



DEPARTMENT OF DEFENSE
Defense Contract Management Agency

INSTRUCTION

Fraud, Waste, and Abuse

Office of General Counsel
OPR: DCMA-GC

DCMA-INST 906
October 29, 2014

1. PURPOSE. This Instruction:

a. Reissues, updates, and renames DCMA Instruction (DCMA-INST) 906, “Reporting Fraud, Waste and Abuse” (Reference (a)).

b. Establishes fraud, waste, and abuse policy and provides guidance to the DCMA workforce to identify and report fraud, waste, and abuse.

c. Is established in accordance with the authority in DoD Directive (DoDD) 5105.64, “Defense Contract Management Agency (DCMA)” (Reference (b)).

2. APPLICABILITY. This Instruction applies to all organizational elements of DCMA.


3. MANAGERS’ INTERNAL CONTROL PROGRAM. In accordance with DCMA-INST 710, “Managers’ Internal Control Program” (Reference (c)), this Instruction is subject to evaluation and testing. The process flow is located at Appendix A.

4. RELEASABILITY – UNLIMITED. This Instruction is approved for public release.

5. PLAS CODE. 157A - Fraud and Other Irregularities

6. POLICY RESOURCE WEB PAGE. <https://home.dcma.mil/policy/906r>

7. EFFECTIVE DATE. By order of the Director, DCMA, this Instruction is effective October 29, 2014, and all applicable activities shall be fully compliant within 60 days from this date.


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SUMMARY OF CHANGES

This Instruction has been rewritten and should be read in its entirety to understand the changes since the previous publication. Significant changes include:

- Reformatting to comply with DCMA-INST 501, “Policy Publications Program” (Reference (d))
- Updating References
- Establishing roles and responsibilities in Chapter 2
- Providing a narrative description of procedures in Chapter 3
- Adding process flowchart
- Including a glossary list of acronyms

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REFERENCES

- (a) DCMA-INST 906 , “Reporting Fraud, Waste and Abuse,” October 2010 (hereby canceled)
- (b) DoD Directive 5105.64, “Defense Contract Management Agency (DCMA),”
January 10, 2013
- (c) DCMA-INST 710, “Managers’ Internal Control Program,” April 21, 2014
- (d) DCMA-INST 501 Immediate Policy Change (IPC-1), “Policy Publications Program,”
May 12, 2014
- (e) Sections 7101-7109 of title 41, United States Code “Contracts Dispute Act of 1978”
- (f) Executive Order 12731, “Principles of Ethical Conduct for Government Officers and
Employees,” October 17, 1990
- (g) DoD Instruction 5505.02, “Criminal Investigations of Fraud Offenses,” August 29, 2013
- (h) Part 2635.101(b) of Title 5, Code of Federal Regulations, “Basic Obligations of Publ
Service, General Principles”
- (i) DoD Instruction 4140.67, “DoD Counterfeit Prevention Policy,” April 26, 2013
- (j) DoD Manual 5200.1-R, “Information Security Program,” February 24, 2012
- (k) DoD 5200.1 Pamphlet (PH), “DoD Guide to Marking Classified Documents,”
April 1997
- (l) DoD Directive 5106.01, “Inspector General of the Department of Defense (IG DoD),”
April 20, 2012
- (m) DoD Instruction 7050.05, “Coordination of Remedies for Fraud and Corruption Related to
Procurement Activities,” May 12, 2014
- (n) DCMA-INST 1201 (IPC-1), “Corrective Action Process,” September 23, 2013
- (o) Federal Acquisition Regulation (FAR) 3.1003 (b), Notification of possible contractor
violation
- (p) FAR 33.209, Suspected fraudulent claims
- (q) FAR 33.210 (b), Contracting Officer’s authority
- (r) FAR 49.106, Fraud or other criminal conduct
- (s) FAR 33.206, Initiation of a claim

CHAPTER 1

POLICY

1.1. OVERVIEW.

1.1.1. This Instruction provides policy guidance to the DCMA workforce on reporting suspected fraud, waste, and abuse involving contractors and their employees or agency employees.

1.1.2. If followed, the procedures described herein will enhance the capability of the DCMA workforce to identify and report fraud indicators and promote effective coordination of remedies in order to preserve and maintain fraud deterrence, mitigation, and remediation.

1.1.3. For this policy to be effective, there must be close coordination between the DCMA workforce and Contract Integrity Center (CIC) Counsel, as well as DCMA Counsel at all levels of the process.

1.2. POLICY. It is DCMA policy to:

1.2.1. Continually enhance the capability of the DCMA workforce to identify potential fraud indicators and report suspicions of fraud, waste, and abuse.

1.2.2. Require the DCMA workforce to report any suspected fraud, waste or abuse to the CIC.

1.2.3. Require the DCMA workforce to complete annual Fraud Awareness Training to ensure the DCMA workforce is familiar with various fraud indicators or “Red Flags” (available on the Policy Resource Web Page) to help identify fraud, waste, and abuse as well as reporting requirements and methods.

1.2.4. Require Contracting Officers to be cognizant of limitations imposed by the Federal Acquisition Regulation (FAR) on their authority to resolve matters involving contractor fraud.

1.2.5. Require Contracting Officers to be cognizant of the Contract Disputes Act (CDA) (sections 7101-7109 of title 41, United States Code, “Contracts Dispute Act of 1978” (Reference (e))) statute of limitations for timely coordination of remedies with Contract Management Office (CMO) and CIC Counsel when they learn of a potential claim impacted by a matter involving contractor fraud.

CHAPTER 2

ROLES AND RESPONSIBILITIES

2.1. CONTRACTING OFFICER. The term Contracting Officer as used in this Instruction refers to all DCMA contracting officers to include Administrative Contracting Officers (ACO), Divisional Administrative Contracting Officers (DACO), Corporate Administrative Contracting Officers (CACO) and Termination Contracting Officers (TCO). When a potential claim by or against a contractor involves fraud, the Contracting Officer shall:

2.1.1. Review and gather all facts pertinent to the claim and report the fraud indicators to CIC Counsel before taking any action on the claim.

2.1.2. Coordinate with CIC Counsel prior to taking contractual action which could impact any investigation or litigation involving fraud or allegations of fraud.

2.1.3. Support CIC Counsel, investigative agencies, and/or the Department of Justice (DoJ) in any investigation or litigation involving fraud or allegations of fraud.

2.2. CONTRACT MANAGEMENT OFFICE (CMO) COUNSEL. CMO Counsel (referred to as Associate Counsel in DCMA International) are directly assigned by the Office of General Counsel to serve as the primary legal advisors to specific Contracting Officers and functional leads. CMO Counsel shall:

2.2.1. Coordinate with CIC Counsel on fraud matters.

2.2.2. Support CIC Counsel, investigative agencies, and/or the DoJ in any investigation or litigation involving fraud or allegations of fraud.

2.3. COMMANDERS/DIRECTORS. The term Commander means the cognizant CMO and Region Commander. Director means the cognizant Director of a CMO or Center. Commanders and Directors shall:

2.3.1. Ensure annual Fraud Awareness Training is provided to employees on a fiscal year basis. Computer Based Training (CBT) is available on the CIC website. Live training performed by the CIC is also available.

2.3.2. Ensure each new employee, including all military members and civilian personnel, are provided Fraud Awareness Training within 90 days of assignment to DCMA.

2.4. CONTRACT INTEGRITY CENTER (CIC) DIRECTOR. The Director, CIC, shall:

2.4.1. Assign CIC Counsel to advise and train the DCMA workforce on suspected fraud, waste, or abuse matters.

2.4.2. Assign CIC Counsel to maintain remedies plans and support investigative agencies within geographic areas for investigations having a DCMA connection.

2.4.3. Assign CIC Counsel to support Assistant United States Attorneys and DoJ in the litigation of civil or criminal fraud issues having a DCMA connection in Federal Courts.

2.4.4. Develop and maintain a database of fraud, waste, and abuse matters impacting or relating to DCMA.

2.5. CIC COUNSEL. Attorneys assigned to the CIC shall:

2.5.1. Provide Fraud Awareness Training for DCMA employees in their geographic area of responsibility to ensure they are familiar with various fraud indicators or “Red Flags” (available on the Policy Resource Web Page) used to help identify fraud, waste, and abuse as well as reporting procedures.

2.5.2. Receive and screen all reports of alleged fraud, waste, and abuse from DCMA employees within their area to ensure referrals to investigative agencies have substance and investigative potential.

2.5.3. Monitor all aspects of open matters within their assigned geographic area, maintain remedies plans, and ensure associated CIC database entries are properly completed.

2.5.4. Coordinate remedies so relevant individuals and functions are included in, and informed of, decisions and actions.

2.6. DCMA EMPLOYEES. DCMA employees shall report suspected fraud, waste, and abuse in accordance with paragraph 3.2.

CHAPTER 3

PROCEDURES

3.1. RECOGNIZING FRAUD, WASTE, AND ABUSE.

3.1.1. The DoD Office of Inspector General defines fraud, waste, and abuse as follows (available on the Policy Resource Web Page):

3.1.1.1. **Fraud** - a type of illegal act involving the obtaining of something of value through willful misrepresentation. Whether an act is, in fact, fraud is a determination to be made through the judicial or other adjudicative system and is beyond the auditor's professional responsibility. Fraud is described as a false representation of a material fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives another so he or she acts, or fails to act to his or her detriment.

3.1.1.2. **Waste** - involves the taxpayers not receiving reasonable value for money in connection with any government-funded activities due to an inappropriate act or omission by players with control over or access to government resources (e.g., executive, judicial or legislative branch employees, grantees, or other recipients). Importantly, waste goes beyond fraud and abuse and most waste does not involve a violation of law. Rather, waste relates primarily to mismanagement, inappropriate actions, and inadequate oversight.

3.1.1.3. **Abuse** - involves behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary business practice given the facts and circumstances. Abuse also includes misuse of authority or position for personal financial interests or those of an immediate or close family member or business associate. Abuse does not necessarily involve fraud, violation of laws, regulations, or provisions of a contract or grant agreement.

3.1.2. Fraud, waste, or abuse can result in increased costs to the Government and can present safety hazards for military personnel and other end-users of manufactured equipment and/or services. DCMA employees, as the front-line interface with contractors, play an important role in the prevention and detection of fraud, and in the reporting of suspected misconduct, thereby assuring our warriors receive quality products at a fair price. This is especially true where a DCMA employee is a frequent visitor to, or has a duty station in, a contractor's plant.

3.1.3. DCMA employees should be continually alert for indications of fraud or other irregularities on the part of contractors and/or contractor employees. To assist in this process, the CIC provides annual Fraud Awareness Training either in person or by CBT to all DCMA employees in order to maintain and enhance their ability to detect and report suspected fraud and other irregularities, and publicizes "Red Flag" indicators (available on the Policy Web Resource Page).

3.2. REPORTING FRAUD, WASTE, AND ABUSE.

3.2.1. Executive Order 12731, “Principles for Ethical Conduct for Government Officers and Employees” (Reference (f)), requires all Executive Branch employees to report fraud, waste, abuse, and corruption to appropriate authorities. DoD audit organizations and their auditors have additional requirements. DoD Instruction (DoDI) 5505.02, “Criminal Investigations of Fraud Offenses” (Reference (g)), requires that the Secretaries of the Military Departments, Heads of DoD Components, the Directors of Defense Agencies, and Commanders of the Combatant Commands ensure the prompt referral of all allegations of fraud involving DoD personnel or persons affiliated with DoD and any property or programs under their control or authority to the appropriate DoD Criminal Investigative Organization (DCIO). DoDI 5505.2 (Reference (g)) also requires the Director of the Defense Contract Audit Agency (DCAA) to establish procedures to ensure the prompt referral of suspicions of irregularity or suspected fraud arising from DCAA audit activities to the appropriate DCIO.

3.2.2. Part 2635.101(b) of title 5, paragraph (11), Code of Federal Regulations, “Basic Obligation of Public Service, General Principles” (Reference (h)) requires DCMA employees to report the discovery of any instance that indicates the possibility of fraud or other irregularity by a contractor.

3.2.3. DoDI 4140.67, “DoD Counterfeit Prevention Policy” (Reference (i)) requires reporting of suspect and confirmed counterfeit material.

3.2.4. Within DCMA, employees shall notify CIC Counsel, with supervisors and investigative agencies notified as appropriate (Executive Order 12731 (Reference (f))). Employees assigned to DCMA Special Programs (DCMAS) should contact DCMAS-GC. If desired, employees may report anonymously through the DCMA FraudNET eTOOLS application (FraudNET). Although the FraudNET eTool was initially developed for reporting allegations of fraud by defense contractors and their employees, the FraudNET eTOOL may also be used to report suspected fraud, waste, or abuse by employees or contractors of the Agency or Department, which will normally be referred to an appropriate investigative agency based on the circumstances. Alternatively, reports of suspected fraud, waste or abuse of any kind may be made to the DoD Hotline (see below for details).

3.2.5. When reporting suspected activity, DCMA employees should provide a summary of the suspected fraud, waste or abuse which identifies the contractor and describes the circumstances. The summary should include pertinent background information such as the contract number, description of the product or service, when the activity occurred, and how the suspect activity affects the Government. Substantiating documentation should be retained.

3.2.6. Reports involving SECRET information must be made through FraudNET on the Secure Internet Protocol Router Network, otherwise known as the SIPRNET system, registered mail or courier. The following link is **not** live and is presented for information and reference only, as the SIPRNET system cannot be reached from this unclassified site:
SIPRNET e-mail: FraudNet@dcma.smil.mil.

3.2.7. If an employee prefers not to submit a complaint involving SECRET information via the online complaint form on the SIPERNET, the employee may use the form as a guide to format the complaint document to send by registered mail or courier. Employees must ensure the complaint content complies with DoD Manual 5200.1-R, "Information Security Program," (Reference (j)), and DoD 5200.1PH, "DoD Guide to Marking Classified Documents" (Reference (k)). If applicable, send complaints via registered mail to: DCMA FraudNET, 495 Summer Street, Boston, MA 02210. Alternatively, contact the DoD Hotline Classified Complaints Site (link available on the Policy Resource Web Page).

3.2.8. Reports involving **any TOP SECRET** information or above must be made by calling the Defense Hotline at 1-800-424-9098, or by coordinating with the employee's servicing security office on courier options. TOP SECRET complaints cannot be sent via postal systems. Alternatively, contact the Defense Hotline at 1-800-424-9098 (unsecured line) to coordinate delivery. Further coordination to speak on a classified, secured line can be arranged, if requested or deemed necessary.

3.3. ADMINISTERING CONTRACTS AFFECTED BY A FRAUD INVESTIGATION.

3.3.1. Routine contract management should continue during an investigation, as long as it does not adversely affect the issues under review. DCMA employees must coordinate with the CIC on any contract management activity that might impact the investigation. For example, contract modifications and requests for waivers on contracts under investigation, as well as process or product audits performed pertaining to contractors under investigation for product substitution.

3.3.2. During the course of any investigation, DCMA employees shall cooperate with investigators and CIC Counsel by providing documents and information available through their normal contract management duties in accordance with DoDD 5106.01, "Inspector General of the Department of Defense (IG DoD)," and DoDI 7050.05, "Coordination of Remedies for Fraud and Corruption Related to Procurement Activities," (References (l) and (m)). Investigative requests for information that is not available through performance of routine contract management should be referred to the CIC, as should requests for information from non-government sources.

3.3.3. A pending investigation does not necessarily preclude some contract remedies (such as withholding progress payments, issuing Corrective Action Requests (CAR), unilateral rate determinations, disallowance of cost, assessing cost for re-inspection, consideration or equitable price reduction, business systems withholding, rejection of product or services, termination for default, etc.). DCMA employees should continue to consider appropriate contractual and administrative remedies, but should coordinate these actions with assigned CMO Counsel and CIC Counsel prior to initiation. Specifically, DCMA-INST 1201 (IPC-1), "Corrective Action Process" (Reference (n)) requires pre-release coordination of all Level III CAR with CMO Counsel and CIC Counsel.

3.3.4. Information regarding the existence or details of any on-going investigation is FOR OFFICIAL USE ONLY (FOUO). FOUO information may be shared with other Government

employees, but only on a need-to-know basis. Such information shall **not** be disclosed to contractors or other non-government personnel without the prior consent of investigators or CIC Counsel.

3.3.5. Pursuant to FAR 3.1003(b) and FAR 33.209 (References (o) and (p)), Contracting Officers shall report any suspected fraudulent claim or misrepresentation to CIC Counsel. For matters arising in Special Programs, the Contracting Officer shall report such matters to the DCMAS Chief Counsel, who will, in turn, coordinate with the CIC as security regulations and guides allow.

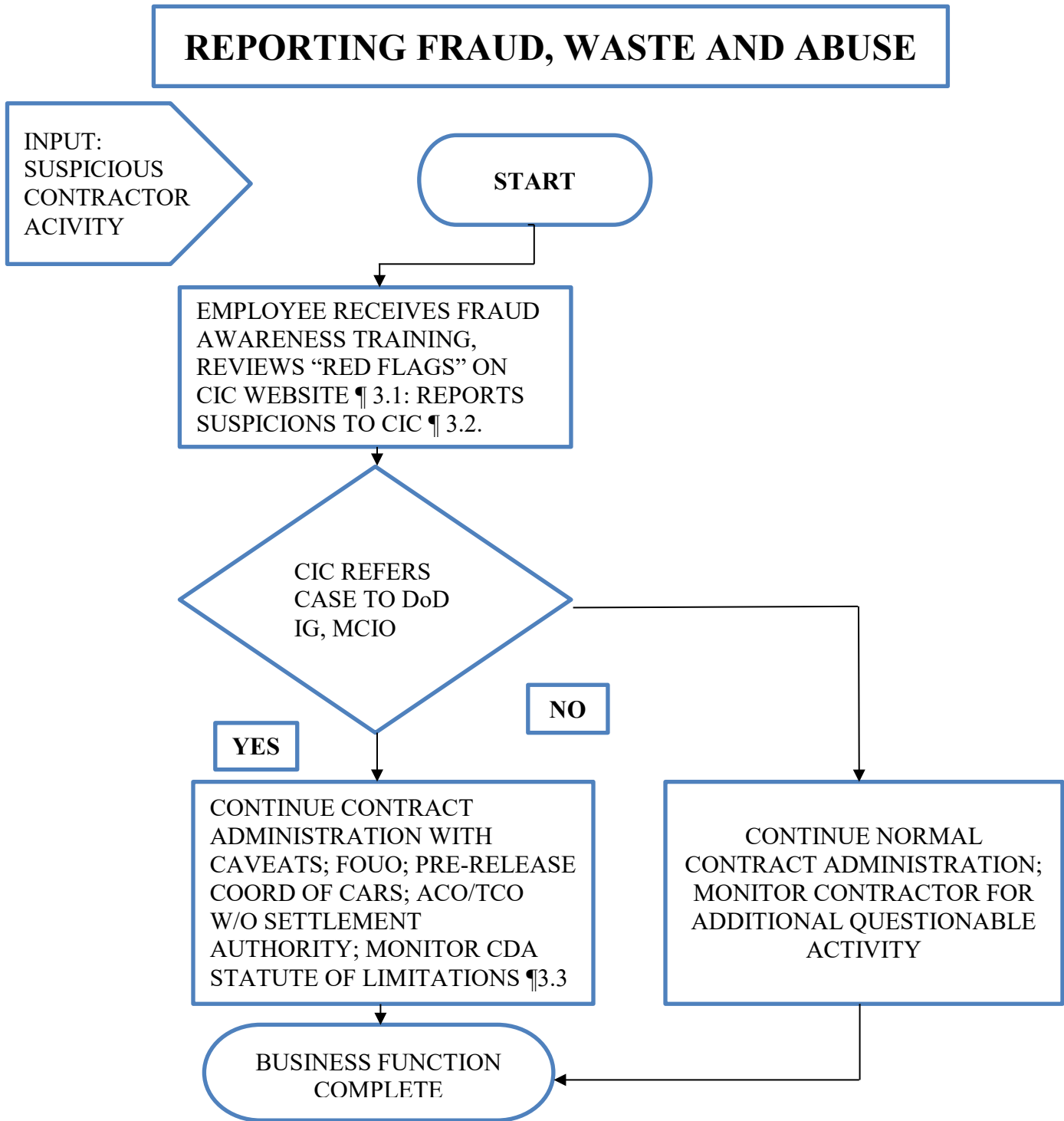
3.3.6. Pursuant to FAR 33.210 (b) (Reference (q)), Contracting Officers are not authorized to decide or resolve claims or disputes that involve fraud. Contracting Officers shall not take any action to settle or disposition any contract action while it is under investigation without CIC coordination.

3.3.7. Pursuant to FAR 49.106 (Reference (r)), if a TCO suspects fraud related to the settlement of a terminated contract, the TCO shall discontinue negotiations and report the matter. TCOs shall not take any action to settle or disposition any contract action while it is under investigation without CIC coordination.

3.3.8. Statute of Limitations. There is a 6-year statute of limitations upon CDA claims by either party arising under contracts awarded after October 1, 1995, that may not be waived under the CDA (Reference (e)) and FAR 33.206 (Reference (s)). Contracting Officers should be cognizant of the accrual of the CDA statute of limitations and maintain frequent communication with CMO and CIC Counsel and the investigative organization to ensure timely coordination of remedies on matters subject to an investigation.

APPENDIX A

Reporting Fraud, Waste, and Abuse Flowchart



GLOSSARY

ACRONYMS

ACO	Administrative Contracting Officer
CAR	Corrective Action Request
CDA	Contract Disputes Act
CBT	Computer Based Training
CIC	Contract Integrity Center
CMO	Contract Management Office
DCAA	Defense Contract Audit Agency
DCIO	Defense Criminal Investigative Organization
DCMA-INST	DCMA Instruction
DCMAS	Special Programs Directorate
DoD IG	Department of Defense Office of Inspector General
DoDD	DoD Directive
DoDI	DoD Instruction
DoJ	Department of Justice
FAR	Federal Acquisition Regulation
FOUO	FOR OFFICIAL USE ONLY
MCIO	Military Criminal Investigative Organization
OPR	Office of Primary Responsibility
PLAS	Performance Labor Accounting System
SIPRNET	Secure Internet Protocol Router Network
TCO	Termination Contracting Officer