



# Science's Troubled Legacy

*Time for a 21<sup>st</sup>-Century Re-envisioning of  
20<sup>th</sup>-Century Government Contracting Rules that  
Were Designed to Boost Scientific Innovation*

Dan Guttman

Government contracting grew out of scientific inquiry in the interests of national security in the mid-20<sup>th</sup>-century and represents a government reform that yielded great successes but has since lost its moorings. It's time to re-envision the role of private contractors in the public service.

**SINCE 9/11**, Americans have discovered that contractors are doing much of the public's basic work. In Iraq, Halliburton tends to the mess halls, Blackwater to armed security details, CACI International Inc. to Abu Ghraib prison. On the home front, the Coast Guard bet its future on an out-of-control multibillion-dollar contract with Lockheed known as "Deepwater Port" to develop a whole new Coast Guard system. The Department of Homeland Security watched a \$100 million contract to hire baggage checkers balloon to \$700 million. And the Federal Bureau of Investigation's \$100 million-plus contract with the Science Applications International Corporation, or SAIC, to bring FBI case information management into the 21<sup>st</sup> century came closer to bringing it to a halt.

When and how did the U.S. government become so dependent on contractors to do its basic work? Some said these developments reflect Bush administration policies; others traced them to Reagan- and Thatcher-era distrust for big government. In fact, the reliance on contractors to do the government's basic work is neither new nor an accident. It is the predictable and predicted outcome of a mid-20<sup>th</sup>-century, bipartisan decision to grow government through the use of contractors. What's more, this decision was made in the name of science and was seen by the science policy elite at the time as a reform of truly Constitutional dimensions.

This far-from-accidental reform yielded civilization-shaking developments—the Manhattan and Apollo projects, innumerable breakthroughs in biomedical research, and, of course, the Internet. But as is now apparent from the day's front-page headlines, the 21<sup>st</sup>-century legacy of this reform is a government dependent on contractors to do its most basic work, such as feeding our soldiers, protecting our diplomats, and collecting intelligence on the battlefield, often with too little official control or even awareness.

Today, dual sets of laws and policies govern the use of government officials and contractors—even as they may increasingly work side by side perform-

ing the same work. Consequently, laws enacted to define and limit government and protect Americans against abuse increasingly do not apply to those doing the real work of government.

Proclamations that more competition and better management will render government by contract accountable are no longer acceptable. Official oversight is inadequate, competition is too often limited, and the laws enacted to assure official control are too often placebos. The country needs to know the real condition of its public workforce. The path to reform requires not only transparency but also analysis to prevent new imbalances. If contractors are to continue to do basic government work, then not only must laws and reality be reconciled, but also the public-service ethic must be extended to encompass the entire taxpayer-funded workforce.

To begin to understand how we reached the point where dedicated contracts for specific scientific projects with profound national security implications morphed into a default determination to meet new challenges by deploying contractors instead of civil servants, we must start with the perspective of mid-20<sup>th</sup>-century science policy. For it is there that the reliance on contractors to do the government's work was conceived as a profound reform, with those present at the creation understanding the strengths and limits of reform with acute foresight that is relevant today.

## **FROM THE MANHATTAN PROJECT TO THE MILITARY-INDUSTRIAL COMPLEX**

America entered World War II with a small government and a tradition of distaste for Big Government. The war, however, required rapid deployment of the nation's scientific and industrial resources. The Manhattan Project to develop the first atomic bomb, and the further wartime research sponsored by the famed Office of Scientific Research and Development, showed that the genius of America lay not only in its natural scientists and inventors but also

in its management techniques—the ability to use the contract to organize private enterprise for public tasks of enormous complexity.

That’s how the atomic bomb was built speedily in secrecy by a combination of universities and industrial giants working on contract at secret, government-owned, contractor-operated sites throughout America. As Office of Scientific Research and Development historian Walter A. Macdougall observed, OSRD established the practice “of state funded but privately executed R&D. In a matter of minutes, patterns that had characterized American research throughout its history were undone.”

That wartime success of the public-private partnerships led OSRD director and presidential science advisor Vannevar Bush to recommend to President Franklin D. Roosevelt, in the classic report *Science: The Endless Frontier*, that the government continue contract relationships with nonfederal organizations after the war. Incomprehensible today, but plausible in the shadow of mid-century totalitarianism, Bush needed to explain to corporate colleagues why taking money from Washington was okay. As Bush’s memoir explains, his good friend the president of Bell Labs “was sure that we were inviting federal control of colleges and universities, and of industry for that matter, that this was an entering wedge for some kind of socialistic state.”

Two decades later, in his 1965 *The Scientific Estate*, science policy eminence Don Price, first dean of the Kennedy School of Government at Harvard University, provided a classic explanation for developments calculated to satisfy corporate and science beneficiaries of the government contracting process. The United States, Price argued, needed more government to prepare to fight the Soviet Union, develop infrastructure, provide social welfare, and cure disease. The use of private contractors would permit the federal government to draw on private expertise, provide corporations with funding that would allay corporate fears that America was turning socialist, and would provide a force to counter-veil the dead hand of a central official bureaucracy.

Scientists, with their world-shattering, public-private research-and-development projects, were providing the elixir that would make the world safe for a new kind of government.

Price hailed the transformational import of the “fusion of economic and political power” and the “diffusion of sovereignty,” both chapter headings in his book. Specifically, he argued that:

*the general effect of this new system is clear; the fusion of economic and political power has been accompanied by the diffusion of sovereignty. This has destroyed the notion that the future growth of the functions and expenditures of governments would necessarily take the form of a vast bureaucracy.*

American government was undergoing a reform of Constitutional dimensions. Scientists, with their world-shattering, public-private research-and-development projects, were providing the elixir that would make the world safe for a new kind of government. But even before Price championed public-private contracting as benign reform of Constitutional dimensions, other, less flattering perspectives were also emerging. Most famously, in his 1961 farewell address, President Eisenhower declared the new public-private contract-based R&D partnerships to be the “military-industrial complex.”

President Kennedy early in his presidency waded into this debate by commissioning a cabinet-level

report to examine the implications of contract-dependent R&D. The 1962 “Bell Report” (named after Budget Bureau Director David Bell) served as a springboard for the first public congressional hearings on the Rand Corporation and other government-created contract “think tanks” and “systems managers” spawned at the nexus of government and the aerospace industry. It is the last, best, and indeed only (save for Ike’s speech) White House review of the wisdom of government by contract, and it foretold much of what has since come to pass.

The report declared that the “blurring of the boundaries between public and private” raised profound questions about the axiom that officials must be able to account for the work of government. The report said the use of contractors to respond to Cold War emergencies made sense in the short term. But over the longer term, the axiom of official government control over contractors to the federal government would be challenged unless corrective action were taken.

The “Bell Report” put its finger on the problem: the disparity between the rules of law governing officials and contractors. Americans, ever concerned with big government, have enacted over two centuries laws to protect against official abuse. These began with the Constitution and its Bill of Rights, which define the limits of government and provide for individual rights against government abuse, and now include laws on ethics, pay, freedom of information, and political activity.

By and large, these laws do not apply to those outside government—even contractors doing government work on taxpayer dollars. They do not apply on the dual premise that officials will have the capacity to oversee contractors and that the qualities for which contractors are valued may be constrained if they are subject to rules governing officials. Yet as the “Bell Report” prophesied, when the decision to rely increasingly on contractors for key government work was coupled with the freedom of contractors from rules limiting government officials, the predictable effect would

be the erosion of some, if not all, official capability to oversee contractors.

Why, the “Bell Report’s” logic foretold, should experienced government officials choose to remain in government service when they can work as contract employees who are not governed by official pay caps and the stringent constraints of official ethics—and do work no less interesting than that in government?

But the “Bell Report” backed away from answering the basic questions it raised. The new public-private mix, it found, was essential to Cold War programs. “Philosophical issues,” the report said, needed to be deferred. Thereafter, as government grew, third-party government grew without pause, on automatic pilot driven by bipartisan limitations on civil servants.

#### FROM THE “BELL REPORT” TO ABU GHRAIB

Cold War agencies such as the Atomic Energy Commission, the Department of Defense, the National Aeronautics and Space Administration, and the U.S. Agency for International Development, provided the initial template for the deployment of contractors as a permanent workforce to perform central public tasks. From the get go, and in its present incarnation in the Department of Energy, the nation’s nuclear weapons complex has been essentially government-owned and contractor-operated.

“NASA,” the *Washington Post* observed following the *Columbia* tragedy, “may hire the astronauts,” but “at the Johnson Space Center, the contractors are in charge of training the crew and drawing up flight plans. The contractors also dominate mission control, though the flight directors and the ‘capcom’ who talk to the crew in space are NASA employees.”

With each new agency or program, contractors were trained and deployed to do the basic work. In this fashion, federal funding gave birth to information technology and the Internet and also to an increasingly sizeable contract (and university and

further nonprofit grant) workforce. In the 1960s and 1970s, these contracting models were transferred from Cold War agencies to civilian agencies as the Great Society programs initiated by President Johnson rushed to embrace contractor-generated management products, such as PERT (Program Evaluation and Design Technique) and PPBS (Planning, Programming, Budgeting, and Execution), incentive contracting, and systems analysis. All these products promised to solve the problems of the inner cities as well as those in Vietnam.

In 1971, looking back on developments, John Corson, who opened McKinsey Corporation's Washington office, marveled at what had been wrought. "There is," he wrote in *Business in the Humane Society*, "little awareness of the extent to which traditional institutions, business, government, universities, and others, have been adapted and knit together in a politico-economic system which differs conspicuously from the venerated patterns of the past." Post-war contracting, he said, was a "new form of federalism."

From the perspective of the Nixon White House, what had been invented was not a new way of government but a new way of patronage. The "Political Personnel Manual" uncovered by the Senate Watergate investigations showed that Nixon White House staffers, seeking to catalog ways to control the presumably Democratic-leaning civil service, were bemused to discover that, under the guise of efficiency, JFK and LBJ had used cutbacks in the civil service to hire friends as contractors—with, the Nixon staffers noted, of course, higher taxpayer costs. Turning the tables, at the Office of Equal Opportunity, the central War-on-Poverty agency, two young administration officials named Donald Rumsfeld and Richard Cheney hired their own contractor, Booz Allen, to help take control of the agency, shuffling civil servants under the guise of agency reorganization.

In the 1980s and 1990s, a new generation of reformers—the privatizers, downsizers, and reinventors—came to argue for the reform of Big Government, often with little evident knowledge of the

history or legacy of the reform that had been occurring for decades in America. When, in 1993, the Clinton administration announced its intention to "reinvent government," it declared it would reduce Big Government by further reducing the numbers of civil servants, with little demonstrable recognition that this had long been the means for growing, not reducing, government.

Ironically, the eponymous book that heralded the Clinton administration's "Reinventing Government" reform was itself focused on local government reform and noted that many of the "public-private" partnership methods advocated had long been used at the federal level. Reinventing government followed the footsteps of the Price logic—the diffusion of sovereignty was a good thing that can be kept under control by modern management techniques such as "performance contracting." The task was to cut red tape and make the use of contractors simpler and more efficient.

Thus, a key reform was to centralize purchasing in the General Services Administration, so that other agencies could essentially buy from a catalog without need for further competition. As Iraq showed, however, an effect of the reform was to maximize potential for unaccountability. When the public learned that a contractor called CACI had been at work interrogating prisoners at Abu Ghraib, there was a scramble to find out exactly how the Army hired the contractor. It turned out that the contract was originally awarded by the GSA, assigned to the Department of Interior for administration, and then used by the Army in Iraq.

With responsible GSA officials evidently unaware of what was happening with their contract, the Army used the contractor for purposes that were (unlawfully) beyond what the GSA contract provided, contrary to the Army's own prohibition against the use of contractors to perform such intelligence gathering, and contrary to the rule against using contractors to serve, in essence, as integrated members of the government workforce. Thus, in context, the contracting scandals of the Bush administration are

not an aberration but rather the predictable and predicted consequence of a half century of government contracting reform.

President Bush entered the White House committed to paring the federal government, but, as with predecessors, the means was not to reduce the size of government but rather to increase the number of contractors. Thus, one of the pillars of the Bush “Management Agenda” was to put out for competition up to 850,000 civil-service jobs. After 9/11, the new Department of Homeland Security was borne aloft on a contractor workforce and limited official capacity for its oversight.

Or consider Iraq. In March 2002, before the war began, the Secretary of the Army sent a troubled memorandum to top Pentagon officials explaining that Pentagon Army planners had little clue as to the size of the contractor workforce, the costs associated with it, “and of the organizations and missions supported by them.” In April 2002, the Army told Congress that its own estimates of the size of the civilian support workforce varied from 100,000 to 600,000. In short, assuming the Iraq war were to be waged, contracting would be the predictable means to be used—and an inability to oversee contractors the predictable consequence.

## RE-ENVISIONING 20<sup>TH</sup>-CENTURY GOVERNMENT CONTRACT REFORM

The domestic “diffusion of sovereignty” that Price foresaw, and indeed urged, has now meshed with a global diffusion of sovereignty. Research and development is now a matter of networks of multinational corporations, “global universities,” and numerous governments. But at home, Price’s vision has (as the “Bell Report” prophesied) left a legacy that must now be addressed. We can no longer assume that the official workforce has the capacity to understand and control the basic work of government. We have the diffusion of sovereignty, but we do not have the rule of law to match it.

In short, 20<sup>th</sup>-century reform has taken a remarkable journey but is now adrift from its moorings—and we need a map for the future of reform. Today, we have two alternative frameworks for viewing the government system that science policy helped create. In practice, neither of these is adequate to hold contractors to account.

First, governing law and policy enshrine what might be called the “presumption of regularity” or the “rule of law” vision, in keeping with longstanding legal tradition that officials may be presumed to act with the good faith, diligence, and competence expected of them. Under the Western rule-of-law tradition, the presumption of regularity envisions that officials must be subject to rules that define and limit government authority and protect against government abuse. This is known as public law. If the presumption of regularity is valid, then these rules need not apply to contractors because contractors will be accountable to officials.

The problem, as the front pages increasingly tell us, is that this presumption of regularity does not reflect reality, where contractors have long since been engaged to do the government’s basic work. When it became apparent, at the dawn of contract reform, that the presumption was imperiled, the Eisenhower White House issued a policy that only officials can perform “inherently governmental” functions. That policy (now found in Office of Management and Budget Circular A-76) has become a fiction or fig leaf. It been dutifully reiterated by every White House since—most recently by the Bush administration virtually coincident with the start of the Iraq war and the wholesale deployment of contractors on the battlefield.

Second, while formally reiterating legal principles, bipartisan governing policy embraces what might be called the “governance-accountability” vision. This vision, a modern version of Price’s “diffusion of sovereignty,” holds that the work of the public is best done by a mix of government, civil society, and market organizations—with attention to results and not to who does the work or the

“boundary between public and private.” This vision premises that it does not matter so much who is doing the public’s work, but rather whether there is “accountability” for that work.

In the world of governance today, accountability is to be provided in three interlocking ways:

- Modern management and social science techniques, which will align public and third-party interests by structuring contract performance standards and incentives properly
- The force of competition between or among contractors and interest groups, which will help keep the system honest
- Transparency as an aid to the first two tools.

While not forsaking the premise that officials must be able to account for all government work, proponents of this governance and accountability model suggest that the civil service must be transformed into a workforce that functions substantially, or even primarily, to manage third parties. The problem, as the front pages once again tell us, is that the tools of governance are insufficient and can even be counterproductive—especially in the age of diminished official oversight.

The upshot: competition in procurement is a key tenet of procurement law today, but the reality is that it is often limited because competitors may be few (particularly in security areas where workforces must have clearances), competition costly, and competition further restricted by socioeconomic preferences. Similarly, performance measures are hard to come by for novel public tasks that often require unavailable resources to police, which in turn makes poor performance hard to penalize. Because the work has to get done, and because too harsh a penalty may eliminate a competitor needed if there is to be competition, performance measures are often mostly useless. As for transparency—again it is nice in theory—the contract workforce too often remains largely invisible within agencies, never mind the public at large.

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By consequence of the limits of these two visions, the evolution of the rules of the game often owes more to what might be called a “muddling through, common law” model. When crises arrive, they are handled with limited regard for the big picture. In the absence of coherent congressional and executive oversight, this model has, by default, become the primary means by which new rules of law are set to govern contractors and other third parties who perform the basic work of government.

This model accepts that rules of public law should apply to those who perform public tasks and applies those rules on a piecemeal basis to nongovernmental actors who perform the public’s work. In doing so, it draws from the Anglo-American legal tradition, which (as in the case of public utilities regulation) has long applied public obligations to private entities that serve public purposes and to public procurement law itself.

“The Science of Muddling Through,” as Yale professor Charles Lindblom’s classic article explained, is the American way—but it has its weaknesses, as the evolution of reform by contract well illustrates. First, successful muddling through requires a healthy crew of diverse and well-funded

nongovernmental watchdogs to keep policy and practice honest. Government contracting is an insider's game. Public watchdogs have been few and far between.

Case in point: the history of the ethical standards applicable to contractors illustrates the difficulty of developing a rule that works in the public interest. At the onset, no conflict-of-interest rules at all applied to contractors. As Price observed, during the 1950s, "no Congressmen chose to make political capital out of an investigation of the interlocking structure of corporate and government interests in the field of research and development."

The concept of "organizational conflict of interest," or OCI, was conceived only when some contractors felt that other contractors were using their inside track to unfair competitive advantage. It said nothing about circumstances where collective contractor interest is served but public interest disserved. In the late 1970s, the notion of "public interest," as well as competitor interest, was added to the OCI concept. Even so, contractors may be hired where conflicts exist.

Moreover, while civil servants can go to jail if they work for the Department of Transportation and General Motors, no criminal conflict of interest rules govern contractors. But the real problem is that disclosures of potential conflict are exempt from disclosure under the Freedom of Information Act, and there is no routine of independent audits of the integrity of the disclosure and review process.

Most importantly today, as Lindblom explained, the science of muddling through produces change by increment that serves the interests of those pushing the change, with often little regard for a big picture that may be increasingly out of kilter. As is the case with government contracting, whenever incremental changes neglect the big picture, which is the fundamental and continuing erosion of official oversight capacity and the disconnection between law and reality, muddling through may be the problem and not the answer.

## A PATH TO RE-ENVISIONING REFORM

The presumption of regularity, governance, and muddling through all represent frameworks for understanding how the ship of state got to where it is. But none of them provides an adequate chart for today's waters. There is no current vision to replace the one that kicked off reform of the scientific estate over a half century ago, but there are steps that can be taken to address its legacy and to re-envision the reform.

Proclamations that more competition and better management will render government by contract accountable are no longer acceptable. Official oversight is inadequate, competition is too often limited, and the laws enacted to assure official control are too often placebos. The country needs to know the real condition of its public workforce. The path to reform requires not only transparency but also analysis to prevent new imbalances. If contractors are to continue to do basic government work, then not only must laws and reality be reconciled, but also the public-service ethic must be extended to encompass the entire taxpayer-funded workforce.

### *Truth in government: public workforce must be seen and planned for as whole*

The third-party workforce must be rendered visible—to Congress, officials, and the public. Federal budgets, organizational charts, and agency directories provide details on the federal workforce, but there is no such detail on the third-party workforce—even where it works side by side with officials in federal buildings. Data must be supplemented by analysis. Because reliance on contractors to perform the basic work of government remains invisible in substantial respects, independent analyses of how and how well the system works are exceedingly rare.

The White House (through the Office of Federal Procurement Policy, but also the Deputy for Management) needs to be able to perform, or coor-

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dinate, research and analysis that addresses topics including the extent to which

- Functions vital to national security and well being are in danger of being contracted beyond official oversight capability
- Competition can be relied on to award contracts to perform governmental activities
- Reviews of past performance, are, in fact, used and useful in contracts for performance of the work of government.

In addition, the White House must examine the role of contractors in providing “networked government,” especially how and how well contractors who work for multiple agencies (or public agencies and private regulatees) perform network functions, and how potential conflicts are addressed. And the new president and his administration must ensure the adequacy of the procurement oversight workforce, including the availability of third-party resources (both contractors and citizens using the False Claims Act or otherwise).

All this analysis must then be put to use. In creating new programs or agencies, Congress and the White House should ask, “Who will do the work and can officials account for it?”

Before funding new programs, relevant congressional committees and the White House Office of Management and Budget should assess the ability of the official workforce to perform core govern-

ment functions, including oversight of contractors. The Department of Homeland Security, for example, was created without evident regard for the reality—as evidenced by the problems of Deepwater Port and much else—that the official workforce was from the get go inadequate to oversee contractors. As the country creates new programs to address, for example, climate change and energy security, funding must be preceded by review of the adequacy of official oversight in light of the Department of Energy’s long dependence on contractors.

### *The White House must have capacity to lead*

Today dual sets of laws and policies govern the use of officials and contractors—even as they may increasingly work side by side performing the same work. There must be public review and comparison of the differing rules that apply to federal employees and to nongovernmental actors in the performance of the government’s work. The sharp concern about contractors on the battlefield in Iraq should be the beginning, but not the end, of the review, which must encompass work at home as well as abroad.

Generations of procurement law reform have had mixed results, and the attempt to relate procurement and personnel law will be all that more difficult. Moreover, mechanical application of uniform rules to officials and contractors may be counterproductive and negate qualities for which contractors and civil servants are valued.

Thus, at the same time, the White House needs to develop an ethic of public service that can be applied to contractors who do basic government work. The focus should not be so much on conduct that is plainly illegal and covered by current law—bribery or kickbacks, for example—but on conduct that is problematic because it takes advantage of the difference between the presumption of regularity that is enshrined in law and the practical reality of limited official oversight.

It is a tenet of modernity that information asymmetries dog relationships between experts and lay-

people, or, in a related vein, between principals and agents. Unless controlled, the actor with more information may be able to take advantage of the client or principal who has called on him or her for help. Sadly, the primary legacy of 20<sup>th</sup>-century contract reform is the potential to abuse information asymmetry.

First, in many cases the only experts on a subject are those in the contracting sector. Second, the dual sets of rules governing officials and contractors provide incentives for those experts the government does possess to join the contractor workforce. Third, information asymmetry is further amplified by the compartmentalization of the procurement process that attended contract reforms in the 1990s: officials with responsibility see part of the big picture, but contractors, with contacts, and experience throughout government may see the whole playing field.

Professional codes have evolved to limit the abuse of information asymmetry by experts in their dealings with clients. Doctors, for example, must fully disclose and obtain informed consent of patients. Ethical codes also, of course, govern those who perform the public's work as civil servants. There are no generally applicable ethical principles that govern special ethical problems when private citizens do public service on taxpayer dollars. In part, the very need for such principles has been obscured by repeated official proclamations that officials must be in control.

In contrast to a patient or a legal client, the U.S. government might be thought to have the resources (authority, people, knowledge, money) to make decisions and protect itself. Indeed, this thought is given legal form in the presumption of regularity and the inherently governmental principle. But it is simply not the case today. Three remedies, then, present themselves for immediate attention.

First, there must be independent audits of the contractor conflict-of-interest disclosure and review process. Criminal conflict-of-interest laws that severely limit civil servants do not apply to

contractors on the premises, which means that contractors must be effectively overseen by civil servants. In fact, it may be in the public interest for contractors to work for others than the government. Current law also requires contractors to disclose relevant interests to government, but disclosures are not publicly available, and there has been scant independent review of their workings. Investigations conducted by Sen. David Pryor (D-AK) found that even on key national security issues, contractors too often failed to disclose relevant interests, and when disclosure was made, the government too often failed to take note.

In July 2008, for example, a federal jury found SAIC, one of the largest professional service contractors, guilty of making numerous false claims and statements in response to its obligation to disclose interests relevant to work for the Nuclear Regulatory Commission. The Department of Justice discovery in the case showed core deficiencies in both this major contractor's internal review and the government's oversight. This is why the government—and public—must know how and how well contractor internal reviews work, and all must know how well government does its job of reviewing contractor disclosures.

Second, there must be attention to the increasing circumstances where contractors are put to work in violation of the law—notably where the work is beyond the scope of the contract (as in contracting interrogation at Abu Ghraib), or where contractor employees staff offices alongside officials (in violation of the prohibition against personal service contracts), or where contractors are used to perform inherently governmental functions, in violation of inherently governmental policy. Abu Ghraib crystallized the problem. Among other things, it brought to public light the reality that much GSA “supply schedule” contract work, such as one for prison interrogation, is outside the scope of that permitted in the basic GSA agreement. Addressing this, contractor lawyers explained to the *Washington Post* that it was

not for the contractor to tell the government that assigned work was beyond that provided for by law.

If the presumption of regularity were valid, then it might be argued that contractors may rely on government for the “regularity” of contracts. But where it is known that official oversight may be limited, and, to boot, where contractors talk of themselves as “partners” to government, the duty of disclosure seems clear.

Third, there are too many instances where work that is poorly specified or not needed at all is performed by contractors—again on the grounds that the government asked for it and, therefore, the work can be presumed to be reasonable. The objection will be raised that to impose ethics principles would be to stop government in its tracks because of the profound dependence on contractors. But the focus, at least at the onset, may be on disclosure.

As with current contractor conflict-of-interest laws, once disclosure is done, then the government can affirm that the contract should proceed—even where a problem that cannot be mitigated may exist. A point of the effort should be to alert officials to problems they may not have seen, to require official reflection on problems that are seen but not addressed, and to create a public record of the need for variation from principle on which reform can proceed.

If, for example, contractors routinely note that their work appears to be impermissible personal service or inherently government contracting, and if procurement officials routinely determine there is no alternative to proceeding, then Congress and the White House will have a basis to consider whether such law and policy have outlived their functions, or, if not, what alternatives must be crafted.

In sum, it is time to explore, at the highest level, the possibility and efficacy of an ethos or ethic of

public service to govern all those who do the work of government, not just the civil service. If ethics may seem a weak reed to account for the powerful forces unleashed by 20<sup>th</sup>-century reform, then the logic by which contracting information asymmetry has grown may provide a comparative advantage in the development of ethical principles. The “revolving door” assures that there will be a steady flow of contractor officials who understand the government perspective (in ways, for example, that doctors or lawyers may not understand their patient or client perspective).

Finally, there is America’s role as the pioneer of modern government by contract for uses of historic importance. The American system is unique among modern governance systems in its scope of reliance on contractors to do the basic work of government. At the same time, contracting for government services appears to be a growing global phenomenon, for which the American system may be a model for study and, with appropriate local modifications, adoption.

Strengthening the ability of the American system to creatively address and solve the difficult questions that are the legacy of 20<sup>th</sup>-century contract reform may be crucial in the globalized world and best in keeping with the genius that was the spirit of mid-20<sup>th</sup>-century reform.

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