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# IMPROVING THE ACQUISITION PROCESS-- THE ROLE OF CONGRESS

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## INTRODUCTION

It has been said innumerable times over the past three years that Congress is micromanaging the acquisition process -- from its examination of particular programs to the adoption of detailed legislative provisions regulating the process the Department of Defense uses to acquire its goods and services and the way in which the defense industry fulfills its contracts. The purpose of this paper is to: (1) analyze the role that Congress has played through adoption of the Competition in Contracting Act of 1984, the Defense Procurement Reform Act of 1984, the Small Business and Federal Competition Enhancement Act of 1984, and the Defense Procurement Improvement Act of 1985, in terms of the policy Congress desired to effectuate, whether the legislation passed did in fact promote that policy, and problems encountered in implementing the legislation; (2) determine as a result of this analysis what the appropriate role of Congress should be; (3) identify minimum changes to enhance the legislation already adopted; and (4) provide a recommended blueprint for future action.

Due to the detail with which one must address the legislation in order to provide a basis for determining the impact of Congressional action on the acquisition process, this paper will only briefly synopsize the legislation being addressed, providing a sufficient amount information to give the reader an appreciation of the intent and policy behind the legislative changes. The policy issues considered when enacting the legislation will not be addressed except to the extent necessary to highlight a problem with implementation or to elucidate the rationale behind proposed recommendations.

During the process of gathering the information necessary to draft this paper, I relied on articles, analyses, testimony, reports and statements made by many experts directly involved in the acquisition process. To those who have contributed to the formulation of ideas expressed herein through their willingness to speak out on the issue, I express my sincere gratitude.

The opinions expressed herein are solely those of the author and should not be attributed to any other person or organization.

## THE CURRENT ENVIRONMENT

The Department of Defense is by far the largest and most complex organization in the world, employing more than 3 million people, operating over 5,600 installations around the world and executing over 15 million contracts per year with some 300,000 contractors. It is not unusual then that such an organization would encounter problems of the kind frequently recounted in media "horror stories" about \$436 hammers and \$700 toilet seats. What is perhaps unusual, however, is the public's lack of confidence in the Defense Department as a result of the focus on a small number of problem acquisitions. It has been said that

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the sheer size and complexity of the military establishment focus media attention on the most minute, easily grasped issues in the hope that understanding the process of buying a bolt will yield an understanding of the effectiveness of the process as a whole.

There is no question that buying hammers is something the average "man on the street" understands. The comment of an Iowa woman queried about the spare parts issue by a newspaper reporter is perhaps indicative, as she answered:

"People here are told they can't get federal funds to clear up flooding problems and keep their basements dry and then they go home and read that the Pentagon is paying \$6,000 for coffee pots. You don't have to be too bright to put the two together. We wouldn't be upset if they were paying 60 cents for a 30-cent bolt. But let's keep the corruption within limits."

There are also those who recite the horror stories not because they are incensed about that particular situation, but because they see the issue as a way to discredit the efforts to achieve a defense buildup or to discredit those who voted to increase the defense budget. As William F. Buckley, Jr. aptly stated: "There are people about who hate an expensive Navy not because they mind expensive hammers, but because they mind the Navy."

Finally, Congress believes that it must act to ensure that such horror stories do not occur because it is the body that holds the ultimate power of the purse, and with that power the responsibility to ensure that money granted any government agency is wisely spent. As one member so appropriately stated:

"The drumbeat of new stories about \$600 ashtrays and \$700 toilet seats is symptomatic of an utter failure of the Defense Department to exercise proper oversight of Pentagon procurement contracts and the failure of all of us in the House to perform our oversight responsibility." (Armed Forces Journal, August 1985, p.42.)

Regardless of the motivation behind bringing these problems to the attention of the public, the result has been a conclusion by many that defense contracting officials are too stupid or untrustworthy to do their job; contractors are crooks, racketeers or spies; and that even the watchdogs must be watched. These conclusions have in turn cultivated in the Department of Defense an environment in which few will take risks or exercise judgment for fear of being the next person to be hung at the mast for paying too much for a stool cap. One can question this attitude if you assume that as long as there is a legitimate rationale for what one did there should be no fear of explaining that decision later. The problem is that for any decision in which one would exercise judgment there is a great likelihood that another person examining the same circumstances could arrive at a different conclusion. To avoid that result, there is an incentive to remove any semblance of decisionmaking and instead strictly adhere to rigid regulatory guidance regardless

of the wisdom of such an action -- for if a purchase was made in accordance with the regulations, one cannot be criticized personally if the result is not perfect -- it is a problem with the regulations. That attitude is exactly what Congress was trying to prevent with much of its legislation -- the blind adherence to regulation and established procedures rather than the exercise of a little common sense.