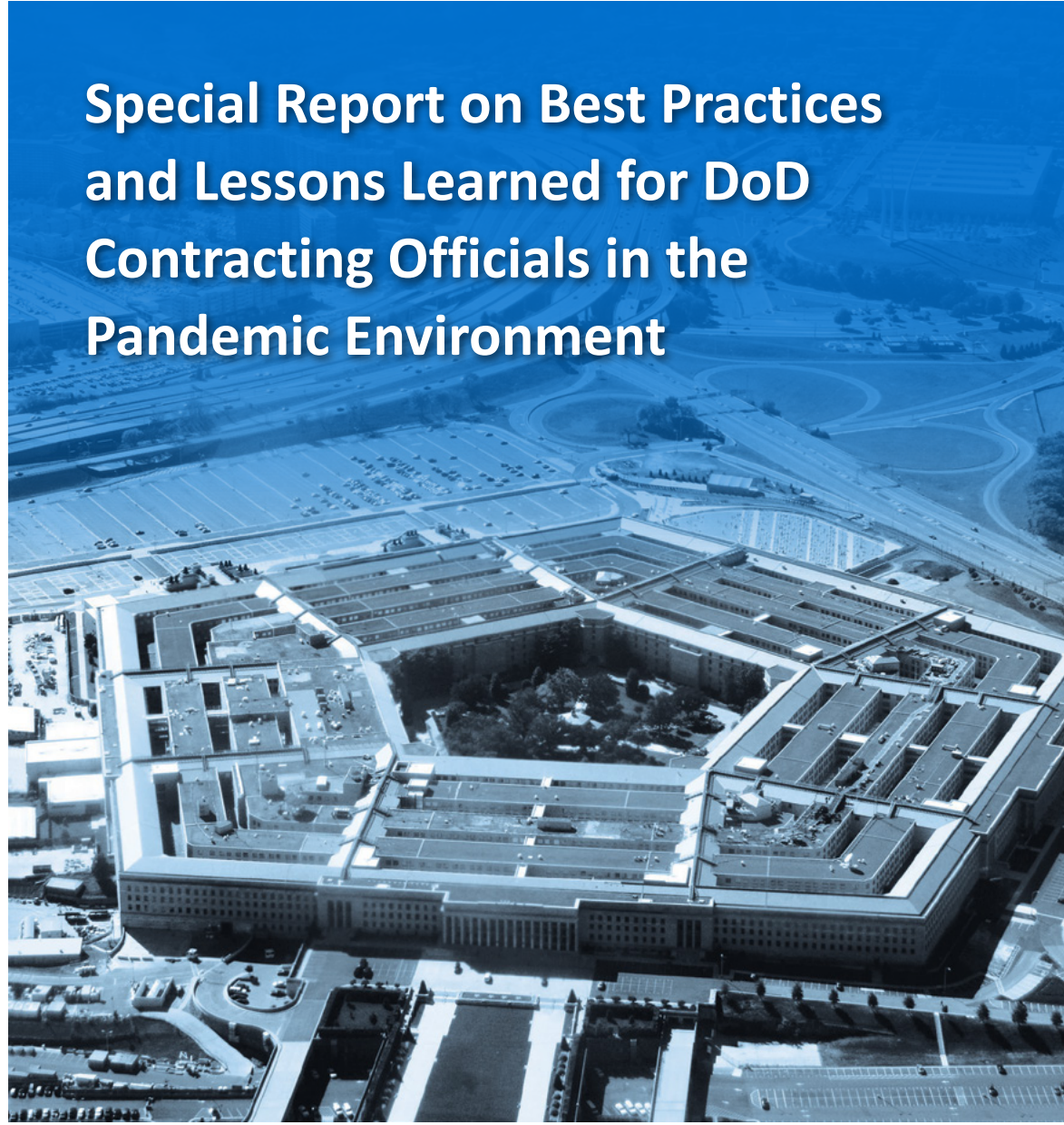




INSPECTOR GENERAL

U.S. Department of Defense

JUNE 2, 2020



Special Report on Best Practices and Lessons Learned for DoD Contracting Officials in the Pandemic Environment

INTEGRITY ★ INDEPENDENCE ★ EXCELLENCE





**INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
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June 2, 2020

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARY OF DEFENSE FOR ACQUISITION
AND SUSTAINMENT
DIRECTOR OF OPERATIONAL TEST AND EVALUATION
DIRECTORS OF DEFENSE AGENCIES
DIRECTORS OF DOD FIELD ACTIVITIES

SUBJECT: Special Report on Best Practices and Lessons Learned for DoD Contracting Officials
in the Pandemic Environment (Report No. DODIG-2020-085)

This special report provides best practices and lessons learned identified in audit reports related to disaster responses. From 2006 through 2020, personnel from the DoD Office of Inspector General and the Service Audit Agencies conducted 52 audits related to disaster relief response. Of the 52 reports, 36 were focused on oversight of contracting related to disaster response activities. We analyzed the audit reports and determined several best practices and lessons learned related to contracting from the DoD's previous disaster relief responses. In addition, this special report provides potential procurement fraud schemes and tips to avoid potential fraudulent activity.

We recognize that DoD contracting officials are in a unique, and ever-changing situation. However, the best practices, lessons learned, and fraud awareness highlighted in this special report should assist DoD contracting officials in providing better contract oversight and avoiding potential fraudulent activity.

If you have any questions, please contact me at [REDACTED]

A handwritten signature in cursive script, reading "Theresa S. Hull", is positioned above the typed name.

Theresa S. Hull
Assistant Inspector General for Audit
Acquisition, Contracting, and Sustainment

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Special Report

DoD Office of Inspector General

Best Practices and Lessons Learned for DoD Contracting Officials in the Pandemic Environment

Background

Coronavirus disease–2019 (COVID-19) is a viral respiratory illness caused by a novel coronavirus. The World Health Organization declared the global COVID-19 outbreak a Public Health Emergency of International Concern on January 30, 2020, and labeled the outbreak a “pandemic” on March 11, 2020. The President declared a U.S. national emergency on March 13, 2020. Additionally, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) on March 27, 2020.¹ The CARES Act includes \$10.5 billion in additional emergency funding for the Department of Defense (DoD). Additional funding to the DoD related to COVID-19 may come from other agencies, such as the Federal Emergency Management Agency (FEMA), through mission assignments. FEMA officials issue mission assignments to Federal agencies, requesting that the agencies complete certain tasks and FEMA provides the associated funds for those tasks.

The DoD provides disaster relief for situations such as COVID-19 through Defense Support of Civil Authorities operations. DoD resources may be committed to these operations when requested by another Federal agency and approved by the Secretary of Defense, or when directed by the President. When DoD resources are authorized to support civil authorities, the DoD retains command of those forces. DoD personnel should coordinate closely with response organizations at the Federal, state, and local levels. Due to the expected contracting actions that will occur within the DoD related to COVID-19, the DoD Office of Inspector General (DoD OIG) initiated a review of past oversight work related to the DoD’s efforts to respond, usually in a rapid fashion, to disasters. The purpose of this review was to identify best practices and lessons learned related to contracting in circumstances similar to COVID-19–related responses, such as responding to natural disasters.

The DoD OIG, along with the DoD Service Audit Agencies (including the Army Audit Agency, Naval Audit Service, and Air Force Audit Agency), have conducted audits, over the course of multiple disasters, of DoD contracting process related to disaster relief. We reviewed these audit reports, including reports on the responses of DoD officials to Hurricane Katrina in 2005 through Hurricanes Florence and Irma in 2019. These audits related directly to pre-award, award, contract administration, undefinitized contract actions (UCAs), and the contract closeout processes. Additionally, these audits examined various disaster relief activities, such as debris removal, delivery of water and supplies, and reconstruction efforts.

¹ Public Law 116-136, “The Coronavirus Aid, Relief, and Economic Security Act,” March 27, 2020.

From 2006 through 2020, the DoD OIG and the Service Audit Agencies conducted 52 audits related to disaster relief response.² Of the 52 reports, 36 reports focused on oversight of contracting related to disaster response activities. We analyzed the 36 audit reports and identified several best practices and lessons learned related to contracting from the DoD's previous disaster relief responses.

DoD officials are under increased pressure to provide goods and services in a fast-paced, ever-changing environment under the COVID 19 pandemic, which are similar to the pressures that were present during past disaster response and relief efforts. We developed a list of best practices and lessons learned that DoD officials should consider following to minimize opportunities for fraud, waste, and abuse in awarding and overseeing the large amount of contracts needed to respond to the COVID-19 pandemic.³

Best Practices and Guidance When Contracting During Emergencies

We recognize the unique situations that DoD contracting officials are experiencing during the COVID-19 pandemic and that the CARES Act and other guidance provided exceptions to numerous required contracting procedures; however, contracting officials have taken several steps to improve processes, based on lessons learned from past emergencies, that should be considered during this pandemic. Specifically, select DoD Components, including the U.S. Army Corps of Engineers (USACE) and the Defense Logistics Agency, that are routinely tasked with providing support to civil authorities have taken the following actions to respond in emergencies.

- DoD Components identified areas where contracts, such as indefinite-delivery indefinite-quantity or requirements contracts, can be awarded to meet the potential needs during an emergency.
- DoD Components have sufficient contract planning and lead times in place to ensure that as advance contracts expire, other contracts are awarded without a gap in coverage. By awarding advance contracts, DoD contracting personnel have been able to establish terms and conditions for the goods and services needed using competitive procedures in a non-emergency environment. For example, USACE officials developed and implemented Advanced Contracting Initiative contracts, for supplies such as bottled water, emergency power, and temporary roofing, for use during relief efforts.⁴

² The 52 reports consist of 23 DoD OIG reports, 16 Army Audit Agency reports, 9 Naval Audit Service reports, 3 Air Force Audit Agency reports, and 1 Lead Inspector General report.

³ A best practice is a validated method or procedure that has consistently shown results superior to those achieved with other means, and appears to be worthy of replication. Lessons learned are resolved issues or best practices that improve military operations or activities at strategic, operational, or tactical level; result in an internalized change to capability, process, or procedure; and are appropriately institutionalized to improve warfighting capabilities.

⁴ Advanced Contracting Initiative contracts allow USACE contracting personnel to respond when a disaster occurs by placing delivery orders at a negotiated rate for supplies and services.

- DoD Components have multiple teams of personnel to both award and administer emergency contracts. These personnel are trained and readily available at multiple geographical locations. As emergencies happen, these teams have been able to provide supplemental staffing to the offices providing most of the relief support. Additionally, by using multiple teams of trained personnel, DoD officials can increase the readiness and continuity of emergency response efforts. For example, DoD officials can transfer contracting responsibility from one office to another if the emergency directly affects the duty location initially providing the emergency contracting support.

As the COVID-19 relief efforts continue, DoD officials can use these best practices to better prepare themselves to award and administer contracts. The DoD can also prepare for future events, such as a reoccurrence of COVID-19 or another emergency, by identifying additional opportunities to develop advance contracts. Finally, contracting officers should attempt to identify previously awarded contracts by other DoD Components or Federal agencies that can be used to meet the emerging needs related to COVID-19 instead of awarding new contracts under emergency conditions. Using previously awarded contracts may avoid a lengthy award process and opportunistic price gouging by using the existing pre-negotiated contract prices and terms.

In addition to having advance contracts in place, officials from the Defense Pricing and Contracting office (DPC) (formerly the Defense Procurement and Acquisition Policy office) published the Defense Contingency Contracting Handbook and the Defense Contingency Contracting Officer's Representative Handbook to provide guidance to contracting personnel.⁵ Contracting personnel should be aware of the additional authorities and flexibilities available for contracting in emergencies, but also be aware of the additional controls and stipulations discussed in these handbooks, such as increased simplified acquisition thresholds, expanded use of commercial item procedures, and addressing contractual delays to contractors impacted by the emergency.

DPC officials have also published other resources related specifically to COVID-19 on their website.⁶ These resources include memorandums for areas such as the use of Government purchase cards, the acquisition of commercial items, class deviations to provide increased contracting flexibility, and answers to frequently asked questions. Furthermore, the Office of Management and Budget (OMB) issued a series of memorandums addressing the spending of CARES Act funds and management of contractors during the crisis. Contracting personnel should rely on the DPC handbooks, other DPC resources, the OMB memorandums, and any other agency or local publications related to contingency contracting to ensure maximum effectiveness of contracting response during the COVID-19 response.

⁵ "DoD Contingency Contracting Handbook," version 5, April 2017, and "DoD Contingency COR Handbook," version 2, September 2012.

⁶ DPC memorandums, deviations, and other guidance are available on the DPC website. <https://www.acq.osd.mil/dpap/pacc/cc/COVID-19.html>.

Lessons Learned From Past Emergency Response Efforts That Should Be Considered in COVID-19 Response Efforts

DoD officials implemented several best practices as a result of previous disaster responses; however, we also identified lessons learned that DoD officials should also be aware of during their response to COVID-19. Our review of the 36 audit reports identified trends and recurring issues related to contracting during past emergencies. The reports covered responses to hurricanes, wildfires, and the Ebola pandemic. Specifically, we identified lessons learned related to communication and coordination, documentation, consistency in contracting processes, and staffing and training. This special report contains a brief discussion of each of these areas. We have also included a section related to past oversight of UCAs because of their increased use during emergency operations. Although many of the previous reports, the issues identified, and the recommendations developed were specific to the individual Components audited, all contracting personnel should be cognizant of these lessons learned and take necessary steps to mitigate and avoid problems that could occur during the contracting process for the COVID-19 relief and response.

Communication and Coordination

One of the areas the DoD oversight community identified as an issue area in previous disaster response efforts is communication and coordination throughout the contracting process. Increased communication and coordination during emergency response efforts ensures that each office involved in the contracting process is aware of the contracting vehicles in place, the amount of products and services ordered by each location, and any issues as they arise. Contracting officials can improve communications and coordination by implementing the following lessons learned.

- Maintain communication between contracting personnel and contractors for the purpose of negotiations, acquiring accurate cost estimates, and evaluating proposed contract prices.
- Communicate with FEMA officials to ensure that FEMA's requirements are being met and that FEMA officials are aware of the DoD's ongoing response efforts.
- Communicate and coordinate throughout all stages of the process, from initial purchase request through delivery of the product or service.

By maintaining consistent and continued communication and coordination, contracting officials can avoid delays in receiving information, allow for a more efficient response effort, and could reduce the over- or under-ordering of goods and services. In addition, contracting officials can ensure that FEMA and other Federal Agency officials' needs are met and DoD response efforts meet those needs efficiently and effectively.

Documentation

Contracting officials must maintain adequate documentation in contracting files in accordance with Federal and DoD regulations. We acknowledge that documentation may not be the priority for contracting officials during the initial stages of response efforts; however, contracting officers have a responsibility to maintain proper documentation and should consider implementing the measures discussed below to ensure that adequate documentation is maintained.

- Ensure that contracting personnel are keeping documentation of important decisions in the contract files, including cost data from contractors, negotiated agreements, and detailed written explanations if there is a need to deviate from normal procedures and an explanation of why the deviation was necessary. In addition, contract files should contain sufficient, accurate documentation for use in processing and paying invoices.
- Ensure that quality assurance personnel fully document in the contract files, the methodology and results of contractor oversight through observations and testing and any remedial and corrective actions taken. In addition, contracting officer's representatives should document contractor performance for use in their Contractor Performance Assessment Reporting System evaluations.
- Ensure that contracting personnel establish an archival process for completed projects.

Adequate documentation in the contract files allows for an audit trail of decisions made throughout the contracting process, lessens the risk for improper payment of invoices, and provides past performance data for contracting officials to use during future contracting actions. For example, contracting officers rely on past performance evaluations; therefore, accurate and timely evaluations assist officials in making future contract awards and can help contracting officers avoid awarding contracts to contractors that have proven unreliable.

Consistency in Contracting Processes

Consistency in the contracting process is a key factor in allowing for a rapid response in the pandemic environment while also meeting Federal contracting requirements and avoiding fraud, waste, and abuse. Contracting officials should be mindful of the following lessons learned when awarding and administering contracts.

- Ensure that contracts and task orders are accurate and complete when awarded to the contractor.
- Ensure that the agency contracting personnel awarding contracts clearly define contract requirements in solicitations to avoid inconsistencies in the interpretations of the requirement.
- Ensure that contractor quality control plans meet the minimum level of detail required by agency policy.

- Instruct the contracting personnel to comply with the Federal Acquisition Regulation and establish a method of validating contractor invoices before authorizing payment. As part of the validation process, verify the accuracy of information provided to contracting officials in support of contractor invoices.
- Follow proper procedures for closing out contracts and mission assignments.

Contracting officials should maintain consistency in contracting processes wherever possible. By ensuring consistent processes across the DoD, contracting officials can avoid potential confusion and personal interpretations of contract specifications, requirements for the payment of invoices, and quality control plans for contractor oversight as well as ease transitions during staffing changes.

Staffing and Training

Proper staffing and training is essential to effectively awarding and administering contracts. We recognize that availability of staff and funding constraints may affect staffing levels and training; however, as a best practice DoD officials should take the following actions.

- Ensure the use of long-term Government employees for program management and key technical positions that exercise oversight over contract employees.
- Ensure that sufficient staff are available and trained on the requirements in the contract, the documentation required to support payment of contractor invoices, and the performance of quality assurance activities.
- Establish and ensure, to the maximum extent possible, proper segregation of duties in the purchase request and invoice payment processes.

By ensuring proper staffing levels and that assigned personnel are adequately trained, contracting personnel can further mitigate potential issues and lessen the risk the fraud, waste, and abuse of COVID-19 related funds. For example, training personnel on the terms of the contract could reduce the risk of receiving non-conforming products and services. In addition, contracting officials could reduce the risk of inappropriate payments to the contractors by providing the necessary training to those individuals responsible for receiving and processing invoices.

Unfinalized Contract Actions

Contracting officers can effectively use UCAs, also known as letter contracts, to allow a contractor to begin providing supplies and services immediately, without establishing the full terms and conditions of the contract. When the contractor and Government agree on contract terms, specifications, price, and profit, the UCA should be finalized. Proper use of UCAs by contracting officers during emergencies is paramount to a timely response. Contracting officers need proper justification and authorization before issuing UCAs because of the cost and pricing risks they present. The CARES Act includes flexibilities to the normal award procedures of UCAs, such as making a larger percentage of the funds available to the contractor before finalization of the award.

Past DoD OIG oversight of DoD contracting officials' use of UCAs found positive trends during the pre-award processes for issuing UCAs. Specifically, contracting officers generally justified the use of UCAs within contract files and obtained higher-level approval before issuance. Additionally, DoD contracting personnel improved the processes through better management of approval authorities and increased scrutiny on when it was appropriate to issue a UCA versus a traditional contract; therefore, ensuring that UCAs were used only when delaying performance to establish the full terms and conditions would be detrimental to operations. Although the increased use of UCAs during the COVID-19 pandemic is expected, contracting officers should continue to implement these pre-award best practices to ensure effective implementation of UCAs during the COVID-19 relief and response efforts.⁷

Past DoD OIG oversight also indicated that DoD contracting officials could improve the post-award processes for managing UCAs. Contracting officials struggled to obtain qualified proposals in a timely manner to use as a basis for negotiations, negotiate a fair and reasonable price, definitize the award, and close out the contract so that funds could be released for other purposes. In the coming months, contracting officials will likely need to perform these functions at a higher rate than normal. During this period, contracting officers should:

- establish and manage a definitization schedule and continually coordinate the schedule with contractors;
- emphasize to contractors the importance of submitting a timely qualifying proposal;
- hold contractors accountable for not providing qualifying proposals in accordance with regulations and inform contractors of the incentives in the Defense Federal Acquisition Regulations Supplement that the DoD is authorized to pay contractors related to prompt definitization of the award;⁸
- manage the allowable profit based on whether the Government or contractor bears the risks associated with the UCA;
- adjust contract ceiling prices upward to meet the increased and urgent need the COVID-19 response requires; and
- definitize UCA awards as soon as practical to do so, so that excess funds not used for the UCA can be used for other COVID-19 relief efforts.

⁷ As of April 30, 2020, DoD contracting officials have uploaded 142 UCAs, with a ceiling value of over \$771 million, into the Federal Procurement Data System.

⁸ Defense Federal Acquisition Regulations Supplement, Section 271.7404-6, "Allowable Profit," September 13, 2019.

Fraud Awareness

During emergencies, contracting personnel are often required to execute multiple contracts quickly to ensure that supplies arrive to affected areas and that emergency responders are prepared and equipped to complete their duties. Unfortunately, the need for quick action makes the contracting process vulnerable to potential procurement fraud schemes. Contracting personnel should familiarize themselves with common fraud schemes to help avoid potential fraud.

Potential Procurement Fraud Schemes

Federal investigators have identified during past events, numerous fraud schemes designed to take advantage of emergency contracting procedures. Investigators determined that these schemes occurred at all stages of the contracting process, from pre-award through payment. Contracting personnel need to be aware of potential fraudulent activity and report the activities to the appropriate authorities, including the Department of Defense Hotline or any joint task force that is established for COVID-19 relief.⁹ Federal investigators have already started tracking and identifying potential fraudulent activity related to COVID-19 relief. Some of the fraud schemes that have been used in the past and that we are already seeing during the COVID-19 response efforts include:

- phantom vendors (creating a fictitious entity to create false invoices),
- providing counterfeit or substituted materials other than those identified in the contract,
- conflicts of interest between Government and contractor personnel,
- bribes and kickbacks,
- price fixing,
- double or falsified invoices presented for payment, and
- anti-competition agreements between vendors.

Tips to Avoid Potential Fraudulent Activity

Contracting personnel should use the following tips to assist in recognizing potential fraudulent activities by assessing the viability of potential vendors.

- Verify the identity of companies and individuals that offer assistance.
- Check past performance of companies through the Contractor Performance Assessment Reporting System. For other companies that have not conducted business with the DoD in the past, search online reviews, social media, and company webpages.

⁹ DoD Hotline 1.800.424.9098.

- Review the articles of incorporation of companies to determine when a corporation was created and whether the company is in good standing.
- Search for company addresses to determine whether addresses are residential, which can be an indicator of it not being a viable business concern.

As with all awards, contracting personnel should continue to determine whether perspective contractors are registered in the System for Award Management and that perspective contractors are not identified on the Excluded Parties List.¹⁰

Summary

We recognize that DoD officials and contracting personnel are in a unique, ever-changing situation; however, the best practices, tips, issues identified, and lessons learned from past reports identified here can assist DoD officials in avoiding fraudulent activity and provide better contractor oversight. Contracting officials may not be able to employ all of these strategies given the time constraints to provide goods and services; however, personnel should be made aware of the best practices, tips, and lessons learned and use them whenever applicable. We outlined lessons learned related to communication and coordination, documentation, consistency in contracting processes, staffing and training as well as the use of UCAs that DoD contracting officials should consider over the duration of not only this response but also any future disaster or pandemic response efforts. DoD officials will be under scrutiny from Congress, the DoD OIG, and the public on the use and tracking of all disaster relief funding related to the COVID-19 pandemic. DoD officials need to ensure their response is deliberate and they are adequately prepared for the increased scrutiny that will inevitably occur. DoD contracting officials should lean on past experiences in disaster recovery efforts and apply these best practices and lessons learned to the COVID-19 pandemic response.

¹⁰ The System for Award Management and the Excluded Parties List are located at <https://www.sam.gov>.



Whistleblower Protection

U.S. DEPARTMENT OF DEFENSE

The Whistleblower Protection Ombudsman's role is to educate agency employees about prohibitions on retaliation and employees' rights and remedies available for reprisal.

The DoD Hotline Director is the designated ombudsman.

For more information, please visit the Whistleblower webpage at www.dodig.mil/programs/whistleblower.

For more information about DoD IG reports or activities, please contact us:

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