Federal Procurement Reform:
A Mixed Record at Best

By

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INTRODUCTION

“A government ill executed, whatever it may be in theory, must be in practice a poor government.” Federalist 70, Alexander Hamilton (Hamilton, Madison, Jay, 1961, p. 423).

Given the enormous sum of public money funneled through the federal procurement system, Alexander Hamilton’s warning in Federalist 70 is extremely relevant. How well the procurement system performs is crucial to how well the federal government performs since $1 of every $6 spent by the federal government is spent by that procurement system. In 2015 that amounted to $437.4 billion (USASpending.Gov). The government buys a wide variety of products and services including office supplies, professional services, information technology, space exploration, and complex weapons systems. The widely held perception is that it takes too long and costs too much to buy the goods and services the government needs. Moreover, it is widely believed that too many contractors deliver inferior and defective products. Questions over the performance of the federal procurement system have persisted over the last 70 years.

Attempts to reform the so called “poorly” performing federal procurement system are almost too numerous to count. Nevertheless, the federal procurement system seems to be subjected to incessant reform initiatives with every new Congress and presidential administration. According to Peter Eide and Charles Allen: “The history of acquisition reform reflects much has been done to study the problem, identify candidate solutions, and execute reforms, only to return to the conclusion that more reform is needed” (Acquisition Reform Journal, 2012, p. 104). Ronald J. Fox calls defense acquisition reform an elusive goal (Huitink and Slyke, 2015, p. 15).

On October 29, 2013, The House Committee on Armed Services held hearings on “Twenty-Five Years of Acquisition Reform: Where Do We Go from Here” (U.S. House of Representatives, House Armed Services Committee hearings, October 29, 2013). Mr. Moshe Schwartz of the Congressional Research Service testified that there had been more than 150 major studies on acquisition reform since World War II (Schwartz, Moshe, “Twenty Five Years of Acquisition Reform: Where Do We Go From Here.” Congressional Research Service, October 29, 2013). Despite the numerous acquisition reform efforts, Schwartz suggests that DOD acquisition programs continue to experience significant cost increases (p. 3). “Despite the many acquisition reforms and other DOD management initiatives over the years, the development and cost growth of military systems has not been reduced (p. 5). Moreover, Schwartz cites reports arguing that acquisition reforms have made the acquisition process less efficient and less effective instead of improving the system (p. 6). Despite this pessimism, Schwartz does see a possible framework for
improving the acquisition process and it has to do with improving the acquisition workforce. Schwartz points out that most of the acquisition reform reports arrive at the same conclusion: the key to awarding good contracts is having a good acquisition workforce (p. 16).

In addressing the importance of the acquisition workforce, Under Secretary of Defense Frank Kendall stated:

Policies and processes are of little use without acquisition professionals who are experienced, trained, and empowered to apply them effectively. At the end of the day, qualified people are essential to successful outcomes and professionalism, particularly in acquisition leaders, who drive results more than any policy change (p. 17).

In late 2017, Steven Kelman, the former Administrator of the Office of Federal Procurement Policy indicated he did not see any improvement in the procurement system’s performance over the past 25 years (“Reinventing government, 25 years later.” Steve Kelman, December 6, 2017. FCW, https://fcw.com/Articles/2017/12/06.)

The performance of the federal procurement system matters for many reasons. When it performs well, an agency can acquire necessary capabilities to support the mission. When it performs poorly, the mission suffers. Poor performance leads to contract cost overruns and delays.

As will be shown, the history of procurement reform consists of promises mostly unmet. This unfortunate result contributes to a lack of trust in government. Trust in government is widely believed to be at an all-time low. Any further reduction in such trust will adversely affect the government’s ability to execute laws and programs.

Why haven’t procurement reforms been more successful? It will be argued here that there are at least four broad reasons:

(1) The constitutional design of divided government leads to a lack of permanence of such reforms.
(2) The government’s capacity deficit inhibits successful implementation of various procurement reforms.
(3) The swinging, always changing, pendulum-nature of procurement reform undermines most reforms.
(4) Many of the reforms rely on business principles but the government cannot be run exactly like a business.

Each of these reasons will be explained in detail below.

The next section briefly reviews some of the most important procurement reforms over the last 70 years. This list of reforms is not all inconclusive. And it must be noted that others may have a different list of the most important procurement reforms over the last 70 years.
Another qualification: procurement reform did not start in 1947. A table at the end of this section (pages 13 and 14) summarizes the relative success of these reforms.
A VERY BRIEF HISTORY OF PROCUREMENT REFORM OVER THE LAST 70 YEARS

“History may not repeat itself, but it rhymes a lot.” Mark Twain

The Armed Services Procurement Act of 1947 and the Federal Property and Administrative Services Act of 1949

During World War II the procurement system consisted of a large mass of uncoordinated legislation. Many laws conflicted. The procurement system was inefficient. The Armed Services Procurement Act of 1947 and the Federal Property and Administrative Services Act of 1949 were reactions to this chaos and should be considered the first modern procurement reform attempts (Armed Services Procurement Act of 1947. Feb. 19, 1948, Ch. 65, 62 Stat. 21, and Federal Property and Administrative Services Act of 1949. June 30, 1949, 40 USC 101). These laws consolidated all the various contract laws that had proliferated over the years; one for defense agencies and one for civilian agencies. The laws also led to the formation of two sets of regulations: The Armed Services Procurement Regulation (for defense) and the Federal Procurement Regulation (for civilian).

While the regulations were eventually replaced by a single regulation in 1984, both laws and implementing regulations were major, successful, long lasting procurement reforms.

The Hoover Commission of 1949

The Hoover Commission found that: “one of the major weaknesses in Federal purchasing stems from the lack of any central body to coordinate Government purchasing activities” (Hoover Commission Report, 1949, p. 89). “A maze of laws and regulations surrounds the whole process with unnecessary red tape. The emphasis of the laws is not on promoting efficiency and economy but upon preventing fraud” (p.97). One of the key Hoover Commission recommendations to address these weaknesses was the establishment of the “Office of General Services” (p.98) in an attempt to centralize all purchasing. On July 1, 1949, the General Services Administration became an independent agency after the passage of the Federal Property and Administrative Services Act.

While GSA survives and serves as an important central purchasing organization for the government’s commercial needs, a large percent of federal spending is done by individual agencies. If the goal was to centralize all procurement, it was not achieved. And will probably never be achieved.
The Second Hoover Commission of 1955

The Second Hoover Commission examined the defense procurement process in some detail. Key recommendations included (1) better procurement planning; (2) removing “needless legal and administrative encumbrances upon the placement of military contracts”; and (3) “establishing policies to strengthen the role of contracting officers in the interest of more expeditious and effective buying (Task Force Report on Military Procurement, June 1955, p. 73).

Have these procurement reforms produced permanent improvements? The answer must be no given that many of the proposed procurement reforms since the Second Hoover Commission have called for improved planning, less red tape and a stronger role for the contracting officer.

McNamara Reforms of the early 1960s

Secretary of Defense Robert S. McNamara implemented acquisition reforms intended to eliminate cost overruns that plagued many defense programs of the 1950s and early 1960s (J. Ronald Fox, Defense Acquisition Reform, 1960-2009: An Elusive Goal, p. 35, 36). The McNamara acquisition reforms included formal source selection procedures, contractor performance evaluations, total package performance requiring fixed-price contracting for development and production, incentive contracting and other contract administration innovations (p. 37). But these reforms proved to be ineffective: total package performance was applied to the Lockheed C-5A cargo plane, the General Dynamics F-111 fighter aircraft, and the Grumman F-14A Tomcat fighter aircraft, all of which experienced large cost overruns (p. 37). In 1969, the U.S. General Accounting Office (GAO) (now known as the Government Accountability Office) reached a similar conclusion (p. 40).

To be fair, many McNamara reforms provided permanent improvement to the defense acquisition process. These reforms included adoption of the Program Manager concept, Systems Engineering and cost control techniques, which subsequently became Earned Value Management (p. 37). But regarding the more substantive reform of preventing cost overruns, the McNamara reforms must be judged as ineffective.

The Truth in Negotiations Act of 1962

The Truth in Negotiations Act (TINA) requires contractors to disclose accurate cost data to the government prior to certain contract negotiations (Public Law 87-653). Reports by GAO of overpricing and excessive profits by government contractors led directly to the enactment of TINA. Before TINA, government contract negotiators had to rely on cost and pricing data furnished by contractors; this created the opportunity for excessive profits. TINA requires contractors to certify that cost or pricing data provided to the government is complete, current and accurate. This provision is still law today.
TINA should be viewed in general as a permanent and successful reform.

The Brooks Act of 1965 (Public Law 89-306)

In March of 1965, OMB sent Congress a report citing serious Information Technology (IT) management problems (Timothy S. Traaen, The Brooks Act: An 8-Bit Act in a 64-Bit World? 1995, p. 7). These problems included lack of standardization, computer incompatibility, and decentralized decision making; moreover, government purchasing practices were contributing to a hardware monopoly (Seifert, Jeffery W., Government Information Technology Management: Past and Future Issues, Congressional Research Service, January 15, 2002, p. 2). The Brooks Act attempted to address these problems by centralizing computer purchasing authority within the General Services Administration and directing that the National Bureau of Standards (now known as the National Institute of Standards) set standards for IT (p. 2).

The changing procurement and technology environments eventually rendered the Brooks Act ineffective. The problem the Brooks Act attempted to address – ineffective procurement of IT products and services – remains a challenge today as evidenced by numerous GAO reports and a proliferation of legislative proposals to reform IT procurement. It seems as if every new Congress pushes an IT acquisition reform bill.

The 1972 Commission on Government Procurement

After extensive hearings in the late 1960s, Congress created the Commission on Government Procurement with the goal of achieving fundamental improvement in federal procurement (Recommendations of The Commission on Government Procurement: A Final Assessment, GAO, May 31, 1979, PSAD-79-80, p. 1). The Commission had four main concerns with existing procurement regulations: (1) the regulatory environment consisted of a proliferation of uncoordinated agency regulations; (2) there was a lack of uniformity among agency procurement regulations; (3) the regulations were unnecessarily complex and ambiguous; and (4) there was limited public participation in the development of procurement regulations.

The Commission released its report in 1973 containing 149 recommendations. How successful were the Commission’s reforms? In 1979, GAO assessed the Commission’s work: “Important structural changes are now in place on procurement reforms first proposed in 1972, but the program is far from complete and momentum is slowing. The outlook for at least half of the reforms is not encouraging.” (Recommendations of the Commission on Government Procurement: A Final Assessment, GAO, PSAD-79-80, May 31, 1979).

Another comprehensive procurement reform effort fell short.
The 1983 Grace Commission

In 1982 President Ronald Reagan created the Grace Commission to investigate government waste and inefficiency. The Grace Commission submitted its report on January 12, 1984 containing 2,478 recommendations designed to save $424 billion over three years (J. Peter Grace, War on Waste: President’s Private Sector Survey on Cost Control, Macmillan Publishing Company, 1984, p. v, vi.) The Commission endorsed a proposal for a “Uniform Federal Procurement System” designed to unify federal procurement policies (p. 489). Given that the initiative to unify federal procurement policies was already undergoing implementation in the form of the Federal Acquisition Regulation, the Grace Commission’s proposal was either tardy or redundant.

Another Grace Commission recommendation urged civilian agencies to make greater use of GSA’s acquisition services (p. 491.). As a procurement reform, increasing civilian agency reliance on GSA has not been completely successful. But it would be misleading to give the Grace Commission credit for a reform that has been pushed since 1949.

In terms of the Grace Commission’s long-term effect on permanent federal procurement reform, the impact can be considered negligible. The recommendations seemed to consist of jumping on the bandwagon of reforms already underway (i.e., Federal Acquisition Regulation), rather than proposing any unique reform that had a positive, permanent outcome.

The 1984 Competition in Contracting Act

Full and open competition was established as the preferred method for federal agencies to award contracts by the Competition in Contracting Act of 1984 (Pub. L. No.98-369, Section 2701). The act called for allowing all prospective contractors to submit proposals if they met certain criteria. In 1983, prior to the law taking effect, the percent of contract dollars awarded non-competitively was 35 percent (Federal Procurement Data System FY 1983 Standard Report). During a five-year period from Fiscal Year 2011 through Fiscal Year 2015, the percent of contract dollars competed was 53 to 55 percent (Annual Review of Government Contracting 2016, NCMA/Deltek). Moreover, since enactment in 1984, the percent of contract dollars awarded competitively has never returned to the pre-act levels of below 50 percent.

The Competition in Contracting Act must be considered a permanent and successful procurement reform.
The 1986 Packard Commission

The President’s Blue-Ribbon Commission on Defense Management, generally known as the Packard Commission was established by Executive Order 12526 issued by President Ronald Reagan on July 15, 1985 (Executive Order 12526, President’s Blue Ribbon Commission on Defense management, July 15, 1985). The Commission was charged with studying the adequacy of the defense acquisition process as well as the adequacy of defense organizational arrangements (EO 12526). Referring to the impact of the Packard Commission, J. Ronald Fox suggested that these reforms “tended to attack the symptoms of cost increases, not their causes, and, and at best have been only partially implemented” (Fox, J. Ronald, Defense Acquisition Reform, 1960-2009: An Elusive Goal, p. 150).

If the overall intent of the Packard Commission was to reduce weapon system cost overruns, it was not successful.

1994 Federal Acquisition Streamlining Act

P.L. 103-355, the Federal Acquisition Streamlining Act of 1994, can be credited with bringing about important, long-lasting and effective acquisition reforms unlike many of the previous reforms. However, not all of the act’s objectives were realized.

The Act raised the dollar threshold from $25,000 to $100,000 for simplified acquisition procedures. This higher threshold expanded the streamlined process for making small purchases, reduced administrative overhead and produced significant savings for the government. The higher threshold allowed the use of simplified procedures on tens of thousands of procurement actions. The newly authorized use of purchase cards and Indefinite Delivery/Indefinite Quantity (IDIQ) contracts are two important reforms.

The Act also allowed the purchase of commercial items on a commercial basis. It was often the case that commercial businesses encountered great difficulty in doing business with the federal government due to the unique laws and regulations such as invasive and burdensome audit practices, cost information disclosure requirements and drug free workplace terms. Such practices were foreign to the normal commercial business environment. The Act waives most of these unique federal requirements on commercial buys.

In response to a concern that the number of bid protests were increasing, the Act called for debriefings upon request. The assumption was that the number of protests would decline as offerors learned that the award process was fair, or that their concerns were without merit. Given that the number of protests continue to increase, this provision of the law has not achieved its objectives. The number of protests grew from 1,652 in fiscal year 2008 to 2,789 in fiscal year 2016 (GAO Bid Protest Annual Reports to Congress).

In sum, several goals were met but not all.
1996 Clinger-Cohen Act

The Clinger-Cohen Act, formerly the Information Technology Management Reform Act of 1996, was designed to improve the way the federal government acquires and manages IT. The Act called for each agency to appoint a Chief Information Officer (CIO) to establish clear accountability for IT. Stressing business-like principles, the Act required that the planning and management of technology be treated as a capital investment. In ending the General Services Administration’s monopoly on IT purchases, the Act opened the door for agencies to make their own IT purchases. This was a major step towards decentralization of the government’s acquisition activities. The Act also stripped the GSA of its authority to adjudicate bid protests.

As with many acquisition reforms, Clinger Cohen cannot be considered a complete success. It will be shown below that subsequent IT reform legislation has been enacted to achieve some unmet Clinger Cohen goals. Actual CIO authority fell short of the law’s intent.

Another reform making some progress but falling short on many goals.

Services Acquisition Reform Act of 2003 (SARA)

The Services Acquisition Reform Act of 2003 (SARA) was signed into law on November 24, 2003. Congress recognized that agencies were buying more services than goods. SARA was intended to provide more guidance and flexibility on how to acquire services. Some of the key provisions of SARA are listed below:

- It established an Acquisition Advisory Panel to review acquisition laws and regulations regarding the use of commercial practices, performance-based contracting, the performance of acquisition functions across agency lines, and the use of governmentwide contracts.
- It required the designation of a noncareer Chief Acquisition Officer (CAO) within certain civilian executive agencies. CAOs must have management of acquisition as their primary duty
- It required GSA to establish an acquisition workforce training fund. The fund would be used to develop acquisition training resources for civilian agencies to improve how contracting officers buy services.
- It encouraged incentives for using performance-based contracts for services
- It provided the authority for the federal government to identify commercial services that could be acquired on a time-and-material basis or a labor-hour basis

SARA should not be considered very successful given the problems remaining with the acquisition of services.

DOD initiated a series of acquisition reforms in 2010 aimed at reducing or eliminating schedule slippage and cost growth of weapon system acquisitions as well as improving their performance. Better Buying Power is the label given to these initiatives. Over seven years and three separate iterations, Better Buying Power pushed many separate initiatives to reduce weapon system costs.

According to a 2015 GAO assessment of 78 DOD programs, most programs in the portfolio experienced a cost increase in the previous year. In addition, the average time to deliver capability increased by over one month (“Defense Acquisitions: Assessments of Selected Weapon Programs”, GAO-15-342SP, March 2015).

A 2016 internal DOD assessment of Better Buying Power showed that weapon system cost growth had slowed significantly. According to Frank Kendall, then Under Secretary of Defense for Acquisition, Technology and Logistics, weapons system cost growth is now at a 30-year low (Jared Serbu, http://federalnewsradio.com, January 18, 2017).

While there is a recent indication of some positive effect of this reform, earlier assessments show no progress.

Federal IT Acquisition Reform Act (2014)

The Federal IT Acquisition Reform Act was passed on February 25, 2014 as Subtitle D of Title VIII of the National Defense Authorization Act for FY 2015. The act required that each agency develop a streamlined plan for its acquisitions, make use of private sector best practices, and have only one Chief Information Officer who reports directly to the head of the agency. Other key requirements included:

- Consolidation of federal data centers
- Agencies must justify any purchase not made from the Federal Strategic Sourcing Initiative (FSSI) when such items were available from the FSSI
- Agencies would be required to make fixed price awards where competitions were based solely on non-price factors

The act was intended to save the government billions annually by reducing IT procurement related waste.

To measure the government’s performance under the act, the House Oversight and Government Reform IT Subcommittee released FITARA scorecards. In 2015, the first FITARA scorecard showed extremely low grades for most agencies; 13 “D” scores and three “F” ratings (Federal News Radio, October 18, 2016). The fifth FITARA scorecard showed agency scores dipping for a second consecutive time. Six agency scores dropped, three went up and 15 were unchanged (www.nextgov.com, November 14, 2017).
The HHS CIO complained that FITARA did not provide the control over the Department’s tech spending he expected (www.fedscope, 2/20/2017). Frank Baitman stated: “So I don’t believe that FITARA has really addressed the fundamental problem...When a department IT chief tries to exercise control over part of the budget, the affected operating division then goes to appropriators and complains because they’re not able to use the money that was appropriated to them for how they see fit. And ultimately that undermines the intent of FITARA.” Baitman does not think the law has brought about any change.

In testimony before the House Oversight Subcommittee on Information Technology on March 28, 2017, Dave Powner of GAO stated: “more than half of the 24 CIOs reported they do not have authority over IT acquisitions” (https://fcw.com, March 28, 2017).

**Category Management (2015)**

According to GSA, “Category Management is an approach the Federal Government is applying to buy smarter and more like a single enterprise. Category Management enables the government to eliminate redundancies, increase efficiency, and deliver more value and savings from the government’s acquisition programs” (https://www.gsa.gov/portal).


In an October 2016 report, GAO found that use of Federal Strategic Sourcing Initiatives (FSSI) was low (GAO, 2016. “Federal Procurement: Smarter Buying Initiatives Can Achieve Savings, but Improved Oversight and Accountability Needed, GAO-17-164, October, p. 17). FSSI is a precursor initiative to Category Management. GAO claims there is a risk of agencies underutilizing existing FSSI and category management solutions and diminished cost savings if OFPP does not take certain actions based on lessons learned from FSSI experience (p. 23).

It does not seem that this initiative has yet realized its intended results.
The following table summarizes the relative success of these procurement reforms:

### SUCCESS OF MAJOR PROCUREMENT REFORMS

<table>
<thead>
<tr>
<th>Procurement Reform</th>
<th>Major Goals</th>
<th>Level of Success</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Armed Services Procurement Act of 1947 (ch. 65, 62 Stat.21) and the Federal Property and Administrative Services Act of 1949 (40 USC 101).</td>
<td>Consolidate various procurement laws that had proliferated during WWII.</td>
<td>Both laws were very successful and produced long lasting reforms.</td>
</tr>
<tr>
<td>The Hoover Commission of 1949</td>
<td>Centralize all purchasing</td>
<td>Not achieved</td>
</tr>
<tr>
<td>The Second Hoover Commission of 1955</td>
<td>(1) Better procurement planning; (2) removing legal and administrative encumbrances upon the placement of military contracts; and (3) establishing policies to strengthen the role of contracting officers</td>
<td>Not achieved</td>
</tr>
<tr>
<td>McNamara Reforms of the early 1960s</td>
<td>Reduce cost overruns</td>
<td>Not achieved</td>
</tr>
<tr>
<td>The Truth in Negotiations Act of 1962</td>
<td>Require contractors to disclose accurate cost data to the government prior to certain contract negotiations</td>
<td>Achieved</td>
</tr>
<tr>
<td>The Brooks Act of 1965</td>
<td>Centralizing computer purchasing in GSA</td>
<td>Not achieved</td>
</tr>
<tr>
<td>The 1972 Commission on Government Procurement</td>
<td>Fundamental improvement in federal procurement</td>
<td>Minor progress achieved</td>
</tr>
<tr>
<td>The 1983 Grace Commission</td>
<td>Implement a uniform procurement system Increase use of GSA</td>
<td>Not achieved</td>
</tr>
<tr>
<td>Reform</td>
<td>Goal</td>
<td>Outcome</td>
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<tr>
<td>The 1984 Competition in Contracting Act</td>
<td>Increase competition</td>
<td>Achieved</td>
</tr>
<tr>
<td>The 1986 Packard Commission</td>
<td>Streamline the defense acquisition system and reduce cost overruns</td>
<td>Not achieved</td>
</tr>
<tr>
<td>1994 Federal Acquisition Streamlining Act</td>
<td>Raise thresholds, Purchase cards, IDIQ contracts, Commercial practices, Reduce bid protests</td>
<td>Mixed results</td>
</tr>
<tr>
<td>1996 Clinger-Cohen Act</td>
<td>Improve the way the federal government acquires and manages IT</td>
<td>Some progress but fell short of achieving most goals</td>
</tr>
<tr>
<td>Services Acquisition Reform Act of 2003 (SARA)</td>
<td>Fundamentally improve the acquisition of services</td>
<td>Not very successful</td>
</tr>
<tr>
<td>DOD Better Buying Power Initiatives (2010 - 2017)</td>
<td>Reduce weapon system acquisition schedule slippage and cost growth</td>
<td>GAO sees no improvement, DOD sees minor improvement</td>
</tr>
<tr>
<td>Federal IT Acquisition Reform Act (2014)</td>
<td>Increase CIO’s oversight over IT acquisitions to reduce IT procurement waste</td>
<td>Not yet achieved</td>
</tr>
<tr>
<td>Category Management (2015)</td>
<td>Have the federal government act like a single buying enterprise to produce large savings</td>
<td>Not yet achieved</td>
</tr>
</tbody>
</table>

This overview of procurement reform over the last 70 years suggests federal policy makers have been obsessed with the idea of reforming the federal procurement system. The proliferation of proposed procurement reforms has left no time for the goals of each reform to be implemented. There has been little evaluation and evidence of reform success or failure before the next round of reforms.

The majority of reforms reviewed here can be fairly said to have not been successful. Future reformers would be well served by mining this mixed record for lessons that could
guide future attempts at reforming the very complicated federal acquisition process. Such analyses could be a rich subject for future research.
Why haven’t procurement reforms been more successful?

FOUR GENERAL EXPLANATIONS FOR A LOW LEVEL OF SUCCESS BY COUNTELESS ATTEMPTS TO REFORM FEDERAL PROCUREMENT

As mentioned earlier it is believed there are four broad reasons for this mixed record (at best) of success by countless attempts to reform federal procurement: (1) The constitutional design of divided government leads to a lack of permanence of such reforms; (2) The government’s capacity deficit inhibits successful implementation of various procurement reforms; (3) The swinging, always changing, pendulum-nature of procurement reform undermines most reforms; and (4) Many of the reforms rely on business principles but the government cannot be run exactly like a business.

DIVIDED GOVERNMENT

The first reason countless procurement reforms have produced mixed results is because the reforms are based on a model that assumes that government is an efficient business-like organization. Clearly this approach is a mismatch for the existing governmental design. The founders designed our federal governmental system based on preventing tyranny rather than on promoting business efficiency; it was designed to rein in the potential tyrannical power of a strong king-like leader. To counter such a threat, the founder’s divided power among three federal branches of government, and between the states and the federal government. The founders also built in checks and balances to counter excessive power accumulating in any one branch. Their intent was to have political power divided and shared. Historically, Americans have had a healthy distrust for a strong central government. As will be discussed, the limitations on the executive branch as well as the political forces inherent in the American democratic system undermine the permanence of various procurement reforms.

Divided government was blamed for a failure of reform of the weapons acquisition process by McKinney, Gholz and Sapolsky of the Massachusetts Institute of Technology. “The formal division of powers in the American constitutional system are likely to prevent significant improvements in the efficiency of the weapons acquisition process.” (Acquisition Reform, MIT, May 24, 1994). McKinney, Gholz and Sapolsky argued that the fragmented nature of political authority in the American governmental system is an inhibitor of effectiveness in reform efforts.

The presidency and the executive branch were never intended or designed to be very powerful. The delegates to the Constitutional Convention of 1787 had recently fought a war with a powerful king. They were not in favor of creating a branch of government and a ruler of that branch that could wield unbridled power. While Alexander Hamilton, one of the founders, pushed for an executive that had energy (Federalist No. 70), the resulting Constitution more reflected the Madisonian federal system, which was “designed to
preclude concentrated power” (Durant, PAR, p. 573). Robert Durant describes the federal system as a “Madisonian system of diffused power” (p. 573).

James Q. Wilson declared: “The governments of the United States were not designed to be efficient or powerful, but to be tolerable and malleable” (Wilson. Bureaucracy, 1989, p. 376). On the other hand, Wilson notes that Social Security checks arrive on time, federal prisons are decent and humane institutions, letters are delivered in a day, and “one can stand on the deck of an aircraft carrier during night flight operations and watch two thousand nineteen-year-old boys operate one of the most complex organizational systems ever created. There are not many places where all this happens. It is astonishing it can be made to happen at all.” (p. 378) (This writer also experienced aircraft carrier night flight operations and gained enormous respect and admiration for the Naval men and women, the U.S. military, and U.S. Government for their efficiency, competence and courage.) Is this a contradiction to the idea of inefficient government? Happily, yes. But it is more the exception than the rule.

Divided government also leads to an inefficient executive branch. The political environment is a direct cause of ambiguous goals. Unlike the private sector’s simple unitary goal of profit, the executive branch has multiple, conflicting goals: efficiency, equity, legality, democracy, due process, fairness, transparency, accountability. Efficiency as a goal competes with other public-sector goals and must become subordinate to legal and democratic goals.

According to Wilson: “equity is more important than efficiency in the management of many government agencies” (Wilson, p. 132). Public agencies, he says, will have more managers than private ones doing the same kind of work (p. 133). That is the case because public agencies must handle “constraints.” The three major constraints he identified are revenues, productive factors, and agency goals, all of which are controlled by entities (legislatures, courts, politicians and interest groups) external to the agency (p. 115). The fact that these constraints are controlled by external entities makes public organizations fundamentally different from private organizations and less efficient than private organizations.

“When we denounce bureaucracy for being inefficient we are saying something that is half true.” (Wilson p. 317) That is because, Wilson argues, the economic definition of efficiency is too narrow. “A government that is honest and accountable in its actions and properly responsive to worthy constituencies may be a very efficient government...” (p. 318). Governments only appear to be inefficient because they are pursuing multiple goals (e.g., accountability, democracy, equity) as compared to private sector organizations pursuing a single goal, profit maximization. The federal procurement process is endlessly criticized for taking too long to buy critical weapons systems that cost too much and underperform. But the procurement system must serve Congressionally mandated social goals such as quotas for small business and women owned businesses. Federal agencies must buy American products that protect the environment and pay established labor rates for services (p. 324). It may be viewed as inefficient in buying complex goods quickly, but it
also may be viewed as fulfilling America’s small business goals. One person’s inefficiency is another man’s accountability.

In short, procurement reforms intended to make buying more efficient are facing a big head wind. The myth of Sisyphus (i.e., pushing an enormous rock to the top of a mountain only to have it fall back to its starting point) comes to mind.

THE GOVERNMENT’S CAPACITY DEFICIT

The second reason there is a mixed record on procurement reform is directly related to the government’s capacity deficit, a recent governmental trend that has further decreased the chances for success of these reforms. Capacity deficit is the label given to this recent phenomenon by Phillip J. Cooper (Cooper, 2011, p. 7). Cooper describes capacity deficit as a major challenge that will prevent any president from successfully executing his policies (p. 8). He argues that the federal government has assumed far more complex administrative obligations than ever before. And its resources to implement and administer these responsibilities have been so diminished over the last 40 years, that the government lacks the capacity to do what is needed to ensure that the laws are faithfully executed by the president and his administration. By the time that Barak Obama came into office, Cooper believes, capacity deficit was at a crisis level. “The capacity crisis that President Obama inherited was the result of both Democratic and Republican administrations before him” (p. 9). According to Cooper, the capacity crisis was especially critical around government contracting. The contracting out of federal services increased rapidly under the Bill Clinton and George W. Bush administrations. “But the capacity to administer policies that relied on contracting continued to decline” (p. 9). Successful and permanent procurement reforms are undermined by the Cooper “capacity deficit”.

“Austerity and privatization have, respectively, decreased the fiscal capacity of government to carry out resource-intensive public policies and increased the reliance on contracts with the private sector, creating oversight problems,” say Beland, Rocco and Waddan (Beland, Rocco and Waddan, PAR, p. 142). The public now demands more from government and wants to pay less (i.e., lower taxes). Over the last several years, the emphasis at the national level has been to constrict budgets and reduce the national debt or to cap its growth. The result has been to reduce or slow the growth of both defense and non-defense discretionary programs. This has reduced the capacity of the federal government to administer the programs it is responsible for through legislation it has enacted.

Another view of this capacity problem is offered by James L. Perry, former Editor in Chief of Public Administration Review (PAR, Vol. 76, No. 2, p. 211). Perry sees a real erosion of administrative capacity. He cites Paul Volker’s concern that “government has lost its capacity to execute public policies and implement programs. To make his point, Volker cites the government’s response to Hurricane Katrina and the HealthCare.gov rollout (p. 211). Perry also describes relevant research by Paul Light; 48 federal government
breakdowns since 2000 are documented by Light. These breakdowns, according to Light, suggest significant disinvestment in the government's capacity to implement policy and provide warnings about the future (p. 211).

Donald F. Kettl suggests “both liberals and conservatives have eroded confidence in government’s ability to work” (Kettl, p.639, PAR). “Liberals have developed a disconcerting habit of launching big ideas without paying much attention to how to make them work.” A perfect example is the failed launch of the Obamacare website. Kettl also observed that conservatives employ hiring freezes, political attacks and budget cuts to undermine the agencies responsible for administering policies they disagree with (p.639). Recent examples include President Trump’s widely publicized call to drain the swamp and former Trump advisor Steve Bannon’s plan to deconstruct the administrative state. But a competent bureaucracy is necessary to produce the public goods its citizens want and need: national security, health security, a safe and healthy environment, and many other items (p. 640). Kettl suggests: “fewer bureaucrats will not produce less government, just worse government” (p. 640).

Federal procurement is a complex administrative function. It is extremely hard to do procurement well with adequate resources and competent staff. It becomes nearly impossible to perform procurement activity with a governmental capacity deficit.

Another way to understand the capacity deficit is to observe the growth or lack of growth in the federal workforce as compared to the growth of the federal budget. The federal workforce reached a peak of 3.4 million workers during World War II. After the troops returned home, the level of employment dropped below 2 million and remained there until 1966 except for a brief period during the Korean War. From 1966 until 2014 the level stabilized at around 2 million (OPM, Historical Federal Workforce Tables 2015). In essence, the number of federal workers remained relatively stable in the face of phenomenal growth of the scope and influence of the federal government including the number and size of federal programs. The federal budget grew from $130 billion in 1966 to $3 trillion in 2014. The number of contact workers has skyrocketed.

A big reason the federal workforce has not grown to match the federal budget growth is politics. The Congress would rather increase funding for outsourcing rather than federal employees. But all these contractors need federal worker oversight. This challenge further exacerbates the government’s capacity deficit.

THE SWINGING PENDULUM OF PROCUREMENT REFORM

The third reason or alternative theory for the mixed record of procurement reform has to do with the lack of permanence of procurement reform. In other words, while procurement reforms may have been instituted to streamline the procurement system to, for example, quickly arm the nation in a time of war, events such as a procurement scandal
may occur leading to elimination of the reform and reinstitution of overregulation of the procurement system. This lack of permanence or swinging back and forth between strong and weak procurement regulation can be thought of as a swinging pendulum, a frequently used metaphor.

This pendulum swings between two poles or two conditions of the federal procurement system. At one pole the procurement system may be operating in a largely unregulated condition where the regulations may have been purposefully relaxed to allow streamlined purchases, for example, in a time of war. At the other pole the procurement system may be operating in an over-regulated condition. This over-regulated condition may have been the result of laws enacted by Congress in reaction to such wartime scandals as profiteering and waste.

The swinging pendulum receives a constant oiling from our two-party system, especially when the politics of this two-party system become negative and nasty. Any real or imagined procurement scandal is exploited by the party out of power. A cost overrun or a delay in the procurement of a weapon system is often criticized as administrative incompetence or worse by the party out of the White House; the usual result is a clarion call for procurement reform and new procurement reform legislation. The steps in this dance are the same for either party.

This swinging pendulum pattern is easily discerned throughout the history of federal procurement. To award federal contracts quickly during the Civil War, a loophole was created in the law requiring advertising on all government contracts (Culver, 1984a, p. 7). The loophole eliminated the advertising requirement. After the war a joint Senate House commission established a board to review every proposed contract award because of extensive wartime profiteering (House of Representatives, 1895, p. 30). The pendulum swung between a relaxed condition of procurement rules during the war to expedite buying and a reapplication of procurement rules after the war as a consequence, it seems, of the relaxation of rules.

The swinging pendulum can be observed during another American war, World War I. Again, to expedite the procurement of goods and services needed for the war effort, advertising on all contracts was eliminated. Another indication of the relaxed condition of procurement regulation was the widespread use of cost plus a percentage of cost contracts. This type of contracting gave contractors no incentive to control costs, and is now deemed illegal (Culver, 1984b, p. 8). After the war, Congress passed an excess profits tax in large part due to contractor profiteering and influence peddling scandals at least partially related to the relaxed regulatory environment. (p. 9).

And yet another swing of the pendulum can be seen during World War II. On December 18, 1941, just a few days after the attack on Pearl Harbor, the president signed the War Powers Act. According to the act, any agency engaged in the war effort could award contracts without public advertising or competitive bidding (Culver, 1984c, p. 11). Congress restored competitive bidding after the war. And during the Korean War, Congress rescinded the requirement for advertising before contract award (Culver, 1985, p. 14).
These historical examples reveal a swinging pendulum pattern. At one extreme of the swinging pendulum, procurement regulations are very loose or relaxed; at the other extreme, procurement regulations are very tight and restrictive. The swinging pendulum pattern has been confirmed by several histories of federal procurement (Commission on Government Procurement, 1972; Culver, 1984a, b, c and 1985, Nagle, 1992).

As mentioned earlier, the swinging pendulum metaphor has been used before. In 1998, Steven Kelman said: “Sure, right now, federal procurement has been moving in the direction of fewer rules and more leeway for government folks to use their judgment. But the pendulum will swing back. After a while we’ll go back to the way things were before procurement reform, and the regulations and distrust will return...” (Kelman, 1998a, p. 21).

Outsourcing versus insourcing is a very recent example of the swinging pendulum. Federal procurement reforms and procurement policies that appear to be permanent can be easily reversed by a new Administration or Congress. The permanence or lack of permanence of various procurement reforms is readily evident in the government’s policy regarding the determination of whether commercial activities should be performed under contract with commercial sources or in-house using government facilities and personnel. The federal policy of relying on the private sector to obtain commercial products and services was encapsulated in Office of Management Circular No. A-76, Performance of Commercial Activities. (May 29, 2003). There is a current moratorium on A-76. An excerpt from this policy is shown here:

The longstanding policy of the federal government has been to rely on the private sector for needed commercial services. To ensure that the American people receive maximum value for their tax dollars, commercial activities should be subject to the forces of competition.

During the George W. Bush presidency, contracting out was strongly encouraged. There was wide-spread support for complying with the policies of A-76. “Among other things, the Bush Administration proposed amending OMB Circular A-76 so that all functions were presumed commercial unless agencies justified why they were inherently governmental” (Luckey, Congressional Research Service, 2010, p. 6).

In a reversal of the Bush emphasis on contracting out, one of the first initiatives of President Barak Obama’s administration was an emphasis on-insourcing. This is a pretty strong indication of how outsourcing can be directly affected by political winds. In July 2009, the Director of OMB, Peter R. Orzag directed all executive branch agencies to consider in-sourcing as a tool for managing the multi-sector workforce. Orzag warned that: “over-reliance on contractors can lead to erosion of in-house capacity that is essential to effective government performance” (Orzag, Peter R, “Managing the Multi-Sector Workforce” OMB, July 30, 2009).

And with another swing of the pendulum, the Republican-led House of Representatives attached a provision to Fiscal Year 2011 Continuing Resolution to roll back the Obama
Administration’s opposition to A-76 competitions (Matthew Weigelt, “Is competitive sourcing ready for a comeback?” washingtontechnology.com April 22, 2011).

There is recent speculation that the Trump Administration may revive A-76.

This is just one example of how key procurement policies swing from one extreme to another with the change of political winds. A-76 competitions seem to be in favor under Republican administrations and out of favor under Democratic administrations. More generally, Democratic and Republican politics play a large role in the direction of various reforms.

The swinging pendulum as discussed leads to a lack of permanence of procurement reforms and creates an almost insurmountable challenge for procurement reformers.

**IT MAY NOT BE WISE TO RUN GOVERNMENT EXACTLY LIKE A BUSINESS**

“Government shouldn’t be run like a business; it should be run like a democracy” (from The New Public Service, Janet V. and Robert B. Denhardt, 2003, p. 3). On the other hand, “Government needs to be as well managed as it is well meaning.” (1984 Democratic convention, Walter Mondale).

There has been a noticeable push to make the federal government more business-like at least since the Carter Administration in the late 1970s. It is believed that more business-like government can help to reduce the cost of government and lower budget deficits. But making the government more business-like has had its share of challenges and failures. A discussion of the implications of entrepreneurial governance follows.

Under the Government Reform Act of 1994, Congress authorized franchise funds to provide common support services to other government organizations (GAO, August 2003). Common support services include payroll processing, information technology support, employee assistance programs, and contracting. Franchise funds must recover the full cost of providing the service and charge fees to do so. In 2005, GAO issued a report critical of franchise funds (GAO, July 2005). GAO referred to these franchise fund entities as “entrepreneurial, fee-for-service organizations, which are government-run but operate like businesses” (GAO, 2005, p. 1). “The fee-for-service arrangement provides incentives to emphasize customer service at the expense of proper use of contracts and good value” said GAO (GAO, 2005, p. 3). “The fee-for-service arrangement creates an incentive to increase sales volume because revenue growth supports growth of the organization. This incentive can lead to an inordinate focus on meeting customer demands at the expense of complying with contracting policy and required procedures” (GAO, 2005, p. 7). GAO also reported: “…franchise funds sometimes face incentives to provide customer service at the expense of proper use of contracts and good value” (GAO, 2005, p. 28).
In the mid-1990s, the General Services Administration became one of the most entrepreneurial organizations in government. The fees it earned for its procurement services and the bonuses it gave its employees were tied to the revenue it generated. From 1998 to 2003, the revenue it generated from its procurement services more than doubled (Harris, p. 44, 2004). An investigation uncovered serious contracting abuses. Several offices purchased millions of dollars of building construction products and services with IT funds. It looks as if the pressure to maximize revenue and making the customer happy led to stretching the procurement rules too far. Entrepreneurialism may not be a good fit for government.

Another example of government entrepreneurialism not working concerns an Army contract for private sector interrogators awarded in 1993. To obtain the interrogators the Army used a contract reserved for information technology. The $20 million contract was awarded by a fee-for-service procurement office in the Interior Department (Harris, 2004). Interrogation services seem far outside the scope of the information technology contract. To add such a task to the basic contract would be to stretch procurement rules to their breaking point. Indeed, the Department of Interior Inspector General blamed the out of scope contract on an inherent conflict in a fee-for-service operation. “Procurement personnel in their eagerness to enhance organizational revenues have found shortcuts to federal procurement procedures and procured services for clients whose own agencies might not do so” (Devaney, 2004, p 3).

In 1999, the Procurement Roundtable (PRT) issued a report on the Federal Acquisition System concerning needed reforms. In addition to describing the reforms, the PRT acknowledged:

“that the Federal Government has been and always will be different from the commercial sector. Thus, while serving to make the Federal acquisition system more like its commercial counterpart, the PRT continues to recognize the unique constraints that are imposed on public-sector organizations. No matter how commercial, competitive, or cost-effective the Federal Acquisition system becomes, it ultimately will still be governed by public policies – policies that are driven not only by economic objectives but also by social and political considerations” (Procurement Roundtable, 1999, p. 6).

In a 2001 American University Law Review article on the “Fundamental Failure of Businesslike Government, Steven L. Schooner warns against pushing too far in the direction of business-like government (Schooner, 2001, p. 98). Schooner suggests that the government is different than the private sector; it lacks “the profit motive” (p. 91). According to Schooner, “Government is not a business, nor can a market-based private sector model sustain the public trust” (p. 95).

In early May 2004, a CBS “60 Minutes 2” broadcast broke the Abu Ghraib prison scandal. The news program suggested that Army soldiers and civilian contractor employees were involved in the abuse of Iraqi prisoners in an Iraqi prison in Baghdad. While the soldiers were quickly disciplined, the civilian contractors were not. The military chain of command
ensures that soldiers will be quickly held accountable to the military code of justice. Apparently, no such clear accountability chain exists for contractors. Soldiers are subject to the Uniform Code of Military Justice; contractors are not. The policy of privatizing military interrogation seems unwise given the sensitivity of this function and the vagueness of the chain of command.

From 2005 to 2007, GSA and Sun Microsystems conducted negotiations with regard to allegations of overcharging for computer software and technical support. A GSA auditor had reported that Sun had billed the government millions more than it had charged its commercial customers. Although there appeared to be grounds to terminate the Sun contract, GSA took no such action. If GSA terminated the Sun contract, GSA would stand to lose millions it would collect on future orders from Sun in fees called industrial funding fees. The GSA contracting officer on the Sun contract stated that: “We thought of ourselves as being, not a part of the government, but as being a business, and we looked to profit on our customers.” According to the Washington Post, “When a government buying office becomes a profit center, then bad things are likely to happen” (Washington Post, May 23, 2007, p. A01).

Recent history reveals serious problems and challenges associated with operating the government like a business. Many aspects of government administrative activities are business like and can benefit by the efficiencies and economies of business like operations. But the stories described above call for a cautious approach to wholesale installation of business methods.

“Government is different—and especially the federal government—is different in many ways than running a business or anything else (Robert Gates speaking on Meet the Press, January 24, 2016). Business doesn’t have the multiple goals the government has. Business doesn’t have the oversight the government has. Business doesn’t have the press scrutiny the government has. Business does not need to be as concerned as government with equity, justice and fairness.

**HOW LIKELY IS IT TO ACHIEVE MEANINGFUL REFORM OF THE FEDERAL PROCUREMENT SYSTEM?**

Given the bleak history and poor record of past procurement reforms, can we be optimistic about future reforms? Probably not.

Is the federal procurement system in serious need of reform? Is it broken? The answer is yes if you listen to all of its critics, or if you listen to each new presidential administration. On the other hand, the federal procurement system is the envy of the world. It produces sophisticated weapons systems sought by most countries. Every year the system successfully processes millions of procurement transactions.
This paper has argued that there are significant barriers to achieving radical and permanent reform. This reality is the justification for this author’s pessimism. Another reason for this pessimism is almost 40 years of intimate federal procurement experience inside the government as a contracting officer and contracting manager, and outside as a procurement consultant to government agencies.

The federal procurement system is what it is. It was never designed to make buys as fast as possible. If that were the case, all buys would be done on a sole source basis to avoid the time consuming competitive process. The federal procurement system has a multitude of goals and responsibilities. Federal procurement professionals cannot simply focus on one goal like buy as fast as you can.

When reviewing the history of federal procurement reforms, is there an echo in the history of government management reforms? Some of these management reforms can be thought of as management fads that have come and gone with various Administrations. Many of these theories/approaches have not been permanent or highly successful. Here are just a few examples: Management by Objectives, Zero Base Budgeting, Zero Defects, Total Quality Management, Performance Management.

Can we expect continued attempts to reform the federal procurement system? Absolutely! Such proposals are just good politics. It is hoped that reformers would be more realistic about what can be achieved. Reformers need to lower their expectations. I have seen up close how constant reform adversely affects the federal procurement community as it is pushed and pulled in opposite directions as Administrations come and go.
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Public Law 87-653, 10 USC Section 2306a. The Truth in Negotiations Act.


USASpending.Gov.


Federal Procurement Reform: A Mixed Record at Best

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Overview

• Perception of federal procurement system performance: Negative
• Numerous attempts to reform system with mixed results
• How federal procurement systems perform is important
Review of Major Procurement Reforms

- 1947 to 2015
- 16 Reforms Reviewed
  - Were goals achieved?
  - Was reform permanent?

Mixed Record of Success

- Procurement Reform Record
  - Relatively successful reforms – 3
  - Somewhat successful reforms - 4
  - Relatively unsuccessful reforms - 9
- Why haven’t reforms been more successful?
Explanation No. 1: Divided Gov’t

- Government designed by Founders to prevent tyranny
- Divided gov’t leads to inefficient gov’t
- Federal procurement system is understandably inefficient

Explanation No. 2: Capacity Deficit

- Cooper: Capacity Deficit
- Public demands more from Gov’t and wants to pay less
- Federal workforce since 1966 approx. 2 million
Explanation No. 3
Swinging Pendulum

- Procurement pendulum (popular metaphor) swings between 2 poles
- Swinging pendulum easily discerned throughout history
- Recent example of pendulum: Outsourcing and the role of politics

Explanation No. 4: Running the government like a business

- Push to make gov’t more business-like since 1970s
- Problems with fee for service arrangements
  - Incentive to please customer
  - Leads to improper contracting
- Government is different
Does the federal procurement system need meaningful reform?

- Conventional wisdom says yes
- On the other hand
  - DOD weapon systems are sought by many countries
  - System processes millions of procurement transactions

Notes to Reformers

- Recognize government is different
- Procurement system is better than advertised
- There are significant barriers to achieving radical reform
- What is the current Administration doing?