

March 17, 1997, Monday

SECTION: COMMENTARY AND ANALYSIS; Pg. 29

LENGTH: 1382 words

HEADLINE: WHO'S MINDING THE ARMY'S STORES?

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BODY:

Official corruption and bribery with no legal repercussions. Kickbacks and embezzlement running into the millions. Not exactly words typically used to describe the U.S. military, but true nonetheless.

The Department of Defense operates thousands of small businesses for its military personnel. Everything from PXs, officers clubs, golf courses, gas stations, and fitness centers are run with what is called "nonappropriated funds." This simply means that the funds do not come from the U.S. treasury, but instead come from moneys paid by the users. These Nonappropriated Fund Instrumentalities, or NAFIs as they are commonly termed, are big business- total program costs per year are about \$15 billion. NAFIs employ more than 240, 000 people worldwide. These activities are found on practically every military installation in the United States and overseas. Because of their unique legal status, oversight of NAFIs falls through the cracks; they have most of the immunity protections afforded the U.S. government, but have little or none of the oversight mechanisms afforded regular government expenditures. More than any other area, it is procurement irregularities that have drawn the most attention because of widespread corruption and contractor favoritism.

Stonewalled

There is little anyone knows about NAFIs outside the military establishment and the contractor community. As part of a research project conducted during my studies at Georgetown University Law Center, I submitted a Freedom of Information Act request in 1994 to the Department of Defense for specifics of corruption and abuse in procurement and other areas related to NAFIs. For 18 months I was stonewalled in my attempts by increasingly higher-level officers. Perhaps fearing increased public and congressional scrutiny, the Department of Defense simply refused to turn over any meaningful documents. Only after I sued in federal district court did the Pentagon turn over any documents, and even then they turned over only a sampling of the available documents-just enough to offer proof in court they had made a good faith effort.

But even this sampling of documents revealed procurement and contract administration abuses of substantial proportions. These documents contained example after example of bribery, kickbacks, embezzlement, overcharges, theft, use of taxpayer funds to buy goods for NAFIs, and contractor favoritism, all at the expense of armed services personnel and their families who pay for and use

these facilities. Perhaps most disturbing, the armed service officers who victimize the system are often given little more punishment than reassignment, prosecutorial immunity, or even counseling. It was extremely rare that any officer was criminally prosecuted or discharged. Some typical examples:

- * Naval officer provided proprietary contract information to persons who used it to formulate a winning proposal for a multimillion dollar soft-drink vending contract. The contractor directed business to three companies formed by the officer. Subsequent investigations revealed the officer had participated in fraudulent sales schemes and received kickbacks under other contracts. Result: He was granted immunity from prosecution to testify against the contractors.

- * Air Force officer provided confidential information concerning other companies' bids on NAFI contracts in exchange for the winning contractor hiring the officer's friend. Despite being a civilian contractor with no base privileges, the officer's friend was allowed to live in base housing for more than a year, and he opened and operated his business from there. The friend was allowed to carry keys to NAFI facilities, was provided with a government pager, and used NAFI equipment and employees to complete work he was paid to do. The friend was paid \$45 per hour, doing many jobs that could have been done by \$8- to \$10-per-hour employees. Result: The case was briefed to the relevant U.S. attorney who indicated that no federal laws were broken since NAFIs dealt with non-appropriated funds. The officer retired from the Air Force, and no further action was taken.

- * Naval officer improperly sole-sourced a contract to a friend, improperly bought an expensive and complicated computer system, used "split buys" to avoid bank-card ceiling limit, improperly traded in nonappropriated equipment for new equipment with appropriated funds, furnished a motel without competitive bids, and improperly issued a purchase order for an RV park. Result: The officer was removed from the department and "formally counseled." No further action was taken because, in the investigator's words, the officer's "heart was in the right place."

- * In one of several improprieties in 1995 where no action was taken, an officer sold off airplanes below market value without the required sealed bids.

Best of Both Worlds

NAFIs possess the best of both worlds: governmental sovereign immunity with little government oversight. Congressional oversight has been slim, with only a few hearings addressing relatively minor issues. The federal government's oversight mechanisms, such as General Accounting Office oversight and audits, do not apply because NAFIs mostly use nonappropriated moneys to pay for their contracts. NAFIs' own internal oversight is inadequate and poorly enforced, apart from being the fox guarding the henhouse. For all other government contracting, an unsuccessful bid competitor may protest to a quasi-judicial Board of Contract Appeals and then to federal court-but Board of Contract Appeals are not allowed for NAFI contracts, and NAFIs may not be sued on procurement improprieties because Congress has not waived sovereign immunity.

This lack of accountability is present not only at the bidding stage, but throughout the contract's performance. Anyone entering into a contract with a NAFI, other than an exchange, has no recourse against the NAFI or the U.S. government if the NAFI breaches the contract in some manner. This

allows NAFI contract administrators carte blanche to pressure contractors into concessions without fear of reprisal, an open invitation to corruption.

Additionally, Americans' tax dollars are subsidizing NAFI programs. The \$2.2 billion annual taxpayer subsidy has come under fire recently from a number of groups, including the grocers trade association. They insist that commissaries are losing customers because of military downsizing and need ever-larger subsidies to compete. NAFIs have also been criticized for having large overhead expenses, instead of spending money where it counts-on serving the armed services personnel who fund the bulk of these programs. Sen. Richard Shelby (R-Ala.) estimates that for every dollar the soldiers are spending on NAFI activities, about 33 cents goes to overhead.

It's clear there is a problem. The solution seems equally clear. First, Congress should waive sovereign immunity for all NAFI breaches of contract. This would ensure that contractors are treated fairly and eliminate some of the leverage NAFI contract officers have over contractors-less power in the hands of the contract officers might reduce the risk of corruption. Second, and more important, Congress should establish a bid protest system that is identical or similar to the comprehensive system currently in place for government contract procurements that use appropriated funds. Establishing a bid protest system would help to ensure that procurements are subjected to more scrutiny, thereby significantly decreasing the temptation for a contracting officer to go astray.

Each year corruption and noncompetitive contract awards cost our hard-working, underpaid military personnel and their families big money, money that comes right out of their pocket in the form of higher-cost goods and user fees. They deserve better. Subjecting nonappropriated funds to the same high level of oversight as appropriated funds is a simple legislative fix that would immediately benefit the men and women of the armed forces.

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LOAD-DATE: March 20, 1997