

Corrupts Absolutely; How Power, Unhappiness, and the Need for Recognition Can Be Mitigated by Implementing Psychology into Public Procurement

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Abstract

Public procurement is one of the most corruption-prone government activities, even with compliance measures in place. Law firms have created strong compliance programs to help assist contractors from avoiding integrity risks by following the guidance included in the Federal Acquisition Regulation System (FAR). The FAR also includes reactive investigation measures that are put into place to combat corruption. Suspension and Debarment systems suspend and debar individuals or entities who engage in misconduct during a procurement. Even with these proactive and reactive mechanisms in place, corruption still is at an all-time high. To further mitigate integrity risks, a new approach that has not been taken before needs to be enacted. Psychological training measures need to be implemented into the FAR or in compliance programs for contractors. To reduce the instances of corrupt actions, a focus on the individual, and how they interact in their specific environment, needs to be evaluated. Implementing psychological training evaluations and follow-up sessions into compliance programs can be the first steps to understanding individual motivations and improve the culture and ethical predispositions of government contractors, law firms, and communities involved in public procurement to ultimately reduce corruption.

I. Introduction

“Tsamina mina, eh eh. Waka waka, eh eh. Tsamina mina zangalea. This time for Africa.”¹ The Fédération Internationale de Football Association (FIFA) selected a non-African, Columbian pop star, Shakira, to write the official FIFA World Cup song for the 2010 World Cup in South Africa, which offended many South Africans who felt that Shakira and her lyrics did not represent them and their country.² The lyrics to the official FIFA World Cup song “Waka Waka” was only one of the many controversies that surrounded the FIFA World Cup.³

On May 15, 2004, FIFA announced that South Africa would be the next host of the 2010 FIFA World Cup.⁴ South Africa built five stadiums in preparation for the World Cup.⁵ The top South African construction firms acted in concert when bidding for the contracts.⁶ The “construction cartel” colluded secretly to agree and fix the prices for the building of the stadiums.⁷ The “construction cartel” had various meetings in which they agreed to submit sham tenders in order to create the illusion that there was full and open competition.⁸ This plan failed when greed and a breakdown of trust between participants took over.⁹

Instead of the pride and great publicity that South Africa hoped to gain from the World Cup, South Africa rather gained a reputation for corruption.¹⁰ However, corruption is not unique to South Africa. Rather, corruption is ubiquitous, and public procurement is one of the most corruption-prone areas of the government.¹¹ One of the reasons for corruption within government procurement is the volume of transactions needed to procure goods, services, or construction.¹² In Fiscal Year 2019, the U.S. federal government spending reached the highest that it had ever been at \$597 billion.¹³ Further, spending in Fiscal Year 2020 by the U.S. federal government topped \$600 billion.¹⁴ The substantial increase in government spending and procurement has resulted in part from the COVID-19 pandemic.¹⁵

There should be proactive means of avoiding corruption to reduce the amount of reactive investigations, such as the reactive investigations that occurred in the 2010 South African World Cup scandal.¹⁶ This Note will discuss the various anti-corruption systems that are currently being used to mitigate integrity risks and suggest that psychological training, focused on understanding the individual within a community, should be added as a major component of a compliance program to further mitigate corruption.

II. Background: Proactive and Reactive Measures to Combat Corruption

The procurement process is a complex process that requires all “transactions relating to the expenditure of public funds” to be treated with the “highest degree of public trust and an impeccable standard of conduct.”¹⁷ In most jurisdictions around the world, various codes of conduct, anti-

corruption laws, and ethical restrictions have been put into place to reduce cases of corruption.¹⁸ This section will discuss proactive measures that are implemented before the procurement takes place to combat corruption, such as the establishment of a compliance program, and the reactive measures that respond to any corruption that occurred during the procurement, such as sanctions imposed from the Suspension and Debarment system.

A. Contractors Should Take the Proper Proactive Measures to Combat Corruption by Establishing Compliance Programs That Are Specific to Their Business.

There are laws and regulations listed in the Federal Acquisition Regulation (FAR) system that set out proactive procedures to assist procurements and avoid corruption. FAR Part 52.203-13 and FAR Part 3.1000 establish the policies and procedures of the Contractor Code of Business Ethics and Conduct. When the value of a contract is expected to exceed six million dollars and the performance period is one hundred, twenty days or more, contractors must insert the clause at FAR 52.203-13, which includes the Contractor Code of Business Ethics and Conduct.¹⁹ The policy in the FAR requires contractors to have a written code of business ethics and conduct and have employee business ethics and compliance training programs.²⁰ Determining the applicable laws or regulations for a particular procurement can be very difficult, and the contractor conducting the procurement may take different approaches depending on the circumstances.²¹ Contractors use the FAR to provide guidance on how to structure their compliance programs.²² However, there is not a “one-size-fits-all” approach that contractors all must take when determining an internal control system.²³ Each contractor tailors their compliance program to their specific organization.²⁴

I. Various Hallmarks Are Included in the Most Effective Compliance Programs

Contractors must include various components when creating their compliance program in order to prevent, detect, and mitigate misconduct.²⁵ These main components are a great place for contractors to start when creating a compliance program, but they may need to add policies and procedures to address specific risks that they foresee in their business or with people they employ.²⁶ The following charts illustrates some of the main hallmarks of an effective compliance program:²⁷

[insert hallmarks compliance pdf]

Senior management must be committed to clearly articulating a policy against corruption that is enforced through their compliance program.²⁸ Senior management sets the tone for the rest of the company.²⁹ If high executives seem to be enthusiastic and willing to take a stance against corruption, it will produce a strong ethical culture in the entire company. Senior management should clearly explain and distribute the Code of Conduct and Compliance Policies and Procedures to every person working on a contract.³⁰ Employees are properly trained and provided with advice about how to comply with the policies and procedures.³¹ Training shall be required for not only the principal individuals involved in the procurement, but also for the contractor’s agents or subcontractors.³² Once all individuals involved in the procurement are aware of the Code of Conduct, senior management can allocate proper oversight, autonomy, and resources to ensure that employees are complying with the policies and procedures laid out in the compliance program.³³ The specific amount of resources depends on the size of the company and the exact involvement with the government.³⁴

The Code of Conduct is created based on the specifics of the business and properly addresses any risks that may arise in the particular procurement the contractor will be working on.³⁵ The contractor performs its due diligence and diverts its attention and resources to areas of risk within the business or specific procurement.³⁶ A risk assessment is conducted to identify all risks in the industry, country, size of the procurement, and nature of the transaction.³⁷ Contractors identify risks within their own business and through the work that they will be conducting with any third parties or subcontractors.³⁸ Contracting Officers have a large role in ensuring that the procurement is carried out not only efficiently, but also ethically.³⁹ Early in the acquisition process, one of the main duties of the Contracting Officer is to identify and evaluate potential conflicts and resolve them before the contract award by including specific clauses in the solicitation or planning in advance of proposal submission.⁴⁰ Organizational conflict of interests (OCI) include situations in which a specific relationship between various people involved in the procurement (1) renders a person unable to give impartial advice or assistance; (2) suggests that the person’s objectivity in carrying out the procurement might be impaired; or (3) indicates that an unfair competitive advantage may arise due to the relationships between various people.⁴¹ These conflicts of interest should be avoided because the offeror may have access to non-public information and may provide advice affecting their own interests.⁴² Contracting Officers can take proactive steps to resolve OCIs by either avoiding them, by eliminating the work from the Statement of Work, by mitigating the risk of OCIs by creating information firewalls or work firewalls, or by neutralizing the OCI by disqualifying the offeror from the current competition or from future work.⁴³ In some cases, OCIs can be waived.⁴⁴ In addition to OCIs, personal conflicts of interest may exist.⁴⁵ They include any conflicts that contractor employees may have in performing “acquisition functions closely associated with inherently governmental functions.”⁴⁶

The compliance program applies to everyone, and incentives and disciplinary measures should be put in place to ensure that employees comply with the program.⁴⁷ The compliance training programs emphasize procedures of disclosing improper conduct and, if improper conduct is discovered, the corrective measures that should be immediately issued.⁴⁸ If the contract is for the acquisition of a commercial item or is a domestic contract, contractors must insert the clause at FAR 52.203-14, Display of Hotline Posters.⁴⁹ The Display of Hotline Posters clause states that, "during contract performance in the United States, the Contractor shall prominently display in common work areas within business segments performing work under this contract and at contract work sites . . . agency fraud hotline poster or Department of Homeland Security (DHS) fraud hotline poster. . . ."⁵⁰ An anonymous internal reporting mechanism is utilized if employees suspect improper conduct.⁵¹ Even if it appears that improper conduct is not discovered, periodic assessments of even the potential risk of criminal or corrupt conduct are conducted to identify any arising issues or to mitigate the risk of future issues.⁵² Compliance can be challenging when new laws, regulations, and ethical norms are constantly changing.⁵³ Therefore, the compliance program is not set in stone for many years, but it is continuously reviewed and updated to evolve with the business, environment, and nature of the employees over time.⁵⁴

2. Even Though Compliance Programs May Not Eliminate Corruption, They Are Important to Mitigate Corruption and to Reduce Penalties on the Contractor.

Even if a company implements the hallmarks of an effective compliance program and takes an oath that they plan to avoid integrity risks, corrupt actions do not just disappear. Additionally, it can be challenging for smaller businesses to manage these additional duties of adhering to compliance programs when such businesses can barely make it when putting all their time and resources to the specific requirements of the procurement.⁵⁵ However, implementing these hallmarks will help identify and mitigate the risks of misconduct.⁵⁶ When the U.S. Department of Justice or the U.S. Securities and Exchange Commission are investigating a contractor, the existence and effectiveness of a compliance program is a major component in whether the contractor receives reduced penalties, receives more favorable settlements, and avoids suspension or debarment.⁵⁷

For example, on March 10, 2019, the second fatal accident involving a Boeing 737 Max 8 Jet occurred when an Ethiopian Airlines jet crashed, killing 157 people on board.⁵⁸ Boeing, the world's leading aerospace company and the largest manufacturer of commercial jetliners and military aircrafts, was charged with 737 Max Fraud Conspiracy and entered into a deferred prosecution agreement with the Department of Justice.⁵⁹ This event was not Boeing's first instance of misconduct.⁶⁰ It has committed eighty additional instances of misconduct since 1995.⁶¹

However, when the Boeing 737 crashed and when Boeing engaged in other missteps, they had a strong compliance program.⁶² In the total scheme of Boeing's operations and the number of procurements in which they engage, their compliance program is very effective.⁶³ Prosecutors credited Boeing for their efforts designed to enforce compliance and ultimately decided not to require them to hire an independent monitor because they were taking the right steps to mitigate misconduct.⁶⁴ Despite the tragedy of this accident, it is a rare instance and unfortunately resulted from inevitable human error.⁶⁵

In the past nine years, which include around ninety million flights, the country went without a fatality.⁶⁶ The FAA issued a statement crediting Boeing for its "current excellent safety record."⁶⁷ After the 737 mishap, Boeing did take the additional compliance steps that it needed in order to decrease the likelihood this tragedy would occur again.⁶⁸ Boeing followed the hallmarks of an effective compliance program by creating an entire webpage on compliance to be as transparent as possible in the ways they sought to improve their airlines.⁶⁹ On the website, the company included the Code of Conduct in eighteen different languages to make sure all employees in all locations understood the policies and procedures and provided simple ways to disclose any misconduct that the employees encountered.⁷⁰ Additionally, the company included updates to the 737 Max 8 Jet, such as the changes made, pilot training added, and a statement of reflection committing to learn from past mistakes.⁷¹ Boeing still had to pay large fines and had to improve their compliance program from this specific instance.⁷² However, the compliance program in place at the time of the misconduct helped reduce the Department of Justice's sanctions against Boeing and mitigated the many other instances of misconduct that could occur from a contractor that receives the second largest amount of money from the federal government.⁷³

B. Enforcing Sanctions Through the Suspension and Debarment System Has Served as an Effective Reactive Measure to Combat Corruption.

In addition to the proactive procedures, laws and regulations listed in the Federal Acquisition Regulation System set out reactive procedures to assist procurements and mitigate corruption. Specifically, FAR 9.4 includes debarment, suspension, and ineligibility of contractors who engage in corrupt or improper conduct.

Suspension is defined as "temporary exclusions 'pending the completion of an investigation of legal proceeding, when it has been determined that immediate action is necessary to protect the Government's interest."⁷⁴ The cause for suspension typically comes from evidence that a contractor engaged in a crime, fraud, or other offense.⁷⁵ Suspension is urgent but temporary, and the contractor is suspended for a period of time during the

pending resolution of the investigation, legal proceeding, or indictment.⁷⁶ Debarment is defined as “actions which ‘exclude a contractor from Government contracting and Government-approved subcontracting for a reasonable, specified period.’”⁷⁷ There are various causes for debarment such as convictions or civil judgments of an offense (including fraud), committing a crime, or unsatisfactory performance that affects present responsibility.⁷⁸ The length of the debarment is determined by the Chief Suspension and Debarment Officer based on the seriousness of the crime, remedial measures, and mitigating factors considered.⁷⁹ The purpose of suspension and debarment is to protect the government’s interest in not allowing a corrupt contractor to continue doing business with the government if the contractor committed misconduct on past contracts.⁸⁰

The suspension and debarment process “protects the federal government from fraud, waste, and abuse by using a number of tools to avoid doing business with non-responsible contractors.”⁸¹ A debarring official has the discretion to suspend or debar a contractor by evaluating various factors.⁸² When a contractor is suspended or debarred, their name is added to an excluded parties list on the System for Award Management (SAM).⁸³ This excluded list applies government-wide, and the contractor or entity is ineligible for any federal contracts or grants.⁸⁴ The effect of the listing is that, without a compelling reason, agencies shall not award contracts, consent to subcontracts, or solicit offers from any suspended or debarred contractors.⁸⁵ This includes all named affiliates of the named company on the list.⁸⁶ When suspended or debarred, the contractor is deemed non-responsible.⁸⁷ In the proactive procedures mentioned above in this Note, looking at the suspension and debarment list to ensure that a contractor is not on it before contracting with them is an important part of the ethics and compliance programs.⁸⁸

The Contracting Officer must use his or her own discretion to make a responsibility determination.⁸⁹ Responsibility is determined by past performance, ethics, integrity, and compliance with the laws.⁹⁰ Even if the offeror is responsive and agrees to satisfy the requirements in the invitation for bid or solicitation, they will not have the capability to perform the work if there is not an affirmative finding of responsibility prior to contract award.⁹¹ Due to their unsatisfactory performance, record of integrity, and business ethics, they will be barred from doing any contracts, typically up to three years.⁹² The purpose of the suspension and debarment process is not to punish the contractor or entity, but to protect the federal government’s interests.⁹³ However, the process does have a large deterrent effect on contractors or entities because it “can be the equivalent of a death sentence for a company.”⁹⁴ Suspension and debarment is a process that protects the federal government when fraud or corruption is detected, but the process ensures that proactive steps are taken in the future to avoid contracting with these suspended entities or individuals until they comply with specific requirements to deem them a responsible contractor.⁹⁵

In addition to a government-wide system for suspension and debarment in the United States, many suspension and debarment systems exist around the world.⁹⁶ These exclusion systems all serve similar purposes as the United States system, but the structure and principles underlying the systems are different in various aspects, which the Debarment and Exclusions Subcommittee of the International Bar Association’s Anti-Corruption Committee and the Office of Suspension and Debarment at the World Bank are still working to understand.⁹⁷ On January 29, 2021, the Office of Suspension and Debarment published a Global Suspension and Debarment Directory that captured data and information on the exclusion systems of twenty-three different jurisdictions and institutions.⁹⁸ This published list is the first ever consultive resource on exclusion systems.⁹⁹

Specifically, the World Bank, an international financial institution that provides loans and grants to the governments of low- and middle-income countries for the purpose of pursuing capital projects, has its own Sanctions System created in 2007.¹⁰⁰ This Sanctions System has a two-tier administrative sanctions process: the Office of Suspension and Debarment and the World Bank Group Sanctions Board.¹⁰¹ The Office of Suspension and Debarment is the first level of independent adjudication where the office makes determinations on suspending or debarring individuals or entities.¹⁰² The World Bank Group Sanctions Board is the second level of independent adjudication, which is composed of seven judges, who decide contested cases determined sanctionable by the Office of Suspension and Debarment.¹⁰³ The World Bank, as a financial institution, has two main goals: (1) to eradicate extreme poverty, and (2) to promote shared prosperity.¹⁰⁴ Therefore, the Sanctions System is aimed at the World Bank achieving these two goals, by ensuring that developing countries have strong procurement systems to help carry out sustainable development, such as building roads, creating trash-collection services, or providing freshwater systems.¹⁰⁵ Corruption is a major challenge to achieving these goals.¹⁰⁶ The World Bank entered into an agreement with four other multilateral development banks (MDBs): (1) the African Development Bank, (2) the European Bank for Reconstruction and Development, (3) the Inter-American Development Bank, and (4) the Asian Development Bank to mutually enforce debarment actions.¹⁰⁷ This cross-debarment approach across the various banks sends “a strong regional and global message that misconduct will not be tolerated.”¹⁰⁸ Any action of corruption, fraud, coercion, or collusion within one of the banks will suspend funding from the banks for an individual or entity across all of these MDBs.¹⁰⁹ Thus, Suspension and Debarment not only serves as a reactive measure by sanctioning misconduct, but can serve as a proactive measure because of the strong deterrent effect of the “corporate death sentence.”¹¹⁰

The anti-corruption measures found in the Federal Acquisition Regulation System,¹¹¹ the compliance programs,¹¹² and the Suspension and Debarment system,¹¹³ are only a few of many systems that our country has used to improve the fight against corruption in public procurement. Despite these proactive and reactive measures in place, corruption still exists. More needs to be done to improve compliance programs to help deter and further mitigate cases of corruption, fraud, and other misconduct.

III. Analysis of Psychological Training Measures

Even if a company or individual confirms that they have a compliance program,¹¹⁴ and takes an oath that they plan to avoid integrity risks, or are aware of the “corporate death sentence” of being suspended or debarred,¹¹⁵ corrupt actions will still occur if people fall into the trap of engaging in corrupt activity by adapting to the behaviors of those around them.¹¹⁶ To reduce the instances of corrupt actions, a focus on the individual, and how they interact in their specific environment, should be evaluated. Implementing psychological training evaluations and follow-up sessions into compliance programs can be the first steps to understanding individual motivations and to ultimately reduce corruption.

A. Case Study: “The Man Who Seduced the Seventh Fleet”

Leonard Glenn Francis (Fat Leonard) was a defense contractor who befriended Navy leaders by providing them cigars, liquor, expensive dinners, and prostitutes.¹¹⁷ Once he befriended them, Fat Leonard was not hesitant to exploit his connections to get classified material about U.S. warship and submarine movements.¹¹⁸ He used this information to exploit the intelligence for illicit profit and to redirect carriers to the ports that he owned.¹¹⁹ He was also able to obtain confidential contracting information regarding active law enforcement investigations that were pending against him and his company.¹²⁰ He was known for his “charm,” and “appetite for excess,” and was called the “snake charmer, preying on [others’] flaws and manipulating [others] to serve or advance his interests.”¹²¹ Due to his charming personality, he was incredibly influential on members of the Seventh Fleet.¹²² One member was quoted in a confessional letter to a federal judge, “As we drank together, he convinced me into believing that we were friends, and he was a mentor. I’m ashamed to admit that I wanted to believe we were equals.”¹²³ Due to how this logistics planner for the Seventh Fleet felt, he handed over classified ship schedules and information to Fat Leonard about his competitors.¹²⁴ In total, over 200 subjects were under investigation for accepting bribes from Fat Leonard.¹²⁵

B. Individuals, Not Institutions, Engage in Corrupt Actions Because They Desire Power, and, in Group Settings, Individuals Tend to Adapt to the Behaviors of Those Around Them.

One man was able to seduce over 200 well-disciplined members of the Seventh Fleet. When instances of misconduct like this one occur, investigations are conducted into the structure of the organization, and, if an organization has a compliance program, steps are taken on how the program can be improved.¹²⁶ These steps are used effectively to identify the flaws within the organization and to begin to implement measures to ensure that misconduct does not happen in the future. For example, in the Fat Leonard case, the flaw would be a lack of commitment from senior management in the Navy to set the tone for the rest of the fleet to avoid misconduct, such as accepting bribes.¹²⁷ Here, since the leaders of the Seventh Fleet were accepting bribes from Fat Leonard, other members followed their lead given the absence of a strong ethical culture.¹²⁸

When the investigative agencies, such as the DOJ and SEC, begin to investigate the misconduct, they fail to look at the root of the misconduct and determine why the individuals acted the way that they did. Instead, these agencies focus on the organization and structure of a compliance program, if one is in place.¹²⁹ However, the issue in most instances is not found in the organization at large, but in the individual employees within the organization. People are corrupt, not systems or institutions.¹³⁰ A study conducted in Estonia examined individual-level determinants of corruption and stressed the need for future research.¹³¹ Research in the past focused significantly on institutional explanations for corruption, but this research failed to investigate individual-level motivations.¹³²

1. Individuals Are More Likely to Engage in Corruption When They Are Unhappy, Are Desiring More Power, or Are Following People in Power:

Understanding individual-level motivations and emotions can help understand why people engage in misconduct. Studies have found that unhappy people will do anything in their power to become happy, even if that means that they will engage in misconduct.¹³³ Individuals do not just become corrupt overnight, but, instead, “corruption begins with the seeds of discontent, unhappiness, and the need for recognition . . . and corruption provides the illusion of happiness.”¹³⁴ Insecure people feel better about themselves when they place themselves over others.¹³⁵ Gallup, an American analytics company that is known for its public opinion polls, found that between fifty-five and eighty percent of people are unhappy at work.¹³⁶ If unhappy people are more likely to be corrupt, then there is no surprise why corruption rates are so high.¹³⁷ Not only are happy people less corrupt, but they are more productive, and the organization as a whole improves.¹³⁸

This idea that “power tends to corrupt” is seen in two famous psychology studies. First, the 1971 Stanford Prison Experiment, in which one group of volunteer college students were assigned to be prison guards and the other group of volunteer students were assigned to be prisoners.¹³⁹ Second, the Milgram Experiment, in which volunteers were either “learner” or “teacher.”¹⁴⁰ In the Stanford Prison Experiment, none of the participants wanted to fulfill the role of guard.¹⁴¹ When the experiment started, the students assigned to guard had a hard time keeping control over the prisoners.¹⁴² However, the students quickly assumed their power in their role as guards, and the two-week simulation study had to be stopped after only six days.¹⁴³

The students who were reluctant to assume the role of prison guard, who would have been called, "ordinary" good people, resorted to violence and anti-social behaviors once they were thrown into the prison setting.¹⁴⁴ The prison guards initially just made the prisoners do push-ups and limited their food, but, as the study went on, the prison guards tried to humiliate the prisoners and would order them to hump each other doggy-style, make them strip naked, or not let them empty the buckets that they were using to urinate or defecate.¹⁴⁵ In the Milgram experiment, the volunteer was always assigned as the teacher, and one of Milgram's confederates would pretend to be the participant.¹⁴⁶ The experimenter, another actor, would dress up in a lab coat and tell the volunteers to shock the learner every time he made a mistake in listing word pairs, increasing the shock every time the learner got an answer wrong.¹⁴⁷ The learner would scream and say they could not handle the shock anymore, but the experimenter told the teacher to continue.¹⁴⁸ The teachers continued to administer the shock, despite the screaming, because an individual with authority, the experimenter in a lab coat, told them to continue until they increased the shock to the highest voltage of "severe shock."¹⁴⁹

The combination of these two studies helps explain how Fat Leonard was able to put over 200 Navy members under his "snake charm."¹⁵⁰ The Stanford Prison experiment study shows how "good people can be transformed into perpetrators of evil" based on the situation that they are in and how others around them are acting.¹⁵¹ Even well-disciplined members of the Navy fell into the trap of bribery and leaked confidential contracting information to Fat Leonard due to the situational forces around them. Due to the collectivist mindset and idea of fitting in, which are furthered described in the sections below, members of the Fleet felt comfortable accepting lavish gifts and giving away confidential information.¹⁵² The Milgram study shows how "ordinary people are likely to follow orders given by an authority figure, even to the extent of killing an innocent human being."¹⁵³ This outcome can be seen with the members of the Seventh Fleet because the members saw higher officials engaged in the corrupt actions.¹⁵⁴ When people recognize authority as morally and/or legally right, they are more likely to follow orders from those people, even if the orders involve illegal actions.¹⁵⁵

2. Individuals Are More Likely to Engage in Corrupt Behavior When They Have a Collectivist Mindset Because They Feel Protected and Personally Less Accountable.

Collectivism is the idea that the individual is a subordinate to a social group.¹⁵⁶ One study found that "people who had a collectivist mindset were more likely to pay bribes and feel less personal accountability for their actions."¹⁵⁷ One reason that Fat Leonard was able to seduce the Navy members with bribes was due to the idea of collectivism.¹⁵⁸ In the case of Fat Leonard, the Seventh Fleet developed a collectivist mindset that accepting the bribes from Fat Leonard was okay, because all the members around them were doing the same thing.¹⁵⁹

Rear Adm. Michael H. Miller, commander of the USS Ronald Reagan Carrier Strike Group knew Fat Leonard well.¹⁶⁰ He let Fat Leonard know that he would soon be docking in Hong Kong and asked Fat Leonard to arrange a banquet for his officers.¹⁶¹ It was noted that "Miller and his officers were accustomed to eating well with Francis."¹⁶² Instead of thinking about the individual prison time and criminal charges that each individual could have received, members of the Seventh Fleet were used to being treated nicely by Fat Leonard and thought that, as a group, they were protected. The theory behind this idea is that "people use their trust heuristics, i.e., generalized trust in others obtained from prior experience with beneficial collective action."¹⁶³ Groups mutually reinforce each other. The members of the Seventh Fleet continuously accepted the lavish treatment from Fat Leonard without any punishment.¹⁶⁴ As they continued to engage in this behavior with others, they became more comfortable. By seeing other members of the Seventh Fleet engaging in this behavior, they collectively accepted it as the norm, and they discarded their personal individual values. As described in the findings of the psychological study, the Milgram experiment, the members of the Seventh Fleet were just following the behaviors and actions of the leaders of the Fleet because they held authority above them.¹⁶⁵ There is danger in group activity, and, once individuals begin engaging in the corrupt acts, they "swear allegiance to their groups ignoring their duty to the greater community."¹⁶⁶

3. Individuals Are More Likely to Engage in Corrupt Behavior When They Are Trying to Fit In.

In addition to adapting to the collectivist mindset of others around them, people tend to change their behavior in order to feel accepted. Another reason that Fat Leonard was able to seduce the members of the Navy¹⁶⁷ was due to the basic idea of fitting in.¹⁶⁸ This idea of fitting in can be seen from childhood, with young children mimicking older kids or the dominant group in order to be accepted by them.¹⁶⁹ This idea was also demonstrated in the psychological study, the Stanford Prison Experiment, in which one guard began to harass the prisoners and the rest of the prison guards mimicked his lead, in order to fit into the prison environment and assume their role as prison guards.¹⁷⁰ This behavior of fitting in continues into adulthood.¹⁷¹ People unconsciously and unintentionally change the way that they speak and act depending on whom they are talking to.¹⁷² If people's behaviors mimic those around them, they feel like they are doing something right.¹⁷³ This idea of fitting in intertwines with the idea of collectivism.¹⁷⁴ Acceptance is a basic human instinct and that is what many of the members of the Seventh Fleet felt.¹⁷⁵ One member of the fleet was quoted in a confessional letter to a federal judge that he thought he was actually friends with Fat Leonard and that they were equals.¹⁷⁶ This member saw Fat Leonard as a successful tycoon, who rode around in his black armored SUV, had extravagant parties and, on Christmas, would spend over \$75,000 on Christmas lights.¹⁷⁷ When Fat Leonard was nice to him, he felt accepted and was willing to accept gifts from Fat Leonard in return for providing him information. The act seemed more like an act of friendship, rather than a criminal act of bribery.

C. Psychological Training Measures Should Be Implemented into Compliance Programs in Order to Further Mitigate Corruption.

Psychological training measures, which target increasing workplace satisfaction and focus on the individual working with others in their community, should be implemented into compliance programs. Training programs focusing on the empathy, quality, and courage of each individual will not guarantee elimination of corruption, but they may mitigate or deter particular individuals from engaging in corrupt acts.¹⁷⁸ Learning about concepts such as empathy, quality, and courage could fan out in waves and “affect [the] clients, [the] profession, and [the] community.”¹⁷⁹ Empathy helps people understand one another’s thoughts.¹⁸⁰ Quality helps people have a sense of direction.¹⁸¹ Courage better helps people take moral responsibility.¹⁸²

The trainings are not meant to be long all-day seminars but can be tailored to what works best within a community. The main point of implementing psychological training is to target individuals in their specific organization, to ensure that all employees feel recognized and worthy, and to understand the core people with whom they are working. For example, in 2012, Google worked on “Project Aristotle” in which the company studied hundreds of Google’s teams to figure out why some were more successful than others and had greater employee satisfaction.¹⁸³ After conducting various surveys, analyzing various statistics, and conducting interviews for three years, “Google’s research had identified dozens of behaviors that seemed important, except that sometimes the norms of one effective team contrasted sharply with those of another equally successful group.”¹⁸⁴ This result demonstrates that psychological training is not meant to be uniform across various contractors. Each contractor has to work on individual and team building based on the personality types of those who are working on a specific project.

When employees are happy, have a voice, and are supported by those around them, they are less likely to cut corners and to do anything to gain power. Further, they become more likely to seek out help when things go wrong.¹⁸⁵ The Google study found that this support, conversation turn-taking, and empathy created “psychological safety.”¹⁸⁶ Individuals must feel that they can share things that scare them or drive them crazy.¹⁸⁷ Work cannot be strictly focused on efficiency.¹⁸⁸ The Google study concluded that, “when companies try to optimize everything, it’s sometimes easy to forget that success is often built on experiences—like emotional interactions and complicated conversations and discussions of who we want to be and how our teammates make us feel. . . .”¹⁸⁹ Many groups at Google reported that they successfully implemented empathy and sensitivity into charts and data reports and saw improvements and stronger bonds within their teams.¹⁹⁰ Using the conclusions in the Google study, if contractors focus on team-building and open communication, and then stress the values of empathy, courage, and quality in the new project on which the contractors plan to work, they will be more likely to avoid missteps and be more successful.¹⁹¹

1. Big Law Firms and Other Companies Are Using New Recruiting Tools to Assess Their Candidates and Understand the Personality and Competencies of Each Individual to Determine If They Would Be Suitable for the Firm.

Not only has Google focused on trying to understand individual employees to improve efficiency in their company, but Big Law Firms have focused on learning more about individual new hires by implementing two assessment programs into their interviewing process: (1) Suited, and (2) Pymetrics.¹⁹² Suited is a platform that seeks more diverse candidates by assessing “personality, stress response, values and other essential competencies.”¹⁹³ Pymetrics is an assessment based on, “cognitive, emotional and social traits to map back to firms and predict a level of success.”¹⁹⁴ Other companies such as Unilever, LinkedIn, and Accenture, have used Pymetrics as well.¹⁹⁵ These programs are intended to better understand potential new employees in order to ultimately continue to improve their firms. Some firms believe that the traditional hiring measures reflect the connection between the interviewer and interviewee, not the actual success that the person may have at the company.¹⁹⁶

Additionally, companies such as Harley-Davidson and McKinsey & Company have been implementing personality tests into their companies.¹⁹⁷ Academic works show psychological testing and personality tests are a reliable measure of future job success.¹⁹⁸ Eighty-eight companies in the Fortune 100 use the Myers-Briggs psychological test.¹⁹⁹ Thompson Hine uses the “16Personalities” test, which includes questions that, “seek to align the test taker’s behavior with sixteen different personality measurements, which include self-reliance, openness to change and emotional stability.”²⁰⁰ The test determines specific traits, such as whether candidates are individualistic or state-oriented, the responsiveness of candidates, and how they make judgments. Additionally, partners and upper-management employees take the tests, and their results are compared to current employees to see which employees are most likely to succeed based on the firm’s most successful partners.²⁰¹ Studies show that law firms and companies that implement more personality tests have stronger communities and are better able to serve their clients because employees know how to interact with certain individuals, respond to stressful situations, and reach out to others to celebrate success or to ethically get out of problems or hard situations.²⁰²

2. Personality Tests, Such as the Myers-Briggs Test, Have Been Proven as an Effective Measure in Other Firms to Be a Reliable Measure of Career Success and Can Help to Mitigate Corruption by Understanding How People Work with One Another.

At the start of a new project, government contractors should make their employees and subcontractors take the Myers-Briggs Test.²⁰³ It is a forty-five-minute assessment that is worth being implemented if it means avoiding a potential three-year suspension or debarment.²⁰⁴ The test focuses directly on the individual. It focuses on well-being, personal development, and relationships.²⁰⁵ PhD-level research psychologists and psychometric experts

make sure that this personality test is scientifically accurate.²⁰⁶ The determination of an individual's personality can help the contractor become more aware of how they work best and how they form relationships with others.²⁰⁷ It will also help co-workers better understand one another and know how best to respond to them in certain situations.²⁰⁸

The Myers-Brigg Test distinguishes thinkers and feelers.²⁰⁹ Thinkers tend to be more “thick-skinned” and appear to others to be insensitive, while feelers are more “thin-skinned” and tend to be more sensitive towards the feelings of others.²¹⁰ Knowing this personality trait about someone can significantly impact how two individuals give or receive feedback. For example, those actors who may act aggressively or handle situations poorly can focus on improving themselves and learning how to better empathize with others. Training can be provided for these individuals by raising hypothetical situations in which individuals who tend to be more aggressive and those who tend to be timid interact with one another. These short tasks completed by contractors and subcontractors can increase empathy through the process of better understanding one another, which orients individuals towards moral action.

3. Implementing a Buddhist Practice into Compliance Programs Can Help Mitigate Corruption by Increasing Bravery and Courage to Stand Up to Corrupt Actions and Not Just Follow the Collectivist Mindset.

A Buddhist practice has long been used to increase bravery and courage.²¹¹ The practice includes breathing techniques to “breathe in fear and breath out bravery and kindness.”²¹² By practicing this breathing mechanism, individuals become more aware of their thoughts and can better regulate their emotions.²¹³ This practice would be useful when confronting stress, such as a pressing deadline or confronting a mistake. If these individuals just take time to breathe and think through the situation, they may respond more appropriately and avoid problematic behaviors in the future. The breathing exercise does not have to take hours a day but can be as simple as taking five breaths before answering a hard email to really think about a situation.

None of these training methods is blackletter law and should not be required to be applied uniformly for all contractors. As concluded in the Google study, each group was successful in different ways.²¹⁴ Each group had to better understand one another to see how the group as a whole would ultimately function best. As described above, individuals engage in corrupt actions because they desire power and, in group settings, tend to adapt to behaviors around them due to the collectivist mindset and desire to fit in. When teammates understand personality types, engage in open conversations, actively listen to one another and focus on empathy, courage, and quality, there will be a collectivist mindset to strive towards moral actions and not corrupt ones. The bond of the team will be stronger, so individuals will be less likely to feel isolated. If individuals take a deep breath and feel supported to reach out to one another for help, all of these techniques, whether one is used or all of them are used, will help to improve individuals on an individual level and help improve their work product overall.

IV. Conclusion

Corruption can never be completely abolished. People will never always be happy. People will always desire more power. However, mechanisms can be put in place in addition to the proactive and reactive measures already in place to reduce corruption. Adding psychological tests and spending time each day to understand the individuals or entities contractors are working with does not consume significant time or money and will greatly improve the culture and ethical predispositions of the government contracting firms, law firms, and communities involved in public procurement.

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