

CRISIS PLANNING: When Your Company Is In The Government's "Crosshairs"



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Outline

- I. CEO's Day Of Infamy
- II. Sea Change in S&D
- III. Crisis Planning to
Minimize Risk of
Potential S&D

A CEO's Day Of Infamy

Huntsville defense contractor raided by federal agents

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Posted: Sep 06, 2012 5:11 PM CDT

Updated: Oct 04, 2012 5:19 PM CDT

By WAFF.com Staff - email

HUNTSVILLE, AL (WAFF) - Federal agents raided Huntsville defense contracting business, System Studies and Simulation, Inc. (S3) Thursday. At least one agent remained at the location Friday.

Witnesses said agents stopped by the building Thursday morning and had everyone leave.

A lot of information is being withheld, but several men removed files and boxes from the building and loaded them into a large, white truck.

S3's website remains down, and their Facebook page is inactive.



S3 is a defense contracting company located in Research Park in Huntsville.

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A CEO's Day Of Infamy

The processes that the company puts into place long before the Government's ire often determines whether the company is allowed to continue to do business with the Federal government.

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A CEO's Day Of Infamy

The Most Likely Causes

1. Disgruntled employees
2. Employee bad judgment
3. Ignorance
4. Affiliation
5. Misunderstanding

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A CEO's Day Of Infamy

The Most Likely Causes

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Disgruntled Employees

- In FY 2012, DOJ recovered nearly \$5B in False Claims Act
- Most of the recovery involved *qui tam* law suits brought to employees

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United States Attorney Alice H. Martin Northern District of Alabama

FOR IMMEDIATE RELEASE CONTACT: Jill Ellis

Thursday, March 29, 2007

www.usdoj.gov/usao/ain FAX: (205) 244-2171

ALABAMA DEFENSE CONTRACTOR AND ITS OWNER INDICTED FOR ILLEGAL EXPORT OF MILITARY DEFENSE ARTICLES

BIRMINGHAM, AL - An Alabama company and its owner have been indicted by a Federal Grand Jury on charges of illegally exporting military defense technology without a license, fraud involving aircraft parts, and submitting false documents. The five-count indictment charges AXION CORPORATION and its owner ALEXANDER NOOREDIN LATIFI, 59, both of Huntsville, Alabama, and is announced today by Kenneth L. Wainstein, Assistant Attorney General for National Security, and Alice H. Martin, United States Attorney for the Northern District of Alabama.

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Disgruntled Employee Example #1

- Fired embezzling bookkeeper
- Bookkeeper “downloads” to DODIG
- Man years of Special Agent time devoted to investigating
- Axion suspended
- Axion acquitted
- Business essentially ruined

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Disgruntled Employee Example #2

- Successful Huntsville 8(a) Company
- Largest contract was a subcontract with a top five government contractor
- Disgruntled employee claimed 8(a) had submitted false claims
- 8(a) retained a retired SES attorney to conduct investigation
- Because of excellent “damage control,” no adverse impact

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If It Can Happen To Boeing....

Bad Judgment Example #1

- Boeing possessed a large amount of rival LM proprietary data during the 1998 Evolved Expendable Launch Vehicle (EELV) competition
- The data was capable of providing great insight into LM cost and pricing
- Boeing waited four years to disclose the misconduct

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If It Can Happen To Boeing....

Bad Judgment Example #1

- In July 2003, the Air Force suspended three of Boeing's Integrated Defense System business units

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If It Can Happen To Boeing....

Bad Judgment Example #2

- In 2002, Boeing's CFO offered a job to Darleen Druyun, the Air Force chief acquisition official
- For a reduced sentence, Druyun admitted that she favored Boeing on multiple contracts because of favors granted by Boeing

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If It Can Happen To Boeing....

Bad Judgment Example #2

- Boeing's CEO was forced to resign
- Contracts awarded to Boeing by Druyun were successfully protested
- The Air Force's problems in awarded its tanker contract were largely attributable to the scandal

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If It Can Happen To Boeing....

Bad Judgment

In June 2006, Boeing settled Example #1 and Example #2 collectively for \$615 million

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If It Can Happen To Boeing....

Bad Judgment = Bad Ethics

“I also went back and counted the number of vice presidents who have been separated from the company for ethics violations over the last few years. The total is 15.”

Boeing General Counsel (2006)

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Local

Bad Judgment Example #3

- Successful Huntsville large business
- Hires a “hard charging” retired officer to pursue approximately \$25M contract
- Selected for award

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Local

Bad Judgment Example #3

- Disqualified because employee repeated contacted SSA and SSAC members
- Because of excellent “damage control,” no other adverse action against company

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A CEO's Day Of Infamy

The Most Likely Causes

1. Disgruntled employees
2. Employee bad judgment
3. **Employee Ignorance**
4. Affiliation
5. Misunderstanding

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Ignorance Example #1

- Georgia company makes small arms training simulators
- Imports demilitarized small arms from Europe to insert laser beam firing
- Ignorant that ITAR applies

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Ignorance Example #1

- Federal agents seize all records and most of inventory
- Delinquent on delivering products to clients
- Impact almost fatal to company

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Ignorance Example #2

- In 1995, Coast Janitorial Service was awarded a contract at Redstone Arsenal for \$19,128,277
- Coast's Project Manager, "to keep overhead low," did not pay employees who worked overtime time and a half

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Ignorance Example #2

- Instead, Coast credited employee with "comp time" which was paid at regular hourly rates.
- DOL found SCA violation involving two employees at an amount of \$6,596.

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Ignorance Example #2

- Coastal responsible for “willful and deliberate” violations of supervisor
- Coast debarred for 3 years
- President, Mr. Grimes, debarred
- VP, Mr. Scott, debarred

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A CEO's Day Of Infamy

The Most Likely Causes

1. Disgruntled employees
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3. Ignorance
4. **Affiliation**
5. Misunderstanding

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Affiliation Example #1

- Taos acquired by Agility Defense and Government Services Inc.
- Agility owned by DGS, a Dutch Company
- PWC owned by PWC, a Kuwait Company

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Affiliation Example #1

- A Special Security Agreement prohibited DGS for exercising control of Agility
- In 2009 PWC indicted for defrauding US Govt of \$6B
- Agility suspended as an affiliate of PWC

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Affiliation Example #1

- Suspension Official rejected a management buy-out where officers in Agility would acquire 60% of company
- After 32 months, Judge Lynwood Smith gave summary judgment to lift suspension

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A CEO's Day Of Infamy

The Most Likely Causes

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5. **Misunderstanding**

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Misunderstanding

- 1997 DESE Research awarded Army contract to support Kinetic Energy Anti-Satellite Weapon System Program
- DESE claimed as allowable cost meeting with members of Congress to increase funding

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Misunderstanding

- When Army and DESE reached an impasse on whether costs were allowable, DESE was suspended
- USDC struck down finding the DESSE violated the False Claims Act
- USDC found expenses were unallowable lobbying costs and suspension was appropriate.

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II. Sea Change In S&D

- Number of DoD proposed suspensions & debarments almost doubled in first Obama Administration
- OMB Memo November 2011 stated agencies have not adequately used S&Ds

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II. Sea Change In S&D

- In Sept 2011, the Council of the Inspectors General recommended increase use of S&D
- FAR § 52.203-13 “Contractor Code of Business Ethics and Conduct”
- FRAPIIS

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III.

Crisis Planning to Minimize Risk of Potential S&D

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Crisis Planning To Avoid S&D

- A. Prevent**
- B. Preparation**
- C. Reaction**

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Crisis Planning

DOJ's Corporate Fraud Task Force
"Aims High" – Convictions

- CEOs 82
- Presidents 85
- Vice Presidents 102
- CFOs 36

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A. Prevent

The best
prevention is an
exceptional
compliance
program

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A. Prevent

See

Gabig's Presentation on

FAR § 52.203-13

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A. Prevent

Recommendation

Any corporation that derives significant revenue from government contracts should have a Board of Directors Compliance Committee (not unlike an Audit Committee or a Compensation Committee)

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KELLOGG, BROWN & ROOT

COFC No. 09-351C, May 02, 2012

- KBR awarded food services contract at Camp Anaconda, Iraq.
- KBR submitted claims of ~ \$11.5M
- Govt sought forfeiture of claims arguing violation of Anti-Kickback Act

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KELLOGG, BROWN & ROOT

COFC No. 09-351C, May 02, 2012

- Govt proved that kickbacks were given to KBR employee, Mr. Hall
- KBR claimed no knowledge of kickbacks
- KBR awarded \$11,79,505
- Two key facts favored KBR:

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KELLOGG, BROWN & ROOT
COFC No. 09-351C, May 02, 2012

Key Fact #1

KBR “required employees to have training in professional responsibility and to sign agreements signifying that they would comply with KBR policies, which prohibited the acceptance of kickbacks.”

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KELLOGG, BROWN & ROOT
COFC No. 09-351C, May 02, 2012

Key Fact # 2

At trial, KBR “introduced, Mr. Hall’s signature page, whereby Mr. Hall had acknowledged that he had read, and would abide by, Halliburton’s Company Code of Business Conduct.”

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B. PREPARE

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B. Reaction

Master the facts before the government — complete an internal investigation

- “Damage assessment” vital
- Present “solution” to Govt before Govt dictates

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B. Reaction

Internal Investigation should be independent

- *Appears more objective*
- *Distances senior management*
- *Use lawyers to protect report as attorney-client privilege*

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B. Reaction

- Multiple agency involvement
 - *Global settlement preferred but difficult to arrange*
- Timely responses to agency vital for appearance of cooperation

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B. Reaction

- Risk of Obstruction of Justice
 - *Arthur Andersen*
- Notify insurance carrier
- Need for Board involvement
- Manage shareholder concern
- If public company, SEC complications

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B. Reaction

- Lead Counsel pursues an acceptable outcome
 - *DOJ (declination or deferred prosecution)*
 - *Regulators (no action)*
 - *Civil law suits (settle)*
 - *Suspension & Debarment (avoid)*

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B. Reaction

Factors Considered By The Debarring Official

-- Whether the contractor had effective standards of conduct and internal controls systems in place at the time.

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B. Reaction

Factors considered by the Debarring Official (*continued*)

-- Whether the contractor brought the activity to the attention of the government in a timely manner

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B. Reaction

Factors considered by the Debarring Official (*continued*)

-- Whether the contractor has fully investigated the circumstances surrounding the cause for debarment

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B. Reaction

Factors considered by the Debarring Official (*continued*)

-- Whether the contractor cooperated fully with Government agencies during the investigation

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Concluding Thought

- When you do business with the Sovereign, you risk incurring the Sovereign's wrath.
- Plan like any other occupational hazard:
 1. Prevent
 2. Prepare