FRAUD AWARENESS

OFFICE OF THE INSPECTOR GENERAL

2006

U.S. NUCLEAR REGULATORY COMMISSION

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I. MESSAGE FROM THE INSPECTOR GENERAL

The Inspector General Act of 1978, as amended in 1988, states that one of the reasons for establishing the Office of the Inspector General (OIG) is

> . . . to provide leadership and coordination . . . for activities designed . . . to promote economy, efficiency, and effectiveness . . . and . . . to prevent and detect fraud and abuse . . ..

The U.S. Nuclear Regulatory Commission (NRC) OIG Fraud Awareness Program was established to educate NRC employees about Federal statutes and regulations applicable to fraud, inform them about common schemes used to perpetrate fraud, and advise them of reporting obligations so that they can fulfill their obligations as Government employees.

This brochure has been prepared as part of OIG's ongoing efforts to educate, inform, and support you, the NRC employee, in avoiding and preventing fraud and abuse.

Hubert T. Bell
Inspector General

II. INTRODUCTION

Fraudulent activities waste valuable funding and other resources; fraud also threatens successful achievement of the U.S. Nuclear Regulatory Commission's (NRC's) mission of protecting public health and safety.

What is "Fraud"? Its precise legal definition varies in different statutes and regulations. For purposes of this document, "fraud" is generally intended to convey wrongdoing resulting from an intentional act of deception or dishonesty against NRC.

Agency functions generally have policies or procedures in place that adequately address fraud deterrence — when employees abide by them.

28 U.S.C. § 535 requires NRC employees to report suspected criminal activity, in this case fraud, to the OIG. It is our intent in this pamphlet to increase awareness of NRC personnel to the potential of fraud occurring within the work place.

III. AREAS OF POTENTIAL FRAUD

Experience with fraudulent activities perpetrated against NRC by its employees, contractors, subcontractors, or visitors indicates that such fraud generally falls into the four broad areas discussed next: procurement, time and attendance, travel, and disability claims.

A. PROCUREMENT

NRC's procurement of supplies and services involves the expenditure of millions of dollars. The Division of Contracts (DC) at NRC is responsible for actual procurement and administration of the majority of "large dollar" contract actions. Also, many NRC employees have contract responsibilities as Purchase Card buyers, Project Officers, and Contracting Officers Technical Representatives. In addition, other employees have responsibility for placement and monitoring of reimbursable agreements with other agencies, e.g., Department of Energy laboratory projects.

Some factors may point to the presence of, or may enhance the potential for, perpetrating fraud at various stages in the procurement process. These indicators are not intended, each taken by itself, to establish the existence of fraud. Rather, any of the indicators, when taken in the context of a particular procurement action, should alert NRC employees to the possibility of impropriety and to the need to take appropriate actions to ensure the integrity of the process.

The motives for committing fraud in the contract process are varied. Many instances of fraud have been perpetrated to obtain a contract in order to create the opportunity to later engage in such activities as theft or embezzlement, substitution of products, mischarging of costs, or progress payment fraud. Some contractors commit fraud to obtain a

contract at a higher price or one with better terms than those in an award untainted by fraud. Still others fraudulently obtain Government contracts because they need the business to keep their companies in operation when activity in the private sector is low.

Another factor to be considered is that fraud is sometimes committed by, or with the assistance of, Government employees. The possibility should not be overlooked that a Government employee has solicited or accepted bribes or gratuities or has a financial interest in a contractor. In some instances, an agency's employees have created, or become partners in, outside businesses for the sole purpose of committing fraud through their ability to affect or manipulate the award process.

Most of the people participating in NRC programs or involved in their administration comply with all of the applicable rules and regulations. However, the ability to recognize certain potential indicators of fraud during the procurement process can have a deterrent effect on fraud and thereby enhance the integrity of the program.

Various personnel at all levels may become involved directly or indirectly in the procurement process. DC carries out a major portion of the agency's direct procurement. Of course, many others are responsible for monitoring indirect procurement, i.e., program funds expended by program participants through third-party contracts, or work orders to National laboratories. In both direct and indirect situations, involved employees should determine the degree to which procurement actions comply with the administrative requirements dictated by the Federal Acquisition Regulation (FAR), NRC Acquisition Regulation, Office of Management and Budget circulars, NRC Management Directives (MDs), and Federal or State and local laws.

Common indicators of fraud in procurement include the following:

- "Sole source" contracts are awarded unnecessarily or "second sources" are not developed.
- Specifications improperly describe needs in ways that can be met only by certain contractors.
- Prequalification standards in specifications unnecessarily exclude otherwise qualified contractors.
- Contracts are modified to increase the price immediately after the contract is signed.
- Contractors are provided with advance "inside" information.
- Requirements are divided to qualify for simplified or small-purchase procedures to avoid contract-review procedures.

CONTRACT FRAUD SCHEMES

Substitution of Products

In this scheme, a contractor certifies that goods or services are being provided in accordance with contract specifications when, in reality, the contractor has provided a substitute or inferior product. NRC contracting procedures allow for changes in performance only with the knowledge and prior approval of the contracting officer. A contractor's unilateral decision to alter performance standards and

falsify contract certifications can lead to criminal liability.
Some of the indicators of, and conditions associated with, product substitution are the following:

- contractor's unauthorized quality assurance practices,
- history of poor performance by the contractor,
- awards to unusually low bidders,
- misuse of "fast pay" procedures,
- reliance by Government quality assurance representatives on unverified documentation which has been falsified by a contractor, and
- inadequate Government quality assurance oversight.

Mischarging of Costs

In this scheme, costs are charged improperly to NRC cost-type contracts; for example, charges are switched from commercial contracts to NRC contracts, or cost overruns from one task order or Government contract are charged to other task orders or Government contracts.

FAR 31.2 provides specific guidance on allowable and unallowable costs. Mischarges on cost reimbursement contracts can involve improper accounting procedures, material costs, or labor mischarges or all three. In some cases, contractors inflate hours worked, double bill, or substitute unqualified workers who get paid less, allowing the contractor to pocket the extra money.

Indicators of cost mischarging are:

- Contractor employees frequently reassigned to different projects.

- Contractor employees identified in the proposal not assigned to contract after award.

Kickbacks

Payments made for the purpose of improperly obtaining or rewarding favorable treatment in relation to a Government contract constitute a kickback. Although such payments are similar in many ways to bribing a Government official, kickbacks, until recently, had not been the focus of public attention and little had been done to address the problem. Congress strengthened the original 1946 kickback statute in 1986 (see 41 U.S.C. sections 51 through 58) to make it illegal for any person to provide, attempt to provide, or offer a kickback to a Government contractor or a contractor's employee for the purpose of improperly obtaining any favorable treatment under a Government contract. The prohibition covers any money, commission, gratuity, or anything else of value, whether paid directly or indirectly, and applies equally to persons who solicit, accept, or attempt to generate kickbacks. The legislation further prohibits the inclusion of any kickback amounts in the contract price charged by a contractor.

Indications of kickbacks include the following:

- The same contractor repeatedly awarded competitive contracts based on bids only slightly lower in price than the next lowest competitor.

- Relationships which are "too close" are observed between contractor and Government officials.

- Unexplained wealth or change of life style by Government official.

B. TIME AND ATTENDANCE FRAUD

Time and Attendance (T&A) concerns accounting for the hours employees are present for, or absent from, official duty status. Fraud, abuse, and mismanagement in this area occur all too often in Government. Some of this is due to willful intent or lack of internal management controls.

Who is Responsible?

Entering and approving incorrect data in the Human Resources and Management Support (HRMS) System is among the most common abuses. Done inadvertently, it represents sloppy work and poor management. Done deliberately, this is fraud. Employees are responsible for entering the correct data; supervisors and administrative officers who review and approve T&A data in HRMS and sign the Summary Approval Reports (SARs) are responsible for certifying the accuracy and validity of the data.

Supervisors control the T&A reporting process by

(1) assigning T&A timekeeping, coordinating, and reviewing duties to employees within their offices,

(2) certifying the attendance and leave reported, and

(3) reconciling leave and overtime reports with T&A documents.

Types of T&A Fraud

- Conducting personal business at work

  Conducting personal business during hours charged to official duty is also an abuse. Deminimus, or limited activities of a personal nature, are permitted as described in MD 2.3, *Telecommunications*, and MD 2.7, *Personal Use of Information Technology*.

Conducting a "for profit" business, e.g., real estate sales, is always improper. In many instances, this involves not only wasting Government time, but also the use of Government resources, such as the telephone, the photocopier, the fax machine, and office supplies.

- Travel Status

  Travel makes many aspects of T&A more vulnerable to abuse. Supervisors should ensure that the travel is necessary and should check the traveler's work products, time reports, and travel vouchers to detect possible T&A violations.

Deterring Fraud in the T&A Process

To deter fraud in the T&A process, managers can take the following actions:

- Compare leave reported on the SAR with approved leave requests (OPM-71). Ensure all leave taken, including that not requiring an OPM 71, is reported.

- Compare overtime reported on the SAR with the overtime authorizations (NRC Form 145). Also review work performed on overtime to verify hours.

- Check T&A forms to assure they are completed correctly and signed.

- Ensure that supervisors and timekeepers do not approve their own T&A forms.

- Discuss discrepancies with employees.

- Assure adequate training on leave/compressed/flexible schedule regulations and policies.

C. TRAVEL

Government travelers need to be aware of and avoid potential fraud in conducting official travel.

Transportation

The basic rule is that the choice of transportation should result in the greatest advantage to the Government. This involves the total cost of a trip, including per diem allowance, any lost work time, any overtime pay, and the actual transportation costs. Travel by common carrier, such as scheduled airlines, trains, or buses, usually results in the most efficient use of resources and in the least costly method of travel.

Government-Furnished Motor Vehicles

Official use does not generally include transportation between an employee's place of residence and place of employment unless specifically authorized in writing. (See MD 13.4 Handbook, Part II, Paragraph (B)(5).

Privately Owned Vehicles (POVs)

A POV may be used if its use is advantageous to the Government and if common carrier transportation or Government-furnished vehicle transportation is not reasonably available. Travelers requesting POV authorization should obtain written approval in advance.
(See MD 13.4, *Transportation Management*, Handbook, Part 4, Paragraph 4.7.1).

Fraud occurs when travelers inflate the number of miles driven on official business.

Rental of Commercial Vehicles

Commercially rented conveyances (such as rental cars) should only be used when it is determined that use of a common carrier, or a Government-furnished vehicle, would not be more advantageous to the Government. However, an employee who travels by a common carrier (such as an airline) to a temporary duty location and is authorized to obtain a vehicle may use a GSA contract rental vehicle as the first source of supply instead of a GSA motor pool vehicle.

Waste is also experienced when Government travelers fail to obtain available rental discounts.

Per Diem Allowance

Travelers should be familiar with per diem allowances and the method of computation. They should exercise the same care and restraint in incurring official expenses as they would if traveling on personal business.

One method of fraud occurs when a traveler submits a voucher claiming full per diem, but neither stays in nor pays for public lodging and submits a falsified receipt for lodging. This occurs when the traveler stays at the residence of someone they know or commutes home daily.

Travel Orders

Generally travel must be approved in writing before incurring any travel expenses. The traveler and the approving official should ensure that orders specify the purpose of the trip and the means of travel.

The use of higher level approval authorities, documenting the official purpose for the travel orders, is an important factor in avoiding abuse.

Travel Vouchers

Claims for reimbursement of temporary duty travel expenses are made on NRC Form 64, and on SF 1164 for local travel. The purpose of the trip and travel accounting classification/subject class(es) should be included. Approving officials should examine each of these closely, as improperly or falsely filled out vouchers are a primary means of committing fraud, waste, and abuse in travel.

Indications of travel fraud have included:

- Inadequate, incomplete or handwritten receipts.
- Travel requests and orders signed by the same person.
- Per diem claimed during periods of annual leave.

Rebates to the Traveler (Frequent Flyer Miles)

Generally, rebates or other material of value received by the traveler while on official duty become the property of the U.S. Government. Frequent Flyer programs are a noteworthy exception. Recent changes permit Federal employees to retain, for personal use, promotional benefits received in conjunction with official travel. While Federal employees may participate in programs offered by many airlines and other travel companies, they are responsible for any additional costs.

Additionally, MD 14.1 provides additional details and restrictions related to these programs. In accordance with conditions related in MD 14.1, Handbook, Part 4, Paragraphs 4.5-4.6.2, travelers may accept benefits (often free flight coupons) for ***voluntarily*** giving up their seat on oversold flights (i.e., cannot compromise the mission, cannot receive extra per diem).

However, if the traveler is ***involuntarily*** denied boarding by the airline due to an oversold condition, any compensation repayment or vouchers become the property of the NRC.

D. DISABILITY PAYMENTS

The Federal Employees' Compensation Act (FECA) was enacted in 1916 to provide payments for disabled Federal employees. Guidance on the FECA process is provided in 20 CFR Part 10.

18 U.S.C. § 1920 makes a knowingly false claim for these benefits a crime punishable by up to $2,000 fine or 1 year in prison or both.

Fraud under FECA includes false claims for injury occurring outside the workplace, claims when there is no injury at all and continuation of claims after the disability ended.

Indications of FECA fraud have included the following:

- The claimant is never home — person who answers the telephone says claimant "just stepped out."
- The claimant goes to a physician used by many claimants who have more subjective than objective type of medical conditions.
- The claimant can show little or no medical expenses.
- The claimant had a recent problem with a manager or supervisor.
- Wording of the medical report suggests the physician's skepticism about the claimant's description of the disability, particularly with soft tissue cases.

- The accident

  - is described inconsistently with the nature of the injury;
  - has no witnesses;
  - occurs after proposed or anticipated adverse personnel action.

- Claim is not reported timely.

- Information about the incident is inconsistent with the actual report.

Managers can help deter FECA fraud by full compliance with the reporting requirements described in 20 CFR Part 10.

IV. PROSECUTING FRAUD

In addition to guarding against the types of fraud covered by the statutes noted below, it is important to recognize fraud in its broad context. Fraud is characterized by acts of guile, deceit, trickery, concealment, or breach of confidence that are committed to gain some unfair or dishonest advantage. The objective may be to obtain money, property, or services; to avoid the payment or loss of money, property, or services; or to secure business or personal advantage. Perpetrators of fraud may incur criminal, civil, contractual, and/or administrative penalties.

Criminal Penalties

Criminal penalties are available to *punish* contractors and Government employees who commit fraud. The following statutes generally address acts of criminal fraud:

- *False Statements (18 U.S.C. § 1001).* This statute renders the willful making of an untrue official statement a crime.

  Thus, an employee or contractor could be prosecuted under this statute for committing fraudulent acts including, swearing to an untrue statement on a financial disclosure form or on an application for a Government entitlement program or for any form of payment. This can be a voucher, a T&A report, or a FECA application.

- *False Claims (18 U.S.C. § 287).* This statute renders it illegal to knowingly submit a claim to the Government for money that is undeserved. False travel claims and contract vouchers are examples of this type of fraud.

- *Conspiracy to Defraud (18 U.S.C. § 371).* This statute renders it illegal to agree with another person, or to take joint action, to defraud the Government.

A conspiracy is defined as two or more persons agreeing to commit a crime. Society views conspiracy as a serious offense and worthy of separate punishment because two or more persons working together can do more harm than one and because a conspirator, by definition, must have planned or "premeditated" the crime.

Thus, a supervisor who agreed with a subordinate to falsify the overtime on timecards would have entered into a conspiracy.

- *Mail and Wire Fraud (18 U.S.C. §§ 1341 and 1343).* These statutes render it illegal to use the mail service, telephone lines, or to transmit facsimile or computer data to commit fraud.

  Thus, a contractor mailing a fraudulent invoice to an agency official for reimbursement could be prosecuted for making a false statement, filing a false claim, and committing mail fraud. Wire fraud would be implicated if the telephone were used or if the information were transmitted through a computer modem.

- *Theft and Embezzlement (18 U.S.C. § 641).* This statute renders it illegal to steal, to embezzle, or to have possession of something stolen from the Government.

  Thus, an employee or contractor who, without proper authority, retained Government money or property could be prosecuted for embezzlement.

- *Computer Fraud (18 U.S.C. § 1030).* This statute renders unauthorized access to a Government computer to obtain financial information, affect Government operations, defraud the Government, benefit a foreign nation, or injure the United States as illegal.

  Thus, an employee filing a false claim by accessing a Government database could be prosecuted for making a false statement, filing a false claim, committing wire fraud and computer fraud. If two or more persons were involved, prosecution for conspiracy is also possible.

- *Obstruction of Audit (18 U.S.C. § 1516).* This statute renders it illegal to influence, obstruct, or impede a Federal auditor to deceive or defraud the Government.

  A contractor who manufactures a false receipt to support costs questioned during the course of an audit could be prosecuted under this statute.

- 18 U.S.C. § 201, the bribery statute, prohibits a public official from seeking, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act or for being induced to take or fail to take any action in violation of his official duty.

  The United States may seek recovery for bribery from both the payer and payee of the bribe. In addition, pursuant to 18 U.S.C. § 216, the Attorney General may seek to obtain from the recipient of a bribe the amount of the bribe, a $50,000 civil penalty for each violation of the criminal bribery statutes, and injunctive relief.

- 18 U.S.C. § 209, prohibits Government employees, with certain limited exceptions, from receiving any salary or any contribution to or supplementation of salary from any source other than the United States as compensation for services as a Government employee. Payment of a bribe is a violation of this statute.

Civil, Contractual, and Administrative Penalties

Civil, contractual, and administrative penalties are available to *recover* money lost from fraud schemes and to *protect* the Government. Disciplinary actions (e.g., removal, suspension, demotion, or reassignment) against Government employees who commit fraud or who collude with contractors or others in fraudulent conduct may also be taken. Imposition of these penalties does not require the level of proof needed to support a criminal conviction. Actions may be taken even if there is never a criminal prosecution for fraud.

In some instances, investigators have sufficient evidence that a crime occurred, but the circumstances do not result in criminal prosecution. If the Department of Justice (DOJ) declines to prosecute, managers and contracting officials should consider the facts to determine if some other action is warranted.

A criminal conviction does not, without action by Government officials, prevent the contractor from obtaining future contracts or allow the agency to recoup money paid to the contractor as a result of fraud or to obtain the desired or intended performance under the contract.

Managers and contracting officials need to be aware of and to use the civil, administrative, and contractual powers and penalties available to prevent further loss to the Government and to recover Government assets and funds lost through fraud.

The Government has the right to take action against individuals and companies that engage in fraudulent activities. This right is based on several statutory grounds. Some of the civil actions based on those statutes are filed by the DOJ and may be filed in conjunction with, after, or instead of a criminal prosecution.

Other sanctions are imposed by agency officials under administrative regulations. For example, under contract law and principles, the Government has the right to insist on certain standards of responsibility and business integrity from its contractors. The violation of any of those laws or principles gives the Government the right to take action.

Statutes and regulations that address civil, contractual, and administrative penalties include the following:

- *Civil False Claims Act (31 U.S.C. § 3729).* The submittal of a false claim to the Government can make an individual or company liable to the Government, both criminally and civilly. The Civil False Claims Act establishes liability for false claims. It stipulates that the Government can take action to recover

penalties and damages for false claims in addition to, or instead of, resorting to criminal sanctions. Through such actions, the Government can recover assets lost through fraud. The act, as amended, provides for penalties of up to $10,000 plus three times the amount of damages sustained by the Government for each false claim. Each fraudulent invoice submitted by a contractor could, under appropriate circumstances, be considered a false claim for purposes of the act.

- *Forfeiture of Fraudulent Claims (28 U.S.C. § 2514).* In accordance with this statute, the U.S. Court of Claims can order the forfeiture of the entire amount of a claim in which it judges the proof, statement, establishment, or allowance thereof is based on fraud or attempted fraud of a single item. Employees should note that this statute means that a single falsified entry in a travel voucher could result in forfeiture of the entire claim.

The following provisions are specifically applicable to contracts:

- *Contract Disputes Act (41 U.S.C. § 604).* In accordance with this act, a contractor is liable to the Government for the amount of any unsupported part of a claim plus the costs of reviewing the claim if the claim is based even in part on fraud or misrepresentation of fact. The Government does not have to pay the claim in order to recover damages.

- *Procurement Integrity Act (41 U.S.C. § 423).* Although several provisions were repealed, this act still provides for penalties against Government employees and contractors for improper negotiation of employment, offering or accepting gratuities, or disclosure of proprietary information during a procurement. Violation may result in criminal conviction, administrative

actions, and civil penalties, including fines up to $100,000 for individuals and $1 million for contractor companies.

- *Termination for Default.* FAR 52.245, provides that making a false claim or statement in a contract, is evidence of a contractor's irresponsibility and may result in termination for default.

- *Findings of Irresponsibility.* FAR 9.1 requires contractors to demonstrate affirmatively their responsibility, including a satisfactory record of integrity and business ethics. Any evidence of fraud by a contractor is clearly a matter that contracting officers should consider in determining responsibility.

- *Suspension and Debarment.* FAR 9.4. Contractors may be precluded from doing business with the Government for committing fraud or for various other actions indicating a lack of business integrity.

Program Fraud Civil Remedies Act (31 U.S.C. § 3801)

This act allows most Federal agencies to impose administrative penalties and damages for false claims and false statements if the damages sought are less than $150,000. NRC has established administrative procedures to implement the provisions of this act (see Part 13 of Title 10 of the *Code of Federal Regulations*). The act provides for a penalty of up to $6,000 for each false claim or false statement. Damages for false claims may be assessed at double the amount of the provable loss. Examples of PFCRA actions resulting in double damages include false claims of small entity status by licensees and fraudulent travel and permanent change of station claims by employees.

V. A FINAL MESSAGE

Avoid Fraud

- Exercise care in monitoring time and attendance reporting.
- Use internal controls to protect Government property.
- Review travel procedures and claims.
- Be wary of contractors who attempt to "buy" NRC business. Acceptance of even small favors by employees could result in an improper demand from a contractor.
- If you suspect that a contractor or any other person is offering you a bribe, notify the OIG immediately. Immediate reporting is important for the following reasons:
  - An attempt to bribe Government officials is itself a crime.
  - Contractors whose bribe is rejected will sometimes falsely report that the *employee* solicited a bribe.
  - Refusal to accept a bribe, in itself, has no deterrent effect.
- Protect account and PIN numbers associated with Government sponsored travel and small purchase credit cards.
- Review credit card statements closely to identify unauthorized or fraudulent transactions.
- Do not respond to e-mails requesting financial account information. This includes e-mails claiming to revalidate account information or settings.

Report Fraud

- OIG is the proper recipient of all complaints concerning fraud, graft, corruption, and diversion of NRC assets by NRC employees or contractors.

Call:	OIG Hotline 1-800-233-3497 9:00 a.m. - 4:00 p.m. (EST) After hours, please leave a message
Submit:	On-Line Form Access by: logging onto www.nrc.gov Click on Inspector General Click on OIG Hotline phone symbol
or Write:	U.S. Nuclear Regulatory Commission Office of the Inspector General Hotline Program Mail Stop T-5 D28 11545 Rockville Pike Rockville, MD 20852-2738

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