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Learn from this battle of industry titans

Defense contractors often escape the harsh and probing glare of the media spotlight because government procurement is considered too dull to stir the public's interest. Not this summer.

This year's "Enron" involves a battle between two of the largest defense contractors in the country: The Boeing Co. and Lockheed Martin Corp. The controversy concerns the Air Force's selection for the Evolved Expandable Launch Vehicle (EELV) program, a satellite launch program traditionally dominated by Lockheed Martin.

In 1997, Boeing hired a former Lockheed engineer that had worked on the EELV program. This person brought along Lockheed Martin proprietary documents, including pricing information, regarding EELV procurements.

In 1998, Boeing and Lockheed Martin submitted bids for 28 EELV contracts with a value of about $28 billion. In October 1998, Boeing won 19 of the 28 contracts, and Lockheed Martin got the other nine.

On June 10, 2003, Lockheed Martin filed a lawsuit against Boeing, alleging that Boeing and three of its former employees had improperly obtained and used Lockheed Martin proprietary information during the EELV competition.

Less than a month later, the U.S. attorney in Los Angeles charged two of those former Boeing employees with conspiring to steal trade secrets from Lockheed Martin. And July 24, the Air Force suspended three Boeing Integrated Defense System business units and three former Boeing employees from eligibility for future contracts.

The Air Force also stated that it intended to reallocate the existing EELV contracts, transferring at least seven of those previously awarded to Boeing to Lockheed Martin.

During a press conference, Peter Teets, undersecretary of the Air Force, estimated the service had taken away about $1 billion worth of business from Boeing and awarded it to Lockheed Martin.

Surely, this cascade of catastrophe could have been avoided. According to news reports, the documents taken from the Lockheed Martin were not only stamped "Lockheed Martin proprietary information," they also were clearly source selection information. The Procurement Integrity Act forbids a government contractor from soliciting, obtaining or possessing such information.

How can it be that the employees of one of this country's largest defense contractors were not aware of or could easily ignore this fundamental prohibition? To make sure it doesn't happen again, Boeing announced this month that it is increasing its internal ethics training on these issues.

Spot training, however, is not the answer. Government contractors and their employees must have the procurement integrity rules reinforced at every opportunity. There is no greater risk and, therefore, no greater priority for a company in this industry.

Why didn't Lockheed Martin ask its engineer to sign a nondisclosure or a noncompete agreement? It was clear this person would have access to important, sensitive, proprietary data, so it would have been an entirely appropriate action. Lockheed Martin also should reconsider its apparent policy of widely disseminating sensitive data within the corporation.

The former Lockheed engineer allegedly had more than 35,000 pages of information that the company now argues constituted its trade secrets. Under the Uniform Trade Secret Act, however, to claim information as a trade secret, a claimant must show that reasonable steps were taken to protect the secrecy of the information.

The fact that the former Lockheed engineer did not sign a confidentiality agreement and was given free access to such a large volume of sensitive information suggests Lockheed may have a problem proving this aspect of its case, at least.

Sure seems that some basic legal planning by both companies at the outset could have prevented these recent, unfortunate events. ■

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