FBI Exhibit No. 40: The U.S. Army is required to follow Federal and Defense Federal Acquisition Regulations (FARS-DFARS) to assure fair and open competition.

The U.S. Government, as part of a purposeful scheme to defraud, is engaged in the violation of the following federal procurement statute, law and regulation:

1. Federal Acquisition Law and Regulations

1. Failure to follow the open and fair competition requirements of Federal procurement law. The *Competition in Contracting Act (CICA) of 1984 (41 U.S.C. 253)* applies.
2. Failure to identify a compelling need for internal development of commercially available software that accomplished the same or similar purposes. The *Federal Acquisition Reform Act (FARA) of 1996* applies.
3. Failing to procure a commercially available alternative for a non-inherently governmental product or service. The *Federal Activities Inventory Reform Act (FAIR), P.L. 105-270* applies.
4. Violation of the *Federal Acquisition Regulations* as codified at *Title 48, Chapter 1 of the United States Code of Federal Regulations* applies:
5. §1.102 (b) (i): maximize the use of commercial products and services; (iii) promote competition; (3) Conduct business with integrity, fairness, and openness;
6. §1.102-2 (5): It is the policy of the System to promote competition in the acquisition process; (c) Conduct business with fairness, integrity and openness;
7. §3.101-1 General: The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships;
8. §3.104-2 General: (4) Parts 14 and 15 place restrictions on the release of information related to procurements and other contractor information that must be protected under 18 U.S.C. 1905;
9. §3.1002 Policy: (a) Government contractors must conduct themselves with the highest degree of integrity and honesty;
10. §3.1102 Policy: The Government’s policy is to require contractors to—(a) Identify and prevent personal conflicts of interest of their covered employees; and (b) Prohibit covered employees who have access to non-public information by reason of performance on a government contract form using such information for personal gain;
11. §6.002 Limitations- No agency shall contract for supplies or services from another agency for the purpose of avoiding the requirements of this part [Unlawful use of a Military Interdepartmental Purchase Request (MIPR) to avoid fair and open competition];
12. §6.202 Establishing or maintaining alternative sources: (b)(1) Every proposed contract action under the authority of paragraph (a) of this section shall be supported by a determination and findings (D&T) [Failure to justify an exemption to fair and open competition];
13. §6.302-2 Unusual and compelling urgency [The FDA failed to meet the exclusion requirements and follow the exemption process as stipulated in this Section], and;
14. §6.302-7 Public interest: (2) Full and open competition need not be provided for when the agency head determines that it is not in the public interest in the particular acquisition concerned; (ii) This authority may not be delegated; (2) The Congress shall be notified in writing of such determination not less than 30 days before award of the contract; (3) If required by the head of the agency, the contracting officer shall prepare a justification to support the determination under paragraph (c)(1) of this subsection; (4) This Determination and Finding (D&F) shall not be made on a class basis. [Failure to: 1) seek an exemption from agency head; 2) justify the exemption, and; 3) report the exemption to Congress].
15. Defense Federal Acquisition Regulation Supplement (DFARS)
    1. The U.S. Army violated the DFARS as codified at Chapter 2, Title 48, Code of Federal Regulations 201.402 Policy which states that any deviation in FAR policy cannot be made in the absence of a formal deviation request, namely:
    2. Violations of: UBPART 201.4--DEVIATIONS FROM THE FAR: 201.402 Policy.

(1) The Director of Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (OUSD) (AT&L) (DPAP), is the approval authority within DoD for any individual or class deviation from—

(i) FAR 3.104, Procurement Integrity, or DFARS 203.104, Procurement Integrity; (ii) FAR Subpart 27.4, Rights in Data and Copyrights, or DFARS Subpart

* + - * 1. 227.4, Rights in Data and Copyrights;

(iii) FAR Part 30, Cost Accounting Standards Administration, or DFARS

* + - * 1. Part 230, Cost Accounting Standards Administration;

(iv) FAR Subpart 31.1, Applicability, or DFARS Subpart 231.1,

* + - * 1. Applicability (contract cost principles);

(v) FAR Subpart 31.2, Contracts with Commercial Organizations, or

* + - * 1. DFARS Subpart 231.2, Contracts with Commercial Organizations; or;

(vi) FAR Part 32, Contract Financing (except Subparts 32.7 and 32.8 and the payment clauses prescribed by Subpart 32.1)

* 1. The U.S. Army violated §203.070, “Reporting of violations and suspected violations” that requires:

Report violations and suspected violations of the following requirements in accordance with 209.406-3 or 209.407-3 and DoD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities

Procurement integrity (FAR 3.104).

Antitrust laws (FAR 3.303).

* 1. Violations of: SUBPART §203.9—WHISTLEBLOWER PROTECTIONS FOR CONTRACTOR EMPLOYEES

§203.901 Definitions: “Abuse of authority,” as used in this subpart, means an arbitrary and capricious exercise of authority that is inconsistent with the mission of DoD or the successful performance of a DoD contract.

§203.903 Policy: (1) Prohibition. 10 U.S.C. 2409 prohibits contractors and subcontractors from discharging, demoting, or otherwise discriminating against an employee as a reprisal for disclosing, to any of the entities listed at paragraph (3) of this section, information that the employee reasonably believes is evidence of gross mismanagement of a DoD contract, a gross waste of DoD funds, an abuse of authority relating to a DoD contract, a violation of law, rule, or regulation related to a DoD contract (including the competition for or negotiation of a contract), or a substantial and specific danger to public health or safety. Such reprisal is prohibited even if it is undertaken at the request of an executive branch official, unless the request takes the form of a non-discretionary directive and is within the authority of the executive branch official making the request.

(5) Contracting officer actions. A contracting officer who receives a complaint of reprisal of the type described in paragraph (1) of this section shall forward it to legal counsel or to the appropriate party in accordance with agency procedures.

* + - * 1. Violations of: SUBPART 206.2--FULL AND OPEN COMPETITION AFTER EXCLUSION OF SOURCES

The U.S. Army failed to abide by §206.202, Establishing or maintaining alternative sources which states that a determination and findings (D&F) is required to totally or partially exclude a particular source from a contract action.

§206.202 (b) “The determination and findings (D&F) and the documentation supporting the D&F shall identify the source to be excluded from the contract action. Include the information at PGI 206.202(b), as applicable, and any other information that may be pertinent, in the supporting documentation.

* + - * 1. Violations of: §209.571-6 Identification of organizational conflicts of interest.
        2. Violations of: SUBPART §215.3--SOURCE SELECTION
        3. Violations of: SUBPART §217.73--IDENTIFICATION OF SOURCES OF SUPPLY
        4. Failure to follow procedures as proscribed in SUBPART §218.1—AVAILABLE ACQUISITION FLEXIBILITIES; 218.170 Additional acquisition flexibilities; Additional acquisition flexibilities available to DoD are as follows: (a) Circumstances permitting other than full and open competition. Use of the authority at FAR 6.302-2, Unusual and compelling urgency, may be appropriate under certain circumstances. See PGI 206.302-2; (h) Rights in technical data. The agency head may notify a person asserting a restriction that urgent or compelling circumstances (e.g., emergency repair or overhaul) do not permit the Government to continue to respect the asserted restriction.
        5. Violations of: SUBPART 227.3--PATENT RIGHTS UNDER GOVERNMENT CONTRACTS
        6. Violations of: SUBPART 227.4--RIGHTS IN DATA AND COPYRIGHTS
        7. Violations of: SUBPART 227.70--INFRINGEMENT CLAIMS, LICENSES, AND ASSIGNMENTS
        8. Violations of: SUBPART 227.71--RIGHTS IN TECHNICAL DATA
        9. Violations of: §227.7103-7--Use and non-disclosure agreement
        10. Violations of process procedure and ASBCA attorney misconduct: Appendix A—Armed Services Board of Contract Appeals

3. Employees of the U.S. Army, as part of the purposeful scheme to defraud, are violated procurement integrity law. *5 C.F.R. Part 2635* applies.

1. Subpart A: General Provisions-avoiding appearances of conflicts of interest;
2. Subpart E: Impartiality in Performing Official Duties;
3. Subpart G: Misuse of Position, and;
   1. Endorsing Organizations, Products, or Persons [i.e., FDA endorsement of Tyco Integrated Security Systems].
      1. The U.S. Army, as part of the purposeful scheme to defraud, is violating the Code of Ethics for Government Service. *P. L. 96-303*, July 3, 1980, applies. Officials of the U.S. Government have failed to:

1. “Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.”
2. “Uphold the Constitution, laws, and regulations of the United States and of all governments therein and never be a party to their evasion.”
3. “Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of governmental duties.”
4. “Never use any information gained confidentially in the performance of governmental duties as a means of making private profit.”
5. “Expose corruption wherever discovered.”
6. “Uphold these principles, ever conscious that public office is a public trust.”

5. The U.S. Army, as part of the purposeful scheme to defraud, is engaged in racketeering. The *Racketeer Influenced and Corruption Organizations Act (RICO)* as codified at *Title 18 U.S.C. §1961 et seq.; §1963* applies. The U.S. Army is/has:

1. Engaged in a purposeful scheme to defraud. *18 U.S. Code § 1031 - Major fraud against the United States*, *15 U.S.C. §§ 1-7 – Sherman Antitrust* and *5 C.F.R. Part 2635* apply.
2. Two or more employees of the U.S. Government conspired to defraud the United States. *18 U.S.C. § 371-Conspiracy to commit fraud.*
3. Used coercion, intimidation and extortion to silence Wesleyan Company from reporting fraud, waste and abuse. *Title 18 U.S.C. §1961 et seq.; §1963* and *5 C.F.R. Part 2635* applies.
4. Actively concealed Federal crimes by officials of the U.S. Government and senior grad military officers of the U.S. Army. *Title 18 U.S.C. § 4 - Misprision of felony* and *5 C.F.R. Part 2635* apply.
5. Used extortion as part of a purposeful scheme to interfere with commerce and economically harm Wesleyan Company. *The Hobbs Act- interference with commerce by threats or violence as codified at 18 U.S.C. § 1951.*