



WHITE
PAPER

Outsourcing Transit Management



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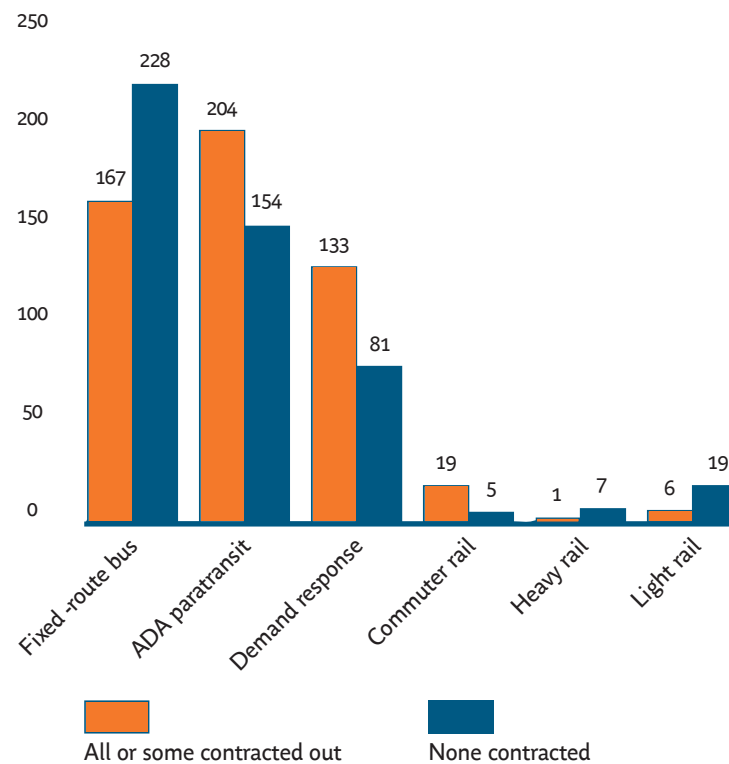
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1 FORWARD

In the United States, the outsourcing of public transit services is widespread. That trend is likely to intensify as transit agencies continue to contend with financial issues, market forces, and technology changes. Approximately 61% of the 463 transit agencies that responded to a recent survey from the U.S. Government Accountability Office (GAO) indicated that they contract out some or all of their operations.¹ The two types of transit service that agencies were most likely to outsource to private providers were Americans with Disabilities Act (ADA) paratransit and demand response services.

Number of transit agencies



▶ Number of Surveyed Transit Agencies That Do and Do Not Contract Services, by Mode

<https://www.gao.gov/assets/660/658171.pdf>

Source: GAO survey, April 2013

1 U.S. Government Accountability Office GAO-13-782, September 2013



Likewise, about half of the 817 agencies that submitted data for a 2015 Federal Transit Administration (FTA) study reported that they outsource at least partially. While 411 reported that they do no contracting, the remaining 50% were split almost evenly between those that contract all their services and those that contract a portion.²

No matter the type of service – whether fixed route, demand response, or ADA paratransit – the most common reason agencies choose to outsource is to reduce costs. Other factors agencies cited for contracting included:

- Needing help to start up a new service
- A desire to establish increased operating efficiency
- An intent to provide more flexible service to passengers

The most prominent reason agencies reported for choosing to keep operations in-house was a preference for maintaining control over operations. Some non-contracting agencies also decided there was no compelling reason to change their current practices, or they determined that outsourcing would not provide a cost benefit.³

Contracting is not a “one-size-fits all” proposition.⁴ Properly executed, strategic contracting can improve transportation quality and lead to successful outcomes.⁵ But, each individual agency must thoroughly analyze its current system and define its future goals before deciding whether to contract, determining which services to contract, and drafting the terms of the outsourcing agreement.

So, where do you start? Is this the right path for you, your agency, your community? Join us, as we partner with Linda Watson, an experienced public transportation leader, to take a deeper dive into what it means to outsource your transit management and operations.

2 A Bid for Better Transit: Improving Service with Contracted Operations. Transit Center/Eno Center for Transportation, September 2017.

3 GAO-13-782

4 Ibid.

5 A Bid for Better Transit

II

THE CONTRACTING EXPERIENCE

● Through the Lens of Linda Watson



Deciding whether to contract for transit services in a rapidly changing transportation industry can be complicated. To help understand some of the issues involved, we've enlisted the assistance of Linda Watson, an independent transportation consultant with more than 35 years in the business. Ms. Watson was Chief Executive Officer (CEO) of Capital Metropolitan Transportation Authority (Capital Metro), the transit system in Austin, Texas from 2010 to 2017. At the beginning of her tenure, only a small portion of the bus and all of the commuter rail service was outsourced to contractors. In 2011, Watson led the effort to contract out 100% of the bus and paratransit service. Her experiences with the process and transition will be used throughout this paper to illustrate some of the challenges and successes of outsourcing.

Linda Watson is a distinguished leader in the field of public transportation. Prior to serving as President and CEO of Capital Metro, she was the CEO of LYNX, the Central Florida Regional Transportation Authority in Orlando, Florida. She also previously served as the General Manager of the Corpus Christi Regional Transportation Authority in Corpus Christi, Texas, and was the Deputy General Manager of the Fort Worth Transportation Authority in Fort Worth, Texas.

Ms. Watson has served on several highly respected transportation boards responsible for researching scientific and technical issues at both the local and national level, including:

- Transportation Research Board (Chair)
- Transit Cooperative Research Program (Chair)
- Texas Transportation Institute (TTI) Advisory Council (Member)

Watson currently lectures at the LBJ Graduate School of Public Affairs at the University of Texas on strategic planning and change management. She also mentors students in this program. She graduated from the University of Texas at Arlington with a B.A. in Political Science and an M.A. in Urban and Regional Affairs and was honored as a "Distinguished Alumni." Watson retired from Capital Metro at the end of 2017 and continues to work in the industry as an independent consultant.



OUTSOURCING

What Does It Mean?



a. Service Delivery Models

Typically, the terms “outsourcing” or “contracting out” are used to describe the process by which a public transit authority procures services from a private firm through a competitive procurement process. Outsourcing does not have to be an either/or proposition.¹ Some agencies outsource their entire operations, some outsource specific functions (or specific routes), and some choose not to outsource at all. In some cases, transit agencies opt to outsource only one specific, specialized aspect of service such as a technology. This form of niche contracting is one example of partial outsourcing. Agencies can contract out additional functions or responsibilities, including:

- Infrastructure Maintenance
- Ancillary Services (e.g., cleaning or security)
- Service Planning²

In general, most agencies typically retain control of “big-picture” functions such as long-range planning, capital planning, and contract oversight; however, these tasks are sometimes outsourced to private parties as well.³

Although the term privatization is sometimes used interchangeably with contracting, it’s important to note that privatization typically refers to the European service delivery model of allowing private companies to actually own, design, operate, and plan services in competition with other private providers.⁴ By contrast, contracting in the United States commonly means the contractor assumes responsibility for some or all of the operations and maintenance services, but the agency “owns” or retains ultimate control over the system as a whole.

Existing research by the American Public Transportation Association (APTA) on U.S. (governance) models indicates that there is no “ideal” model for contracting⁵. There are many variations. Following are examples of frequently used delivery methods:

1 Frick, Karen Trautenberg et. al, 2008. “Contracting For Public Transit Services: Evaluating the Tradeoffs,” University of California Transportation Center.

2 A Bid for Better Transit

3 Ibid

4 Public Transit and Privatization: Pros and Cons, July 15, 2017, <https://www.thoughtco.com/public-transit-privatization-pros-and-cons-2798647>

5 Alternative Transit Management Models, Agency and Service Delivery Options, City Manager’s Transit Stakeholder Advisory Group. City of Tucson, September 14, 2016.

- **Agency Performed.** Under this option, the agency performs the delivery of service by hiring employees directly. This is often referred to as “in-house.”
- **Contract Out.** Under this option, the agency competitively procures the delivery of transit service and perhaps associated functions (e.g. service planning, marketing, finance, customer service, and safety/security) with private contractors. Within the contracting option, there are three general sub-options:
 - **Operations and Management/Service Contract.** Under this delivery method, the operations and maintenance services are provided by a private contractor. Other associated functions may be performed under this contract or be contracted out separately.
 - **Management Contract.** With this option, the agency hires a private contractor to provide a management team to manage service delivery and other associated functions. In addition, sub-corporations are usually created to hire transit staff.
 - **Delegated Management or Public/Private Operating Partnership Contract.**

Under this method, the contractor manages all aspects of transit services, including administration. The agency board retains some level of policy control (service objectives, service models, fares, service levels, major service design changes, annual operating budget).

The table below outlines the ways in which different tasks can be delegated and how the risk can be allocated according to the type of contract.

Comparison of Service Delivery Options

	Agency Performed	Operations and Management/Service Contract	Management Contract	Delegated Management Contract
Policies	Agency	Agency	Agency	Board/Contractor
Agency administration	Agency	Agency	Agency	Contractor
Transit Service Management	Agency	Contractor	Contractor	Contractor
Associated Functions	Agency	Agency	Contractor	Contractor
Employees	Agency Hired	Contractor	Sub-corporation	Contractor
Assets (Equipment & Facilities)	Agency Owned	Agency Owned	Agency Owned	Agency Owned or Contractor Provided
Costs	Agency	Agency with fixed O&M unit costs from Contractor	Agency with fixed fee for Management Contract	Agency with fixed and variable fee from Contractor
Financial Risk	Agency	Contractor	Agency	Contractor
Typical Profit & Overhead	Non-profit	to 15% of 10% contract value	of fixed fee 10%	Unknown-part of fixed fee



Source: *Alternative Transit Management Models, Agency and Service Delivery Options, City Manager’s Transit Stakeholder Advisory Group – City of Tucson, September 14, 2016*

Some researchers say that while labels such as – management, operations, and delegated management – are used to describe the services provided by the private contractor, they do not accurately capture the complexity of the relationship between the parties.⁶ While the chart above gives a rough overview of some of the contracting options available to transit agencies, agreements between transit agencies and contractors do not always fall neatly into one category or another. Often, they combine elements from each model, or include other provisions or risk allotment clauses not included in the chart.



Photo by Jay Clark on Unsplash

b. Infrastructure and Communication

Fleet and Facilities:

In general, many agencies that choose to contract also choose to retain ownership of their own fleet. There are several reasons for this. First, purchasing vehicles is costly and could deter qualified proposers from competing for a contract, particularly if the contract duration is short. Second, in the event a transit agency needs to terminate a contract, vehicle ownership gives an agency more flexibility when choosing a new provider. Finally, agencies that own their own fleets can control their own repair and replacement schedules.⁷

Planning:

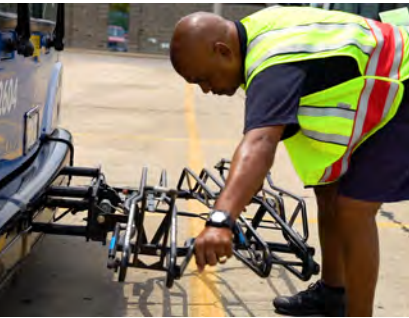
Unlike the United States, many governments around the world require their contractors to plan and design transportation routes to insure maximum efficiency. In the U.S., however, most local agencies already have fully functioning routes and schedules that they want to maintain. Therefore, most U.S. agencies choose to remain in control of route and schedule planning, and look to the private contractor to be responsible for service planning, on-time performance tracking and route adjustments.

Customer Service/ Marketing:

Marketing and customer service support vary greatly across agencies. Some agencies have full in-house departments dedicated to supporting these crucial business elements or have contracts for these services, while some agencies have very limited marketing resources or customer service assistance. Agencies looking for support in these areas should clearly identify their needs when soliciting proposals, and should examine the potential contractor's scope of experience and expertise in these areas.

⁶ Analysis of Transit Contracting Models and Proper Incentives for Long-Term Success, National Center for Transit Research, November 2013.

⁷ GAO-13-782



c. Personnel Transition

A move from public to private service provision will inevitably involve the transition of some personnel. In Austin, the agency required potential contractors to hire as many agency personnel as was practical. The reason for this was two-pronged: (1) agency employees knew the operations, were familiar with the service, and their experience was invaluable to continuing operations without disruption; and (2) the agency prioritized the fair treatment of transitioning personnel. Accordingly, core terms were required of the contractors to provide labor and employee protections. Some of these included:

Core Terms for Bargaining Employees:

- All current employees were to be guaranteed a job (contingent on passing a physical and drug/alcohol screening) and would maintain seniority
- All current employees would be hired at a wage equal to their current rate
- Equivalent medical, dental and life insurance would be provided with employee contributions negotiated between the union and new contractors
- Accrued pension benefits were honored, and contractors were required to offer a retirement plan
- New contractors assumed all accrued sick and vacation leave

Core Terms for Non-Bargaining Employees:

- All current employees were to receive a hiring preference for equivalent positions before recruiting outside candidates. The contractors determined the appropriate number and type of positions
- Employees were to receive the same pay and benefits with employee contributions determined by the contractors
- Some non-bargaining employees were retained and trained by the authority to become part of the contract oversight team. However, reductions in force were required to avoid job duplication; this also helped reduce costs. These employees received severance pay as part of a separation package. Employees with fewer than five years of service were fully vested in the pension plan.

IV. HISTORY OF OUTSOURCING

The Transition from Private to Public



a. The Move from Private to Public

In the United States, public transportation was originally a private sector enterprise. Most modes of transportation – from horse and buggies in the 17th century to intercity passenger trains at the end of the 19th century – were all privately owned.¹ In the early half of the 20th century, private firms operated trains, streetcars, subways, and buses with the intent of providing a financial return to their investors.² This model was successful until the end of World War II when, for a variety of reasons, the private firms ceased to be financially viable and the provision of transit moved into the public sector.

But by the 1960's ridership on public transport had declined significantly and public transportation became increasingly reliant on federal aid for funding. Recognizing the need for "good urban transportation," the Urban Mass Transportation Act, which provided federal assistance for mass transit projects, became law. But by the 1980's, the federal government wanted to reduce its financial burden and it started encouraging the outsourcing of services.³ Several states followed suit; passing legislation aimed at increasing the public-private partnership.⁴ The practice grew during the 1980's and 1990's with mixed results. Then in 1990, Congress passed the Americans with Disabilities Act (ADA). To adhere to the mandate, many agencies turned to the private sector for demand response services rather than incurring the high costs of developing and operating such a service in-house.⁵ To this day, because they require more specialized equipment and training, paratransit and direct response services are more likely to be contracted out than fixed-route bus services.

Indeed, according to the American Public Transportation Association (APTA), as of 2015 nearly 75% of demand response services, measured by vehicle revenue hours, is provided by private contractors. Likewise, 17% of bus service is outsourced.⁶

1 Public Transportation in the U.S.: History and Current Status, Louis S. Thompson March 17, 2008

2 Contracting for Bus and Demand Responsive Transit Services, Transportation Research Board

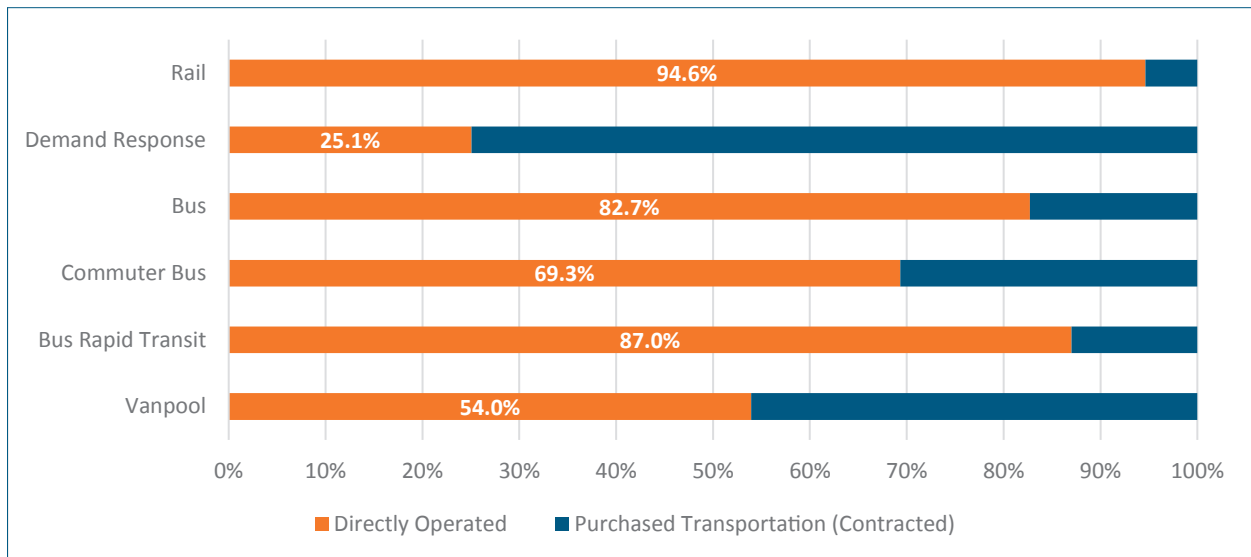
3 Ibid.

4 A Bid for Better Transit

5 Impact of the Americans with Disabilities Act on Transit Operations, Transit Cooperative Research Program, Transportation Research Board, Carolyn B. Witherspoon, et. al., 2003

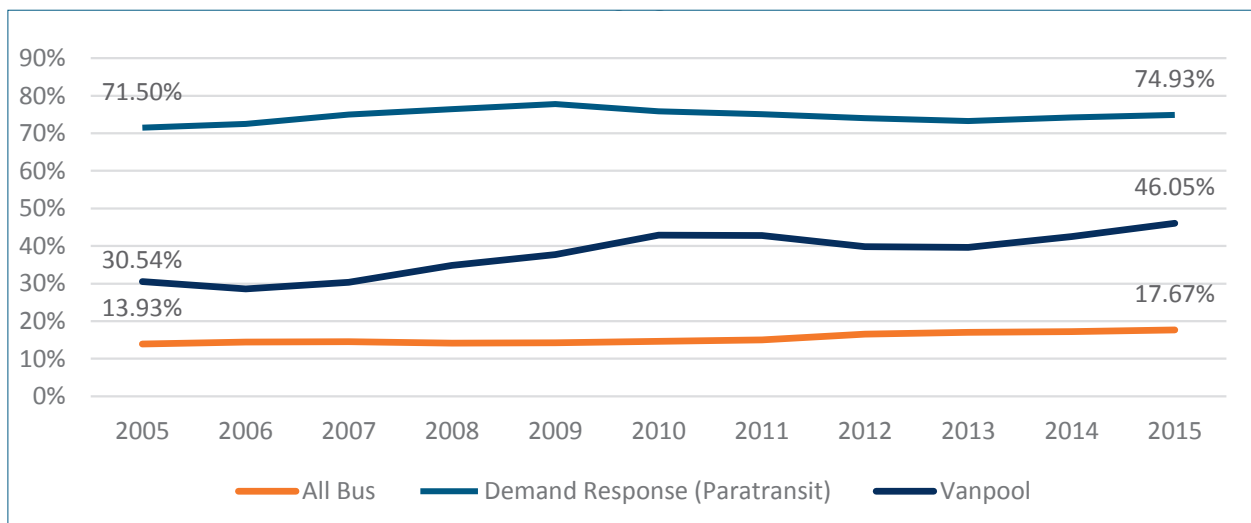
6 2017 Public Transportation Fact Book, American Public Transportation Association

Percent of Revenue Hours Contracted by Mode



In general, during the ten-year period between 2005 and 2015, there has been a trend toward outsourcing.⁷

Trend Of Percent Of Revenue Hours Contracted



Analysts anticipate that the outsourcing of public transit operations in the United States will likely continue due to financial pressures and the rapidly changing nature of the industry.⁸

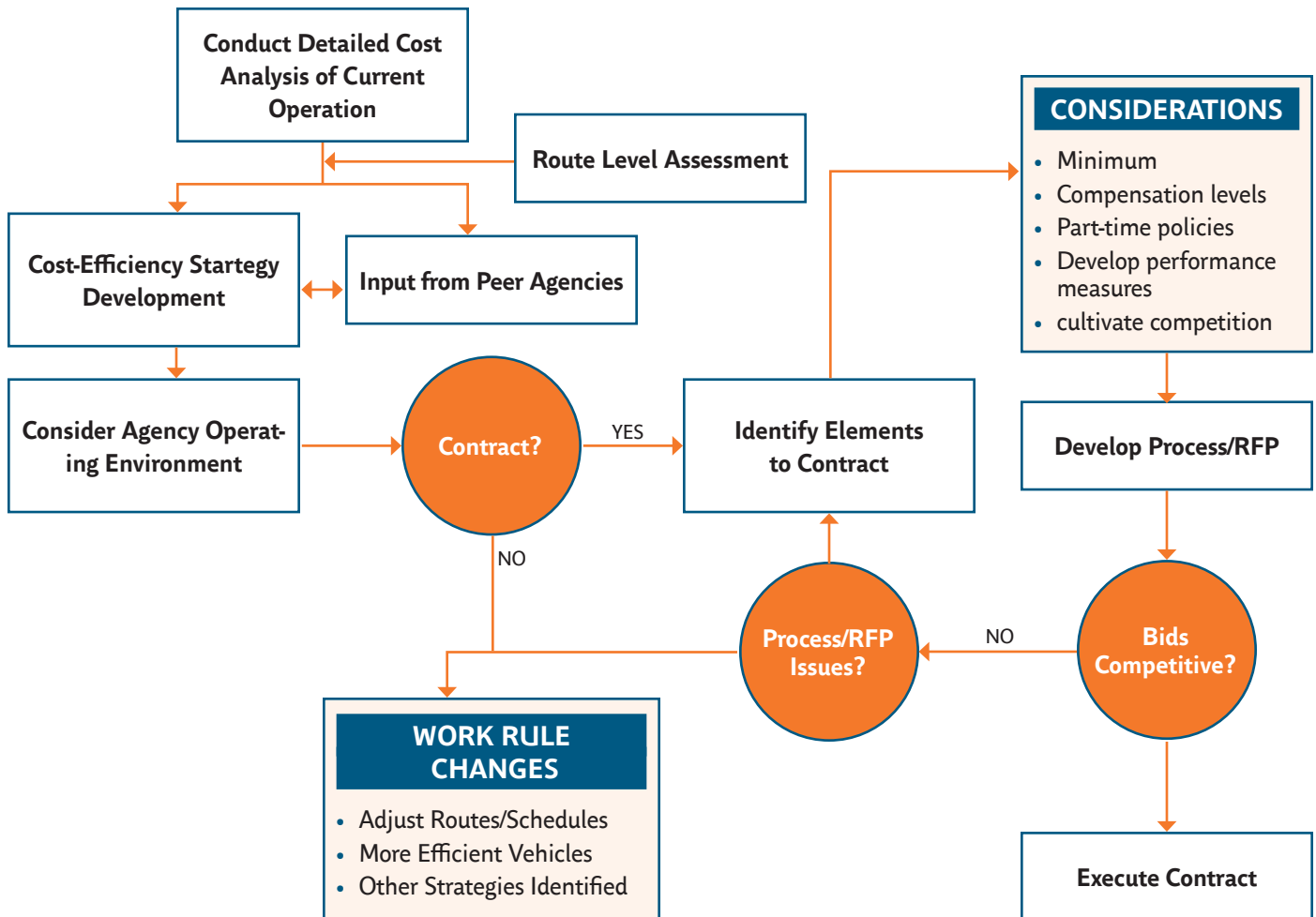
⁷ Ibid.

⁸ Public Transit and Privatization: Pros and Cons, <https://www.thoughtco.com/public-transit-privatization-pros-and-cons-2798647>, July 15, 2017

V STARTING THE PROCUREMENT PROCESS

Before deciding to contract, an agency should complete a detailed cost analysis of current operations (including a route level assessment), to help determine if those services can be performed more efficiently; this includes incorporating information from similar agencies that contract for service and making comparisons between the systems.¹ To help determine whether contracting will be advantageous, experts suggest following a logic flow chart like the one below.

Contracting Decision Tree



¹ Analysis of Transit Contracting Models and Proper Incentives for Long-Term Success, National Center for Transit Research, Project No. FDOT BDK85-977-47, November 2013.



Experts advise that before going out for proposals, agencies should determine the cost of their current services so they can use that as a baseline against which to judge the prices submitted by private contractors. Moreover, it is suggested that agencies set realistic expectations for contracting and establish a competitive procurement process that invites high-quality proposals and screens out unqualified contractors.²

Before choosing a private contractor from those who submitted proposals, many have found it helpful to do the following:

1. Consult with other agencies to determine the reputation of the proposers.
2. Look for stability in the management team (changes in personnel can affect whether the contracting experience is positive or negative).
3. Use a two-phase process for selecting a contractor:
 - Evaluate proposer qualifications and capabilities; and then
 - Evaluate prices, making sure they are realistic.³

Once a contractor is chosen, leaders noted the importance of monitoring contract performance. This includes holding the contractor responsible for meeting agreed-upon standards and having a mechanism for making changes in contract terms in the event circumstances or needs change.⁴

² Supplemental Analysis of National Survey on Contracting Transit Services, Transit Cooperative Research Program sponsored by the Federal Transit Administration, Research Results Digest, February 2002 – Number 46

³ Contracting for Bus and Demand-Responsive Transit Services, A Survey of U.S. Practice and Experience; Transportation Research Board Special Report 258, 2001.

⁴ Ibid.

VI • WHY OUTSOURCE

a. Turning to Outsourcing – the Experience from Linda Watson’s Perspective

During Watson’s tenure in Austin, the initial drive for comprehensive contracting was the result of a stinging state of Texas audit criticizing the agency’s labor structure and rates. For many years there had been contentious labor relations, which is not unusual in transit operations. Further, contract negotiations in 2005 and 2008 resulted in labor strikes. These strikes had a negative impact on image not only in the community but with the legislature. Accordingly, the state legislature passed legislation, based on the audit’s recommendation, to require the transit agency to either contract out all services or bring them all in-house. Per the collective bargaining agreement, the union had the authority to make the final decision. It chose to outsource, leading Capital Metro to contract out 100% of the service in 2011.¹

b. The Benefits of Outsourcing

Ms. Watson believes contracting the entire provision of service was one of the best experiences in her career and continues to be a strong proponent. Outsourcing resulted in reduced costs, significantly improved labor relations and employee morale, and allowed the agency to transfer a substantial amount of risk to the private contractors. While these results were not unexpected, Ms. Watson and her team were pleasantly surprised to find that outsourcing also created the space to concentrate on high-level strategy. Like Austin, communities across the country are changing rapidly. Travel patterns, new technology and emerging transportation options are quickly evolving, and transit must adapt to these changes. Contracting allows transit executives to focus their attention on those big picture objectives because they know their day-to-day operations are in the hands of a competent third party.

At the time of contracting, the service was not broken. The agency was very familiar with running the service and didn’t necessarily see the value in changing. In fact, at times the changes were difficult for employees, who were concerned that the quality of the service would be compromised. However, the experience and payoff in the end proved to be worth the effort. Employees were able to adapt and change amazingly well and were pleasantly surprised that not only was service as good as, but in some areas better than the service previously provided.

¹ In 1991, Capital Metro created an independent nonprofit (StarTran, Inc.) to negotiate with the union and operate most of its services. This structure was intended to provide more separation of Capital Metro from union activities without having to contract out services to a private for-profit provider. In practical terms, this structure operated as if the service were provided in-house.



1. Decreasing the Cost of Providing Service

As is often typical, transit agencies, salaries, and other labor costs constitute the biggest budget line item. A long-range financial analysis determined that if labor rates had continued to rise at the same pace, dramatic service cuts would have been inevitable in the near term. This was also noted in the state of Texas audit. With the contractors, costs were not only reduced but the pace of labor increases in future years also slowed. Further, these savings would have been double if core contract terms that protected the transitioned jobs, wages and benefits had not been a requirement.

2. Improved Labor Relationships

The improved labor relations in Austin are a real success story. Before outsourcing, there had been an antagonistic relationship with the union that resulted in frequent negative press coverage which, in turn, created a poor public image. The new contractors made some very tough calls that quickly improved employee relations and morale. They also communicated effectively with employees, creating a positive working environment. As previously noted, contractors have a strong financial incentive to control costs; and improved labor relations led to more favorable labor contract terms. In the end, improving labor relations while controlling costs contributed to an improved public image.

3. Rethinking Transit's Role: An Agency Before and After

The unexpected benefit of contracting based on Watson's experience, was the opportunity and time to rethink how service was provided as well as the system's role in the larger landscape. There was more time for external focus. Another significant change was the need for a new organizational structure and business model. Prior to contracting, Ms. Watson's organization employed more than 1,500 workers. After, there were about 350 employees – mostly administrative. Some of these employees became part of a newly created division that was charged with the crucial role of overseeing contracted service. Other employees continued providing central administrative services, including long range and service planning, marketing, purchasing, capital construction, and financial services. Across the organization, employees became immersed in big picture, long-range planning. Discussions and partnerships with new technology providers, micro transit and ride hailing services increased. Creative ways to improve service and attract new customers became the agency's focus. Evaluating how well the service was addressing the changing population and demographic shifts became a priority. Contracting created the space that allowed the organization to do this more intensely.

4. Shifting Risks of Service Provision to an Outside Entity

For some agencies, contracting is appealing because it can protect agency leaders from unpopular decisions or customer complaints. It can also shift responsibility for providing a complex service, like ADA paratransit, to a contractor.

ADA paratransit is the most likely type of service to be outsourced for several reasons:

1. It requires specialized training and equipment, and agencies may lack the expertise and resources needed.
2. Agencies can realize cost savings through outsourcing because ADA paratransit can be very expensive to provide.
3. Contracting allows agencies to shift the risk and liability associated with the service to the outside agency.²

With the number of ADA paratransit rides increasing annually, agencies will likely continue to look for private companies to provide the service in an effort to control costs and increase efficiency and on-time performance.

Politically, hiring an outside contractor can provide “insulation” for public officials who want to use the contractors “as a shield between them and complaints from the public.”³ Industry studies have determined that transit agencies that are governed by elected boards that view contracting as a way to reduce risk are more likely to outsource.⁴ In fact, risk aversion and safeguarding elected officials may be the most important reason – even more important than efficiency and effectiveness – transit agencies seek assistance from an outside party.⁵

c. Starting New Service or Expanding Service

Transit agencies often find it advantageous to outsource when starting a new service or expanding an existing one. The agencies cite several reasons including:

1. Private contractors can get a new service up and running more quickly than a governmental agency.
2. Union issues are few or non-existent with a new service.
3. The agency can avail itself of expertise it likely doesn’t have because it is attempting a venture that is outside its normal parameters.



² GAO

³ Understanding Local Government’s Decision to Contract Out for Transit.

⁴ IBID.

⁵ IBID.

VII THE PROCUREMENT PROCESS

- Getting the Best Price and Quality

Price savings can potentially occur at two points in the contracting process. First, competition forces potential providers to offer their services at the best possible price. Having a large number of qualified proposers sets the stage for a transit agency to have the greatest number of choices when it comes to both quality and price.¹ According to the GAO study, the majority of agencies that go through the procurement process for services, have indicated they had at least three responses to their solicitations.²

Second, once awarded a contract, a private contractor is better situated to provide cost savings than a system run by a governmental agency, particularly when it comes to labor. Although this can be controversial, private contractors can reduce costs by hiring new employees at entry-level wages, institute creative staffing levels, or minimize benefits.³ A review of the literature shows that this can result in a one-time reduction in costs that cannot be replicated or sustained long-term. However, some experts say that because most private contractors are large national or multi-national corporations, they can draw on a wealth of knowledge garnered from their experiences at other agencies and more effectively negotiate collective bargaining agreements than their public counterparts that lead to longer-term cost savings.”⁴

Private contractors say they can also achieve cost savings through economies of scale. For example, they can develop a comprehensive training or maintenance program that can be adapted to fit any agency, and they can purchase commonly used items such as fuel, vehicle parts and equipment at lower rates due to their enhanced bargaining power.⁵ In addition, it is cost effective for contractors to develop propriety technology for routing and scheduling because they can employ it at other agencies – something that an independent agency cannot do. Finally, experience and expertise, although intangible, provide private contractors with a wealth of knowledge on which they can rely to quickly identify and correct inefficiencies.

1 Special Report 258: Contracting for Bus and Demand-Responsive Transit Services. A Survey of U.S. Practice and Experience, Transportation Research Board, 2001.

2 GAO

3 Analysis of Transit Contracting Models and Proper Incentives for Long-Term Success, November 2013

4 Working Paper 22088 - Efficient Local Government Service Provision: The Role of Privatization and Public-Sector Unions, National Bureau of Economic Research, March 2016

5 GAO

a. Recommendations from the Capital Metro Procurement Process

Capital Metro received attractive proposals in terms of quality and price by using an approach that clearly communicated the expectations of the agency during the procurement process. It is easy for contractors' proposals and/or prices to miss the mark if they do not clearly understand the needs of the agency. Following are recommendations that worked well for their process:

- Clearly list requirements and criteria in the Request for Proposal (RFP) design
- Give all potential contractors the opportunity to review and comment on the draft RFP.
 - Identify lessons learned from the contractor experiences
 - Describe what the contractors determined works best and what does not work
 - Get ideas from the experts. The agency can pick and choose the ideas it believes are a good fit.
- Do the research. In addition to communicating with contractors, talk to and meet with other systems about their experiences. Send teams to tour other systems and ask for input. Request relevant documents. There is no reason to reinvent every wheel.
- Encourage competition and be open. Let the contractors know you are serious about contracting and the process is not just an exercise. They need to know they have a shot at providing the service.
- Allow potential contractors to tour your property and see how service currently operates. The better contractors understand your system and requirements, the better the proposals and costs will be.

Let them know your priorities. Is it cost, the team, the maintenance plan? You will get better proposals if the contractors do not have to guess.

Most importantly be fair. Treat everyone the same and do not show favorites. You may think you know who will do the best job, but you may be wrong.



Photo by rawpixel.com on Unsplash

VII

CHALLENGES OF OUTSOURCING



Photo by rawpixel.com on Unsplash

Some agencies choose not to avail themselves of outsourcing because they believe that the “contracting process is complex, long, and arduous.”¹ Contracting involves “writing the scope of work, updating requirements (which includes getting input from various departments within the agency), issuing the request for proposal, evaluating the responses, negotiating with the selected contractor, and monitoring any start-up activities.”² An agency pursuing outsourcing must be prepared to make a time and financial commitment.³ For many agencies, just preparing for the bidding process can take as long as a year.

a. Concern about Loss of Control

Outsourcing is not an option for some agencies because they have determined that the economic benefit of doing so does not outweigh the risk of delegating responsibility of the system to an outside party.⁴ These managers have decided that they want to keep direct authority so they can personally adjust services or deal with unforeseen events.⁵

b. Loss of Control of System (Can Lead to Political Ramifications)

Contract monitoring is another reason some transit agencies avoid outsourcing. Some worry that they may need to employ additional staff to supervise the terms specified in the contract, resulting in expenditures that could exceed cost savings anticipated by contracting.⁶

There are, however, several methods for ensuring contractors perform their contractual duties. One way is contract duration. Studies show that agencies need to limit contract length to keep contractors performing up to standard; underperformers know they will not be considered for renewal. According to a 2001 federal survey, the most prevalent contract length is three years with many of these contracts offering two one-year options.⁷

1 GAO

2 GAO

3 Understanding Local Government’s Decision to Contract Out for Transit, Suzanne Leland and Olga Smirnova, 2009, <http://coppfs1.asu.edu/spa/abfm2009/papers/PBFOct27.4.pdf>

4 GAO

5 GAO

6 Understanding Local Government’s Decision to Contract Out for Transit

7 Contracting for Bus and Direct Response Transit Services, Transportation Research Board, National Academy of Science, 2001.

Contract incentives and penalties are another common method for monitoring contractor performance. These can be based on any one of many performance issues from on-time performance to number of preventable accidents to cleanliness standards.

c. Legal and Statutory Challenges

i. Federal and State Laws

Each agency will need to complete a legal analysis regarding federal 13(c) regulations and state law and the impact on their ability to contract service. There will be varying restrictions and limitations and this should be evaluated on a case by case basis. In simple terms, 13(c) ensures that contractors cannot disadvantage existing employees when taking over a contract. Contractors are obliged to:

- Recognize existing union contracts,
- Continue collective bargaining rights,
- Protect employees against any worsening of their positions respective to employment,
- Assure employment to current employees or recall rights for laid off employees, and to
- Continue paid training or retraining programs.

The logic behind the provision is that many contractors bid on contracts intending to reduce costs, and the most variable cost is often labor. Essentially, this is in place as an “unofficial” employment safety regulation to protect against abusive contractors. A common compliance strategy is to accept the existing union agreement, not cut wages or benefits, and conduct the normal employee vetting process (drug and alcohol tests, licensure validation, etc.) Having a lawyer to appropriately understand and navigate this regulation would be helpful.

ii. Unions and Collective Bargaining Agreements

In general, labor unions are resistant to the outsourcing of transit services. Unions argue that savings from contracting are borne almost entirely by employees who suffer lower wages, reduced benefits and more stressful working conditions under private contractors.⁸ The National Bureau of Economic Research disputes this, contending instead that private firms can realize cost savings because they are better equipped due to their size and expertise to negotiate favorable collective bargaining agreements.⁹ In addition, contractors may be able to realize cost savings because they are more likely to efficiently allocate labor and reduce the numbers of unnecessary or duplicate employees.



⁸ Amalgamated Transit Union, <https://www.atu.org/work/privatization>

⁹ Working Paper 22088, National Bureau of Economic Research

VI

CONCLUSION

● Common Goals/ Successful Partnership

Interestingly, a significant number of studies have shown that contracting is not always the least expensive method of providing transit services.¹ Moreover, there is no one infallible rule that an agency can follow to ensure a positive economic outcome.² But ultimately, outsourcing transit services to a private provider is not just about money; it's also about creating a partnership for providing quality transit services. In a recent study, the Eno Center for Transportation concluded that “when implemented carefully— competitive contracting can yield improved transit service and other innovations that benefit the riding public. These benefits will be fully realized when elected leaders, transit officials, and other stakeholders work to understand and implement contracting in a strategic, context-appropriate way.”³

After analyzing data from the National Transit Database from 2002 through 2011, a study by the National Bureau of Economic Research found no negative effects from outsourcing transit services. The study concluded that contracting out has no detrimental effect on the quality of service provided (based on the numbers of fatal and non-fatal accidents), nor does it result in a reduced level of service, nor does it negatively affect ridership.⁴ To ensure effective contracting, the Eno Center provides some good advice:

1. Government cannot contract out the public's interest in high-quality, safe public transit;
2. Contracts must clearly articulate the transit agency's goals and align those goals with the contractor's desire to make a profit; and
3. Although agencies must continually monitor contractor performance, they must also work together with contractors as partners to improve operations.⁵

Ultimately, whether you decide it best to outsource some subset of your functions, specific zones or routes or 100% of your operations, finding a trusted, experienced, and knowledgeable partner can help an agency provide improved, safe and efficient transportation to the riding public. So, if you are seeking additional knowledge to educate yourself about outsourcing, or you are currently in the process of deciding whether to ‘contract out’ it is hoped that this white paper serves as a first step in understanding what may work best for your system and community.

1 E.g., Does Contracting Transit Service Save Money?, Access Magazine, <https://www.atu.org/work/privatization>, finding that reducing deadheading had far more impact on cost savings than outsourcing

2 Does Contracting Transit Service Save Money?

3 A Bid for Better Transit

4 Working Paper 22088, National Bureau of Economic Research

5 Ibid.







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