

# PAR

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## Theory to Practice

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## Public Administration Review

**Thom Reilly**  
Clark County, Nevada

**Brown, Potoski, and Van Slyke**

## Managing Public Service Contracts: Aligning Values, Institutions, and Markets

Trevor Brown, Matthew Potoski, and David Van Slyke's article challenges public sector managers and scholars to broaden their understanding of contract management by viewing the process through the lenses of theories regarding markets, organizational design, strategic management, and public values. They offer a convincing case on why the proper alignment of values, institutions, and markets is critically important in terms of public sector contract management. The article's relevance rests not just in the applicability of the information, but in the validation it gives this practitioner's experience.

It is certainly refreshing to read an article that recognizes that contracting out, outsourcing, and

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privatization are realities of public sector life, and that avoids the polarizing and often pointless and irrelevant debates that center around whether these practices are good or bad. Their work recognizes the current state of affairs on how government at the federal, state, and local levels is delivering services. Public administrators are moving away from managing people inside government who directly provide services, and toward coordinating services that are provided by an array of public, private, nonprofit, and faith-based organizations.

This is important, as almost all government services involve a degree of contracting out. For many public managers, the question is not so much whether to contract out or outsource a ser-

vice or program. Rather it is how much of the program or project to contract out or outsource (Brown and Brudney 1998), and how to minimize opportunism and weak contract management capacity (Morris 2001).

My comments will center on two areas. First, I will offer suggestions on further refining the framework. Second, I will elaborate on the notion offered most recently by Goldsmith and Eggers (2004), Newland (2002), Salamon (2002), and others that we need to think of government less as the actual *provider* of certain goods and services and more as the *facilitator* of them.

### **The Framework Revisited**

The article provides a good overview of the basic steps of contract management, and demonstrates how to apply tools, criteria, and internal and external considerations for informed decision making when contracting. To these, I would add or further elaborate on the following considerations:

- Monopolistic companies, besides raising prices or reducing service quality as the authors suggest, also can manipulate the process to make the contracting entity require more service. Monopolistic companies have no competition. When routine updates, maintenance, or a change order is required, a company can explain that such changes will require a drastic workaround when it may be an easy fix. For example, with software companies, often the source code is proprietary and there is no competition to gauge the amount of work actually required. The monopolistic company can also make mistakes, prolong the change, and then charge the entity for those related hours, depending on how the contract is structured. Additionally, some companies may purposely use older technology, which requires a longer time to repair.

- The authors posit under contract specification and within the contours of legal requirements that public managers have discretion to specify several features. These include vendor tasks, outcome measures, vendor qualifications and compensation, contract duration, renewal provisions, payment schedules, and reporting requirements. I would argue that "legal jurisdiction" also is very important for managers and researchers to consider. Where disputes are adjudicated can be critical. It is important that disputes are adjudicated in the home state and that contract times are governed by the statutes within that state. Most public entities would want legal terms and disputes to be defined and settled in their home state, as opposed to in states whose laws favor the domiciled company.

- Not only might increased transparency of the contracting process and the transparency of contract execution improve contract management, but it also might facilitate the accountability of all parties to these contracts (Morris 2001).

- Not only should values, institutions, and markets be aligned, but so too should service delivery goals; true, realistic, and acceptable costs; and performance measurement. Many government organizations strive to operate under the highest service levels possible in light of available staffing and resources. When these organizations lack a clear understanding of the true service cost (i.e., what the "real" cost of delivering the service is), expectations are not readjusted to either "realistic" or "acceptable" service levels. And without clear key performance indicators, metrics, and costs, comparisons of contracting versus in-house service delivery may do nothing more than compare "apples to oranges."

- As the authors note, one common aspect of contracting involves the purchase of information technology (IT) software. I would argue that governments need to bind together to buy widely popular software such as Microsoft. Too often large IT companies dictate the contract and buying terms. They also dictate the servicing requirements. Binding together affords more purchasing expertise, experience, and leverage to governments than when governments act individually.

- Although the authors mention that managers may not legally authorize the auditing of vendor records and performance, I would recommend placing audit verbiage in contract clauses. This language is not only possible to incorporate, but essential for accountability.

- The authors properly address in some detail the "crucible of swirling and often political values" in which contracting takes place. I would emphasize, too, that no matter what values, processes, or safeguards are put in place by managers, all can be for naught if the contracting provider (typically a nonprofit organization) believes it can circumvent them with a call to an elected official. These types of work-arounds can have the additional effect of minimizing the efficiency of markets, thus ensuring a cycle of thin markets.

This point is especially crucial for those managers who attempt to change the contracting culture in their organizations by means of a more transparent and defensible process that avoids thin markets (as the authors seem to advocate). Changing the contracting culture in this fashion requires an agreement with the policymakers that the inevitable end-runs that potential contrac-

tors pursue will not meet with success, and that elected officials and their appointees will be willing to bear the "transaction costs" of an unhappy contractor community.

- The authors make the important point that principal-agent problems can arise in contract management. I would add, however, that the internal structuring of a department's contract management function can mitigate these problems. This can occur within departments that have both technical contracting skills and the programmatic goods and/or services skills involved in contracting. Furthermore, the structure of contract "ownership" inside the contracting department can address those issues. Breaking apart the contracting function by leaving it up to administrative staff to "manage" a contract runs the risk of losing the program skills needed to provide sufficient arms-length oversight. This occurs when a contract manager oversees contract processes or performance, but without a sense for what constitutes high quality of service provision.

- Not only is aligning values, institutions, and markets critical in the contracting process, but so too is aligning service delivery roles between government organizations and vendors. Done adroitly and within the larger context of the authors' framework, contracting can become a win-win situation for governments, contractors, and the public.

At one level, contracting can compensate for the shortcomings of agencies and vendors. Given the diverse needs of the public sector, government managers and employees tend to become generalists with very broad, diverse knowledge and skill bases.

Vendors can fill a need for the public sector by providing highly specialized skills that are needed only intermittently.

A vendor can aggregate the demand and costs for these specialized skills among many government customers. Meanwhile, the customer benefits from the focused specialization of vendors that can compensate for the broader skill generalization typical of most professionals internal to the organization. Meanwhile, government employees can bring a public interest orientation to the work of vendors, an orientation for which the profit motive is not known.

At a second level, contracting presents opportunities for better aligning the workflow of agencies and vendors with personnel availability. Service delivery demand fluctuations (i.e., staffing for the "valleys" in demand and contracting for the "peaks" in demand) have always proved challenging for governments. Through contracting informed by the authors' framework, the public sector can avoid the costs of maintaining a larger employee base when it is not needed. Meanwhile, vendors can profit by aggregating the fluctuating demand across agencies to stabilize their own workforces.

### **The Competition Prescription Revisited**

The importance of contracting out in a way that integrates values, institutions, and markets has been demonstrated by Brown, Potoski, and Van Slyke. Their article recognizes, and seeks to conceptualize more broadly, what authors like Goldsmith and Eggers, Newland, and Salamon have chronicled: the current reality in government is that private and nonprofit contractors already are embedded in everything government does. As public problems become more complex, messy, and intractable,

government has come to rely more and more on a network of outside contractors in public, private, and nonprofit organizations to deliver services and to respond to these challenges.

Contracting might be conceptualized as a component of what Goldsmith and Eggers (2004) have coined *network-based* partnerships (although these authors focus in their book on other forms of networks). As these authors put it, government is finding itself increasingly in the position of managing resources that belong to someone else in order to address community problems. Moreover, Goldsmith and Eggers suggest that managing this array of network providers is dramatically different from managing internal organizational resources, and that most governmental agencies lack the capacity to manage these networks effectively.

Some wonder whether this incapacity can ever be adequately addressed. As Ingraham (1995), among others, notes, contracting presents a challenge to "retooling" an existing employee base from specialized "doers" to subject-matter experts with contract management skills. Consider, for example, the government programmer who used to write and support applications, but is now responsible for managing new system implementation and its associated contracts and support agreements. Likewise, public agencies are in need of an array of employees who cannot only perform traditional duties such as planning, budgeting, and deploying staff, but who also are skilled in facilitation and negotiation, contract negotiations, contract management, risk analysis, and the ability to manage across boundaries (Goldsmith and Eggers 2004; Newland 2002; Salamon 2002).

While the ability of public agencies, managers, and employees to make these role

changes and effectively perform them may be in question, the need to do so is not. The challenges facing communities cannot be solved by governmental agencies alone. The need to engage a multitude of third parties and approaches is critical. Effectively managing these networks—including public, private, and nonprofit contractors—will require public agencies and universities to enhance their traditional training programs to incorporate this new reality. Providing relevant, practical, and value-based guidance such as the framework on contract management advanced by Brown, Potoski, and Van Slyke is a step toward such an understanding for practitioners.

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