

**DISPELLING FEAR AND LOATHING IN GOVERNMENT ACQUISITION: A
PROPOSAL FOR CULTIVATIONAL GOVERNANCE IN DOD SOURCE
SELECTIONS**

Steve M. Maser and Fred Thompson*

ABSTRACT. Government contracting is rife with miscommunication and misperception, sometimes unavoidably, and is often associated with secrecy, autarky, and opportunism. These qualities undermine trust, increase contracting costs, and reduce effective collaboration between business and government. In this article we show how mutual trust can be repaired and, once repaired, bumped up and made much more robust through cultivational governance. The proximate aim of the article is improving source-selection in government acquisition; its scholarly purpose lies in contributing to a process theory for recovering and reinforcing trust.

* Steve M. Maser, Ph.D., is a Professor of Public Management and Public Policy at Willamette University's Atkinson Graduate School of Management. Research interests: conflict management and collective choice. Fred Thompson, Ph.D., is Grace & Elmer Goudy Professor of Public Management and Policy at Willamette University's Atkinson Graduate School of Management and Director of the Willamette University Center for Governance and Public Policy Research. Research interests: mechanism design and financial engineering of government enterprises.

Opportunism, the pursuit of self-interest by means of duplicity and guile, is a key concept in neo-institutional economics (Williamson, 1967, 1985). It manifests itself in fraud, waste, and abuse. Many observers claim that, where defense acquisition and contracting are concerned, it is endemic (Spiller, 2009: 49). Moreover, because social relationships, characterized by ambiguity and asymmetric information, are its native habitat, some observers add that opportunistic behavior is especially likely where source selection is concerned (Jansen, Hocevar, Rendon, & Fann, 2009).ⁱ The source selection process comprehends evaluating bids and proposals, selecting providers, negotiating contract terms and conditions, and awarding contracts.

Nevertheless, some of those who have looked carefully at the source-selection process deny that, as a practical matter, opportunism is a serious problem. They by no means deny its existence. Rather, they assert that existing institutional arrangements work to minimize the losses caused by opportunism and propose that these arrangements are pretty good solutions to a difficult set of transactional problems (Maser, Subbotin, & Thompson, 2012). The efficacy of bid protests is central to this assessment. This mechanism relies on interested third parties to ensure that acquisition officials follow the rulesⁱⁱ that govern source selection. Nevertheless, while protesting is cheap and easy, protests are rare and successful protests even rarer. About 2 percent of all protestable source-selection decisions are protested and, where the GAO hears protests, only 5 percent succeed (Gansler & Lucyshyn, 2009). This implies an error rate of about one in a thousand, which is pretty good by almost any standard.ⁱⁱⁱ

As good as these results are, if the aim is dramatically improved performance of the acquisition function, they are arguably not good enough. While existing institutional arrangements work to lessen the manifestations of opportunistic behavior in government contracting, they leave the participants in the source-selection process constantly on the look out for opportunism from their would-be collaborators and partners. This is very costly. Its costs are reflected in defensive effort,^{iv} risk aversion, lack of initiative and imagination, and failed partnerships (Thompson, 1993; Teisman & Klijn, 2002). These consequences go well beyond the effects of fraud and abuse and are

themselves among the chief causes of waste in defense acquisition and contracting.

How do we get from where we are – a source-selection process dominated by habits of secrecy, autarky, and opportunism – to one based on collaboration, learning, and shared problem solving (Franck, Lewis, & Udis, 2008; Kapstein & Oudot, 2009; Elliott & Johnson, 2011)? The answer to this question lies in building and sustaining presumptive trust among the government-business participants in the source-selection process.^v

In this article we will describe the pervasive mistrust that is characteristic of the source-selection process, the events that have broken trust among its participants, and, following Kramer and Lewicki (2010), show how trust can be repaired and, once repaired, bumped up and made more robust.

We will also show that many of government's initiatives appear to be well designed to repair trust or correct the behaviors that inspire mistrust, but absent an explicit commitment to building a presumption of trust throughout the acquisition community there is a good chance these efforts, no matter how well intentioned, will be stillborn.

What is Trust and Why Does it Matter?

It is fairly easy to define trust. According to Lewis and Weigert (1985: 971) trust is the willingness to undertake “a risky course of action on the confident expectation that all persons involved in the action will act competently and dutifully.” According to Mayer, Davis, and Schoorman (1995: 712) trust is “the willingness of a party to be vulnerable to the actions of another party based on the expectation that the other will perform a particular action important to the trustor, irrespective of the ability to monitor or control that other party.” In other words, as Kramer and Lewicki (2010: 257) explain, trust is “a psychological state characterized by ... some sort of positive expectation regarding others' behavior.”

It is harder to say why it matters. One can repeat Francis Fukuyama's assertion that it is the single most valuable currency of the modern global economy, the maker and breaker of nations, but that is hardly satisfactory. We need something that speaks directly to contracting. Nobel laureate Elinor Ostrom (1990) comes closer to meeting that need with her conclusion that reciprocity and trust are necessary to sustain productive relationships, for resolving social impasses, and in coordinating collective efforts to achieve superior outcomes (relative to Nash equilibriums, where participants maximize their minimum gains or minimize their maximum losses). Trust means that contracts (formal or informal) will be carried out faithfully; that participants in commercial transactions need not waste resources protecting themselves against cheats or from other forms of malfeasance; and that effort, which would otherwise be expended watching out for trouble or invested in fruitless conflict, can be employed productively.

The increase in the number of bid protests during the past few years, including a few well-known and contentious ones, led us to take a hard look at defense contracting and source selection.^{vi} What we found was a yawning trust gap. Rather than a presumption of trust within the broader community of practice, we observed pervasive mistrust.

THE TRUST GAP

Using a protocol designed to diagnose the causes of conflict (Ury, Brett, & Goldberg, 1988), we engaged in structured interviews averaging about 90 minutes each with attorneys at General Accountability Office (GAO, the audit, evaluation, and investigative arm of the U.S. Congress), which has primary responsibility for refereeing bid-protests. We also interviewed executives and in-house counsels at four prime contractors, four outside bid-protest counsels, contract managers at two small subcontractors, current and former officials in the Office of the Secretary of Defense (OSD), officials and in-house attorneys at three military commands: Air Force Material

Command, Naval Air Systems Command, and the Defense Logistics Agency; Senate Committee staff, and executives – typically, former DOD contracting officers – with industry trade and professional associations such as the Aerospace Industries Association, the National Contract Management Association, the Professional Services Council, and TechAmerica.

We do not claim that our interviewees constitute a representative sample of the acquisition community. They comprise a network initiated through people we knew professionally and expanded as respondents recommended others who could share different perspectives. They offered their perceptions as individual participants in source-selection process, not as representatives of the organizations with which they are associated. Many of their insights are suggestive, not definitive.

Nevertheless, one message came through loud and clear: the folks we talked to distrust each other. Many of them distrust the source selection process itself, claiming that it is inherently biased. Several insisted that Democratic administrations favor some companies, Republicans others; that defense agencies have pets, that contractors protest for all sorts of spurious reasons; and that the GAO kowtows to congressional interests. Each participant in this process tends to attribute base motives, involving narrow, parochial interests, to the others: that acquisition officials seek the best deal for government they can get on the contract at hand, regardless of the consequences for the winning contractor, the sustainability of the industry, or losses to other customers; that potential suppliers cut corners to win contracts; that, once government is locked into a contractual relationship, incumbent suppliers will exploit the situation to the maximum extent possible; that Congress is preoccupied by short-term constituency considerations; and that everyone lies.

It is often contended that qualitative research is more about ‘feel’ than systematic process. In this instance that contention was amply confirmed. What we found was a substantial trust gap. Trust/mistrust was not initially part of our analytic schema or included in our protocol. Given the size of the trust gap, it follows that even

blameless actions can trigger a conflict spiral (Sanders, 2010; Sanders & Mullins, 2010). By conflict spiral, we mean a cycle of action and reaction, in which each reaction is more severe and intense than the action that preceded it, and each action in the spiral provides new issues or grievances, often leading to bad outcomes for everyone concerned.

How does a source-selection conflict gather steam (Carpenter & Kennedy, 2001)? A source-selection conflict usually starts with a rejected offeror, who is unhappy with an acquisition agency's decision. The offeror seeks redress. Agency officials resist. Other parties then jump into the fray: the winner of the source-selection contest in support of the agency, elected officials to help injured constituents, the media and others, thereby, expanding the conflict. Positions harden and perceptions of the problem become rigid. As the conflict escalates, communication becomes more difficult; misunderstandings multiply. Zealots replace moderates, investing resources to win rather than to resolve the disagreement.

In the case of bid protests, the desire to win at almost any costs may prevail from the outset. A trade association official described the approach taken by many bidders going into a competition as "intensely motivated:"

When you bid you commit money and people. This inspires ... a military mindset, a compulsion to win, to 'take the hill.' Not winning is simply unacceptable. If you don't win, you can't perform. You have to win ... at any cost.

This mindset leads rejected bidders to appeal to citizens and authorities outside the circle of participants in the selection process. Uncertainty about outcome generates anxiety. Perceptions distort: parties lose objectivity; gray areas become black or white; seemingly innocuous behaviors become meaningful as distrust and suspicion grow. Finally, having left behind solutions that might have been feasible early in the process, the conflict consumes resources that the original parties never intended to commit.

SOURCES OF DISTRUST IN SOURCE SELECTIONS

A potential for destructive conflict is inherent to the source-selection process. Selecting winners necessarily implies losers. It is human nature for losers to blame others – to believe they have been treated badly or unfairly (Malhotra & Bazerman, 2007: 135) – rather than themselves. Sometimes they are right: government has failed to follow its own source-selection rules. Far more often than not, they are wrong. In both cases, GAO's bid-protest mechanism works to sort out the consequences quickly, surely, and efficiently. It also works to educate offerors about the rules governing federal acquisition.

There is a prior question, however. How can destructive conflicts be prevented or, if not prevented, nipped in the bud? Kramer and Lewicki (2010) assert that the main difference between a productive disagreement and a no-holds-barred fight is presumptive trust/mistrust. If so, the answer to this question lies in getting the participants in the source-selection process to trust each other. So, what causes the presumptive mistrust that characterizes the source-selection process, in particular, and defense contracting, in general? What conditions give rise to negative expectations about the motives and competencies of the other participants in this process?

Thompson (1993: 310) proposes that trust is fragile, that it:

[C]an be poisoned by a single lapse of honesty or fair dealing; by contempt on the part of one of the parties for the abilities, judgment, or ethical standards of the other; by an excess of zeal or an overtly adversarial or confrontational approach or by a simple lack of communication.

More precisely, Kramer and Lewicki (2010; see also La Porte & Metlay, 1996) specify that mistrust is typically triggered by the following kinds of transgressions:

- (1) Communications failures: not listening, not working to understand other parties, and unwillingness to address major issues;
- (2) Performance failures: unwilling or unable to perform basic responsibilities, making mistakes, issues of general competence;

- (3) Breach of rules: poor decisions, bias or favoritism;
- (4) Incongruence: misaligned with or the core values, mission, purposes of the joint enterprise; actions do not match words;
- (5) Unwillingness to acknowledge: taking no responsibility for mistakes or issues, not owning issues or the violation itself, placing self before the enterprise.

Other studies have shown that the size of transgressions and their frequency matter, as does their timing. Transgressions that occur early in a relationship are more damaging than those that occur after a relationship has been established (Tomlinson, Dineen, & Lewicki, 2004; Lount, Zhong, Sivanathan, & Murnighan, 2008), which may in part account for the propensity of inexperienced losers to protest source selections, as well as the paucity of success of those protests (Gansler & Lucyshyn, 2009).

The implication of the literature is that these sorts of transgressions should be forestalled. And, indeed, many contracting officials concur with this assessment. As a DOD contracting official put it – “protests happen because of organizational dysfunction; what an agency does to conduct a good source selection is also what will avoid a protest.” Consequently, various defense agencies have taken steps to avert trust-damaging transgressions: improving communications at every stage in the acquisition process, starting with formulation of requirements and continuing all the way through the execution of the contract; strengthening the capacities of contracting officials to perform their roles and subjecting their actions and decisions to peer review, disclosing draft RFPs, and thoroughly debriefing losers to help them understand how they can do better in the future (see also Thompson, 2009: 165).

Performance Failures and Breach of Rules: Competence

Competence is the first line of defense against the errors that give rise to mistrust and, thereby, against presumptive mistrust. This

means aligning the knowledge, skills and motives of the acquisition workforce, through training, recruitment and retention, guidance, and incentives, with their responsibilities, so that selections are done correctly and protests are anticipated and avoided. Defense agencies have devoted considerable effort to recruiting and training a more highly skilled acquisition workforce, but attention to these matters has been imperfect and gaps remain.^{vii}

To compensate for these gaps, maintain standards, and provide credibility, the Under Secretary of Defense for Acquisition, Technology, and Logistics has established a multi-agency system of peer review for source-selections, where contracts exceeding \$1 billion for supplies and services are concerned. The Under Secretary's memorandum, dated September 29, 2008, also directs contracting agencies to design internal peer-review systems for contracts valued at less than \$1 billion. Most agencies now have some kind of peer-review system up and running. This program has, by most accounts, worked to reduce trust-damaging transgressions in source selections, but, like better acquisition-workforce training, it is not infallible.^{viii}

Logically speaking, peer review is a quality assurance program that relies upon inspecting every source selection prior to delivery: quality of the source-selection process is the "end," universal peer review the "means." As such, peer review has two key functions: audit and *ex ante* evaluation. In performing the audit function, peer reviewers must verify that the source-selection team followed prescribed procedural standards. In performing the *ex ante* evaluation function, they must gauge the substantive outcomes that will result from the policies recommended by the source-selection team. If the peer reviewers find the source selection defective on either count, it must be reworked. In the end, this program can be no better than the reviewers it relies upon or the efficacy of the rework process.^{ix}

We presume that if better, more uniform, human-resources management practices throughout the Defense Department's acquisition workforce would help to reduce trust-damaging transgressions in source selections,^x so too would standardized, high quality peer review. But humans make mistakes. Errors, real or perceived, are inevitable.

Communication Failures: Explanations

Good explanations repair trust, especially where perceived error is concerned. Just as government has sought to improve the quality of its decisions, it has also sought to explain its decisions better. The Federal Acquisition Streamlining Act of 1994 mandated agency debriefings. Bidders have the right to ask agencies to explain their selection decisions and contract awards; losers can ask why their bids were rejected. Most observers give this mandate credit for a drop in protests after 1994.

Here too, however, take up has been uneven. This is the case for two reasons. First, the 1994 Act requires agencies to explain their decisions only when losers ask for an explanation. Second, it allows agencies considerable discretion in the content of their explanations.^{xi} Consequently, some agencies thoroughly explain all of their source selections and give losers ample opportunities to ask questions. Their explanations typically feature multiple members of the source-selection team, including engineers and attorneys, presenting the same information conveyed to the Source Selection Authority. These kinds of explanations can repair trust. Other agencies provide explanations only when asked and say no more than the minimum required by law. In which case, the explanation might take the form of a ten-minute presentation, scripted by an agency attorney, comprehending one or two PowerPoint slides, with little or no opportunity for the loser to ask questions.

Agencies give bad explanations because they fear losers will use the information against them. Consequently, they apply a standard of disclosure tied to surviving a protest at GAO, which is obviously different from one aimed at building or repairing a trust-based relationship. Moreover, in many instances, the agency needs the winner's permission to share information about its bid with the loser. Even where that permission is granted, the winner may insist that competitive or proprietary information be redacted from the agency's

explanation of its source-selection decision. Winners also fear that information will be used against them. But, of course, mistrust encourages mistrust. As Kramer and Lewicki (2010) explain, one builds trust by awarding trust to others, even when confidence in them is lacking.

Unwillingness to acknowledge: Apologies

Apologies are a way to repair trust when a transgression has occurred and, thereby, normalize relations. While FAR requires explanations and admissions of error on the part of agencies, along with specific reparations, it evidently discourages apologies. As Charles Tilly (2006: 53) explains, recipients of apologies typically regard them as characterizations of their relationship to the givers, not as cause-effect explanations. Because trust is largely based on reciprocity,^{xii} good apologies characterize relationships as equal partnerships and the practices governing relationships and the connections between the participants as reciprocal, as is the case when an agent takes personal responsibility for a transgression. Denying individual responsibility (the FAR made me do it; technical considerations required my actions, etc.) implies a hierarchical relationship. Trust is conceivable in a hierarchical relationship only where the inferior acknowledges the authority and the competence of the superior and, even then, the wrong kind of apology (blaming the recipient or some external cause for the transgression) or one that is perceived to be insincere can be hard on trust. Source-selection agencies are rarely willing to grant bidders equal status, in part because of a fundamental asymmetry in the legal relationship. Government procurement law is affirmative law, meaning government as buyer is required to do everything it says it will do; a business as seller cannot be made to do anything it is not asked to do. It is very difficult for government officials to acknowledge they failed to do what they were legally required to do, which is what a good apology implies.

Even if that were not the case, agencies might not offer appropriate and effective apologies out of fear that they would be used against them.^{xiii} Finally, as Kramer and Lewicki (2010: 255) observe: “Explanations and apologies are more effective when combined with reparations; open offers of reparations (inviting the victim to define the terms and conditions) tend to be more effective than specific targeted offers.” Again, the FAR evidently discourages open offers of reparations, although many of the individuals who have gone through the source-selection process tell us that they are not unusual.

BUILDING TRUST

Building trust is harder than repairing it. A sense of membership in a common enterprise constitutes the basic foundation for trust: a positive expectation of reciprocity within the boundaries of shared identity. Unfortunately, the acquisition community is not a community (in this case, what might be described as a community of inquiry or practice). Rather, the intricate nexus of social relations that characterize the contracting/source-selection process introduces myriad cleavages and fault lines. As Kramer and Lewicki (2010: 262) explain, “the salience of subgroup identities enhances inter-group bias and competitive orientations, thereby undermining trust and cooperative behavior.” They further argue that there is a tension between the *bonding* trust that arises within subgroups versus the *bridging* trust that might help subgroups cooperate. Since the participants in the source-selection process often do not perceive that they are part of a common enterprise, but instead, belong to a set of disparate communities, it is no surprise they tend to distrust each other.

Building Trust Means Building Communities of Practice

It is our impression that negative expectations that pervade source selection begin with commercial rivalry. The companies seeking

government contracts do not play with all their cards on the table. They want to create advantages for themselves, which can be productive for all concerned where advantage is pursued in terms of product, price, and past performance, but not where it is unfairly won. Most bidders seem predisposed to believe their commercial rivals will stop at almost nothing in pursuit of a competitive advantage and will exploit every edge they can get. This mistrust undermines confidence in the contracting process as a whole. For example, companies buy expertise about the contracting process by recruiting contracting officers from government agencies. Competitors often fear that these contracting officers will trade not only on their expertise but also on their relationships with decision makers in the contracting command.

Certainly bidders often seem obsessed with protecting proprietary information, even where that information has little real market value, although learning requires a free flow of information. This leads them to censor the information agencies can divulge in debriefings and sometimes even to deny themselves access to information that would help them win contracts. For example, because questions posed during discussions about a solicitation will be public, "...merely asking a question at this stage or the content of a question might reveal something about your product and the state of your technology that you don't want your competitors to know."

Lawyers are inherently adversarial. For example, a bid-protest attorney told us that it is always safer to assume that agencies won't correct their own mistakes. "They are more likely to circle the wagons. An agency review is a single filing, no discovery, and you wait for an agency to decide." Consequently, involving lawyers in the source-selection process, almost necessarily creates a climate of mistrust. The implication being that they ought to be excluded wherever possible. Indeed, another bid-protest attorney advised, "do not admit a lawyer into any forum where the agency is on the other side, even the debrief, unless you've already decided to file a protest."

The logic behind this advice is compelling although currently untenable. While agencies can restrict the number of people they send to a debriefing, they cannot preclude a rejected bidder from bringing an attorney. Moreover, where operating policies and laws in the form of FAR and DFARS are almost one and the same, absent a

lawyer, a losing bidder might not understand agency decisions. On the other hand, if bidders were required to have non-lawyers on staff certified to understand the rules governing source selections, this advice could be more tenable. Were certification to become the coin of the realm within government's acquisition workforce (Fast, 2009), it should also be required of teams seeking government contracts. Understanding the rules governing the process would seem to be a basic condition for building communities of practice around the source selection process.

Rules Help, but not Necessarily the Rules We Have

That many of the members of the acquisition community are ill-socialized into the structure of rules governing their common enterprise or are ignorant of each others' identities, decision rights, and responsibilities are significant sources of sub-group tension. It is a commonplace that rules governing an enterprise constitute an important basis for trust building. As Kramer and Lewicki (2010: 264) explain: "Rule-based trust is not predicated on members' ability to predict specific others' trust-related behaviors, but rather on their shared understandings regarding the normatively binding structure of rules guiding – and constraining – both their own and others' conduct.... [R]ule-based trust is sustained ... by members' socialization into the structure of rules. When socialization processes are perceived as efficacious, trust results. When they are perceived as weak, ineffectual, and lacking normative power, it does not" (see also Bardach and Kagan, 2002).

Kramer and Lewicki (2010: 262) further argue that rule-based trust can be reinforced by clearly defined, complementary roles. Indeed, if subgroup obligations are defined in terms of a common enterprise, and are, in turn, supported by and integrated with the community's identity, then friction between subgroups can be precluded. In fact, shared knowledge about subgroup identities, decision rights, and responsibilities provides the basis for presumptive trust within a community of practice.

Problems arise when these conditions are not met. For example, contracting commands need expertise from potential suppliers to define requirements. But many potential suppliers lack sufficient understanding of the rules governing contracting to respond to requests for information, let alone proposals. Not only does this lead to inferior requirements, relative to those that are theoretically feasible, it can exclude the best suppliers from the source selection. In such cases, regulations, which were designed to create fairness, have the opposite effect because of their complexity. Moreover, even if ill-socialized suppliers participate in a source selection, they are likely to be much more distrustful of the process and more likely to question decisions that go against them. Smaller, less-sophisticated companies, for example, comprise a disproportionate source of bid protests. Hence, a mechanism, which would allow all potential suppliers to understand the rules governing source selection and the roles and responsibilities of the other participants in the process, would go a long way toward building bridging trust.

So, what would such a mechanism look like? To answer this question, it might be useful to recover the best-known attempt on the part of the US government to build a collaborative, learning community involving government and business and, then, to see if we cannot extrapolate from that experience to defense acquisition. According to Gerald Berk (2009, see also Thompson, 2010), the Federal Trade Commission was initially conceived as a new kind of governance scheme. Berk calls this scheme 'cultivational governance.'

Cultivational governance involved the creation of public-private collaborations, called associations, which formulated 'codes of fair competition' for industries and trade groups. These codes defined the obligations each member of an association owed the others and their collective obligations to the public at large. Cultivational governance sought to channel "competition from predation to improvements in products and production processes" to correct destructive business habits of secrecy, autarky, and opportunism and to use associations, dialogue and open exchange of information, to achieve collective learning that would increase their members' productivity and profitability (Berk, 2009: 117).

The pattern for cultivational governance was found in Arthur Eddy's

developmental associations. These were communities of inquiry, where dialogue and social learning took place and where erstwhile rivals could establish relationships based on openness and reciprocity (Berk, 2009: 63-64).

Eddy explained how ... he invented a new form of competition. He asked firms in steel construction and cotton printing to submit pricing data in the midst of a bidding competition. When the bidding ended, he compiled the data, distributed it to the participants, and organized a forum to discuss the outcome. Participants inevitably raised broader questions.... Eddy found that the more competitors learned to play with “their cards on the table” the more they stood back from the precipice of cutthroat pricing and concentrated instead upon service, product quality, and productivity. The “new competition. Eddy concluded, was “cooperative.” By pooling and discussing information, business learned to channel rivalry from opportunism to genuine improvements in products and production processes.

The key to the success of Eddy’s developmental associations lay in sharing business secrets with rivals. This made their members vulnerable to their peers and, in so doing, provided a basis for presumptive trust. Because this process was voluntary, there had to be a payoff to the members. In this case, there were two: reducing unproductive competitive rivalry and more rapid learning about products and production processes.

What the FTC had to offer these communities was legitimacy. The FTC could vouchsafe associational activities and contractual restraints that would otherwise have been unenforceable and, perhaps, subject to prosecution. More importantly the FTC guaranteed to the public and to association members that the associations were not ‘conspiracies in restraint of trade’ but were instead collaborations aimed at increasing the average level of performance among their members, while at the same time decreasing the performance spread among them. As is almost always the case with business-process improvement, the intelligence needed to solve problems didn’t necessarily reside close at hand, developmental learning required

association members to be actively engaged in understanding why some actions seemed to work and others didn't. Consequently, cultivational governance at the FTC helped trade-association members reach agreement on what was worth achieving, set in motion the processes by which they learned how to do what they needed to do, and helped refine the measures association members used to assess performance and thereby practice improvements.

Administratively these tasks were assigned to the FTC's Trade Practice Conference Division, which "sought to build deliberative, scientific, and evaluative capacity ... through public/private collaboration" (Berk, 2009: 29). An early trade conference held by the FTC to discuss its report on the fertilizer industry provided the model for the division's activities. Most of the industry showed up and voluntarily worked out a successful code of fair competition. Subsequently, the FTC launched a full-scale trade conference program "premised on the assumption that it was often difficult for individual firms to make sense of the social causes and consequences of their actions (138)... Among the defining features of this program was the elaboration of codes mandating "uniform cost accounting, benchmarking, and interfirm deliberation" (29). FTC sanctioned rules governing trade associations typically mandated frequent reports on their members practices and productivity and quarterly association meetings where those results could be discussed and debated, allowing ample opportunities for learning.^{xiv}

The UK Highways Agency's Collaborative Approach to Supplier Management and Engagement

Applying something like this to source-selection is not a completely outré proposal. The UK Ministry of Transport is experimenting with public-private arrangements that have many of the elements of cultivational governance to manage its highway-maintenance contracts (Elliott & Johnson, 2011: 107-8). The Highways Agency adopted this approach in response to cost and schedule overruns. Because they had experienced these unhappy outcomes as far back as anyone remembered, under both 'firm' fixed-price arrangements

that awarded contracts to low bidders and under cost-plus arrangements the awarded contracts to 'best offers' based on detailed work-breakdown structures, the highways agency wanted to try something entirely new (although justified by "best-practice research in supply-chain management"): the creation a genuine community of practice based upon "espoused values, shared goals, and ... peer pressure, " comprising project designers, managing contractors, and specialist contractors, who would work with the Highways Agency under fixed-term partnership agreements and a derived pricing system, rather than bidding for individual contracts.

The Highways Agency's process of building a community of practice begins with a regional facilitated workshop involving about 20 contractors "designed to challenge the adversarial approach typical of the construction industry" and establish the terms of reference under which the partnership would operate. The agency left it the participating contractors to decide "what they do, how it was done and how they proved it." Aside from a consistent emphasis on partnership and working together, the agency relabeled the contractors as specialists and sub-contractors as supply chain partners, required that each partner be afforded equal status and share equally in rewards that accrued to delivering projects on time and under budget (and the costs, where they failed), and stipulated that each partner would contribute "to funding a Community Management Team which monitors performance, identifies areas for improvement, and promotes initiatives to share better practices."

Johnson and Elliott report that, over time, "several additional structural forms were developed to encourage ongoing communication, reflection and innovation. For example, 'Off-line' groups enabled the development and sharing of resources and practices. Convened away from project delivery, three main groups, namely, process, culture, and measurement were supported by sub-groups including safety, innovation, and supply chain integration. Simple mechanisms, such as the co-location of contractors and 'buddy partnering' encouraged the sharing of ideas and better practices."

The upshot of this experiment, at least according to Johnson and Elliott, has been a shift away from previous adversarial relationships

and the secrecy, autarky, and opportunism characteristic of those arrangements, toward cooperation, resource sharing, and collective learning about better methods that save money. This, in turn, produced substantial improvements in highway maintenance and cost reductions of 20-40 percent (where partnerships operated compared with matched sites where traditional contracting mechanisms remained in effect).

Building Communities of Practice around Source Selection

To extrapolate cultivational governance from its source site to our target site, government acquisition officials would have to establish similar collaborative, developmental associations for the industries and trade groups that serve defense agencies. Together, a contracting agency and the relevant association would develop the rules that would govern each source selection (subject, of course, to FAR/DFARS requirements), specifying the obligations of each party, their decision rights, and their responsibilities with respect to:

1. Defining requirements of the good or service sought
2. Attracting proposals that address requirements adequately
3. Establishing criteria for evaluating proposals that reflect those requirements
4. Deciding what constitutes a meaningful discussion
5. Obtaining price information
6. Conducting the evaluation
7. Complying with a schedule

At each step in the source-selection process, participants would be required to be fully transparent with respect to their capabilities, purposes and intentions. Following, government's sourcing decisions, open forums would be held to discuss outcomes. In the interim, members of associations would be obligated to report on their operating practices and productivity and to hold regular meetings to

discuss and debate those results. Another responsibility of associations would be to socialize newcomers to the acquisition enterprise and to a system of rules that would create and sustain collective expertise and motivation. As Kramer and Lewicki (2010) explain: "Rules contribute to presumptive trust not only through their influence on individuals' expectations regarding other members' behaviors, but also by shaping their expectations regarding their own behavior."

In addition to providing a basis for bridging trust, associational activities could go a long way to putting government and its suppliers on a more equal footing as participants in an on-going dialogue about products and operating processes and, thereby, to reducing communication and performance failures, breaches of rules, incongruent actions, and unwillingness to acknowledge transgressions.

Why would businesses want to participate in these kinds of associational activities? One answer is, access to government contracts. If most potential bidders voluntarily agreed to participate, government could exclude those who refused to do so from competitions. But there is another equally compelling answer, faster learning. Businesses that participated would acquire knowledge, which would allow them to increase profitability and turnover, to serve civilian customers better, and to contribute more effectively to the public welfare.

The downside of building communities of practice, modeled on cultivational governance, around source selections is that they would undoubtedly be conducive to bid rigging. We believe it likely that this drawback would be more than offset by faster learning, product and operating upgrades, improvements in the execution of contracts, and reduced monitoring and enforcement costs.^{xv} Nevertheless, that is by no means certain. Consequently, what we propose here is a formal experiment that would test this scheme against the status quo.

To build trust, one must first give it.

NOTES

ⁱ Execution of the acquisition function involves the following processes, listed sequentially: procurement planning, solicitation planning, solicitation, source selection, contract administration, and contract closeout (Rendon, 2008).

ⁱⁱ The Federal Acquisition Regulations (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS) prescribe the steps that acquisition officials must follow in making source-selection decisions.

ⁱⁱⁱ Defense contracting is often the butt of public criticism, notwithstanding careful analysis that presents a very different picture of its effectiveness (see, for example, Besselman, Arora, & Larkey, 2000).

^{iv} Obviously, we do not know if the following claim is true or not, but one of our respondents insisted that government and businesses typically prepare for the worst: that agencies build three months into their schedules for large contracts to account for bid protests and that companies build the expected cost of a protest into their overhead.

^v Our practical goal in writing this article is improving the source-selection process; our scholarly purpose lies in contributing to a process theory for recovering and reinforcing trust. Trust has long been a focus of scholarship in our field, if not a major one. Some of the more prominent works on trust are Perry & Wise, 1990; Thompson, 1993; Behn, 1995; La Porte & Metlay, 1996; Ruscio, 1996; and Yang & Holzer, 2006. One of the main insights found in this literature is that institutional constancy is a critical requirement for sustaining trust, both in general (Miller 1993; La Porte & Keller, 1996) and specifically with respect to public-private partnerships (Teisman & Klijn, 2002; Romzek & Johnston, 2005). We take this conclusion as a given in the discussion that follows.

^{vi} We make certain assumptions that should be made explicit: negotiation is good, unproductive conflict bad; compromise is good, intransigence bad. Note that we are most emphatically NOT saying that disagreement *per se* is bad. Disagreement can drive creativity. If we value item A more than you do and you value item B more than we do, we disagree, but that's the basis for any productive exchange. We generally presume that contract negotiation is inherently a positive-sum game. If, in fact, the source-selection process is inherently a zero-sum game, mistrust is not a problem to be solved; it is a condition to be borne and, where possible, its costs reduced. That is not our perspective, although candor forces us to acknowledge that it may well be correct.

^{vii} It would be easy to document a widespread belief in the incapacity and under capacity of the acquisition workforce, especially during the last ten years when the volume of contracts increased and the number of people in the workforce remained stable or declined. We might note that the differences observed in training, recruitment, and incentives in the various contracting agencies provide a real opportunity for rigorous analysis of the effectiveness of personnel practices and procedures. Maser, Subbotin, and Thompson (2012), for example, claim that the personnel practices observed at the Naval Air Systems Command and the Defense Logistics Command are better designed to insure competency than are those of other defense agencies. They also show that the Naval Air Systems Command's and the Defense Logistics Command's source-selection actions are less likely to be protested and, if protested, more likely to prevail than are the actions of other defense acquisition agencies. The problem with this analysis is that the assessment of personnel practices is extremely informal and, even if that were not a problem, correlation does not necessarily imply causation. We need more rigorous programmatic analysis and evaluation to draw strong conclusions about the relationship between personnel practices and acquisition outcomes. But these results suggest that investing in the right sort of experimentation and evaluation might have a significant payoff.

^{viii} Beyond the FAR, statutory guidance for peer review can be found in the appropriations rider to the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554; H.R. 5658), section 515(a), which has come to be known as the Information Quality Act. Implementation of this statute by the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) has taken the form of "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies" (8452 Federal Register, Vol. 67, No. 36, Friday, February 22, 2002). These OMB guidelines prescribe that agencies covered by the Paperwork Reduction Act (44 U.S.C. chapter 35):

[S]hall adopt a basic standard of quality (including objectivity, utility, and integrity) as a performance goal and should take appropriate steps to incorporate information quality criteria into agency information dissemination practices.... As a matter of good and effective agency information resources management, agencies shall develop a process for reviewing the quality (including the objectivity, utility, and integrity) of information before it is disseminated....This process shall enable the agency to substantiate the quality of

the information it has disseminated through documentation or other means appropriate to the information.

Subsequently, OMB has issued bulletins clarifying standards and operating procedures for information provision, including those governing peer review.

^{ix} Sampling aimed at finding the sources of errors and fixing them might be more effective. Certainly, that would be more consistent with the tenets of quality management. In the same vein, it is likely that this program would be sounder and surer if peer reviewers used a standard, comprehensive checklist. We don't now know. Indeed, we have no hard evidence that this program works at all. In this case, however, the defense department's Office of Acquisition, Technology & Logistics is conducting a thorough evaluation of the efficacy of the peer review process and we should soon have that evidence.

^x Indeed, that presumption is probably valid for the entire acquisition community – suppliers and users, as well as buyers.

^{xi} 15.506 (d) At a minimum, the debriefing information shall include— (1) The Government's evaluation of the significant weaknesses or deficiencies in the offeror's proposal, if applicable; (2) The overall evaluated cost or price (including unit prices) and technical rating, if applicable, of the successful offeror and the debriefed offeror, and past performance information on the debriefed offeror; (3) The overall ranking of all offerors, when any ranking was developed by the agency during the source selection; (4) A summary of the rationale for award; (5) For acquisition of commercial items, the make and model of the item to be delivered by the successful offeror; and (6) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.

^{xii} If I think you ought to trust me, then I ought to trust you in return. Acts that are manifestly premised on trust tend to breed trust in others.

^{xiii} Even doctors – once advised by counsel not to apologize to patients for fear that an apology would be used against them in a lawsuit as an admission of guilt – are now being advised to apologize when appropriate as a way of discouraging lawsuits.

^{xiv} One of the intriguing aspects of cultivational governance is the way it combines competition with close working relationships. Most scholars have treated these as either/or propositions (Williamson 1985; Thompson 1993; Brown, Potoski & Van Slyke 2006), although practitioners evidently improvise similar arrangements on a regular basis (Romzek & Johnston 2005; Werner & Hefetz 2008; Kapstein & Oudot 2009).

REFERENCES

- Bardach, E. & Kagan, R. A. (2002). *Going by the Book: The Problem of Regulatory Unreasonableness*. Piscataway NJ: Transaction Publishers.
- Behn, R. D. (1995). "The Big Questions of Public Management." *Public Administration Review*, 55 (4): 313-324.
- Berk, G. (2009). *Louis D. Brandeis and the Making of Regulated Competition, 1900-1932*. New York: Cambridge University Press.
- Besselman, J., Arora, A. & Larkey, P. (2000). "Buying in a Businesslike Fashion— And Paying More?" *Public Administration Review*, 60 (5): 421–434.
- Brown, T. L., Potoski, M. & Van Slyke, D. M. (2006). "Managing Public Service Contracts: Aligning Values, Institutions, and Markets." *Public Administration Review*, 66 (3): 323–331.
- Carpenter, S., & Kennedy, W.J.D. (2001). *Managing Public Disputes*. (pp. 11-17) San Francisco: Jossey-Bass
- Elliott, D. & Johnson, N. (2011). "Using Social Capital to Organise for Success? A Case Study of Public-Private Interface in the UK Highways Agency." *Policy & Society*, 30 (2): 101-113.
- Fast, W. (2009). "Whatever Happened to Certification?" *Defense Acquisition Review Journal*, 16 (1): 3-17.

-
- Frank, C., Lewis, I. & Udis, B. (2008). "New Patterns of Collaboration and Rivalry in the U.S. and European Defense and Aerospace Industries," (September 30, Monterey, CA: Naval Postgraduate School NPS-AM-08-131).
- Gansler, J. & Lucyshyn, W. (2009). "Bid Protest Analysis to Date." *Proceedings of the 6th Annual Acquisition Research Symposium of the Naval Postgraduate School: Volume II: Defense Acquisition in Transition*, Monterey CA: May 13-14.
- Jansen, E., Hocevar, S.P., Rendon, R.G. & Fann, G.T. (2009). "The Theory and Measurement of Interorganizational Collaborative Capacity in the Acquisition and Contracting Context." *Proceedings of the 6th Annual Acquisition Research Symposium of the Naval Postgraduate School: Volume II: Defense Acquisition in Transition*, Monterey CA: May 13-14.
- Kapstein, E. B. & Oudot, J.M. (2009). "Reforming Defense Procurement: Lessons from France," *Business and Politics* 11(2):1-25. Retrieved August 1, 2011 at: <http://www.bepress.com/bap/vol11/iss2/art1>
- Kramer, R. M. & Lewicki, R. J. (2010). "Repairing and Enhancing Trust: Approaches to Reducing Organizational Trust Deficits." *The Academy of Management Annals*, 4(1): 245-277.
- La Porte, T. R. & Keller, A. (1996). "Assuring Institutional Constancy: Requisite for Managing Long-Lived Hazards." *Public Administration Review*, 56 (6): 535-544.
- La Porte, T. R. & Metlay, D. S. (1996) . "Public Hazards and Institutional Trustworthiness: Facing a Deficit of Trust." *Public Administration Review*, 56 (4): 341-347.
- Lewis, J.D. & Weigert, A. (1985). "Trust as a Social Reality." *Social Forces*, 63 (4): 967-985.

-
- Lount, R.B., Jr., Zhong, C., Sivanathan, N & Murnighan, J.K. (2008). "Getting Off on the Wrong Foot: The Timing of a Breach and the Restoration of Trust." *Personality and Social Psychology Bulletin*, 34 (12): 1601–1612.
- Malhotra, D. & Bazerman, M. (2007). *Negotiation Genius*. New York: Bantam Books.
- Maser, S. M., Subbotin, V. & Thompson, F. (forthcoming). "How Bid-Protest Mechanisms Mitigate Opportunism in Government Contracting." *International Public Management Journal*.
- Mayer, R.C., Davis, J.H. & Schoorman, F.D. (1995). "An Integrative Model of Organizational Trust." *Academy of Management Review*, 20 (3): 709–734.
- Miller, G.J. (1993). *Managerial Dilemmas: The Political Economy of Hierarchy*. New York: Cambridge University Press.
- Ostrom, E. (1990) *Managing the Common*. New York: Cambridge University Press.
- Perry, J. L. & Wise, L. R. (1990). "The Motivational Bases of Public Service." *Public Administration Review*, 50 (3): 367-373.
- Rendon, R. (2008). "Procurement Process Maturity: Key to Performance Measurement." *Journal of Public Procurement*, 8 (2): 200-214.
- Romzek, B. S. & Johnston, J. M. (2005). "State Social Services Contracting: Exploring the Determinants of Effective Contract Accountability." *Public Administration Review*, 65 (4): 436–449.
- Ruscio, K.P. (1996). "Trust, Democracy, and Public Management: A Theoretical Argument." *Journal of Public Administration Research & Theory*, 6 (3): 461-477.

-
- Sanders, P. (2010). "Northrop Quits Tanker Bid." *Wall Street Journal* (March 9).
- Sanders, P. & Mullins, B. (2010). "Sarkozy Criticizes U.S. on Tanker Deal." *Wall Street Journal* (March 13).
- Snider, K. & Walkner, M. (2001). "Best practices and protests: Toward effective use of past performance as a criterion in source selections." *Journal of Public Procurement*, 1(1): 96-122.
- Spiller, P. T. (2009). "An Institutional Theory of Public Contracts: Regulatory Implications." In C. Menard and M. Ghertman (Eds.), *Regulation, Deregulation and Reregulation: Institutional Perspectives* (pp 45-66). Northhampton, MA: Edward Elgar Publishing.
- Teisman, G. R. & Klijn, E. H. (2002). "Partnership Arrangements: Governmental Rhetoric or Governance Scheme?" *Public Administration Review*, 62 (2): 197-205.
- Thompson, F. (1993). "Matching Responsibilities with Tactics: Administrative Controls and Modern Government," *Public Administration Review*, 53(4): 303-318.
- Thompson, F. (2010). "Finding Institutional Purpose: Enterprise, Risk Management, and Learning," *Journal of Public Administration Research and Theory*, 20 (3): 723-33.
- Thompson, L. (2009). *The Heart and Mind of the Negotiator*. Upper Saddle River, NJ: Prentice-Hall.
- Tilly, C. (2006). *Why? What Happens When People Give Reasons...and Why*. Princeton, NJ: Princeton University Press.
- Tomlinson, E., Dineen, B. & Lewicki, R. (2004). "The Road to Reconciliation: Antecedents of Victim Willingness to

Reconcile Following a Broken Promise.” *Journal of Management*, 30 (2): 165–187.

Warner, M. E. & Hefetz, A. (2008). “Managing Markets for Public Service: The Role of Mixed Public–Private Delivery of City Services.” *Public Administration Review*, 68 (1): 155–166.

Williamson, O. E. (1967). “The Economics of Defense Contracting: Incentives and Performance.” In McKean (Ed.), *Issues in Defense Economics* (pp.217-256). New-York: Columbia University Press.

Williamson, O. E. (1985). *The Economic Institutions of Capitalism. Firms, Markets, Relational Contracting*. New York: The Free Press.

Ury, W., Brett, J. & Goldberg, S. (1988). *Getting Disputes Resolved*. San Francisco: Jossey-Bass.

Yang, K. & Holzer, M. (2006). “The Performance–Trust Link: Implications for Performance Measurement.” *Public Administration Review*, 66 (1): 114–126.