



SMALL BUSINESS ANTI- FRAUD OUTREACH

Acquisition Integrity Office

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GOALS

- Support the DON's small business contractors
- Proactively stop fraud before it occurs rather than just excluding contractors after it occurs
 - Small business fraud risks
 - What's an effective ethics and compliance program?
- **Make sure you know that you can engage proactively with AIO**
 - FAR 9.406-1(a)(2) "Before arriving at any debarment decision, the debarring official should consider factors such as the following:... Whether the contractor brought the activity cited as a cause for debarment to the attention of the appropriate Government agency in a timely manner."



DISCLAIMER

- This training does not constitute legal advice.
 - Our one and only client is the Department of the Navy.
 - We are prohibited from giving you legal advice or our official legal opinion.
- If you have a specific legal question, consult a private attorney or hire a consultant:
 - Specific legal issue.
 - How to develop an effective ethics and compliance program for your business's specific fraud risks.



Today's Roadmap

1. **What is AIO? What's our mission? What do we do?**
2. **Suspension and Debarment 101**
3. **Small Business Fraud Risks**
4. **Effective Ethics and Compliance Programs**





1. What is AIO? What's our mission? What do we do?

WWW.SECNAV.NAVY.MIL/OGC/AIO



AIO's Mission

Provide a Department of the Navy-wide program that will:

- **Deter** acquisition fraud to the maximum extent possible;
- **Detect** acquisition fraud when and where it occurs;
- **Protect** the Department from the effects of acquisition fraud;
- **Take appropriate action** against those who commit acquisition fraud (e.g., suspend and debar); and
- **Recover** fraudulent gains.





AIO Overview

- ❑ Office within OGC. Located at the Washington Navy Yard
- ❑ AIO is the DON's ***central point of contact on all acquisition fraud matters***. AIO monitors all significant investigations of fraud/corruption related to procurement activities to ensure all possible criminal, civil, contractual, and administrative remedies are identified and pursued. DODI 7050.05; SECNAVINST 5430.92C.
- ❑ The Assistant General Counsel (Acquisition Integrity) is the DON's ***Suspending and Debarring Official (SDO)***. DFARS 209.403(1).





Coordination

- ❑ Single DON POC for all acquisition integrity matters received from multiple sources, including:
 - ❑ Criminal Investigations (NCIS, DCIS, FBI, etc.)
 - ❑ Department of Justice (False Claims Act/ Qui Tam)
 - ❑ Command Referrals
 - ❑ Poor Performance Notifications (T4D/Cure Notices)
 - ❑ FAR Part 3 Mandatory Disclosures
 - ❑ Contractor Voluntary Disclosures
 - ❑ IG Hotline Complaints / IG Referrals
 - ❑ Defective Product (GIDEP) Reports
 - ❑ Audit Referrals (DCAA, DCMA)





1. What is AIO?

2. Suspension And Debarment 101

- Suspension
- Debarment
- Letter of Concern/Show Cause



Suspension & Debarment 101

Suspension

Temporary exclusion when immediate action is necessary. FAR 9.407.



Debarment

Exclusion for a *specified period* (usually 3 years). FAR 9.406.

- ❑ Discretionary measures taken to protect the public interest and to promote the policy of doing business only with responsible persons.
- ❑ Suspending and Debarring Official (SDO) determines whether action is in the Government's interest.
 - ❑ Existence of a cause for action does not require it – consideration of factors
- ❑ Can apply to both individuals and businesses.
- ❑ Reserved for Serious Misconduct & Poor Performance.



Effects of Exclusion

- ❑ Exclusion is GOVERNMENT-WIDE [excluded contractors are ineligible for contract awards throughout the Government.]
- ❑ Does not apply to existing contracts. Applies to:
 - ❑ Award of new contracts;
 - ❑ Subcontracts greater than \$35K; and
 - ❑ New orders on IDIQ contract, exercise of options, or extending the duration of any current contract.
- ❑ Exclusion also extends to non-procurement programs (e.g., grants, SBA loans, mortgages, student loans, etc.).
- ❑ Exclusions are listed on SAM. Contracting officers are required to review the SAM prior to awarding new work.





Imputation

- SDO may *impute* misconduct from:
 - **Individual to entity** if misconduct occurred in connection with duties performed on entity's behalf or the entity knew, approved, or acquiesced.
 - **Entity to individual** if individual participated in, knew of, or had reason to know of misconduct.
 - **Entity to joint venture participant** if misconduct occurred on behalf of joint venture or the participant knew, approved, or acquiesced.



Letters of Concern / Show Cause Letter

- ❑ A non-exclusion action used by the Suspending and Debarring Official allowing a contractor an opportunity to show cause why debarment proceedings should not be initiated.
- ❑ Tool used after AIO receives notification about a matter or incident raising concerns about a contractor's present responsibility.
- ❑ Issued to both individuals and businesses.





IN THE MATTER OF: Joint Information Network, Appellant SBA No. WOSB-113

- ❑ On October 10, 2020, the Naval Information Warfare Center Contracting Officer claimed that JIN improperly misrepresented its women-owned small business concern (WOSB) status.
- ❑ On February 19, 2021, the SBA determined that JIN did not meet the WOSBC eligibility requirements for the Contract.
- ❑ . On April 8, 2021, the SBA Office of Hearings and Appeals affirmed this determination, holding that from December 16, 2016, until April 10, 2019, Dr. Yanhe Jin controlled JIN, so JIN did not meet the WOSBC eligibility requirements in accordance with 13 C.F.R. § 127.504.
- ❑ On August 20, 2021, the SDO issued JIN a Letter of Concern requesting clarification about the SBA Office of Hearings and Appeals' determination.
- ❑ JIN responded on September 15, 2021, explaining how they updated the wording in the partnership agreement after they received the SBA's ineligible determination, and closed business operations in July 2020.
- ❑ On November 29, 2022, the SDO recognized JIN's good-faith attempts to comply with the rules and sent JIN a No Further Action letter.



1. What is AIO?

2. Suspension And Debarment 101

3. Small Business Fraud Risks



SMALL BUSINESS FRAUD RISK EXAMPLES

- 1. Disadvantaged Business Enterprise (DBE) Pass-Through Fraud**
- 2. Counterfeit Goods**
- 3. False Claims**

- 4. Bribery and Kickbacks**
- 5. Export Control Violations**
- 6. Antitrust**
- 7. Procurement Integrity Act Violations**



Small Business Fraud Risk: Pass-through Fraud

- **DBE programs:** Government has numerous programs to help socially and economically disadvantaged business owners (e.g. SBA 8(a) Business Development program)
 - Set-aside contracts and sole-source contracts
- **Pass-through:** 8(a) qualified firm that obtains the set-aside and sole-source awards but does not perform the work. Typically, the pass-through retains a portion of the profits for participating in the fraud.



Small Business Fraud Risk: Pass-through Fraud

- Violation of subcontracting limitations in the prime 8(a) set-aside contracts; must subcontract more than 50% to firms that are not similar situated 8(a) firms (**contractual damages**)
- False Claims Act (**civil treble damages**)
- False Statements (**criminal**)
- Anti-Kickbacks Act (**criminal**)
- Debarment (**administrative**)



Small Business Fraud Risk: Pass-through Fraud

Sage Consulting Group, Inc. Agrees to Pay \$4.8 Million to Settle Civil False Claims Act and Anti-Kickback Act Allegations

Tuesday, July 20, 2021

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For Immediate Release

U.S. Attorney's Office, Eastern District of Virginia

ALEXANDRIA, Va. – A Virginia-based consulting group and its president and majority owner agreed to a \$4.8 million settlement with respect to allegations that they paid kickbacks, announced Acting U.S. Attorney Raj Parekh for the Eastern District of Virginia.



Small Business Fraud Risk: Counterfeit Goods

- **Counterfeit parts:** an unauthorized copy, imitation, substitute or modified component that has been knowingly misrepresented as a legitimate component from an authorized manufacturer.
- **Senate Armed Services Committee 2011:** “Experts have estimated that as many as 15% of all spare and replacement parts purchased by the Pentagon are counterfeit.”
- **Be Careful!!!** It is often hard to distinguish the victims from the perpetrators.



Small Business Fraud Risk: Counterfeit Goods

PRESS RELEASE

CEO of Dozens of Companies and Entities Charged in Scheme to Traffic an Estimated \$1 Billion in Fraudulent and Counterfeit Cisco Networking Equipment

Friday, July 8, 2022

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For Immediate Release

U.S. Attorney's Office, District of New Jersey

NEWARK, N.J. – A federal grand jury has indicted a Florida man for allegedly orchestrating a scheme over many years to traffic in counterfeit Cisco networking equipment with an estimated retail value of over \$1 billion, Attorney for the United States Vikas Khanna, District of New Jersey, and Assistant Attorney General Kenneth A. Polite announced today.



Counterfeit Goods

Onur Aksoy/Pro Network LLC

- ❑ Onur Aksoy was indicted on July 7, 2022 for running a massive operation trafficking counterfeit Cisco routers.
- ❑ Aksoy is accused of importing low-quality, modified routers from China with counterfeit stickers, boxes, and labeling, and selling those routers to customers as new, genuine, high-quality devices manufactured by Cisco. The total retail value of the devices Aksoy imported, if they had been genuine, is **over \$1 billion.**
- ❑ Some of these counterfeit devices were ultimately sold on to the DON and put into service in the NMCI network.



- ❑ Aksoy and more than 26 affiliated companies under his control are currently suspended by the DON.



Small Business Fraud Risk: False Claims

- **False Claims Act:** The False Claims Act, also called the "Lincoln Law", is an American federal law that imposes liability on persons and companies who defraud Governmental programs. It is the federal government's primary litigation tool in combating fraud against the Government.
- **Treble damages:** three times the loss to the Government.
- **Qui Tam Lawsuits:**
 - a relator sues on behalf of the Government
 - The complaint is filed under seal
 - The Government can investigate and then choose whether to intervene in the lawsuit or not
 - If the lawsuit is successful, the relator gets a share (15-25%)



Small Business Fraud Risk: False Claims

- **False claims:** a demand for money or property that is based on a material falsehood or a fraud. Examples:
 - Cost mischarging
 - Labor hour mischarging
 - False testing data
 - False certifications
 - False pricing information (Truth In Negotiations Act)



TrellisWare Technologies, Inc.

- TrellisWare provided advanced terrestrial waveform wireless networks to the DON for use in tactical environments under several **Small Business Innovation and Research (SBIR)** contracts.
- NCIS and the DOJ (USAO (S.D. Ca)) initiated a **False Claims Act (FCA)** investigation after TrellisWare self-disclosed in early 2015 that its **ownership status** may have made it ineligible to receive these SBIR contracts.
- TrellisWare agreed to settle FCA, sent AIO present responsibility letter.
- AIO and the DOJ agreed that an **Administrative Agreement (AA)** could clarify and enforce DON's data rights more effectively than the \$11.8M FCA Settlement Agreement, signed by TrellisWare and the DOJ on 3/9/18.
- After a meeting at AIO with TrellisWare an AA granting the DON unlimited data rights was signed by TrellisWare and the AIO SDO on 3/9/18.



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4. Effective Ethics and Compliance Program



What's the value of an effective E&C program?

1. Proactively Stop Fraud Before Its Occurs
2. If Fraud Does Occur, Helps You To Demonstrate That You Are “Presently Responsible”



Stopping Fraud With An Effective E&C Program

7 Pillars of an Effective Ethics and Compliance Program

1. Written Policies and Procedures
2. Compliance Officer
3. Training
4. Reporting
5. Auditing
6. Investigating & Responding
7. Culture



Demonstrate Present Responsibility

What does the SDO consider?

FAR 9.403-1(a) factor 1: Did you have an effective Ethics and Compliance Program?

FAR 9.403-1(a) factors 6-10 : Do you have an effective Ethics and Compliance Program now?

FAR 9.403-1(a) factors 2-5: Did you cooperate with the Government and make the Government whole?



Demonstrate Present Responsibility

U.S. Federal Sentencing Guidelines: § 8B2.1

To have an effective compliance and ethics program... an organization shall—

- (1) exercise due diligence to prevent and detect criminal conduct; and
- (2) otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.



Demonstrate Present Responsibility

U.S. Federal Sentencing Guidelines: § 8B2.1

Small Organizations.—

- Must demonstrate the same degree of commitment to ethical conduct and compliance with the law as large organizations.
- Less formality and fewer resources than would be expected of large organizations.
- Reliance on existing resources and simple systems is fine.



If you discover fraud, disclose it!

FAR 52.203-13(b)

The Contractor shall-

(3) (i) The Contractor shall timely disclose, in writing, to the agency Office of the Inspector General (OIG), with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of this contract or any subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed-

(A) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code.

(B) A violation of the civil False Claims Act (31 U.S.C. 3729-3733).



Suspect Acquisition Fraud?

- Ask questions / Retain relevant documents and contact one of the following:
 - DODIG
 - Contracting Officer
 - DoD / DON HOTLINE
 - AIO: DONOGC-AIO@us.navy.mil - 202.685.7000





QUESTIONS?

