Selling Out?

Contingent Politicization and Contracting Risk in U.S. Federal Procurements, 2001–2016*

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Abstract

This study analyzes how agency politicization shapes contracting risk in the design of U.S. federal procurements. Political influence is manifested in contracting risk in three interrelated ways: the *ideological nature of the agency's mission*, *centralization of agency decisions*, and *appointee politicization*. A statistical analysis of over a million U.S. federal contracts reveals that the organizational location of agency decisions is most critical for understanding the design of procurement agreements within ideologically salient agencies. Specifically, procurement decisions reflecting low government contracting risk are more frequently made in a decentralized manner away from high level political appointees, while those reflecting high government contracting risk are more frequently determined in a centralized manner that is organizationally proximate to these high level appointees. The broader lesson from this study is that the efficient division of executive branch authority across administrative hierarchies contributes to benefitting narrow particularistic interests at the expense of collectivist interests.

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A substantial portion of the U.S. federal government's provision of public goods and services is handled through outsourcing administration to third-party vendors. The importance of these activities has sharply risen through time. For example, the total constant dollar value of U.S. federal procurements beyond simple FAR acquisition thresholds has risen from $34 billion per annum in 2001 to $358 billion per annum in 2016, with its recent apex being $917 billion per annum in 2014.[1] Some portion of this increase can be attributed to U.S. federal agencies refraining from increasing permanent staff. For example, UT-Battelle is regularly awarded contracts of over $1 billion per year to run the Oak Ridge National Laboratory in Tennessee for the Department of Energy (*Source: USASpending.gov, retrieved 8/17/2019*). Similarly, technological advancements have led U.S. federal agencies to hire vendors to provide the latest technology. BAE Systems PLC received over $6 billion dollars every year from 2008 through 2012, and over $4 billion each year since, to provide technology solutions and hardware to various federal agencies (*Source: USASpending.gov, retrieved 8/17/2019*).

Yet relatively little is known about how politics shapes the distribution of contracting risk surrounding these vast sums of government funds. The design of procurement agreements reflects the quality of governance transactions undertaken by U.S. federal agencies responsible for outsourcing public functions to third-party entities.[2] Although the U.S. federal government often dictates favorable terms that minimizes its own contracting risk, this is clearly not always the case. This study seeks to understand

[1] Federal Procurement Data System, https://www.fpds.gov/fpdsng_cms/index.php/en/reports, retrieved 8/17/2019.

[2] The terms *contract* and *procurement* are used interchangeably throughout this study. Each refer to government legally outsourcing administrative responsibility to third-party vendors.

how the dynamics of U.S. executive branch policymaking shapes the federal government's propensity for incurring contracting risk from outsourcing administrative functions. This is a critical topic for scholars interested in the relationship between political inequality and government policymaking (e.g., Hacker and Pierson 2010; Kriner and Reeves 2015) since procurement arrangements indicate the extent that the U.S. federal executive branch prefers to favor vendors' particularistic interests against government's collectivist interests. This study seeks to address these issues by not only seeking to better understand where are procurement decisions made within federal agencies (executive versus non-executive levels), but also to whom do they advantage: governments or vendors?

Contracting risk is defined here as the *ex post* costs incurred from government outsourcing of administrative responsibilities to a third-party. Government contracting risk is low when these *ex post* costs are unambiguously incurred by the vendor (i.e., 'agent') performing the administrative task, and not by the government (i.e., 'principal'). Conversely, government contracting risk is high when these *ex post* costs are borne by governments (i.e., 'principal') when delegating its own administrative authority to a vendor (i.e., 'agent'). Recent important work by Dahlstrom, Fazekas, and Lewis (2021) shows that non-competitive (single) bid structures allow vendors to receive preferential access based on agency design. This study offers a novel integration of two primary elements of contracting risk associated with U.S. federal agency procurements: supply competition and cost structure to evaluate how politics affects *contracting risk* underlying federal procurement decisions when either the contracting principal (i.e., U.S. federal government) or contracting agent (i.e., vendor) is unambiguously advantaged or disadvantaged.

Political influence over government contracting decisions are posited to work through three interrelated mechanisms: *ideologically-salient agencies*, *centralized decisions*, and *appointee politicization*. Ideologically salient agencies are those well positioned to deliver distributive policy benefits to core partisan constituencies ([presidential] ideologically-aligned agencies), as well those agencies where presidents have an incentive to circumvent problems of presidential control over executive administration by substituting third-party vendors for agency personnel ([presidential] ideologically-opposed agencies). Centralized procurement decisions made at the executive level of federal agencies are largely overseen by high level political appointees with policy influence, while decentralized procurement decisions are made at either the managerial or field office levels often well beyond the reach of presidential influence. Finally, appointee politicization refers to the relative extent that presidents can penetrate U.S. federal agencies through political appointee slotted positions (Lewis 2008; see also, Berry and Gersen 2017).[3] Appointee politicization is hypothesized as being associated with contracting decisions that unambiguously benefit contractors at the expense of government for those federal agencies involving ideologically-salient agencies.

An analysis of approximately 1.1 million nontrivial U.S. federal procurements from 2001-2016 reveals that ideologically-aligned and ideologically-opposed agencies with respect to the president behave similarly for a given type of government contracting risk. This is consistent with our claim that presidents' desire for political influence over government contracting risk is similar across both friendly and hostile agencies, even if the motives differ between them. Perhaps the most critical finding is that procurement agreements are more likely to be administered at lower managerial and field office levels within an agency when government contracting risk low, while risky government contracts are more likely to be centralized at the executive office level than non-executive levels. Finally, appointee

[3] We employ the term *appointee politicization* for purposes of this study to avoid conflating it with other manifestations of political influence discussed in this essay.

politicization is shown to be associated with marginal, if not negligible, effects on contract design. On a broader level, this study's findings on the design procurement agreements suggest that the efficient division of executive authority between centralized and decentralized decision making is one means by which political accountability and bureaucratic discretion can coexist within executive branch governance. Nonetheless, this division of executive authority also sacrifices the collectivist interests of the American public in favor of benefitting powerful particularistic interests.

Analyzing how presidential influence skews the procedural terms of procurement agreements provides a complement to existing research on distributive policymaking behavior within the U.S. federal executive branch that analyzes the targeted, aggregate allocation of financial resources for partisan and electoral purposes (e.g., Berry and Gersen 2017; Gordon 2011; Kriner and Reeves 2015; cf. Dahlstrom, Fazekas, and Lewis 2021). The design of federal government contracts is a particularly salient vehicle for understanding presidential influence over executive branch policymaking. Next, contracting risk from these governance arrangements are discussed within a transaction cost framework.

U.S. Federal Agencies as 'Buyers': Defining Procurement Arrangements

U.S. federal agencies have a fiduciary responsibility of representing the U.S. federal government's best interests when determining the procedural elements of a procurement contract (*FAR 1.102*). Unlike grants, which do not supplant federal agency administrative duties, procurements involve the *complete* delegation of administrative task functions by U.S. federal agencies to external vendor agents. Effective stewardship requires federal agencies to enter contracting agreements that seek to mitigate moral hazard when delegating administrative authority to a third-party (Laffont and Tirole 1993). Stemming from the *Competition in Contracting Act of 1984*, the Federal Acquisition Regulation (FAR) requires that the U.S. federal government seek fulfillment of contracts by minimizing costs, maximizing quality, and considering the timeliness of the needs and delivery (*FAR 1.102*). Although contracts are to be awarded through open competition (*FAR 6.101*), exceptions can be made when only one source can be identified that can fill the need or when the immediate delivery of goods or services is needed because of the urgency of a need, such as in an emergency (*FAR 6.302*). Fixed-price contracts are generally considered preferable for limiting the government's contracting risk as principal. Alternative contract structures do enable the government to incentivize a vendor to work with the government in times of urgency, or if the vendor faces greater risks than the government (*FAR 16.103*). President Barack Obama's 2009 memorandum to executive agency heads echoed these concerns posed by contract structures that impose considerable risk for the U.S. federal government:

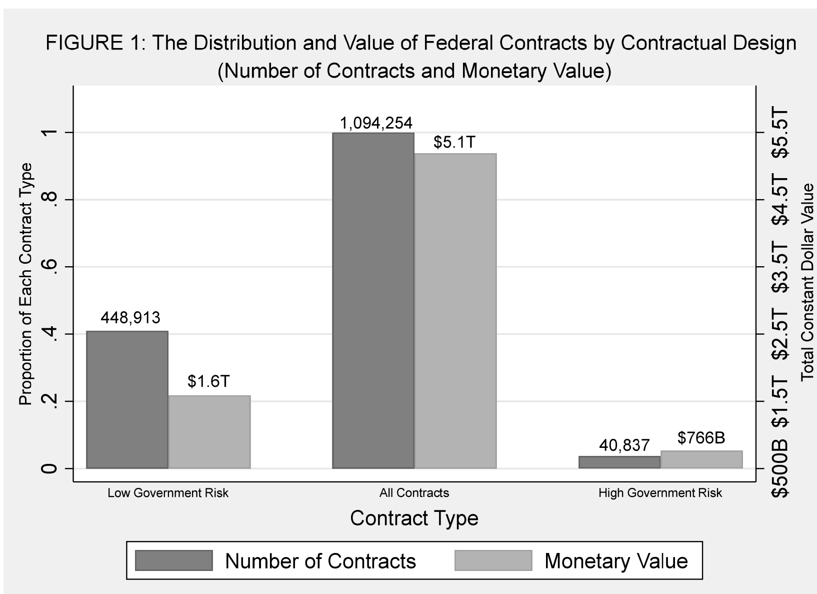
> *"Excessive reliance by executive agencies on sole-source contracts (or contracts with a limited number of sources) and cost-reimbursement contracts creates a risk that taxpayer funds will be spent on contracts that are wasteful, inefficient, subject to misuse, or otherwise not well designed to serve the needs of the Federal Government or the interests of the American taxpayer. Reports by agency Inspectors General, the Government Accountability Office (GAO), and other independent reviewing bodies have shown that noncompetitive and cost-reimbursement contracts have been misused, resulting in wasted taxpayer resources, poor contractor performance, and inadequate accountability for results."* (Obama 2009)

Federal agencies enjoy substantial control over how they shift principal-based government risk incurred from procurement agreements due to the considerable discretion that they have over these administrative choices (e.g., Brown, Potoski, and Van Slyke 2016; Kim and Brown 2012). From a transactional perspective, federal agencies have a clear incentive as a 'buyer' to favor procurement opportunities that minimize the government's risk as a contracting principal regarding both their choice of contracting agent and cost structure associated with the delegated project. Federal agencies often prefer contracts that broaden contracting supply options, thereby reducing the U.S. government's principal-based risk. These organizations determine the procedures by which vendors are entrusted with U.S. federal administrative policymaking authority (Brown and Potoski 2005; see Roberts and Sweeting 2016 for an application).[4] Restricting supplier choice augments contracting risk borne on behalf of the U.S. federal government since the contracting agent has fewer incentives to control costs and work efficiently (Berrios 2006). Due to the unique nature of many government contracts, there is often a limited pool of vendors to choose from, which increases the potential risk when the market does not provide a competitive supply of vendor options (e.g., Brown, Potoski, and Van Slyke 2010; Cass and Gillette 1991). From a contracting risk perspective, federal agencies prefer procurements operating under fixed cost structures that shift cost risk onto vendors, as opposed to variable cost reimbursement contracts that shift cost risk onto the government (Brown, Potoski, and Van Slyke 2016: 299-300). Limiting government contracting risk is desirable since the U.S. federal government finds it difficult to effectively hold contractors accountable to contractual obligations (Romzek and Johnston 2005), a pattern consistent with evidence finding that public sector contracting is less effective at limiting political opportunism compared to private sector contracting (Moszoro, Spiller, and Stolorz 2016).

This study focuses on analyzing (1) 'favorable' government contracts involving multiple bids and fixed cost structures (*Low Government Contracting Risk*), and also (2)

[4] Non-competitive pressures offer ancillary benefits by allowing federal agencies to home in on their preferred supplier of choice (Dahlstrom, Fazekas, and Lewis 2021), while also reducing information asymmetries by eliciting cost information *ex ante* from prospective vendors (Kang and Miller 2017).

also ‘unfavorable’ government contracts involving single closed bids and variable cost structures (*High Government Contracting Risk*). These cases unambiguously shift the risk burden onto vendors and the U.S. federal government, respectively. **Figure 1** offers a graphical inspection of all contracts beyond the simple FAR threshold acquisition thresholds from 2001-2016 in these sample of data.[5] The left vertical axis measures the proportion of each contract type, while the right vertical axis represents the total 2009 constant dollar value of these contracts. Low risk U.S. federal government contracts, reflecting both multiple bids & fixed cost structures, are considerably more commonplace than high risk U.S. federal government contracts (41.02%, n = 448,913; 3.73%, n = 40,837) for this sample. Low government risk procurement agreements constitute approximately 31% ($ 1.6 trillion out of $ 5.1 trillion) of the total value of U.S. federal government



outsourcing observed in this sample while high government risk procurement agreements constitute only 15% ($ 766 billion out of $ 5.1 trillion) of these total value of procurement

[5] The FAR simple acquisition threshold lower limit was $100,000 from 2001-2009, and $150,000 from 2010-2016 (Federal Register *75 FR 53129*).

agreements. It is important to note that the average constant-dollar value associated with high government risk contracts is more than five (5.263) times the value associated with low government risk contracts ($18.76 million / $ 3.56 million = 5.263).

These data patterns underscore the extent to which procurement decisions that shift risk away from vendors towards the U.S. federal government offer disproportionate financial benefits to these vendors. Some portion of principal-based contracting risk incurred by governments is unavoidable given the tasks required of procurement projects, as well as vendors' willingness to undertake these projects**.** Yet, the location within a federal agency where such decisions are made, as well as the level of appointee politicization, offer insights into the nature of political influence, or lack thereof, over the design of U.S. federal procurement decisions. Addressing these issues can offer unique insights into the contextual role that both centralization and appointee politicization play in the shaping government contracting risk displayed in U.S. federal procurements.

Contingent Politicization:
Understanding How Politics Shapes the Terms of Government Procurements

Political incentives can adversely impact government welfare through suboptimal procurement arrangements made on behalf of U.S. federal agencies. For instance, Gordon (2011) offers persuasive evidence that General Services Administration's (GSA's) Public Buildings Service funneled a large amount of federal funds to vulnerable Republican controlled congressional districts in the 2008 election cycle. This same study, however, also finds that contracts supervised by the GSA's Federal Acquisition Service did not engage in a similar targeted response to assist vulnerable Republican districts. Dahlstrom, Fazekas, and Lewis (2021) offer compelling evidence that non-competitive (single-closed bid) bid processes are associated with agency favoritism towards vendors within executive department agencies, and that this impact is exacerbated as appointee politicization rises. Zarit (2018) shows that decision making units within agency hierarchies exhibit variable susceptibility to political influence on funding allocations associated with U.S. federal procurements. Existing research has yet to analyze how these different features of executive branch politics work in tandem to shape contracting risk burdens corresponding to U.S. federal government procurement decisions.

We begin with the premise that U.S. federal government procurements constitute a regulated market that enable federal agencies ample discretion in setting the terms of the contractual parameters based on supply choices, cost structures, and time commitment (Berrios 2006; Brown, Potoski, and Van Slyke 2010). Subject to the technical and market-related necessities for a given contracting situation, ceteris paribus, federal agencies that are unfettered from politics should be inclined to act as responsible government stewards that enter into procurement agreements that benefit them as a 'buyer'. This includes ensuring competition among prospective suppliers, and also requiring fixed-price cost structures. Conversely, political influence over the design of procurement agreements should be most pervasive in ideologically salient agencies where presidents have clear incentives to shape the terms of outsourcing, and that within such agencies, the extent to which these decisions are politically determined will be a function of centralized decision making and appointee politicization.

Our logic presupposes that presidents have a pair of unique incentives for shaping the terms of federal procurement agreements in ideologically salient agencies contracts. First, presidents have a *distributive motive*, whereby they prefer government contracts that shift risk toward the contracting principal (U.S. federal government) and away from contracting agents (vendors) that represent core partisan constituent groups associated with ideologically aligned agencies. This ensures an effective means of funneling government policy benefits through vendors aligned with the current administration's goals. Core partisan constituent groups served by presidential-aligned agencies should be associated with the U.S. federal government incurring greater principal contracting risk vis-à-vis vendors to facilitate these transactions. In 2008, for example, the Department of the Interior during the Bush administration awarded a $750,000 cost-reimbursement contract to Pictometry International Corporation, a company based out of Rochester, NY in New York's 25th Congressional district. This district was represented by Republican James Walsh, who had announced his retirement (Weiner 2008) after winning the 2006 election by only 3,417 votes (Federal Election Commission 2007). Walsh's retirement after a close election meant that this district remained highly competitive in the next election cycle.

Presidents also have a *substitution motive* for transferring administrative policy authority away from ideologically opposed agencies towards vendors by shifting contracting risk burdens to the U.S. federal government. If the president does not trust the entrenched civil servants within a particular agency, government outsourcing provides an opportunity to circumvent federal agencies inclined to be less compatible with the president's policy objectives. Because presidents expend greater effort at politicizing ideologically opposed agencies through personnel mechanisms for the purposes of shifting policy towards their preferred position (e.g., Hollibaugh, Horton, and Lewis 2014; Lewis 2008), they have an incentive to produce outsourcing arrangements that benefit contractors at the expense of government for those federal agencies that are inherently difficult to control.

An important assumption underlying our contingent politicization logic is that high government contracting risk procurements constitute favorable terms for vendors. Favorable pricing structures provide opportunities for contractors to deliberately inflate costs at the government's expense. Notably, Halliburton, with close political connections to George W. Bush's administration, was awarded numerous no-bid, cost-reimbursement contracts for work in Iraq (Berrios 2006). An internal Pentagon audit found $1.8 billion in unnecessary costs charged to the government by Halliburton (Witte 2005). The lack of competition prevented other vendors from offering lower estimates, along with Halliburton being able to negotiate a favorable cost structure. Additionally, a congressional investigation found that high-level Department of Defense officials overruled a senior procurement employee to award at least one of these contracts (United States Congress 2005). While this is an egregious case, it highlights the use of political connections in contract awards, along with the potential benefits for vendors to exploit the increased contracting risk bore by the U.S. federal government.

Presidents have an incentive to extract rents from government contracts which favor vendors at the expense of those federal agencies that are viewed as being adversarial to an administration's policy interests. For example, the Obama administration used government outsourcing of administrative tasks under the legal aegis of the Department of Energy, a conservative agency, to rely on outside vendors to reduce the government's energy consumption. Although the Obama administration issued roughly the same number of contracts from the Department of Energy as the preceding G.W. Bush administration their terms (G.W. Bush: 5,382; Obama: 5,260), those awarded under Obama were for a higher monetary value. Based on spending data, the Obama administration outsourced a total value of $13.5 billion more (in 2009 adjusted dollars) from the Department of Energy than compared to the G.W. Bush administration. This difference corresponds to average contract value of $49.3 million and $45.6 million under each respective presidency.[6] This strategy accomplished a policy goal, while also allowing for this project to be largely executed by outside contractors (Harada 2016).

[6] Data retrieved from USASpending.gov, 9/13/2020.

Within these particular types of agencies, two political mechanisms are at play – centralization/decentralization of decision making (e.g., Rudalevige 2002) and the extent to which appointees are embedded within agencies, *appointee politicization* (Lewis 2008). Regarding the former, political influence is also shaped by hierarchical considerations within government agencies. Agency decisions that occur at lower levels of an agency hierarchy are less susceptible to political influence due to the decentralized nature of administrative decisions taking place in field officers (Schmidt 1994; Whitford 2002), and also conflicts between political executives and civil servants that typically favor the latter given their expertise advantage and longer tenure in office (Aberbach and Rockman 2000).

The hierarchical location of U.S. federal contracting decisions within public agencies does matter since decision-making autonomy varies by contracting officers across levels of an administrative organization. Contracting officers at the managerial and field office levels rarely have their decisions questioned, while also reporting little to no interest from political appointees in their decisions on contracts (Zarit 2018: 28-29, see also Schmidt 1994 for similar claims in the realm of U.S. federal regulatory enforcement). For executive level offices, however, contracting officers reported more interest in their decisions, as seen through inquiries about the status of their decisions (Zarit 2018**:** 29). While both managerial and field office contracting officers did not have their decisions reviewed before they were finalized, executive level contracting officers reported review by senior acquisition officials (Zarit 2018: 29). This review represents not merely a lack of autonomy, but also review by agency officials who, while careerist, also frequently interact with high level appointed officials serving in policymaking oriented positions. Regarding the latter, appointee politicization, reflected by the balance between presidential appointees and civil servant careerists (Lewis 2008; see also, Berry and Gersen 2017; Dahlstrom, Fazekas, and Lewis 2021), is hypothesized to adversely affect contracting risk on behalf of the U.S.

federal government. This is because appointee politicization facilitates executive branch coordination by enhancing administrative responsiveness to presidential policy objectives.

Based on these mechanisms, the theory of contingent politicization sketched out in the preceding discussion yields the following empirically testable hypotheses:

> **H1a:** *Political influence over U.S. federal procurement agreements will be **less** prominent for procurement activities exhibiting **low government contracting risk.***
>
> **H1b:** *Political influence over U.S. federal procurement agreements will be **more** prominent for procurement activities exhibiting **high government contracting risk**.*
>
> **H2:** *Political influence (or lack thereof) over the design of U.S. federal procurement agreements through either centralization or appointee politicization mechanisms are hypothesized as being **similar for both ideologically aligned and ideologically aligned agencies, for a given type of government contracting risk** characterized by **H1a** and **H1b**, respectively.*

To summarize, this logic predicts that political influence, manifested through either centralized decisions or appointee politicization, is observed through the design of procurement activities undertaken within federal agencies, and that this should not differ between federal agencies that are either ideologically-aligned or opposed to the president since shifting the terms of outsourcing towards favoring vendors is politically desirable for different reasons for this set of agencies. In turn, we empirically evaluate the direct mechanisms of centralized decision making and appointee politicization as a means for evaluating the efficacy of political influence over the design of U.S. federal government procurements under both scenarios.

Data and Empirical Strategy

These hypotheses are tested using approximately 1.1 million U.S. federal procurement contracts exceeding the simplified acquisition threshold of $100,000 from 2001-2009, and $150,000 from 2010-2016 based on 75 *Federal Register 5716 (February 4, 2010)*. These data comprise 42 major federal agencies between 2001 and 2016, with nearly 491,000 procurement agreements classified as having either posing (unambiguously) low or high government contracting risk for those contracts. Federal contracting data are drawn from *USASpending.gov*, maintained by the U.S. Department of Treasury. This data source includes a rich amount of details on contracts, including pricing structures, bidding processes, and the winning vendors. While information about the actual bidders is limited, these data do reveal how many bidders participated in competitive bid processes. Related to pricing, each contract notes the type of pricing used, denoting various types of fixed-firm price, cost reimbursement, and time and materials constructions. For simplicity, fixed-firm price contracts were collapsed into one category, and the cost-reimbursement and time and materials pricing types were collapsed into their own category. The dependent variables of interest take two forms. *Low government contracting risk* is coded as 1 for procurement agreements that reflect both multiple bids and fixed cost structures, 0 otherwise. *High government contracting risk* is coded as 1 if these agreements operated under the tandem of single closed bids operating under variable cost structures, and 0 otherwise.

The first primary covariate employed to evaluate the nature of contingent politicization centers on focusing on agencies where the president has distributive and substitution motives for designing contracts. These distinctions are respectively measured as ideological alignment and opposition relative to the president, 95% credibility estimates developed by Clinton and Lewis (2008) are used to identify ideologically aligned, neutral, and opposed agencies vis-à-vis the current president. Separate binary indicators for aligned and opposed agencies are used in the analysis. The second primary covariate is a binary indicator that equals 1 if the procurement agreement is made in a centralized manner within an executive level office, or equals 0 if it is determined in a decentralized manner in a lower managerial or field office level.[7] The final primary covariate is the common *appointee politicization* measure originated by Lewis (2008), and subsequently applied to executive distributive policymaking behavior by Berry and Gersen (2017). This measure divides the total number of PAS, noncareer SES, and Schedule C employees over the number of Career SES managers in an agency.[8]

Several other factors associated with political influence and agency considerations relating to the design of government contracts are also accounted for as control covariates in the statistical model specification. Moreover, these model specifications account for a host of contract-specific and vendor-specific characteristics per each government contract analyzed in the sample. Finally, agency, year, and product-service (based on FPSC codes)

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[7] The assignment of these office levels comes from Zarit (2018), and are determined from organizational charts within agencies, the staff within these offices (types of appointees and managers), and physical location of the offices. Executive offices reside at the top of the organizational structure and are populated by high-level appointees and senior executive service employees. Managerial level offices consist mainly of civil servants (though may contain strong presidential loyalists in the form of Schedule C appointees), but are still centrally located in and around Washington, D.C. Field offices lie at the bottom of the organizational chart, are void of political appointees, and are located outside of the capitol geographic region.

[8] Data sources for agency packing data: 2001 – 2004: *The Politics of Presidential Appointments*; Lewis, D. E.; 2008, Princeton, NJ : Princeton University Press. https://my.vanderbilt.edu/davidlewis/data/; 2005 – 2016: FedScope, retrieved on January 27, 2017.

specific unit effects are accounted for in each model specification to ensure that unobserved heterogeneity along these dimensions to mitigate the potential for endogeneity bias. For purposes of brevity and document space limitations, specific details regarding these control covariates are presented in the corresponding *Appendix* document displayed on the *JPIPE* website (*1. Control Covariates Employed in Statistical Model Specifications*).

One limitation of the current empirical strategy is that cost overruns associated with U.S. federal government contracting arrangements cannot be ascertained. These data are not available in a systematic manner for individual contracts. Even if such data were systematically available, it would be extremely difficult to apportion blame to the contractor vis-à-vis the government. Because cost projections on contracts are estimated prior to the agreement between the vendor and government, it is the result of joint error by both parties (Christensen 1994). Diagnosing the sources of cost overruns in order to apportion blame to contractors versus governments is made further difficult since it has several facets ranging from poor project design, misguided implementation, and poor coordination between the vendor and government (Morris 1990). Thus, identifying whether cost overruns represent exogenous forces, poor government planning, or shirking by contracting agents is an exceedingly difficult task beyond the scope of this study.

Evaluating Contingent Politicization of U.S. Federal Procurements: Agency Hierarchies and Appointee Politicization Considerations

For both brevity purposes and ease of substantive interpretation, the full set of tabular regression estimates for the statistical models reported in an **Appendix Table A1** in the *Appendix* document located on the *JPIPE* website. The statistical models of interest employ Probit regression to predict the likelihood of low and high contracting risk reflected in U.S. federal government procurement agreements, respectively.

Evaluating Low U.S. Federal Government Contracting Risk

The first set of Probit regression model estimates analyzing low government risk contracts for ideologically aligned and ideologically opposed agencies appear in **Figures 2A** and **2B**, respectively. The vertical bars represent 95% confidence intervals around the point estimates. Moving from the left to the right, the first trio of estimates capture the predicted probability of low risk government contracts for non-executive and executive level procurement decisions made within federal agencies, and the difference between them under low appointee politicization (*defined as the 10th percentile within-agency value*); the second trio of estimates represent the parallel set of estimates under high appointee politicization (*defined as the 90th percentile within-agency value*); and the final pair of estimates pertain to the estimated probability change attributable to increasing appointee politicization from these quantities of interest within each decision level.[9]

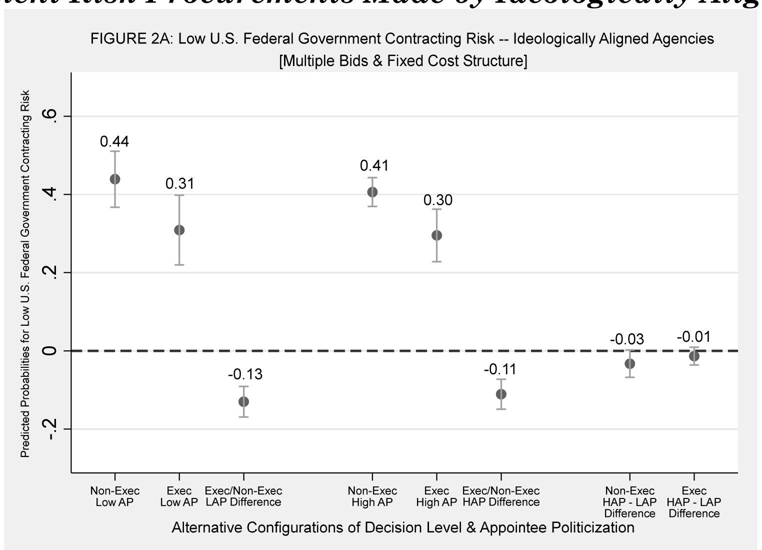
Figure 2A reveals support for the logic that agency politicization reduces the estimated likelihood that the federal government will enter into procurement agreements that represent favorable contract terms to them (*multiple bids and fixed costs*). Specifically, under low appointee politicization, executive level offices (0.31), on average, are 13% less likely than compared to non-executive level offices (0.44) to undertake procurement agreements exhibiting low contracting risk to the U.S. federal government when federal agencies are ideologically aligned with the current president. This effect remains relatively

[9] The overall sample interdecile range for appointee politicization is 0.485 (Ideological Aligned Agencies) and 0.343 (Ideological Opposed Agencies), while the within-agency sample interdecile range is a more modest 0.079 for both subsamples. This pattern is consistent with Mummolo and Peterson's (2018) research demonstrating that within-unit covariate variation is routinely much smaller compared to its own overall sampling variation.

similar under high appointee politicization for this subsample of agencies as this probability difference is −11% (0.30 − 0.41). Evaluation of the within-decision level effect conditional on an interdecile within-agency increase in appointee politicization reveals that

FIGURE 2A

Evaluating Appointee Politicization and Centralized Decision Making
(*Low Government Risk Procurements Made by Ideologically Aligned Agencies*)

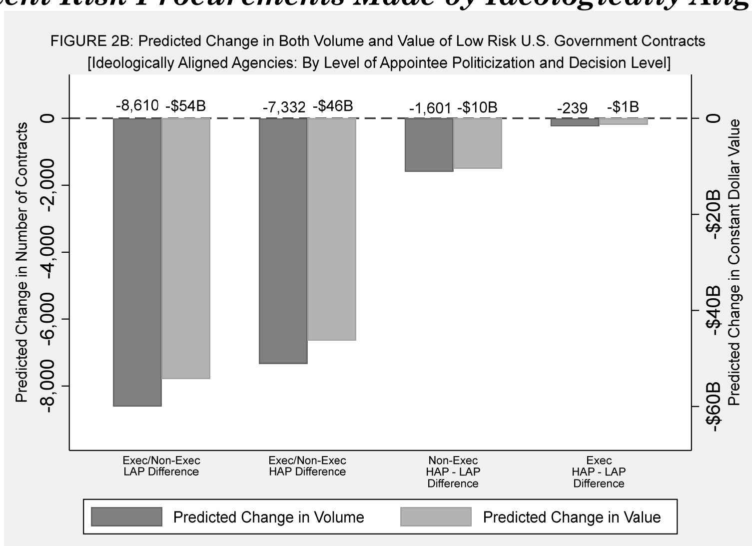


this factor has a noticeably more modest −0.01 (p = 0.243) and −0.03 (p = 0.065) association on contracting risk subsumed within the executive and non-executive decision levels. These findings suggest that low risk government procurement agreements are more strongly associated with decentralized agency decision making processes at the middle and bottom hierarchical rungs of the agency than compared to those that are centralized at the top levels where political influence is most pervasive. Moreover, appointee politicization has modest effects on contracting decisions within each organizational level.

Figure 2B displays the corresponding policy impacts associated with these predicted probability change effects. Specifically, the executive/non-executive level estimated probability difference involving low government contracting risk type procurement agreements under low appointee politicization translates into 8,601 fewer contracts worth $54 billion, while the analogous difference under high appointee politicization scenario represents 7,332 fewer contracts valued at $46 billion.[10] The policy consequences of appointee politicization in ideologically aligned agencies for decentralized decisions made at the non-executive levels is 6.70 (−1,601 / −239) and nearly 10 times ($−10 billion / $−1 billion) greater in terms of volume and monetary value respectively than centralized decisions made on the executive levels of federal agencies. Although these policy impacts are numerically modest compared to the decision level differences, they nonetheless suggest that appointee politicization is more effective when it comes to reducing low government contracting risk procurements in non-executive level decisions

FIGURE 2B

Policy Impacts of Appointee Politicization and Centralized Decision Making (*Low Government Risk Procurements Made by Ideologically Aligned Agencies*)



[10] This is computed as *marginal probability effect* × *number of multiple bid and fixed cost [or single closed bid & variable cost] procurements* in the regression sample, conditional on both a given president-agency ideological configuration and organizational level for procurement agreements. The monetary value is based on the average contract award size for this same grouping noted above.

than it is for executive level decisions. One plausible explanation for this finding is that appointee politicization through lower non-policy positions has little bearing on decisions made at the executive level dominated by PAS appointees. These findings, with respect to ideologically aligned agencies, suggest that the design of U.S. federal contracts do not comport with the partisan-based distributive hypothesis rooted in either centralization or appointee politicization. Rather, this subset of procurement agreements is crafted under greater bureaucratic discretion since they are designed more frequently in the lower levels of the agency hierarchy, while appointee politicization has modest relative effects.

Figures 3A & 3B display the parallel set of estimates and policy impacts for those agencies which are ideologically opposed to the president. The findings are quite similar to those discussed for ideologically aligned agencies, except that the expected probability differential for low government contracting risk procurement agreements between executive level and non-executive level offices is somewhat attenuated in **Figure 3A** since these estimated probabilities are statistically discernible from zero at the 95% confidence level, and are associated with a −6% and −8% differential (compared to a −13% and 11% differential noted in **Figure 2A**), respectively. Consistent with the prior evidence supporting the distributive motive via ideologically aligned agencies, the organizational level at which procurement decisions are made within ideologically opposed U.S. federal agencies is more substantively important than the influence of appointee politicization. **Figure 3B** shows that the estimated number of executive level procurement agreements are 12,461 and 17,310 fewer than compared to those made in non-executive levels (at a value of $−49 billion and $−68 billion) under low and high appointee politicization, respectively. Once again, rising appointee politicization exhibits a relatively stronger association by modestly increasing the expected number of low risk government contracts

FIGURE 3A

Evaluating Appointee Politicization and Centralized Decision Making
(*Low Government Risk Procurements Made by Ideologically Opposed Agencies*)

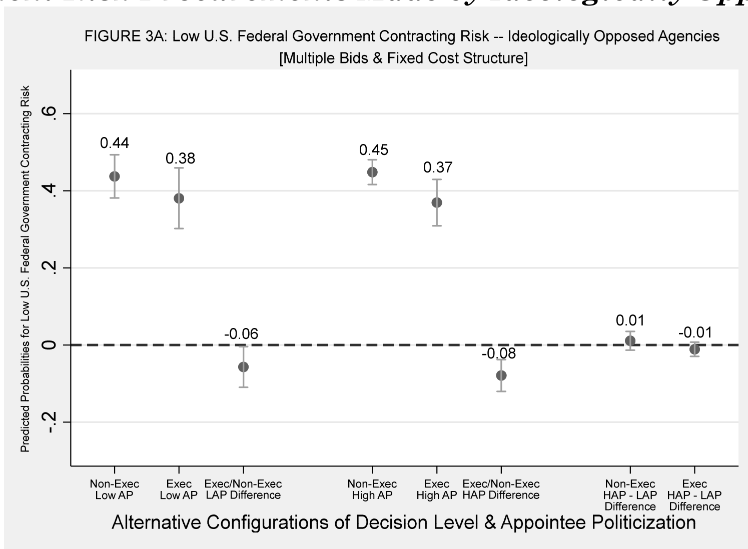
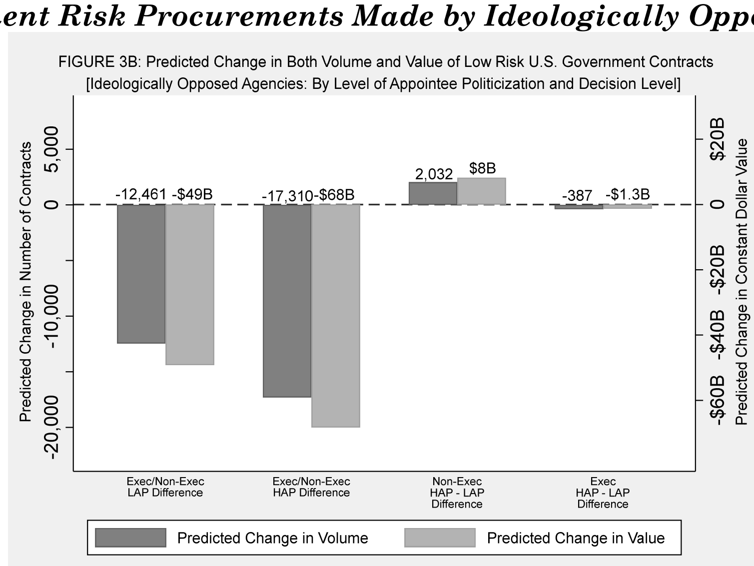


FIGURE 3B

Policy Impacts of Appointee Politicization and Centralized Decision Making
(*Low Government Risk Procurements Made by Ideologically Opposed Agencies*)



for non-executive level decisions made beyond the direct reach of top-level appointees (2,032, $−8 billion), while being associated with a meager decline for more politicized executive level decisions (−387, $−1.3 billion). This symmetry in low government risk contracting between the distributive and substitution motives indicates that these relatively more common set of ‘safe’ procurement agreements, ones that shift transaction costs to vendors, are more commonly determined beyond the purview of direct political influence since decisions are made removed from the top-levels within federal agencies, and appointee politicization has modest effects on the calculus of government contracting.

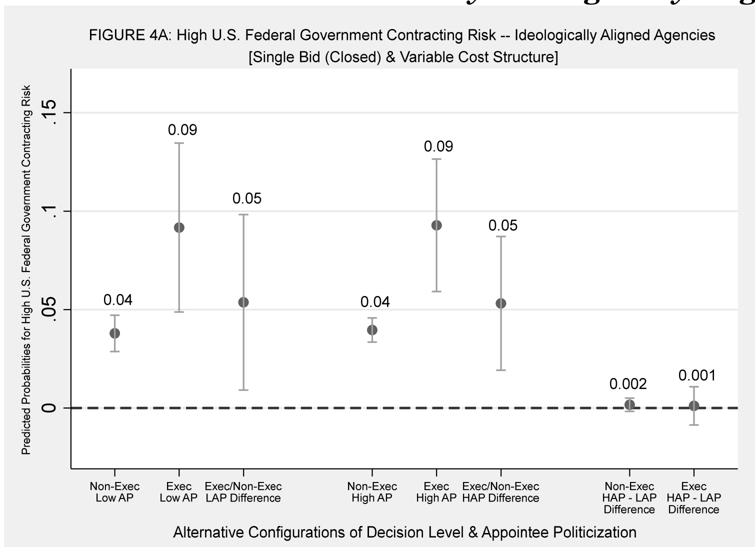
Evaluating High Government Contracting Risk

Although less frequently occurring compared to safe government contracts, risky procurement agreements that unambiguously shift risk away from vendors and onto the U.S. federal government reveal a starkly different portrait when evaluating the interrelated mechanisms associated with political influence. **Figure 4A** reveals that high government risk contracts are approximately 5% more likely to be made within executive level offices (0.09) compared to either managerial or field office levels (0.04), regardless of whether appointee politicization is relatively low or high. This corresponds to 668/664 additional risky procurement agreements for the government worth an estimated $11 billion denoted in **Figure 4B**. The meager and statistically insignificant appointee politicization effects portrayed in **Figure 4A** displays a paltry eight procurement agreements valued at $42 million (**Figure 4B**). These findings uncover support for centralization as the primary mechanism underlying the distributive motive in contract design, while appointee politicization plays an infinitesimal role under these conditions.

The estimated difference involving centralized−decentralized procurement agreements between high and low government contracting risk scenarios among ideologically-aligned agencies from comparing **Figures 2A & 4A** is 18% [0.05 – (−0.13)] / 16% [0.05 – (−0.11)], thus constituting a predicted difference of 9,278 and 7,996 procurement agreements with an estimated value of $65 and $57 billion under low and high appointee politicization scenarios, respectively. These estimated policy impacts

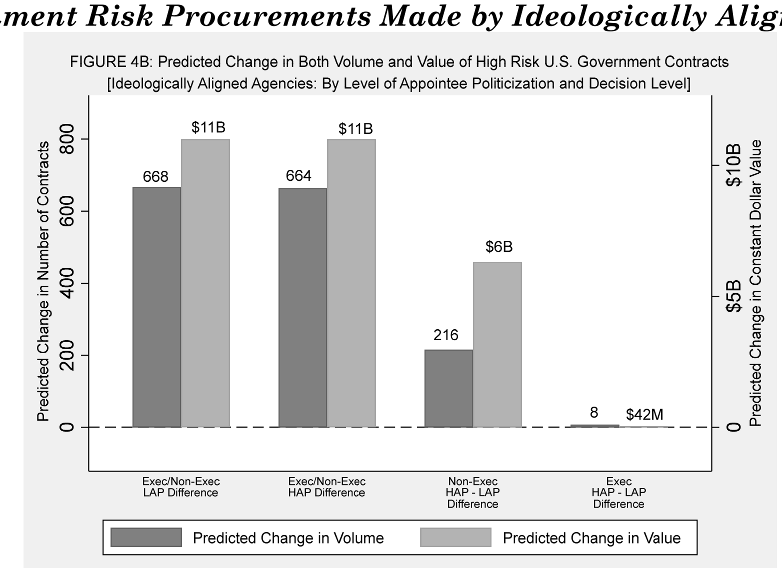
<u>FIGURE 4A</u>

Evaluating Appointee Politicization and Centralized Decision Making
(*High Government Risk Procurements Made by Ideologically Aligned Agencies*)



<u>FIGURE 4B</u>

Policy Impacts of Appointee Politicization and Centralized Decision Making
(*High Government Risk Procurements Made by Ideologically Aligned Agencies*)



substantially outweigh those from analyzing interdecile within-agency variations in appointee politicization between decentralized and centralized procurement agreements in **Figures 2B** & **4B** (an estimated difference of 1,601 and 247 procurement agreements worth $16 and $1.42 billion at the non-executive and executive levels, respectively).

Interestingly enough, the corresponding estimates evaluating the substitution motive with respect to ideologically opposed agencies in **Figure 5A** uncovers similar estimated probabilities to those for ideologically aligned agencies (**Figure 4A**). The substantive policy impact of these estimates reveal that not only are a larger number of contracts affected by centralized procurement decisions made at the executive level vis-à-vis non-executive levels (831/862 versus 668/664) in ideologically opposed agencies (**Figure 5B**) compared to ideologically aligned agencies (**Figure 4B**), but also constitutes more than double the value of these subset of contracts ($25/26 billion in **Figure 5B** versus $11/11 billion in **Figure 4B**). The relative absolute magnitude for centralization in relation to appointee politicization displayed in **Figure 5B** is at least nearly 18 fold ($25 billion / − $1.4 billion). U.S. federal agencies rely upon a centralization strategy that benefits vendors as a means of circumventing ideologically opposed agencies.

The total estimated probability difference between centralized−decentralized procurement agreements between high and low government contracting risk scenarios among ideologically-opposed agencies (cf. **Figures 3A & 5A**) is 11% [0.05 – (−0.06)] / 14% [0.06 – (−0.08)], thus constituting a predicted difference of 13,292 and 18,172 procurement agreements with an estimated value of $74 and $94 billion under low and high appointee politicization scenarios, respectively. Once again, these estimated policy consequences greatly outweigh those compared to appointee politicization effects within either decentralized or centralized procurement agreements taken from **Figures 3B & 5B** (an estimated difference of 2,057 and 377 procurement agreements worth $9.4 and $1.30 billion respectively at non-executive and executive levels).

FIGURE 5A

Evaluating Appointee Politicization and Centralized Decision Making
(*High Government Risk Procurements Made by Ideologically Opposed Agencies)*

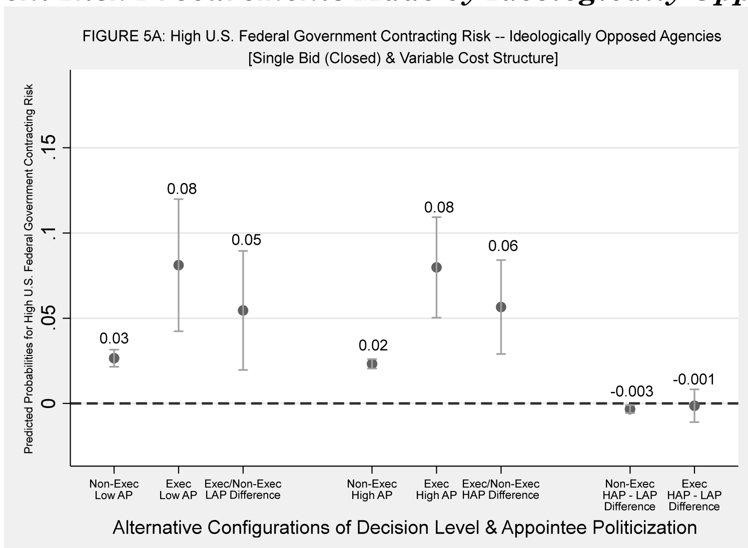
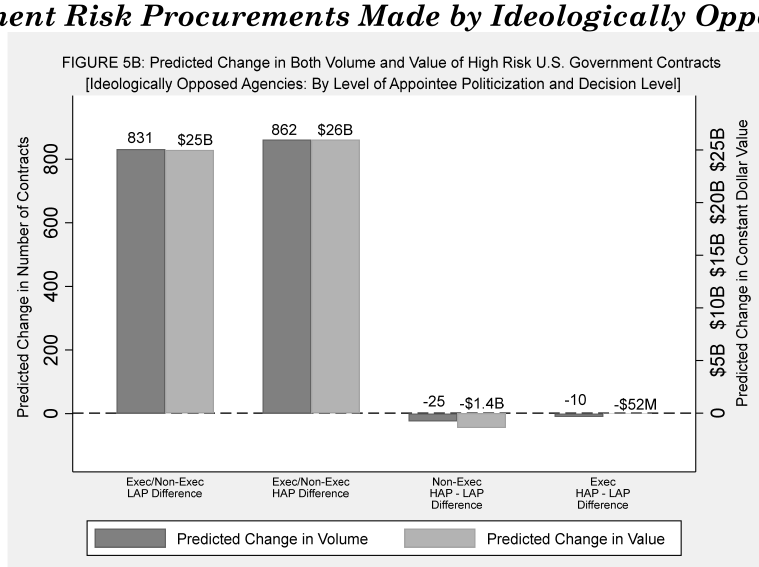


FIGURE 5B

Policy Impacts of Appointee Politicization and Centralized Decision Making
(*High Government Risk Procurements Made by Ideologically Opposed Agencies*)



In summary, these findings reveal that centralized decision making within federal agencies are much more strongly associated with producing favorable contract conditions for vendors than the diffuse effects of appointee politicization. Of particular interest is that appointee politicization only exhibits extremely modest particularistic benefits for vendors based on contract design when presidents and agencies are ideologically aligned with one another. These findings are also compatible with prior evidence documenting tradeoffs between centralization and appointee politicization as presidential strategies for exerting influence over U.S. executive branch policymaking (Lewis and Rudalevige 2007).

Alternative Analyses: A Postscript Summary

These data are further disaggregated by non-defense contracts (*2. Comparison of Full Sample Estimates to Those Omitting Department of Defense (DoD) Contracts)*, comparison of closed versus open single bid processes (*3. Comparison of Full Sample Estimates to Those Omitting Set Aside Contracts*), and the removal of set aside contracts (*4. Comparison of Single Bids & Variable Cost Structures: Closed Single Bids Versus Open Single Bids*). These analyses appear in the *Appendix* document. Omission of defense contracts produces substantive similar findings in terms of point estimates and statistical inferences, with wider confidence intervals (i.e., less precision), for low government contracting risk under ideologically opposed agencies (**Figure A2.3A**), as well as both high government contracting risk scenarios (**Figures A2.4A** & **A2.5A**). Although the decision level estimates for those procurement agreements reflecting low government contracting risk made within ideologically aligned agencies are noticeably more conservative in **Figure A2.2A** when omitting defense contracts than those reported in the article (**Figure 2A**), they nonetheless are statistically discernible from zero and exhibit the same pattern of relationships.[11] Omitting set aside contracts (see **Figures A3.2A – A3.5A** in *Appendix* document), reveals statistical patterns that are remarkably similar to those presented in the article with one exception. The magnitude of the estimates for the procurement agreements exhibiting low government contracting risk under both ideologically-aligned

[11] The centralized/decentralized levels estimate difference declines from −13%/−11% to −5%/−5%.

and opposed agencies are less conservative when omitting set aside contracts than those corresponding estimates presented in the article which include them as part of the sample (**Figures 2A** & **3A**; cf. **Figures A3.2A** & **A.3A**).[12] *Closed* single bid processes favor vendors vis-à-vis *open* single bid processes (see also, Dahlstrom, Fazekas, and Lewis 2021) but only with respect to high government contracting risk incurred by ideologically-aligned agencies (**Figure 4A**, cf. **Figure A4.4A**).[13] In the case of such procurement agreements made by ideologically-opposed agencies, however, the estimates are roughly similar between the two types of contracts (**Figure 5A**, cf. **Figure A4.5A**). This evidence of a differential in providing favorable contractual terms to vendors suggest that the distributive motive is stronger than the substitution motive with respect to considering alternative bids. Further, the substantive results relating to the contingent politicization thesis are both numerically and substantively similar to alternative model specifications that omit all control covariates, except for the agency, year, and product-service type unit effects (**Figures 2A** – **5A**, cf. **Figures A5.2A** – **A5.5A**).[14] Therefore, the findings reported here do not reflect a statistical artifact arising from model overfitting.

Finally, the *Appendix* document empirically evaluates a series of six alternative mechanisms of U.S. executive branch political influence compared to the contingent politicization thesis offered in this study. These alternative mechanisms represent both

[12] The centralized/decentralized levels estimate difference rises from −13%/−11% to −19%/−16%.

[13] The centralized/decentralized levels estimate difference rises from −5%/−4% to −2%/−2%, with the latter set of estimates marginally failing to attain statistical significance at the 95% confidence level.

[14] See *5. Comparison of Reported Model Estimates to Those Omitting Control Covariates [except Agency, Year, and FPSC Unit Effects]*.

simplified versions of the mechanisms proposed in this study, as well as alternative ones.[15] Based on statistical criteria, the reported model estimates represent the best characterization of these data. These constitute restricted versions of the reported statistical model specifications: (1) the interplay between appointee politicization and the decision level of these procurement agreements, independent of whether the agency is ideologically aligned or opposed to the president; (2) the interactive relationship between appointee politicization and alternative ideological agencies, independent of the administrative location of the contracting decisions made within an agency; and (3) the interrelated nature of the relationship between the decision making level and alternative ideological agencies, independent of appointee politicization. The alternative variants focus on the interrelated nature between each of these contingent politicization mechanisms and agency appointment insulation based on Selin's (2015) 1st dimension estimates.

Discussion

Understanding how executive politics influences U.S. federal procurement decisions offers insight into the caliber of democratic governance. The design of procurement agreements determines risk allocation between the U.S. federal government and vendors, and by extension, which party benefits from these agreements. Since procurement outcomes are highly dependent upon contract design (e.g., Lewis and Bajari 2014), these provisions determine whether they serve the collectivist interest of governments, or instead serve interests of contract vendors representing corporate shareholders and other particularistic interests. The design of U.S. federal procurement agreements thus provides a unique channel for analyzing political inequality emanating from U.S. executive branch

[15] See *6. Comparison of Alternative Mechanisms for Explaining Contract Design Quality: An Analysis of Akaike Information Criteria (AIC) and Bayesian Information Criteria (BIC) Model Fit Statistics.*

policymaking that is distinct from interest group lobbying (Hacker and Pierson 2010), as well as the financial disbursement of U.S. federal grants (Kriner and Reeves 2015).

U.S. administrative law makes a clear demarcation between governmental activity and non-governmental activity. Both constitutional and legal constraints placed on third-party actors engaged in administering public policies, in lieu of governmental activity, are extremely limited (Rosenbloom and Piotrowski 2004: 104-105). This view of outsourcing underscores the incomplete nature of contractual arrangements (e.g., Hart and Moore 1990; Laffont and Tirole 1993; Kim and Brown 2012). Agency loss confronting the U.S. federal government has further expanded with the passage of time as the Office of Management and Budget's *A-76 Circular* has been both amended and refined to meet both Republican and Democratic presidential administrations shared efforts to transfer administrative authority away from federal agencies and towards the private sector (Brown 2013: 1363). This expansive set of administrative functions delegated to third-party entities has reduced democratic accountability in policy administration by affording vendors *de jure* independence from constitutional and legal requirements imposed on federal officials (Rosenbloom and Piotrowski 2004), and also *de facto* independence from provisions governing federal administration carried out by public agencies (Brown 2013).

This study demonstrates that a sizable portion of procurement agreements are organizationally distanced from politics since these are made in a decentralized manner within agencies when government contracting risk is low. Conversely, decision making is more susceptible to political influence when it is centralized for the smaller proportion of procurement agreements that shift risk away from vendors and onto the U.S. federal government. This empirical pattern is symmetric with respect to both distributive and substitution governance motives underlying U.S. federal procurement activity. Although the volume of low risk government contracts vastly outweighs high risk government contracts by a factor of 11, the average monetary value per contract for high risk designs are larger than low risk designs by a factor of more than 5! One can infer from this evidence that political influence over government contracting that benefits vendors at the expense of the U.S. federal government is surgically targeted for a smaller, more manageable volume of procurement agreements that involve a substantial delegation of administrative authority to non-governmental actors based on its average monetary value.

On a normative level, these findings underscore both the promise and perils relating to how executive branch authority is exercised for administering procurement agreements. The evidence obtained from this study demonstrates that the location within the agency hierarchy that these U.S. federal procurement agreements are determined is more critical than the packing of political appointees when it comes to the design of outsourcing arrangements that unambiguously shift contracting risk to either the government or vendors (cf. Berry and Gersen 2017; Dahlstrom, Fazekas, and Lewis 2021). Greater centralized control over risky contracts increases political accountability, while decentralized control over safe contracts enhances bureaucratic discretion. Therefore, any blame attributed to the U.S. executive branch for entering into contractually risky procurement agreements is the result of political influence, and not administrative personnel divorced from democratic politics. Although this efficient division of executive authority may mitigate coordination dilemmas within the U.S. federal executive branch (e.g., Krause 2009; Lowande 2018), it also comes at the expense of exacerbating political inequality when the collectivist interests of the American public are sacrificed in exchange for favorable contractual terms on procurement agreements that benefit powerful individuals, firms, and industries to perform administrative tasks in lieu of U.S. federal agencies.

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