

April 2005

# DEFENSE ETHICS PROGRAM

## Opportunities Exist to Strengthen Safeguards for Procurement Integrity





Highlights of [GAO-05-341](#), a report to congressional requesters

## DEFENSE ETHICS PROGRAM

### Opportunities Exist to Strengthen Safeguards for Procurement Integrity

#### Why GAO Did This Study

To help ensure defense contracts are awarded fairly and current and former employees do not use their knowledge of DOD acquisition activities to gain financial or other benefits, DOD personnel are required to conduct themselves in a manner that meets federal ethics rules and standards.

Regulations require DOD to implement an ethics program and provide that contractors must conduct themselves with the highest degree of integrity and honesty. For this report, GAO assessed (1) DOD's efforts to train and counsel its workforce to raise awareness of ethics rules and standards as well as DOD measures of the effectiveness of these efforts and (2) DOD's knowledge of defense contractors' programs to promote ethical standards of conduct.

#### What GAO Recommends

GAO is recommending that DOD regularly assess training and counseling efforts to ensure that individuals covered by conflict-of-interest and procurement integrity rules receive appropriate training and counseling, ensure ethics officials track and report on the status of alleged misconduct, and assess contractors' ethics programs to gain knowledge and mitigate risk in DOD contracting relationships. In commenting on a draft of this report, DOD agreed with two recommendations and partially concurred with the third.

[www.gao.gov/cgi-bin/getrpt?GAO-05-341](http://www.gao.gov/cgi-bin/getrpt?GAO-05-341).

To view the full product, including the scope and methodology, click on the link above. For more information, contact David C. Cooper at (202) 512-4125 or [cooperd@gao.gov](mailto:cooperd@gao.gov).

#### What GAO Found

To implement its ethics program, DOD has delegated responsibility for training and counseling employees on conflict-of-interest and procurement integrity rules to more than 2,000 ethics counselors in DOD's military services and agencies. These efforts vary in who is required to attend training and counseling, the content of ethics information provided, and how often the training and counseling is provided. While some variation may be warranted, DOD lacks the knowledge needed to determine whether local efforts are meeting the objectives of its ethics program—in large part because DOD does not systematically capture information on the quality and content of the training and counseling or employee activity as they relate to ethics rules and restrictions. Specifically, ethics counselors were unable to tell us if people subject to procurement integrity rules were trained. Instead, DOD evaluates its ethics program in terms of process indicators—such as the number of people filing financial disclosure forms, the number of ethics officials providing training and counseling services, and the amount of time ethics officials spend on such activities—which do not provide metrics to assess the effectiveness of local training and counseling efforts. DOD also lacks adequate information on the number and status of allegations of potential misconduct related to conflict-of-interest and procurement integrity rules. Ethics officials did not know of 53 reported allegations of potential misconduct referred to inspectors general offices. DOD has taken several actions since October 2004 aimed at enhancing its ethics program. However, without knowledge of training, counseling, and reported allegations of misconduct, DOD is not positioned to assess the effectiveness of its efforts.

DOD's knowledge of defense contractor efforts to promote ethical standards is also limited. Defense regulations provide that contractors should have certain management controls, such as ethics training for all employees and systems to detect improper conduct in connection with government contracts. However, DOD had not evaluated the hiring practices of the contractors GAO contacted. Neither the Defense Contract Management Agency nor the Defense Contract Audit Agency—the agencies responsible for oversight of defense contractors' operations—had assessed the adequacy of contractors' practices for hiring current and former government employees. An independent review of one of DOD's largest contractors found that the company lacked the management controls needed to ensure an effective ethics program. Instead, the review found that the company relied excessively on employees to self-monitor their compliance with post-government employment restrictions. The review concluded that by relying on self-monitoring, the company increased the risk of noncompliance, due to either employees' willful misconduct or failure to understand complex ethics rules.

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# Contents

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<b>Letter</b>		<b>1</b>
	Results in Brief	2
	Background	3
	DOD Lacks Information to Evaluate Its Training and Counseling Efforts	6
	DOD Needs More Knowledge of Government Contractors' Standards of Conduct Efforts	11
	Conclusion	13
	Recommendations	13
	Agency Comments	14
<b>Appendix I</b>	<b>Scope and Methodology</b>	<b>17</b>
<b>Appendix II</b>	<b>Comments from Department of Defense</b>	<b>19</b>
<b>Table</b>		
	Table 1: Summary of Annual Ethics Training by Office	8

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United States Government Accountability Office  
Washington, DC 20548

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April 29, 2005

The Honorable Ike Skelton  
Ranking Minority Member  
Committee on Armed Services  
House of Representatives

The Honorable Solomon P. Ortiz  
Ranking Minority Member  
Subcommittee on Readiness  
Committee on Armed Services  
House of Representatives

The Honorable Vic Snyder  
Ranking Minority Member  
Subcommittee on Military Personnel  
Committee on Armed Services  
House of Representatives

In fiscal year 2004, officials from the Department of Defense (DOD) awarded contracts worth more than \$200 billion for goods and services. Federal ethics rules and standards have been put in place to help safeguard the integrity of the procurement process by mitigating the risk that DOD employees will use their position to influence the outcomes of contract awards for future gain and that companies will exploit this possibility.

Given the sizeable dollars at stake and the risks inherent in federal contracting, you asked us to determine whether post-government employment rules are ensuring the public trust. In response, we assessed (1) DOD's efforts to train and counsel its workforce to raise awareness of the rules as well as DOD measures of the effectiveness of these efforts and (2) DOD's knowledge of defense contractors' programs to promote ethical standards of conduct. To satisfy our objectives, we met with the designated agency ethics officials, their designee, or ethics counselors in the Office of the Secretary of Defense, Air Force, Army, Navy, and the Defense Contract Management Agency and visited seven major defense contractors. Further details on the scope and methodology of our review can be found in appendix I. We conducted our review from April 2004 to March 2005 in accordance with generally accepted government auditing standards.

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We did not address the effectiveness of the statutory provisions covering post-government employment restrictions or the extent to which violations have occurred.

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## Results in Brief

Through its ethics program, DOD implemented ethics training and counseling efforts aimed at educating its workforce to raise awareness of conflict-of-interest and procurement integrity rules in order to prevent misconduct. However, DOD lacks departmentwide knowledge of the content of training and counseling, how often these services are provided, which employees receive information on conflict-of-interest and procurement integrity, and reported allegations of potential misconduct. Specifically, ethics counselors were unable to tell us if people subject to procurement integrity rules were trained. Ethics officials also did not know of 53 reported allegations of potential misconduct referred to inspectors general offices. Without knowledge of training, counseling, and reported allegations of misconduct, DOD is not positioned to assess the effectiveness of its efforts. Aware of the increased public concern about misconduct, DOD took several actions since October 2004 aimed at enhancing its ethics program.

DOD regulations provide that its contractors should have written codes of conduct, ethics training, and monitoring programs in place; however the seven contractors we visited indicated that DOD, through its oversight activities, did not monitor these contractors' recruiting, hiring, and placement practices of current and former government employees. In fact, a recent independent review of one of DOD's largest contractors found both gaps in the company's procedures and a failure to follow written policy, in certain cases. For example, the company relied excessively on employees to self-monitor compliance with standards of conduct rules and in doing so increased the risk of noncompliance, due to either employees' willful misconduct or failure to understand complex ethics rules.

We are making three recommendations to the Secretary of Defense to take actions in order to raise the level of confidence that DOD conducts business with impartiality and integrity. Specifically, to improve DOD's knowledge and oversight, DOD should regularly assess training and counseling efforts for quality and content to ensure that individuals covered by conflict-of-interest and procurement integrity rules receive appropriate training, and DOD should ensure ethics officials track and report on the status of alleged misconduct. We further recommend that DOD assess, as appropriate, contractor ethics programs to facilitate awareness and mitigation of risks in DOD contracting relationships. In

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commenting on a draft of this report, DOD concurred with two of our recommendations and partially concurred with the third. DOD concurred with our recommendations to regularly assess its training and counseling efforts for quality and content and to assess, as appropriate, contractor ethics programs. DOD partially concurred with our recommendation that ethics officials, as required by the joint ethics regulation, track and report on the status of alleged misconduct to the military services and defense agencies head ethics officials. DOD also provided technical comments, which we incorporated as appropriate. DOD's comments are included in their entirety in appendix II.

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## Background

Federal statutes and regulations collectively require agencies to establish an ethics program intended to preserve and promote public confidence in the integrity of federal officials through their self-reporting of potential conflicts-of-interest (financial disclosure), through knowledge of post-government employment restrictions (training), and through independent investigations of alleged wrongdoing.<sup>1</sup> A key objective of an ethics program is to provide a formal and systematic means for agencies to prevent and detect ethics violations. The elements of a comprehensive ethics program include (1) a written policy of standards of ethical conduct and ethics guidance; (2) effective training and dissemination of information on ethical standards, procedures, and compliance; (3) monitoring to ensure the ethics program is followed; (4) periodically evaluating the effectiveness of the ethics program; and (5) levying disciplinary measures for misconduct and for failing to take reasonable steps to prevent or detect misconduct.

The joint ethics regulation<sup>2</sup> is DOD's written policy establishing its ethics program. The ethics program emphasizes training and counseling to raise awareness of standards of ethical behavior and to prevent misconduct.

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<sup>1</sup>Agency ethics regulations reflecting government standards of conduct and statutory restrictions are required by Executive Order 12674, Principles of Ethical Conduct For Government Officers and Employees, April 12, 1989, as modified by E.O. 12731, Principles of Ethical Conduct For Government Officers and Employees, October 17, 1990. In addition to agency ethics regulations, the Federal Acquisition Regulation includes specific guidance concerning procurement integrity (FAR 3.104).

<sup>2</sup>DOD's joint ethics regulation (DOD Regulation 5500.7-R) merges the federal principles of ethical conduct and restrictions into a written, uniform source of standards of ethical conduct and guidance for its workforce. Its scope encompasses not only post government employment restrictions but also other ethics matters such as gifts, financial disclosure requirements, and political activities.

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DOD's ethics training requirement includes educating employees about the procedures to follow when considering employment outside of DOD and the post-government employment restrictions that may apply and to inform employees of the resources that are available to them to address ethics questions and concerns. The training includes an initial briefing to introduce employees to ethics regulations, such as conflict-of-interest and procurement integrity rules, and exit briefings to discuss restrictions that may apply once employees leave government service. Additional ethics briefings are held for certain senior employees on an annual basis. DOD's ethics counseling aims to address employee concerns and questions as they arise. The training and counseling is also to raise awareness so that DOD employees can recognize misconduct and report the matter to ethics officials, inspectors general officials, the head of the command or agency, criminal investigative offices, or any number of DOD hotlines. Responsibility for recognizing and reporting potential misconduct rests with all DOD employees.<sup>3</sup> Additionally, the joint ethics regulation requires ethics officials to track and follow up on reports of potential misconduct. Finally, the DOD regulation requires periodic evaluations of local activities, which implement DOD's ethics program, to ensure they meet standards.

Defense regulations provide that government contractors should have standards of conduct and internal control systems to promote ethical standards, facilitate timely discovery and disclosure of improper conduct in connection with government contracts, and ensure corrective measures are promptly implemented.<sup>4</sup> The regulations provide that contractors should have a written code of business ethics and conduct, an ethics training program for all employees, and to periodically review practices, procedures, policies, and internal controls for compliance with standards of conduct.

The federal government has a host of laws and regulations governing the conduct of its employees and contractors. The Compilation of Federal Ethics laws prepared by the United States Office of Government Ethics includes nearly 100 pages of statutes alone. For the purposes of this report, however, we note a few laws relevant to DOD officials whose

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<sup>3</sup>Post-government employment restriction violations may also be reported by parties outside DOD such as contractors through DOD hotlines.

<sup>4</sup>Defense Federal Acquisition Regulation Supplement, subpart 203.70, Contractor Standards of Conduct.

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responsibilities involved participation in DOD's acquisition process. The statutes are complex, and the brief summaries here are intended only to provide context for the issues discussed in this report.

The principal restrictions concerning employment for federal employees after leaving government service are found in 18 U.S.C. 207 and 41 U.S.C. 423 (procurement integrity). The title 18 provision generally prohibits former federal employees and their supervisors from representing non-government entities concerning matters they handled while working for the federal government. Violation of the statute entails criminal penalties. In contrast, the title 41 provision more narrowly applies to contracting officials and also entails civil and administrative penalties. The provision generally restricts employment with a contractor if the official performed certain functions involving the contractor and a contract valued in excess of \$10,000,000.<sup>5</sup> The law, however, permits employees to accept compensation "from any division or affiliate of a contractor that does not produce the same or similar products or services" that were produced under the contract.<sup>6</sup>

There are also provisions related to post-government employment that are applicable to federal employees' actions while still in federal service.

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<sup>5</sup>41 U.S.C. § 423(d). The prohibition against accepting compensation from a contractor applies to former officials who

(A) served, at the time of selection of the contractor or the award of a contract to the contractor, as the procuring contracting officer, the source selection authority, a member of the source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of \$10,000,000;

(B) served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10,000,000 awarded to that contractor, or

(C) personally made for the federal agency

(i) a decision to award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of \$10,000,000 to that contractor;

(ii) a decision to establish overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of \$10,000,000;

(iii) a decision to approve issuance of a contract payment or payments in excess of \$10,000,000 to that contractor; or

(iv) a decision to pay or settle a claim in excess of \$10,000,000 with that contractor.

<sup>6</sup>41 U.S.C. § 423(d)(2).



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18 U.S.C. 208 prohibits government employees from participating in matters in which they have a financial interest. The statute imposes criminal penalties on federal employees who begin negotiating future employment without first disqualifying themselves from any duties related to the potential employer. In addition 41 U.S.C. 423(c) requires officials who participate personally and substantially in a procurement exceeding \$100,000 to report promptly contacts by bidders or offerors regarding future employment.<sup>7</sup> The official must either reject the possibility of employment or disqualify himself or herself from further participation in the procurement.

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## DOD Lacks Information to Evaluate Its Training and Counseling Efforts

DOD's joint ethics regulation, administered by DOD's General Counsel, requires DOD to provide training and counseling to educate employees regarding applicable ethics laws and regulations. To implement its ethics program, DOD relies on local ethics counselors within DOD's military services and agencies to train and counsel employees on conflict-of-interest and procurement integrity rules. Training is to raise individual awareness and to enable DOD employees to recognize misconduct and report any matter to appropriate officials. The joint ethics regulation also requires ethics officials to track and follow up on reports of misconduct. However, DOD lacks knowledge to evaluate the ability of its training and counseling efforts to prevent misconduct and ensure the public trust.

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## Training and Counseling Results Are Not Measured

DOD has delegated responsibility for training and counseling to more than 2,000 ethics counselors assigned to commands and organizations worldwide. These ethics counselors administer ethics training and briefings, provide advice and counseling, and review employees' financial disclosure documents<sup>8</sup> as outlined in the joint ethics regulation. At the 12 DOD locations we visited we found training and counseling efforts varied in the content of ethics information provided, who is required to attend training and counseling, and how often the training and counseling is provided. For example, some ethics counselors conduct extensive

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<sup>7</sup>41 U.S.C. § 423(c)(1)(A).

<sup>8</sup>Certain federal employees are required to file a financial disclosure statement to satisfy federal conflict of interest laws. There are two separate groups of federal officials required to file. Public financial disclosure reports (SF-278) are filed by senior officials, such as presidential appointees, general and flag officers (rank O-7 and above), and senior executive service members. Confidential financial disclosure reports (OGE form 450) are filed by certain other federal employees, identified by the executive agency based on employees' roles and responsibilities.

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discussions about employees' plans upon separation at the exit briefing, some provide written advice, and others distribute pamphlets summarizing employment restrictions. Some ethics counselors have supplemented their annual training because they do not believe that the minimum requirements in the joint ethics regulation—an annual ethics briefing—are sufficient to ensure employees understand employment restrictions both during and after they leave government service. For example, a Navy ethics office offers live, interactive ethics training to all personnel at its location approximately three to four times a year.

DOD currently evaluates its ethics program's performance in terms of process indicators—such as the number of financial disclosure forms completed, the number of ethics counselors, and the amount of time spent by ethics counselors on training and counseling services. According to DOD officials, the information on the number of ethics counselors at each location and the amount of time they spend with employees can provide insight into the level of resources used. However, these process indicators do not provide DOD knowledge of which employees are subject to restrictions, which employees receive training and counseling, the quality and content of training, and who is leaving DOD for employment with contractors. For example, DOD does not know if the population critical to the acquisition process, those employees covered by procurement integrity restrictions, are trained. Further, many ethics counselors could not provide evidence that employees received the annual ethics training. Additionally, DOD does not know whether the training and counseling includes all relevant conflict-of-interest and procurement integrity rules. As shown in Table 1, we found that the ethics counselors we interviewed did not consistently include information on the restrictions provided for in 18 U.S.C. 207, 18 U.S.C. 208, and 41 U.S.C. 423 in their annual ethics briefings for the past 3 years.

**Table 1: Summary of Annual Ethics Training by Office**

Year	Procurement integrity (41USC423)			Restrictions on former employees (18USC207)			Acts affecting personal financial interest (18USC208)		
	1	2	3	1	2	3	1	2	3
Standards of Conduct Office, OSD, DOD Headquarters	✓	•	•	✓	•	•	✓	•	✓
Department of Air Force, Pentagon	✓	•	•	✓	•	•	✓	✓	✓
AFMC, Headquarters, Wright-Patterson Air Force Base <sup>a</sup>	✓	•	✓	✓	✓	✓	✓	•	✓
AFMC, 88th Wing, Wright-Patterson Air Force Base <sup>b</sup>	•	•	•	✓	•	•	✓	✓	•
AFMC, Electronic Systems Command, Hanscom Air Force Base	✓	✓	•	✓	✓	•	✓	✓	•
Department of Army Headquarters <sup>a</sup>	•	•	•	•	•	•	✓	•	•
Department of Army Headquarters <sup>b</sup>	•	•	•	•	•	•	✓	•	•
Department of Army Headquarters <sup>c</sup>	✓	✓	✓	✓	✓	✓	✓	✓	✓
AMC, Headquarters, Fort Belvoir, Va. <sup>a</sup>	✓	•	•	✓	•	•	✓	•	•
AMC, Headquarters, Fort Belvoir, Va. <sup>b</sup>	•	•	•	•	•	•	✓	•	•
AMC, Communications-Electronic Command, Fort Monmouth, N.J. <sup>a</sup>	✓	✓	✓	✓	✓	✓	✓	✓	✓
AMC, Communications-Electronic Command, Fort Monmouth, N.J. <sup>b</sup>	✓	•	•	✓	•	•	✓	✓	•
Department of Navy, Headquarters	✓	•	•	✓	•	•	✓	•	✓
NAVAIR Systems Command, Headquarters, Patuxent River, Md.	•	✓	✓	•	•	✓	✓	✓	✓

Year	Procurement integrity (41USC423)			Restrictions on former employees (18USC207)			Acts affecting personal financial interest (18USC208)		
	1	2	3	1	2	3	1	2	3
NAVAIR Systems Command, Naval Air Warfare Center-Weapons Division, China Lake, Calif.	✓	•	•	✓	•	•	✓	•	✓
Defense Contract Management Agency, Headquarters	✓	•	•	✓	•	•	✓	•	✓
Defense Contract Management Agency, East	✓	•	✓	✓	•	✓	✓	✓	•

Source: DOD (data); GAO (analysis).

Notes:

✓ Information included in annual ethics briefing.

• Information not included in the training materials, unable to determine based on the training material provided, or unable to determine because the training materials were not available.

<sup>a</sup>SF 278 filers are employees who complete the public financial disclosure statements. SF 278 filers include senior officials, such as presidential appointees, general and flag officers (rank O-7 and above), and senior executive service members.

<sup>b</sup>OGE form 450 filers are employees who complete the confidential financial disclosure statements. OGE form 450 filers are certain federal employees, identified by each executive agency based on employees' roles and responsibilities.

<sup>c</sup>A subset of SF 278 filers at Army headquarters who report directly to the secretariat.

### Training and Counseling is to Facilitate Identification and Reporting of Misconduct, but Alleged Misconduct Is Not Being Tracked

Training is to raise awareness of procurement integrity and conflict-of-interest rules so DOD employees are able to recognize misconduct and report matters to appropriate officials. Ethics counselors are required to (1) review the facts of an allegation of misconduct and report the allegation to appropriate investigative organizations or the head of the DOD command of the suspected violator and the appropriate contracting officer, if applicable; (2) follow-up with the investigative office until a final determination is made on the allegation; and (3) periodically report on the status of the allegation of misconduct to the military service and defense agencies head ethics official. However, when we asked the ethics officials for information on allegations of misconduct and the status of investigations, they were not tracking or following-up on the status of alleged misconduct cases. For information on reported allegations of potential misconduct the ethics officials referred us to the inspectors general offices. According to inspectors general officials, DOD has not made an attempt to determine the extent that potential misconduct in terms of conflict-of-interest and procurement integrity is reported. The information on reports of potential misconduct is maintained in various files and databases by multiple offices. As a result, DOD has not

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determined if reports of potential misconduct are increasing or decreasing and why such a change may be occurring. DOD Inspector General's hotline official told us that anecdotal evidence indicates post-government employment misconduct is a problem, but DOD has no basis for assessing the severity.

At the locations we visited, we obtained information from the inspector general officials demonstrating at least 53 cases of potential misconduct reported in the last 5 years. However, ethics officials at the Office of Secretary of Defense and the military headquarters we spoke with were not tracking the status of the reports of potential misconduct. Lacking this knowledge DOD has no assurance that ethics-related laws and regulations are properly followed and that appropriate administrative or disciplinary action is taken. Also, the information on potential misconduct can help DOD understand the extent of the problem and the risk such behavior poses.

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## Ongoing Actions to Prevent Misconduct

Concerned about the effectiveness of its efforts to minimize misconduct and prevent violations of conflict-of-interest and procurement integrity rules, DOD has taken actions aimed at enhancing its ethics program. In October 2004, the Deputy Secretary of Defense required (1) personnel who file public financial disclosure reports to certify that they are aware of and have not violated employment restrictions, (2) DOD components to include training on employment restrictions in annual ethics briefings to financial disclosure filers, and (3) DOD components to provide guidance on employment restrictions to all personnel leaving government service. While this directive clarifies the content required in DOD's training and counseling, no provisions were made to provide knowledge about whether the policy is implemented. Therefore, it is unclear at this time the extent that the actions called for in the directive will improve DOD's effort to prevent violations of post-government employment restrictions.

In November 2004, the acting Undersecretary of Defense asked the Defense Science Board to establish a task force to assess whether DOD has adequate management and oversight processes to ensure the integrity of acquisition decisions. The task force report was due January 31, 2005, and is expected to recommend options for improving checks and balances to protect the integrity of procurement decisions. Currently, the Defense Science Board is briefing preliminary findings to senior DOD officials and Congress.

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Acknowledging the risk to the acquisition process the United States Attorney for the Eastern District of Virginia announced, in February 2005, the creation of a procurement fraud working group to increase prevention and prosecution of fraud in the federal procurement process. This working group will facilitate the exchange of information among participating agencies, including DOD, and assist them in developing new strategies to prevent and to promote early detection of procurement fraud. Among the ideas and initiatives to be undertaken by the working group are efforts to detect ethics violations and conflicts of interest by current and former agency officials.

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## DOD Needs More Knowledge of Government Contractors' Standards of Conduct Efforts

Defense acquisition regulations provide that government contractors should have standards of conduct and internal control systems that promote ethical standards, facilitate timely discovery and disclosure of improper conduct, and ensure corrective measures are promptly implemented. However, DOD cannot identify nor take action to mitigate risks because it lacks knowledge of its contractors' efforts to promote ethical standards. Recently a major defense contractor chartered an independent review of its hiring processes of current and former government employees. This review found both gaps in the company's procedures and a failure to follow written policy, in some cases. Weaknesses in the contractor's policies, procedures, and structure were identified, and recommendations were made for actions to be taken to mitigate risks.

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## DOD Does Not Have Adequate Knowledge of Its Contractors' Policies and Practices for Hiring Former and Current DOD Employees

Defense regulations provide that government contractors must conduct themselves with the highest degree of integrity and honesty. Specifically, defense regulations provide that contractors should have (1) a written code of ethical conduct; (2) ethics training for all employees; (3) periodic reviews of its compliance with its code of ethical conduct; (4) systems to detect improper conduct in connection with government contracts; and (5) processes to ensure corrective actions are taken.<sup>9</sup> The seven contractors we visited indicated that DOD had not discussed or reviewed their practices for hiring current and former government employees.

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<sup>9</sup>Defense Federal Acquisition Regulation Supplement, subpart 203.70, Contractor Standards of Conduct. While this regulation provides that contractors should have such elements, they are not required to.

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While DOD evaluates components of contractors' financial and management controls, neither the Defense Contract Management Agency nor the Defense Contract Audit Agency—the agencies responsible for oversight of defense contractors' operations—had assessed the adequacy of contractors' practices for hiring current and former government employees.<sup>10</sup> DOD's lack of knowledge of the contractors' hiring practices and policies prevents DOD from being assured that effective controls are in place to address the risks posed by contractors.

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### Independent Review of Defense Contractor Finds Weaknesses in Controls for Managing Former Government Employees

In February 2004, a major defense contractor hired an outside entity to conduct an independent evaluation of its hiring policies and practices. This review found that the company relied excessively on employees to self-monitor their compliance with post-government employment restrictions. The review concluded that by relying on employees to monitor their own behavior, the company increased the risk of noncompliance, due to either employees' willful misconduct or failure to understand complex ethics rules. The independent evaluation of the company's hiring policies and practices illustrates an opportunity for DOD to leverage knowledge of contractors' practices to identify and mitigate risks.

In general, the review identified lack of management controls as a weakness in the company's ethics program. Specifically, the review found the company lacked (1) a single focal point for managing its hiring process; (2) centralized management of its hiring process, which made it difficult to implement consistent procedures and effectively monitor efforts; (3) consistent maintenance of pre-hire records; (4) internal audits of its process for hiring former government employees; and (5) sufficient emphasis from senior company management to the ethics program in general and the training program in particular, among other things. As a result of these weaknesses, the company did not know whether employees were following its written policies and procedures addressing post-government employment restrictions.

Some contractors we spoke with stated that they used the lessons learned from the company's independent review to assess their own policies for

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<sup>10</sup>Defense Contract Management Agency's review includes assessments of contractor performance measurements; Defense Contract Audit Agency audits include financial and internal control systems of contractors.

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recruiting, hiring, and assigning of current and former government employees to ensure they are complying with ethical standards. For example, some of the contractors are reviewing company personnel files to identify employees trained as well as former government employees hired. Some contractors were in the process of identifying methods to ensure that information on the hiring and training of former government employees is readily available, such as corporate personnel systems that will provide electronic files to allow the contractor to identify employees with prior DOD experience including contracts on which they worked as well as monitor employees' post-government career path. Similarly, knowledge of conditions at the company and at other contractors could provide DOD with information to better identify and understand risks to its acquisition process.

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## Conclusion

In an environment where the risk of ethical misconduct can be costly, DOD is missing opportunities to raise the level of confidence that its safeguards protect the public trust. Better knowledge of training and counseling efforts is essential to ensuring that the large numbers of employees who leave DOD for contractors each year are aware of and abide by conflict-of-interest and procurement integrity rules. Finally, enhanced awareness of contractor programs would enable DOD to assess whether the public trust is protected.

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## Recommendations

We are making three recommendations to the Secretary of Defense to take actions to improve DOD's knowledge and oversight of its ethics program and contractors' ethics programs to raise the level of confidence that DOD's business is conducted with impartiality and integrity:

- Regularly assess training and counseling efforts for quality and content, to ensure that individuals covered by conflict-of-interest and procurement integrity rules receive training and counseling that meet standards promulgated by DOD Standards of Conduct Office.
- Ensure ethics officials, as required by the joint ethics regulation, track and report on the status of alleged misconduct to the military services and defense agencies head ethics officials.
- Assess, as appropriate, contractor ethics programs in order to facilitate awareness and mitigation of risks in DOD contracting relationships.



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## Agency Comments

DOD provided written comments on a draft of this report. DOD concurred with two of our recommendations and partially concurred with the third. DOD concurred with our recommendation to regularly assess training and counseling efforts for quality and content, and stated that it currently assesses and will continue to assess agencies' training and counseling efforts to ensure that personnel required to receive such training do so in accordance with applicable standards. As discussed in this report, DOD currently assesses its ethics program's performance in terms of process indicators—for example, number of financial disclosure forms completed, the number of ethics counselors, and the amount of time spent by ethics counselors on training and counseling. However, as DOD moves forward, its assessments should also provide DOD knowledge of which employees are subject to restrictions, which employees receive training and counseling, and the quality and content of training to ensure its ethics program achieves the goal of raising awareness of conflict-of-interest and procurement integrity rules in order to prevent ethical misconduct.

DOD concurred with our recommendation that DOD assess, as appropriate, contractor ethics programs, and stated that it intends to call upon companies throughout the defense industry to reexamine their ethics programs and share best practices. DOD also stated that the recommendation is currently implemented when contracting officers make, prior to awarding a contract, an affirmative determination of responsibility, which includes consideration of the potential contractor's business practices and the potential contractor's integrity. We believe assessments of contractor ethics programs would enhance contracting officers' ability to make such determinations. Knowledge about contractors' policies and practices for hiring former and current DOD employees would provide DOD more assurance that effective controls are in place to address the risks posed by potential violations of post government employment restrictions. As recent GAO bid protest decisions illustrate, lapses in ethical behavior can have significant consequences.

DOD partially concurred with our recommendation that the Secretary of Defense ensure that ethics officials, as required by the joint ethics regulation, track and report on the status of alleged misconduct to the military services and defense agencies head ethics officials. DOD stated that responsibility for tracking and reporting on the status of alleged misconduct resides with Departmental and federal law enforcement agencies, rather than ethics officials. While we agree that responsibility for enforcement should not reside with ethics officials, we believe senior DOD ethics officials should be knowledgeable concerning the scope and extent of ethics violations within the Department. Tracking alleged misconduct

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cases would provide senior DOD ethics officials knowledge about whether ethics-related laws and regulations are properly followed and that appropriate administrative or disciplinary action is taken. Also, information on alleged misconduct can position DOD to assess the effectiveness of its training and counseling efforts and understand the extent of the problem and the risk such behavior poses. As DOD revises its Joint Ethics Regulation, it should ensure its reporting structure provides for relaying misconduct information to senior DOD ethics officials.

Finally, DOD expressed concern that our report may be misinterpreted because it does not accurately capture the full extent of DOD programs. We recognize that the Department's programs are broader than reflected in our report. Our report identifies opportunities to improve (1) DOD's efforts to train and counsel its workforce to raise awareness of ethics rules and standards as well as DOD measures of the effectiveness of these efforts and (2) DOD's knowledge of defense contractors' programs to promote ethical standards of conduct. Notwithstanding its concerns, however, we note that DOD agreed that our report identifies opportunities to strengthen safeguards for procurement integrity.

DOD's comments are included in appendix II.

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We are sending copies of this report to the Secretary of Defense and interested congressional committees. We will provide copies to others on request. This report will also be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you have any questions about this report or need additional information please contact me at (202) 512-4125 or Blake Ainsworth, Assistant Director, at (202)512-4609. Other major contributors to this report were Penny Berrier, Kate Bittinger, Anne McDonough-Hughes, Holly Reil, and Karen Sloan.

A handwritten signature in black ink that reads "David E. Cooper". The signature is written in a cursive style with a large, sweeping initial "D".

David E. Cooper, Director  
Acquisition and Sourcing Management

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# Appendix I: Scope and Methodology

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To address DOD's oversight of its agencies' implementation of ethics regulations we compared DOD's practices to established management guidelines. We did not determine the effectiveness of post-government employment legal restrictions or the extent to which violations of these restrictions may be occurring.

In assessing DOD oversight of its programs, we used the Standards for Internal Control in the Federal Government,<sup>1</sup> Internal Control Management and Evaluation Tool,<sup>2</sup> Office of Management and Budget Circular A-123 regarding management accountability and control, and the United States Sentencing Commission Guidelines Manual. We applied the management control framework to DOD and DOD component ethics programs.

To assess DOD's efforts to train and counsel its workforce to raise awareness and DOD measures of the effectiveness of these efforts, we met with the designated agency ethics official, their designee or ethics counselors in the Office of the Secretary of Defense, Air Force, Army, Navy, Defense Contract Management Agency. In addition to headquarters offices, we selected locations that according to the Federal Procurement Database System and DOD officials spent a large amount of money on acquisitions. Specifically, we met with officials from: (1) Standards of Conduct Office, General Counsel, Office of the Secretary of Defense; (2) General Counsel—Ethics and Personnel Office, Defense Contract Management Agency; (3) Associate Counsel—Ethics and Personnel, Eastern Region, Defense Contract Management Agency, (4) Ethics Office and Associate General Counsel (Fiscal & Administrative Law), Air Force; (5) Air Force Materiel Command, Wright Patterson Air Force Base, Air Force; (6) Electronic Systems Center, Hanscom Air Force Base, Air Force; (7) Deputy General Counsel (Ethics & Fiscal) and Standards of Conduct Office, Army; (8) Army Materiel Command, Fort Belvoir, Army; (9) Communications-Electronics Command Fort Monmouth, Army; (10) Office of General Counsel, Navy; and (11) Naval Air Systems Command, Patuxent River, Navy, (12) Naval Air Warfare Center Weapons Division, China Lake, Navy. We met with five contracting/acquisition offices and nine investigative offices at these locations.

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<sup>1</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: November 1999).

<sup>2</sup>GAO, *Internal Control Management and Evaluation Tool*, [GAO-01-1008G](#) (Washington, D.C.: August 2001).

To assess DOD's knowledge of defense contractors' programs to promote ethical standards of conduct, we interviewed seven defense contractors about their ethics programs and hiring practices of former government employees. Six of the contractors are ranked in the top 10 of defense contractors based on DOD spending in fiscal year 2003. The seventh is a contractor that was in the top 100 of defense contractors based on DOD spending. We attended the annual Defense Industry Initiative Annual Best Practices Forum, 2004. In addition, we reviewed a report to the chairman and board of directors of one major defense contractor responding to concerns about the company's policies and practices for the hiring of government and former government employees.

As part of these efforts, we reviewed relevant Federal ethics laws, the Federal Acquisition Regulation, Defense Federal Acquisition Regulation, DOD policies, directives and guidance governing conflict of interest and procurement integrity rules. We supplemented the DOD and DOD component ethics program information we collected by interviewing officials from the Office of Government Ethics, Department of Justice, Army Contracting Agency, Defense Acquisition Regulations Council, Office of Secretary of Defense Acquisition, Technology, and Logistics Office, World Policy Institute, and the American Federation of Government Employees. We also attended the 26<sup>th</sup> Annual Council of Governmental Ethics Laws Conference, 2004.

We conducted our review from April 2004 to March 2005 in accordance with generally accepted government auditing standards.

# Appendix II: Comments from Department of Defense



DEPARTMENT OF DEFENSE  
OFFICE OF GENERAL COUNSEL  
1600 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1600

18 APR 2005

Mr. David E. Cooper  
Director, Acquisition and Sourcing Management  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Mr. Cooper:

This is the Department of Defense (DoD) response to the Government Accountability Office (GAO) draft report, "DEFENSE ETHICS PROGRAM: Opportunities Exist to Strengthen Safeguards For Procurement Integrity," dated March 22, 2005, (GAO Code 120336/GAO-05-341). The Department of Defense partially concurs with the three recommendations in the draft report (see enclosure).

The first GAO recommendation is that the Secretary of Defense regularly assess training and counseling efforts for quality and content, to ensure that individuals covered by conflict-of-interest and procurement integrity rules receive training and counseling that meet standards promulgated by DoD Standards of Conduct Office. The Department concurs. The appropriate Designated Agency Ethics Officials (DAEOs), and their designees, as well as other pertinent Department officials, have regularly assessed, and will continue to assess, their DoD agencies' training and counseling efforts, to ensure that personnel required to receive such training and counseling do so in accordance with the standards promulgated by the Office of Government Ethics (OGE), as supplemented by the Department.

The second GAO recommendation is that the Secretary of Defense ensure that ethics officials, as required by the joint ethics regulation, track and report on the status of alleged misconduct to the military services and defense agencies head ethics officials. The Department concurs, with the exception of the role of ethics officials in the process. The tracking and reporting of the status of alleged misconduct resides almost exclusively with Departmental and Federal law enforcement agencies. These various Department investigating organizations generally report to the appropriate agency head, who may forward such information to the pertinent DAEO or Deputy DAEO, who are the head ethics officials. Subsequent to the publication in 1993 of DoD 5500.7-R, the Joint Ethics Regulation (JER), the Department deemed that it is not appropriate for ethics counselors (the term the Department uses to indicate ethics officials) to play a role in the enforcement of alleged misconduct. An amendment of the entire JER, which will reflect the current operating status of the tracking and reporting mechanism, has been under development.

The third GAO recommendation is that the Secretary of Defense assess, as appropriate, contractor ethics programs in order to facilitate awareness and mitigation of



risks in DoD contracting relationships. The Department concurs. This recommendation is currently implemented in the Department's procurements. Under FAR 9.103, Procurement Contracting Officers make, prior to award, an affirmative determination of responsibility, which includes consideration of the potential contractor's business practices and the potential contractor's integrity. Under FAR 9.406-1(a), during any administrative suspension or debarment proceeding or in reaching an administrative settlement, the contractor's ethics program may be examined. The Department does not believe, however, that it should approve or otherwise accept responsibility for the contractor's ethics program. Such responsibility properly lies with the contractor's management. Nevertheless, because we expect our contractors to have the highest ethical standards, the Department intends to call upon companies throughout the defense industry to reexamine their ethics programs and share best practices.

While the Department agrees that there are opportunities "to Strengthen Safeguards for Procurement Integrity," as stated in the subtitle of the Report, it is concerned that certain implications in the body of the Report may be misinterpreted and lead to conclusions not supported by the Report's actual Recommendations. Through eleven months of its review, GAO's tasking changed from an assessment of the extent to which the restrictions on post-employment were being followed by senior civilian employees, military officers, and contracting officials to an assessment of DoD's training of its personnel to raise awareness of the post-Government service employment rules, the effectiveness of that training, and DoD's knowledge of defense contractors' programs to promote ethical standards of conduct. Because GAO did not advise DoD of the changed tasking, however, DoD organizations provided data to GAO for the purpose of answering the original tasking. The body of the draft report, therefore, does not accurately capture the full extent of DoD programs.

The Department appreciates the opportunity to review the draft GAO report and offers the enclosed comments.

Sincerely,



Daniel J. Dell'Orto  
Principal Deputy

Enclosure: As stated

GAO DRAFT REPORT - DATED MARCH 22, 2005  
GAO CODE 120336/GAO-05-341

“DEFENSE ETHICS PROGRAM: Opportunities Exist to Strengthen  
Safeguards For Procurement Integrity”

DEPARTMENT OF DEFENSE COMMENTS  
TO THE RECOMMENDATIONS

**RECOMMENDATION 1:** The GAO recommended that the Secretary of Defense regularly assess training and counseling efforts for quality and content, to ensure that individuals covered by conflict-of-interest and procurement integrity rules receive training and counseling that meet standards promulgated by DoD Standards of Conduct Office. (p. 13/GAO Draft Report)

**DOD RESPONSE: Concur.** The appropriate Designated Agency Ethics Officials (DAEOs), and their designees, as well as other pertinent Department officials, have regularly assessed, and will continue to assess, their DoD agencies’ training and counseling efforts, to ensure that personnel required to receive such training and counseling do so in accordance with the standards promulgated by the Office of Government Ethics, as supplemented by the Department.

To ensure that there is no misunderstanding about who is covered by conflicts of interest and procurement integrity restrictions, who is required to receive training and counseling, and what are the current required training standards, we provide the following clarification.

Who is Covered: All civilian employees and military officers are covered by 18 U.S.C. 207 (post-Government Service employment restrictions) and 18 U.S.C. 208 (restrictions on official duty while seeking employment outside the Government). Enlisted members are covered by a JER provision similar to 18 U.S.C. 208, and are subject to prosecution under the Uniform Code of Military Justice (UCMJ). The procurement integrity post-Government service employment restrictions apply to those civilian and military personnel included within the parameters of the statute.

Who is Required to Receive Training and Counseling and Current Training Standards: The Office of Government Ethics requires all personnel who are new to a Federal service to receive an ethics orientation. It also requires all personnel who file a Public Financial Disclosure Report to receive annual, verbal ethics briefings, which includes a reminder of the employees’ responsibilities under the conflict of interest statutes. It further requires all personnel who file a Confidential Financial Disclosure Report to receive annual ethics briefings, which also includes a reminder of the employees’ responsibilities under the conflict of interest statutes. The training must be verbal once every three years, and may be written in the remaining two years. The Department has established that the verbal training occurs throughout the Department during the same year, the next one occurring in 2006. In accordance with the JER,



personnel covered by the procurement integrity restrictions file either a public or confidential financial disclosure report and, consequently, would be covered by these training requirements. The Department notes that OGE conducts program reviews of several DoD organizations each year. The reviews include an audit of the training program. To date, OGE auditors have generally found DoD organizations to be in compliance with the training requirements. In addition to (and separate from) the OGE requirements, during 2004, all members of the DoD acquisition corps were required to take specialized ethics training, which included post-Government service employment restrictions.

On October 25, 2004, the Deputy Secretary of Defense amended the JER and established three additional training and counseling requirements. On November 5, 2004, the Standards of Conduct Office (SOCO) established and published guidance to implement the new requirements.

1) DoD personnel who file a public financial disclosure report (SF 278) must annually certify that they are aware of the disqualification and employment restrictions of 18 U.S.C. 207 and 208, and 41 U.S.C. 423, and that they have not violated those restrictions. SOCO attached a model Annual Certification, which included a summary of the disqualification and employment restrictions, as well as definition of terms. Certifications for 2004 were to be filed by 12/31/04. For all subsequent years, SOCO recommended that the Certifications be collected with the financial disclosure reports. All senior Department officials, therefore, who may be those considered at the most risk for inadvertent violations, must now annually review the restrictions and certify that they are in compliance with them.

2) Training on post-Government service disqualification and employment restrictions (which would include those in the procurement integrity area) must be included in Annual Ethics Briefings. The SOCO guidance advised that although the OGE regulations already require that the conflict of interest statutes be covered in these briefings, the discussion of the restrictions must be enhanced. The SOCO 2004 Annual Ethics Briefing meets this requirement and is published on its website. This requirement covers all personnel who file either public or confidential financial disclosure reports, and, therefore, applies to all DoD employees involved in procurement.

3) DoD Components are required to provide guidance on post-Government service employment restrictions as part of out-processing procedures for personnel who are leaving Federal service. This regularizes what is already a common practice in many DoD organizations. Some organizations provide counseling by the legal office as personnel check out. Others provide written advice tailored to the requirements that apply to the departing individual. As the SOCO guidance advised, for example, an enlisted member with no procurement duties has very few restrictions, while senior personnel or personnel who are heavily involved in procurement receive more extensive guidance. This requirement ensures that those personnel who are not required to receive annual training, but who are nevertheless subject to post-Government service

employment restrictions, will receive guidance as they leave Federal service.

To the extent that GAO is recommending that training and counseling required by these standards be regularly assessed by the appropriate authorities to ensure its quality and content, the Department concurs.

**RECOMMENDATION 2:** The GAO recommended that the Secretary of Defense ensure ethics officials, as required by the joint ethics regulation, track and report on the status of alleged misconduct to the military services and defense agencies head ethics officials. (p. 13/GAO Draft Report)

**DOD RESPONSE:** Concur, with the exception of the role of ethics counselors in the process. The tracking and reporting of the status of alleged misconduct resides almost exclusively with Departmental and Federal law enforcement agencies. These various Department investigating organizations generally report to the appropriate agency head, who may forward such information to the pertinent DAEO or Deputy DAEO, who are the head ethics officials. Subsequent to the publication in 1993 of DoD 5500.7-R, the Joint Ethics Regulation (JER), the Department deemed that it is not appropriate for ethics counselors (the term the Department uses to indicate ethics officials) to play a role in the enforcement of alleged misconduct. An amendment of the entire JER, which will reflect the current operating status of the tracking and reporting mechanism, has been under development.

**RECOMMENDATION 3:** The GAO recommended that the Secretary of Defense assess, as appropriate, contractor ethics programs in order to facilitate awareness and mitigation of risks in DoD contracting relationships. (p. 13/GAO Draft Report)

**DOD RESPONSE:** Concur. This recommendation is currently implemented in the Department's procurements. Under FAR 9.103, Procurement Contracting Officers make, prior to award, an affirmative determination of responsibility, which includes consideration of the potential contractor's business practices and the potential contractor's integrity. Under FAR 9.406-1(a), during any administrative suspension or debarment proceeding or in reaching an administrative settlement, the contractor's ethics program may be examined. However, the Department does not believe that it should approve or otherwise accept responsibility for the contractor's ethics program. Such responsibility properly lies with the contractor's management. Nevertheless, because we expect our contractors to have the highest ethical standards, the Department intends to call upon companies throughout the defense industry to reexamine their ethics programs and share best practices.

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