

Standing Guard

How Unaccountable Contracting Fails Governments and Taxpayers



In the **Public Interest**

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Introduction

When governments outsource vital public services, how carefully are contractors being watched? As local and state governments increasingly contract out critical public services that are crucial to the well-being of the community, the need for robust contract oversight is pressing. Yet, recent research and the experiences of cities and states across the country show that too often contract oversight is lax.



Robust oversight means that the government can hold contractors accountable for their performance, and ensure that the public receives quality services at a reasonable cost. Proper oversight can protect public health and safety. Strong oversight allows governments to catch waste, fraud, and abuse in real time instead of long after the fact, and correct mistakes before they result in serious harm.

Lax oversight has detrimental impacts for the people served by a program or service, and for the public at large. Poor oversight of government contracts can mean:

- ▶ Wasted public tax dollars
- ▶ Fraud and abuse
- ▶ Poor quality of service and underperformance by contractors
- ▶ Risk to vulnerable residents and to public health and safety

Problems with contract oversight are pervasive. These problems occur in cities and states across the country and across all sectors of government, including health and human services, criminal justice, information technology, education, public works, and more. Recent research and numerous examples illustrate why contract oversight often falls short. This report discusses common problems and the real world consequences of lax oversight, and provides policy recommendations to help cities and states improve their oversight of government contracts. The appendix provides additional examples of recent government contract problems not included in the report.

PROBLEM
No. 1

Contracts contain inadequate performance requirements and standards.

Contracts lay a legally-binding foundation for what is expected of contractors performing public work.

Specific performance measurement and outcome criteria, developed by the contracting agency and clearly communicated to the contractor, are crucial for effective contract oversight.¹ Contract language should clearly identify requirements for which the contracting agency can hold the contractor accountable, to ensure that the contractor understands the scope of the work and expectations before the contract begins. However, many contracts do not contain precise performance standards and monitoring requirements. In 2012, Florida's Chief Financial Officer audited 600 contracts and found that 46% of them lacked "common-sense contracting standards."²



Defining these standards as early as possible, such as during the Request for Proposal (RFP) stage of the contracting process, can help contractors to develop realistic bids and ensure that the agency and the contractor both know from the outset the performance measures for which the contractor will be accountable.

Loosely written RFPs, and contracts without specific performance standards, hamper oversight of the contractor. As the examples below show, contractors may be allowed or even incentivized to provide inferior services, leaving the contracting agency with little or no leverage to hold the contractor accountable.



In 2011, Oregon signed the first in a series of contracts with the IT contractor Oracle, to design and build the state's health exchange website by October 2013. As months passed, the contractor fell behind, missed key deadlines, and ultimately failed to deliver a functioning website.³ In a February 2014 report, the Centers for Medicare and Medicaid Services examined the project, and determined that poor contract

¹ Janice Fine, Patrice Mareschal, et. al., "Overlooking Oversight: A Lack of Oversight in the Garden State is Placing New Jersey Residents and Assets at Risk," Rutgers University Department of Labor Studies and Employment Relations, March 2014.

² New York Office of the State Comptroller, "State Contracts by the Numbers: Longstanding Contract Oversight Authority Serves Taxpayers," January 2014. http://osc.state.ny.us/reports/state_contracts_by_numbers_jan2014.pdf

³ Nick Budnick, "Oregon's Contracts with Cover Oregon Health Insurance Exchange Bypassed Standard Rules, Lacked Teeth," The Oregonian, March 18, 2014. http://www.oregonlive.com/health/index.ssf/2014/03/oracles_contracts_for_cover_or.html



SECTOR

Information
Technology

MAJOR PROBLEMS

1. Contract contained inadequate performance requirements and standards.
2. Contracting agency did not have enough experienced and trained contract management staff.

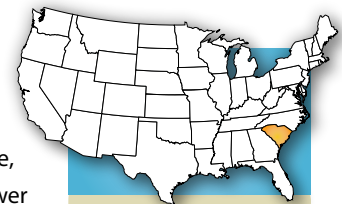
management was a “root cause” of the failed site.⁴ Despite the \$134 million price tag, contracts between Oracle and Oregon failed to specify what the company was required to produce. There was no clear understanding of expectations between the state and the contractor. Consequently, the state “[did] not have any leverage” to hold the firm accountable for missed deadlines or poor quality work.⁵ Compounding the oversight problems, the state did not have a dedicated Project Manager to oversee project activities and deliverables.⁶ The site was ultimately scrapped.⁷

In March 2014, Oregon cancelled its contract with Oracle. Five months later, the state sued the contractor for fraud and breach-of-contract, which cost the state hundreds of millions of dollars and left residents without a functioning state-run insurance exchange website.⁸ In response to the contracting disaster, Oregon Gov. John Kitzhaber signed a bill in spring 2014 that strengthened oversight of information technology contracts.⁹



North Carolina outsources Medicaid fraud detection to private

contractors, and recent state audits have revealed a lack of contract oversight. A 2012 audit found that contractors, including IBM, SAS Institute, and Public Consulting Group, uncovered over-payments at a rate much lower than original projections.¹⁰ Contracts allowed the contractor to receive a percentage of the dollar value of any potential fraud it identified, regardless of how much fraud was ultimately verified and recovered. Those terms incentivized contractors to inflate their findings of fraud, but only a small percentage of the fraud they identified could be verified. For example, a contractor accused a Medicaid vendor of \$1.34 million in fraudulent claims. The Department of Health and Human Services found the company was only liable for \$22,000 in repayments. Yet the contractor still got a percentage of the \$1.34 million. The auditor concluded that the state needed better review of contracts before they are signed, to ensure they do not waste public money.¹¹ Additionally, payments were made to contractors even though the contracting agency “still had much work to do in reviewing and verifying the accuracy of the data.” In other words, contractors were paid in advance of a full review of their work product.¹²



SECTOR

Health and
Human Services

MAJOR PROBLEMS

1. Contract contained inadequate performance requirements and standards .
2. Information revealing non-compliance ignored.
3. Contracting agency did not have enough experienced contract management staff.

The state released another audit in 2014, and found that contract oversight problems continued. The state requires that any provider that delivers health services to Medicaid recipients must be approved by the state through an application process. The state outsources the application review to Computer Sciences Corporation, Inc. The audit found that the contracting agency did not sufficiently monitor the contractor and could not

⁴ Centers for Medicare and Medicaid Services, “Technical Assistance Report For: Oregon Health Insurance Marketplace,” U.S. Department of Health and Human Services, February 27, 2014. http://media.oregonlive.com/health_impact/other/FFRDC%20Report-%20Oregon.pdf

⁵ Nick Budnick, “Oregon’s Contracts with Cover Oregon Health Insurance Exchange Bypassed Standard Rules, Lacked Teeth,” *The Oregonian*, March 18, 2014. http://www.oregonlive.com/health/index.ssf/2014/03/oracles_contracts_for_cover_or.html and Centers for Medicare and Medicaid Services, “Technical Assistance Report For: Oregon Health Insurance Marketplace,” U.S. Department of Health and Human Services, February 27, 2014. http://media.oregonlive.com/health_impact/other/FFRDC%20Report-%20Oregon.pdf

⁶ Centers for Medicare and Medicaid Services, “Technical Assistance Report For: Oregon Health Insurance Marketplace,” U.S. Department of Health and Human Services, February 27, 2014. http://media.oregonlive.com/health_impact/other/FFRDC%20Report-%20Oregon.pdf

⁷ Nick Budnick, “With Cover Oregon switching to federal health exchange, state may scrap second, \$71-million Oracle project,” *The Oregonian*, April 25, 2014. http://www.oregonlive.com/health/index.ssf/2014/04/with_cover_oregon_switching_to.html

⁸ Marion County Circuit Court, “State of Oregon vs. Oracle America, Inc.,” Oregon Department of Justice, August 22, 2014. http://www.doj.state.or.us/releases/pdf/FINAL_Complaint_8_22_14.pdf; The Advisory Board Company, “Oregon Sues Exchange Website Contractor for Fraud,” August 26, 2014. <http://www.advisory.com/daily-briefing/2014/08/27/oregon-sues-exchange-website-contractor-for-fraud>

⁹ Oregon State House of Representatives, House Bill 4122, 2014 Regular Session.

¹⁰ Laura Leslie, “NC Auditor: Flawed Medicaid Contracts Show Need For More Oversight,” *WRAL.com*, August 15, 2012. <http://www.wral.com/news/state/nccapitol/story/11432128/>

¹¹ Ibid.

¹² Office of the State Auditor, “Department of Health and Human Services Division of Medical Assistance, Financial Related Audit - Selected Contracts With Vendors to Identify Payments,” Report No. FCA-2012-445, July 2012. <http://www.ncauditor.net/EPWeb/Reports/FiscalControl/FCA-2012-4445.pdf>



SECTOR

Information Technology

MAJOR PROBLEMS

1. Contract contained inadequate performance requirements and standards.
2. Information revealing non-compliance ignored.

provide “reasonable assurance” that only qualified providers were approved. The contract did not include any standards for accurate and reliable application approvals. Furthermore, the contracting agency did not review the contractor’s work in a consistent manner. Reviews were assigned to one staff member who performed them “as time permit[ed].” Auditors found that 30% of applications had one or more processing errors.¹³

\$ Similarly, the contract between Deloitte Consulting and California’s Administrative Office of the Courts (AOC) to develop a statewide case management system, had serious problems in large part stemming from loose contract language and poor oversight.¹⁴ A state audit found that contract terms did not allow the agency to “adequately control cost and scope.” As a result, the AOC entered into 102 amendments to the contract over a 7-year period, and costs increased from \$33 million to \$310 million.¹⁵ These amendments substantially changed the scope of the project, but the AOC was not required to follow the oversight and approval procedures that other agencies must abide by, since it is located within the judicial branch. As a result, the AOC squandered public funds.¹⁶

Furthermore, auditors found that the AOC failed to document its oversight plan and could not demonstrate that some best practices were implemented.¹⁷ Some monitoring specific to IT projects was not performed until well into the contract period. As a result, the AOC did not detect important problems until the system was well developed, and the time and cost to fix those problems were prohibitive.¹⁸ The AOC ultimately abandoned the case management system in 2012, despite spending \$500 million on the project.¹⁹

PROBLEM No. 2 Governments do not have enough experienced and trained contract managers on staff.

Governments that choose to outsource need experienced personnel trained to effectively manage and monitor contracts. Contract management staff should possess both substantive knowledge of the functions that are being outsourced and best practices in contract oversight, so that they understand the work that the contractor is supposed to perform and how to hold them accountable for their performance.

Unfortunately, the number of highly qualified contract managers has declined.²⁰ Staff acting as contract managers



¹³ Office of the State Auditor, “Department of Health and Human Services Division of Medical Assistance, Financial Related Audit - Selected Contracts With Vendors to Identify Payments,” Report No. FCA-2012-445, July 2012. <http://www.ncauditor.net/EPSSWeb/Reports/FiscalControl/FCA-2012-4445.pdf>

¹⁴ Megan Woolhouse and Beth Healy, “Mass. IT Project is Latest Black Eye for Deloitte,” The Boston Globe, October 7, 2013. <http://www.bostonglobe.com/business/2013/10/06/deloitte-projects-plagued-with-troubles-around-country/gbNRcQg6yKHDS4yGVxh1RM/story.html>

¹⁵ California State Auditor, “Administrative Office of the Courts: The Statewide Case Management Project Faces Significant Challenges Due to Poor Project Management,” Report 2010-102, February 2011. <http://www.bsa.ca.gov/reports/summary/2010-102>

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Michael Krigsman, “California Abandons \$2 Billion Court Management System,” ZDNet, April 2, 2012. <http://www.zdnet.com/blog/projectfailures/california-abandons-2-billion-court-management-system/15363>

²⁰ Janice Fine, Patrice Mareschal et. al., “Overlooking Oversight: A Lack of Oversight in the Garden State is Placing New Jersey Residents and Assets at Risk,” Rutgers University Department of Labor Studies and Employment Relations, March 2014; David M. Van Slyke, Georgia State University, “The Mythology of Privatization in Contracting for Social Services,” Public Administration Review, Vol. 63, No. 3, May-June 2003.

often do not have the training, experience, and skills they need. Contract manager responsibilities may be added to an employee's duties without any training or skill development. As one New Jersey Department of Human Services official explained of many of the state's agencies, "[we] work with what [we] have."²¹

In addition to having skilled staff, a contracting agency must also have enough staff to properly oversee private contractors. Yet during budget crises, contract oversight funds are often cut.²² The loss of staff often means that institutional knowledge related to an agency's mission and contracting history are lost, and the burden of contract management is spread among fewer and less experienced staff. When fewer staff oversee more contracts, meaningful oversight is virtually impossible.



This loss of contract oversight capacity is documented in a study by Professor David M. Van Slyke of Georgia State University, who interviewed county and state managers in New York who oversee social services contracts.²³ The study found that as social service agencies increased their use of contracts to provide services, they simultaneously reduced their staffing levels, creating shortages in critical areas including contract management. As the counties and state engaged in increased contracting, the number of contract oversight staff fell. Every public manager interviewed said that lower staffing significantly impacts how the agency manages contractors and the level of oversight the agency can provide. One public manager said her staff of 12

was responsible for overseeing over 500 contractors. Many contemporaneous New York state reports and audits confirm this finding, reporting numerous instances where state agencies did not have enough staff with expertise in contract management.²⁴

A 2014 Rutgers University study found similar problems with state contract oversight capacity in New Jersey. For example, the Office of Auditing in New Jersey's Department of Health Services (DHS) had 30 staff at the time of the study. Twelve years prior, the unit had 60 staff. Slashing auditing staff by half has had serious consequences. There used to be 150 full contract audits conducted each year. Now, only 125 contract audits are performed each year, and only half of those are full audits. The other half are consulting reviews, which do not examine specific performance outcomes. Essentially, full contract audits have been reduced by 60% due to reduced staffing.²⁵

The study also found that staff working as contract managers were not always qualified nor provided with adequate training. Many current contract managers were not hired as contract managers, but were later assigned the responsibilities. In many cases they received only a three-hour online tutorial as preparation. Officials from every New Jersey department interviewed for the study reported that "personnel designated as contract managers often cannot provide effective oversight."²⁶

In 2003, Georgia's Department of Audits and Accounts surveyed 25 state agencies and found that only 10 of those agencies offered some form of training in contract management. When researchers conducted on-site reviews of those agencies, they found that none offered sufficient training – the training either did not focus on contract monitoring, or was not delivered to all personnel with contract oversight responsibilities.²⁷

²¹ Janice Fine, Patrice Mareschal et. al., "Overlooking Oversight: A Lack of Oversight in the Garden State is Placing New Jersey Residents and Assets at Risk," Rutgers University Department of Labor Studies and Employment Relations, March 2014.

²² Ibid.

²³ David M. Van Slyke, Georgia State University, "The Mythology of Privatization in Contracting for Social Services," *Public Administration Review*, Vol. 63, No. 3, May-June 2003.

²⁴ United States General Accountability Office, "Social Service Privatization: Expansion Poses Challenges in Ensuring Accountability for Program Results," Report to the Chairman, Subcommittee on Human Resources, Committee on Government Reform and Oversight, House of Representatives, October 1997. <http://www.gao.gov/assets/230/224891.pdf>; New York Office of the State Comptroller, "Multi-Agency Contracting Practices; Chief Contracting Officers (Follow-Up Review)," Report 99-F-62, May 18, 2000. <http://osc.state.ny.us/audits/allaudits/093000/99f62.pdf>

²⁵ Janice Fine, Patrice Mareschal et. al., "Overlooking Oversight: A Lack of Oversight in the Garden State is Placing New Jersey Residents and Assets at Risk," Rutgers University Department of Labor Studies and Employment Relations, March 2014.

²⁶ Ibid.

²⁷ Georgia Performance Audit Operations Division, "Best Practices in Government: Components of an Effective Contract Monitoring System," Department of Audits and Accounts, July 2003. https://www.dca.ga.gov/housing/housingdevelopment/BestPractices_ContractMonitoring.pdf

Similarly, a 2013 Evaluation Report by the Idaho Legislative Office of Performance Evaluations surveyed state agency personnel involved in contract management. They found that even though the state offered courses in contract monitoring, only 27% of respondents had taken such training.²⁸ After the release of the Evaluation Report, the Idaho Legislature passed a law aimed at increasing contract oversight.²⁹ As Idaho Republican state Rep. Maxine Bell, chair of the House Appropriations Committee explained, “We found out that we had 831 active contracts in a little state like ours — \$3.2 billion worth. We weren’t aware of that type of business going on in the state or the magnitude of it. The state should have been better planning and more training [sic] for the people in charge of the monitoring.”³⁰



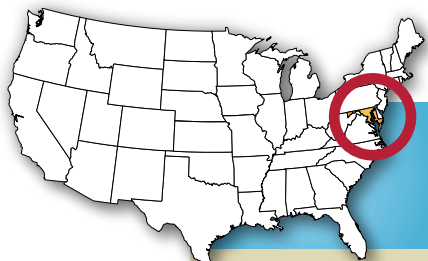
In 2014, the Maryland Office of Legislative Audits conducted an audit of the Department of Health and Mental Hygiene’s Medical Care Programs Administration (MCPA), the agency responsible for administering

the state’s Medicaid program. Investigators found that the agency failed to properly oversee important contracts.³¹ In one instance, the agency had a contract with a company to conduct hospital utilization reviews, to ensure that charges paid for by the state were for medically-necessary procedures. Auditors found that since the contract was signed in 2010, there was “minimal monitoring” of the contractor. When asked about this, MCPA explained that the agency did not have enough staff to provide proper contract oversight.³²

MCPA contracts with another company to audit hospital claims, to verify that services being billed to Medicaid were actually provided. The company failed to conduct the required number of audits. Investigators found that the most recent claims audited by the company were for the years 2004 to 2007. Since hospitals are only required to retain documentation for six years, there may be overpayments that the state will never recover.³³ In this case, mistakes were not caught in real-time or even close to the time when they occurred. As a result, valuable information was no longer available.

MCPA had a third contract with another company responsible for enrolling new Medicaid applicants. The contract, which cost the state \$9 million in 2012, was also not adequately monitored. As a result, the contractor was able to overcharge the state. The contract required

the contractor to meet specific enrollment requirements each month. The contractor reported that it met and sometimes exceeded those requirements during the contract period. However, an audit revealed that the contractor overstated its performance, and did not actually meet the requirements for any given month. The agency overpaid the contractor almost \$1 million. The agency even renewed the contract three times during this time period, believing that the contractor was meeting expectations.³⁴



SECTOR

Health and Human Services

MAJOR PROBLEMS

1. Contracting agency did not have enough experienced and trained contract management staff.
2. Information revealing non-compliance ignored.

²⁸ Office of Performance Evaluations, “Strengthening Contract Management in Idaho,” Idaho Legislature, Report 13-02, January 2013. <http://www.legislature.idaho.gov/ope/publications/reports/r1302.pdf>

²⁹ Idaho Legislature, H. C. R. No. 18, pp. 1004-1005, March 2013. http://legislature.idaho.gov/sessioninfo/2013/sessionlaws_vol2.pdf

³⁰ Jenni Bergal, “Your Tax Money Wasted When No One Watches State Contracts,” The Fiscal Times, August 5, 2014. <http://www.thefiscaltimes.com/Articles/2014/08/05/Your-Tax-Money-Wasted-When-No-One-Watches-State-Contracts>

³¹ Office of Legislative Audits, “Audit Report: Department of Health and Mental Hygiene Medical Care Programs Administration,” Department of Legislative Services, Maryland General Assembly, April 2014. <http://www.ola.state.md.us/Reports/Fiscal%20Compliance/MCPA14.pdf>

³² Ibid.

³³ Ibid.

³⁴ Office of Legislative Audits, “Audit Report: Department of Health and Mental Hygiene Medical Care Programs Administration,” Department of Legislative Services, Maryland General Assembly, April 2014. <http://www.ola.state.md.us/Reports/Fiscal%20Compliance/MCPA14.pdf>

PROBLEM
No.

3

There are few formal rules about contract oversight.

Many cities and states do not address contract oversight in their laws or policies. With no formal rules, contract monitoring is uneven across agencies and departments, and can even vary from one contract to the next. Formal rules not only establish standards, but also signal to contracting agencies and contractors that oversight is a priority. Without rules, staff in contracting agencies often have to figure out how to operate case by case, without the legal benefit or guidance that a law or rule would provide.

Additionally, many contracting agencies do not have their own rules or procedures on contract oversight. While local and state laws can set the stage for basic contract oversight, agencies may need specialized guidance and policies for the programs and services they provide.

Georgia's Department of Audits and Accounts survey, discussed above, found that of the 25 state agencies interviewed, only 36% reported formal procedures and policies for contract monitoring. Only one had written contract oversight policies.³⁵

Similarly, the 2013 Idaho Evaluation Report found that the state lacked formal rules around contract oversight at many levels of state government. The Idaho Code and Administrative Code provided no rules or guidance. Only 46% of state agencies had their own policies and procedures around contracting monitoring. The Division of Purchasing provides agencies with contract guidelines, but the guidance fails to address specifics regarding oversight.³⁶

Another common deficiency is that cities and states often do not have one agency or department to ensure that contracts serve the public interest and that public funds are efficiently allocated to contractors. States that centralize this function have found that the investment more than pays off.

New York's office of the State Comptroller is required by statute to pre-audit contracts. It issued a January 2014 report that showed that this independent and centralized review of proposed state contracts and any subsequent amendments or change orders has saved the state millions of dollars and has not been a significant burden to the process. In 2013, it took the agency only 11.2 days on average to complete a review.³⁷ Importantly, this process can flag issues before contracts are signed instead of after problems occur, when services have been harmed and funds have been spent.

A 2013 state audit found that the Texas Education Agency (TEA) failed to properly oversee its \$462 million testing contract with Pearson, a global education corporation, to provide assessments for Texas public school students. The agency did not have formal policies for monitoring the contract and, as a result, it has been inconsistent in evaluating contractor performance. In fact, the auditor found documentation approving only 23% of deliverables related to test question



SECTOR

Education

MAJOR PROBLEMS

1. Few formal rules about contract oversight in place.
2. Contracts contained inadequate performance requirements and standards.
3. Information revealing non-compliance ignored.
4. Contracting agency delegated oversight to contractors.
5. Contracting agency did not have sufficiently trained contract management staff.

³⁵ Performance Audit Operations Division, "Best Practices in Government: Components of an Effective Contract Monitoring System," Department of Audits and Accounts, July 2003. https://www.dca.ga.gov/housing/housingdevelopment/BestPractices_ContractMonitoring.pdf

³⁶ Office of Performance Evaluations, "Strengthening Contract Management in Idaho," Idaho Legislature, Report 13-02, January 2013. <http://www.legislature.idaho.gov/openpublications/reports/r1302.pdf>

³⁷ New York Office of the State Comptroller, "State Contracts by the Numbers: Longstanding Contract Oversight Authority Serves Taxpayers," January 2014. http://osc.state.ny.us/reports/state_contracts_by_numbers_jan2014.pdf

development, and 77% of test creation deliverables. It is unclear whether other deliverables were approved by the agency, since no documentation could be produced. Additionally, TEA staff that functioned as contract managers had not completed training required by the state.

Furthermore, the contract did not contain “sufficient detail about deliverables and costs,” making it difficult for the agency to determine whether tasks were completed before paying the contractor. If Pearson fails to meet a contract requirement, the contractor, instead of the agency, determines the amount it owes in penalties, undermining the key mechanism that the agency has for holding the contractor accountable. As Texas Senator Wendy Davis (D-Fort Worth) explained at the time, “Texas taxpayers must know they’re getting their money’s worth out of these contracts. Just as important, parents must be certain their children are being accurately tested.”³⁸



SECTOR

City Services

MAJOR PROBLEMS

1. Few formal rules about contract oversight in place.
2. Contracting agency did not have sufficient contract management staff.



In Denver, Colorado, the city auditor found systemic problems in contract oversight provided by the Department of General Services, which manages and controls city-wide

contracts. In August 2014, investigators found that the department had a weak policy on monitoring contracts. For example, the policy lacked critical elements, such as guidelines regarding the type and frequency of monitoring that should occur. Additionally, the department had no position tasked with monitoring contractor performance.³⁹

As a result, there is considerable confusion among city departments about who is responsible for monitoring contracts. Monitoring is inconsistent and the Department of General Services failed to produce relevant documentation when asked by auditors. Without adequate oversight, problems have slipped past the department. For example, one city contractor attempted to bill the city at a higher rate than was in the contract, and requested payment for incomplete work. Another contractor failed to pay \$60,000 for overtime and other payments to its workers between 2010 and 2014.⁴⁰ Neither incident was caught by the Department of General Services.



A 2014 investigation by the Detroit Free Press examined charter school oversight in Michigan, and found that there were no statewide standards for

how the entities in charge of authorizing charter schools, including boards of schools districts, community colleges, and public universities, should monitor a charter school’s performance or under what conditions a charter should be revoked.⁴¹ As a result, oversight of charter schools was widely inconsistent. The Michigan Department of Education conducts site visits only every 2-3 years, and does not have the authority to mandate compliance.⁴² Charter schools in the state operate with little formal oversight, which has enabled a “range of abuses” in the charter system. Charter schools in Michigan have wasted millions of public dollars, school founders and leaders have funneled school funds to themselves, and schools have failed to live up to their promises of student academic achievement.⁴³



SECTOR

Education

MAJOR PROBLEMS

1. Few formal rules about contract oversight in place.

³⁸ Morgan Smith, “State Auditor Finds Testing Contract Lacking,” The Texas Tribune, July 16, 2013. <http://www.texastribune.org/2013/07/16/state-auditor-finds-testing-contract-oversight-lac/>

³⁹ Denver Office of the Auditor, “The Department of General Services’ Contract Administration,” Audit Services Division, City and County of Denver, August 2014. http://www.denvergov.org/Portals/741/documents/Audits%202014/General_Services_Contract_Administration_Audit_Report_08_15_14.pdf

⁴⁰ Ibid.

⁴¹ Jennifer Dixon, “Michigan spends \$1B on charter schools but fails to hold them accountable,” Detroit Free Press, June 22, 2014. <http://www.freep.com/article/20140622/NEWS06/306220096/Michigan-charters-1-billion-taxpayer-dollars>

⁴² Martha Thierry, “Graphic: The goals of Michigan’s charter school law and how Michigan’s charter school structure fails,” Detroit Free Press, June 21, 2014. <http://www.freep.com/article/20140622/NEWS06/140621004>

⁴³ Jennifer Dixon, “Michigan spends \$1B on charter schools but fails to hold them accountable,” Detroit Free Press, June 22, 2014. <http://www.freep.com/article/20140622/NEWS06/306220096/Michigan-charters-1-billion-taxpayer-dollars>

PROBLEM
No.

4

Information revealing non-compliance is ignored.

In some instances, contracting agencies may be aware of problems with a contract, but not act on that information in a timely manner. Even with good practices in place, if an agency fails to implement them, contractors will get away with poor performance and mistakes. As numerous examples show, failure to address mistakes early in the contract can lead to costly or even irreversible damage to contracted programs and services. When a contracting agency becomes aware of problems, it must set up a plan to bring the contractor into compliance, including but not limited to levying penalties or, in the worst cases, cancelling the contract. The following examples show the harmful consequences of failing to act on information indicating malfeasance.

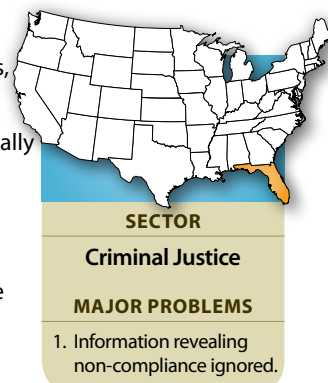


Florida has long contracted with private companies to operate the state's juvenile detention facilities. In 2004, Youth Services International (YSI) began a \$9.5 million contract to run Thompson Academy, a juvenile prison. In the first months of the contract, multiple instances of poor performance and abuse surfaced, including a youth trying to escape the facility, a staff member slamming a 15-year old boy's head into a wall, another staff member physically assaulting two other inmates, and bug infestations in the cafeteria.⁴⁴ The state's top monitor at the prison called for a special audit team to review the facility. The 2004 investigation found that the facility was understaffed, existing staff were not trained properly, the facility was dirty,

and complaints from the youth living there were ignored. Shortly after the report, the company complained about the monitor's practices including unannounced visits, demanding required documentation, and encouraging YSI employees to call him with concerns. The Department of Juvenile Justice (DJJ) removed the monitor from his position and he was fired two months later.⁴⁵

Even though the state monitored the contractor and had ample evidence of problems, including some that put the health and safety of youth at risk, the state failed to hold the contractor accountable. Even though the monitor told the state that he "emphatically recommended that the facility be closed," the facility remained open.⁴⁶ In the nine years since that original contract, YSI received eight more contracts with Florida to run juvenile facilities, despite evidence that facilities were plagued with problems, including terrifying incidents of youth abuse in recent years.⁴⁷ For example, there were 23 reported incidents of excessive force by staff at YSI facilities in Florida in 2012.⁴⁸

In 2012, DJJ hired a company to conduct a Procurement and Contract Management Assessment, to review the agency's contracting practices.⁴⁹ Following the Assessment, DJJ released its Roadmap to System Excellence in August 2013, which incorporated many of the Assessment's findings, including strengthening contract monitoring and oversight.⁵⁰ In August 2014, the state finally canceled one of its YSI



⁴⁴ Chris Kirkham, "Florida's Lax Oversight Enables Systemic Abuse At Private Youth Prisons, Huffington Post, October 23, 2013. <http://projects.huffingtonpost.com/prisoners-of-profit-2>

⁴⁵ Ibid.

⁴⁶ Chris Kirkham, "Florida's Lax Oversight Enables Systemic Abuse At Private Youth Prisons, Huffington Post, October 23, 2013. <http://projects.huffingtonpost.com/prisoners-of-profit-2>


⁴⁷ Ibid.


⁴⁸ Chris Kirkham, "Private Prison Empire Rises Despite Startling Record Of Juvenile Abuse," Huffington Post, October 22, 2013. <http://projects.huffingtonpost.com/prisoners-of-profit>

⁴⁹ North Highland Worldwide, "Procurement and Contract Management Assessment Report, Florida Department of Juvenile Justice, October 2, 2012. <http://www.djj.state.fl.us/docs/roadmap-endorsements/procurement-and-contract-management-assessment-report.pdf?sfvrsn=0>

⁵⁰ Florida Department of Juvenile Justice, "Roadmap to System Excellence," August 1, 2013. http://www.djj.state.fl.us/docs/town-hall-meetings/roadmap-to-system-excellence_8-1-2013.pdf?sfvrsn=0

contracts, for operation of the Santa Rosa facility, after the company failed to correct deficiencies involving safety and security, behavioral interventions, and appropriate incident reporting.⁵¹ Stakeholders are watching to see if the agency is truly improving oversight of its juvenile justice contracts after years of failure.

 **The 2014 investigation by the Detroit Free Press**, discussed above, also revealed that the boards of schools districts, community colleges, and public universities that authorize charter schools and oversee the schools, were slow to close poor performing schools.⁵² Even though authorizers had ample evidence the schools were not providing quality education to students, they failed to act on the information and close the schools. For example, two of the oldest charter schools in Detroit, Hope Academy and Commonwealth Community Development Academy, ranked in the first percentile and third percentile respectively in the 2012-13 school year, meaning they were among the worst performing schools in the state. Eastern Michigan University is the authorizer for these two schools, and has publicly acknowledged their failure. But in 2013, the Hope Academy’s charter came up for renewal, and the university again renewed its charter.⁵³



SECTOR
Education
MAJOR PROBLEMS
1. Information revealing non-compliance ignored.

PROBLEM No. 5 Cities and states delegate oversight to contractors.

Remarkably, some cities and states actually delegate responsibility for contract oversight itself to contractors. This can happen in a couple ways. First, government contracting agencies may take a back seat in determining performance measures, and allow the contractor to determine the standards for which they will be held accountable. The government may simply not have enough staff with the expertise to develop effective performance standards. This creates an obvious conflict of interest where the contractor can set performance criteria that are self-serving, instead of criteria that ensure programmatic goals are met.



SECTOR
Health and Human Services
MAJOR PROBLEMS
1. Contracting agency delegated oversight to contractors.
2. Contracts contained inadequate performance requirements and standards.

In 2012, a Tampa Bay Times investigation revealed that Florida’s Division of Blind Services had little oversight over contractors that provided support services to blind and visually-impaired residents. Contractors, instead of the division, decided the performance criteria and penalties contained in contracts. Furthermore, the agency did not comply with law that required the state to oversee each contractor through yearly unscheduled visits. The state performed an unscheduled visit for only one of the 16 contractors in 2011. Other contractors were only checked on by phone.

Former employees of the Division expressed concerns, and a contract manager was fired in 2010 after criticizing the lack of meaningful oversight.⁵⁴ Lax oversight provisions in contracts and in practice meant that contractors were able to maximize their profit without meeting meaningful performance requirements. For example, contractors were paid based on their plans for service, instead of the actual services provided to blind residents. Contractors were required to keep track of time spent providing services, but not actual results and outcomes.⁵⁵

⁵¹ Margie Menzel, “DJJ cancels contract with controversial provider,” Tallahassee Democrat, August 31, 2014. <http://www.tallahassee.com/story/news/local/state/2014/08/31/djj-cancels-contract-controversial-provider/14893897/>

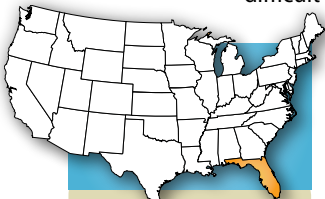
⁵² Jennifer Dixon, “Michigan spends \$1B on charter schools but fails to hold them accountable,” Detroit Free Press, June 22, 2014. <http://www.freep.com/article/20140622/NEWS06/306220096/Michigan-charters-1-billion-taxpayer-dollars>

⁵³ Jennifer Dixon, “Michigan spends \$1B on charter schools but fails to hold them accountable,” Detroit Free Press, June 22, 2014. <http://www.freep.com/article/20140622/NEWS06/306220096/Michigan-charters-1-billion-taxpayer-dollars>

⁵⁴ Brittany Alana Davis, “Critics: Florida Oversight Lax for Contractors Like LightHouse Providing Services to the Blind,” Tampa Bay Times, November 11, 2012. <http://www.tampabay.com/news/business/critics-florida-oversight-lax-for-contractors-like-lighthouse-providing/1261139>

⁵⁵ Brittany Alana Davis, “Critics: Florida Oversight Lax for Contractors Like LightHouse Providing Services to the Blind,” Tampa Bay Times, November 11, 2012. <http://www.tampabay.com/news/business/critics-florida-oversight-lax-for-contractors-like-lighthouse-providing/1261139>

Second, governments may actually hire private contractors to oversee contracts or even to oversee their own work. While third-party monitoring can be helpful in supplementing robust government oversight, it should never replace it. By abdicating oversight to a contractor, the government risks a “fox guarding the henhouse” dynamic, where one contractor with different goals and priorities than the government is determining whether another contractor is doing its job. Outsourcing is complicated. Outsourcing oversight makes it extremely difficult to assess whether contracts are meeting the public’s needs.



SECTOR

Health and Human Services

MAJOR PROBLEMS

1. Contracting agency delegated oversight to contractors.
2. Few formal rules about contract oversight in place.
3. Contracting agency did not have enough contract management staff.



In the 1990s, Florida outsourced child welfare services, including foster care and adoption.

The contracting agency, the Department of Children and Families (DCF) experienced several of the issues discussed in this report, including a lack of formal procedures for monitoring contractors and the loss of key contract monitoring staff. In 2005 alone, DCF lost 24 experienced contract monitoring staff, out of 68 positions. These issues contributed to ineffective oversight by the state, and the subsequent decision to outsource contract oversight responsibilities.⁵⁶

The first attempt to outsource oversight occurred in 2005, when the state outsourced financial monitoring of all lead contractors statewide. This attempt failed, as the private monitor violated contractual requirements, including using unqualified staff to perform monitoring duties, inadequately documenting findings, and not completing monitoring tasks. The next year, the state established a 3-year pilot program to outsource both financial and programmatic oversight for two lead contractors. Monitoring reports were late and the contractor was unable to complete the required number of case reviews. At the end of the 3-year period, the state brought program oversight back in-house at the recommendation of both DCF’s internal auditor and the Legislature’s oversight office.⁵⁷

In one of the first in-depth studies about outsourced contract oversight, Drs. Kaifeng Yang and Gary Vanlandingham examined Florida’s experiment to outsource oversight of its privatized child welfare services.⁵⁸ They found that the effort failed to meet most of the criteria they developed to determine whether oversight can be successfully outsourced. Importantly, the researchers note that some problems may be inherent to outsourcing this function. In other words, it may be impossible to effectively outsource the responsibility for contract oversight.

Likewise, in its evaluation of this experiment, the Florida Office of Program Policy Analysis and Government Accountability noted several conclusions:⁵⁹

- ▶ Outsourced oversight weakens the relationship between the agency and contractors
- ▶ Outsourced oversight reduces the agency’s firsthand knowledge about how contractors deliver services, the quality of these services, and how well they are meeting the need of children in state care
- ▶ Outsourced oversight creates an administrative layer between the agency and contractors and hinders communications between the two
- ▶ Outsourcing oversight reduces the agency’s control over timing, quality, and scope of contract oversight

⁵⁶ Kaifeng Yang and Gary Vanlandingham, “How Hollow Can We Go? A Case Study of the Florida’s Efforts to Outsource Oversight of Privatized Child Welfare Services,” *The American Review of Public Administration*, June 2011.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ Florida Office of Program Policy Analysis and Government Accountability, “Outsourced Oversight for Community-Based Care Produced Benefits But Substantive Challenges,” Report No. 09-09, February 2009.



SECTOR

Security

MAJOR PROBLEMS

1. Contracting agency delegated oversight to contractors.
2. Contracts contained inadequate performance requirements and standards.



On the federal level, the use of private contractors to perform background checks and then oversee their own work has come under recent scrutiny. Beginning in 2008, a contractor, USIS, submitted at least 665,000 background investigations to the Office of Personnel Management (OPM) that had not been properly reviewed and were incomplete. In 2014, the Department of Justice (DOJ) accused the company of falsely representing background checks as being complete, or “dumping” or “flushing” them, to maximize the amount of money they made. DOJ believes that 40% of cases submitted to OPM since 2008 were the result of “dumping.”⁶⁰ During this time period, USIS was given a second contract to review the quality of its own background checks.⁶¹ The contracts contained incentives for the company to defraud the government to increase revenues, but no incentive to report its own misdeeds. This “fox guarding the henhouse” oversight structure gave the agency false security that background checks were being performed accurately. Fortunately, earlier this year, OPM announced that it would take all oversight responsibility back in-house and ensure that the agency was performing contract monitoring duties.⁶²

If contractors are to perform critical public services, like background checks for important positions, the government must be absolutely sure the contractors are doing their job. The consequences of sloppy work are too grave, and in this case, put national security at risk. USIS was the contractor responsible for approving the background checks for both National Security Agency leaker Edward Snowden and Aaron Alexis, the man who fatally shot 12 people and injured three at the Washington DC Navy Yards in 2013.⁶³

Recommendations for Improving Contract Oversight

As the examples and research in this report show, the failure to adequately oversee contracts can have grave consequences. Lack of oversight opens the door for contractors to overcharge, skimp on services, or even flat-out fail to deliver on contractual obligations, ultimately leaving the public without critical public services and programs. If, after careful analysis, cities and states decide to outsource, they can mitigate many risks with robust and effective contract oversight. While specific tasks may vary contract to contract, the following recommendations provide a framework for effective contract monitoring.

Incorporate Oversight Costs Into Any Decision to Outsource.

Many cities and states fail to consider the cost of contract oversight when deciding whether to outsource a public service. Research shows that, “contracting is inappropriate when the combined contract price and cost of contract management exceeds in-house production.”⁶⁴ When contract oversight costs are not considered, cost savings are impossible to estimate. Numerous studies, including academic research and research from the Government Finance Officers Association, show that the cost of contract administration is typically around 20% of the price of the contract.⁶⁵ This cost can often cancel out any savings anticipated from outsourcing.

⁶⁰ Jack Moore, “Background Check Firm in Hot Water for ‘Flushing’ Records,” Federal News Radio, January 23, 2014. <http://www.federalnewsradio.com/1069/3548156/Background-check-firm-in-hot-water-for-flushing-records>

⁶¹ Christian Davenport and Jia Lynn Yang, “Report Says Security Background Check Company Received \$16 million in Awards,” The Washington Post, February 11, 2014. http://www.washingtonpost.com/business/economy/report-says-security-background-check-company-received-16-million-in-awards/2014/02/11/537f5e0e-932f-11e3-84e1-27626c5ef5fb_story.html

⁶² Ibid.

⁶³ Jack Moore, “Background Check Firm in Hot Water for ‘Flushing’ Records,” Federal News Radio, January 23, 2014. <http://www.federalnewsradio.com/1069/3548156/Background-check-firm-in-hot-water-for-flushing-records>

⁶⁴ Jonas Prager, “Contracting Out Government Services: Lessons From the Private Sector,” Public Administration Review, vol. 54, no. 2, March-April 1994.

⁶⁵ Janet Rothenberg Pack, “Privatization and Cost Reduction,” Policy Sciences, vol. 22, no. 1, March 1989; Government Finance Officers’ Association, “Cost Analysis and Activity-Based Costing,” 2004, Chapter 8: Make-vs.-Buy Decisions; Janice Fine, Patrice Mareschal, et. al., “Overlooking Oversight: A Lack of Oversight in the Garden State is Placing New Jersey Residents and Assets at Risk,” Rutgers University Department of Labor Studies and Employment Relations, March 2014; Mary K. Marvel and Howard P. Marvel, “Outsourcing Oversight: A Comparison of Monitoring for In-House and Contracted Services,” Public Administration Review, May-June 2007.

All cost benefit analyses used to determine whether to outsource should include the cost of contract oversight. Staff time and materials are real costs that the government must bear, and incorporating these costs at the outset can ensure that the contracting agency has allocated sufficient resources for effective contract management.

As one scholar concludes, “More intense monitoring is called for when the contracted good is vital and service disruption has substantial deleterious consequences. Similarly, monitoring is needed more when the contractor’s incentive and ability to cheat is powerful. Hence, the cost of monitoring can be significant.”⁶⁶ Public services are certainly vital and, as examples in the previous section illustrate, contractors may have an incentive to game the contract. Local and state governments must not give them that ability.

Include Clear Performance Standards, and Penalties for Non-Compliance in the Request for Proposals (RFPs) and Contract.

The RFP and the contract are important and, in the case of the contract, legally binding documents that set performance standards, expected outcomes, deliverables, and required services levels. Making these terms explicit ensures that the contracting agency and the contractor share an understanding of what is required to adequately perform the work. Importantly, they also determine what the contracting agency will actually monitor to ensure compliance with the contract. Specific expectations mean the contracting agency can better monitor performance and decrease the likelihood of contract problems.

In addition to performance standards, the contract should also detail how the contract will be monitored, including scheduled and unscheduled inspections, information the contractor will provide, and any reporting requirements. Additionally, the contract should specify clear penalties for non-compliance. This not only deters contractors that may try to take short cuts, but limits confusion and preempts arguments if the contractor fails to live up to expectations.

Establish Formal Contract Monitoring and Oversight Rules.

Cities and states should have laws and/or rules and procedures related to contract oversight. These rules should clearly specify who is responsible for various aspects of oversight before, during, and after a contract term, and requirements for contract oversight. Additionally, contracting agencies should adopt rules that provide additional guidance related to their specific mission -- for example, oversight of a prison contract may be different than oversight of a social services contract.

While auditing is an important aspect of contract oversight, by the time a major independent contract audit takes place, serious problems have often already occurred. Real-time oversight of contracts, instead of an after-the-fact review, can prevent or at least decrease the severity of contract problems. Contract oversight rules can require contracting agencies to provide ongoing monitoring, in addition to audits conducted by auditing professionals.

Scholarly research supports this recommendation. Professor Janet Rothenberg Pack of the Wharton School of Business at the University of Pennsylvania found that comprehensive oversight consists of “real interaction usually involv[ing] daily meetings between liaison personnel of the government and the contractor.” She explains that this type of interaction is different than the “far more common routine monitoring that generally consists of reviewing periodic activity reports submitted by the contractor, spot checks of performance, and receiving and transmitting complaints about performance.”⁶⁷ Rules can specify the type of monitoring required by contracting agencies, and incorporate best practices.

⁶⁶ Jonas Prager, “Contracting Out Government Services: Lessons From the Private Sector,” *Public Administration Review*, vol. 54, no. 2, March-April 1994.

⁶⁷ Janet Rothenberg Pack, “Privatization and Cost Reduction,” *Policy Sciences*, vol. 22, no. 1, March 1989.

The National State Auditor's Association similarly advises that "without a sound monitoring process, the contracting agency does not have adequate assurance it receives what it contracts for." They recommend that a contracting agency should require the following activities:⁶⁸

- ▶ Track budgets and compare invoices and charges to contract terms and conditions
- ▶ Ensure that deliverables are received on time and document the acceptance or rejection of deliverables
- ▶ Withhold payments to vendors until deliverables are received
- ▶ Retain documentation supporting charges against the contract
- ▶ After contract completion, evaluate the contractor's performance on the contract against a set of pre-established, standard criteria and retain this record of contractor performance for future use

Provide Adequate Resources, Including Staff, Training, and Funding, to Oversee Every Contract.

Substantial time and personnel are necessary to adequately monitor contracts. If government agencies are unable to dedicate sufficient personnel and time to overseeing contracts, they should not outsource the service. The National State Auditor's Association recommends that once a decision to contract has been made, the contracting agency should identify the specific staff responsible for monitoring contractor performance, including a contract manager with the authority, resources, and time to monitor the contract, and ensure that sufficient staff is available to handle contract oversight.⁶⁹

All government staff involved in contract oversight, including formal contract managers as well as other positions that may include this responsibility or act as de facto contract managers, should receive training. It is recommended that governments have dedicated contract managers, to limit confusion and ensure consistent oversight. Well-qualified contract managers should have substantive knowledge of their agency's service and mission as well as contract management skills. Managing contractors requires a different skillset than managing in-house employees, including specialized knowledge about contracting best practices, applicable rules and laws around contracting, incentive structures, and how to manage costs and performance of the contractor.⁷⁰

Some states have developed formal contract training requirements. For example, Texas has codified training requirements for all personnel performing contract management duties.⁷¹ Contract management personnel must complete training and formal certification to provide them with the information and skills necessary to:

- ▶ Fairly and objectively select and negotiate with the most qualified contractor
- ▶ Establish prices that are cost-effective and that reflect the cost of providing the service
- ▶ Include provisions in a contract that hold the contractor accountable for results
- ▶ Monitor and enforce a contract
- ▶ Make payments consistent with the contract

⁶⁸ National State Auditor's Association, "Best Practices in Contracting for Services," June 2003.

⁶⁹ Ibid.

⁷⁰ Jonathan D. Breul, "Practitioner's Perspective—Improving Sourcing Decisions," *Public Administration Review*, December 2010.

⁷¹ Tex. Government Code §2262.053 (2013)

- ▶ Comply with any requirements or goals contained in the state contract management guide
- ▶ Use and apply advanced sourcing strategies, techniques, and tools

Similarly, Florida recently instituted contract manager training. Beginning on December 1, 2014, each contract manager responsible for contracts greater than \$100,000 is required to complete training to become a Florida Certified Contract Manager.⁷²

Finally, the staff and materials required for contract oversight cost money, and governments must ensure that contracting agencies are allocated sufficient funds for this purpose. Research confirms that government financial commitment to contract oversight is critical to success.⁷³ Unfortunately, many cities and states do not provide contracting agencies the resources to perform quality contract oversight.

One way of ensuring adequate funding for contract oversight is to allocate money for oversight when each contract is signed. For example, if a city signs a contract for \$1 million, the funding they should allocate from their budget for that contract would be the \$1 million to pay the contractor for services rendered, plus the appropriate amount needed for monitoring and oversight. Contracts should only be signed if the contracting agency can allocate both the actual contract costs and the costs to manage that contract. There are other methods for ensuring contract oversight funding, such as setting up a contract oversight budget for a contracting agency and ensuring a permanent mechanism to fund it each year. The important point is having a way to ensure contract oversight is funded. Regardless of the method chosen, if local and state governments are serious about contract oversight, they must allocate funds for that purpose. Contracting agencies may have the best intentions, but they cannot provide adequate oversight without sufficient resources.

Do Not Outsource Contract Oversight.

Cities and states should not outsource contract oversight responsibilities to third-party contractors. This practice introduces additional confusion into the process, and delegates crucial functions to contractors that may have different priorities and interests than the government. While it may be appropriate to involve independent monitors or auditors to supplement robust government oversight, the contracting agency must always conduct and be ultimately responsible for contract oversight.

In Spring 2014, the New York City Comptroller rejected a contract that would have outsourced the selection and oversight of the city's IT contractors to one company. As the comptroller explained, "At the core of this contract is an unproven service model which provides no adequate fail-safe if the system is unsuccessful."⁷⁴ The city would have lost its direct relationship with contractors and its ability to hold contractors accountable if it had accepted this contract.

Additionally, cities and states should never allow a contractor to monitor their own work. Contractors that both provide a service and evaluate their own work are inherently conflicted. Likewise, contracting agencies must set their own performance standards, deliverables and timelines for contracts. Allowing a contractor to set these terms creates a similar conflict. Following best practices regarding staffing and resources can help ensure that the contracting agency is not dependent on contractors for these critical functions.

⁷² Florida Department of Management Services, "Florida Certified Contract Manager," 2014. http://www.dms.myflorida.com/business_operations/state_purchasing/public_procurement_professional_development/certifications_for_the_public_procurement_professional/florida_certified_contract_manager

⁷³ Barbara Romzek and Jocelyn Johnson, University of Kansas, "Effective Contract Implementation and Management: A Preliminary Model," *Journal of Public Administration and Theory*, July 2002.

⁷⁴ New York City Comptroller, "Stringer Rejects \$30 Million IT Contract with Computer Aid, Inc. that Outsources Oversight and Accountability to Third-Party Vendor, Press Release, March 20, 2014. <http://comptroller.nyc.gov/newsroom/stringer-rejects-30-million-it-contract-with-computer-aid-inc-that-outsources-oversight-and-accountability-to-third-party-vendor/>

Conclusion

State and local governments may believe that outsourcing vital public services means they can save money and free themselves of the burden of managing those services, but research and hard experience has shown the problems that can arise when contracting entities do not devote adequate staff and funding to managing contracted services. Governments considering outsourcing should factor these costs in at the outset, to avoid expensive and dangerous problems down the road.

Appendix

Additional Selected Examples of Oversight Problems in Government Contracting

Criminal Justice

October 27, 2014: New York – Oversight hearing announced amid concerns about jail healthcare

<http://www.newsday.com/news/region-state/lawmaker-nyc-jail-health-care-needs-oversight-1.9552271>

A city councilman called for an oversight hearing to examine healthcare services at Rikers Island and other city jails provided by Corizon after the AP reported on 15 troubling inmate deaths.

October 25, 2014: Oklahoma – Delayed action on inmate violations at state halfway houses

http://www.enidnews.com/news/local_news/inmate-violations-plagued-state-halfway-houses/article_10973e82-5cb9-11e4-847b-ef520867cc06.html

Lack of oversight allowed serious violations to take place in the state's two largest halfway houses, run by Avalon Correctional Services Inc., for three years before the state removed inmates from one and demanded a corrective plan for the other.

August 15, 2009: Florida – Private Prisons lacking oversight

<https://www.prisonlegalnews.org/news/2009/aug/15/floridas-private-prisons-still-lack-meaningful-oversight/>

OPPAGA issued a report stating that oversight of private prisons by DMS has strengthened but is still weak in many areas. DMS failed to address problems identified by FDOC reviews such as inoperable alarms and escape sensors, lost or never executed lab tests, unsanitary conditions, and drugs and weapons.

December 24, 2008: Florida – Private Prison oversight

<http://www.oppaga.state.fl.us/Reports/pdf/0871rpt.pdf>

Office of Program Policy Analysis & Government Accountability (OPPAGA) report on the Department of Management Services' (DMS) lack of private prison oversight. DMS did not establish performance standards for the private prisons' inmate education, vocation, or treatment programs.

Education

October 10, 2014: Albuquerque, New Mexico – Two agencies failed to oversee a NM charter school

<http://krqe.com/2014/10/10/state-agencies-battle-for-control-of-charter-school-oversight/>

Two state agencies, the Public Education Commission (PEC) and the Public Education Department (PED), failed in their oversight of and response to problems surrounding Southwest Learning Centers and SAMS Academy. Both agencies overlooked issues such as the high salary of the schools' founder and conflicts of interest.

October 7, 2014: Iowa – Board of Regents for public universities strengthen oversight of Deloitte's expenses

<http://www.press-citizen.com/story/news/education/university-of-iowa/2014/10/07/regents-consultant-no-specifics-on-job-cuts/16847297/>

Deloitte will be subjected to tighter oversight from the state's public universities after it was revealed that the consulting firm was reimbursed \$366,000 for expenses submitted without receipts.

June 18, 2014: Broward County and Palm Beach County, Florida – Charter schools

<http://interactive.sun-sentinel.com/charter-schools-unsupervised/>

Lack of oversight allowed anyone to open or run charter schools, regardless criminal records or a history of operating failed schools. As a result, public education money was spent frivolously on schools that were closed only months later.

May 12, 2014: Pennsylvania – Auditor slams oversight on charter schools

<http://mobile.philly.com/news/?wss=/philly/education&id=258969911>

State Auditor called charter schools in the state "a mess" and called for the creation of an independent charter oversight board, restoring charter reimbursements for school districts, and shifting the burden of financing cyber schools from school districts to the state.

May 2, 2014: Philadelphia, Pennsylvania – Editorial on oversight problems with city charter schools

http://articles.philly.com/2014-05-02/news/49581193_1_charter-enrollment-budgets

School district revoked the charter for Walter Palmer Leadership & Learning Partners Charter School due to low academic performance and unsound financial policies and actions. Students perform at the bottom 10 percent and charged the district \$770,000 for students who did not attend the school.

January 2013: Ohio – Policy Matters Ohio report on charter school oversight

http://www.policymattersohio.org/wp-content/uploads/2013/01/CharterClosure_Jan2013.pdf

Report found that despite the strictness of the state's charter closure law, the law is replete with loopholes. Loopholes in the law allow charter management organizations (CMOs) to keep failing schools open despite orders to close.

September 19, 2011: Florida – Charter School oversight

<http://www.miamiherald.com/news/special-reports/cashing-in-on-kids/article1939199.html>

Charter schools in the state operate with little oversight and are given more flexibility than public schools giving for-profit management companies total control to operate as they wish. School districts have their hands tied since the state prioritizes charter promotion rather than oversight.

Health/Human Services**October 29, 2014: Minnesota – MNSure found to lack some accounting controls**

<http://www.startribune.com/business/280650642.html>

The state's legislative auditor revealed that the MNSure insurance exchange has some internal control weaknesses. An audit found that MNSure did not execute a contract amendment or appropriately authorize \$925,458 worth of additional marketing work until after the actual work was completed.

October 12, 2014: California – Health Exchange awarded millions in no-bid contracts

<http://marketbusinessnews.com/covered-california-awards-millions-bid-contracts/35493>

Covered California awarded no-bid contracts, valued at around \$370 million, without oversight or competitive bidding. Some of the no-bid contracts were also awarded to a consulting firm with ties to the agency's director.

August 18, 2014: Louisiana – Failed oversight of privatized Medicaid

http://www.nola.com/politics/index.ssf/2014/08/gov_bobby_jindals_medicaid_pri_1.html

The auditor's review of an annual report of the state's Medicaid privatization found that the report lacked important financial information. In addition, the report presented excellent performance reviews uncorroborated by the data.

July 14, 2014: Maryland - Ineffective oversight of children group home

http://articles.baltimoresun.com/2014-07-14/news/bs-md-lifelinernxn-20140713_1_damaud-martin-founder-randall-martin-jr-child-advocates

Despite long standing financial and regulatory problems, the state continued to give group home contractor LifeLine millions in taxpayer dollars. Regulators' oversight was so weak that it was not until Damaud Martin, a boy at the group home, died that all children were removed.

May 18, 2014: Maryland and Texas - Medicaid contracting

<http://www.fiercehealthpayer.com/antifraud/story/medicaid-contractors-need-better-oversight/2014-05-18>

Audit of Maryland's Medical Care Programs Administration showed that the agency failed to monitor Medicaid vendors responsible for billing verification and enrolling new applicants. In Texas, the Attorney General's office sued Xerox to recoup millions of dollars that Xerox approved for unnecessary care.

March 2014: Michigan - Audit of Families First of Michigan Program from DHS

http://audgen.michigan.gov/finalpdfs/13_14/r431278413.pdf

Audit of Families First of Michigan (FFM) Program found that the Department of Human Services (DHS) did not always perform compliance case records reviews of FFM Program contracted agencies. DHS did not always review FFM Program staff training records.

July 5, 2013: Florida - Medicaid Managed Care oversight

<http://www.kaiserhealthnews.org/stories/2013/july/05/medicaid-managed-care-states-quality.aspx>

Patient advocates highlight need for oversight of private Medicaid plans. Since 2006, doctors received delayed payments, patients complained about being denied access to services, and there is insufficient data on quality of care.

November 27, 2012: California - Department of Public Health contract oversight failure

<http://blogs.sacbee.com/capitolalert/latest/2012/11/state-auditor-rips-public-health-contracts-oversight.html>

Audit exposed weak contract oversight of the state's Department of Public Health which mismanaged public funds. Despite deciding to end the contract with the San Diego State University Research Foundation, they allowed the foundation to perform services for 10 months without a contract.

March 21, 2011: Florida - Child Protective Services

http://articles.sun-sentinel.com/2011-03-21/news/fl-dcf-editorial-dl-20110321_1_dcf-community-based-care-child-abuse

Oversight powers of the Department of Children & Families are weakened after contractors lobbied state lawmakers for more favorable regulations. Much of the fiscal and quality assurance oversight duties have been contracted out to private firms.

Information Technology**October 7, 2013: Boston, Massachusetts - Weakened oversight of IT contracts**

<http://www.bostonglobe.com/business/2013/10/06/deloitte-projects-plagued-with-troubles-around-country/gbNRcQg6yKHDS4yGVxh1RM/story.html>

The state's Department of Revenue fired Deloitte for falling behind on a \$116 million tax system overhaul. The firm was also found to be two years behind schedule and \$6 million over budget in delivering a system to manage unemployment claims.

August 1, 2013: Pennsylvania - Department of Labor & Industry ends IBM contract, little oversight

<http://www.informationweek.com/applications/pennsylvania-ends-troubled-contract-with-ibm/d/d-id/1111004>

After an independent study conduct by Carnegie Mellon University, the state's Department of Labor & Industry decided not to renew their contract with IBM. The contracted project was an unemployment compensation system which was found to be \$60 million over budget and 42 months behind schedule.

May 31, 2012: New York, New York - Hewlett-Packard

<http://www.nydailynews.com/new-york/controller-john-liu-hewlett-packard-fleeced-city-163-million-article-1.1087280>

Audit of lead contractor Hewlett-Packard's 911 system overhaul revealed that city officials did little to address HP's cost overruns, delayed completion of projects, and overpaid clerical assistants.

Transportation

October 9, 2014: Michigan – Audit reveals lax oversight of Detroit parking contractor

<http://www.freep.com/story/news/local/michigan/detroit/2014/10/09/detroit-parking-audit/16939873/>

Audit of Detroit's parking department found that the department failed to monitor Park Rite-Detroit, the company that manages its parking garages. Failed oversight resulted in Park Rite co-mingling personal funds with parking department revenue and overbilling the department \$6,000.

May 2013: Hawaii – Audit on oversight of the Department of Transportation's Airports Division's procurement practice

<http://files.hawaii.gov/auditor/Reports/2013/13-04.pdf>

Audit revealed that the DOT's Airports Division handed contract oversight and management responsibilities to contractors. The reliance on contractors to regulate themselves has led to cost overruns, time delays, and procurement violations.

July 16, 2009: Houston, Texas – City hires consultant for light-rail contract oversight

<http://www.texaswatchdog.org/2009/07/metro-lacks-expertise-to-manage-light-rail-project-hired-2400day-consultant-who-is-associate-of-metro-ceo/>

Houston outsourced oversight of its light-rail contract through a non-competitively bid contract with Clyde H. Garrison Jr., a former colleague of Metro CEO Frank J. Wilson. Garrison stands to gain \$500,000 within a year and a half; the contract pays him \$300 an hour.

Water and Utilities

April 23, 2014: Clackamas County, Oregon – Sewer Department Director fired over improperly awarding contracts

http://www.oregonlive.com/clackamascounty/index.ssf/2014/04/investigator_finds_impropriety.html

Investigation led to the firing of former county sewer department head for improper contracting practices. The department awarded contracts without competitive bidding, split contracts to avoid board oversight, and misrepresented reasons for a contract amendment to the board.

February 2014: Maryland – Audit: Prince George's County energy performance contracts

<http://www.ola.state.md.us/Reports/Schools/PGCPS14.pdf>

Audit of Prince George's County Public Schools (PGCPS) revealed that the county's lack of oversight led to cost overruns. Auditors discovered that energy service contractors improperly increased invoiced amounts which the county paid even though the costs were not explained by the contractors or presented to the county Board for approval.

Other

July 11, 2014: Florida – Department of Economic Opportunity

<http://www.floridatoday.com/story/opinion/columnists/syndicated/2014/07/11/paula-dockery-scotts-signature-agency-mess/12482699/>

The Department of Economic Opportunity failed in providing proper contractor oversight, accountability, and transparency. The agency downplayed problems with the launch a \$63 million website that prevented Floridians from receiving unemployment benefits.

January 26, 2014: Glendale, Arizona – Lack of oversight in Glendale's consulting contracts, lets millions slip away

<http://www.azcentral.com/story/news/local/glendale/2014/04/07/glendale-contract-oversight-lax/7407397/>

A review of the city's consulting contracts found that the city spent millions of dollars on contracts without bids or City Council oversight. A consultant was paid \$125,000 without a contract on file and the city spent over \$35 million on contracts in two years that were never reviewed by the Council.

January 7, 2014: Frankfort, Kentucky – Plumbers, electricians, general services

http://apps.auditor.ky.gov/Public/Audit_Reports/Archive/2013CityofBarbourvilleexamination-PR.pdf

Auditors discovered that lax controls and oversight led to financial mismanagement and abuses.

December 11, 2013: Frankfort, Kentucky – Kentucky Retirement Systems

http://apps.auditor.ky.gov/Public/Audit_Reports/Archive/2013KYRetirementSystems-PR.pdf

Audit found that Kentucky Retirement Systems failed to monitor contracts and did not have a central listing system in place to track all contracts. Auditors found that the state paid \$171,197 to two companies with expired contracts.

February 4, 2011: National – Federal contract oversight

<http://www.publicintegrity.org/2011/02/04/2154/lack-contract-oversight-puts-billions-risk>

Government Accountability Office (GAO) found that federal agencies struggle to manage contractors, which exposes billions of taxpayer dollars to fraud and mismanagement.

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Credits

ITPI thanks Kerry Korpi for her thoughtful edits and comments.

Design and layout by Terry Lutz.