



September 8, 2023. A Day That Will Live in Infamy.

Description

Somewhere in the federal government's rulebook there is a section so plainly written, so clearly forged from hard experience, that reading it doesn't feel like regulatory guidance. It feels like a warning scratched into a wall by someone who'd been here before and was desperately hoping you wouldn't be.

FAR 32.4. Advance payments.

It opens with a sentence of almost poignant resignation: advance payments are the least preferred method of contract financing.

Least preferred. Not prohibited. Not criminal. Just we have thought about this carefully, consulted history, and arrived at the institutional conclusion that we would really, genuinely, quite strongly prefer if you didn't. Perhaps even beseech you. In the language of federal procurement, this is as close to pleading as it gets.

The reason requires no imagination whatsoever. When you pay before a contractor delivers, you surrender the only leverage that makes contracts work. The money is gone. The incentive evaporates with it. What remains is hope which is lovely in churches and wedding speeches and has absolutely no business near a federal procurement.

So the regulation requires three things before an advance goes out the door. Personal sign-off from the agency head. A formal assessment of whether the contractor can actually do the job. And ongoing controls over how the money moves once released. Not suggestions. Requirements. There's also because the authors of this regulation had clearly been burned before FAR 32.409-3, which requires advance funds to go into a separate, designated account. A segregated account. One the government can monitor. One with a clean audit trail. Because commingling advance funds with general operating cash is precisely how public money disappears without anyone being able to say exactly where it went.

These are gates. Built specifically for one scenario.

On September 8, 2023, \$38.7 million in Foreign Military Financing funds — your tax dollars, earmarked to help Ukraine buy defense equipment — was released to Cyberlux Corporation against a Firm-Fixed-Price subcontract for two thousand K8 drones. Before a single drone was built. Before a single drone was accepted. And then — magnificently, defiantly, almost admirably in its brazenness — Cyberlux deposited it straight into their main operating account. Not a segregated account. Not a designated advance account. The account they used to pay the electricity bill. The same account that, the day before, had held less than three thousand dollars.

Three thousand dollars.

Now here is where this stops being merely absurd and becomes genuinely, jaw-droppingly, spit-your-coffee-across-the-room extraordinary. The source of what follows is a one-hundred-and-forty-page Signal chat thread involving the CEO himself. His own words. His own arithmetic. Preserved, in full, and now part of the evidentiary record. According to those communications, the all-in manufacturing cost for a single K8 drone was approximately \$6,700. Materials, labor, margin. Two thousand drones. Fourteen million dollars. That's the job. That's what it costs. According to the man who signed the contract, in messages he almost certainly assumed nobody would ever read.

On our cost we're \$4700 for all m
Pack + long range radio + long ra
Ignition control
Exact spec sheet available this at

Source: Signal Chat, CEO Mark Schmidt March 2022

The contract was valued at \$78.8 million. Five and a half times what the CEO's own messages said the work should cost. The advance alone was \$38.7 million — nearly three times the entire manufacturing cost of every drone in the order — released into a commingled operating account that the previous day couldn't have funded the parts for a single unit.

Let that sit for a moment. A company with less than three thousand dollars in its account. A CEO whose own private messages showed the whole job costing fourteen million. A contract worth five and a half times that, against which someone released thirty-eight million seven hundred thousand dollars into the wrong account before a single deliverable existed. The financial condition assessment that FAR 32.4 required would have found all of this in approximately the time it takes to read a bank statement. The contract pricing itself should have provoked questions that a moderately attentive golden retriever would have found worth barking at.

Every gate. Left open.

Here is where I stop being wry, because what follows is not wry.

Wartime does things to procurement. Ukraine was burning. Drones were needed. Nobody wanted to be the person who raised their hand and asked whether a company with three thousand dollars in the bank and a penny-stock buyer-beware label could manufacture two thousand weapons systems it had never produced at scale. Urgency is real. It is also, in the history of public procurement, the single most reliable mechanism by which catastrophically bad decisions get made and the paperwork catches up later — if at all. FAR 32.4 exists precisely because urgency has always been oversight's worst enemy. The people who wrote it understood that the more pressure there is to move fast, the more essential it becomes to stop. Particularly when the contractor's CEO has documented, in a hundred and forty pages of private messages, that the job costs a fraction of what the contract is worth.

Nobody stopped.

I have written before about what happened to the money once it arrived. That record is sworn, documented, and sitting in federal court files across three states. I won't retrace it here. What I will say is this: none of it — not a dollar, not a lawsuit, not a shell company, not a single creditor fighting over scraps in a federal court registry — happens without September 8. Every consequence in this entire cascading, multi-jurisdictional catastrophe flows from one upstream decision. Not what the CEO did with the money once it landed. The decision that put it in his hands in the first place.

Fourteen million dollars to do the job. Five and a half times that in contract value. Three times the manufacturing cost released as an advance. Into the wrong account. Without the financial assessment the law required.

FAR 32.4 did not fail. The segregated account requirement did not fail. Every control built to protect the public's money from exactly this scenario was in place, documented, and legally binding.

Someone chose not to use any of them.

September 8, 2023.

A day that will live in infamy.

The gate was left open. Everything else is a matter of record.

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