrity and management controls, e.g., internal controls, corrective measures, or disciplinary action taken as a result of the information disclosed.

2. The DoD, through the Office of the Inspector General and in cooperation with the Department of Justice, will seek to expedite the completion of any investigation and audit conducted in response to a voluntary disclosure, thereby minimizing the period of time necessary for identification of remedies deemed appropriate by the Government.

3. Advise the Department of Justice of the complete nature of the voluntary disclosure, the extent of contractor cooperation and the types of corrective action instituted by the contractor. As always, any determinations of appropriate criminal and civil fraud sanctions will be the ultimate prerogative of the Department of Justice.

Commencing a Voluntary Disclosure

Since initial judgments as to appropriate investigative and audit resources will be necessary in any voluntary disclosure involving possible fraud, the initial contact with the DoD on fraud-related disclosures should be with the Office of the Inspector General.

While the Office of the Inspector General will be the initial point of contact for fraud-related disclosures, other DoD components are expected to be advised or involved as circumstances warrant. Besides the Office of General Counsel, DoD, and the appropriate suspension/debarment authority, other DoD components that expectedly would be advised, or involved, in voluntary disclosures are the Office of the Assistant Secretary of Defense (Acquisition and Logistics) and the Defense Contract Audit Agency.

The Office of the Inspector General element that will serve as the initial point of contact is:

Assistant Inspector General for Criminal Investigations
Policy and Oversight
400 Army Navy Drive
Room 723
Arlington, Virginia 22202
Telephone: (703) 604-8711



THE DEPUTY SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

AUG 10 1987

Dear :

As a result of Department of Defense encouragement to Defense contractors to adopt a voluntary disclosure policy as one aspect of corporate self-governance programs, several issues have arisen which merit comment.

Does the Department of Defense require disclosure and self-investigation?

Except for the requirement contained in the 1986 amendments to the Antikickback Act, our position is that we encourage disclosure as a manifestation of general corporate integrity and as part of contractor self-governance programs. Consistent with recommendations of the Packard Commission and the Defense Industry Initiatives, we intend to encourage voluntary disclosure without legally or contractually mandating them. Accordingly, the decision to conduct an internal investigation of a matter disclosed to the Department of Defense is within the sole discretion of the contractor and is not required under our program of encouragement. While we believe that a contractor's internal inquiry will likely expedite resolution of the matter, we are prepared to conduct independent inquiries of all disclosed matters regardless of whether the contractor has performed its own internal investigation.

When may a contractor making a voluntary disclosure obtain a formal opinion regarding suspension and debarment?

When a voluntary disclosure involving possible fraud is made, a final determination by the Department of Defense regarding suspension and debarment will include consideration of the Government's completed investigation to verify the disclosure. Therefore, the Department of Defense will not initiate suspension or debarment based on a voluntary disclosure prior to verification of the disclosed facts. Of course, this policy would not apply if it becomes apparent that

a contractor has acted in bad faith in making a disclosure, as for example by knowingly failing to disclose relevant facts or by concealing other unlawful acts.

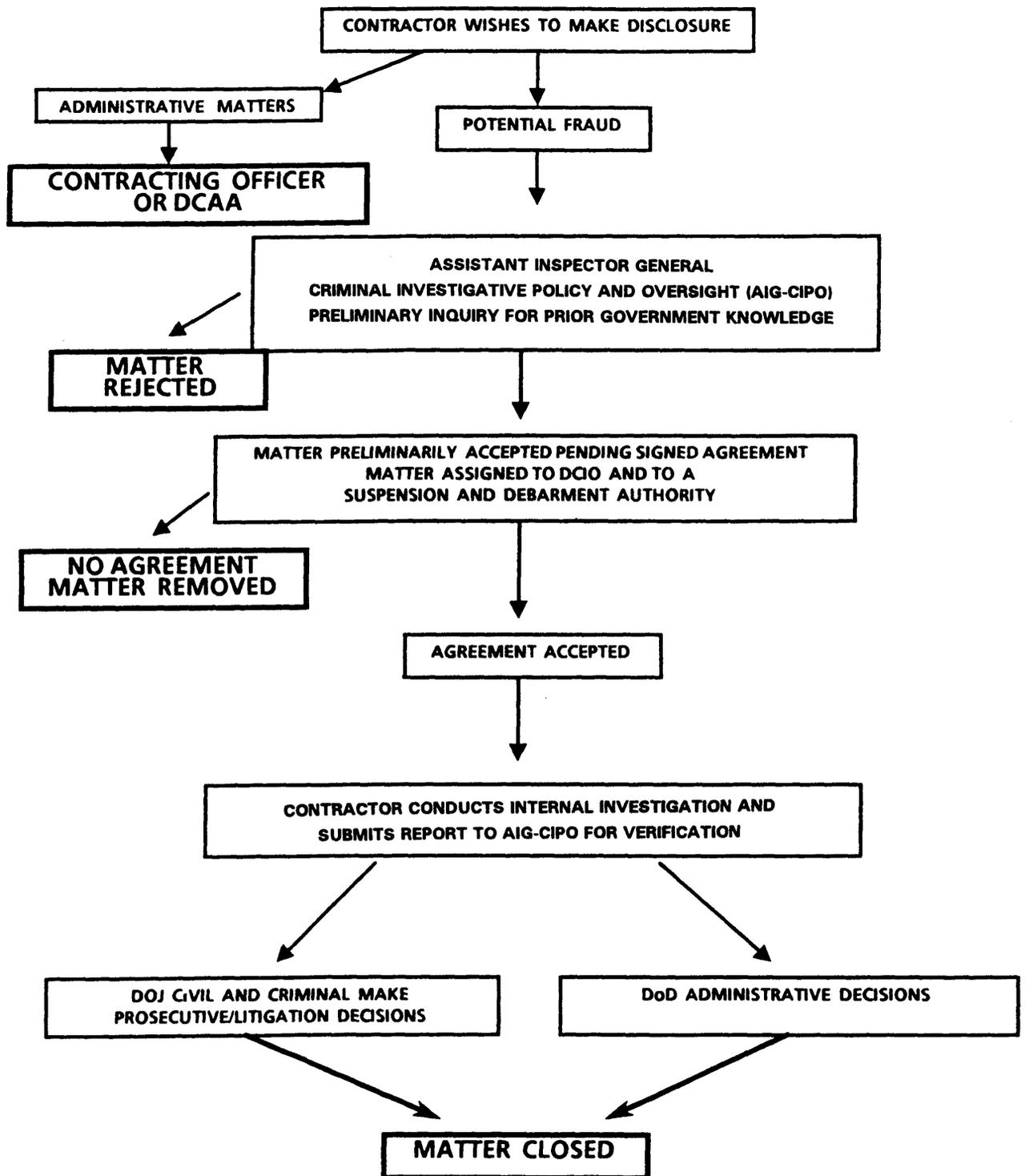
Will the Department of Defense recognize contractor cooperation in Department of Defense investigations not resulting from voluntary disclosures?

We realize that even with the most comprehensive self-governance programs, contractors may not detect every matter which adversely impacts on their business relationships with the Department of Defense. The Government likely will continue to identify contract-related problems through its audit and investigative operations. We encourage contractors committed to self-governance to cooperate in the Department of Defense-initiated investigations and to institute corrective and remedial measures as they become appropriate. We will ensure that determinations regarding suspension and debarment reflect consideration of the contractor's achievements in ensuring corporate integrity regardless of whether a particular case arises from a voluntary disclosure by the contractor or from another source. In addition, the Department of Defense will provide the Department of Justice with appropriate information concerning the effectiveness of contractor cooperation, corrective action and self-governance in the specific matter, as well as in general.

We continue to believe that a commitment by contractors to effective programs of self-governance, including disclosure, is vital to the Department of Defense.

Sincerely,

William H. Taft, IV



APPENDIX C

Revised 5/5/89
(Updated 2/1/93)

AGREEMENT BETWEEN

XYZ COMPANY

AND

INSPECTOR GENERAL, DEPARTMENT OF DEFENSE

Pursuant to this Agreement executed by and between XYZ Corporation (hereafter the "Company") and the Inspector General of the Department of Defense (hereafter the "IG-DoD"):

WHEREAS, the Company informed the IG-DoD on (date) that it is voluntarily disclosing information concerning (subject _____); and

WHEREAS, the Company asserts that this disclosure is not triggered by the Company's recognition that the underlying facts were about to be discovered by the Government through audit, investigation, or contract administration efforts or reported to the Government by third parties; and

WHEREAS, this disclosure is made solely on behalf of the business entity; and

WHEREAS, this disclosure is made at the initiative of the Company to demonstrate its commitment to corporate integrity and self governance; and

WHEREAS, the United States Government has made no representations regarding disposition of this matter other

than those previously made in the July 24, 1986 and August 10, 1987 letters of Deputy Secretary of Defense Taft (with attachments), and the guidance set forth in the July 17, 1987 Department of Justice (DOJ) Guidelines (hereafter the "DOJ Guidelines") regarding the Voluntary Disclosure Program (attached); and

WHEREAS, the Company understands that continued participation in the Voluntary Disclosure program is conditioned on the Company cooperating fully with the Government in any audit or investigation resulting from this disclosure; and

WHEREAS, a Military Department or the Defense Logistics Agency will be assigned lead agency responsibility for any suspension or debarment determination resulting from information in this disclosure; and

WHEREAS, the Defense Procurement Fraud Unit (hereafter, the "Unit") in the Fraud Section, Criminal Division, Department of Justice, is the contact point in the DOJ to oversee voluntary disclosure matters and to determine whether there is specific credible evidence suggesting prosecutable violations of federal laws; and

WHEREAS, the Company understands that, at the conclusion of the Government's verification investigation, the prosecutive decision made by the Defense Procurement Fraud Unit, or by the United States Attorney's office with

the concurrence of the Unit, to which a voluntary disclosure matter has been referred, shall be based, in part, upon complete, candid and timely disclosure; and the degree, extent, quality and timeliness of cooperation as more fully set forth in the July 17, 1987 DOJ Guidelines; and

WHEREAS, the Company understands that the Commercial Litigation Branch of the Civil Division will assess the matter to determine whether violations of the False Claims Act and related common law theories are apparent and initiate such action as may be appropriate based on its conclusions;

WHEREAS, the Company and the IG-DoD desire to resolve the matters set forth in this disclosure in a timely manner; and

WHEREAS, the persons executing this Agreement are authorized by their respective parties to execute the Agreement on their behalf;

NOW THEREFORE, in consideration of the following covenants, the Company and the IG-DoD agree as follows:

A. Disclosure to the Government by the Company of Results of its Internal Investigation

1. The Company shall determine whether an internal investigation will be conducted. It is understood that any internal investigation is the result of the Company's independent decision to conduct the internal investigation

for its own purposes and not at the direction of the Government.

2. If the Company conducts an internal investigation, the Company shall determine if it will submit to the IG-DoD a written report describing the results of the Company's internal investigation. The Company shall notify the IG-DoD within ten days of the IG-DoD's execution of this agreement whether a written report will be provided.

3. Notwithstanding any other provision in this agreement, the Company shall do the following:

a) if it conducts an internal investigation, and whether or not it submits a report to the Government pursuant to paragraph A.2., above, determine the cost impact to the Government resulting from the matters disclosed, and submit to the Government a good faith statement of the cost impact and any supporting audit reports, auditing work papers, exhibits and all analytical documents; and

b) if it submits a written report pursuant to paragraph A.2., above, include in the report a list of all individuals interviewed and the subject matter of each interview.

4. If the Company notifies the IG-DoD that it will provide a written report, the IG-DoD will allow the Company a reasonable period of time to conduct an internal

investigation and to provide the written report before the Government commences its investigation. The written report should be submitted within 60 days of the initial disclosure. If the Company cannot complete its written report within 60 days, the Company shall request an extension of time from IG-DoD. The IG-DoD will determine if and on what basis an interim report shall be provided. The Government reserves the right to conduct, at any time, its own investigation of a matter which is or may become the subject of a voluntary disclosure.

5. In order to expedite the resolution of this matter, in addition to the material described in paragraph A.3, above, which shall be produced:

a. The report should include or have attached thereto, the following:

(1) the information and material encompassed by the Key Elements in contractor Voluntary Disclosures Related to Fraud, which are attached;

(2) any additional audit reports, auditing work papers, supporting exhibits, and all analytical documents;

(3) a detailed description and chronology of the investigative steps taken in connection with the Company's inquiry into the matter disclosed, including the following:

(a) a description of the position in the Company currently and at the time of the matter disclosed as to all individuals interviewed:

(b) a statement of each occasion on which individuals were interviewed;

(c) a description of files, documents and records reviewed;

(d) a summary of auditing activity undertaken, and a summary of the appropriate documents in support of the cost impact determination, which documents and information in support of the cost impact determination shall be produced pursuant to paragraph A.3., above;

(4) a detailed statement of the facts, including the identity and role of employees involved in the matter disclosed.

b. If, after reviewing the Company's report and supporting materials, the DOJ or IG-DoD believes that it is necessary that the Government obtain further details beyond that provided in the report and supporting materials, concerning information provided by any individual interviewed by the Company on any occasion, or concerning any other aspect of the report, it shall so advise the

Company and give the Company the opportunity to promptly provide supplemental information.

c. The Company understands, in accordance with the DOJ Voluntary Disclosure Guidelines, that its declination to provide the supplemental information may affect DOJ's ability to verify the disclosure and DOJ's evaluation of the Company's cooperation.

6. The Company contends that the attorney-client privilege and the attorney work-product privilege may attach to certain information, documents, communications, and notes, memoranda, recordings, or detailed descriptions of interviews, whether or not voluntarily submitted in connection with this disclosure or in connection with the submission of any of the supplemental information. The Company presently intends to preserve these privileges and the Government recognizes that they may assert them, to the extent they may exist. The Government reserves the right to agree or disagree with the asserted applicability of these privileges in any given instance. The Government will not contend that the Company's production of the report and its underlying documents, or the furnishing of additional information relating to this disclosure will constitute a waiver of the attorney-client and work-product privileges as may be applicable.

7. The report and other information disclosed shall be used by the Government as it deems appropriate in any criminal, civil, administrative or contractual proceedings arising out of disclosed or related matters, subject to any legal objection to that use, otherwise available in the particular proceeding, asserted by the Company and subject to the restrictions in use in criminal and civil proceedings set forth in paragraph A.8 below.

8. The Department of Justice agrees that the report will not be used as an admission by a party-opponent, who is the disclosing Company, or subsidiary or business unit thereof, in any criminal or civil proceeding arising out of the disclosure or related matters; except, said report can be used as authorized by the Federal Rules of Evidence in a prosecution for false statements based upon the contents of the report, obstruction of justice, misprision of a felony, or conspiracy relating thereto. As used herein, report shall mean solely the narrative summary submitted by the Company. Any attached documents, audit work papers, supporting exhibits, analytical documents and notes, memoranda or recordings of interviews may be used by the Government in accordance with the Federal Rules of Evidence. The Department of Justice may make derivative use of the report and may use the report for impeachment purposes in any criminal or civil proceeding against the Company. The

Government may make any use of the report it deems appropriate in any criminal, civil, or administrative matter against an individual.

9. The Company recognizes that any report and other information disclosed to the Government will be subject to verification audit and investigation. The verification will be focused on the matters disclosed by the Company and will include the quantification of Government losses. Unrelated fraud allegations developed during the verification process may, at the Government's option, be pursued by the initiation of an independent audit or investigation. Such allegations shall not be treated as part of the Voluntary Disclosure Program without prior coordination with the Assistant Inspector General for Criminal Investigative Policy and Oversight.

B. Cooperation in Government's Investigation

The Company agrees to cooperate with the Government's investigation as follows:

1. The Company shall provide the Government, consistent with paragraphs A.5 and A.6, access to and copies of all documents and information, not previously provided, which the Government might deem to be relevant. The Company shall produce necessary records without issuance of subpoenas or other compulsory process by the Government.

The parties may agree that the production of records be made pursuant to the issuance of a subpoena.

2. Notwithstanding paragraph B.1, above, the Government reserves the right to seek compulsory production of Company information relating to this disclosure pursuant to any other means, including the issuance of Inspector General subpoenas, grand jury subpoenas, and civil process, if necessary to the Government's investigation or resolution of issues arising therein. The Company reserves the right to assert any valid legal objection to such process.

3. If documents deemed necessary to the Government's investigation or resolution of issues related to the Company's disclosure are not in the possession, custody or control of the Company, the Company will seek to identify the location of such documents not in its possession or control, and will take such actions as may be appropriate in assisting the Government to obtain such documents.

4. The Company shall arrange for a Corporate point of contact for the purpose of addressing matters arising under this Agreement.

5. The Company shall provide such technical assistance as the Government may reasonably request, including assistance in audit, contracting, financial management, computer analysis and technical areas.

6. The Government may elect to conduct employee interviews relating to the subject matter of the disclosure. The Company shall, at the Government's option, provide appropriate office space at its facilities, and shall allow its employees to attend these interviews. The Government reserves the right to conduct interviews other than at the Company facility. Company management shall not attend these interviews. Company counsel shall not attend these interviews unless requested to do so by the Government or by the employee. The Company shall not compel or require the employee to have Company counsel present. If the employee elects to have Company counsel present in a non-representational capacity, the Government reserves the right not to conduct the interviews, or to ensure that the employee's decision to have the Company's counsel present has not been mandated or unduly influenced by Company policy, procedure, or practice. By this paragraph, neither the Company nor the Government intends to limit employees' rights to decline to be interviewed, to obtain legal counsel of their own selection at the expense of the Company or to be accompanied by such counsel at any interviews conducted by the Government with respect to this matter. If the employee elects to be represented by Company counsel and to have Company counsel present, the Government reserves the right to ensure that no conflict-of-interest exists in the

representation of the company and the employee. If the Government is not satisfied that conflict-free counsel is present, it may take appropriate action, including but not limited to, not conducting the interview, requesting independent counsel or ensuring that there is an appropriate waiver of conflict-free counsel from each employee.

C. Restrictions on Department of Defense Disclosure

1. The Department of Defense, to the extent permitted by law and regulations, will safeguard and treat information obtained pursuant to this Agreement as confidential where the information has been marked "confidential" or "proprietary" by the Company. To the extent permitted by law and regulations, such information will not be released by the Department of Defense to the public pursuant to a Freedom of Information Act (FOIA) request, 5 U.S.C. 552 et. seq., without prior notification to the Company.

2. The Government may transfer documents provided by the Company to any department or agency within the Executive Branch if the information relates to matters within the organization's jurisdiction.

3. When the supporting documents furnished by the Company pursuant to this agreement are no longer needed, the Government agrees to return the originals to the Company, if requested by the Company.

IN WITNESS WHEREOF, the Company and the IG-DoD have caused this Agreement to be executed by their duly authorized representatives.

COMPANY

FOR THE DEPARTMENT OF DEFENSE

Assistant Inspector General
for Criminal Investigative
Policy and Oversight

DATE: _____

DATE: _____

CONCUR:

FOR THE DEPARTMENT OF JUSTICE

Chief, Defense Procurement
Fraud Unit

DATE: _____

Memorandum



Subject DEPARTMENT OF JUSTICE GUIDELINES RE: DEPARTMENT OF DEFENSE VOLUNTARY DISCLOSURE PROGRAM	Date JUL 17 1987
To All United States Attorneys	From  William C. Hendricks III Chief, Fraud Section Criminal Division

On behalf of William F. Weld, Assistant Attorney General Criminal Division, I am providing each of you with five advance copies of this Department's guidelines on referral, investigation and prosecution of Department of Defense cases involving contractors who have voluntarily disclosed procurement-related problems. These guidelines will be published for inclusion in the United States Attorneys' Manual in the near future. Should more copies be needed for distribution within your office and its branches, please contact the Defense Procurement Fraud Unit within this office at (FTS) 786-4600.

DEPARTMENT OF JUSTICE GUIDELINES REGARDING
DEPARTMENT OF DEFENSE VOLUNTARY DISCLOSURE PROGRAM

Introduction

In July 1986, the Department of Defense (DOD) initiated the Volunteer Disclosure Program designed to encourage self-policing and voluntary disclosure by defense contractors of procurement related problems. These guidelines are designed to describe the process relating to the referral, investigation and prosecution of cases generated in DOD's Program. More complete information is available through the Fraud Section of the Criminal Division, Department of Justice (DOJ).

Requirements on Contractors

The DOD's recognition of a contractor as a "volunteer" depends on four key factors:

A. Disclosure must not be triggered when the underlying facts are about to be discovered by the government through audit, investigation or other means.

B. Disclosure must be on behalf of the business entity; benefits of voluntary disclosure do not ensure to individuals but only to the corporation.

C. Prompt and complete corrective action, including disciplinary action and restitution to the government, must be taken by the contractor in response to the matters disclosed.

D. After disclosure the contractor must cooperate fully in any ensuing investigation or audit.

Department of Defense Actions

The DOD has designated its initial contact point for its program as the Office of the Inspector General. If a contractor is recognized as a volunteer based on the preceding criteria, the DOD will undertake the following:

A. Identify one of the Military Departments or the Defense Logistics Agency as the cognizant DOD component to represent the DOD for suspension/debarment purposes, i.e., to assess contractor integrity in light of the disclosures.

B. Seek through the DOD Office of the Inspector General (OIG) and in cooperation with the DOJ to resolve any investigation and audit conducted in response to a voluntary disclosure at the earliest time, consistent with other workload demands.

C. Advise the DOJ of the complete nature of the voluntary disclosure, the extent of contractor cooperation and the types of corrective action instituted by the contractor. The DOD recognizes that determination of criminal and civil sanctions is always the ultimate prerogative of the DOJ.

Law Enforcement Objectives

The DOJ objective in the defense procurement fraud area is to bring prosecutions that will have a deterrent effect while at the same time make prosecutive judgments that encourage contractors to initiate compliance programs. Deterrence is a significant factor in prosecuting corporations, particularly defense contractors. Through prosecution, conviction and punishment, other contractors are put on notice of what constitutes illegal activity and are encouraged, where appropriate, to modify their behavior to conduct business in a non-criminal manner. Prosecution creates an incentive for management to establish both preventive measures and clear standards of right and wrong for their employees.

On the other hand, contractors that make serious and responsible efforts to comply with the law and to disclose misconduct promptly and forthrightly should not be discouraged from those practices by prosecutive policies. In some situations, a weighing of the factors for and against prosecution may result in a decision that law enforcement objectives would not be furthered by prosecution of contractors that have made serious and responsible efforts to comply with the law.

Department of Justice Procedures

Fraud Section's Defense Procurement Fraud Unit

The Fraud Sections' Defense Procurement Fraud Unit (Unit) is the contact point in the DOJ to oversee voluntary disclosure matters. The responsibilities of the Unit include the following:

A. The Unit will review all referrals made to the DOJ by the OIG in connection with the Voluntary Disclosure Program.

B. Upon receipt of the referral from the DOD, the Unit will conduct or refer to an appropriate United States Attorney to conduct whatever preliminary inquiry is deemed necessary to determine whether there is specific credible evidence suggesting prosecutable violations of federal laws.

C. If the Unit determines that specific credible evidence of criminal conduct does not exist, the preliminary inquiry will be closed. The closing of a preliminary inquiry does not necessarily constitute a criminal declination. An inquiry may be reinstated by the Unit at any time for any reason it deems to be appropriate.

D. If the Unit determines that specific credible evidence of criminal conduct exists, the referred matter will be investigated.

E. Matters involving an impact on the government of \$100,000 or more or where the fraud had posed a substantial threat to safety or our National Security will be retained by the Unit or referred to an appropriate United States Attorney's office. The Unit will advise the relevant United States Attorney(s) of all matters, whether or not retained by the Unit. Cases referred under this paragraph to United States Attorney(s) will be monitored by the Unit on two bases: (1) for periodic status reports provided by the United States Attorneys and (2) for review of proposed prosecutions. (See United States Attorneys' Responsibilities below.)

F. All other matters will be referred to an appropriate United States Attorney's office for prosecutive decision.

United States Attorneys' Responsibilities

The United States Attorneys' offices will periodically notify the Unit of the status of investigations (see E and F above) of corporations referred to them that have participated in the DOD Voluntary Disclosure Program. Prior to any decision to prosecute or to decline prosecution of a volunteer corporation, United States Attorneys' offices will notify and obtain the concurrence of the Unit (providing a summary of the evidence,

proposed theories of criminal liability and proposed charges in the case).

Criteria for Prosecuting Volunteer Corporations

Where the law and evidence would otherwise be sufficient for prosecution, the following factors should be included among those considered, on a case by case basis, in determining whether to prosecute a volunteer corporation:

A. Voluntary Disclosure

A candid and complete disclosure will be a factor in the prosecutive decision. In this regard consideration should be given to whether the contractor came forward promptly after discovering the illegal activity. Consideration should also be given to the quantity and quality of information provided by the corporation.

B. Contractor's Preventive Measures

The existence of a compliance program is a significant factor. It must include preventive measures and be in place prior to commencement of the illegal activity.

Compliance programs may vary among contractors but the following questions should be asked in evaluating any program: Did the contractor have a strong institutional policy against the type of illegal activity which occurred? Had reasonable safeguards been developed and implemented to prevent the illegal

activity from occurring? Such safeguards might include, but not necessarily be limited to, training, fraud awareness programs, creation of ombudsmen, installation of employee hotlines, etc. Did the contractor have regular procedures, such as compliance and internal audit reviews, to evaluate, to detect and to remedy the circumstances that led to the commission of the fraud? Was the corporation's program more than a mere pronouncement of the importance of complying with the law?

Investigations often disclose that the decision to engage in improper activity resulted from the contractor delegating to a manager the responsibility to make entirely discretionary determinations regarding allocating costs to government contracts. The contractor then argues that actions involving significant costs to the government were done by managers without knowledge or advice of others. One measure of a meaningful compliance program is an effective mechanism to permit complex or questionable contractual or accounting decisions to be brought to the attention of higher managers or to those with expertise (accountants, attorneys, contract specialists) for review and approval as to the propriety of managers' actions.

C. Extent of Fraud

The extent of the fraud may be measured in several ways. It may be determined by the financial benefit to the corporation and the corresponding dollar loss to the government. It may also be determined by the consequential harm to the government as a

result of corrective actions that must be taken. Where the government has been sold a defective product, for example, the cost of locating, removing and installing a new part may be much greater than the contract amount.

D. Pervasiveness of the Fraud

Pervasive fraud may indicate systemic corporate participation in or condonation of criminal behavior. It may also indicate the lack of a meaningful compliance program. The measurement of this factor may include, but should not be limited to, the number of corporate employees participating in the criminal activities, the number of corporate departments involved, the number of transactions and the duration of the criminal conduct.

E. Level of Corporate Employee

Where upper-level corporate managers commit criminal conduct, the corporation may be said to have a higher degree of criminal responsibility. The prosecution of the corporation may force those in positions of higher corporate responsibility to act to prevent recurrence of illegal conduct by others.

If meaningful preventive measures had been taken by the corporation and if only lower-level employees participated in the illegal activities, the law enforcement objectives of prosecuting

the corporation may, in some cases, be outweighed by the inhibiting effect on future corporate compliance with the DOD Voluntary Disclosure Program.

F. Cooperation by Corporation

The degree and timeliness of corporate cooperation should be considered. Any corporation that holds itself out as a volunteer should be prepared to cooperate with the government in making the results of its investigation available to investigators and prosecutors. In addition to providing the government with the results of its investigation, cooperation should also be measured by the extent and quality of corporate assistance in the government's investigation.

G. Remedial Action

Effective remedial action is crucial to any compliance program. For example, did the company have an effective system of discipline for employees who violate company policies for legal and ethical conduct? Did the disciplinary system establish an awareness in other employees that criminal conduct would not be condoned?

In determining whether the disciplinary system is meaningful, the employee's financial compensation should also be reviewed. In certain instances, although some disciplinary action was taken, financial bonuses or incentive compensation for

the culpable employees was not affected. Such a result would not be viewed as a meaningful remedial action program.

In addition to disciplinary action, the corporation should take remedial action in other ways. It should institute measures to prevent criminal conduct from occurring in the future by strengthening weaknesses in existing compliance programs and by correcting accounting deficiencies. It should also be willing to make restitution or otherwise make the United States whole for any harm caused by the criminal actions.

H. Culpable Corporate Employees

The voluntary disclosure program relates only to the potential prosecution of the corporate entity and does not affect prosecutorial decisions regarding senior management or other employees or individuals.

I. Independence of the DOJ Determination

The DOJ will make prosecutive and other decisions after giving consideration to the criteria described above. These decisions, however, will be independent of any related determinations made by the DOD.

The above described criteria are provided to give guidance to United States Attorneys and do not establish any rights for corporations being reviewed under the Voluntary Disclosure program.

Legal Liability of Corporations

Vicarious Liability of Corporations

There is no federal statute defining corporate criminal liability. The development of principles governing such liability is almost exclusively through case law. Criminal liability based upon the doctrine of respondeat superior has been the rule in federal courts since the Supreme Court decided New York Central Hudson River Railroad Co. v. United States, 212 U.S. 481, 493-94 (S.D.N.Y. 1909). Under this doctrine a corporation may be held vicariously liable for the criminal acts of its agents acting within the scope of their employment if the agents are acting on behalf of the corporation. United States v. Automated Medical Laboratories Inc., 770 F.2d 399, 407 (4th Cir. 1985); United States v. Basic Construction Co., 711 F.2d 570-73 (4th Cir. 1983); United States v. Demauro, 581 F.2d 50, 53 (2d Cir. 1978); United States v. Hilton Hotels Corporation, 467 F.2d 1000, 1004-1007 (9th Cir. 1972), cert. denied, 409 U.S. 1125 (1973); United States v. American Radiator & Standard Sanitary Corp., 433 F.2d 174, 204-05 (3rd Cir. 1970); Standard Oil Company of Texas v. United States, 307 F.2d 120, 127 (5th Cir. 1962).

Even though the employee acted outside the scope of his or her employment and without any purpose to benefit the corporation, the corporation may be held liable for adopting the criminal conduct by subsequent corporate action (or possibly inaction). Continental Baking Co. v. United States, 281 F.2d 137 (6th Cir. 1960).

Requirement of Intent to Benefit the Corporation

In order for the corporation to be liable for crimes involving a mental element it is necessary that the agent act with the intent to benefit the corporation. United States v. Lebar, 521 F. Supp. 203 (M.D. Pa. 1981), aff'd, 688 F.2d 826 (3rd Cir.), cert. denied, 103 S. Ct. 260 (1982); United States v. Hilton Hotels, supra, (Sherman Act antitrust violations); Standard Oil Co. of Texas v. United States, supra, (switching production among oil leases in violation of Hot Oil Act); United States v. Automated Medical Laboratories, Inc., supra, (false documents to FDA); United States v. Cincotta, 689 F.2d 238, 241-42 (1st Cir. 1983) (conspiracy to defraud, false claim, false statement); United States v. Gold, 743 F.2d 800, 822-23 (11th Cir. 1984) (medicare fraud).

Corporate Criminal Liability May Be Based on Actions of Low Level Employees

The doctrine of respondeat superior applies regardless of the status or level of the employee in the corporate structure. It ". . . is the function delegated to the corporate officer or agent which determines his power to engage the corporation in a criminal transaction." CIT Corp. v. United States, 150 F.2d 85, 89 (9th Cir. 1945).

Examples of cases where lower level employees have subjected the corporation to criminal liability include:

Salesmen - United States v. George Fish, 154 F.2d 798, 801 (2d Cir. 1946), cert. denied, 328 U.S. 869 (1946); United States v. Gibson Products, Inc., 426 F. Supp. 768 (S.D. Tex. 1976).

Clerical workers - United States v. Riss & Co., Inc., 262 F.2d 245 (8th Cir. 1958).

Truck drivers - United States v. Harry L. Young & Sons, 464 F.2d 1295 (10th Cir. 1972); Texas-Oklahoma Express, Inc. v. United States, 429 F.2d 100 (10th Cir. 1970).

Laborers - United States v. Dye Construction Co., 510 F.2d 78 (10th Cir. 1975).

Corporate Criminal Liability May Apply Even Though Actions of the Employee Are Against Corporate Policy and Contrary to Express Instruction

If an employee is acting within the scope of his employment, courts have held that the employee's conduct will bind the corporation even if his conduct was specifically forbidden by corporate instructions or policies and occurred despite a good faith effort by the corporation to prevent the crime. United States v. Hilton Hotels Corp., supra; United States v. Automated Medical Laboratories, Inc., supra; United States v. Basic Construction Co., supra; United States v. American Radiator and Standard Sanitary Corp., supra; United States v. Beusch, 596 F.2d 871, 878 (9th Cir. 1979).

Corporate Liability Extends to the Criminal Acts of Corporate Subsidiaries and Divisions

Corporate liability for the criminal acts of a subsidiary or division are governed by the same principles that apply to a corporation's liability for the acts of its employees. United States v. Wilshire Oil Co. of Texas, 427 F. 2d 969 (10th Cir. 1971), cert. denied, 400 U.S. 829 (1970); United States v. Ira S. Bushey & Sons, Inc., 363 F. Supp. 110, 119 (D. Vt.), aff'd, 487 F.2d 1393 (2d Cir. 1973), cert. denied, 417 U.S. 976 (1974).

Corporate Criminal Liability Applies Even Though No Individual Is Prosecuted

Although it is only the acts of individual corporate agents that can be asserted against the corporation in order to find corporate criminal liability, it is not necessary that the individual agent or employee be prosecuted in order to convict the corporation. United States v. Bank of New England, No. 86-1334 (1st Cir. June 10, 1987), United States v. General Motors Corp., 121 F.2d 376 (7th Cir. 1941), cert. denied, 314 U.S. 618 (1941). It is also not necessary to prove a specific employee acted criminally, only that some agent of the corporation committed the violation. United States v. American Stevedores, Inc., 310 F.2d 47, 48 (2d Cir. 1962), cert. denied, 83 S. Ct. 552 (1963).

Collective Knowledge

Under the doctrine of collective knowledge, the requisite knowledge need not be imputed to the corporation from a single

individual, but may be established by imputing to the corporation the aggregate or collective knowledge of the employees or agents as a group. Under this doctrine a corporation may be found guilty of a crime even though no single employee had been or could have been guilty of the crime. The doctrine has generally been limited to prosecutions under the regulatory provisions of the Interstate Commerce Act where a corporate defendant is deemed to have knowledge of a regulatory violation if the means were present by which the company could have detected infractions. United States v. T.I.M.E.-D.C. Inc., 381 F. Supp. 730, 740-41 (W.D. Va. 1974) (knowingly permitting ill truck drivers to operate a motor vehicle); United States v. Sawyer Transport, Inc., 337 F. Supp. 29, 30-31 (D. Minn. 1971), aff'd, 463 F.2d 175 (8th Cir. 1972) (maintaining false drivers' logs); Inland Freight Lines v. United States, 191 F.2d 313, 315 (10th Cir. 1951) (maintaining false drivers' logs); Steere Tank Lines, Inc. v. United States, 330 F.2d 719 (5th Cir. 1963) (maintaining false drivers' logs).

The collective knowledge doctrine has recently been applied to charges under the Currency Transaction Reporting Act at 31 U.S.C. §§5311-22 and Treasury Regulations promulgated pursuant to that Act for failure to file Currency Transaction Reports (CTRs) for customer currency transactions exceeding \$10,000. United States v. Bank of New England, supra.

"Corporations compartmentalize knowledge, subdividing the elements of specific duties and operations into smaller components. The aggregate of these components constitutes the corporation's knowledge of a particular operation. It is irrelevant whether employees administering one component of an operation know the specific activities of employees administering another aspect of the operation." United States v. Bank of New England, supra.

Proof of Willfulness

Willfulness entails a voluntary, intentional, and specific intent to disregard, to disobey the law with a bad purpose to violate the law. A jury cannot convict for accidental, mistaken or inadvertent acts or omissions. With respect to regulatory statutes, the Supreme Court has defined willfulness as a disregard for the governing statute and an indifference to its requirements. Trans World Airlines, Inc. v. Thurston, 469 U.S. 111 (1985). A willful failure to comply with the regulatory requirements can be proven by evidence of flagrant organizational indifference by a corporation to its obligations. United States v. Bank of New England, supra.

Civil False Claims Act

On the civil side, whether to pursue a case based upon the False Claims Act is governed by many of the same considerations outlined above. There are occasions, however, where it may be

KEY ELEMENTS IN CONTRACTOR VOLUNTARY DISCLOSURES RELATED TO FRAUD

In order for a voluntary disclosure of improper or illegal practices to be truly effective, and in order for the contractor and DoD to be completely assured that these practices have been fully identified and rectified, it is essential that any internal examination undertaken by the contractor addresses certain important issues. The contractor should be prepared to share information regarding its resolution of these issues as part of its disclosure to DoD.

A. Nature of the Improper or Illegal Practice

A full examination of the practice should be conducted to include:

1. Source of the practice (e.g., lack of internal controls; circumvention of corporate procedures or Government regulations)
2. Description of the practice, to include:
 - a. Corporate divisions affected.
 - b. Government contracts affected.
 - c. Detailed description as to how the practice arose and continued.
3. Identification of any potential fraud issues raised by the practice and relevant documentation.
4. Time period when the practice existed.
5. Identification of corporate officials and employees who knew of, encouraged or participated in the practice.
6. Estimate of the dollar impact of the practice on DoD and other Government agencies.

B. Contractor Response to the Improper or Illegal Practice

1. Description of how the practice was identified.
2. Description of contractor efforts to investigate and document the practice (e.g., use of internal or external legal and/or audit resources).

3. Description of actions by the contractor to halt the practice.

4. Description of contractor efforts to prevent a reoccurrence of the practice, (e.g., new accounting or internal control procedures, increased internal audit efforts, increased supervision by higher management, training).

5. Description of disciplinary action taken against corporate officials and employees who were viewed as culpable or negligent in the matter, or who were viewed as not having exercised proper management responsibility.

6. Description of appropriate notices, if applicable, provided to other Government agencies, (e.g., Securities and Exchange Commission and Internal Revenue Service).

C. Conclusion

1. List and description of supporting investigative, audit and legal information to be provided to the Government as part of voluntary disclosure, including reports of interviews, audits and audit working papers.

2. Assurance that contractor is willing to reimburse Government for any damages suffered, including restitution and payment of Government costs to resolve the matters disclosed.

3. Assurance of contractor's full cooperation with Government audit/investigative efforts to resolve contractor's voluntary disclosure information, to include access to corporate records, promises and personnel.



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202

(Criminal Investigations
Policy and Oversight)

SAMPLE

Mr. Brian Smith
General Counsel
ABC Corporation
333 James Plaza
Boston, MA 22394

Dear Mr. Smith:

This confirms receipt of your letter, dated April 3, 1988, disclosing potential cost mischarging by the ABC Corporation at its ABG Division in Boston, MA. The letter states the potential mischarging occurred between 1985 and 1987 on a Defense Logistics Agency-administered contract for cables used in the sky missile.

The letter also states that the disclosure was not triggered by concern that the matter or the facts underlying the disclosure were about to be discovered by the Government. Based on that information, the matter is being preliminarily accepted into the Voluntary Disclosure Program. I am enclosing a standard Voluntary Disclosure Agreement to be signed by an authorized director or officer of the corporation.

Participation in the Voluntary Disclosure Program is contingent on prompt execution of the standard Voluntary Disclosure Agreement. Continued participation in the Program is contingent on the ABC Corporation adhering to the provisions of the agreement. Please inform me within ten days whether a written report will be provided describing the results of your internal investigation. I further ask that you contact me prior to making any refunds, credits, or payments to the Government concerning the voluntary disclosure.

If you have any questions, please call me at (202) 694-1234.

Sincerely,

Assistant Inspector General for
Criminal Investigations Policy and Oversight

cc with enclosure:

Mr. Michael West, DOJ Criminal Division
Mr. Gordon Birch, DOJ Civil Division
Mr. John Henry, DCAA
Mr. Dave Bens, AFOSI
Mr. Gerald Banks, DLA

APPENDIX E



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202

(Criminal Investigations
Policy and Oversight)

Mr. Brian Smith
General Counsel
ABC Corporation
333 James Plaza
Boston, MA 22394

SAMPLE

Dear Mr. Smith:

The March 3, 1988 disclosure by the ABC Corporation regarding cost mischarging at its ABG Division has been reviewed. As part of the review, we discovered an ongoing Air Force Office of Special Investigations (AFOSI) investigation of the ABC Corporation at its ABG Division concerning cost mischarging which relates to the matter disclosed.

Based on our review, a determination has been made that the disclosure does not meet the requirements set forth in the Deputy Secretary of Defense letter of July 24, 1986. Nonetheless, the ABC Corporation is encouraged to cooperate in the audit and investigation. The corporation's cooperation is a factor which will be considered in the ultimate resolution of the matter.

I have notified the Defense Procurement Fraud Unit (DPFU), the Defense Contract Audit Agency (DCAA), the AFOSI, and the Defense Logistics Agency (DLA) of the matter and of the ABC Corporation commitment of cooperation.

If you have any questions, please call me at (202) 694-1234.

Sincerely,

Assistant Inspector General for
Criminal Investigation Policy and Oversight

cc: Mr. Michael West, DOJ Criminal Division
Mr. Gordon Birch, DOJ Civil Division
Mr. John Henry, DCAA
Mr. Dave Bens, AFOSI
Mr. Gerald Banks, DLA

APPENDIX F



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202

(Criminal Investigations
Policy and Oversight)

Mr. Brian Smith
General Counsel
ABC Corporation
333 James Plaza
Boston, MA 22394

SAMPLE

Dear Mr. Smith:

In our letter of May 18, 1988, the ABC Corporation was informed that one criteria for admission into the Voluntary Disclosure Program is prompt execution of the standard Voluntary Disclosure Agreement.

I have been informed that the ABC Corporation continues to seek changes to the standard agreement that are unacceptable to the Government. If the ABC Corporation is unwilling to accept the terms of the standard agreement within the next two weeks, the matter will be removed from the Voluntary Disclosure Program. If you have any questions, please call me at (202) 694-1234.

Sincerely,

Assistant Inspector General for
Criminal Investigations Policy and Oversight

cc: Mr. Michael West, DOJ Criminal Division
Mr. Gordon Birch, DOJ Civil Division
Mr. John Henry, DCAA
Mr. Dave Bens, AFOSI
Mr. Gerald Banks, DLA

APPENDIX G



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202

(Criminal Investigations
Policy and Oversight)

Mr. Brian Smith
General Counsel
ABC Corporation
333 James Plaza
Boston, MA 22394

SAMPLE

Dear Mr. Smith:

Enclosed is a fully executed copy of the ABC Corporation, ABG Division, Voluntary Disclosure Agreement. The matter is being assigned to the Air Force Office of Special Investigations (AFOSI) for investigative purposes. Your point of contact at the AFOSI is Mr. Dave Bens who may be reached at (202) 692-1029. The Defense Logistics Agency (DLA) is the assigned suspension and debarment authority. Your contact at the DLA is Mr. Gerald Banks who may be reached at (202) 474-6022.

You indicated in your letter of March 3, 1988, that you intend to submit a written report describing the results of your internal investigation. We ask that you submit the report within 60 days of the initial disclosure. Please coordinate with this office if a problem arises in meeting the schedule.

If you have any questions, please call me at (202) 694-1234.

Sincerely,

Assistant Inspector General for
Criminal Investigations Policy and Oversight

cc with enclosure:

Mr. Michael West, DOJ Criminal Division
Mr. Gordon Birch, DOJ Civil Division
Mr. John Henry, DCAA
Mr. Dave Bens, AFOSI
Mr. Gerald Banks, DLA

APPENDIX H



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202

(Criminal Investigations
Policy and Oversight)

Mr. Brian Smith
General Counsel
ABC Corporation
333 James Plaza
Boston, MA 22394

RAMDIE

Dear Mr. Smith:

This confirms receipt of the ABC Corporation final report of investigation concerning cost mischarging at its ABG Division in Boston, MA. I have forwarded copies of the report to the Air Force Office of Special Investigations, the Defense Logistics Agency, the Department of Justice, and the Defense Contract Audit Agency. If you have any questions, please call me at (202) 694-1234.

Sincerely,

Assistant Inspector General for
Criminal Investigations Policy and Oversight

cc with enclosure:

Mr. Michael West, DOJ Criminal Division
Mr. Gordon Birch, DOJ Civil Division
Mr. John Henry, DCAA
Mr. Dave Bens, AFOSI
Mr. Gerald Banks, DLA

APPENDIX I

VOLUNTARY DISCLOSURE NINETY-DAY
INVESTIGATIVE PROGRESS REPORT

SUBJECT	ABC CORPORATION
DIVISION	ABG Division
LOCATION	Boston MA
DCIO CASE NUMBER	884391829M231
CIPO CASE NUMBER	CIPO 076
DATE OPENED	1/23/86
FIELD OFFICE	Boston
GOVERNMENT ESTIMATED LOSS	\$1 million
CORPORATION ESTIMATED LOSS	\$750,000
MONIES RECOVERED TO-DATE	\$750,000

SAMPLE

The matter was brought as a voluntary disclosure to the AIG-CIPO on October 12, 1986 by the law firm of Daniels and Morris, located in Washington, D.C. Matter disclosed include two types of irregularities at the ABC Corporation's wholly owned subsidiary, ABG, Incorporated, located in Boston, MA.

The first involves payments to a number of vendors for goods that were never delivered to the ABG Division. The invoices were approved for payment by William Henderson, Manager for Administration, the second ranking executive at ABG until he was dismissed on November 3, 1986.

The materials were to be used in radar devices installed in the AA-Z helicopters sold to the Army between the years 1981 and 1985. The materials were in fact installed on commercial contracts. There is no evidence that the safety of existing helicopters has been compromised. The contracts were all fixed price contracts. The ABC Corporation auditors estimate the impact to the Government relating to the first allegation as \$250,000.

The second area under investigation concerns expense account abuses, primarily by Henderson and Barry Graft, Senior Vice President for Advertising. The ABC Corporation estimates the loss at \$500,000.

Henderson was discharged for cause following an internal investigation and his admission to the corporate attorneys of his false billings. Graft quit for unknown reasons prior to the initiation of the investigation. Graft has not been interviewed.

On January 23, 1987, the ABC Corporation sent its internal report of investigation concerning both matters to the AIG-CIPO; who in turn assigned the matter to the DCIS. The DCIS, in coordination with the USACIDC, opened an investigation into the matters based on the voluntary disclosure. On January 29, 1987, the DCAA, at the request of the DCIS, began its audit.

SAMPLE

UPDATES:

March 21, 1987

On March 6, 1987, a meeting was held between the ABC Corporation, the DPFU, the DCIS, the USACIDC, and the DCAA to discuss additional documents requested by DCIS. Interviews have been scheduled.

June 15, 1987

Fifteen interviews have been conducted, and the initial allegations in both matters have been substantiated. The DCAA has indicated that the Government losses may be \$500,000.

September 10, 1987

The ABC Corporation has submitted a check in the amount of \$750,000 to the contracting officer. Coordination was established with the Civil Division, Department of Justice. Copies of the check have been sent to the AIG-CIPO, the DCAA and DLA. The DCAA reviews have shown that materials were taken from the Apache program and used in commercial contracts, and the DCAA revised its loss impact estimate to \$1 million. The DCAA is continuing its audit into the personal expense matters. The ABC Corporation is fully cooperating and has submitted its followup interview notes held by outside counsel.

December 20, 1987

A former program manager has made additional allegations of labor mischarging outside the information contained in the initial disclosure. He estimates (neither documented nor substantiated) alleged losses to the Government in excess of \$5 million over five years, in addition to the matters disclosed by the ABC Corporation. The new allegations concern the YY missile program. The program manager has refused to discuss further his involvement without a grant of immunity. A determination has been made to investigate the new allegations concerning the YY program as a separate investigation. The ABC Corporation is still fully cooperating in the audit and investigation.

March 10, 1988

The DCAA audit is complete, with a cost impact to the Government of \$1 million on the two matters originally disclosed. The DPFU is considering prosecuting Henderson and Graft. No action will be taken by the DLA against either the ABC Corporation or the ABG Division concerning either suspension or debarment. Anticipate concluding all interviews by March 20, 1988 and the investigation by March 31, 1988.



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202

(Criminal Investigations
Policy and Oversight)

Mr. Brian Smith
General Counsel
ABC Corporation
333 James Plaza
Boston, MA 22394

SAMPLE

Dear Mr. Smith:

Repeated attempts to resolve differences regarding access to employees of the ABC Corporation by Government investigators has resulted in an impasse. This is contrary to the terms of the Voluntary Disclosure Agreement and the contractor requirements set forth in the Deputy Secretary of Defense letter of July 24, 1986. The matter is, therefore, being removed from the Voluntary Disclosure Program.

I have so notified the Defense Procurement Fraud Unit, the Defense Contract Audit Agency, the Air Force Office of Special Investigations, and the Defense Logistics Agency.

If you have any questions, please call me at (202) 694-1234.

Sincerely,

Assistant Inspector General for
Criminal Investigations Policy and Oversight

cc: Mr. Michael West, DOJ Criminal Division
Mr. Gordon Birch, DOJ Civil Division
Mr. John Henry, DCAA
Mr. Dave Bens, AFOSI
Mr. Gerald Banks, DLA

APPENDIX K



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202

(Criminal Investigations
Policy and Oversight)

Mr. Brian Smith
ABC, International
333 James Plaza
Boston, MA 22394

SAMPLE

Dear Mr. Smith:

I have been informed that the Government investigation of the ABC Corporation voluntary disclosure of cost mischarging at its ABG Division has been completed. I am, therefore, closing the matter under the Voluntary Disclosure Program. I wish to thank the ABC Corporation for its cooperation in the verification of the matters disclosed. If you have any questions, please call me at (202) 694-1234.

Sincerely,

Assistant Inspector General for
Criminal Investigation Policy and Oversight

cc: Mr. Michael West, DOJ Criminal Division
Mr. Gordon Birch, DOJ Civil Division
Mr. John Henry, DCAA
Mr. Dave Bens, AFOSI
Mr. Gerald Banks, DLA