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# ACQUISITION INTEGRITY FIRST

By Major Brian M. Shust



This article discusses changes in the Acquisition Integrity Branch's processes so acquisition fraud counsels and other field practitioners are fully armed to defend acquisition integrity throughout the Department of the Air Force.

## Procurement Fraud and Corruption

Since establishing the Fraud Remedies Branch (FRB) in 2011, the Air Force Judge Advocate General's (JAG) Corps has adapted how it fights procurement fraud and corruption.[1] The JAG Corps made significant changes when the overarching Department of the Air Force's (DAF) structure to combat fraud and corruption changed from the "Procurement Fraud Remedies Program" into a broader "Acquisition Integrity Program (AIP)."[2] In conjunction with that major change, the JAG Corps' FRB became the Acquisition Integrity Branch (AIB) in December 2022.[3] AIB was designated as the JAG Corps' conduit for communicating with the Office of the Deputy General Counsel of the Air Force, Contractor Responsibility & Conflict Resolution Division (SAF/GCR) and tasked with maintaining visibility over acquisition integrity cases DAF-wide on behalf of The Judge Advocate General (TJAG).[4]

Over the past several years, the JAG Corps has bolstered its commitment to the AIP, and rightly so. Increased defense budgets, a global pandemic, and sophisticated foreign actors in the cyber realm all incentivize or exacerbate fraud against the Department of Defense (DoD). Between fiscal year (FY) 2013 and FY 2017, DoD recovered over \$6.6 billion from defense contracting fraud cases.[5] In 2020, one in five DoD Inspector General investigations involved procurement fraud.[6] In FY 2021 alone, the Department of Justice (DoJ) reported that False Claims Act settlements and judgments exceeded \$5.6 billion.[7] Even this might only be the tip of the iceberg—fraud and corruption are deceptive by nature,[8] so identifying and estimating its attributable losses to the DoD (which accounts for two-thirds of all federal contracting) is difficult.[9] To that end, President Biden's Interim National Security Strategic Guidance[10] and National Security Strategy[11] identify the risk that

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corruption poses to the rule of law to the United States and its allies, and emphasize how the administration intends to fight it transnationally: through diplomatic engagement, foreign assistance, and enhancing partner governments' abilities to detect and combat it.[12]

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To align with that strategy, the JAG Corps remains focused on the foundational **AIP mission:**

Detect and correct instances of fraud and corruption affecting DAF procurement and nonprocurement transactions to maintain operational readiness, recoup lost financial resources, restore public confidence in Air Force and Space Force acquisitions, and prevent fraudulent conduct from occurring in the future.[13]

In 2016, then-FRB published (in The Reporter Vol 43, Issue No. 2) a comprehensive overview of the four AIP remedies (criminal, civil, contractual, and administrative), described the role of Acquisition Fraud Counsel (AFC), and justified exactly why combatting fraud matters.[14] **Please read it!**

While the AIP mission, the four AIP remedies, and the importance of fighting for acquisition integrity have not changed since that 2016 article, the way in which the AIB and AFCs execute has. This article discusses these changed AIB processes so AFCs and other field practitioners are fully armed to defend acquisition integrity throughout the DAF.

The article first describes new Article 6 inspection requirements for AFCs, clearly delineating the responsibilities of individual legal offices responsibilities within the AIP mission. The

article then summarizes the recent memorandum of understanding among DAF AIP stakeholders—contracting, investigatory, and legal. Finally, the article discusses the AIB's increased responsibilities and its new initiative to ensure proactive legal support to all AIP stakeholders.

### **There Will be a Test**

Installations are now inspected on their Acquisition Integrity Programs. The DAF's AIP is decentralized. The JAG Corps' most important assets to protect acquisition integrity are competent and engaged installation-level AFCs. All MAJCOMs/FLDCOMs are responsible for ensuring the readiness of AFCs within their respective commands. Acquisition fraud cases are rare at some installations, so it can present a challenge to develop the capability needed to effectively support fraud and corruption investigations and pursue remedies when the occasion does arise.

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To ensure AFCs maintain readiness, build stakeholder relationships, and execute the AIP mission, beginning 1 September 2022, each legal office's acquisition fraud program (MAJCOM/FLDCOM and installation-level) will be assessed in AF/JAI Article 6 Inspections on three main tasks: (1) appointing AFCs, (2) training them and program stakeholders, and (3) coordinating with investigators and the AIB.

**First,** AFCs must be formally identified and appointed in writing by their cognizant Staff Judge Advocates (SJAs).[15] The AIB strongly recommends SJAs also appoint alternates able to immediately step-in when the primary AFC has a potential conflict of interest, is out of the office, or gets

pulled away by other mission demands. SJAs should appoint AFCs who are adept at communicating with and advising diverse clients, and who actively seek opportunities to help others preventively spot and remedy complex issues. An AFC's main job is to advise and support both DAF and interagency stakeholders. They do that by training attached contracting offices on fraud indicators and trends, and regularly coordinating with AFOSI on fraud investigations so that they can provide legal parameters. By training the people most likely to spot fraud, and then advising the fraud investigators once fraud is suspected, AFCs perform as the legal backstop at the tactical level. They succeed by building relationships and by simply being a known commodity in their command.

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**Second,** AFCs need to be trained, and then train program stakeholders from a legal perspective. For most AFCs, their role is an additional duty that competes against other legal office activities. Thus, the full-time AIB fills gaps in knowledge and experience and otherwise supports AFCs in addition to providing program oversight for TJAG. The AIB regularly conducts training directly with AFCs and within legal offices at the installation and MAJCOM/FLDCOM levels. It also leads bi-monthly training for AFCs DAF-wide, and sends out a bi-monthly newsletter with training tips and developments in the law, all of which can be found on the AIB's Knowledge Management page on FLITE.[16] Generally, AIB-led training orients AFCs to the AIP, helps AFCs identify and apply the four main remedies, and presents current trends and indicators of procurement fraud. With a basic understanding of their role, AFCs can then help their contracting offices proactively spot acquisition integrity issues, and assist AFOSI in shaping investigations if problems arise.

**Lastly,** AFCs must stay in constant communication with other stakeholders and the AIB.[17] First, AFCs must routinely coordinate with AFOSI on acquisition fraud cases that affect their installations and their contracting offices. The point is to both work existing cases and train AFOSI on fraud indicators and trends. To repeat: building relationships is the most important AFC skill in this practice area. The AIB recommends at least monthly meetings with all stakeholders to offer training opportunities and obtain the latest case updates on AFOSI procurement fraud investigations. Second, AFCs must coordinate with the AIB early and often to ensure headquarters maintains an accurate site picture and can lend assistance as needed.

Legal offices are encouraged to take a proactive approach in identifying and addressing deficiencies through self-assessment programs, but the AIB stands ready to provide training, slide decks, templates, and other review support.

### **Acquisition Integrity Working Group**

The DAF has a legacy of teamwork among the acquisition, law enforcement, and legal communities that we rely on every day to fight acquisition fraud and corruption. The Office of Primary Responsibility for the Air Force's AIP is SAF/GCR.[18] In that role, SAF/GCR oversees coordination of fraud remedies, and offers input to DoJ regarding the initiation, amendment, settlement, or withdrawal of actions which allege fraud or corruption involving DAF procurement or nonprocurement transactions.[19] SAF/GCR is not alone, however, as the AIP is built on stakeholder synergy. Contracting personnel identify fraudulent or non-responsive contractors. AFOSI Special Agents investigate allegations of fraud and corruption. AFCs and the AIB ensure all stakeholders are trained and supported, and that the four remedies are applied where appropriate.

The relationships between AIP stakeholders were reaffirmed in 2021 when SAF/AQC, SAF/GCR, AFOSI, and AF/JAC signed a Memorandum of Understanding (MOU) emphasizing the DAF prioritization of collaborative engagement against fraud and corruption, in turn aligning with President Biden's Interim National Security Strategic Guidance and National Security Strategy.[20]

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The goal of the MOU is to strengthen and extend the Parties' strategic, operational, and tactical relationships, enhance information-sharing and coordinate actions to improve and advance our tactics, techniques, and procedures to combat fraud.[21] The MOU created the main mechanism for DAF entities to collaborate on acquisition fraud: the Acquisition Integrity Working Group (AIWG).[22] The AIWG maximizes coordination, knowledge/information-sharing, and training across the DAF. The AIWG meets quarterly to "discuss mutual issues of concern and best practices to address the fraud, misconduct and corruption fight in the DAF." [23] This is primarily accomplished through briefings and trainings by each of the AIWG subcommittees, which are led and composed of representatives from all stakeholder disciplines and focus on specific issues like fraud risk management, space acquisition, and case management. The AIWG also creates and adopts AIP policy positions for dissemination to DAF Senior Leaders. As the AFOSI Commander said upon signing the MOU at the Pentagon, "History has shown us that the more aggressively all the stakeholders in fraud prevention and detection work together, the healthier our ability to both root out fraud ... and also deter others." [24]

The MOU delineates the joint and individual responsibilities of the parties. The JAG Corps, through AF/JAC (Civil Law and Litigation Domain) and its AIB, is tasked with education and training of all AIP stakeholders, field support to AFCs, and support to AFOSI on investigations.

The AIB highly encourages the field to review the MOU, which is posted on the AIB Knowledge Management page.[25] AFCs will find it useful to know the responsibilities of the other stakeholders, in conjunction with the responsibilities listed in DAFI 51-1101, *Acquisition Integrity Program*.

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## AIB: The JA Conduit to SAF/GCR

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To provide visibility and support to the AIP mission, a major update to DAFI 51-1101 in 2021 accompanied the signing of the MOU. The DAFI now clearly makes the AIB the single conduit to SAF/GCR, and as such AIB is required to maintain visibility over all acquisition fraud cases on behalf of TJAG. Specifically, DAFI 51-1101 requires AFCs to coordinate with AF/JAC (again, through its AIB) on the support they provide to stakeholders,[26] provide AF/JAC case updates and "significant case developments,"[27] and provide litigation products, such as settlement concurrences and suspension or debarment recommendations *through* AF/JAC to SAF/GCR.[28]

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At a minimum, AFCs must know basic information about the procurement fraud cases AFOSI is investigating, and then communicate that information up the chain to AIB. Without this coordination, fraud goes unchecked, Airmen's safety is put at risk, dollars are wasted, and the mission fails. If the AIB and AFCs are also not constantly coordinating about cases, taxpayers are at risk of being duped by non-responsible contractors and bad actors (military and civilian). Over the past few years, the AIB, through AF/JAC, began a targeted campaign to emphasize the role and importance of AFCs in the fight against procurement fraud and corruption.

The AIB recognized two things: first, the JAG Corps needed to eliminate the deltas between what it should be doing (and tracking) versus what was actually going on, and second, it needed more proactive engagement to ensure stakeholders were trained and collaborating on fraud and corruption remedies, from AFCs to contracting shops and AFOSI detachments. The AIB identified that it was required to "accelerate change" as directed by Air Force Chief of Staff General Charles Q. Brown's Strategic Approach.[29] The

AIB needed to take the initiative in establishing proactive legal support,<sup>[30]</sup> or risk the unchecked and exponential growth of fraud and corruption within the DAF.

The initiative it implemented, and which continues today, is simple: more consistent, recurring coordination and training. Through a systematic, monthly communication schedule between AIB and DAF AFCs, the JAG Corps is now better able to track fraud and corruption, apply faster and more substantial remedies to combat them, and deter future fraud and corruption. This enables continuing conversations between AIB attorneys and AFCs on cases, proactive issue-spotting, identification of potential remedies, and informed, engaged AFCs that have strong relationships with their installation clients. AFCs at all levels are better postured to comply with the new Article 6 inspection requirements and receive more training in the AIP mission—whether in the form of formalized presentations or e-mailed quick tips.

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Please ensure you are making full use of the AIB's capabilities to fill even the slightest resource, knowledge, and training gaps your office may have.

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Early returns are promising. Increased attention by MAJCOMs/FLDCOMs, and subsequently greater oversight of AFC performance by Installation AFCs has drastically increased intra-JAG Corps coordination. The AIB is now tracking almost 150 more cases than it did the prior year (approximately 400 cases representing \$94 billion in potential losses to the United States Government). Specifically, in the final three months of 2022 after the initiative began, the AIB opened 39% of all new 2022 cases, closed 39% of all closed 2020 cases, and proposed nearly double (17) the number of individuals and contractors for debarment than the rest of 2022 combined! Through the hard work of AFCs and AIB during that time, SAF/GCR has debarred individuals who committed COVID-19 Payment Protection

Program fraud, contractors who failed to perform and committed integrity violations, and contractors who were convicted of federal wire fraud. The AIB has trained entire MAJCOMs, installation legal offices, and AFCs across the world. One-on-one and mass online hosted trainings have reached hundreds of AFCs, JAGs, civilian attorneys, and AIP stakeholders since the Summer of 2022.

The AIB is charged with supporting and training AFCs and has geared itself to do so. Please ensure you are making full use of the AIB's capabilities to fill even the slightest resource, knowledge, and training gaps your office may have.

## The AIB is Standing By

While the JAG Corps has undergone some significant changes in how it executes the fraud fighting mission, its pursuit of acquisition integrity remains constant. Armed with this article's updates to the 2016 primer on procurement fraud, AFCs should be up-to-speed on the state of the DAF AIP and ready to accelerate proactive legal support through regular fraud and corruption training and stakeholder collaboration. **If not, the AIB is standing by to help!**

## Glossary

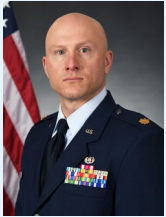
- **AFC:** Acquisition Fraud Counsel
- **AFOSI:** Air Force Office of Special Investigations
- **AIB:** Acquisition Integrity Branch
- **AIP:** Acquisition Integrity Program
- **AIWG:** Acquisition Integrity Working Group
- **DAF:** Department of the Air Force
- **DoD:** Department of Defense
- **DoJ:** Department of Justice
- **FRB:** Fraud Remedies Branch
- **FLDCOM:** field command
- **FY:** fiscal year
- **JAG:** Judge Advocate General
- **MAJCOM:** major command
- **MOU:** Memorandum of Understanding
- **SJA:** Staff Judge Advocate
- **TJAG:** The Judge Advocate General

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## Endnotes

- [1] Both the Department of Defense and the Department of the Air Force discuss combatting procurement fraud and corruption together, and define corruption as involving “bribery, gratuities, or conflicts of interest.” See Dep’t of Defense Instr. 7050.05, *Coordination of Remedies for Fraud and Corruption Related to Procurement Activities*, Glossary, May 12, 2014 (incorporating change 1, effective July 7, 2020); Dep’t of the Air Force Instr. 51-1101, *Acquisition Integrity Program*, Oct. 4, 2021, atch. 1 [DAFI 51-1101].
- [2] DAFI 51-1101 at 2. This change was made to align the program to the mission, which is not focused solely on combatting procurement fraud and corruption. Rather, the federal government’s policy is to only do business with “responsible” federal contractors as defined in FAR Part 9.104-1. For example, businesses with a history of willfully disregarding contract terms, carrying unpaid federal tax liens, or that have filed for bankruptcy protection are not responsible under the FAR, and the DAF may suspend or debar those contractors despite the absence of fraud. Specifically, DAFI 51-1101 states that the DAF renamed the program “to more accurately reflect the program’s mission and improve ease of recognition by using the same naming convention used by sister programs at other agencies such as the National Aeronautical and Space Administration and the Department of the Navy.” *Id.*
- [3] This change was made to better reflect our mission within the DAF’s overarching AIP.
- [4] *Id.* at 8-9.
- [5] U.S. Government Accountability Office, *DOD Fraud Risk Management*, August 2021, at 8 [GAO Report on DoD].
- [6] *Id.* at 2.
- [7] Press Release, Dep’t of Justice, Justice Department’s False Claims Act Settlements and Judgments Exceed \$5.6 Billion in Fiscal Year 2021 (Feb. 1, 2022), <https://www.justice.gov/opa/pr/justice-department-s-false-claims-act-settlements-and-judgments-exceed-56-billion-fiscal-year>.
- [8] DAFI 51-1101, atch. 1 (defining fraud as “intentional deception”).
- [9] GAO Report on DoD at 1.
- [10] The White House, Interim National Security Strategic Guidance (Mar. 2021) at 7, 18.
- [11] The White House, National Security Strategy (Oct. 2022) at 21, 36.
- [12] *Id.*
- [13] Dep’t of the Air Force Policy Directive 51-11, *Remedies for Fraud and Corruption affecting Procurement and Nonprocurement Transactions* (Oct. 4, 2021) at 3.
- [14] Nicole M. Navin, & Matthew L. Sherman, *Combating Procurement Fraud: A JA Perspective*, THE REPORTER, Vol 43, No. 2 (2016), 57-61. The article provides examples on how AFCs can support contracting officers and contracting squadrons, such as education and training on fraud and fraud indicators, and advising contracting personnel of potential contract remedies when fraud is suspected or discovered. It also gives examples of how AFCs support the Department of Justice in civil and criminal actions, and specifically discusses the False Claims Act and qui tam whistleblower suits. Further, the article provides an overview of the suspension and debarment processes, and how these administrative remedies flow from AFCs, through AIB, to SAF/GCR for action.
- [15] The AIB has posted template appointment memoranda for MAJCOMs/FLDCOMs and Installation SJAs on its FLITE page. See Contract Law Field Sprt Ctr, Procurement Fraud and Fraud Remedies, <https://kmjas.jag.af.mil/moodle/course/view.php?id=228> (last accessed 31 Jan 23). Please note this website is restricted access and requires a CAC and access to the JAG Corps’ FLITE page.

- [16] *Id.*
- [17] Legal offices should retain emails among the AFC, AFOSI, AIB, and other stakeholders (e.g., DoJ, CONS) to substantiate this inspection requirement.
- [18] DAFI 51-1101 at para. 1.
- [19] *Id.* at paras. 1.1.1, 1.1.4.
- [20] *See infra* notes 9, 10.
- [21] Memorandum of Understanding by and among Deputy Assistant Secretary (Contracting), Deputy General Counsel (Contractor Responsibility and Conflict Resolution), Director, Judge Advocate General's Corps Civil Law Domain, and Commander, Air Force Office of Special Investigations, (July 8, 2021) at 1.
- [22] *Id.* at 2-3.
- [23] *Id.*
- [24] Wayne Amann, *Joint MOU targets fight against acquisition fraud, corruption*, OFFICE OF SPECIAL INVESTIGATION PUBLIC AFFAIRS (July 13, 2021), <https://www.dyess.af.mil/News/Article-Display/Article/2692107/joint-mou-targets-fight-against-acquisition-fraud-corruption/>.
- [25] *See infra* note 15.
- [26] DAFI 51-1101, para. 1.7.2.1. Per DAFI 51-1101, para. 1.7, Installation AFCs are required to coordinate with and provide advice and support to all procurement fraud case stakeholders, including intra-DAF (e.g., SAF/GCR, AFOSI, CONS) and inter-agency (e.g., DoJ), from “case inception to case closure.”
- [27] *Id.* at para. 2.1.5.1.1.
- [28] *Id.* at para. 2.2.1.
- [29] Gen. Charles Q. Brown, Jr., Air Force Chief of Staff, *Accelerate Change or Lose*, (Aug. 2020), [https://www.af.mil/Portals/1/documents/csaf/CSAF\\_22/CSAF\\_22\\_Strategic\\_Approach\\_Accelerate\\_Change\\_or\\_Lose\\_31\\_Aug\\_2020.pdf](https://www.af.mil/Portals/1/documents/csaf/CSAF_22/CSAF_22_Strategic_Approach_Accelerate_Change_or_Lose_31_Aug_2020.pdf).
- [30] The JAG Corps 2021 Flight Plan requires the “Civil Law” domain to “[d]eliver proactive ... advice.” JAG Corps Flight Plan 2021 (Mar. 17, 2021), [https://kmjas.jag.af.mil/moodle/pluginfile.php/43382/mod\\_resource/content/1/JAG%20Corps%20Flight%20Plan%202021%20%2817%20Mar%2021%29.pdf](https://kmjas.jag.af.mil/moodle/pluginfile.php/43382/mod_resource/content/1/JAG%20Corps%20Flight%20Plan%202021%20%2817%20Mar%2021%29.pdf). This website is restricted access.