Legal Matters

References:


1. PURPOSE.

a. The policies and procedures contained in this Defense Logistics Agency (DLA) Instruction are intended to ensure that DLA and its officials operate within the rule of law, avoid unnecessary legal controversies, promptly and fairly resolve legal disputes to which DLA is a party, and effectively initiate and defend legal actions to protect DLA interests. Adherence to the policies and procedures in this instruction will ensure that DLA and its officials act within the scope of their authority; comply with applicable laws, regulations, directives, and other legal authorities and requirements; select optimal courses of action from legally acceptable alternatives to achieve mission objectives; initiate appropriate action to protect Agency legal interests and remedy negligent or criminal conduct, including fraud, waste and abuse; receive effective legal representation in Agency litigation, administrative disputes, and other legal controversies; exercise proper stewardship over property, funds, personnel, and other resources; enter into legally binding agreements for the delivery of supplies and services; enforce the terms and conditions of DLA contracts and other Agency rights; identify legal issues involved in deployments and contingency operations; maintain workforce and military personnel discipline; act in accordance with the highest standards of ethical conduct; comply with various Agency reporting requirements; and, bring about statutory and regulatory changes to facilitate mission accomplishment.

b. The focus of the processes in this instruction is on handling legal matters in a way which facilitates the effective, efficient, and economical execution of DLA’s mission.

2. APPLICABILITY. This DLA Instruction applies to Headquarters (HQ) DLA and DLA Primary Level Field Activities (PLFA).
3. POLICY.

   a. DLA officials shall accomplish mission goals and objectives within the rule of law and with impartiality, fairness, and integrity. Agency officials shall carry out their official duties consistent with the high standards of ethical conduct expected of public servants. Agency officials shall promptly refer all material issues of fact and law, suspected violations of law, and all legal disputes, controversies, and claims where there will or may be a non-DLA decider of the matter to their assigned DLA legal office. This includes, but is not limited to, requests for production of documents or testimony in Federal or state judicial or legislative proceedings, as well as requests for an official Agency position on proposed Federal legislation or regulations or changes thereto. When a financial conflict of interest, violation of employee ethics rule, or fraud, waste, or abuse is suspected, DLA officials shall immediately refer the matter to the assigned DLA legal office to determine the need for investigation and for initiating appropriate administrative, contractual, civil, and criminal remedies, as may be indicated.

   b. The assigned DLA legal office shall provide such legal assistance, as may be necessary, to identify, interpret, and apply governing laws, regulations, and other legal authorities; identify the need for additional relevant and material facts; assess the legal implications and risks of the matter; avoid unnecessary legal controversies; resolve legal issues and disputes fairly and promptly; defend or protect DLA interests, to include representing DLA as legal counsel in the matter concerned; and, as appropriate, refer matters for appropriate criminal investigation.

NOTES:

• ALTERNATIVE DISPUTE RESOLUTION. DLA, as a general rule, does not resort to litigation without first pursuing a negotiated solution to a matter in controversy. When unassisted negotiations are unsuccessful, an alternative dispute resolution (ADR) process must be considered. A management decision not to use ADR shall only be made after its possible use has been fully evaluated and discussed. At a minimum, discussions shall take place between the deciding official and the activity ADR specialist. A decision not to use ADR must be documented, in writing, by an official at least one level above the deciding official. Negotiated or mediated settlements of disputes shall comport with the facts, comply with the law, and protect Agency interests. In addition to representing DLA in matters subjected to alternative dispute resolution procedures, DLA attorneys may upon request, serve as third party neutrals to facilitate dispute resolution within the Agency or in matters involving contracts awarded by a DLA activity different from the one to which the attorney is assigned. If a dispute cannot be resolved informally and must be litigated, the legal office concerned shall provide all due professional advocacy and zeal in representing the Agency and in protecting the Government’s interests. An Agency attorney serving as a mediator in a disputed matter shall not later represent or participate in the representation of the Agency in the same matter.

• DECORATIONS AND GIFTS FROM FOREIGN GOVERNMENTS. DLA personnel shall not request or otherwise encourage the offer of a gift or decoration from a foreign government. Whenever possible, personnel shall refuse acceptance of any gift or decoration. Table favors, mementos, remembrances, or other tokens bestowed at official functions, and other gifts of less than $285 in value received as souvenirs or marks of courtesy from a foreign government may be accepted and retained by the employee. The burden of proof is upon the employee to establish the value of the gift. Value means a retail value in the United States at the time of acceptance. When a gift in excess of $285 in value is offered, and the gift is not in the nature of an
educational scholarship or medical treatment, the donor shall be advised that statutory provisions and DoD policy prohibit employees from accepting such gifts. If it appears that refusal of such a gift would cause offense or embarrassment to the donor, or could adversely affect the foreign relations of the United States, the gift may be accepted and becomes the property of the United States. When more than one tangible gift is included in a single presentation from the same donor to an employee, or jointly to an employee and spouse, the aggregate value of the gifts received at that time must not exceed the minimal value. Decorations tendered in recognition of active field service in connection with combat operations or awarded for outstanding or unusually meritorious performance may be accepted and worn upon receiving the approval of DLA. This includes all offers of medals or ribbons by multilateral organizations, other than the United Nations, to members of the Armed Forces. In the absence of such approval, the decoration becomes the property of the United States and will be deposited with DLA for use or disposal. DLA approval will be contingent upon a determination that the decoration has been tendered in recognition of active field service in connection with combat operations or for outstanding or unusually meritorious performance.

- **DoD FOREIGN TAX RELIEF.** To the maximum extent practicable, effective relief from all foreign taxes shall be secured wherever the ultimate economic burden of those taxes would, in the absence of such relief, be borne by funds appropriated or allocated to DoD or under the control of its non-appropriated fund activities. In those cases in which the total economic burden of a tax not readily identifiable in the normal course of business is so small that it may be considered a de minimis matter, or in which the administrative burden of securing effective relief from a tax in a particular instance would be out of proportion to the amount of the relief obtained, tax relief shall be considered impracticable.

- **LEGISLATION, EXECUTIVE ORDERS, PROCLAMATIONS, AND CONGRESSIONAL REPORTS.** A single coordinated position of appropriate elements of DLA shall be expressed to DoD on matters related to legislation, Executive Orders, and Proclamations. The DLA Office of General Counsel (OGC) shall coordinate DLA positions on such matters.

- **TESTIMONY BEFORE STATE AGENCIES.** DLA shall provide assistance to local and state governments on technical or specialized matters. Such assistance shall be in accordance with applicable laws and regulations. Requests for the appearance of DLA personnel as expert witnesses before state or local governmental bodies, advisory committees, or agencies must be submitted to the Director, DLA, for approval. DLA personnel may not appear as expert witnesses before those governmental bodies, advisory committees, or agencies without the prior approval of the Director, DLA.

- **INVESTIGATIONS OF ALLEGATIONS AGAINST SENIOR OFFICIALS OF DoD.** Allegations of serious misconduct by senior officials of DLA shall be promptly reported to the Headquarters (HQ) DLA OGC. The OGC will report any such allegations to the DoD Inspector General (IG). Allegations of serious misconduct by senior officials shall be vigorously and fairly investigated by appropriate investigative organizations.

- **COORDINATING REMEDIES FOR FRAUD AND CORRUPTION RELATED TO PROCUREMENT ACTIVITIES.** DLA shall combat fraud and related irregularities through centralized policy-making and program direction; decentralized responsibility for program operations; DLA-wide fraud and integrity awareness training; and case management, including automated case tracking from the time suspected fraud is detected to prosecution and final
Agency corrective action. DLA shall monitor, from its inception, all significant investigations of fraud or corruption related to procurement activities affecting the Agency, for the purpose of ensuring that all possible criminal, civil, administrative, and contractual remedies in such cases are identified to cognizant procurement and command officials and that appropriate remedies are pursued expeditiously. This process shall include appropriate coordination with all other affected DoD Components. DLA shall review all investigations of fraud or corruption related to procurement activities to determine and implement the appropriate contractual and administrative actions that are necessary to recover funds lost through fraud or corruption and to ensure the integrity of DoD programs and operations. Appropriate civil, contractual, and administrative actions shall be taken expeditiously. During an investigation and before prosecution or litigation, such actions shall be taken with the advance knowledge of the responsible DoD criminal investigative organization and, when necessary, the appropriate legal counsel in DoD and the Department of Justice (DoJ). When appropriate, such actions shall be taken before final resolution of the criminal or civil case.


• COOPERATION WITH THE OFFICE OF SPECIAL COUNSEL OF THE MERIT SYSTEMS PROTECTION BOARD. DLA supervisory and management personnel shall comply with laws and regulations implementing established merit system principles in taking, or failing to take, all civilian personnel actions. All civilian personnel actions shall be free of any prohibited personnel practices. DLA supervisors and managers shall take vigorous corrective action when prohibited personnel practices occur. Such corrective action may include disciplinary measures, when appropriate. Allegations of improper or illegal conduct which are forwarded to the DLA General Counsel by the Office of Special Counsel (OSC) shall be promptly and thoroughly investigated. The investigative report, including all supporting documentation, shall be forwarded to the DLA General Counsel. DLA personnel shall cooperate with OSC investigations by providing appropriate assistance and information to OSC investigators and by furnishing copies of releasable documents requested by OSC investigators.

• INVESTIGATING AND PROCESSING CERTAIN NON-CONTRACTUAL CLAIMS AND REPORTING RELATED LITIGATION. DLA does not finally adjudicate non-contractual claims (i.e., tort claims against the United States based on alleged Government negligence). This responsibility is assigned to the Department of the Army, unless otherwise indicated. DLA personnel shall cooperate fully in the investigation of tort claims arising out of DLA activities.

4. RESPONSIBILITIES.

   a. The head of the Agency legal office assigns incoming matters to attorneys and supporting paralegals on the basis of subject matter and functional expertise. Matters are logged in and due dates are established, either by the requester or the legal administrative support staff.

   b. The assigned attorney preliminarily analyzes the matter, determining pertinent facts.

   c. If the attorney determines that pertinent facts are missing, the attorney or supporting paralegal collects additional information from the requester and other knowledgeable persons and records.
(1) If the matter is in litigation, the attorney identifies and interviews potential witnesses and prepares them for testimony.

(2) The attorney and paralegal assemble relevant documentary evidence for introduction into evidence at the hearing or trial.

d. The attorney researches statutory, regulatory, case law, and other legal authorities and precedents that are relevant to the legal issues presented by the matter. Where available, paralegals assist with legal research and writing.

e. The attorney applies the law to the facts, determining issues of fact and law.

f. At times, the course of action intended by an Agency official is not legally permissible. At other times, an intended course of action may be permissible but may present elements of risk. The attorney assesses risks and proposes alternative courses of action that will achieve the objective.

g. The attorney develops a legal position and prepares a response that addresses the questions presented.

(1) There may be a written legal product, such as a memorandum of law to the requester or correspondence drafted for the requester’s use.

(2) Written legal products also take the form of legal briefs, papers, and other documents to be presented to a court or board.

(3) For matters that are not complex or contentious, products are not always in writing. The product may consist of informal assistance and oral legal advice and counsel.

h. Before releasing a legal response or product, the attorney determines whether higher level management attorney review and approval is required. For field legal offices, review and approval may need to be obtained from the supervisory attorney or chief legal counsel. For significant matters, local counsel may need to obtain review and approval from the Agency General Counsel. Before approving a legal position or approach, the management attorney may obtain or direct coordination with departmental or civilian agency authorities or other affected offices or organizations.

i. After necessary coordination and approvals have been obtained, the attorney delivers the response or product to the requester.

(1) If the requester needs nothing further from the attorney, the legal matter is usually considered closed. If the matter is recorded in the office suspense log, it is closed out.

(2) If the matter is unresolved by the legal response or product or if the legal response or product is part of a lengthier process, the attorney continues to provide services and products until the matter is fully resolved.

(3) Throughout the process, the attorney is expected to meet all statutory, regulatory, and procedural timeframes.
5. PROCEDURES. Refer to Enclosure 1. Additional Information is located at Enclosure 2 and the Glossary of Terms is at Enclosure 3.


Director, DLA Enterprise Support

3 Enclosures
   Enclosure 1 – Procedures
   Enclosure 2 – Additional Information
   Enclosure 3 – Glossary of Terms
Enclosure 1

Procedures

1. All DLA legal offices are part of the DLA-wide legal system falling under the general management of the DLA General Counsel. DLA legal offices provide a wide range of legal advisory and legal program services, including legal representation in Agency litigation, administrative disputes, and other legal controversies as well as carrying out employee ethics and contract integrity programs. Expertise is maintained in all legal subjects necessary for the support of the mission, operations, and administrative programs for which DLA is responsible and accountable. Legal subject expertise includes, but is not limited to, acquisition, personnel, EEO, fiscal, installations, environment, safety, health, ethics, fraud, Freedom of Information and Privacy acts, information technology, international affairs, labor relations, legislation, litigation, and military personnel. DLA attorneys are responsible for possessing a broad understanding of administrative programs, logistics and commodities for which DLA has procurement, storage, distribution, and disposal responsibility.

NOTES:

• GIFTS AND DECORATIONS FROM FOREIGN GOVERNMENTS. The DLA OGC is responsible for ensuring compliance with DoD Directive 1005.13, Gifts and Decorations from Foreign Governments (http://www.dtic.mil/whs/directives) which provides policy and Agency legal counsel responsibilities and procedures for processing foreign decorations, reporting gifts and disposing of gifts and decorations. DLA General Counsel responsibilities include establishing procedures to familiarize employees with the requirements and restrictions of DoD Directive 1005.13; reviewing reports from employees who have received decorations or gifts from foreign governments; providing legal advice regarding matters related to decorations and gifts from foreign governments; approving or disapproving employee acceptance of gifts that exceed the threshold value and approving or disapproving employee requests for acceptance of decorations from foreign governments; reporting to the Attorney General, through the DoD General Counsel, when it is determined administratively that an employee who is the recipient of a gift or decoration has failed to comply with the provisions of DoD Directive 1005.13; and filing a report with the Secretary of State no later than January 31 of each year of all gifts and decorations accepted by Agency employees that exceeded the threshold value.

  o When an employee is tendered a foreign decoration, approval by the DLA OGC must be requested immediately. The request must contain the title of the decoration, when, where, and by whom it was presented; a statement of the service for which the decoration was awarded; and a copy of the citation.

  o When an employee accepts a gift from a foreign government, a report which includes the following information must be forwarded within 30 days to the DLA OGC: the name and position of the employee, a brief description of the gift, the identity of the foreign government, and the name and position of the individual who presented the gift, the date of acceptance of the gift, the estimated value in the United States of the gift at the time of acceptance, if the gift is tangible, and its current location. If the gift has an estimated value of more than $285, and is not in the nature of an educational scholarship or medical treatment, the circumstances justifying acceptance must also be reported. If the employee is interested in participating in the sale of the gift or decoration should one be held, that interest should be stated.
An employee may retain any gift or approved decoration determined to be less than $285 in value. Gifts or decorations of more than $285 in value must be deposited by the employee and a determination will be made by the HQ DLA OGC as to whether it will be retained or will be disposed of, in accordance with General Services Administration (GSA) procedures. If an employee is employed by HQ DLA or a co-located primary level field activity (PLFA), it will be deposited with the OGC. In all other cases, the gift or decoration will be deposited with the head of the PLFA to which the employee is assigned.

Within 30 days of receipt of a report that a gift or decoration of more than $285 in value has been accepted and deposited, the DLA OGC will advise the employee, through the appropriate head of the PLFA, whether it will be retained by DLA for official use. Normally when such gifts or decorations are retained by DLA, they will be displayed in an appropriate manner at HQ DLA or the PLFA to which the employee was assigned at the time of acceptance.

When the DLA OGC determines that a gift will no longer be retained for official use, or determines upon deposit that retention by DLA is not desired, that determination will be reported to GSA within 30 calendar days on Standard Form (SF) 120, Report of Excess Personal Property. The gift or decoration will be held by DLA at the location of deposit until instructions are received from GSA regarding its disposition. If a sale is to be held, an employee who has indicated an interest in participating will be notified of the sale. Employees should be aware that there is no assurance that a deposited gift or decoration will be sold or that the accepting employee’s participation therein is feasible.

A gift or decoration may be recommended for donation or transfer by the recipient to an eligible public or state agency or nonprofit tax-exempt institution for public display, reference, or use. Such a recommendation may be made with a statement on the SF 120 citing the specific donee, along with a letter of justification from the recipient outlining any special significance of the gift or decoration to the proposed donee. Where the recipient recommends transfer of the gift or decoration to an eligible public or state agency for public display, or other authorized use, SF 122, Transfer Order--Excess Personal Property, will be executed, citing the recommended donee and a justification of the display or official use of the gift or decoration.

Before accepting a gift of travel expenses from a foreign government, the employee will obtain the approval of the head of the PLFA. Approval is contingent upon meeting the following criteria: a) the travel must begin and end outside the United States, except where travel across the continental United States is necessarily the shortest, least costly, or only available route to the destination; and b) the travel must be in the best interest of DLA and the U.S. Government, considering all the circumstances.

DoD FOREIGN TAX RELIEF. The DLA OGC is responsible for supervising and monitoring the implementation of DoD Directive 5100.6, DoD Foreign Tax Relief Program (http://www.dtic.mil/whs/directives) which defines DoD policy and delineates the responsibilities of organizational elements to implement and monitor the DoD Foreign Tax Relief Program. Agency Counsel responsibilities include: a) disseminating information from tax law studies prepared in accordance with DoD Directive 5100.6 to DLA PLFAs; b) maintaining a central file of foreign tax studies; and c) furnishing a summary, in narrative form,
to the DoD General Counsel, each January, which outlines significant activities during the preceding year that resulted from the Agency’s implementation of the DoD Foreign Tax Relief Program.


  - DLA General Counsel responsibilities include: a) developing a legislative program for the Agency; b) coordinating the views of appropriate Agency PLFAs on matters relating to legislation, executive orders, and proclamations; c) preparing proposed legislation, executive orders, and proclamations; d) as requested by the DoD OGC, preparing proposed reports setting forth a single coordinated position on proposed legislation, executive orders, and proclamations, or comments on reports proposed by other Federal agencies; e) ensuring that Principal Staff Elements with HQ DLA and Agency PLFAs are advised of significant changes in legislative enactments which affect HQ DLA operations; f) arranging for the designation of witnesses for congressional hearings when the Agency is requested to furnish a witness to appear before a congressional committee to testify on pending legislation.

  - DLA employee responsibilities include: a) submission of requests to the DLA OGC for new laws or changes to existing laws; b) if designated by the OGC as a witness to appear before a congressional committee to testify on pending legislation; c) preparation of a written statement of proposed testimony.

- **TESTIFYING BEFORE STATE AGENCIES.** The DLA OGC is responsible for providing assistance to local and state governments on technical or specialized matters. DLA General Counsel responsibilities include: a) providing advice concerning the processing of requests for Agency expert witnesses; b) coordinating the appearance of Agency expert witnesses with the DoD General Counsel; c) reviewing and processing all requests for Agency expert witnesses to testify before state or local governmental bodies advisory committees, or agencies; and d) serving as the principal point of contact for HQ DLA and Agency PLFAs for all requests for the appearance of Agency expert witnesses.

- **INVESTIGATIONS OF ALLEGATIONS OF SERIOUS MISCONDUCT BY SENIOR OFFICIALS.** The DLA OGC is responsible for implementing DoD Directive 5505.6, Investigations of Allegations of Serious Misconduct by Senior Officials (http://www.dtic.mil/whs/directives).

  - DLA General Counsel responsibilities include: a) serving as the point of contact with the DoD Inspector General (IG) for the exchange of information concerning allegations of serious misconduct involving senior DLA officials; b) ensuring that allegations of serious misconduct against senior DLA officials are referred to the appropriate investigative authority; c) notifying the DoD IG, in writing, within 5 workdays of receipt, of any allegations of serious misconduct by senior DLA officials; d) monitoring the progress of all such investigations by ensuring that the OGC checks with the investigative authority for the status of each investigation on a monthly basis until the investigation is complete; e) providing interim program reports to the DoD IG upon a
determination that an investigation will not be completed within 90 days of receipt of notice of the allegation; and f) providing a written report to the DoD IG of any disciplinary or administrative action taken against a senior DoD official due to serious misconduct.

○ Agency employee responsibilities include: a) providing prompt reports to the DLA OGC of any allegation of serious misconduct against a senior DLA official immediately by telephone followed by written report; b) providing prompt reports of and disciplinary and/or administrative action taken against a senior DLA official to the DLA OGC; c) preparing reports of investigation upon completion of an investigation by the investigative authority (the report of investigation will include a thorough review of the facts and circumstances relevant to the allegations, any relevant documents acquired during the investigation, and summaries of any interviews conducted); d) providing completed reports of investigation to the DLA OGC not later than 4 days after completion of the investigation.

• COORDINATION OF REMEDIES FOR FRAUD AND CORRUPTION. The DLA OGC is responsible for implementing DoD Directive 7050.5, Coordination of Remedies for Fraud and Corruption related to Procurement Activities (http://www.dtic.mil/whs/directives). General Counsel responsibilities include: a) serving as the principal point of contact with the DoD IG and DoJ for cases involving contract fraud, corruption, and violations of the antitrust, conflicts of interests, and standards of conduct laws; b) managing a program to monitor and ensure the coordination of criminal, civil, administrative, and contractual remedies for each significant investigation of contract fraud, corruption, antitrust violations, conflicts of interest, and standards of conduct violations related to procurement activities affecting the Agency; c) managing DLA’s efforts to prevent, detect, and deter contract fraud, corruption, antitrust violations, conflicts of interest, and standards of conduct violations; d) informing the Director, DLA, of all significant contract fraud, corruption, antitrust, conflicts of interest, and standards of conduct cases that warrant management attention and ensure that the Director, DLA, is apprised of all significant case developments; and e) preparing and forwarding significant criminal incident reports and referrals on suspected contract fraud, corruption, antitrust, conflicts of interest, and standards of conduct cases to the DoD IG and the DoD General Counsel, as appropriate.

○ Agency Chief Counsel responsibilities include: a) Establishing a Fraud Counsel within the Office of Counsel (the Fraud Counsel will be assigned general responsibility by the Chief Counsel for the overall management and operation of the local fraud program at the PLFA); b) promptly reviewing all reported instances of suspected contract fraud, anticompetitive practices, and possible criminal violations reported by DLA employees, Defense Contract Audit Agency (DCAA) auditors, the DoD Hotline, or received from any other source either inside or outside the Government to determine whether there are reasonable grounds to believe a criminal violation has occurred (If so, Counsel will promptly refer the allegation for investigation, in accordance with DoD Instruction 5505.2, Criminal Investigations of Fraud Offenses, February 6, 2003 (http://www.dtic.mil/whs/directives), and will immediately report any suspected bribe offer reported by, or involving a DLA employee directly to the DCIA); c) ensuring that each criminal case managed by the PLFA Office of Counsel is entered promptly in DLA’s automated criminal case management system; d) tracking and monitoring the status of each investigative referral from beginning to end, providing advice and assistance to criminal investigators, prosecutors, and Agency management officials, as
appropriate; and ensuring that management is kept apprised of significant case developments so that appropriate corrective action is taken; e) for each investigative referral, ensuring that all remedies available to the Government are vigorously pursued and coordinated, including criminal, civil, administrative, and contractual remedies; f) establishing procedures to ensure that a specific comprehensive remedies plan is developed for each significant investigation involving fraud or corruption related to DLA procurement activities (these procedures shall include the participation of the appropriate DoD criminal investigative organization in the development of the plan); and g) developing and maintaining close liaison with the DoD criminal investigative agencies, the FBI, the DoJ, the Defense Procurement Fraud Unit, and the U.S. Attorney Offices.

- DLA employees are responsible for promptly reporting information concerning suspected fraud and related irregularities directly to the Office of Counsel assigned to their activity.

- The DLA Defense Criminal Investigations Activity (DCIA) is responsible for DLA and DoD Hotline cases referred to DLA for action. Upon receiving Hotline allegations involving suspected contract fraud, corruption, antitrust violations, conflicts of interest, and standards of conduct violations, the appropriate DLA Activity and DLA Fraud Counsel will be notified. DCIA responsibilities also include: a) providing criminal investigative support to DLA activities from resources within and outside DLA; b) ensuring that suspected criminal misconduct affecting or involving DLA operations or activities, including theft of Government property and computer fraud, is promptly and thoroughly investigated or referred to the appropriate investigative agency for action; c) maintaining a central reference repository of all Security and Criminal Incident Reports and reports of investigation, including those involving suspected contract fraud, corruption, antitrust violations, conflicts of interest, and standards of conduct violations; and d) ensuring the tracking and monitoring of all contract fraud, corruption, antitrust, conflicts of interest, and standards of conduct cases involving DLA operations or activities.

- DLA Staff Director, Command Security, manage the DLA Command Security Program and the DLA Crime Prevention and Detection Program.

- Office of Special Assistant for Contracting Integrity responsibilities include: a) promptly taking appropriate action on all reports recommending contractor suspension/debarment based on criminal misconduct, poor performance, or related matters which are submitted pursuant to DoD FAR Supplement, Subpart 9.4, and referred by the DLA General Counsel; and b) ensuring that the DLA Director and DLA General Counsel are kept informed of the current status and progress of all pending suspension and debarment recommendations referred for action, and are made aware of significant case developments, as they occur.

- Heads of DLA PLFAs’ responsibilities include: a) minimizing the occurrence of preventable fraud through the vigorous application of internal management controls; b) taking appropriate corrective action as a result of information disclosed by an investigation (to ensure that pending criminal or civil litigation is not compromised or otherwise prejudiced, planned corrective action will be coordinated with the PLFA Counsel and, if appropriate, the DLA General Counsel; c) briefing all new DLA employees on the DLA program to combat fraud and their responsibilities for detecting
and promptly reporting suspected criminal misconduct and cooperating in the investigation and prosecution of fraud cases involving DLA; d) developing and implementing a continuing field-wide training program, specifically tailored to the functions and mission of the PLFA and designed to inform employees of their role in the PLFA’s efforts to combat fraud and of the high ethical standards which they are expected to follow while performing their duties; e) developing a program to ensure that all PLFA managers and their subordinate personnel are aware of the requirement to promptly refer information concerning suspected contract fraud, corruption, antitrust violations, conflicts of interest, and standards of conduct violations directly to the PLFA Counsel and to take appropriate corrective action to protect the Government’s interests when such misconduct is disclosed; and f) ensuring that the reports required by DoD FAR Supplement, Subpart 9.4, are promptly submitted to the DLA General Counsel.

- PROGRAM FRAUD CIVIL REMEDIES ACT (PFCRA). The DLA OGC is responsible for implementing DoD Directive 5505.5, Implementation of the Program Fraud Civil Remedies Act (PFCRA) (http://www.dtic.mil/whs/directives), which establishes policy and procedures for the adjudication of civil claims against those who make false claims or statements to the DoD.

- DLA General Counsel responsibilities include: a) serving as the reviewing official for all cases involving false claims or statements made to DLA or any other DoD Component (other than a Military Department or the National Security Agency); b) transmitting potential PFCRA actions referred to the DLA General Counsel by the DoD IG to the appropriate DLA PLFA for handling; c) reviewing the case evaluations and recommendations of DLA PLFAs and DoD components; d) obtaining the required approval of the Attorney General prior to initiating further action; and e) reviewing and approving proposed settlements.

- DLA PLFAs are responsible for providing to the DLA General Counsel an evaluation and recommendation for proceeding with each case referred to the cognizant DLA PLFA by the DoD IG or designee. The evaluation will include an analysis of the findings and conclusions contained in the DoD IG’s referral report. The evaluation must address the adequacy of the evidence supporting the false claim or statement, identify any exculpatory or mitigating circumstances known to the PLFA that may relate to the claim or statement, and provide any additional evidence supporting the case. The recommendation for further proceedings should include any information known about whether there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

- COOPERATING WITH THE OFFICE OF SPECIAL COUNSEL OF THE MERIT SYSTEMS PROTECTION BOARD (MSPB). The DLA OGC is responsible for implementing DoD Directive 5500.19, Cooperation with the Office of Special Counsel (http://www.dtic.mil/whs/directives), which sets forth policy and Agency counsel responsibilities and procedures for ensuring cooperation with the Office of Special Counsel (OSC) in carrying out its responsibilities under the Civil Service Reform Act of 1978. The DLA General Counsel serves as the Senior Management Official in matters concerning allegations of improper or illegal conduct which are forwarded to DLA by the OSC. The DLA General Counsel’s responsibilities include: a) providing legal advice and services on all issues concerning cooperation with the OSC, b) ensuring that appropriate HQ DLA
personnel are fully apprised of the nature and basis for an OSC investigation, as well as the rights and duties of DLA personnel in regard to such investigations; c) assigning DLA legal counsel, or obtaining legal counsel from another DoD component, to represent a DLA employee suspected or accused by the OSC of committing a prohibited personnel practice or an illegal or improper act when the act(s) complained of was within the scope of the employee’s official responsibilities and such representation is in the best interests of DLA; d) in unusual circumstances, with the approval of the DoD General Counsel, ensuring that a member of the private bar is engaged to represent a DLA employee when the use of DLA or DoD legal counsel would be inappropriate; e) assigning DLA legal counsel to seek intervention in an MSPB proceeding resulting from charges against a DLA employee under the Civil Service Reform Act of 1978 for purposes of representing the interests of DLA; and f) reviewing, and when appropriate, referring to the DoD General Counsel, requests for the assistance of the DoJ in representing DLA employees or in obtaining judicial review of an order by the MSPB.

INVESTIGATING AND PROCESSING CERTAIN NONCONTRACTUAL CLAIMS AND REPORTING RELATED LITIGATION. The DLA OGC is responsible for implementing DoD Directive 5515.9, Settlement of Tort Claims (http://www.dtic.mil/whs/directives) and DoD Directive 5515.10, Settlement and Payment of Claims Under the Military Personnel and Civilian Employees’ Claims Act of 1964 (http://www.dtic.mil/whs/directives). Agency attorney responsibilities include: a) receiving, reviewing and processing claim reports and information about related litigation; and b) providing direction and guidance to claims investigating officers in the investigation and processing of claims.
Enclosure 2
Additional Information

1. Outputs of this process include, but are not limited to, legal advice, opinions, and recommendations; legal sufficiency/insufficiency findings; proposed legal policies, doctrines, procedures, and processes; responses to congressional inquiries; legislative and regulatory proposals and comments; recommended Agency final decisions in disputed matters, e.g., decisions on Freedom of Information Act requests and appeals, contract claims, OMB Circular A-76 appeals, grievances, etc; responses to findings concerning Agency activities by other federal departments and agencies, e.g., Department of Justice (DoJ), Department of Labor (DOL), Environmental Protection Agency (EPA), Office of Personnel Management (OPM), Office of Government Ethics (OGE), and U.S. Government Accountability Office (GAO); legal instruments such as contracts and contract modifications; pleadings, affidavits, motions, and briefs; litigation reports and memoranda; records of witness interviews and witness preparation for hearings and trials; advance preparation of written congressional testimony; documentary and other demonstrative evidence and proofs; interrogatories, requests for production of documents, and depositions; findings and decisions by administrative tribunals and courts concerning Agency matters; agreements settling or withdrawing legal actions; mediation and other dispute resolution actions in lieu of litigation; detection, prevention, and remedies for conflicts of interest, fraud, and other irregularities; referrals for criminal investigation; and orders of suspension or debarment of defense contractors or administrative agreements in lieu thereof.

2. Agency attorneys must possess the requisite education, certification, experience, and training to handle the legal matters entrusted to them.

3. Agency attorneys must be currently licensed and active members in good standing of a state or the District of Columbia attorney licensing authority. Most licensing jurisdictions require members to meet mandatory annual continuing legal education requirements to maintain licensing. Agency attorneys must comply with all such training requirements. In addition to meeting established educational requirements for maintaining licensing, all Agency lawyers must stay current in their respective substantive areas of expertise and obtain appropriate training in the substantive areas of the law to which they are assigned. Legal training must be planned and budgeted for this process to be successful.

4. All Agency attorneys, regardless of location, process legal work under the professional supervision and oversight of the DLA General Counsel, who sets Agency-wide legal policy. The DLA General Counsel is responsible for ensuring attorneys possess the subject matter and functional expertise necessary to effectively support the field activity to which they are assigned. The DLA General Counsel recruits and approves the selection, training, professional standards, performance evaluations, and career advancement of all Agency attorney personnel.

5. DLA field legal offices are headed by a chief legal counsel, who is selected by and reports directly to the Agency General Counsel. Chief legal counsels are rated by the DLA General Counsel in coordination with the PLFA commander. Funding and other necessary administrative support are provided by the DLA activity where the legal office is located. Establishment or disestablishment of PLFA legal offices and/or attorney positions must be approved in advance by the DLA General Counsel.

6. The DLA General Counsel is selected by and reports to the DoD General Counsel and is annually rated by the DoD General Counsel, in coordination with the Agency’s director. The DoD General Counsel may at his or her discretion, review and approve Agency attorney personnel actions for grades GS-14 and above. The DLA legal organization is a component of the Defense Legal Services Agency

7. Review by Management Attorneys. DLA PLFA legal offices are headed by a chief legal counsel reporting directly to the Agency’s General Counsel who provides day-to-day review of legal work products. Some matters must be reviewed or cleared before finalization or must be signed out by the head of the legal office concerned or a higher level attorney, including the General Counsel. Such matters usually involve substantial amounts of money, a high degree of sensitivity, novelty, visibility, or significant value as precedent.

8. Legal Office Administration. Legal support staffs and paralegals manage the administrative infrastructure of the Agency’s legal system, including intake functions, legal matter tracking, reporting, and resolution of routine matters not requiring the assignment of an attorney.

9. Automated Systems. An automated case management system provides an electronic repository for information about significant actions and important due dates in matters that are in litigation. An automated data base of Agency legal opinions and other legal products helps ensure quality and consistency in resolving legal matters throughout the Agency.

10. Professional Ethics and Competence. Attorneys are bound by the codes of professional responsibility of state bar licensing authorities and must maintain current active bar membership and legal proficiency. Attorneys are obligated to represent their clients’ interests vigorously and must do so ethically, avoiding the appearance of impropriety. Like other Government employees, Agency attorneys are bound by DoD 5500.7-R, Joint Ethics Regulation [http://www.defenselink.mil/dodge/defenseethics/ethics_regulation].

11. DoD General Counsel Oversight. The DoD General Counsel sets department-wide legal policy. The Agency’s General Counsel is selected by, reports to, and is rated by the DoD General Counsel, in coordination with the Agency’s director. The DoD Deputy General Counsels provide subject matter policy guidance and oversight within their areas of legal expertise and responsibility.

12. Rulemaking. The Agency is subject to the rulemaking authority of the Office of Management and Budget (OMB), Office of Federal Procurement Policy (OFPP), DoD, OPM, OGE, DOL, EPA, EEOC, Small Business Administration (SBA), GSA, and other Federal authorities.

13. Administrative and Judicial Review. Agency actions and decisions are subject to review by administrative tribunals and Federal courts that may issue binding and precedent-setting decisions. These decisions may include determinations of liability for money damages or for equitable relief, such as restraining orders or injunctions. Contract-related decisions may lead to the replacement of supplies, contract price adjustments, withheld payments, debt offsets, ineligibility for Government contracts, and recovery of losses. Depending on the severity of the conduct, criminal indictments, convictions, fines, penalties, imprisonment, and orders of financial restitution may result. Personnel-related decisions may lead to employee suspension or separation from Federal service, reinstatement, or depending upon the severity of the conduct, criminal indictment, conviction, fines, penalties, imprisonment, and orders of financial restitution.
1. Personnel: Supervisory and staff attorneys; legal practice groups comprised of subject matter experts from legal offices throughout DLA; paralegals and legal assistants; administrative assistants; employees, unions, bidders, contractors, business invitees, or members of the public who raise issues concerning whether they may have been injured as a result of the Agency or its officials exceeding or failing to comply with applicable legal authorities or contractual understandings or who may appeal from decisions on their grievances, complaints or claims; individuals, contractors and other legal entities against whom the Agency or United States may make claims or bring actions to obtain recompense or other relief in the belief that the Agency has been injured or damaged as a result of their negligence or violation of law; judges of the Armed Services Board of Contract Appeals (ASBCA), Merit Systems Protection Board (MSPB), Federal Labor Relations Authority (FLRA), and Equal Employment Opportunity Commission (EEOC); grievance examiners, arbitrators, and deciding officials of other Federal and state administrative bodies; judges of the U.S. Court of Federal Claims, U.S. District Courts, U.S. Appellate Courts, U.S. Supreme Court, and other courts of competent jurisdiction; general counsels of the U.S. General Accountability Office, congressional committees, and the Office of Special Counsel; Inspector General of the Department of Defense.

2. Resources and tools: Telephones; photocopy machines; facsimile transmission machines; scanners; personal computers with standard office automation software applications and tools; knowledge management technologies; including document management; collaboration; and portal technology; standard telecommunication technologies, including access to the Internet and the World Wide Web; case management tracking systems; previous legal opinions and products data base; specialized legal research databases (subscription services) that provide electronic access to legal authorities.

3. Legal authorities - access to authorities whether in book, periodical, printed or electronic form: The U.S. Constitution; Federal statutes and regulations; executive orders; departmental regulations, directives, instructions, and policy statements; foreign law, treaties, and international agreements; applicable state and local laws; administrative rulings and orders; case law from the Federal courts and administrative bodies before which Agency matters are litigated; treatises and law review materials.

4. Factual research - access to Agency files and personnel.

5. Transportation - access to local and long distance transportation support.