

CEP Magazine – April 2018 Cutting the "fat": Applying corporate wisdom to government contracting standards

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Recently, a retired Navy captain and a retired Navy commander pleaded guilty in the wake of the ever-widening Leonard Francis (Fat Leonard) government contracting corruption scandal.^[1] Commentators professed shock at some of the allegations. This shock is understandable since, with the ongoing war on terror—and the high price it has exacted from many U.S. service members—the military in the United States has become an icon of selfless service. Words like honor, sacrifice, and valor are closely associated with the idea of service. Along with demanding adherence to these principles, the Department of Defense (DoD) also relies on written regulations—such as the Financial Acquisition Regulation (FAR), which has also been adopted by the General Services Administration (GSA) and the National Aeronautics and Space Administration (NASA)—to implement executive policy and to constrain individual action.^[2] Service is viewed as an act of patriotism that transcends the notion of simply working for a living.

Consequently, these assumptions lead naturally to the conclusion that all who wear the uniform of our country tend to act ethically and in the nation's best interest. Therefore, when massive scandals, such as Fat Leonard, are revealed, we gash in horror and surprise that a group that is so right could go so wrong.

A need for strong internal controls

The truth proves both more complex and mundane than these assumptions might initially suggest. At ground level, those who typically administer and oversee the government contracts that went so wrong in this scandal are contracting officers and contracting specialists. To date, however, only one U.S. government employee with direct contracting authority has been indicted on federal charges, though others have been charged with influencing the award or payment of contracts.^[3] One former Navy contracting official has pled guilty in Singapore state court, and one active-duty Navy officer is facing a military court-martial.^[4] Driving the contracting requirements in the Fat Leonard case are regular Naval officers (i.e., senior personnel without actual contracting authority).

Notably, these individuals—uniformed contracting personnel and regular officers alike—are all subject to worldwide deployment, and they must be prepared to move with their families every two to four years between garden spots like Newport News, Virginia and Meridian, Mississippi (with an occasional stop in Japan, Hawaii, or Washington DC thrown in). They regularly have to serve away from their families aboard ships or in combat zones for six to nine months at a time. This duty can be extremely dangerous.

Compared to a civilian counterpart subject to similar demands, these military members are underpaid. Further, lengthy family separations and repeated moves create interpersonal pressures that the military culture sometimes meets with attitudes of ambivalence or denial. Add to this that the military is notorious for entrusting

relatively junior personnel with immense responsibility, and the need for a program of strong internal controls becomes readily apparent. After the Fat Leonard story broke and with each new revelation, various reports in the media and blogosphere have been quick to decry a failure of leadership and breakdown in naval culture, and the Navy has aptly responded by instituting a program of ethics reforms.^[5] However, the exceptional duration of the fraud—spanning two decades—points to problems more severe than just poor “tone at the top” and a breakdown in organizational culture.

Unfortunately, DoD internal controls, as set forth in the FAR and other guidance, are anemic compared to the best private corporations’ internal control systems. Congress, the DoD, and other agencies would do well to look closely at their own systems of incentives and rewards in light of Fat Leonard.

Although the FAR does contain some controls, their effectiveness is questionable in light of the recent systemic failures. Part 3 of the FAR lists a series of safeguards to prevent contractors from employing improper business practices and government employees from harboring conflicts. FAR Clause 52.203-13, codified in the Federal Regulations in 2007, requires contractors to have a code of business ethics and to implement internal controls to catch improprieties, though there are a host of exceptions. Our analysis focuses on two key areas that are ripe for reform, and it offers proposals based on principles broadly applicable across organizational structures.

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