GOVERNMENT CONTRACTING PATHOLOGIES

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While it is nice to see federal contracting agencies glowing with expectant self esteem over the bright future that reform legislation and regulation seem to promise, it may be more useful to lay them down on the couch and explore a few of the pathologies that may yet hinder them from becoming ideal acquisition offices.

Federal officials have promoted various improvement projects by advocating a best practices approach to acquisition reform. Emphasizing good news may be informative; but an alternative view—one which examines commonly found problems as object lessons—may be equally useful. Despite claims that the recent enactment of necessary reform legislation and regulation now leaves only implementation to complete the job, many intractable difficulties remain. Some of the dilemmas encountered in contracting offices are better considered as pathologies to be treated in a clinical sense if the ills of federal contracting are to be cured.

The literature of public administration has occasionally used the term "pathology" to describe the actions of humans in federal agencies. Downs (1967) was one of the first to describe life inside federal agencies in terms of defective systems and bizarre personality types. Bennis (1970) also emphasized the aberrant aspects of government work. Hummel (1982) likewise regarded work in federal agencies in terms of clinical psychological dysfunction due to the damaging effects of working in a bureaucratic environment. Contemporary analysts have discussed the problem of "latent pathogens" in an organization, such as poor design, poor training, and poor procedures which make mistakes inevitable (Klein 1998, p. 273)

Only in the past few years have some initial steps been taken to extend this type of examination directly to government contracting. Kelman (1990) focused on fear of discretion as a factor contributing to inadequate performance in government contract management. Muczyk (1998) describes "bureaupathologies" as a key obstacle to acquisition reform. The federal contracting process would profit from further application of this type of analysis.

Here we discuss several pathological conditions presented to track the sequence of the contracting cycle. The goal is to

answer the question: "What's keeping federal contracting from working better?" Through this sort of contrarian analysis I hope to demonstrate that government contracting as a system has a long way to go before we can claim that true reform has occurred.

The Budget Divining Rod: Who's on First?

Symptoms. In any given month of the year, program managers and contracting offices must be concerned with three different budgets. For example, assume this is September. Contracting and program offices are characterized by manic behavior, preoccupied with obligating funds for the soon-to-expire fiscal year's budget (first base).

Yet these offices must also be concerned with the looming start of the next fiscal year, with its separate budget (second base). Even if one can juggle those two balls at once, the budget for the fiscal year starting 13 months from now must soon be prepared, for it will be requested in just a few weeks (third base).

Agencies display confusion about priorities. As a result, poor spending decisions and sloppy contracting practices occur. Bad contract awards are made in the haste to spend money, and money that would have been spent more wisely is not, because of future budget uncertainties.

Diagnosis. Most humans cannot effectively manage three budget years at the same time. Only a soothsayer might predict the course of future budgets and funding patterns. The problem is information overload on budget matters and maximum uncertainty as to future funding. It is unrealistic to expect rationality in annual budget processes. Recent legislation authorizing severable service contracts to cross fiscal years (implemented in the Federal Acquisition Regulation (FAR) 32.703-3) is a useful band-aid but fails to get at the root of the problem.

Treatment. Congress should enact legislation treating this problem by adopting multiyear funding. Multiyear budgeting, and the appropriations to go with it, would be a useful palliative for the symptoms of federal budget woes as reflected in contracting offices.

Firm Requirement, No Money: A Solomonic Dilemma

Symptoms. The program office informs the contracting office that a large contract for a new program will need to be awarded this fiscal year. There is only one problem: Congress has not yet made available any money for the program. Still, the program office is certain that a large amount of money will be forthcoming, and the program is so important that it must go forward regardless of how late the money arrives.

The contracting office diligently attempts to serve its customer by carrying the contract up to the point of award, only to find that no money is forthcoming, or it will be provided in another fiscal year. Disillusioned, the contracting office feels it has been "had." Contracting officers have wasted resources that should have been devoted to other important projects that were properly funded.

Diagnosis. Irreconcilable uncertainty has created a no-win situation. To begin the procurement process now is to risk

wasting considerable resources on an effort that may never come to fruition if Congress decides not to provide funding. To refuse to begin the procurement process now is to risk having to award a contract in madcap fashion, if the money becomes available late in the fiscal year.

Treatment. The prescription for this dilemma is for contracting offices to stand firm and not take on this type of assignment. To do otherwise is simply to create incentives for poor program management and irresponsible behavior by Congress.

If a program is important, it must be timely and properly funded and managed. Anything less simply promotes bad government or brings into question the validity of the program. While this treatment may not fit within some readers' notions of customer service, if contracting officials attempted to do the same thing, program officials would laugh. There is no way to "split the baby." Something must give.

Advance Acquisition Planning: The Myth of Sisyphus

Symptoms. Program offices give lip service to the notion of advance acquisition planning. Program offices submit a handful of plans that do not represent a substantial portion of their contracting budgets. The plans are neither complete nor useful to the contracting office in planning future workload. The age-old problem of unexpected program office requirements clogging the contracting office continue, contributing to poor contracting practices.

Diagnosis. Determine whether program offices really understand what advance acquisition planning is. If advance acquisition plans are not useful, assess whether milestone plans for individual contracts, prepared after receipt of a funded procurement request, are sufficiently effective to deliver good contracts. Current laws on competition and small business both require advance acquisition planning, most recently mandating that each agency issue a forecast of upcoming contracting opportunities. Given the budget woes noted above, this forecast should not be relied on as a source of comprehensive, accurate information.

Treatment. None. This is a problem endemic to the federal government. No known treatment has proved effective. The laws on this subject would profit from some revision, especially the law requiring a small business forecast (15 United States Code (U.S.C.) 637[a][12][C]), as it can very easily be misleading to small businesses. A bold agency may wish to process a class deviation from FAR Part 7 to eliminate the tired annual call for advance acquisition plans and replace it with merely individual milestone plans for specific contracts once they are funded.

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Ratification: Not an Acquisition Strategy

Symptoms. Program offices, frustrated by dealing with what they consider to be unresponsive contracting offices, seriously consider making unauthorized commitments

to get what they need. Comments overheard in government cafeterias include: "Yeah, I know I'm supposed to send this to procurement, but then it won't get done on time or the way I want it. I'd rather tell the contractor to start work now, and ask for forgiveness later." Unauthorized commitments are routinely ratified, with little or no consequence even for repeat offenders.

Diagnosis. This illness may be caused by a combination of:

- ignorance on the part of the program official (lack of knowledge of how to get things through procurement),
- a "the rules don't apply to me" mindset, or
- a serious problem with poor performance by the contracting office.

Treatment. Determine the most likely cause of the problem. Address ignorance through training and "hand-holding" of program officials. Refer cases of malice to the appropriate investigatory body. Make the ratification process more than a rubber stamp. If program office criticisms are valid, make improving contracting office performance a priority.

The Statement of Work: The Cloud of Unknowing

Symptoms. Program offices "know what they want when they see it" but are unable to articulate in writing exactly what that is. Statements of Work (SOWs) are poorly drafted, leading to inadequate contracts and contractor performance of questionable quality.

Diagnosis. The program office may simply need to send employees to a course in SOW preparation to alleviate the symptoms. If this is not the problem, conduct further study as to what the illness is. If the problem is simply lack of talent in the program office, determine whether management can arrange for an infusion of talent from elsewhere. Failure by contracting offices to reject SOWs creates a disincentive, preventing program offices from achieving acceptable performance.

Treatment. Prescribe training for program offices in how to prepare performance-based work statements. Secure management support for additional technical resources, whether on a temporary basis (detailing skilled personnel from outside) or permanently.

Inherently Governmental: Inherently Subjective

Symptoms. Contracting regulations (FAR 7.5) do not explain clearly what an inherently governmental function is. As a result, program offices seek to contract out any and all types of services. The argument is advanced that if the contractor does not actually sign the completed work product, but rather presents the work for approval or signature by the government, it's all kosher. Contractors become indistinguishable from federal employees.

Diagnosis. The problem could be due to the fact that the program office is acting out of ignorance, malevolence, or laziness. Contracting for services is considered by some to be preferable to performance by federal employees, primarily for cost reasons. Unfortunately, no regard is given to the lack of control that contracting

entails. Instead of a proper arm's length relationship, a cozy personal services environment can easily develop if the problem is not treated.

Treatment. If the program office does not understand the rules, provide an explanation. If the program office is acting out of malevolence, refuse to issue solicitations that are for inherently governmental functions. If the program office is acting out of laziness, bring to management's attention the fact that program offices are abdicating their responsibilities by allowing contractors to rule the roost.

The appropriate long-term treatment is to change the regulations or establish more strict policies as to what is an inherently governmental function. Eliminate the ambiguities in FAR 7.5 in favor of less outsourcing, given the fact that fewer resources exist in today's government contracting workforce than were in place when the Office of Federal Procurement Policy (OFPP) Policy Letter on this subject was issued in 1992.

Nonpersonal Services: Half Truth

Symptoms. Contractor employees perform on-site in government offices doing work that is largely indistinguishable from that done by federal employees. Contracts claim to be for nonpersonal services but are administered on a personal services basis. FAR 37.104 lists six basic factors to be considered in determining whether services are personal in nature, but the regulation is vague as to how many of those factors must be present to create a prohibited personal services arrangement.

Diagnosis. The problem may be due to irresponsible SOW preparation by the program office or lax enforcement of existing regulations by the contracting office. One easily detected factor is the contractor's presence on-site in federal office buildings.

Treatment. Move contractors off-site to their own facilities whenever their presence in federal office buildings creates the appearance of personal services. Eliminate personal services elements from contracts subject to the FAR. The factors listed in the FAR are based in part on Internal Revenue Service regulations but need not be. Revise the FAR to tighten up the definition of personal services by making the presence of any two of the six listed factors sufficient to create a prohibited personal services relationship.

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Publicizing Upcoming Contracts: Open Mouth, Insert Foot

Symptoms. Contracting offices must wade through an excessive number of proposals, most of which are from firms with no chance of winning the award. Too many proposals become as much a problem as too few proposals because of the evaluation burden created.

Diagnosis. Synopsizing in the *Commerce Business Daily* allows any company, whether meeting the responsibility standards in FAR 9.1 or not, to request a solicitation or submit an offer. For simplified acquisitions, FAR 13.104(b) allows

contracting offices to limit the solicitation of quotations to only three firms. Common sense tells us that if evaluating lots of proposals is a burden, then we shouldn't ask for so many. The recent coverage in FAR 15.202 on using an advisory multistep source selection process can be useful, but it comes only after the world has been told that it can compete.

Treatment. Expand the "three quote rule" for simplified acquisitions to all contracts regardless of dollar value. Use the waiver authority in FAR 5.202(b) or ask Congress to make publicizing in the *Commerce Business Daily* an option, not a requirement. As noted in my recent paper (Lloyd, 1999), seek to emulate the buying behavior of private individuals, not private corporations, who would never even consider asking perfect strangers (unknown firms with no references) to compete for a job.

"Expand the "three quote rule" for simplified acquisitions to all contracts regardless of dollar value."

The Solicitation: Know What I Mean, Vern?

Symptoms. Many solicitations are incredibly long and complex, featuring excessive proposal requirements and resulting in overly long proposals that seem to take forever to evaluate. Evaluation factors and subfactors proliferate, but fail to produce improvement in source selection.

Diagnosis. This is typically a self-created problem in contracting offices. Most of the paper submitted in a proposal is worthless, amounting to empty promises that are never enforced after contract award.

Treatment. Apply the streamlining techniques developed by Vernon Edwards (1994, 1995, 1997), which include keeping the number of evaluation factors to a minimum, decreasing the size of the evaluation panel, and asking only for the least amount of information needed from offerors. Note that Edwards' approach could be made even more efficient and less mathematical by eliminating much of the number-crunching associated with scoring proposals and past performance.

Of Penalties and Liquidated Damages: Fish Four Days Old

Symptoms. Contracting officials are under the illusion that the assessment of liquidated damages for late completion of construction contracts (or downtime occurring under information technology service contracts) is "not a penalty." No one is buying this line.

Diagnosis. Liquidated damages provide a negative incentive only. Corresponding positive incentives are usually unavailable. Proper treatment of contractors to inspire outstanding effort requires a symmetrical approach with both positive and negative performance incentives.

Treatment. Seek and implement statutory or regulatory authority for bonuses and penalties. Good examples are the Department of Energy's negative fee procedures at 48 Code of Federal Regulations (CFR) 970.15404-4-1 and the bonuses and penalties law at 22 U.S.C. 4856 for overseas construction.

Contracting Automation: Call the Bunco Squad

Symptoms. Contracting offices spend inordinate amounts of time and money trying to implement comprehensive contracting automation systems that computerize all steps in the contracting process from "lust to dust," "womb to tomb," or "cradle to grave" in an integrated fashion with program, budget, and payment offices. Agencies buy "turn-key" systems that fail to start when the key is turned. New, expensive systems consistently fail or underperform. Aspirations overtake available automation tools.

As long ago as the early 1980s, federal agencies were trying to automate contracting functions without the necessary software features being available on the open market. For example, character-based systems were being advocated when clearly visual interfaces were needed. Consequently, more time was spent trying to fix poorly conceived systems than should have been devoted to such efforts. The amount of money spent on an automated system tends to be inversely related to its functionality and user friendliness.

"Bugs" evolve into "features." Workarounds and "kludge solutions" abound as contracting offices seeks to fit square contracting pegs into round automation holes. Even favorable reviews of department-wide contracting automation have confessed that significant cost reductions are unlikely to appear (Nissen, 1999).

Diagnosis. The private market for contracting technology does not always advance as quickly as federal agencies believe or desire. Determine whether wish lists of features diverge from readily available market products. Unrealistic expectations often impair critical thinking. No automation system can be all things to all people. The only meaningful progress that has been made recently in this area has been with low-budget systems that rely on the public Internet infrastructure and commonly available software instead of customized development efforts.

Treatment. Cease all "grand design" or one-size-fits-all contracting automation efforts. Do not get ahead of what the market can deliver in terms of off-the-shelf software capable of meeting agency contracting needs without customization. Rely instead on rapid development prototyping on a small scale or "proof of concept" approaches, rather than integrated systems that are bound to fail. Once small-scale pilot models are proven in practice, only roll them out to other offices if reliability can be ensured. Focus on low-cost, Internet-based systems. Do not allow budget or finance offices to dictate the needs of contracting automation systems.

"Cease all "grand design" or one-size-fits-all contracting automation efforts."

Technical Evaluation: Rogues' Gallery

Symptoms. Program office evaluations of technical proposals from offerors are poorly written and cannot withstand a protest from a losing company. Rogue evaluators pursue their own biases and agendas in skewing the technical evaluation to their favorite contractors. Contracting offices, fearing the possibility of protest,

take on the role of technical evaluators by helping redraft unartfully worded technical evaluation reports.

Diagnosis. The problem may be due to either bias on the part of evaluators or lack of training or experience in performing this function. Most federal employees have little or no experience in performing technical evaluations, which is a specialized skill in big demand.

Treatment. Reduce the size of technical evaluation panels to the minimum size possible. The FAR does not require any size at all; in fact, a single person may perform the entire technical evaluation. By keeping panels to a manageable size, and providing the opportunity for training in technical evaluation, problems of recruiting evaluators and controlling bad behavior by individual team members can be contained.

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Contractor Past Performance Evaluation: Dead Man Walking

Symptoms. Contracting offices spend an inordinate amount of time trying to obtain meaningful past performance evaluations of offerors. The results are substantial numbers of Government Accounting Office (GAO) protests from disappointed offerors, poor quality received during reference checks, and a lack of improvement in contract administration due to the effort spent in pre-award performance evaluations.

Most evaluations are neither high nor low, as references fear protests and would prefer not to be held responsible for contracting decisions of other offices or agencies. For example, take the case of a contractor with three government contracts performed in different settings: one is performed astonishingly well, one is average in quality, and another is a miserable failure.

The contracting officer is understandably unsure whether the contractor deserves a high, medium, or low past performance rating if the successful contract was performed for the contracting officer's agency. Ratings of all contractors tend to gravitate to the medium range, so as to avoid controversy (bid protests) or having one agency influence (and be blamed for) a different agency's source selection. New contractors with no past performance history never quite feel they have been treated fairly by a neutral rating. Past performance loses its value as a meaningful discriminator among contractors.

Diagnosis. Assessment of contractor performance for anything but on-time delivery under supply contracts is almost purely subjective. Despite its current enthusiasm for past performance evaluation, the Department of Defense (DoD) tried to establish a past performance system in the 1963 but abandoned it in 1971, because its costs exceeded its benefits (Edwards, 1995, pp. 2–3). Even the GAO (2000, p. 3) recently stated that past performance evaluation practices "continue to be troublesome." As readers of mutual fund prospectuses know, past performance is no assurance of future quality.

Corporations do not perform work under government contracts; the work is performed by individuals in those

corporations. To attribute outstanding past performance to a corporate entity, without regard to its specific employees on a contract, is to assume that the contractor always uses the same employees or employees who are equally talented. This is a dangerous assumption.

Treatment. If past performance must be evaluated, admit that the evaluation is subjective and rely on the level of confidence assessment rating approach advocated by Edwards (1995, 1997). Use only three rating categories: completely confident, completely not confident, and neutral. FAR 15.304(c)(3)(iv) allows agencies not to evaluate past performance where appropriate. Use this flexibility whenever the expected cost of evaluating past performance exceeds its potential benefit. Heed the lessons of the history of contractor past performance evaluation.

Formal Source Selection: Who Died and Left You Boss?

Symptoms. Large contracts are awarded based not on the independent judgment of the contracting officer but rather the preferences of a source selection authority.

Diagnosis. Some federal agencies are under the impression that large programs should not be left to the authority of the contracting officer to select the "right" contractor. When the agency head so desires, FAR 15.303(a) allows noncontracting personnel to be the ultimate authority as to who gets a contract. This regulation improperly dilutes the contracting officer's authority and subjects the agency to possible improper program influence and high-level maneuvering unrelated to the merits of the source selection.

Treatment. Revise the FAR to prohibit source selection by anyone but a contracting officer.

Federal Procurement Data System: A Day Late, A Dollar Short

Symptoms. Agencies have difficulty motivating employees to complete accurate Federal Procurement Data System (FPDS) reports (SF 279 and SF 281, or agency equivalents). The reports come at the end of the contracting process and are usually considered a paper drill. The reports are often inaccurate. Government-wide compilations of FPDS data can easily be abused by policy makers who seek to pile more legislation onto an already overloaded contracting system. Even studies claiming that the size of the government's shadow (contractor) workforce is huge (Light, 1999, p. 7) significantly understate their case because of omitted data.

"As readers of mutual fund prospectuses know, past performance is no assurance of future quality."

Diagnosis. Determine whether any of the information in the reports is useful for real-time contract management.

Treatment. Change or eliminate the system. If the reporting system does not help make contracting better, but serves only to provide macro-level numbers used for ill-considered policies, then the law requiring the system should be repealed.

Contract Changes: The Hand is Quicker than the Eye

Symptoms. Program offices desire changes to contract work statements but are never sure what will pass muster in the contracting office. Contracting offices are not sure whether contract changes requested by the program office are within the scope of the contract. The changes clause may or may not be used to accomplish the desired result.

GAO or court rulings on what constitutes a valid change are inconsistent and add fuel to the fire, sometimes leading to the paralysis of analysis before any change order occurs. Learned scholars write massive treatises on contract changes (Nash, 1991), a testament to this general sense of ambiguity. Analysts fret about the pricing problems of changing a contract because only one source provides a price proposal. Consequently, change orders are kept to a minimum and the contract loses potential effectiveness as work evolves.

"Most contracting officers have never seen a termination for default anywhere but in a textbook or a classroom."

Diagnosis. Aleister Crowley (1991) defines magic as "the science and art of causing change to occur in conformity with will." The FAR changes clause, in its various incarnations in different contract types, allows contracting officers to use their magic to make contracts evolutionary in nature rather than static relics of the past. The clause provides considerable flexibility that should be used.

Treatment. Use the changes clause to the maximum practicable extent. Only a small fraction of change orders ever makes it to GAO or the courts for dispute resolution. If pricing is expected to be a problem, make all changes bilaterally priced before the changed work begins.

Default Termination: A Problem of Invertebrate Government

Symptoms. Most contracting officers have never seen a termination for default anywhere but in a textbook or a classroom. Yet federal employees constantly complain about shoddy work by contractors.

Diagnosis. The fallacy of making default terminations a rare occurrence is that the default process itself is self-correcting. An improper default termination is easily converted to a termination for convenience. Knowing this to be true, why are contracting officers so reluctant to use the default termination as a tool? The answer is that terminating a contract for default requires backbone, an anatomical feature that seems to be in short supply.

Treatment. Terminate more contracts for default. If a default termination turns out to be in error, immediately convert to termination for convenience.

Evaluating Contracting Office Performance: The Big Nowhere

Symptoms. Agencies conduct internal assessments of contracting offices by contracting personnel in the form of procurement management reviews or balanced score card analyses. Contracting

performance does not change much as a result of these evaluations, due to their inherent limitations. Contracting offices that are "doing a bad job" continue to retain contracting authority, because no one else is available to pick up the workload; there is no serious penalty for noncompliance. Meaningful metrics are in short supply.

Diagnosis. Contracting offices that are responsive to their customers and do a good job awarding all requested contracts on time may be breaking the rules. They may not be using sound contract management in their haste to satisfy their customers. Contracting offices that fail to deliver whatever their customers want on time are roundly criticized even when they follow the rules.

Treatment. De-emphasize the measurement of contracting offices by contracting personnel. Seek other, more meaningful measures of performance. Build a reward system that genuinely encourages desired outcomes or end-states rather than simply on-time outputs. When finished, proudly retire. If unable to complete this task, continue windmill-tilting activity, but recognize that this may be the impossible dream.

Competitive Contracting Offices: License to Ill

Symptoms. Multiple contracting offices are available to award a given contract. Some of these contracting offices are funded by surcharge revenue (paid a fee based on the dollar value or number of contracts awarded). Program officials shop around to see which contracting office is the most pliable.

In their zeal to garner business, competitive contracting offices express an unhealthy willingness to bend or break the rules to get the business, and may in fact violate substantive contracting laws and regulations. A "hired gun" mentality surfaces, whereby contracting offices feel compelled to sell their services to the highest bidder to maintain a revenue stream. Contracting offices and their staffs feel beholden to program officials for their very livelihood, producing anxiety and bad judgment.

"Contracting offices should spend their time contracting, not marketing."

Diagnosis. Determine whether the contracting offices most anxious for new business are exceeding their charters. Assess the quality of their performance, within established laws and regulations. Calculate whether some contracting offices have excess capacity. If so, transfer personnel to make a more sensible distribution of workload.

Treatment. Management must scrutinize closely the movement of contracting work from one contracting office to another. Detect and resolve cases of abuse. Contracting offices should spend their time contracting, not marketing.

Acquisition Versus Procurement: Same Difference

Symptoms. Acquisition leaders fret over whether what they do (or should do) is more properly defined as acquisition (rather than procurement). Misguided contracting personnel believe their mission

extends beyond contracting to securing funding, managing programs, running technical operations, and maintaining and disposing of contracted equipment and systems.

Training companies offer courses in program management for contracting personnel. Program offices are more than willing to delegate any and all responsibilities to contracting offices whenever convenient in terms of making up for their own inadequacies. One witnesses a desire to find a fall guy in the form of a contracting office for the expected adverse publicity of a troubled project that is "programmed for failure."

"Contracting is not synonymous with program management, and contracting offices should not take on program management responsibilities."

Diagnosis. Confusion is bred from inconsistent terminology and a misplaced sense of duty. Until 1976 in DoD and 1984 in civilian agencies, the term "procurement" was considered acceptable. From 1984 on, all federal agencies have used the term "acquisition" as a result of the issuance of the FAR. Nevertheless, each agency has a statutory position of procurement executive, and the employees performing acquisition functions are often titled "procurement analysts" in both DoD and civilian agencies, working under guidance issued by the "Office of Federal Procurement Policy" or the "Director of Defense Procurement."

The term "procure" has a connotation of illicit behavior (*Oxford English Dictionary,* 1971). Outside the Beltway, the term "acquisition" is popularly regarded as either a real estate transaction or a purchase of one firm by another ("mergers and acquisitions"). The debate over which term is "correct" takes on a certain staleness, because neither is an accurate description of the work being performed.

A profession that cannot agree on its own name runs the risk of not being taken seriously. Beyond the obvious problem with terminology, for contracting professionals to feel a compulsion to perform an even broader range of activities than just contracting alone is to beg the question of whether we have "gotten contracting right" in every sense. The answer to that question is no.

Treatment. Replace the terms "acquisition" and "procurement" with "contracting." The semantic argument that instruments such as blanket purchase agreements are not "contracts" and thus must be called acquisition is simply misleading. Orders under such agreements do create contractual relationships. Cease all debate over terminology.

Contracting is not synonymous with program management, and contracting offices should not take on program management responsibilities. To do so is to prevent program management offices from living up to their responsibilities. If the day comes when contracting professionals can honestly say they do a perfect job contracting, then they can take on program management or "acquisition." That day is not likely to arrive any time soon.

Conclusion: Acquisition Reform—Take the "Con" out of "Contracting"

Some self-styled reformers assert that all we need to do to solve the ills of federal

contracting is to implement the established program of reform begun with the Federal Acquisition Streamlining Act of 1994. Regrettably, that program does little to address the many "worst practices" discussed above. A careful analysis of these pathologies can be illuminating for those who seek genuine, continuous improvement of federal contracting. When reform is proposed, one must ask whether the cure is worse than the disease, and whether our aim is on the right target.

To say, as some advocates have, that the problems of contracting can be cured by the judicious application of discretion is to fool no one. The act of giving discretion does not, by itself, make the contracting world better. Acquisition reform did not change human nature. There are those who would use additional discretion as a means of self-promotion, gaining unnecessary resources, and other damaging behavior, just as much as others would use it for substantive improvement.

If we let long-standing, systemic dysfunctions continue to exist, while claiming that our best practices have reformed contracting, we will fall prey to another form of the confidence game. The victim of the confidence game refuses to believe that he is being relieved of his money and dignity, but an ignominious fate awaits him every time. As Maurer (1940, p. 103) puts it: "To expect a mark to enter into a con game, take the bait, and then, by sheer reason, analyze the situation and see it as a swindle, is simply asking too much." Keen judgment and an eye toward good health dictate that we learn the lessons of continuing "worst practices" and resist being conned into a false sense of security about the real state of federal contracting.

The problems I have cited here are not particularly easy to remedy, if they can be solved at all. Working on their solution will not be a glamorous or high visibility assignment. Perhaps we can claim some measure of success in enhancing federal contracting in recent years. The challenge now is not simply to implement a predetermined, 6-year old program of reform but rather to avoid the temptation to boast that all needed changes have been addressed. Herd behavior and complacency are the enemies of true reform. We should redouble our efforts to treat the more persistent maladies that plague federal contracting, if we value candor more than conformity.

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