Remaking Federal Procurement

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by Steven Kelman

Governments contract both for products and services that are inputs into what government produces (ranging from office supplies or computers on the desktops of government employees to fighter aircraft or studies of the costs and benefits of a proposed regulation), as well as for actual government outputs (including debt collection for delinquent college student loans, running customer service hotlines, collecting garbage, or delivering job training). In all, the federal government spends about $200 billion a year buying goods and services, about 30% of discretionary spending (Federal Procurement Data Center 2001).[1]

It is tempting to believe that when government makes the decision that something for which it is paying should be provided by private organizations, it has removed one item from its agenda of worries. No longer, one might imagine, need government worry about how to make computers if it buys them from Dell or Compaq; no longer need it worry about how to educate kids, or get jobs for the unemployed, if it contracts for running a school or for job training.

A moment's reflection will suffice to remind any who might hold such fond hopes that the decision to contract changes the nature of government's worries, but doesn't eliminate them. When government contracts for computers, schools, or job training, it

[1] Information on the size of the discretionary budget (as proposed by the President) for FY2002 was provided by the Office of Management and Budget.

need not know how to produce the products or services in question. But it needs to be able to do three things well: (l) develop a business strategy (specify requirements for what will be bought, choose an appropriate contract arrangement and incentives), (2) select the right suppliers, and (3) administer the contract once signed. These skills are different from those required to produce computers, schools, or job training oneself. Together they constitute what I will call, using a very slight neologism, "contracting management" and are the province of the government's procurement system.[2]

If contracting is to work well to achieve public purposes, Donald F. Kettl (l993: especially Ch. 8) argued almost a decade ago, government must be a "smart buyer." I would go further. A number of agencies, such as the Department of Defense, the Department of Energy, and the National Aeronautics and Space Administration, spend a majority, in some cases an overwhelming majority, of their budgets on contracted products and services – 46%, 94%, and 78% respectively. Most agencies contract out development of information technology applications that are crucial to running their organizations, as well as other central activities such as scientific research. For such agencies and functions, contracting management must be considered a core competence of the organization. This is very different from a traditional view that regarded contracting as a subsidiary administrative function, receiving little attention from senior agency leadership. In the twenty-first century, in many agencies, contracting management needs to come to be one of the central concerns of senior agency political and career executives, the same way other organizational core competencies are.

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[2] "Contract administration" is often called "contract management," as distinct from my phrase "contracting management." In the Department of Defense, the word "procurement" is used more narrowly to describe selecting suppliers, with the word "acquisition" applying more broadly to all stages of the process.

This paper looks both backwards and forwards. Over the past decade, significant changes have taken place in the U.S. federal government's procurement system, designed to improve the system's performance through a strategy of making procurement less rulebound. The changes have been concentrated in the areas of business strategy and source selection ; with the exception of some reduction in oversight requirements vis-à-vis contractors, there have been few changes in contract administration. So the word "remaking" in the title of this paper refers both to an account of what has already happened in some areas and a proposal for what needs to happen in others.

Government procurement, like much of the organization of government in general, was traditionally characterized by high levels of rules, hierarchical signoffs, and what may be called "objectification" in decision-making. Rules tell people what to do. Hierarchical signoffs require people to get approvals at higher levels of their chain of command when no rule tells them what to do. Objectification prefers as grounds for decisions not covered by rules considerations that can be stated independent of human judgment, preferably in quantitative terms. The procurement system, again like much of government, had tended to become ever-more rulebound, signoff-ridden, and objectified over time (Nagle l992). All these features may be compared with an approach granting greater discretion to participants to make decisions they believe are sensible.

As of the early l990's two major statutes established procurement rules. The Competition in Contracting Act of l984 established rules for choosing suppliers based on the policy of "full and open competition" (procurements should be widely advertised, open to all, and evaluated strictly on criteria announced in advance). The Truth in Negotiations Act of l962 established rules for disclosure by bidders of cost information,

which government could use to negotiate prices and that also served as a basis for audits and legal action against firms failing to disclose "accurate, current, and complete" cost data. The system's regulations were codified in the 1900-odd page Federal Acquisition Regulation (FAR), as well as in agency "supplements" to the FAR. (The Defense Department FAR Supplement was itself over l800 pages, and each of the military services in turn had service-specific supplements!) Many common (although not universally followed) practices – such as buying from the low bidder or giving no consideration to a supplier's past performance in awarding new contracts – were not rules at all in that they did not form part of any law or regulation. Rather, they were informal "rules" reflecting the spirit of a system that tried to render rulebound as much behavior as possible.

Some of the rules in the traditional system were decision rules ("award to the low bidder," "do not reimburse contractors for entertainment expenses"). Most were about what process needed to be followed in making a decision ("allow every interested business to bid," "allow bidders at least 30 days to respond to a solicitation," "evaluate proposals only based on the evaluation criteria in the solicitation," "do not accept late proposals," "negotiate only about price and about what elements of a bidder's proposal do not comply with the government's requirements").

During the l990's, under the auspices of Vice President Al Gore's "reinventing government" initiative, a trend break occurred. Rules, objectification, and hierarchy in the system were all scaled back.[3] Two pieces of legislative reform were passed, the Federal Acquisition Streamlining Act (FASA) in l994 and the Federal Acquisition

[3] This author led the Vice President's effort as Administrator of the Office of Federal Procurement Policy from l993-97. For a first-person account, see Kelman (1999).

Reform Act in l995. Two major changes were made in the FAR. A statement of "guiding principles" for the system was added to Part l, which established as the fundamental goal for the system to "(s)atisfy the customer in terms of cost, quality, and timeliness of the delivered product or service," added that those involved in procurement should "exercise personal initiative and sound business judgment in providing the best value product or service to meet the customer's needs," and stated that "(i)n exercising initiative, Government members of the Acquisition Team may assume if a specific strategy, practice, policy or procedure is in the best interests of the Government and is not addressed in the FAR, nor prohibited by law (statute or case law), Executive order or other regulation, that the strategy, practice, policy or procedure is a permissible exercise of authority." In l998 a rewrite of Part l5 of the FAR, dealing with source selection procedures for large buys, was adopted. By the end of the decade, the system looked quite different from how it had looked at the beginning. In l998 the Brookings Institution awarded procurement reform its only full "A" grade in its reinventing government report card (Kettl l998: ix).[4]

This paper is organized as follows: I begin by arguing a case for the significant reduction in rules that was the central tactic of procurement reform. I proceed to discuss changes the procurement reformers instituted, involving the first two legs of contracting management (business strategy development and source selection). Then I will discuss the third leg, contract administration, that was largely ignored by the reformers.

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[4] "Effort" was granted an A+, but procurement reform got the highest grade of any of the specific reinventing government initiatives. Brookings gave the reinventing government initiative an overall grade of B.

Procurement reform was based on a controversial proposition, namely that the procurement system was too rulebound. In this section I will therefore discuss arguments for and against using rules to guide the behavior of people in government.[5]

I will discuss in this section arguments on behalf of rules that conclude that rulebased decision-making in some domain (such as procurement) on the whole produces better results than giving people discretion to make decisions on a case-by-case basis.[6] The most straightforward such argument is that rules produce better results because they serve as decision aids. "Rules in organizations," March et al (2000: 3-4) write, "can be seen both as products of learning and as carriers of knowledge." If organizations have learned over time that certain approaches to dealing with recurring situations work, while others don't, they can use rules to codify and transmit that information. It would seem absurd to ask an aircraft maintenance worker to decide personally which parts should be checked or replaced after the plane had flown various numbers of miles, or to figure out each time the best way to replace part of a complex wing assembly. "Rules retain knowledge and allow reuse of solutions to problems." (March et al 2000: 186) Why reinvent the wheel? In procurement, why require each contracting officer to rediscover the basic results of economic theory about the virtues of competition?

In the context of a government organization dealing with the public, and with elected officials, codifying good practice into rules has an additional advantage. "Making decisions in accordance with specific rules…helps repel attempts by politicians to

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[5] Such arguments are staples in several bodies of literature, including not just organization theory/management but also moral philosophy, jurisprudence, and public administration. There has been only modest cross-communication across these literatures.

[6] I will thus ignore as irrelevant to procurement issues (with the exception of one consideration to be raised in footnote 8 below), deontological arguments raised on behalf of moral rules. (Frankena l973: Ch 2)

reverse…decisions on behalf of irate…constituents." (Bardach and Kagan 1982: 36) More generally, when a government official has decision-making authority over a person, making the decision according to a rule reduces the interpersonal tension involved in an unfavorable ruling – one can say, "the rule made me do it."

The image of rules as decision aids, however, is challenged by the presence of anomaly – situations where application of a rule produces an inappropriate decision. One of the most common criticisms of rules in the organizational and management literature is that they are (because people are forced to follow them), or become (for various psychological reasons), "rigid" – that is, that they get applied even to situations where they produce a bad decision. Thus, technicians installing Soviet missiles in Cuba in l962 configured missile batteries in the same pattern they had used back home, applying rules for how to configure such batteries, even though this made it easy for American spyplanes to detect the missiles' presence, which the Soviet government was trying to keep secret. (Allison and Zelikow l999: 208-l7) In making job promotion decisions according to a seniority rule, the incompetent are promoted along with the competent. In grading students according to a strict curve, some students in a class with an unusual number of smart students (or dumb ones) receive inappropriate grades.

It is in thinking about the implication of the "rigidity" of rules for a rulebased system that jurisprudential and philosophical literatures on rules are most helpful. These literatures openly recognize anomaly and develop arguments for the value of rules even in its presence. So, for example, Schauer (l99l) begins by stipulating what critics of rules in organization theory literature have been at pains to demonstrate, namely that following rules doesn't always produce good decisions. Rules only probabilistically produce good

decisions; they are "over- and under-inclusive." (Ibid.: 29-34) A rule establishing the voting age at l8, based on an effort to exclude politically immature people from voting, excludes some people under l8 who would be fully able to vote intelligently ("over-inclusiveness"), while giving the vote to those over l8 who are unable to do so ("under-inclusiveness"). The rule "no dogs allowed" excludes well-behaving dogs as well as poorly behaving ones. A 55 miles per hour speed limit unnecessarily constrains the careful, skilled driver.

The arguments in these literatures for following rules in the presence of anomaly involve the distinction between what Raz (1979: Ch. 1) refers to as "first-order" and "second-order" reasons to follow a rule. First-order reasons have to do with whether the rule does a good job in a particular situation producing the correct decision. In cases of anomaly, there is no first-order reason to follow the rule. But there are second-order reasons for following rules that go beyond their ability to serve as decision aids in individual cases, involving positive results rule-observation generates in areas other than the immediate decision at hand such that, when these second-order reasons are taken into account, on balance it may produce good results to follow the rule in spite of anomalous outcomes in some particular situations.

Such reasons feature prominently in discussions of utilitarianism in moral philosophy. Critics had argued that utilitarianism failed to recognize the moral weight of rules such as "don't lie," since utilitarian doctrine maintains that people should act so as to maximize net benefits, which would suggest that such a putative moral rule should not be applied in the case of anomalies where it fails to maximize net benefits

No, the counterargument has gone. (Lyons 1965: 144-45) If truth-telling generally maximizes social utility, there are second-order reasons to establish "don't lie" as a rule. For if we trust people to deliberate in each individual case about whether a certain lie will produce more societal benefits than costs, self-regarding biases will tend to distort results of the deliberation in favor of conclusions justifying lies whose social benefits do not outweigh their social costs, but where the decision-maker's private benefits from lying are large. "Moreover, time presses and we are often forced to act in haste, sometimes without adequate deliberation," and it therefore may make sense simply to follow rules that generally produce good results in all situations, knowing that occasionally they won't but that case-by-case determinations will be too time-consuming. ("Our lives proceed more efficiently because by relying on posted speed limits we spend less time calculating how fast to drive.') (Schauer 1992: 146) Alternatively, some people will simply not be intelligent enough to get the calculations right, making errors even if they display no ill-will (and since by hypothesis following the rule general maximizes social utility, a random distribution of errors will produce an under-display of the correct rule-following behavior.) And individual decisions to tell lies just because they maximize utility in specific situations may help undermine public respect for the socially valuable institution of truth-telling, encouraging bad lies among people who might otherwise conform to social norms. Indeed, Sidgwick (1907: 481-82, 489-90) argued that it maximizes social utility for people to be taught to obey rules and not even to think about maximizing utility – or even that the doctrine of utilitarianism itself should be kept a secret, on utilitarian grounds, in favor of a morality of rule-following.[7]

[7] Sidgwick (1907: 490, more generally 481-82, 489-90) writes that "a Utilitarian may reasonably desire, on Utilitarian principles, that some of his conclusions should be rejected by mankind generally; or even that

Schauer (1991) expands on these arguments and applies them to a legal (and governmental) context. One argument involves the danger of abuse in non-rulebased decisions, which is a counterpart in the public realm to the danger of selfish bias that utilitarians discuss in the individual realm (Ibid.: 150-53). Procurement officials free to make decisions unconstrained by rules might give contracts to their relatives, take bribes, or just lazily refrain from doing the work necessary to protect the government's interests.

> When we choose rules…we worry more about decision-maker error than about the errors that are built into the rules themselves. …(R)ule-based decision-making ordinarily entails disabling wise and sensitive decision-makers from making the best decisions in order to disable…wicked decision-makers from making wrong decisions. …A "best case" perspective is necessarily averse to rules, for rule-based decision-making cannot produce the best result in every case. But a "worst case" perspective is likely to embrace rules, recognizing that guarding against the worst case may in some circumstances be the best we can do. (Ibid.: 153)

A second argument, which is relevant only to the use of rules in the contexts of law and public policy), is an argument from certainty (and from the closely related virtue of reliance). This is a common one in jurisprudential contexts and was particularly central to Hayek (1944). For a person subject to government decisions with the force of law, rules provide certainty about what to expect. Certainty in turn allows people to plan personal behavior and interactions with others. Drivers told the speed limit is 55 miles per hour are more certain of what to do to comply with the law than those told "drive safely"; a contractor told the government will not reimburse advertising costs under cost-reimbursement contracts can proceed with decisions about spending money on advertising with knowledge of their consequences better than one told government will not pay "unreasonable" costs.

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the vulgar should keep aloof from his system as a whole, in so far as the inevitable indefiniteness and

In sum, then, the various second-order arguments for rules growing out of the philosophical and jurisprudential literatures make the case for rules even in the presence of anomaly, that is, even when the first-order argument for rules as a decision aid do not apply in an individual situation. What should we make of these arguments in the context of a rulebased procurement system?

These arguments essentially ask us to believe that the negative consequences of decision anomalies in particular situations from rule-following are outweighed by broader positive consequences following the rule produces. This argument depends on two considerations: (l) how frequently following the rule produces a bad result and how serious the bad results are and (2) the strength of the second-order considerations. Obviously, there is nobody who favors every rule that can lay claim at least sometimes to helping produce a good decision and that adds certainty to the system. Second-order benefits can seldom save a rule that is terrible on first-order grounds. The less a rule generally is a good decision aid, the less likely it will be that second-order reasons outweigh following it in specific situations.[8] Furthermore, the strength of the second-order benefits varies. The various second-order arguments for rule-following implicitly assume a situation where applying the rule usually is appropriate and situations where it isn't are exceptions. Typically, the rule "works." In this environment, it is easier to accept anomalies for the sake of the various positive second-order results rulebased decision-making promotes.

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complexity of its calculations render it likely to lead to bad results in their hands."

[8] And, of course, since an important second-order reason for following a rule in a particular situation is that following the rule generally produces good results, even the second-order reasons for following a rule that doesn't do so diminish.

So there is no getting away from asking how good a decision-aid a given rule is in the first place. There are three kinds of reasons why procurement rules – and, perhaps fairly commonly, rules used to guide behavior in government organizations – may, unlike the rules discussed or assumed in the jurisprudential/legal literatures, not typically work to produce good decisions. They are that: (l) the major justification of many rules is to prevent abuse, not to produce generally good decisions; (2) the difficulty in changing rules once adopted creates more problems in many organizational settings than in legal or moral settings; (3) rulebased decision-making more than discretion-based decision-making is subject to unintended negative consequences that persist. Examining these arguments requires us to examine factors that don't appear in the legal/jurisprudential literatures, because they often raise issues relevant only in organizations.

First, I think it would be fair to state that for many of the rules of the traditional procurement system – as well as for much of the panoply of hierarchical signoffs and of objectification – no claim was even offered that following the rule would generally produce good decisions. To be sure, some of the many rules were justified on the grounds that following them was generally likely to produce good results. So, for example, allowing every interested firm to bid would increase the expected quality of the best proposal, as would leaving at least 30 days for firms to respond to the government's solicitation.

However, many rules were justified mainly or solely as ways to avoid abuse, particularly corruption. (Rose-Ackerman l999: especially pp. 59-68; Klitgaard et al 2000: especially Ch. 2) The purpose of the rule wasn't to help people make decisions; it was an effort by principals to control the behavior of agents. Applied by honest people,

these rules would typically produce bad results, but using the rule would prevent dishonest agents from producing disaster. In addition, all of the many rules imposing government oversight requirements on contractors (such data submission and audit rules) were justified, pretty much by definition, based on the danger that, without them, some would cheat the government. It was distrust – both of government officials and of contractors – that produced the fear of discretion in the traditional procurement system.[9] The role the fear of abuse plays in Schauer's argument is to serve as a justification for applying a generally sensible rule to anomalous cases. In the traditional procurement system, fear of abuse drove the substantive content of the underlying rule itself, which is quite different. The image of a good generalization marred by anomalies does not apply. Instead, these procurement rules generated everyday error to avoid occasional abuse; a second-order tail wagged a first-order dog.[10]

I will cite several examples. One is the rule forbidding the government from accepting proposals from bidders that are late, even by five minutes (FAR l5.208). This rule is designed only to prevent the possible abuse of illegal transfer of information from timely bids to a favored bidder who then could submit a winning bid late. There is no reason not to provide government officials the discretion to accept a bid that might turn out to be the best one for the government where unforeseeable delays (say the sudden illness of the spouse of a key proposal writer or a computer crash at the bidding firm's offices) cause a proposal to be late, other than to avoid abuse. The rule is otherwise nonsensical. Another example is rules that prevented government officials from having

[9] This is an underlying theme in Kelman l990.

[10] Obviously, if abuse is the common practice rather than the exception – the case, possibly, with procurement corruption in some times and places – then the argument that a rule generally produces better decisions than greater discretion, with only occasional anomalies, regains its force. To repeat a point from

one-on-one meetings with potential bidders once a procurement process is underway. Pursuant to this rule, such meetings were limited to group "bidder conferences," open to all interested firms. This rule deprived government of valuable information and of feedback on whether the requirements it was considering made sense or not, since in these group settings competitors didn't want to say anything of interest, lest they reveal information about their bidding strategy. The rule was totally contrary to commercial purchasing practice, which regarded vendors as invaluable sources of information in early stages of a procurement. The only justification for the rule was to prevent abuses -- government officials giving information to one potential bidder that had not been given to others or plotting plans to "cook" a solicitation to favor a bidder. Perhaps the most important example was the informal rule enjoining use of information about the past performance of suppliers when deciding from whom to buy the next time around. The many negative unintended consequences of this practice will be discussed below.[11] At this point, what should be noted is that this counterproductive practice could never have been justified as a rule that generally would produce good decisions, but only on the grounds that it would prevent abuse (decisions to use this evaluation factor corruptly to favor one supplier over another).

Second, as has often been noted, rules, once adopted, become difficult to change.[12] This is partly because of what social psychologists call the "mere exposure effect," by which is meant that simple repeated exposure to something increases a person's liking for that something, independent of any reinforcement effects due to

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earlier, no judgment can be made absent an empirical judgment about the extent to which following the rule produces the right decision.

[11] See below, p. XXX.

[12] For a fuller discussion, see Kelman (forthcoming), Ch. 1.

positive experiences with that something (Harrison 1977, Myers 1999: 431-33). One of the early review articles on this topic, which has been extensively studied in the laboratory illustrates its operation (Harrison 1977: 40) through the changed attitude of Parisians over time towards the Eiffel Tower. The Tower initially was seen as hideous and evoked a storm of protest. However, "because of its tremendous height, the tower was ubiquitous and inescapable and hence was likely to be seen day after day. …(P)erhaps attitudes towards the tower changed simply because it became a familiar part of the landscape."[13] So people tend to like a given rule more, just because they've used it a great deal.

However, the attachment of people in organization to rules does not come about simply as the result of an unplanned, preconscious psychological phenomenon. For example, in Merton's (1968: Ch. 8) classic discussion, the displacement of devotion to rules as goals by an attachment to rules as means begins with an organization's inculcation of a commitment on the part of organization members to the rules as an integral part of the organization's mission, which ends in development of a psychological attachment to the rules that both creates dysfunctional behavior but also makes organization members resist changing them.

Finally, rules also may become entrenched because they serve as cognitive structures that direct a person's attention to certain aspects of the world rather than

[13] The earliest experiment on the effects of repeated exposure on attitudes dates from 1903; a l989 review article counted more than 200 experiments on the phenomenon (Bornstein 1989: 265-66). Many of these experiments are quite ingenious. In one, subjects were exposed to a number of purported Turkish words and asked to rate how positive their meaning was; the nonsense words people had seen most frequently were rated most highly. (Myers 1996: 431) In another experiment, subjects shown a photograph of themselves and a mirror-image photograph preferred the mirror-image photo, while for close friends of the subjects, the preference was reversed. In each case, subjects preferred the image they were most accustomed to seeing. (ibid. 485)

others. Since people are inevitably limited in what out of the enormous fire hose of data from the world they can process, rules as cognitive structures discourage people from even noticing elements of the reality around them that the rules don't cover, and hence of the changing features of the environment that would signal the need for rule change. (Ross and Nisbett 1991: 75-77)[14]

In organizational situations, the resistance of rules to change is one of the main criticisms of dependence on rules in organizational design in the first place. (Mintzberg l979: 325; Allison and Zelikow l999: l69-70; Hannan, e.g. Hannan and Freeman l984, regards the inability of organizations to change in the face of changing environments as the main source of organizational death) Some organizations face stable environments, where the resistance of rules to change is relatively unproblematic. But for many, environments change relatively rapidly, and this may mean that application of a rule that initially produced only occasional anomalies comes over time routinely to produce bad decisions. In the procurement system, for example, it may not have been hugely important to evaluate the past performance of suppliers selling pencils or paper clips, but when government started buying more sophisticated professional services or information technology, this old rule became more of a problem. And high-tech firms may have been willing to accept onerous government oversight rules when the Defense Department dominated the high-tech marketplace, but as government became a much smaller part of the market, they became no longer be willing to bid for government business if those rules applied.

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[14] In his generally jurisprudential discussion, Schauer (l99l: 42, and generally Ch. 3) discusses the phenomenon whereby generalizations, such as rules, direct our attention to elements of reality and "ordinarily make it more difficult, albeit not impossible, to think and talk" about elements of the reality the

The resistance of rules to change over time can be an issue in the legal system as well. Schauer notes that "rules allocate power across time by entrenching the categories and generalizations of the past and thus dissipating the power of the present. …Insofar as legal systems embrace rule-based decision-making, they serve as institutions to preserve the past rather than as vehicles for departure from it." (Schauer l99l: 173) However, this on the whole is less of a problem in law than in organizational behavior. First, social values underlying law generally change more slowly, if they change at all, than do the environments of many, if not most, organizations, so outdated rules are less of a problem. Indeed, as the Schauer quote suggests, in thinking about the law one may argue that the resistance of legal rules to change is good, because it prevents excessively rapid policy shifts, while few would argue that it is good for an organization to be unable to adapt to changes in its environment. Second, although the mere exposure effect or other psychological phenomena making rules resistant to change surely operate in legal thinking, they probably normally operate with less force. Judges or legislators typically don't apply a given rule nearly as often as would many people in an organization, who might apply a common rule many times each day. Such frequency of use strengthens the impact of the mere exposure effect in organizational situations. Also, legal and moral reasoning about whether an old rule continues to be appropriate is far more deliberative than is rule-application in most organizational situations, increasing the likelihood that outdated rules will be revised.

Third, because it tends to assume that rules generally function well as decision aids, the philosophical/jurisprudential literatures do not discuss unintended negative

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generalizations don't cover. He gives the linguistic example of the word "snow," a generalization that inhibits our ability to notice the different kinds of flakes that the numerous words used in Inuit encourages.

consequences of a rule that can make the rule produce poorer and poorer results over time.[15] Unintended negative consequences of rules permeated the traditional procurement system.

Three important examples illustrate this. One was the government's refusal to consider a supplier's past performance in making new contract awards (Kelman l990: Ch. 4). This informal rule (it appeared in no regulation) developed in the service of the statutory conception of "full and open competition" which feared that giving an advantage to incumbent contractors, even well-performing ones, would unlevel the "playing field," and also to guard against abuses that could arise from subjectivity in past performance evaluation. Not surprisingly, this practice set in motion a plethora of negative consequences, since suppliers were not, formally at least, punished for poor performance (unless performance was so bad that the government had terminated the contract for default, an extreme step) nor rewarded for outstanding performance.[16] The result was chronic overpromising prior to contract award, poorer contractor performance once a contract was signed, and less customer satisfaction, compared to comparable contracts in the private sector. (Kelman l990: 6-7)

A second example was the so-called "price reduction clause" in General Services Administration (GSA) contracts for governmentwide use. These GSA contracts were

[15] By "unintended consequences" I mean second-order effects an original action sets off. The study of unintended negative consequences is a staple of social science. The phrase was introduced into the literature by Merton (1936). See also Jervis 1997: 6l-67. There is no reason to believe unintended consequences need always be negative, though it is on negative consequences that discussions in the literature typically focus. So, for example, Defense Department research designed to develop a communication system distributed enough to survive nuclear war ended up producing the Internet. Protestantism had the unintended positive consequence, if one believes Weber, of fostering economic development. (Jervis l997: 65) Sadly, I can think of no significant unintended positive consequences of any of the traditional procurement rules, and this discussion will thus focus on unintended negative consequences.

negotiated to require vendors to offer the government a price at least equivalent to the lowest price offered any commercial customer under similar terms and conditions. The price reduction clause was a rule requiring vendors to lower their GSA price whenever they provided a lower price to any other customer. The purpose of the rule was to give government the best possible prices. The result of the rule, however, was that vendors were unwilling to give government temporary discounts, sale prices, or quantity discounts, because doing so would trigger the price reduction clause for all other customers and all times. The rule thus kept GSA prices higher than they otherwise would have been.

A third example was the notorious system of Defense Department specifications for everyday items, ranging from ketchup to troop underwear to chocolate chip cookie mix (Harper's l985). These specifications emerged from the "buy low bid" rule. To buy the low bid, the government needed to specify what it was buying, so it could choose among comparable offers. Whenever the government discovered that a previous low bidder had cut a corner in such a way as to make the product unacceptable, a new element was added to the specification to "tighten" it. Over time, some element of the growingly complicated spec would appear that commercial vendors of the product could not meet. Unwilling to adapt their products for the government, which was a tiny part of their business, these vendors exited the bidding. The unintended negative consequence was that eventually the only firms bidding on these items became ones with no commercial marketplace presence, who had come into existence solely to bid on government spec items, and that generally had high costs and poor customer responsiveness. Defense

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[16] As I noted in my earlier book on the subject (Kelman l990: 105), the system probably worked better in practice than in theory, with government officials informally, and in some sense perhaps illegally, finding

Department "milstandards," rules specifying manufacturing practices as a quality tool in a low-bid environment, had a similar effect of excluding commercial firms with manufacturing processes that didn't conform to the standards.

In a related vein, rules imposing detailed cost reporting requirements on contractors under the Truth in Negotiations Act frequently caused commercial companies to stay out of government business, whether because they lacked accounting systems to comply with the rules, were unwilling to reveal sensitive internal cost, or refused to accept profit margins this cost-plus-fixed fee environment imposed. (For example, five of the country's ten largest semiconductor firms refused to accept Defense Department contracts requiring provision of such cost data .) (Center for Strategic and International Studies l99l: 20) The unintended negative consequence was to limit participation to significant parts of defense contracting, even at the subcontractor level, to firms bidding only on government business that were often more expensive and less innovative.[17]

A final example involves the unintended consequences of the rule establishing "bid protests," the ability of disappointed bidders to challenge government source selection decisions. This was an example of a rule justified to oversee and thus prevent abuse by government officials. However, the fear of being subjected to a traumatic lawsuit (not to speak of the fear of losing) inhibited government officials from trying procurement practices not specifically sanctioned by other procurement rules, even if the rules did not forbid the practice, because this was perceived to increase one's risk of being sued. Furthermore, bid protests had the unintended consequence of establishing an

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ways to judge suppliers based on past performance.

[17] In some cases, commercial firms established separate production lines for runs of products just for the Defense Department, so that their extra costs of doing business with the government wouldn't hurt their commercial business. This deprived the government of economies of scale.

adversarial relationship between government and suppliers -- at the extreme a situation where a court ordered the government to do business with an unwanted supplier. This harmed government's ability to do what many commercial buyers do, which is to establish trusting relationships with suppliers. (Bhote l989) Such relationships promote valuable sharing of information, investments in the relationship, as well as easier cooperation, across individuals and organizations, that create greater value in organized mutual endeavors; trust is therefore typically seen as an important source of organizational social capital (Kramer and Tyler l996; Cohen and Prusak 2001). For this reason, commercial firms often try to develop cooperative, rather than adversarial, relationships with key suppliers (Bhote l989).

Any decision, whether rulebased or not, may of course produce unintended negative consequences (or unintended positive ones for that matter). However, when policies or practices resulting from the exercise of discretion prove to have unacceptable unintended consequences, there is no bar to revising the original action, other than the normal give and take of substantive argument over the merits of any revision. One result of the fact that rules are more difficult to change than non-rulebased decisions is that the rules whose unintended negative consequences make them produce poorer and poorer decisions over time nonetheless get retained. Indeed, often the original unintended negative consequences generate new rules to deal with them, a phenomenon that in discussions of government regulation of business has been referred to as the problem of "pyramiding interventions." (Zeckhauser 1981: 18) So each problem with the cookie mix spec created by the original "buy low bid" rule was handled through addition of additional rules regulating what bidders were required to offer. Many of the rules

regulating supplier behavior after contract award grew out of the rule against evaluating supplier past performance at the time of contract award.

Up to this point I have been discussing situations where the assumption in the literature on rules in jurisprudence and moral philosophy that rules generally produce good decisions is questionable. But there are also a number of effects of the extensive use of rules in an organizational setting that are irrelevant to considerations featured in that literature and that therefore that literature doesn't discuss. The two on which I will focus are (1) "red tape" and (2) rules focusing attention to minimum levels of performance and away from results.

Students of government organizations may find the suggestion in some of the philosophical/jurisprudential literature on rules as decision-making shortcuts to have an ironic ring. For one of the most pervasive criticisms of the proliferation of rules in government is that they cause decision-making to become more complicated and to create enormous delays. A rulebound system, in this view, is marred by "red tape."

Analysts of red tape (e.g. Kaufman 1977) have noted that much of what people see as pernicious red tape grows from efforts to protect people from each other, to prevent governmental abuse, and to constrain official decisions in the name of democracy.[18] "One person's 'red tape,'" stated Kaufman (Ibid.: 4) in a famous bon mot, "may be another's treasured procedural safeguard." Bozeman (l993: 274, 283) seeks to rescue the concept both from this defense and also from synonymity with rules by referring to red tape as meaningless rules. .

This latter conceptualization may go too far, for it ignores the possibility that a large agglomeration of rules, each of whose benefits individually outweigh its costs, may

together create so much delay that the system of rules comes to have greater benefits than costs. (This is an argument analogous to a view among public-choice scholars – see for example Weingast et al l98l -- about government interventions each sought by one group adding up to a system whose costs outweigh its benefits for everybody.) Certainly, collectively the sum of all the rules in the traditional procurement system slowed the system down enormously, so that buying products or services took far longer than in the private sector, and following the rules took up much of the time of contracting officials.

Second, the system of rules directed the attention of government officials away from opportunities to get the government a better deal through non-standard or innovative arrangements, and more broadly away from their responsibility to achieve results for their organizations' missions. In my view, perhaps the most important problem with rules – and the one that lay closest to the heart of procurement reform efforts – was not what rules contained but rather what they left out. The rules, of course, couldn't cover every aspect of the job of someone in the system. There was nothing in the rules prohibiting people from looking for better ways to do business in areas the rules didn't address. However, when rules regulate most parts of a person's job, it is natural to conclude that the job consists only of following the rules. This is so for a number of reasons. First, following the rules may take so much time and effort that it leaves little over for much else. Second, the rules constitute behavior that is clearly sanctioned, while behaviors the rules don't mention lack the same clear endorsement, so unmentioned behaviors are at a minimum at a comparative disadvantage to rule-obedient behaviors for people worried about being criticized if they make a mistake. (This is a version of an argument appearing in Warwick l975: 102-04.) In practice, the greater the ruleboundness of a

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[18] On the latter, see below, pp. .

system, the more likely people are to assume that anything not permitted by the rules is prohibited.[19] Third, as noted above[20], rules serve as cognitive structures that direct a person's attention to certain aspects or responsibilities of the job rather than others. Rules are "a frame of reference that constrains exploration." (Weick l979: 156) If something isn't in the rules, many will come to see it as not in their job description.

Put another way, through all the mechanisms noted above, a rulebound system, by delineating minimally acceptable behaviors, easily slides into delineation of the maximum level of performance the system engenders. "Defining work responsibilities in a clear-cut manner has the advantage of letting everyone know what is expected of them. But it also lets them know what is not expected of them." (Morgan l986: 36).[21] A person in a rulebound system will easily conclude that, as long as what they've done violated no rules, their behavior is acceptable – so, for example, a person wouldn't be led to worry that buying cookies using a lengthy spec might not have been a smart idea. In particular, a person in a rulebound system will be discouraged, for all these reasons, from considering new ways of doing business or better approaches to delivering public value that are not covered by the rules. "The mechanistic approach to organization tends to limit rather than mobilize the development of human capacities." (Ibid.: 38) In the pithy phrase of Henry Mintzberg (l979: 346), "An organization cannot put blinders on its personnel and then expect peripheral vision."

Relatedly, a rulebased system sent people a signal to focus on process more than ultimate results. Most of the rules in the system regulated processes, not results ("allow

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[19] I frequently experienced situations while in my position in government where people came to me requesting waivers of rules to allow them to undertake certain changes, where it turned out that nothing in the rules forbade those behaviors in the first place.

[20] See above, p. .

everyone to bid" or "allow at least 30 days for bidders to respond to a solicitation"). Even those prescribing a substantive decision rather than simply a process leading to a decision ("buy from the low bidder") were not directed towards results directly, but only prescribed decisions believed generally to produce good results. No rule stated, "Get a good deal for the government," if for no other reason than that such a "rule" would provide insufficient guidance to a person about what to do, and hence wouldn't fill the role rules are supposed to fill. Even if one assumed (incorrectly, as argued above) that these rules typically did produce good results, the fact remains that what they explicitly mentioned was not results but inputs. Insofar as rules directed people's attention away from what wasn't in the rules, this meant therefore that a rulebased system focused the attention of procurement officials on processes and inputs, not on results. This is the phenomenon of "displacement of goals," where means come to be valued more than ends, that appears in Merton's classic l940 article (reprinted in Merton l968: 249-60), which was the first major criticism of the Weberian view that bureaucracy was the most effective way to structure an organization. "(P)unctilious adherence to formalized procedures…may be exaggerated to the point where primary concern with conformity to the rules interferes with the achievement of the purposes of the organization." (Ibid.: 253) People display ritualism and a "check the box" mentality, caring only about process.

Briefly, I should also mention that, in addition to questions about whether second-order consideration arguing on behalf of following rules are outweighed by their first-order negative consequences, the strength of second-order considerations itself varies by context. Take the second-order consideration of reliance/certainty. It can arise in

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[21] This argument was first made, in a different context, in Gouldner l954: Ch. 9.

connection with procurement. (Bidders may rely on assumptions about how quickly the government will pay its bills in pricing a bid, or they may rely on assumptions that bids will be treated fairly in deciding to compete for government business. In cases such as these, since decisions to compete are voluntary, a lack of certainty about how the government will behave will redound to the government's detriment, in the form of bids assuming a higher level of risk, and therefore higher price, or in no-bid decisions.) At the same time, bidders may prefer a more uncertain situation to a poor rule, even when the certainty benefits of the rule are included. The rule "always take the low bid" adds certainty, but it also reduces the ways competing firms can differentiate themselves, and firms wishing to compete in areas other than price may prefer a less rulebound environment despite the loss in certainty. Firms may also prefer a less certain environment that gives the government flexibility to tailor the degree to which it audits contractors to the contractor's past record of honesty over a rule that everybody be fully audited.

Finally, I wish to discuss a very different kind of argument, appearing in both the jurisprudential literature and the literature of public administration (reflective of that literature's ancestry in Woodrow Wilson's classic distinction between "politics" and "administration"). (Wilson l887) This is an argument from public values that rules and hierarchy are essential elements in the organization of the civil service in a democratic society.[22] As Schauer notes (l99l: 159, 173), rules are a tool to allocate power. "A decision-maker not constrained by rules has the power…to take everything into account. Conversely, the rule-constrained decision-maker loses at least some of that jurisdiction.

…Rules…(thus reflect) a society's decisions about who will decide what, who is to be trusted and who not, who is to be empowered and who not,…and who is to give orders and who is to take them."

In a democratic society, in this view, the basic foundation for decisions should be either constitutional requirements or laws Congress passes. The President, and by extension the executive branch in which government agencies reside, does not make law, but is required by the Constitution to "take care that the laws be faithfully executed." As Herman Finer (1941: 336, 342, emphasis added) boldly stated in a classic contribution:

> Are the servants of the public to decide their own course, or is their course of action to be decided by a body outside themselves? My answer is that (they) are not to decide their own course; they are to be responsible to the elected representatives of the public, and these are to determine the course of action of the public servants to the most minute degree that is technically feasible. …I cannot yield on the cardinal issue of democratic government. …Without this requirement, we shall gradually slip into a new version of taxation without representation.

In Finer's (Ibid.: 335) blunt phrase, the role of non-elected officials is "subservience."

These foundational considerations, Ronald Moe argues (1997: 42-44), establish the virtues of rules and hierarchy in government and significantly limit non-elected public officials in any exercise of discretion. Instead, Congress establishes laws with rules to guide the decisions of non-elected officials. "In the private sector, there are compliant boards of directors which…can in no way be compared to the supervision provided agency management by Congress. Repeatedly, outside 'CEOs' brought in to 'reinvent' or 're-engineer' this program or that agency along private sector lines are shocked to find

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[22] These arguments involve deontological considerations separate from producing the best overall results. A defender of the traditional procurement system might argue that it was more important for government to promote the public values to be discussed here than to obtain good value from the procurement process.

that they must meticulously obey laws and regulations and are answerable to Congress for their actions." (Moe and Gilmour l995: l38-39)

A similar argument may be made on behalf of hierarchy. As the first Hoover Commission report on governmental organization stated in 1949, the public cannot hold elected or politically appointed officials accountable for agency performance without hierarchy. "Responsibility and accountability are impossible without authority – the power to direct. The exercise of authority is impossible without a clear line of command from the top to the bottom" (quoted in Warwick l975: 70).

A somewhat related argument for rules involves the substantive content of how government treats citizens. One primary argument for rules in a public context has been that by treating people the same, they treat people fairly. For Weber, who wrote the pioneering sociological work on bureaucracy, an advantage of rules is that "the abstract regularity of the execution of authority" respects "the demand for 'equality before the law,'… of the horror of 'privilege' and the principled rejection of doing business 'from case to case.'" (Gerth and Mills l958: 224)

This argument may sound similar to the argument that rules binding non-elected government officials are required in a democracy. In fact, it is not the same. One could imagine Congress passing a law that every time the government lets a contract worth over $l00 million, Congress, not the procuring agency, shall determine who receives it, leaving decisions about who receives such contracts to Congress' discretion. Such a law would respect democratic decision-making but not, perhaps, provide sufficient protection against arbitrary abuse of power.

What should we make of the various arguments from democracy?[23] First, in my view there is nothing undemocratic about a decision by Congress to delegate discretion to unelected officials, as long as the decision to delegate itself occurs democratically.[24] Independent of the question of which law would make better public policy, I see nothing more democratic about a law passed by Congress stating that "all bidders must be allowed to bid and have their bids considered" than a law similarly passed stating that "agencies may limit competition to a reasonable number of well-performing bidders." Congress might delegate discretion for a number of reasons, including the conclusion that government organizations must be unshackled from bureaucracy if they are to perform more effectively on behalf of citizens.

Second, I agree that fair treatment of people is an important value and that sometimes rules may be necessary to protect it. However, the argument that treating people fairly requires treating them the same notices the first part of Aristotle's criterion for fair treatment, which is that relevantly similar cases be treated alike, but ignores the second part, that relevantly different cases be treated differently (Feinberg l973: l00) One could argue that traditional procurement rules inappropriately and unfairly treated all contractors as if they were out to cheat the government, or that the late proposal rule unfairly treated bidders with a good excuse for being a half-hour late the same way it treated those seeking to hold back their proposal as part of a corrupt deal to receive information about other bidders. Indeed, the frequent criticism of bureaucracies for inflexibility, and persistent requests that "an exception be made" to a certain rule because

[23] I will not consider here various other interesting arguments on behalf of greater administrative discretion in a democracy that are not specifically relevant to procurement rules. See, for example, Moore (l995, esp. 293-305).

of special features of a particular situation, reflects the reaction that identical treatment of relevantly different cases is unfair, and that fairness requires different treatment, not the same treatment, of different cases. There may be circumstances where the value of equal human worth does indeed suggest the government ought to treat all people the same (the right to vote comes to mind as an example), but the number of such situations, I believe, is far fewer than the number where rules required government to treat suppliers the same way for reasons, purportedly, of "fairness."

I suspect that much of the force of the argument for treating people the same in the name of fairness was really a version of protecting the system against occasional abuse; the first part of the Aristotelean injunction -- "treat like cases alike" -- can be made into a rule if one changes it into "treat all cases alike," while implementing the second part of the injunction -- "treat relevantly different cases differently" – requires the exercise of discretion to implement, and such discretion might be abused. (An official might treat similar bids differently based on the irrelevant consideration of whether they were politically connected, blood relatives of the contracting official, or paid a bribe.) In fact, what the system did to protect against abuse was frequently to violate the Aristotelean conception of fairness in the name of preventing abuse.

So, to conclude this section, with all these "on the one hand"'s and "on the other hands"'s about the virtues and vices of rulebased ways of designing organization, where does this leave us (beyond President Harry Truman's hoary and oft-quoted plea for a one-handed economist)? One straightforward, and surely at least somewhat helpful, conclusion is that it is unlikely one would wish to structure an organization fully around

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[24] This is of course a somewhat controversial view, which goes against the l935 Supreme Court decision in Schecter Poultry Corporation v. U.S., a decision arguing for the view that some democratic delegations to

either rules/hierarchy or discretion/empowerment. Few would argue the trial-and-error individual development of maintenance lore is preferable to a maintenance manual. Few would argue that a plant manager should be able to commit unlimited corporate funds to unexamined investment brainstorms. At the same time, the many features of the traditional procurement system whose main justification was to avoid abuse, even at the cost of routinely inappropriate decisions, should have created a big red flag. When rules and hierarchy exist mainly to prevent abuses, one should aggressively be looking for ways to make procurement rules justified by this argument the least-restrictive possible, as well as for ways to use the criminal justice system rather than the procurement system to seek these goals (Kelman l990: 96-100). Generally, designing an organization so extensively around rules and hierarchy as was the procurement system prior to procurement reform was not producing results as good as a less rulebound system could achieve. I believe it is fair to conclude that a new approach was in order.

II

The following are the most important changes that took place in the procurement system in the context of the "re-inventing government" effort, divided up into the broad categories (l) streamlining, (2) "best value," (3) using commercial items, (4) partnership between government and industry:

(1) Streamlining: No single change in the procurement system has had more of an impact on the average government employee than granting users a government-issued credit card for making small purchases of ordinary-use items (desktop PC's, software, office supplies, or simple services such as vehicle repair for a forest ranger or FBI agent in the field). Prior to introduction of the credit card, every purchase, even a $25 buy, had

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executive-branch agencies are so broad as to be unconstitutional.

to go through an agency's contracting organization. This meant that a user would need to fill out a requisition explaining what they wanted, send it to the contracting office, wait until it got on top of the pile, perhaps answer questions about the item from a semi-clerical purchasing agent, and wait until the item arrived. Miscommunications frequently led to the need to return the original product and start the process anew. Users often waited weeks or months to receive even minor items.

After passage of FASA, a major expansion of a previously experimental government credit card program began. Two rules needed to be eliminated to allow the expansion. One was the seven statutory contract clauses applying to all government purchases, regardless of dollar size (such as compliance with the Buy America Act) and the requirement that purchases under $25,000 go to small businesses. The contract clauses made it impossible to use a credit card to buy anything (though it could have been used to pay for things bought through other methods), because the standard credit card agreement a person signed did not include the seven clauses. The rule that purchases needed to be made from small businesses required involvement of contracting organizations in purchasing, since users could neither be expected to know the rule nor always to know which firms were indeed small businesses under the legal definition. FASA eliminated the seven clauses and the small business requirement for purchases under $2500, allowing use of the card for such so-called "micropurchases."[25] The second rule that needed to be eliminated was the requirement that only contracting officials could

[25] This was the existing threshold under which no competition rules applied, which meant that contracting shops didn't need to be involved to enforce competition rules. Financial controls were built into the credit card (disallowing transactions in establishments with certain SIC codes), and dealt with by supervisory review and internal audits. A GAO report (General Accounting Office 1996) found relatively few examples of abuse of the credit card, though there have been some instances of employees fired or jailed for misuse.

authorize the government to spend money, not program officials. Agencies allowed the heads of procurement organizations to delegate purchasing authority to credit-card holders.

With elimination of these two rules, the credit card grew with enormous speed. From about 50,000 in l993 (many in the hands of contracting rather than program people), the number of government-issued cards grew to 780,000 by 2000.[26] The card meant that transactions previously requiring a lengthy detour through an agency's procurement organization could now be undertaken immediately and directly.

The other most important streamlining change was the dramatic expansion of simplified vehicles for buying products and services at dollar amounts far larger than $2500, through expansion of GSA contracts and development of so-called "governmentwide acquisition contracts" (GWAC's).

Two rules were eliminated that produced a dramatic expansion of the popularity of the GSA schedules. In l996 GSA eliminated the price reduction clause (one of the examples mentioned earlier of a procurement rule with unintended negative consequences), to allow vendors to offer some customers price reductions not offered every customer. Elimination of the clause had an electrifying effect. Contracting officials at the Internal Revenue Service came up with a new idea – to invite a number of computer hardware/software GSA contract holders to bid for "blanket purchase agreements" with their agencies, specifying discounts off GSA prices they would offer on their whole range of items, and the IRS would choose a smaller number of these bidders to be providers of choice to the agency. Before elimination of the price reduction clause,

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[26] These figures were provided by the General Services Administration. I would like to acknowledge the assistance of David Drabkin in making them available.

such an arrangement would have been impossible. Now, following IRS's innovation, it spread quickly throughout the government. Using streamlined source-selection procedures (there were very few rules regulating the process), agencies were able to award a small number of blanket purchase agreements to vendors, at prices significantly discounted from GSA prices, for supplies users could then order using credit cards.

In buying services, there had grown up before procurement reform the practice in some agencies of awarding so-called "task order contracts," where agencies chose a contractor through full and open competition who would then be permitted to undertake individual smaller jobs, called "task orders," without further competition. These lived a shadowy existence, without recognition in the rules (lawyers in the Office of the Secretary of Defense stated they were illegal, though they continued to exist in the Defense Department anyway). FASA included a provision establishing an authority for the government to award "multiple-award task order contracts," whereby a stable of contractors could be selected upfront, with simplified competitive procedures limited to the winners for choosing a contractor for individual orders. In l995 the Department of Transportation took the initiative to establish a multiple-award information technology services contract that would be open to orders (for a small fee) from the entire government. Thus was born, out of an authority granted in FASA but not imagined for a contract open to the whole government, the so-called "governmentwide acquisition contract." Shortly thereafter, the National Institutes of Health developed a similar vehicle – which they began advertising (a first!) on rush-hour prime time radio in the Washington area. In l996 a competitor to these new contracts arose when GSA established its first governmentwide contracts for information technology services, which basically consisted

of pre-negotiated labor rates for various labor categories, along with a set of standard terms and conditions. Selection of a supplier from among the many contractors on these service schedules was subject to even fewer rules than orders under GWAC's. Finally, agencies introduced other streamlining changes on their own, such as page limitations on proposals, to cut back on a pre-reform regime where supplier proposals often needed to be hauled in by truck. Agencies also reduced the number of evaluation criteria in a solicitation, to streamline evaluation.

The many new contracts quickly became the preferred way to buy information technology and some other professional services, including for orders far larger (sometimes in the hundreds of millions of dollars) than task orders had ever been used before, thus bypassing traditional source-selection procedures in Part l5 of the FAR. As a result, the various streamlining changes adopted in the FAR l5 rewrite after much controversy (for example making it easier to remove bidders from the running earlier in the source selection process), became somewhat overtaken by events, since the ink was hardly dry on the rewrite before use of Part l5 procedures began dramatically to decrease in favor of alternate contracting approaches. As of this writing (summer 200l), however, growing concern exists about problems with how task orders for services are awarded under GWAC's and the GSA services schedules, and it is possible that some re-regulation in this area may occur.

(2) "Best value": At the time procurement reform was beginning, the idea that contracts should not necessarily be awarded the low bidder had emerged and was fighting to survive against many critics, especially in Congress. By the end of the reform decade, "best value" rather than low-bid source-selection decisions, which involved considerably

greater room for judgment by government decision-makers, were the rule. Furthermore, refusal to use supplier past performance in source selection vanished, and past performance emerged as a major factor in choosing suppliers – in some cases, as the most important evaluation criterion in a solicitation. The government judged past performance by contacting customers of similar contracts a bidder had performed or by using "report cards" an agency had already developed on the contract. (The National Institutes of Health took the initiative to develop a governmentwide database for past performance report cards where agencies, on a fee-for-service basis, could submit supplier performance evaluations and access those of others.)

Another change in source selection promoting best-value decision making, pioneered by the Department of Energy, was replacement of all or part of a bidder's traditional written proposal with an "oral presentation" where the actual key personnel who would be working on a project presented their ideas and answered "spot quiz" questions from government evaluators. Previously, those who would eventually be working on a contract were frequently not even involved in developing the proposal to win the contract! And prior to reform, oral presentations had been considered too subjective a way to evaluate proposals.

Finally, in the reform environment, experiments with new ways of structuring contractual relationships with suppliers to improve the value government obtained from contracting flourished. The canonical example was elimination of the spec for chocolate chip cookie mix (along with all the other milspec food) and its replacement in l996 by an entirely new way of buying food for the troops, whereby the government contracted with commercial food distributors who offered an electronic catalogue of commercial food

items to mess sergeants, who placed their ordered and received "just-in-time" delivery. Other examples of new contractual arrangements included a "space launch catalogue" developed by NASA where different kinds of commercial-type launch services were offered at fixed prices, and the spread into government of commercial practices such as low-cost enterprisewide software licenses and Internet-based reverse auctions for buying products. Commenting on experiments with reverse auctions, Federal Computer Week (2000: 3) noted that Internet auctions had "been around for only about a year" in the private sector and that "(i)n the past, government would have taken much longer to follow the private sector's lead."

Interest also grew in new forms of incentive contracting to increase the probability that the contractor would perform well. These included "share in savings" contracts pioneered by the Department of Education whereby the contractor was paid exclusively as a percentage of the savings their efforts generated (so the larger the savings the larger the payment, and no savings would have meant no payment) and "award term contracts" pioneered by the Air Force according to which a contractor could be rewarded for outstanding performance by extending the contract's duration. Few of these new business practices required rule changes, but in the new environment, as the initiators of reform had hoped, less focus on rules opened psychological space for more focus on ways to accomplish the job better.[27]

Commercial items: The Defense Department undertook a number of steps to change practices that restricted the military's access to commercial suppliers and commercial products. The first major reform initiative the new team at the Defense

[27] It is instructive to compare the many years it took for the use of enterprisewide licenses for software to spread to the government from wide commercial use to the quick experiments with

Department undertook was a l994 directive creating a presumption against using milspecs and milstandards to buy products. The Department also sponsored provisions, adopted in FASA, dramatically to scale back the applicability of rules requiring submission of cost data when commercial items were being purchased, as well as of rules requiring contractors and subcontractors agree to special terms and conditions such as a requirement to report to the government on dealings with terrorists.

Two successful examples of commercial item reform applied to weapons systems were development of the Joint Direct Attack Munition (JDAM) and of a new generation of cruise missile (JSAAM) (Ingols and Brem l998; Kelman l998). Elimination of many milspecs and oversight requirements for subcontractors (authorized by FASA in l994) allowed significant insertion of far-cheaper ordinary commercial technology into these systems, leading to dramatic overall cost reductions of one-half or more (compared, in the case of JDAM, to pre-reform bids on the same item and, in the case of JSAAM, to the current generation of cruise missiles).

Government-industry cooperation: The traditional procurement system, with the many bid protests, its emphasis on the danger of abuse, and extensive use of rules that expressed a lack of trust of contractors, was not an environment promoting government-industry cooperation. With procurement reform, two rule changes were made to promote government-industry cooperation. One was elimination, in the rewrite of FAR Part l5, of the rule prohibiting one-on-one meetings between the government and potential bidders during early stages of the procurement process, provided that a contracting official was present at the meeting (FAR l5.20l). The second rule change involved bid protests. In the Federal Acquisition Reform Act of l995 Congress eliminated a bid protest body that

whose standard of review made it especially easy for protesters to win. This left only bid protest bodies whose rules gave greater deference to the government, thus discouraging bid protests. In addition, an important purpose of reductions in contractor oversight, both rule changes involving fewer demands for cost data and management changes involving greater targeting of oversight resources based on past performance, was to reduce adversarial relations between government and industry.

Separate from the rule changes, many agencies began, for the first time, to set up offsite meetings between agency and contractor personnel as a major new contract was beginning to encourage common perspective and understanding, to establish contract "mission statements" signed by both sides or informal problem resolution procedures, and even routinely to refer to contractors as "partners."

Three observations should be made about this account of changes in these four areas. The first is that procurement reform changed some rules, including important ones (such as rules that prevented the spread of credit cards, as well as informal rules such as "buy the low bid" and "don't consider past performance"). It also reduced hierarchical approvals – an element of reform I haven't discussed – and objectification. But many rules remained, along with many reviews and considerable objectification. Nobody should mistake the system emerging from procurement reform as ruleless. In source selection, for example, the rule that proposals needed to be evaluated based only on criteria established in the original solicitation, along with transparency requirements for explaining the grounds for decision. While the new system of evaluating past performance significantly increased the weight given subjective judgments of government officials, it was far more structured than the way a commercial customer

would consider the past performance of a prospective supplier, involving, for example, a formal opportunity by a contractor to challenge, at a higher level within the agency, a past performance "report card." Finally, of course, oversight of contractors was by no means eliminated.

The second point is that many changes associated with procurement reform arose neither from statutory change nor from reinventing government initiatives emanating from the White House, but from innovations invented in the field. This includes GWAC's, changes in the GSA contracts, award-term contracting, oral presentations, and reverse auctions. This underlines the point that just as important as the rules that changed was the message that following the rules was not enough.

The third point is that procurement reform was not exclusively, or even mainly, about "streamlining" the system to speed things up and reduce paperwork. By no means all of those interacting with the reforms realize that. For the typical federal employee with only casual dealings with procurement, reform did almost exclusively mean streamlining. By number, about 70% of all procurement transactions in government are for sums under $2500 (this is analogous to the situation in corporate America). With procurement reform, these transactions were indeed made enormously easier. Also, for federal managers who needed support from information technology or professional services contractors, the availability of the many governmentwide acquisition contracts also dramatically speeded up and debureaucratized source selection.

There is, however, another group inclined to see streamlining as the major, or even the sole, purpose of procurement reform, namely government contracts lawyers and legal scholars, who tend to apply to the procurement process the general observation

taught in law school about tradeoffs between "due process" protections and the "efficient" operation of the legal system. So, for example, Steven Schooner (2001: XXXX, emphasis in original), a member of the public contract law faculty at George Washington University, which has the country's leading public contract law program, has written that the "reforms focused upon enhancing administrative efficiency, permitting fewer buyers to conduct more purchases in a timely fashion." Not surprisingly, these observers tend, as Schooner does, to criticize reform for sacrificing fundamentals of the rule of law for "mere administrative convenience" or "administrative expediency," to use phrases employed in a number of bid-protest decisions over the years rejecting agency efforts to limit competition, such as by establishing lists of pre-qualified suppliers, simply because of the burden of evaluating a very large number of proposals.[28] In this view, procurement reform is seen as analogous to illegal searches or seizures, which violate rights in the name of the efficient pursuit of criminals.[29]

However, for those who were leading the procurement reform effort, both myself and my colleagues in the Defense Department, streamlining was only a tiny part of what procurement reform was "about." For us, procurement reform was most importantly about freeing people from the psychological thrall of rules, to encourage them to abandon old ways of doing business that hurt the government's ability to gain value from its contractual relationships and to conceive of new practices that would

[28] One of the earliest GAO decisions on this topic was U.S. Department of Agriculture (B-182337) (l975), which talked about "administrative expediency." See also National Customer Engineering (B-251135) (1993), which talked about "mere administrative convenience."

[29] More broadly, "The legal profession that...views discretion as an evil. Discretion is the opposite of the rule of law." (Handler l986: 169)

create more value for the government. For me, the symbol of the old, value-destroying way of doing business was the failure to use past performance in source selection. For my colleagues in the Defense Department, it was milspecs. And, interestingly, neither using past performance nor replacing milspecs with commercial standards "streamlined" the process, initially at least, since past performance evaluation got added on to other parts of the source selection process and abandoning milspecs meant one couldn't simply paste the spec from the old solicitation onto a new one.[30]

I would even contend, at the risk of seeming paradox, that even streamlining was not mostly about streamlining. Instead, it was part of achieving larger purposes relating to government performance. First, speeding up the ability to acquire goods and services sends people in an organization a signal about urgency in accomplishment of the organization's mission. To put it gently, it sends a program manager a mixed message to tell them they are engaged in an enterprise to accomplish important public purposes and that the organization expects dedicated commitment to mission results – but that, unfortunately, it will take a year or two to get on contract for the products or services the manager needs for the program. The flip side of this is that, just as those abused as children often become abusers as parents, those subjected as government employees to indifferent or inconsiderate treatment as customers of internal agency administrative systems are sent a signal about "how government behaves" that easily can get transferred to how those same people treat citizens with whom they interact.

[30] Over the longer run, using past performance in source selection could well streamline the process by allowing some other evaluation considerations in source selection to be reduced or eliminated. And once the initial work had been done to replace a milspec by a commercial spec, that spec could be pasted into subsequent solicitations.

Second, there is increasing concern about a "human capital crisis" in the federal government, centering around problems government is having in recruiting and/or retaining bright, committed people needed to accomplish its work.[31] There are, of course, numerous reasons government jobs are unattractive to many, but among them is the perception that government's administrative environment (small issues such as getting reimbursed for travel expenses or the inability to use frequent traveler miles accumulated on government travel for personal use, along with larger ones such as getting rid of nonperforming employees as well as getting access to needed products or services) is bureaucratic, slow, and petty. Making this environment more employee-friendly, such as by streamlining procurement, is one part of a larger effort to make government a more attractive place to work.

Finally, streamlining isn't about just streamlining because streamlining is a way to encourage the innovation and creativity that are one of the two underlying major goals of the reform effort. In analyzing data from a survey of about l500 federal government contracting employees (Kelman: forthcoming), I have found support for the argument of Teresa Amabile (Amabile and Conti: l999) that, among people with a creative orientation, high job or deadline stress reduces creativity, rather than increasing it. My empirical results showed that, among respondents who agreed with the statement, "I prefer a job that requires original thinking," the more they reported that procurement reform had made their jobs easier, the more they reported that they had changed how they did their jobs as a result of procurement reform. (For those who don't prefer original

[31] This phrase has been popularized by David Walker, Comptroller-General of the United States. See, for example, General Accounting Office (2001).

work, a sort of shirking effect exists: the more those respondents reported reform had made their jobs easier, the less they had changed how they did their jobs.)

III

A coalition of government employee unions opposed to contracting out jobs that might otherwise be filled by their own members, and journalists and politicians ever-eager to uncover the unholy trinity of "waste, fraud, and abuse," have promoted an image of contract administration that suggests an environment in which government is "asleep at the switch" and where nobody is "minding the store" (phrases often used) and, therefore, where contractors run roughshod over the public and hapless agencies. This is a world of cost overruns and performance failures. Academic concerns about a "hollow state" where government contracts rather than produces have echoed, sometimes citing similar accounts of contracting problems, have sounded a parallel alarm. (Kettl l988; Milward et al 1993; Milward l996)

We should take such images with a grain of salt. Surely, to take the best-known exhibits for the prosecution, there are "cost overruns" in many weapons and technology projects. But these should not be seen simply, or even mostly, as due to sloth or fraud. Some result from changes in project specifications, so what government ends up buying includes performance features not in the original contract. Some cost growth results from unrealistically low initial cost estimates used to garner political support for a project. (To be sure, such gaming is problematic for other reasons, but it suggests skepticism about any assumption that the original cost estimate is what the project "should" have cost and that any final figure over that estimate means government is paying "too much.") And, of course, many of these projects involve very complex, first-time tasks going beyond the

current state of the art and that are exactly the kinds of project that tend to produce similar cost growth when attempted in the private sector. Studies (Merrow et al 1979: 73, l984: 32-33) comparing "mega-projects" in the Defense Departments and the private sector found that a universe of 47 non-defense projects such as construction of refineries, process plants, and nuclear plants[32] showed a greater average cost growth than did Defense Department major weapons projects in the l960's, although the technological uncertainties in the weapons systems development were surely greater on average than for these projects. A study of private-sector major information-technology systems development projects found that a most came in considerably over budget and delivered less performance than expected; many were abandoned entirely. (XXXX)

Nor is the evidence consistent with the suggestion that wily contractors are able to rip off a government asleep at the switch. Although the return on equity of the aerospace/defense industry was higher than that of the S&P Industrials index during the defense boom years of the l980's, since l988 that industry's return has generally been lower, and often dramatically lower, than the S&P Industrials. (During the l994-98 period, aerospace/defense firms in the index averaged a l4% rate of return on equity, compared, for example, with 26% for chemical or diversified manufacturing firms and l7% for auto parts firms.) (Defense Science Board 2000: 11) To take one example of a publicly traded information technology corporation that reports separate results for its commercial and U.S. federal government divisions, Computer Sciences Corporation (2000: calculated from numbers on 63) reported for 2000 a return on sales of 7.8% for commercial work and 6.3% for federal work, numbers in line with the observations of other large information technology firms selling into both markets.

[32] To be included in the study, projects needed to take at least four years and cost at least $ll billion.

Although one mightn't guess it from the "asleep at the switch" accounts, the government maintains a significant infrastructure dealing with contract administration. On the financial side, the Defense Department has an entire organization of contract auditors, the Defense Contract Audit Agency, that also works for civilian agency customers, along with contracting officers who manage day-to-day financial issues.

I will focus the subsequent discussion on the role of the technical or program people in contract administration, whose role should be key, since they are the customers for work being contracted. How technical or program people get involved in contract administration varies by agency and by type of contract. For large contracted programs, including weapons systems and major government information-technology projects, the agency normally has a fulltime program office, headed by a program manager, with several layers within the organization under the program manager. For most contracts, though (and also for individual task orders under many larger contracts), the government has a single technical or program person in charge of the government's programmatic interface with the contractor, the so-called "Contracting Officer's Technical Representative" (COTR).[33]. Typically, the COTR has contract administration responsibilities over and above other job responsibilities. Many if not most COTR's are senior-level "doers," or at most first-line supervisors, not managers, in the non-contract administration part of their jobs.

Interviews conducted in preparation of this part of this paper[34] suggest strongly that there is no reason in principle for the government to experience a loss of control from

[33] This official has a different name, such as COR (Contracting Officer's Representative) or "task manager," in various agencies or various kinds of contractual situations.

[34] To learn more about contract administration as seen from the perspective of technical or program people involved in this process, two research assistants and I conducted a series of structured interviews with

contracting as opposed to in-house provision. Williamson (1975: Ch. 4) distinguishes an employment relationship from contracting by noting that in an employment relationship, an employee agrees to take general direction from a boss, without the need to specify the expected output in advance, while a contractual relationship does not commit the seller to produce anything but what has been agreed to in advance. Milward (2000: 363) writes that "(t)he hollow state has very few command and control mechanisms."

However, in cost-reimbursement environments, the government gives – indeed it is contractually entitled by technical direction clauses frequently appearing in these contracts (Cibinic and Nash 1993: 975-76) to exert – direction to contractors about what to do that seems more or less identical to the kind of ongoing orders about which Williamson speaks. Indeed, contractors frequently complain that government "micromanages" details of how they do the work.[35]

In recent years, efforts, partly successful, have been made to express the government's requirements, in contracts for services as well as for products, in performance term, and leaves it to the contractor, without contractual design or personnel requirements, or post-award technical direction, to decide how to meet the metrics. (The canonical example is to require that the grass be kept at no more than l/2 inch rather than stating the grass shall be mowed every two weeks.) In such contracts, performance standards replace specific technical direction. (Office of Federal Procurement Policy l998) Here, too, a strong case can be made that government easily can end up exerting

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people in a number of government agencies involved in various aspects, and at various levels, of contract administration. Quotes in this section come from these interviews.

[35] In defense of "micromanagement," at least in a cost-reimbursement environment where the contractor does not commit to achieving any particular results, government people might feel that otherwise the contractor might waste money going down unproductive paths.

more control over contractors than its own employees, because use of performance standards is more uncontroversally accepted by contractors than civil servants.

In my interviews, virtually everyone stated it was easier to control the behavior of contractors than of government employees, particularly in an era where past performance counts for more in contract award. "It's their bread and butter, they have to perform," stated one person. Said another, "With contractors, you don't get people with an attitude, or an entitlement mentality. They hop to." A number of those interviewed mentioned that a contractor employee with whom the government was unhappy would be removed virtually immediately. "We had a security breach involving a contractor and a federal employee. The contractor employee was fired within an hour. For the federal employee, I've had three meetings with the employee and a total of 30 hours of staff time so far, and we're not done yet." (These mechanisms obviously function better in a competitive environment where it is possible to replace a poorly performing contractor.)

Having noted all this, however, the fact remains that, with the exception of considerable attention to auditing for unallowable costs and violations of cost accounting standards, contract administration has traditionally not been given sufficient attention in most parts of government. "(C)ontracting officials often allocate more time to awarding contracts rather than administering existing contracts." (Office of Federal Procurement Policy l994: 5) Much of contract administration (with the exception of the highly rule-laden areas of cost allowability, allocation, indirect cost rates, and treatment of government property contractors use, which is what takes up almost all coverage of contract administration in the FAR) is not amenable to rules, and hence, in the traditional

system, it suffered from the lack of attention accorded everything not treated at length in the rules.[36] And contract administration was largely a stepchild of procurement reform.

I wish to address two questions: (l) What needs to be done well if contract administration in particular is to become a core competence for government, as part of a larger competence in contracting management? (2) Is what needs to be done likely to be an attractive job to which government has some prospect of recruiting talented people?

Crucial to answering the first question is to realize that contracting management is mainly about *management*. The vast majority of what a good contracting manager needs to be good at are the same things *any* good manager needs to be good at.

In fact, the most important responsibilities of those in charge of a contract or task order's administration are not just managerial in general: they are analogous to those of a senior executive, not a first-line supervisor or middle manager. It is the job of the contractor's management directly to supervise its employees on a day-to-day basis. Instead, what a person in charge of contract administration needs to be good at is executive-type functions such as (l) strategy and goal-setting, (2) inspiring those doing the work, including contractors, with enthusiasm and public purpose (3) performance management, (4) managing horizontal interfaces between the contractor and end users of the contractor's services, and (5) managing vertical interfaces with higher levels of the organization and with the external environment. (On the latter distinction, see Haass l994: Ch. 3,5) Contract administration leaders are "agenda-setters" for others (to use the phrase of Hill l992: 6), not simply accomplished doers themselves.

Specific activities in which contract administration leaders should get involved include:

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[36] See above, pp. .

- Setting, or helping set, the strategic direction for what the government is seeking to accomplish through the contract, implying a connection of senior contract administrators both to the underlying agency activity the contract serves as well as to the contractual effort itself, starting with the business strategy development phase. As one successful contract administrator stated, "I spend lots of time on visionary planning. That's the fun stuff."
- Managing the process of interface between end user and contractor to find out what the end users' requirements are and to get them expressed in contractual documents, and throughout contract performance.[37]
- Making sure government people provide the contractor the help they need, for example end users to interview about how they use their current computer software or time on the schedule of government product testers who must perform interim tests on a product before development can go further, or managing conflicts about whether providing a certain kind of assistance is a government responsibility or should be done by the contractor.
- Attending trade association or other professional meetings. As students of organizational social capital (e.g. Cohen and Prusak 2001: 71-72) note, such meetings should be seen mostly as a way to get informal information and to nurture relationships. "The point is not what's on the agenda, the point is what takes place at breaks and lunch." Or: "People at these conferences talk among themselves about

[37] To quote from one interview: "You've got to be able to bring both parties together. …You've got to force people to continue to raise issues, to keep communicating, to keep bringing it back to the common goal. When things go bad, the government wants to point at the contractor for screwing things up, wasting money, and the contractor comes back and says, 'You didn't define your requirements clearly. You didn't give us a focused direction.' You don't want it to get there. …You've got to keep reminding the government people that we've got to have the requirements, we've got to get them nailed down. The same

who's in financial trouble or who's won big commercial contracts. If I learn at one of these meetings that a company's in trouble, I can request a financial survey before I make them an award."

- Signaling through one's personal involvement that an issue is important

The most fundamental problem with the current system is that it insufficiently recognizes contract administration as in the first instance a management function – and that, correspondingly, too many program or technical contract administrators are wannabe doers dealt the short straw by being given contract administration duties. In one of his case studies, Kettl (1993: 123-24) notes that many contract administration responsibilities were placed in the hands of people who saw themselves as technical experts. "In an agency dominated by scientists, technical expertise, not administrative finesse, marked the fast track upward. Technicians and other scientifically trained managers thus had strong motivation to escape from the task – what one official called the 'administrative stigma' – as quickly as possible. Sometimes, an EPA report said, 'contracts management tend(ed) to be dumped on poor performers' because it was not a high-prestige task." As one of those I interviewed noted, "We're brought up to be doing stuff, which is actually much more fun than managing the stuff getting done."[38]

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thing with the contractors. 'If you see us not giving you what you need, you've got to tell us. You can't keep cashing our checks and moving along happily.'"

[38] The activities of government program managers for weapons systems or for major agency projects that establish a program management organization come closest to the kinds of executive-type functions described above, although there are special features of Defense Department weapons-system program management environment that make it difficult for the program manager to get sufficiently involved in these executive functions. Program managers are typically military officers on relatively short (two or three year) tours of duty, which makes it difficult for them to set and execute a program strategy. Weapons programs are in such competition with each other for budget funds that program managers often have an interest in presenting wildly optimistic plans at the beginning of a project and, later on, downplaying problems rather than confronting them, especially given their brief tenure. The enormous hierarchy of the military services and the Office of the Secretary of Defense produces a situation where inordinate time is spent "briefing" superiors and preparing for reviews. Until recently, the culture of program offices played

Furthermore, many functions COTR's perform are currently non-managerial and certainly non-strategic. COTR's review contractor invoices, and the Office of Federal Procurement Policy Guide to Best Practices for Contract Administration (1994: Ch. 3) recommends that COTR's examine time cards and sign-in sheets of contractor personnel, and that they maintain spreadsheets of contractor expenses. The governmentwide Internet-based training course for COTR's, developed by the Federal Acquisition Institute, prescribes extensive paperwork activities such as taking minutes of meetings with contractors and personal performance of inspections or tests. Of COTR's who are not doers, the vast majority are first-line supervisors, used to direct supervision of a modest number of employees, not to executive-type managerial activities. This encourages them to undertake what contractor supervisors should be doing, namely direct supervision of contractor employees in the form of extensive "technical direction." Such micromanagement also allows them, in the absence of a self-conceptualization as performing executive-like functions, to feel, and show, that they are actively "doing something."

There are three things government should do if contract administration leadership is to become a core organizational competency: (1) properly positioning and training for the job, (2) splitting off lower-level tasks from executive-type tasks, (3) making an investment in performance measurement as a discipline.

First, and most important, senior contract administration jobs, including the job of COTR's, should be positioned as management jobs with exciting challenges and stimulation similar to that of senior executive positions. Doing the job well requires very

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relatively modest attention to cost control. And, of course, there are inherent problems in keeping work on new weapons systems to cost, schedule, and performance targets. See generally Fox (l988).

different skills from those required to do well as an individual technician. But it provides a very real, if different, form of excitement. These jobs should not be for "stuckees." -- and clearly cannot be if contracting management is to be a core competency for government. They should be sold to those who are currently doers or first-line supervisors (or for those being recruited directly for such positions from the outside[39]) as an opportunity to experience a taste of job responsibilities normally held by people at much more senior levels, and to entry-level people as an aspiration for those on a fast track up.[40] Training for contract administration leaders should be training in management skills.

Second, to allow contract administration to focus on management, efforts should be made to split repetitive, lower-level tasks off from more complex, and engaging, executive-type functions.[41] (To some extent, such a division of labor already occurs in organizations with a program management structure.) Not surprisingly, of those at a middle or senior level of contract administration, nobody interviewed expressed any enthusiasm about generating contract-monitoring paperwork. "I don't like all this monitoring stuff. All the paperwork, the high administrative burden." Agencies should scrub internal paperwork requirements, just as many have scrubbed requirements for contractor-generated reports, to see what might usefully be streamlined or eliminated, recognizing that paperwork reduces the attractiveness of these jobs. Where a contract has tangible performance metrics, acceptable interim progress towards meeting those metrics

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[39] See below, p. .

[40] One kind of civil servant might complain they shouldn't be "required" to undertake executive-type responsibilities at more modest seniority levels. Another kind of civil servant – particularly the kind the government now must try to recruit – will welcome the opportunity for such challenges at an earlier career stage.

[41] This is a suggestion that also has been made, in somewhat different form, by Suzanne Kirchhoff of SAIC in work she is doing for the U.S. Army.

should trigger reduced contractor reporting requirements. Organizations should consider assigning minute-taking and generation of meeting-related paperwork to junior people, who would also get an opportunity to learn about management by sitting in on such meetings. Documentation that doesn't need to go to higher organization levels should be dictated in real time into a machine by a person's desk, to be filed as tapes and not transcribed unless needed.

One dilemma is how to deal with the role of the COTR in approving contractor labor hour invoices in cost-reimbursable contracts. (That role is basically to verify that contractor personnel worked the hours stated.)[42] On the one hand, people on the program or technical side, for whom the work is actually being done, are in a far better position to know whether contractor employees have been working than are contracting officers or after-the-fact auditors, especially if work is being done on site at the agency. On the other hand, this is repetitive, unengaging work (and if, as is frequently the case, the contractor is working off-site, the COTR can't observe directly whether contractor employees are working). This issue could be dealt with as follows: (1) become more serious about past performance evaluations that compare cost estimates with final costs, to provide contractors a disincentive against padded costs;[43] (2) have clerical people, either in program or contracting offices, review time cards, when these are generated; (3) allow COTR's to request an ability to be involved in verifying invoices, in whatever way(s) they choose – a request that typically will be generated if those people see that results are falling way below expectations – but don't require it. This begins to make the COTR's role look more like performance measurement.

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[42] Only a contracting officer may actually approve paying an invoice.
[43] Change orders would need to be taken into account.

Third, a crucial part of the job of a contract administration leader will be responsibility for performance measurement and management of the contractor. This should be a key management responsibility in all organizations, but it is often difficult in a public-sector context (whether for in-house or contracted work), because financial performance metrics common in the private sector don't suffice and sometimes don't even apply. Although business firms have begun to grapple with the special challenges of developing multiple performance measures (Kaplan l996), such as frequent difficulty developing quantitative measures and possible perverse effects of measurement (Kennedy School of Government 200l), advancing the art and science of non-financial performance measurement is a special issue for government. The Defense Department, representing government as a whole, should therefore take the initiative to develop the discipline of non-financial performance measurement just as it took the initiative in the l960's to establish the discipline of project management to help with its unique needs in developing large weapons systems. (Meredith and Mantel 2000: Ch. 1)

It is not Panglossian to think that contracting management leadership jobs, correctly positioned, can be attractive to talented people. In many technical fields that place a high value on "doing," such as engineering, it is the overwhelming rule, not the exception, that people aspire to leave technical work for managing. (Zussman 1985: 151) A survey of MIT engineering graduates l0-20 years into their careers shows that those in general or engineering management positions are considerably more likely to perceive themselves as being successful in their careers than those who were still staff engineers. (Bailyn 1980: 95)[44] Such jobs, properly positioned, are likely to be

[44] An alternative path that produces significant career satisfaction is a scientific/research path, where the engineer is a "doer" who is more of an independent professional.

especially appealing to young people seeking quick opportunities to learn new things, to grow, and to exercise significant responsibility; one study (Hill l992: 7) of people newly promoted into management positions from jobs where they had performed successfully as "doers" found that "the first year of management was a period of considerable…personal growth," where people "matured as they confronted previously undiscovered truths about themselves." Indeed, government may well be able to offer young people responsibilities more significant than those they would attain in private-sector jobs in large organizations.

The last question I wish to address is the role of substantive expertise in areas involved in a contract for successful contracting management. There are a number of areas where substantive skills often need to be available to the government during contracting: (1) to establish requirements for what the contractor is being asked to do; (2) to evaluate proposals submitted for how the bidder would accomplish the work (called in government the "technical proposal"), including analysis of the relative risks different approaches entail; (3) to evaluate contractor cost estimates for cost-based contracts or for fixed-priced task orders awarded without competition under larger contracts, where the government needs to judge the contractor's estimate of how many hours a job will take and what mix of labor categories is needed; (4) in non performance-based contracts, to provide technical direction during contract performance; (5) to assure compliance with specialized technical constraints, even in a performance-based contract (for example, constraints about how to dispose of infectious waste in a hospital that contracts out cleaning services). Included in "substantive expertise" are both what in government is often called "functional" knowledge such as information technology or engineering skills involving the area where the contractor is working, as

well as what in government is often called "subject matter expertise," which is knowledge of the underlying government activity the contract is serving. So, for example, if the IRS is contracting for information technology services to modernize how it collects taxes, technical skills would be knowledge about information technology, while subject matter expertise would be knowledge about how the IRS currently conducts audits.

When government must have some or all of these kinds of expertise available, the conclusion is frequently drawn that government must maintain at least some in-house production in the areas for which it is contracting, so it can retain that expertise. If government has no "doers" who have written software code, it cannot successfully manage, per this argument, contractors writing code. Thus, for example, Milward argues (2000: 376) that in these kinds of situations, "producing some services is the only way to learn about the costs of production." One prominent worry about the growing trend to contract out is that, by losing its doers, the government inevitably will lose its ability to be successful at contract management.

I disagree. In my view, government can be good at contracting management even without a strong base of "doers" with technical skills in the areas being contracted. Unless there are independent reasons for the government to maintain its own in-house production capability (or if the decision is at least a very close call), it does not make sense for government to retain in-house production simply, or mostly, to retain skills at "doing" needed for managing contractors.

Before exploring this further, three remarks are in order. The first is that, typically, government has, and will continue to have, subject matter expertise available

even when there are question marks about the availability of functional expertise (government people are still running business processes being reengineered by contractors or are the customers for new weapons and can express what results they seek). Government loses subject-matter expertise only if a function both is completely outsourced and if there are no government customers of the service (such as when garbage collection is outsourced). Second, existing procurement reform efforts have reduced government's need for functional expertise. The more government evaluates bidders on past performance, the smaller the role of a bidder's technical approach in source selection on the new job being bid. In a performance-based contract, requirements for functional skills on the government's end, particularly after contract award, decline dramatically. Third, one should not overestimate the number of situations where government needs access to its own functional expertise. It is easier to recognize a good idea than to come up with one.[45] So, often, technical skills are not necessary to judge the quality of significant parts of a bidder's technical proposal. Likewise, it is easier to judge whether performance metrics have been met than to know how to meet them oneself, which dramatically reduces the need for technical expertise in administering a performance-based contract.

But there still remain significant situations where the government needs functional skills. How can it have these skills available for contracting management without a pipeline of "doers" promoted into contracting management jobs? It can do so in several ways:

(l) Perhaps the most important is for government to begin to recruit people into midlevel contracting management positions with several years of "doer" experience in

[45] I owe this formulation to Chip Mather, though we have developed the underlying idea independently.

the private sector, rather than assuming such people must move up from entry-level positions within the government. There will still be lots of entry-level "doer" jobs in information technology, even if they are not in government. Government still operates largely on a model that there are only two points of entry into government employment, the entry level and the senior political level. This view is increasingly at odds with the expectation of young people that they will work in many organizations. (Light l999: 137-39) Government can get technical help it needs for midlevel contracting management positions even if it has no doers itself by hiring people with 3-5 years of entry-level experience in industry, and assume that many if not most of them will stay only for a few years. Such jobs may appeal to young people who are generally job-mobile, who wish to do a few years of public service, who have young children and might prefer less travel or a more family-friendly environment, and/or who might be attracted to positions with fairly significant responsibility.

(2) Government can hire contractors, other than those doing the work contracted for, to provide needed functional expertise. It is easy to ironize about this. In one of his case studies, Kettl (l993: 77, 86) makes disparaging references to agency use of contractors to help develop requirements, evaluate proposals, and monitor performance, writing that "it was as if (the agency) had decided to buy a car but did not have the capability to define what a car looked like, what it ought to do, or what it ought to cost." Such ironization doesn't render this solution less sensible. Even if government employed its own in-house technical experts – say software programmers – there are so many subspecializations and idiosyncratic areas of expertise within a functional domain that for any specific effort, the in-house people would still be likely to lack technical skills in the

specific are. Expertise as a COBOL programmer hardly qualifies a person as an expert on logistics or e-procurement software applications. So in-house expertise doesn't, frequently, obviate the need for outside expertise. Indeed, in areas such as information technology, it is extremely common for private-sector customers to use independent third-party information sources (such as the Gartner Group) to help them develop requirements and evaluate vendors. Government has done this for many years in a number of areas, including weapons systems, even when it had far more "doers" with technical skills on staff.[46]

(3) Although it needs to be careful about how it does this, government can make judicious use of contractors who will, or may, be doing the work to provide some of the technical expertise needed for developing requirements for work that will be done. Under procurement reform, it has become normal for government to have extensive early contact with prospective bidders to get their suggestions about what requirements the government should ask for. Some suggest that the government limit itself in a solicitation to a "statement of objectives," asking bidders to promote performance metrics and target values for such metrics. (Mather 200l) Sometimes a contractor who will be, or may be, doing the work is actually in a better position than a third party to help an agency shape its requirement, because it has more of an interest in eventual success than the third party does and because it may know the agency more intimately. If the contractor has already been chosen for the work, this creates potential conflicts of interest, but such contractor-influenced shaping can occur without such risks in a limited competition where perhaps two suppliers are facing off to receive the final work.

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[46] See, for example, the discussion of the government's telephone services procurement during the l980's in Kettl 1993: 76-77.

A Final Word

In pointing out that government needed to be a smart buyer for contracting to work well, Kettl (l993: 2ll) made an appeal for government to make an "investment in smart buying." The reinventing government movement of the l990's heeded that appeal for the front end of the procurement process – establishing requirements, structuring the overall business arrangement, and selecting the right suppliers. It paid considerably less attention to the contract administration process following contract award. The challenges procurement reinventors of the l990's faced were in the first instance institutional design challenges involving the proper role for rules and discretion. By contrast, the challenges of reinventing contract administration are predominantly challenges of human resources management -- of people and job design. Given a growing concern about government's human capital crisis, the beginning of the new millennium represents an opportunity to address this very important unfinished business.

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