

“Lies and More Lies”
Scenario Draft

Opening – Graphics and Music (News Headlines/Investigative Seals or Pictures with Music)

Actors

Agent 1 - Heather Hilton, Special Agent, Army Criminal Investigation Command
Agent 2 - Karen Spidell, Special Agent, Defense Criminal Investigative Service
Mr. Smith - Joe Bentz, Program Director, Army Audit Agency
Agency Fraud Counsel – Attorney David Gallagher, Army Audit Agency
Company Defense Attorney – Gerardo Lopez, Auditor, DoD IG (Script Name – Jose Rivera)
Suspending and Debarring Official - Attorney Patricia Papas, DoD IG (Script Name – Janice Baker)
Narrator – Joe Bentz, Program Director, Army Audit Agency

Script Begins

Scene 1

(Narrator in front of black curtain, talking head pose. Speaking directly at the camera. Script will be on teleprompter)

Narrator – Good Afternoon and welcome to the solve the scenario session of the 2009 Fraud Prevention and Detection – Improving Accountability for Government Professionals conference. The scenario that we are presenting to you today is titled “Lies and More Lies” and is based on an actual DoD fraud case. However, for this presentation, some names and other identifying information have been changed. When viewing “Lies and More Lies” be sure to pay attention to the following information:

- Fraud indicators for your specific area of technical expertise. For example, what are red flags of fraudulent activity for auditors, investigators, attorneys, and contracting professionals that might have been present, but were not noticed?
- What could DoD do to prevent this fraud or similar fraud schemes from occurring?
- Who are the fraudsters and what did they do wrong, if anything at all?
- How the company’s corporate culture contributed to the success of the fraud scheme?
- What do you think the suspending and debarment official, better known as the SDO, decision should be for this scenario?

Most importantly, it is important to remember that this scenario shows how auditors, investigators, attorneys, and contracting professionals can work together to prevent, detect, investigate, and prosecute fraud within the DoD.

Next, Scene one of “Lies and More Lies” – DAU Insert Text in Video

(Two agents sitting on chairs and talking. Camera Angle – Straight View)

Scene 2 - Two Agents in their office

Agent 1 - Hey, Do you remember the auditor that we met at the DoD Fraud Conference at DAU last summer?

Agent 2 – Which auditor? The conference was loaded with auditors from all the Defense Agencies....even the Auditor General of the Department of the Navy was there.

Agent 1 - The one we had lunch with at the Officer’s Club. Joe something?

Agent 2 – Sure, I remember Joe. He said he was a Program Director.

Agent 1 – Well his team was doing some audit work at a DoD contractor and stumbled on some interesting information. He sent us over a referral of information, about some aviation parts, but some of the terms I am not familiar with.

Agent 2 -Like what?

Agent 1 – Something about how they are required to do their work in accordance with Generally Accepted Government Auditing Standards. Is this some new law or DoD Directive?

Agent 2 – I am not sure. We can look it up on the Internet. What does the referral say?

Agent 1 – (Reading from paper) Here is what the audit team leader wrote:

1. They were told by a Jones Company Quality Assurance Manager, that he suspected that the Director of Engineering Quality was falsifying Qualified Product List, also known as QPL, test data. The company is required to report the results to the DoD Qualification Activity as part of its QPL status. That requirement is described in Federal Acquisition Regulation (FAR) 9.203.
2. The Quality Assurance Manager alleges that the Director of Engineering Quality instructed employees to remove individual parts and whole lots that had failed or were failing during performance of required testing. He also told them to substitute other parts so as to falsely represent the parts ability to successfully pass the testing.

3. If such allegations are true, the Jones Company, a U.S. subsidiary of an internationally known company, might have submitted false statements regarding its test data results.

The audit team followed up with an interview with the Contracting Officer, also known as the KO. Her statement reads:

Quote. I usually receive QPL test reports every six months that are authenticated as official documents by testing officials. However, the company did not submit test results for the past three reporting periods. Because the Government has been doing business with this company since the mid 1980s and had never had any problems, I accepted the test results as true and did not follow up on the late reports. To be honest, I have been very busy overseeing contracts in Iraq and Afghanistan that require a quick turnaround time and I have not had time to visit the facility in several years. End of Quote.

The referral also states that all audit work has been stopped and they are waiting for a response from us.

Agent 2 – Well it is good they stopped the audit because we would not want them to interfere with a potential criminal investigation. Some of those auditors can be pretty headstrong when they think they are onto something. Call Joe and tell him we are going to open a preliminary investigation.

Agent 1- Ok Boss. (Picks up Telephone)

(Mr. Smith is sitting at his desk with his feet up; Camera Number 1 side camera angle. Camera Number 2 behind Mr. Smith to show two agents walking into the office.)

Scene 3 – Agents and Mr. Smith

Agents 2 - Hello, I'm Special Agent Karen Spidell, Defense Criminal Investigative Service. Pleasure to meet you.

Agent 1 - I am Heather Hilton, Special Agent, Army Criminal Investigative Command. Nice to meet you Mr. Smith. Nice tan. Have you been to the beach?

Mr. Smith – I just returned from the Dominican Republic. I am a big fan of baseball and I like to watch the young players that are competing for contracts with U.S. major league teams. The Jones Company opened a small facility there several years ago.

Agent 2 – Are any DoD parts being produced there? Seems like there would be lots of incentives to operate in the Dominican Republic like cheaper labor and operating costs.

Mr. Smith. No, we expanded our business lines to include designer shoes and handbags made in the Dominican Republic. Our QPL product lines, however, are required by DoD regulation to be manufactured in plants located in the United States.

Agent 1. Sounds reasonable, lots of U.S. companies have started to diversify. Actually, we really didn't want to talk to you about baseball or designer handbags today. We requested this meeting because we have some concerns that your company may have submitted false QPL test results to the DoD. (Agent 1 ad lib)

Mr. Smith- The allegations are completely false. No member of my staff or me ever submitted false QPL test results to the DoD. We are all honest hard working American citizens. My company also has a very strong ethics program. There are ethics posters everywhere in the building. All employees, including myself, are required to complete annual ethics training.

Agent 2 – The KO stated that the company recently stopped submitting QPL test reports required by the DoD. Can you tell us why?

Mr. Smith- I looked through the file this week and it appears the QPL tests are missing.

Agent 2 – Missing? Are you sure they are not missing on purpose?

Mr. Smith – What is missing on purpose?

Agent 1 –We mean lost, destroyed, or never happened on purpose?

Mr. Smith- As I stated, no employee of this company would ever do what you are insinuating.

Agent 2 – What if they were told that they had to, or wanted to cover up failed QPL test results?

Mr. Smith – You Government people have very active imaginations. For all I know, you are probably recording this conversation or trying to study my body language to see if I am lying. I watch lots of TV – NCIS is my favorite show. Nothing like that would ever occur at this company. Remember, we have been doing business with the DoD since the 1980s and have never had any problems. You are making me uncomfortable with your questions. (Gets Angry) And to think that my tax dollars are being used to pay you to ask me outrageous questions when I have much more important things to do. You should try and catch some real criminals instead of bothering me. I don't want to answer any more questions until I talk to a lawyer. This meeting is officially over.

(Mr. Smith Leaves the room and stands off to one side. He then uses his cell phone to call his boss and says the following lines)

Mr. Smith – Hey Chief, we are in trouble.

Agent 2 to Agent 1 – It's time to send a lead to the Southeast Field Office for a visit to the Dominican Republic site. I want to make sure that they are really producing

handbags and not DoD parts. I don't believe his talk about missing QPL test reports or love of baseball either. He was too nervous and defensive. Call Joe from audit and tell him to keep his audit team out of the Jones Company. But, give him a heads up that we might need them to crunch some numbers for us if this case breaks. Also, tell him we may also need the KO to assist at some point because neither of us is a DoD contract expert.

Agent 1 – ok. I will put a travel request in the system.

(Narrator in front of black curtain, talking head pose. Script will be on teleprompter)

Scene 4

Narrator – The next scene takes place one year later. Special Agent Spidell and Special Agent Hilton and a team of DoD auditors, contracting professionals, and attorneys worked together to develop the Government's civil case against the Jones Company. As a result of their efforts, the Jones Company and the Government reached a civil settlement totaling over 65 million dollars in Federal District Court. Once the government investigators developed credible evidence that the Jones Company had falsified QPL test results and submitted those test results to DoD, the DoD Procurement Agency suspended the Jones Company from all government contracting for the pendency of the investigation and civil suit. In the next scene, we will observe the Company Defense Attorney and the DoD Agency Fraud Counsel presenting their closing arguments to the DoD Procurement Agency's Suspending and Debarring Official, also known as the SDO, at a presentation of matters and oppositions hearing to determine if the Jones Company will be debarred for some period in the future.

(Office setting. SDO is sitting behind the desk. Camera Number One focused on SDO. Camera Number Two focused on attorneys when they each present their arguments).

Scene 5

Presentation Of Matters and Oppositions Scene – Company Defense Attorney and Agency Fraud Counsel providing information to the SDO on behalf of their clients during a presentation of matters and oppositions hearing.

Company Defense Attorney – Based up on my client's long history as a Government contractor, the Government's request for his debarment is exaggerated. Most importantly, none of the parts produced in the Dominican Republic ever failed when used by the DoD, despite their nonconformance with the contract's requirements. Further, my client immediately stopped shipping all nonconforming parts when requested to do so by Federal Investigators, which resulted in a significant loss of revenue for his company and its stockholders.

The Jones Company remains committed to its employee ethics program. A more stringent policy was drafted when my client was made aware of potential production problems. We have also doubled the number of Ethics posters that are placed in our U.S. facility. Employees are now required to complete ethics training semi-annually in place of the previous annual requirement.

SDO – You mentioned that you have a new policy, did you bring a copy of the new policy and can you tell us how the policy is more stringent. Also, in addition to the Ethics posters, do you have any DoD Hotline posters in your workspaces? How many do you have displayed and where are they?

Company Defense Attorney – Unfortunately, I do not have a copy of that policy with me. I have read it, and I can assure you that it is stronger than the one we had before, although, I can't cite any specifics. But, if you need a copy, I will have to make arrangements to get one to you later.

As far as the DoD Hotline posters go, I am sure that we have them up there somewhere.

Agency Fraud Counsel – Excuse me, but I was down there a few weeks ago to do a site visit and I distinctly remember looking for DoD Hotline posters. If you had them, I don't know where you put them because I certainly didn't see any of them and it's not like they are hard to get, because you can download them on line.

SDO – That brings up another point, does the company have an Ethics Officer, and if so, to whom does the Ethics Officer report?

Company Defense Attorney – We are currently in the process of identifying someone to be the Ethics Officer as a collateral duty.

The Jones Company has already paid over 65 million dollars to the Federal Government as part of a recent civil court settlement related to this case. If my client is debarred and loses all of its Government contracts, they will be forced to cease operations. Our next court appearance will be in Federal Bankruptcy Court.

SDO – Speaking of your client, where is he today? And why is he not here? If he has as much at stake as you say, why didn't he attend this presentation?

Company Defense Counsel – My client wanted very much to be here today but some issues came up involving the company that required his presence.

In closing, I would like the SDO to consider the fact that my client's facility in the Dominican Republic employed over 2,000 people. We provided jobs and improved the living standards of those employees who worked for us. If we are no longer able to operate as a government contractor, the Dominican people and their economy will also suffer. Further, it is important to highlight the fact that my client cooperated with Government officials throughout this investigation.

SDO – I would like to ask the Agency Fraud Counsel if indeed the company did cooperate and to what extent.

Agency Fraud Counsel – I would point out that the so called cooperation that the Defense Counsel refers to only began after two criminal investigators from the Defense Criminal Investigative Service and Army Criminal Investigation Command showed up on his doorstep asking some very specific questions, none of which he had a satisfactory answer for then or now. While there was some cooperation it was not what I would exactly call a highlight.

Company Defense Counsel - In light of my client's acceptance of responsibility, as evidenced by the \$65 million civil settlement, together with other corrective steps that my client has taken and has agreed to take, I submit that my client is presently responsible and does not represent a threat to the DoD and therefore the current suspension should be lifted and no debarment period necessary.

SDO – I have a few more questions I would like to ask the Defense Counsel. What remedial actions has the company taken to correct the misconduct and what disciplinary action was taken against the personnel involved in the misconduct?

Company Defense Counsel – In response to the allegations, I believe we did file a summary of the actions taken to correct these issues, but I can not cite any of them specifically. Regarding disciplinary action, five employees were disciplined and two were let go.

SDO – I would like to know if anyone in your senior management has been disciplined or terminated.

Company Defense Counsel – No, they have not.

SDO – One last question. Has the company informed its employees about the civil settlement? How did the company characterize the events requiring it to enter into the settlement?

Company Defense Counsel – We were waiting until the presentation was finished so we could make sure all of the results were in before we made an announcement. Once that occurs, we will inform employees via email and through the quarterly magazine.

SDO – Thank you, Mr. Rivera. Now does the Agency have anything to present?

Agency Fraud Counsel – Let me start by saying, the Government's case is based upon facts indicating a lack of responsibility, business integrity, and business honesty on the part of the Jones Company and its employees. This seriously and directly affects their ability to continue working as a Government contractor. Based on the Government's investigation, we are recommending immediate debarment of the Jones Company. I will

now summarize misconduct that took place at the Jones Company during the past six years:

One – The Company failed to report QPL test failures occurring at its U.S. based facility to the DoD as required.

Two- A Jones senior manager, Mr. Smith, and several senior employees removed parts and in some cases whole lots which had failed or were failing during the performance of certain required QPL testing. Furthermore, they substituted other parts and lots so as to falsely represent the parts ability to successfully pass the required QPL testing.

Three – The company violated the Government’s registered “JAN” and “J” trademark requirements.

SDO – What is the significance of the company’s fraudulent use of the Government’s trademark “JAN” and “J”?

Agency Fraud Counsel – Those particular trademarks signify that the items were “Made in the U.S.A.” – which the investigation has shown they were not.

Four – When DoD investigators asked Jones employees what they knew about the Dominican Republic facility, not a single employee admitted that they had ever been to the facility, nor would any employee admit any knowledge about the Dominican Republic facility. Mr. Smith told DoD investigators that the company started to produce handbags and shoes in the Dominican Republic. However, he never admitted to visiting the facility during the interview. He said the purpose of his trip was to watch Dominican baseball players competing for contracts with U.S. major league teams.

As a result, it would appear that, although the Jones Company represented to the DoD that the items produced and tested in the Dominican Republic were produced at a U.S. facility and met all of the requirements of the applicable military specifications, these representations were false. Further, Government investigators could not find any evidence that the items manufactured at the Dominican Republic facility were ever tested as required by the QPL.

Five – Mr. Smith instructed employees to destroy evidence related to the product test results when he noticed his newly hired Quality Assurance Manager talking with a DoD auditor in the company’s cafeteria. This action clearly demonstrates that the employees’ only concern was to protect themselves from the consequences of their own actions, with absolutely no regard for the impact their actions could have for the United States Government.

In closing, because of the Jones Company’s blatant scheme to defraud the Government, and complete disregard of its contractual responsibilities, the DoD is requesting that the company be debarred for a minimum of three years. Most importantly, Company officials appeared to promote a culture of corruption that is impossible to change during a

shorter debarment period. The ethical culture of the company is so damaged that it will take many years to develop corporate leaders who will value honesty and integrity more than profits and rising stock values.

SDO – What is the harm to the Government?

Agency Fraud Counsel – Given the fact that these were aircraft parts, the failure of even some of the simplest components could have resulted in a catastrophic failure of the aircraft, possibly causing loss of life or serious injury to the crew. This is something that can not be understated. We are talking about more than just putting a multimillion dollar aircraft at jeopardy. We are talking about human lives, and how do you put a price on that.

Scene 6

(Camera close up of SDO)

SDO – I will take this information under consideration. I will advise you of my decision in two weeks.

Scene Ends – DAU Inset text in video – Stop Video Solve the Scenario Break Out Session Begins

(Camera close up of SDO sitting at desk)

Scene 7 –SDO’s Decision

Agencies shall solicit offers from, award contracts to, and consent to subcontracts with responsible contractors only. The serious nature of debarment and suspension requires that these sanctions be imposed only in the public interest for the Government’s protection and not for purposes of punishment. This particular case involved a contractor falsely warranting that its products met the rigorous testing requirements of the Qualified Products List in accordance with the contract. These products were aircraft parts that were essential to the safety of individuals on the aircraft as well as individuals on the ground. It appears that the Jones Company failed to understand the seriousness of the inadequate testing and failed to undertake corrective actions, including appropriate disciplinary actions, to prevent the misconduct from recurring. Additionally, the Jones Company did not promptly initiate an effective ethics program designed to encourage its employees to report misconduct. The Jones Company has yet to appoint an Ethics Officer and the Ethics Officer’s responsibilities will only be assigned as collateral duties. The Jones Company also intentionally affixed a label having the meaning that the products were “Made in America” when in fact, they were made in the Dominican Republic. For these reasons, I have decided to debar the company for a period of three years. In light of the company’s civil settlement, I will credit the company’s time served under its suspension towards the debarment period. Since the Jones Company has

already served one year of suspension, the Jones Company's debarment will terminate on June 1, 2011.

There is a preponderance of evidence in the administrative record that the Jones Company Director of Quality John Smith instigated the scheme to falsify the test data and instructed his employees to carry out the scheme. Mr. Smith has submitted no information demonstrating his present responsibility to continue doing business with the Government. Mr. Smith continues to be a risk to the public interest. In order to protect the Government from the fraudulent business practices of Mr. Smith, I have decided to debar Mr. Smith for a period of five years without credit for his time served under the suspension. Mr. Smith's debarment will terminate on June 1, 2014.

DAU Insert text in Video

CREDITS

ACTORS

Narrator

Joseph Bentz, Program Director, Army Audit Agency

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Heather Hilton, Special Agent, Army Criminal Investigation Command

Agent 2

Karen Spidell, Special Agent, Defense Criminal Investigative Service

Mr. Smith

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Agency Fraud Counsel

David Gallagher, Associate Counsel, Army Audit Agency

Company Defense Attorney

Gerardo Lopez, Auditor, Department of Defense, Office of Inspector General

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