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Measuring the Statutory and Regulatory Constraints on Department of Defense Acquisition

An Empirical Analysis

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Summary

Improving the defense acquisition process has been a recurring theme for several decades. Acquisition process reforms often require changes in the body of statutes and regulations governing the acquisition process. Prior research has observed a “regulatory pendulum” in which statutes and regulations seem to move back and forth from relative flexibility to relative rigidity in response to perceived problems in the acquisition process generally, or in specific weapon system programs. Increased flexibility enables program managers to tailor their program’s acquisition strategy to the unique features of its environment and to reduce the costs of oversight. Rigidity in statutes and regulations mandates specific management approaches and oversight procedures. Program managers often complain that the periods of relative rigidity constrain their ability to manage their program effectively and impose real, non-value-added costs on the program.

This research addresses the perceived problem of overly burdensome statutes and regulations directly. The objective of this research was to quantify and document the effects of a specific statute or regulation on a specific weapon system program. While many other studies have addressed this topic, few have succeeded in generating the empirical evidence needed to inform the policy debate with more than just anecdotes.

This research tests the hypothesis that the statutes and regulations governing defense acquisition programs place constraints on those programs that significantly affect the program manager’s ability to manage the program. There is a widespread perception in the acquisition community that significant portions of program office staff spend an inordinate amount of time responding to statutes and regulations through formal compliance activities and informal processes that have developed around those activities. Much of that compliance-related time is perceived as burdensome, with purported consequences of schedule delays, additional incurred costs, loss of weapon system capability, increased demands on critical program staff, and other impacts on program execution and outcomes.

As described in our Phase 1 report,¹ we developed a Web-based data collection tool that enabled participants to input the time spent on specific compliance-related activities and provide comments related to those activities. The data collection tool

¹ Drezner et al., 2006.

listed all the compliance activities we had identified in each of five regulatory areas: Clinger-Cohen Act, Core Law and 50-50 Rule, program planning and budgeting, program status reporting, and testing. The tool provided space to report other compliance activities in each area as well as other statutory or regulatory areas of interest to individual participants. We recruited seven program offices as participants and asked that they identify all program office and associated personnel who perform activities relevant to those five areas. We asked those identified individuals to enter data (hours worked on specific activities and any associated comments) every two weeks for a 12-month period. We assembled interim results for each program and reviewed those results with each program every two to three months to validate the information provided. Overall, 316 individuals in the seven program offices participated during the study field period. These individuals included program managers, deputy program managers, product managers, and branch chiefs, as well as personnel within the functional areas associated with the five statutory and regulatory areas of interest.

The results were rather surprising:

- The total reported time spent on compliance activities in the five statutory and regulatory areas we addressed was less than 5 percent of the total staff time available to each program office.
- Most program office officials do not work full time on compliance activities in these five areas. In fact, the vast majority of participants reported considerably less than 20 percent of their total work time as relating to compliance activities in the five areas studied.
- Most compliance-related activities are performed in reference to a Service request or requirement, rather than OSD, Government Accounting Office (GAO), or other program stakeholders.
- In discussions and in their comments input to the Web-based data protocol, participants emphasized process-related issues (i.e., implementation—the details of how compliance is achieved) rather than the intent of a statute or regulation. Participants recognized that many of these “compliance” activities need to be accomplished regardless of whether they are mandated.
- Few serious complaints were recorded about policies or processes within these five statutory or regulatory areas, and reported hours are not correlated with complaints. That is, the majority of complaints reflect the participant’s view that the activity was burdensome, even if it took little time to accomplish. The explanation appears to be that deviations from an individual’s perceived normal job functions are often perceived as burdensome.
- There is little evidence of actual consequences to program execution or outcomes as a result of the compliance activities we tracked. We could identify only a single example in which a firm link could be established between a statute and its associated regulatory processes and program cost and schedule outcomes.

Programs are indeed governed by a large and confusing array of statutes and regulations, and those statutes and regulations do place constraints on program execution. But program office staff do not appear to spend a significant amount of their time complying with those statutes and regulations, nor is much of that compliance time perceived as burdensome. Lastly, there are few adverse consequences to program outcomes due to compliance activities associated with the statutes and regulations we studied.

These findings do not mean that regulatory compliance is without costs, and some compliance activities may indeed be non-value added or burdensome. Many program office personnel who have not formally tracked time spent on such activities certainly perceive that they spend a significant amount of time complying with statutes and regulations perceived as non-value added or burdensome; however, no evidence supports this perception. It was notable that our study participants began with this view, but ended the study agreeing that perhaps the difference between perception and reality was significant.

We made several observations over the course of the study that suggest ways to mitigate some of the perceived burden that was reported:

- Both the perceived burden and reported time spent in compliance activities were driven largely by the unique characteristics of the program and the challenges and issues it is currently facing. This argues for a high degree of flexibility and tailoring of compliance activities, balanced by clear implementation guidance and sufficient training for program office personnel.
- For some compliance activities, technical support to program offices—provided by functional offices within the Service acquisition staff or commodity command—would improve the effectiveness of implementation as well as reduce perceived burdens.
- The introduction of a new policy or procedure will cause a spike in program office compliance activity. If program offices are provided clearer guidance and technical support, the length and severity of the compliance spike can be reduced.

We could not identify any areas in which policy change or streamlined implementation would save significant dollars in program management funds or reduce program cycle times. Nor could we identify a set of program office personnel who do nothing but comply with non-value-added or burdensome statutes and regulations, and whose jobs would not be necessary if changes in statutes and regulations and implementing processes were made. The belief that these kinds of savings would result from reform is part of the myth that motivated this research; we found little data in direct support of that hypothesis and considerable evidence refuting it.

The very idea of value-added versus non-value-added compliance activities raises an important question: Value to whom? What values are these activities designed to add? While some compliance costs may accrue to organizations that perceive such

activities as valueless, such as program offices, other organizations or the Department of Defense (DoD) enterprise as a whole may obtain significant value (benefit) from those same activities. Exploring the benefit side of the equation (i.e., who gets what kind of benefit from activities related to statutory and regulatory compliance?) may provide additional insight to policy makers in the acquisition community as they weigh the advantages and disadvantages of acquisition process streamlining initiatives.