

**WHAT IS PUBLIC PROCUREMENT?
DEFINITIONAL PROBLEMS AND IMPLICATIONS**

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ABSTRACT. At all levels of government, inconsistencies exist regarding the body of knowledge and terminology used to define public procurement. Perspectives on what public procurement is or should be vary from routine ordering to sophisticated analysis of government spending. Definitional ambiguity has hampered attempts to define the field and unify its focus. This exploratory article examines the implications of the range of definitions that has led to debate and uncertainty about the proper role of public procurement professionals. The lack of clarity in public procurement challenges the profession as it seeks to enhance its competency and expand its influence beyond traditional control oriented roles.

INTRODUCTION

Is public procurement a profession? To many practitioners and academics, the question remains unanswered. Does it really matter whether a government employee is called a purchasing agent, buyer, or procurement professional? Why is it so critical to have an agreed upon public procurement body of knowledge (PPBOK), when all these individuals do is buy things? Aren't these matters for academic pursuit rather than substantive discourse about what these individuals do in organizations, and how through professionalization these individuals could significantly enhance the allocation of resources in government?

Unfortunately, without an agreed upon body of knowledge, the development of education and training programs will result in further degradation of the field. According to Gargan (1993), a body of knowledge is a conceptual framework that is systematized about a central

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theme and formulated through the process of definition, classification, and analysis with reference to the discovery of general concepts, theories, laws and/or principles.

A first step in identifying a body of knowledge for the procurement profession is to address the conceptual ambiguity of defining public procurement. If the procurement field cannot define itself, individuals outside the field will create their own ill-informed, ill-fitting definitions of public procurement. For example, imagine the definition of public procurement potentially considered by a human resource manager. The human resource manager would probably think about the most common tasks that procurement professionals perform on the job. From this perspective, these tasks may include gathering information about the buy from various suppliers, investigating the suitability of various suppliers, making sure that the supplies are delivered, checking to insure that what was ordered was actually received, and disposing of all used supplies.

When private individuals or corporations buy things, they may use various terms, such as purchasing or buying, to describe their actions. In government organizations, many different terms are used when referring to the buying function, from “public procurement” to “purchasing,” “contracting,” or “acquisition,” and many other variations. The wide variety of terms becomes a concern when there are definitional ambiguities, as now permeate the practice and profession. This problem appears to be more acute in the buying field than elsewhere. For example, someone who practices economics is invariably called an economist, whether in the public or private sector. Other fields, such as finance, tend to use well-defined and consistent terminology and definitions, typified by the near-universal acceptance of the term “Chief Financial Officer” across both the public and private sectors. Clarity in what practitioners and scholars mean when they refer to “public procurement” is lacking.

This paper seeks to offer an exploratory review of the array of definitions found in the field and to assess the implications of this definitional uncertainty for the profession. We will attempt to frame the debate on the fundamental issue of what public procurement means in theory and in practice. It is safe to say that a profession which cannot clearly define itself risks not only being misunderstood but potentially losing its focus for practitioners.

Smith and Lynch (2003, p. 35) suggest that terms can be defined in two ways: by relying on common usage or by creating a definition for intellectual or conceptual purposes. We will consider both methods as we review the literature and current practices in an effort to provide a baseline of common understanding.

LEGAL DEFINITIONS

Public procurement is one of the most highly legislated and regulated fields of government. In the U.S., legislation on this subject dates back to 1777 (Nagle 1999, p. 19). As a result, no survey of public procurement definitions would be complete without a review of the laws and regulations governing its conduct.

Federal Government

In 1984, the U.S. Government converted to a new system of regulations governing how Federal agencies buy things. The former Federal Procurement Regulations and Defense Acquisition Regulation (which was known as the Armed Services Procurement Regulation until 1976), along with the NASA Procurement Regulation, were combined into a new set of rules called the Federal Acquisition Regulation (FAR). There was a deliberate attempt to replace the term “procurement” with “acquisition,” in part to distinguish the new rules from the old, as noted in the following excerpt from the FAR (Section 2.101, Definitions):

"Acquisition" means the acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract. "Procurement" (see "acquisition")."

Although the term “procurement” has generally fallen into disfavor at the U.S. Federal level, it still persists in several forms. For example, the office responsible for Government-wide policy remains the “Office

of Federal Procurement Policy,” the job series for buyers is referred to as “Contracting” (U.S. Office of Personnel Management 1983), most policy professionals in the field hold the job title of “Procurement Analyst,” and no initiatives are underway to change the term (Lloyd 2000).

At the Federal level, Congress in 2003 enacted legislation that defines in detail what “acquisition” means. In the past, the operative term was “procurement”, which was defined in 41 U.S.C. 403(2) as follows:

The term ‘procurement’ includes all stages of the process of acquiring property or services, beginning with the process for determining a need for property or services and ending with contract completion and closeout.

But in 2003, Congress passed the Services Acquisition Reform Act (SARA), stating:

The term ‘acquisition’—

‘(A) means the process of acquiring, with appropriated funds, by contract for purchase or lease, property or services (including construction) that support the missions and goals of an executive agency, from the point at which the requirements of the executive agency are established in consultation with the chief acquisition officer of the executive agency; and

‘(B) includes—

‘(i) the process of acquiring property or services that are already in existence, or that must be created, developed, demonstrated, and evaluated;

‘(ii) the description of requirements to satisfy agency needs;

‘(iii) solicitation and selection of sources;

‘(iv) award of contracts;

‘(v) contract performance;

‘(vi) contract financing;

‘(vii) management and measurement of contract performance through final delivery and payment; and

“(viii) technical and management functions directly related to the process of fulfilling agency requirements by contract.”

Although the new definition is similar to that appearing in the FAR, by promulgating this new, more expansive definition, Congress signaled its intent to view the buying process in a broader perspective, encompassing technical and management functions. Excluded are grants and cooperative agreements, which are governed by a separate statute (31 U.S.C. 6303) that distinguishes a “procurement contract” by the fact that it involves acquiring something for the direct benefit or use of the U.S. government, rather than simply providing funding to stimulate a public purpose. For the U.S. Federal government, reference books tend to repeat the statutory definition, without much additional comment (e.g., Nash et al. 1998, p. 6)

State and Local Government

The American Bar Association’s (ABA) Model Procurement Code issued in 1979, which has been adopted in whole or in part by many U.S. jurisdictions, defined public procurement as “buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration” (ABA 1979, p. 5).

Some states provide a formal definition of public procurement in statute. For example, the Arizona Procurement Code (2004) offers the following definition:

31. ‘Procurement’:

(a) Means buying, purchasing, renting, leasing or otherwise acquiring any materials, services, construction or construction services.

(b) Includes all functions that pertain to obtaining any material, services, construction or construction services, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Excluded from this definition are activities such as materials management, supply chain management, budgeting and capital planning,

and surplus property management. Enshrined in law are primarily the basic buying steps.

In contrast, the state of Arkansas' Procurement Law and Regulations (2003, p. 7) define procurement to include property disposal, as follows:

(20)(A) "Procurement" means the buying, purchasing, renting, leasing, or otherwise obtaining of any commodities or services.

(B) It also includes all functions that pertain to the obtaining of any public procurement, including description of requirements, selection and solicitation of sources, preparation and award of contract, disposal of commodities, and all phases of contract administration.

In local governments, explicit definitions of public procurement are not often provided; however, the Procurement Code of Maricopa County, Arizona (Article 1, Section 1-101-83, offers this definition:

'PROCUREMENT' means buying, purchasing, renting, leasing or otherwise acquiring any information, Materials, Services or Construction. Procurement also includes all functions that pertain to the obtaining of any Material, Service, or Construction, including description of requirements, selection and Solicitation of sources, preparation and Award of Contract, and all phases of Contract administration."
(http://www.maricopa.gov/materials/p-code/HTML_code/Code-01.htm)

Looked at in isolation, this definition would appear to deal with "pure" buying alone, but Article 8 of the same Procurement Code covers materials management and discusses asset sales and similar activities as if they are part and parcel of the public procurement job. Also, the name of the office handling public procurement in Maricopa County is the "Materials Management" staff.

The lack of uniformity across state and local governments has prompted one author to advocate discarding the ABA's voluntary "Model Procurement Code" approach to promoting consistency with a "Uniform Code of Public Procurement" for adoption by the states in a manner similar to the adoption of the Uniform Commercial Code across the U.S. (Keyes 2000, pp. ix-x, xxi-xxii). Keyes argues that the lack of uniform public procurement rules effectively makes the U.S. less of a

common market than Europe (pp. ix-x). From the standpoint of a contractor seeking or doing business with state and local governments, having a recognizable definition of public procurement could be a distinct advantage.

International Perspective

The Agreement on Government Procurement of the World Trade Organization, now agreed to by 29 nations (Arrowsmith 2003, p. 439), does not provide an explicit definition of public procurement but contains 24 Articles that address the buying process, primarily through contract award, to the exclusion of other related supply management functions (http://www.wto.org/english/docs_e/legal_e/gpr-94_01_e.htm#article1). Although space will not permit a complete survey of other nations, an example can be provided here briefly to make a point. In Canada, the following brief definition is used in the Treasury Board Contracting Policy for Federal contracts:

procurement (*acquisition*) - the function of obtaining goods and services and carrying out construction and leasing through contractual arrangements.” (http://www.tbs-sct.gc.ca/pubs_pol/dcgpubs/Contracting/contractingpol_a_e.asp#p)

This reflects the sort of functional or process-based definition that is commonly found in the U.S. as well.

A NOTE ON TERMINOLOGY: PROFESSIONAL ASSOCIATIONS AND JOURNALS

To illustrate the lack of a common terminology throughout public procurement, the dominant professional associations for buyers who work for government organizations are the National Institute of Governmental **Purchasing** (NIGP), the National **Contract Management** Association (NCMA), and the National Association of State **Procurement** Officials (NASPO) [emphasis added throughout this section]. Members of these organizations arguably all do the same kind of work. Yet even the organizations that pride themselves on promoting professionalism in the buying community cannot agree on the name of the profession.

Periodicals issues by various organizations involved in the field likewise reflect the diversity of terms for the buying done by

governmental organizations. The American Bar Association issues **Public Contract** Law Journal, NCMA prints **Contract Management**, the Department of Defense publishes **Acquisition** Review Quarterly, a popular web site used by practitioners is called “Where in Federal **Contracting?**” and both academic and legal journals use the term “**Public Procurement**” (Journal of Public Procurement in the U.S. and Public Procurement Law Review in the United Kingdom).

NIGP and NCMA, as well as the U.S. Federal Acquisition Institute, all refer to a body of knowledge that their members should possess. The contents of that body of knowledge must take into account the proper scope of its activities. Definitions aside, to lack consistency in terminology and domain is to bring into question just what government buyers should be doing.

PUBLIC PROCUREMENT AS A PROFESSION: WHO IS A PUBLIC PROCUREMENT OFFICIAL?

A profession is characterized by having a professional organization, a code of ethics, a body of knowledge, research activities, and a credentialing arm (NCMA 2002, p. 1). In public procurement, much effort has been made in recent years to define the competencies required of those in the profession. NCMA (2002, p. 3) refers to competencies as “areas of knowledge” to include three key domains: technical, conceptual, and human relations. The body of knowledge that serves as the foundation for these competencies is described later in this paper.

U.S. Federal agencies are now in the process of defining who is included in the public procurement workforce for purposes of meeting the educational and training requirements of the Clinger-Cohen Act of 1996 (41 U.S.C. 433). That law defines the acquisition workforce to include: entry-level positions in the General Schedule Contracting series (GS-1102); senior positions in the General Schedule Contracting series (GS-1102); all positions in the General Schedule Purchasing series (GS-1105); and “positions in other General Schedule series in which significant acquisition-related functions are performed.”

Given the expansive definition in SARA quoted above, the case can be made that nearly every employee of every agency is part of the acquisition workforce, because few offices in the U.S. Government operate without any contracting support. In theory, any Federal employee may be a user of some contracted supplies or services and

regard them as significant. Since the definition in statute includes describing one's needs, there is the potential to have a definition of the workforce that is so broad as to lack meaning.

This dilemma is not purely an academic exercise. For example, the size of the acquisition workforce in the Department of Defense is publicized as approximately 132,000 employees (Defense Acquisition University 2004a), yet clearly most of those employees do not solicit, negotiate, award, and administer contracts. A total of only 58,649 employees appear in FAI's most recent report on the Federal (civilian and defense) acquisition workforce (FAI 2002, p. 4), of which only 27,294 work in the contracting series classification under the civil service. FAI (2002, p. iv) defines "acquisition workforce" to include general business and industry personnel, property disposal specialists, purchasing personnel (where "purchasing" means handling simplified acquisition or low dollar value buys), procurement clerical and assistance, and industrial specialists. Clearly, training needs and budgets, if nothing else, will be affected considerably by the scope of the definition used for public procurement.

POSITIVE DEFINITIONS: PUBLIC PROCUREMENT IN PRACTICE AND IN ORGANIZATIONS

The controversial nature of public procurement has spawned many different perspectives on its roles and responsibilities. To help define the issue, both positive and normative definitions have been offered. We start with positive definitions, which tend to be clustered around workload performed and organizations structured to carry out public procurement.

Workload-Based Definition

Another approach to defining public procurement is to examine what public procurement practitioners actually do on a daily basis. Recent surveys and analyses (such as McCue and Gianakis 2001) provide insight into the breadth and scope of public procurement. Public procurement officials spend most of their time on the following major tasks: handling procurement requests, soliciting and evaluating bids and proposals, performing supplier analysis, negotiating, and contract award and administration.

At the state and local level, the National Institute of Governmental Purchasing has defined procurement in its Dictionary of Purchasing Terms (as noted by McCue et al. 2003, pp. 7-8) as:

“1: purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction; includes all functions that pertain to the acquisition, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration

2: the combined functions of purchasing, inventory control, traffic and transportation, receiving, receiving inspection, storekeeping, and salvage and disposal operations.”

At the Federal level, the U.S. Federal Acquisition Institute (FAI 2003a) has issued “blueprints” of competencies required in public procurement. These “Contract Specialist Training Blueprints” describe 71 different tasks required of public procurement professionals at the Federal level, tracking the requirements of the Federal Acquisition Regulation. These tasks are grouped under the three primary phases of the public procurement process: acquisition planning, contract formation, and contract administration. The tasks are presented in linear fashion following the chronology of a typical contract, ranging from customer business analysis and market research through contract closeout. They do not address the budgeting or capital planning process. Also, they end with contract closeout and do not delve into matters of inventory control, warehousing, property disposal, or similar “post-procurement” functions. There is a more detailed set of 85 contracting competencies that FAI recommends be documented in an individual development plan for each employee (FAI 2003a). A parallel system is in place for the Department of Defense (FAI 2003c, pp. 2, 13-22).

FAI also defines 24 “general competencies” (2003b, pp. 14-18) or “professional business competencies” (FAI 2003c, pp. 8-9) that include interpersonal skills, customer service, attention to detail, and memory that practitioners should possess. Only one of these competencies is “contracting/procurement,” but FAI goes on to describe 14 additional “technical competencies” in public procurement that range from strategic planning to effective resolution of contract termination and/or closeout. The competencies were validated in environmental scans of the Federal acquisition workforce and a “critical incidents analysis” involving contracting officials, and parallel the research done in the private sector

along the same lines (Giunipero 2000). Collectively, these competencies are much more comprehensive than the position classification standard for the contracting series in the U.S. civil service system (U.S. Office of Personnel Management 1983).

The FAI body of knowledge is echoed by (but is not identical to) NCMA's Contract Management Body of Knowledge or CMBOK (2002). In the CMBOK's Table of Specifications containing 193 tasks (including 12 "very high frequency tasks" that, curiously, deal almost exclusively with contract performance) spanning 29 subjects, many are not found in FAI's blueprints, even though both are intended to cover public procurement at the Federal level. These are presented in more or less chronological order, grouped under the major phases or subjects of principles, acquisition planning, contract administration, sub-specialties, and general business. The CMBOK starts with standards of conduct and goes through acquisition planning, negotiations, contract performance, and communication infrastructure. The CMBOK provides more detail than FAI in terms of its presentation of ancillary issues of note for public procurement professionals. For example, there is a separate heading titled "Management" under which tasks such as human relations and organizational behavior are listed as high frequency tasks. The approach used by FAI differs in that it articulates "general competencies" underlying public procurement, rather than listing them as tasks.

Also, the CMBOK lists the following competencies for commercial purchasing but not for public procurement: customer service, data management, decision support systems, supplier/customer management, materials management, inventory management, and quantitative methods. Both sectors, however, share supply chain management as a high frequency task in the CMBOK model.

In 1997, the UPPC and NIGP developed a comprehensive job profile for public procurement professionals. It encompasses the following duties and responsibilities: Procurement Requests; Solicitation and Evaluations of Bids/Proposals; Supplier Analysis; Negotiation Process; Contract Award and Administration; External/Internal Relationships; Material Flow; Inventory Management; Ancillary Tasks; Administrative Aspects of the Purchasing Process; Personnel Issues; Forecasting and Strategies.

The NIGP body of knowledge is more extended functionally in its definition of responsibilities that come under the purview of state and

local government public procurement professionals. For example, NIGP considers “warehouse personnel including storekeepers, stocking personnel, and property accountability personnel” as well as “contract oversight personnel such as engineers” to be included in the definition of “purchasing buyer function” for purposes of applying for the certification status of Certified Public Purchasing Buyer (CPPB; Universal Public Purchasing Certification Council 2004, p. 9). These personnel are not considered “contracting personnel” in Federal agencies (civil service job series 1102), but might be considered part of the acquisition workforce as defined by FAI (2002) to include contracting-related functions. Obviously, how one defines public procurement in terms of roles and responsibilities will have a major impact on the management of the workforce.

In terms of relative importance for state and local government, the activities ranked highest in a survey of practitioners in a survey examining which action items were part of the practitioner’s job fell under the heading of procurement formalization activities (McCue and Gianakis 2001, pp. 88-89). These included identifying sources, determining procurement methods, and evaluating offers. The next grouping in order of priority was procurement implementation, to include follow-up on orders, developing effective relationships with contractors, and various contract administration-related tasks. The survey reported the following as occupying the least part of a public procurement official’s job in practice: developing forecasts of market conditions, planning purchasing strategies, developing needs analysis for warehousing, insurance, or logistics, and conducting performance evaluations. The discussion of normative approaches to public procurement below addresses how governments may respond to this situation in the future.

Organization-Based Definition

If we define public procurement organizationally, that is, by describing what public procurement offices are responsible for, we find the broadest variations at the state and local government level. While some states like Arizona have central procurement offices organized strictly for buying activities, (<http://sporas.ad.state.az.us/Directory/index.htm>), others include post-procurement functions. For example, the state of Michigan’s Acquisition Services Staff includes a logistics division handling inventories, storekeeping, and surplus property

(<http://www.michigan.gov/doingbusiness/0,1607,7-146--23718--,00>).

Likewise, the Division of Purchasing for the state of Delaware includes both surplus property and food distribution among its assignments (http://www.state.de.us/purchase/html/contact_our_employees.htm).

In both large and small local government jurisdictions, public procurement tends to include more responsibilities related to the “post-procurement” function as described below. For example:

- The Purchasing Department in Palm Beach County, Florida includes the “Stores/Warehouse” manager and a storekeeper for “Couriers & Mailroom” (<http://www.co.palm-beach.fl.us/pur/staff.htm>).
- The Bureau of Purchases of the City of Baltimore, Maryland includes a Surplus Property and Supply Management Division as well as a Printing and Reprographic Services Division (<http://www.ci.baltimore.md.us/government/finance/purchasesgoal.html#org>).
- The city of Oakland, California’s Purchasing Division “provides inventory control, storage and handling of materials; liquidates surplus property; operates a shipping and receiving function; tracks receipt, handling and disposal of hazardous wastes; and operates a delivery system for small parcels, interdepartmental mail, firehouse and police supplies, and library book exchange” (http://www.oaklandnet.com/government/b_and_fl/purchasing/purchasing.html).
- Prince George’s County, Maryland, has a Contract Administration and Procurement Division whose duties include central receiving, warehousing, and delivery; asset management; inventory control; and surplus property disposal (<http://www.goprincegeorgescounty.com/Government/AgencyIndex/CentralServices/capd.asp?h=40&s=20&n=20>).
- Allegheny County, Pennsylvania has a Division of Purchasing and Supplies that includes an accounts payable staff and an inventory control function (<http://www.county.allegheny.pa.us/purchasing/org.asp>).
- The Cobb County, Georgia Purchasing Department handles surplus property sales in addition to traditional procurement actions (<http://www.cobbcounty.org/purchasing/index.htm>).

- The City of Fort Lauderdale, Florida combines the materials management function with public procurement in its Procurement and Materials Management Division (<http://www.ci.fort-lauderdale.fl.us/purchasing>).

What definition of public procurement could produce such a collection of functions? The reasons for the wide range of features noted above may include the lack of a critical mass to justify separate supply, warehousing, accounts payable, or printing organizations, or because of other local conditions dictating such an arrangement. Also, surplus property sales are often conducted pursuant to a solicitation and bidding process, although it goes in the opposite direction of public procurement (selling, not buying). Such combinations of activities within a public procurement office are virtually unknown in Federal agencies, where procurement offices are generally limited to the typical buying activities of soliciting, negotiating, awarding, and administering contracts and little else. Perhaps working conditions are such that we need separate definitions for U.S. Federal vs. state and local public procurement.

NORMATIVE APPROACHES: WHAT PUBLIC PROCUREMENT SHOULD (OR SHOULD NOT) BE

As an integral part of contemporary government at all levels, public procurement is part of the ongoing transformation of the public sector. Some commentators argue for a new role for the public procurement professional, urging that the profession must become more strategic. The definition of public procurement can thus be used as a policy mechanism. The following are several of the major conceptual renderings of public procurement in a normative framework.

Rule-Based Public Procurement

One of the most common observations of public procurement in general is that it tends to be rulebound. Some rules establish decisionmaking guides (such as awarding to the lowest responsive, responsible bidder), while others are process rules (such as how much advance notice is needed when publicizing upcoming contracts). This has caused some to question whether a process so structured cannot succeed except by accident (Waelchli 1985, p. 41). As Kelman (2002, p. 7) notes, when asked what they do and why, there has been a tendency for public procurement officials to say “the rule made me do it.” This is

a natural consequence, it can be argued, of promulgating a large number of laws and regulations on public procurement. For example, the Federal Acquisition Regulation is approximately 1,900 pages in length, and each Federal agency has its own supplementary regulations. If the rules are to be meaningful, they must be followed, but in doing so, dysfunctions naturally occur when so many rules exist.

It has been said that the distinguishing feature of the modern era of public procurement is that it is awash in “a sea of paperwork” (Nagle 1999, p. 481). This trend has parallels in state and local government procurement as well as internationally with the expansion of implementation of the detailed, process-oriented, rule-based Agreement on Government Procurement of the World Trade Organization (http://www.wto.org/english/docs_e/legal_e/gpr-94_01_e.htm). Public procurement in one sense is the product of the rules governing buyer behavior. A procurement request (input) is submitted to the “black box” known as public procurement. At the other end, a contract (output) is produced by “the system” (Waelchli 1985). If the system is in control (essential variables are within tolerances, or “homeostasis”), then the system can work well.

Some commentators have defended the current rules, at least on the subject of bid protests (Schooner 2001), while others (Kelman 2002, p. 12) have stated that many of the rules were not even alleged to have the ability to produce good decisions; instead, they served to prevent abuse or serve other purposes. The challenge, as articulated by FAI (2003b, p. 11), is for the public procurement practitioner to serve a dual role of “being both regulator and customer-oriented business broker.” We share this perspective and consider that viewing public procurement as simply a collection of rules is one valid approach but in and of itself is too limiting and risks harming the profession, however important the rules may be. The corresponding danger, though, is that any definition of public procurement that omits consideration of the impact of laws and regulations on the profession (or implies “throw out the rulebook”) will necessarily be incomplete (Lloyd 1999).

Process- and Transaction-Based Approaches to Defining Public Procurement

Traditionally, public procurement has been known for being a structured, sequential way of buying. The Congressional definition found in the quotation from SARA above, as well as the ABA model, is

one based on performing a process or function. Public procurement in this perspective is simply the process of obtaining needed supplies or services through contractual means. Public procurement has for many years been defined, in essence, by process or function alone, probably due to the highly regulated nature of the field where so many steps are dictated by law or regulation. The NCMA lexicon specifically defines “acquisition” as a process, and “procurement” as an “action or process” (Byrne 1999, pp. 3, 190)

Historically, the focus of public procurement has centered on the individual contract or transaction, not the aggregate. The transaction-based approach tends to view each buy in isolation and develop contracting solutions on that basis. There may be various reasons why this approach prevailed, such as lack of useful data to enable procurement officials to view purchases across the enterprise, or unreasonable workload/staffing situations. These approaches are now giving way to more systematic models of public procurement.

For example, public procurement can be viewed as a “nested structure of systems within systems” (Thai 2001, p. 40), in which the procurement process is but one component, or even depicted in terms of a cybernetic model as a “self-vetoing homeostat” (Waelchli 1985). Warren and Welch (2004, p. 5) insist that public procurement should be “strategic in vision and purpose, focusing not on procurement transactions, but on acquisition processes and outcomes that contribute to accomplishing the mission.” They recap the ongoing dialog in the U.S. Federal government on definitions in light of the appointment of a Chief Acquisition Officer at each agency by distinguishing “procurement” from “acquisition,” with the latter term being more comprehensive and involving “input to the agency’s strategic and program plans to meet mission requirements” (p. 4). One normative model defines acquisition as encompassing the following components: source selection; procurement processes; requirements and technology; program management; mission, business and information resource management planning; and contract management (Acquisition Solutions 1997).

Strategic Public Procurement

Recently, there has been increased interest in public procurement as a strategic function of government. This interest is mirrored in private sector purchasing (Giunipero 2000, p. 5). Rather than a rule-based,

single transaction perspective on the role of the public procurement professional, commentators now consider “spend analysis,” “strategic sourcing,” “commodity councils,” and improved management of the supply chain to be integral aspects of the field. Increasingly, observers have made the case that public procurement leaders should embrace a strategic approach to public procurement as a management function in collaboration with other government leaders to produce cost savings, reduced cycle time, better use of human capital, empowerment, and inventory reductions (McCue and Gianakis 2001; Mather and Cleveland 2003). Success stories have been reported at the Internal Revenue Service and elsewhere when agency spending information was analyzed enterprise-wide to facilitate greater leverage in awarding agency-wide contracts (Olsen 2004).

At the state government level, the National Association of State Procurement Officials (NASPO, 1999) has called for moving from “process-based to knowledge/accountability-based procurement organizations,” promoting a management role for public procurement, and viewing supply chain management as “the consummate strategic role of state procurement”. One reason for NASPO’s view is that, with the advent of decentralized purchasing via the purchase card and on-line ordering, “the net effect is that an experienced procurement professional is no longer required to execute much of the process segment of procurement” (NASPO 1999, p. 2). Recent successful initiatives such as the Western States Contracting Alliance have shown how even across jurisdictions, public procurement professionals who take a broader view of their role in service delivery can shape the management of contracted items for the better (Bartle and Korosec 2003).

Internationally, Canada’s Procurement Review (Lacelle 2004) and the “Gershon Review” in the United Kingdom (Cabinet Office 2003) have both produced policy statements advocating a similar approach, emphasizing commodity management and collective purchasing as key functions of public procurement officials. These developments and the overall push to make public procurement more “proactive” serve to provide a stark contrast to the “reactive” mode familiar in most unfavorable depictions of the profession. In the reactive view, procurement officials remain dormant until forced to act upon receipt of an acceptable, valid, funded requisition. Defining public procurement in normative terms allows the debate over definitions to move into the broader realm of government policy and budgeting.

PUBLIC PROCUREMENT AS A BUSINESS

The notion of public procurement as a business is not new. In its broadest perspective, Waldo (1948, p. 70) discussed how government and business were reconciled during the New Deal as the extension of business to government. For decades, the U.S. Navy referred to the documentation required to support a contract award decision submitted for higher approval as a “business clearance” (Antonio 2004). Emphasis in recent years at the Federal level has been to emulate the buying practices of corporations and consumers. U.S. legislation during the 1990’s made it easier to buy commercial items as opposed to government-unique items (Schooner 2003, Kelman 2002). Schooner and Yukins (2003) describe (but lament) the growing desire to embrace commercial contracting as a model for public procurement. Rindner (2000) goes so far as to refer to public procurement as business.

Others have used the term “business leader” and “business broker” (FAI 2001, 2003b; Procurement Executives Council 2001), and Holston (2001) refers to “senior business partner”, to describe who does public procurement and the relationship of public procurement to leaders and program managers within a government organization. In terms of training and education, the Defense Acquisition University (2004b) changed its introduction to public procurement course into “Shaping Smart Business Arrangements.” Internationally, the trend has likewise been to seek to apply private sector approaches to how public procurement is defined and carried out (Arrowsmith 2003, 433).

The most recent model of public procurement competencies (FAI 2003b, p. 5) lists the following “core capabilities”:

- Develop, negotiate and manage business deals
- Communicate effectively
- Manage and lead change
- Solve problems in an ambiguous environment
- Analyze and understand the marketplace
- Build and manage relationships across functions and organizations
- Understand and effectively operate in the customer environment
- Develop and implement outcome oriented solutions

- Execute.

The dominance of the model of public procurement as business is such that there is no specific mention of a contract in this list. The trend, at least at the U.S. Federal level, is toward a more general view of public procurement as a business function. FAI (2003b, p. 5) cites the success of competency-based workforce programs in the private sector as part of its justification for using this methodology in the public sector. The tendency is thus to view public procurement in a more generic sense as a field requiring common business skills, as opposed to just specialized knowledge of specific rules. In fact, the capabilities listed by FAI bear a striking resemblance to the Executive Core Qualifications issued by the U.S. Office of Personnel Management (2004, p. 9) for the Senior Executive Service corps of top leaders in any field.

The business model for public procurement has not been without its critics. Schooner (2003) points out many of the problems with this approach. Krappe' and Kallayil (2003) note that private sector purchasing practices are inadequate and poorly managed in many respects. For example, they report that interviews of over 100 companies revealed that 81% of firms surveyed reported a concern with simply finding their own contracts (Krappe' and Kallayil 2003, p. 3). Further, the use of public procurement itself as a tool of government has come under fire. As noted in a recent empirical study (O'Toole and Meier 2004, p. 350), data in at least one area of public procurement (public education) indicate that "contracting expands to consume the administrative resources available for its generation and management," and can lead to more spending but fewer results.

COMMONALITIES AND DIFFERENCES

The contrasts we have demonstrated above regarding what public procurement is may be great, but despite the differences in terminology and scope, some common elements or themes emerge. Nearly all definitions and roles established for public procurement include the following activities or responsibilities:

- Planning procurement actions
- Publicizing upcoming solicitations
- Preparing and issuing solicitations

- Evaluating bids, proposals, and quotations
- Conducting bid openings or negotiations
- Analyzing contractor capabilities
- Awarding contracts
- Monitoring contractor performance
- Modifying contracts
- Extending or terminating contracts
- Closing out completed contracts
- Evaluating contractor past performance

Most of the differences in definitions and responsibilities concern the “before and after” problem. As noted by McCue et al. (2003, p. 8), activities that occur before actual purchasing takes place (such as defining needs), as well as those occurring after the purchasing is completed (like inventory control), can arguably be included in the definition of public procurement, especially if it is viewed as a sub-set of material management. The dominance of the service economy, however, and its expansion in public procurement, raise questions as to whether the material management model is the best way of viewing public procurement. In addition, whether a given public procurement office is willing or able to perform all of these functions is often a question of resources. The effectiveness of a broad definition hinges at least in part on the ability to provide a division of labor with skilled employees within the governmental unit.

Some views of public procurement include “before” actions such as:

- Defining requirements (SARA 2003; Arizona Procurement Code 2004), such as “helping with needs identification...before a requisition is actually received” (Public Works and Government Services Canada 2003, p. 2-2).
- Participating in capital planning (U.S. Office of Management and Budget Circular A-11, Part 7, 2003 requires that capital plans obtain the review of the agency’s Procurement Executive regarding the acquisition strategy in Exhibit 300, Part I).

Other definitions include “after” actions such as

- Inventory control
- Warehousing
- Surplus property sales

The National Purchasing Institute (2004) in the U.S. gives additional points to procurement organizations applying for the Achievement of Excellence in Procurement award for state and local governments if they conduct Internet auctions of surplus property and if the purchasing organization maintains the inventory/warehouse system rather than another organization within the government. NASPO (1999, p. 2) adopts the “before” functions but not the “after” functions, stating that public procurement’s role should be “embracing the entire procurement process from the initial identification of need through termination of a contract.” Federal acquisition excludes the “after” functions, as noted in the statutory definitions above.

An illustration of a particular problem for practitioners in defining public procurement revolves around the task of defining requirements or determining what the government needs before the contracting process begins. There are at least three good reasons to include this task within the definition of public procurement, including:

- encouraging public procurement officials to take responsibility for the entire contract, not just the contracting process or the contract clauses;
- promoting better cooperation and working relationships among contracting and customer offices; and
- enhancing the knowledge of the buyer, under the theory that one who knows the item being bought can make a better buy.

There are also at least three good reasons not to include specification writing as part of a definition of public procurement, such as:

- lack of internal control that may exist if the same person defines the requirement, makes the purchase, inspects the work, and authorizes payment;
- inadequate technical knowledge on the part of the procurement official that is not likely to be obtained in a reasonable amount of time (such as engineering projects); and

- potential abdication of responsibility by the client of the contracting office, with the former hoping that the latter can cure all problems, even if they are of a technical nature not normally susceptible to a “procurement solution.”

Often, the legal definitions will tell public procurement officials what they must do, but in the area of requirements definition the need for a coordinated, cross-functional, or team-based approach, in which the customer and the contracting officer share duties, is especially apparent.

There is no universal description of the work of public procurement; however, a certain amount of congruence has been noted. For an academic public administration program focusing on public procurement to be successful, it should focus on those core, commonly held duties. Otherwise, separate courses may need to be developed for Federal acquisition in contrast to state and local public procurement.

OVERLAP WITH OTHER DISCIPLINES

The call for a broader focus for procurement in recent years began with Kraljic (1983), who examined private sector purchasing and saw significant opportunities for expanding the influence and results that could be attained by the procurement function by considering its role in the supply chain. In the time since Kraljic’s article appeared, the concept of supply chain management has gained currency and is now a well-publicized function. Many (such as Mather and Cleveland 2003) have called for a similar approach to be adopted by government agencies. The boundary between public procurement and supply chain management is one area where the definition of public procurement will face a crucial test.

Despite the obvious appeal of supply chain management for public procurement, there are potential obstacles to its wide-scale implementation by public procurement officials. First and foremost, there may simply be no resources for taking on this new assignment, however important it may be and however great the potential return on investment may seem. In addition to budgetary constraints (such as funding the cost of a spend analysis effort), and there may be a lack of in-house expertise, management support, or the ability to recruit those who have the necessary skill to perform this work. Second, there is the risk of public procurement professionals stepping into the shoes of

program personnel, thereby allowing the latter to abdicate their responsibilities. Program offices may not see the benefit of such new techniques as spend management, which will make it difficult for public procurement to proceed alone (a “change management” issue). Third, supply chain management may give a disproportionate share of public procurement’s attention to supplies rather than services, at a time when services have become, on a global scale, equal or greater in importance. If we are in a service economy, then “service chain management” may need to be the next area of priority.

IMPLICATIONS

The differences found in the public procurement field regarding terminology and practices have some key implications. These range from the practical effect of the definition, in term of duties to be assigned to those in the public procurement field, to determining training needs, building skill sets sufficient to accommodate changing occupational needs, and ultimately to building a commonly agreed upon body of knowledge.

For example, if the definition of public procurement includes spend analysis, then resources must be devoted to building capacity in the workforce to accomplish this critical task, or the purpose of the definition will be frustrated. Another critical area is competitive sourcing, or public-private competition. The organizational placement of this task across U.S. Federal agencies has varied from assigning it to the Procurement Executive’s office (Department of State) to the Chief Financial Officer (Department of Housing and Urban Development) to creating new organizations reporting directly to top management (Internal Revenue Service), even though the program is about jobs and should arguably be placed in the human resources arena. As the scope of public procurement expands, it may run into areas such as competitive sourcing that feature a highly charged political climate which procurement staffs may not wish to or be equipped to handle.

To be effective, a definition of public procurement should be widely recognized, easily understood, reflect common practice, and above all be realistic. To say that the public procurement professional should be a “business leader,” without analyzing the resources, skills, and interpersonal dynamics that such an approach demands is to offer little

improvement over the current situation in which each jurisdiction has its own view and little cross-organizational sharing occurs.

A broad definition of public procurement can benefit the profession by expanding its influence and enhancing its capacity to produce better contracts and thereby improve government programs. Expanding the boundaries of public procurement has disadvantages as well, especially in times of lean budgets. Assigning ancillary duties such as warehousing and surplus property sales can detract from the core functions of a public procurement office.

Conversely, a narrower definition of public procurement has the advantage of allowing practitioners to focus their efforts, manage needed training effectively, and promote specialization and greater expertise. The disadvantages of the narrower view include the fact that it may “pigeonhole” practitioners and prevent their learning new skills and gaining greater job enrichment. Also, if public procurement’s scope is too isolated, it risks being left out of the broader discussions of budgetary matters that could benefit public procurement from early involvement in shaping acquisition strategies for the better.

CONCLUSION

We conclude this paper without answering our own question posed in the title, as we do not offer a definition of public procurement. To do so could give perspectives ranging from trying to define the indefinable or reminding us of what we already know, and many variations in between. Our goal instead has been to stimulate discussion and debate on this subject by pointing out key features of the public procurement landscape concerning the nature and role of the profession and to highlight the value of commonly understood terminology. Essential questions such as “What is the proper role of the public procurement professional?” and “What should public procurement do?” are worthy of debate, as we explore whether the definition of public procurement is a product of aspiration or practical application. As we have shown, the lexicon of public procurement is varied, and there are multiple approaches to describing the work that public procurement officials perform, although the core duties arguably remain the same. Problems produced by definitional uncertainty and ambiguity can include miscommunications, difficulties in creating a trained workforce, lack of professional recognition, and a severely underutilized workforce.

It has been said that “the contract management profession relies largely on precision and proper interpretation of language” (Byrne 1999, Introduction). Yet clarity and consistency are not the hallmarks of public procurement as it is practiced across governmental entities. Although there may be little prospect for obtaining universal agreement on what public procurement is, within the U.S. Federal, state, and local governments or across nations, deliberating the definitional issues is a necessary step in carving out a role in public administration for public procurement. We believe this will continue to be a challenge to the profession as it moves forward and seeks to make public procurement a serious discipline that is known for producing meaningful results for government. An issue as basic as what public procurement is should prove to be a meaningful subject for further research and debate.

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