



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-4704

April 14, 2011

INSPECTOR GENERAL INSTRUCTION 7050.9

USE OF DEPARTMENT OF DEFENSE INSPECTOR GENERAL ADMINISTRATIVE SUBPOENAS IN SUPPORT OF AUDITS, EVALUATIONS, AND INVESTIGATIONS

FOREWORD

This Instruction establishes Department of Defense Office of Inspector General policy for requesting and processing requests for Inspector General administrative subpoenas.

The office of primary responsibility for this Instruction is the Office of Deputy Inspector General for Policy and Oversight. This Instruction is effective immediately.

FOR THE INSPECTOR GENERAL:

A handwritten signature in black ink, appearing to read "SD Wilson".

Stephen D. Wilson
Assistant Inspector General
for Administration and Management

Appendix

A. **Purpose.** This Instruction establishes policy for the utilization of Department of Defense Inspector General (DoD IG) Subpoenas as authorized by references (a) through (e).

B. **References.** See Appendix.

C. **Applicability.** This Instruction applies to the Office of Inspector General.

D. **Background.**

1. Section 6(a)(4) of reference (a) authorizes the DoD IG “to require by subpoena the production of all information, documents...necessary in the performance of the functions assigned by the Inspector General Act....”

2. Section 1042 of reference (c) amends Section 8 by adding subsection (i) which authorizes the DoD IG to require by subpoena the attendance and testimony of witnesses, as necessary, in the performance of functions assigned to the DoD IG by reference (a).

E. **Policy.**

1. A subpoena shall only be issued for audits, evaluations, and investigations within the DoD IG statutory authority and the information sought shall be reasonably relevant to the DoD IG audit, evaluation, or investigation and not be unreasonably broad or burdensome.

2. A subpoena shall not be issued for records already in the possession of the United States Government; credit bureau information; or records that may be obtained by other means.

3. Request for subpoenas in support of DoD non-fraud related (general crimes) criminal investigations shall be considered when such requests satisfy criteria under the “DoD Nexus Test” and the “Particular Crimes Test” described in reference (d).

4. The process for requesting testimonial subpoenas shall be the same general process utilized to request a subpoena seeking documentary evidence. Guidance is available on the OIG internet at <http://www.dodig.mil/Inspections/IPO/subpoena.htm>. However, in addition to that process, testimonial subpoenas:

a. Shall not be utilized to obtain testimony from a current Federal Government employee.

b. Shall only be requested after the witness has declined an invitation to be interviewed voluntarily.

c. Shall be served on the witness (or the witness’ legal counsel, if the witness is known to be represented by legal counsel) in person, unless arrangements for another form of service, e.g., facsimile or electronic mail, have been agreed to in writing prior to such service.

- d. Shall not be issued to a target/subject of a criminal investigation.
- e. Shall be personally approved by the DoD IG.
- f. The witness interview resulting from a testimonial subpoena shall be digitally recorded by the interviewer. If requested, a transcript of the interview shall be provided to the witness at the conclusion of the audit, evaluation, or investigation. Neither the witness nor the witness' legal counsel shall be allowed to make a separate recording of the interview.
- g. A witness may consult with legal counsel prior to the date of the interview resulting from a testimonial subpoena, and may be accompanied to the interview by legal counsel and may have legal counsel present in the room during the interview. Any legal fees associated with the witness' retention of legal counsel shall be the sole responsibility of the witness.
- h. Allow a minimum of 14 calendar days between the date the testimonial subpoena is served on the witness/witness' legal counsel and the witness interview date.
- i. Conduct the witness interview within the local commuting area of the witness' residence, i.e., 25 miles. The requesting Component shall be responsible for issuing and paying for Invitational Travel Orders for the witness if the interviewer determines that it is more economical for the Federal Government to have the witness travel to an alternative interview site.

F. Responsibilities.

1. The Office of the Assistant Inspector General for Investigative Policy and Oversight shall:

- a. Establish guidelines for requesting and processing DoD IG subpoenas and post the procedures on the OIG internet.
- b. Obtain a legal sufficiency review on all subpoena requests from the Office of General Counsel (OGC) prior to its submission to the DoD IG for his/her personal approval of testimonial subpoenas and to the Principal Deputy Inspector General or the Chief of Staff for approval to request for documents (Subpoena Duces Tecum).

2. The OGC shall:

- a. Review all subpoena requests to ensure legal sufficiency and enforceability.
- b. Prepare, as necessary, all requests for judicial enforcement of subpoenas for the DoD IG signature and coordinate all such enforcement efforts with the Department of Justice on behalf of the OIG.

c. Provide the Attorney General with the notice required by Section 8(i)(3) of reference (c) for testimonial subpoena issuances.

3. The **Component Heads** shall:

a. Submit subpoena requests according to the guidelines listed on the OIG internet at <http://www.dodig.mil/Inspections/IPO/subpoena.htm>.

b. Complete the return of service document on the reverse side of the subpoena and forward a copy to the Investigative Policy and Oversight (IPO) Subpoena Program Manager when the subpoena is served.

c. Immediately notify the IPO Subpoena Program Manager if subpoena recipients fail to fully comply with the issued subpoena. The requestor shall provide an affidavit describing subpoena related actions taken if enforcement action through the Department of Justice is required.

d. Provide the IPO Subpoena Program Manager the results of any subsequent criminal, civil, or administrative action when the audit, evaluation, or investigation is complete according to reference (e).

**APPENDIX
REFERENCES**

- a. Appendix III of Title 5, United States Code, *The Inspector General Act of 1978*, as amended
- b. DoD Directive 5106.01, *The Inspector General of the Department of Defense*, April 13, 2006
- c. Section 1042 of Public Law 111-84, *National Defense Authorization Act for Fiscal Year 2010*, October 28, 2009
- d. Department of Defense Inspector General Memorandum, *Use of DoD IG Subpoenas in Support of Non-Fraud related Investigations*, June 16, 2009
- e. DoD Instruction 7050.05, *Coordination of Remedies for Fraud and Corruption Related to Procurement Activities*, June 4, 2008