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PUBLIC MANAGERS AND PRIVATE CONTRACTING: THE IMPACT OF PROCESS AND PERFORMANCE ON PUBLIC SERVICE DELIVERY

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CHAPTER 1

INTRODUCTION

This paper examines the role of the public manager and the contracting process when outsourcing government goods and services to private vendors for public service delivery. Using the Transaction Cost Framework, this paper will examine the relationship between training and contract processes as well as the influence of democratic values on private vendor performance.

This paper is divided into five sections. The first section provides a review of the literature related to public administration and the contracting process. The following sections present case studies using the Transaction Cost Framework. The second section presents the first case study, exploring the privatization of government services in Sandy Springs, Georgia and Weston, Florida. The third section presents the second case study and examines contracting ethics and vendor performance at Pelican Bay State Prison. The fourth section includes a discussion about contracting processes and performance outcomes from both case studies and recommendations for public managers working in government contracting roles.

CHAPTER 2

LITERATURE REVIEW

During his 1999 lecture on the "Repositioning of American Pubic Administration," H. George Frederickson suggested that public administration reemerged as the "key element in the effectiveness of American government in the twentieth century" (p.702). Appealing to his audience at the annual meeting of the American Political Science Association (ASPA), Fredrickson argued that every significant accomplishment of American government over the last century was a result of public management.

Traditional forms of public administration, or 'scientific management,' suggested that the functions of government should be driven by scientific methodology to better measure outputs and outcomes, limit financial waste, and ensure government accountability to the public (Frederickson, 1999).

In the years following Civil Service Reform Act of 1978, debates supporting private-business approaches to public management began to emerge (Romzek & Johnston, 2004; Schooner, 2004; Rendon, 2005). By the end of the 1980s, public administration repositioned itself away from clashes within political science towards cross-sector collaboration. Trends supporting partnerships between government, private vendors, and non-profit groups emerged to better address growing demands from the public sphere (Frederickson, 1999). During the 1990's, presidential initiatives to make government "work better and cost less" … helped champion a "variety of reforms and projects" in-line with cross-sector collaboration and New Public Management (Denhardt & Denhardt, 2000, p. 550)."

Contracting and New Public Management

Evolving economic climates influenced public and political interests in investments, production, and consumption. The changing environment created a need for collaboration across public and private sectors. Traditional government largely shifted away from the hands of the public, towards networks of private and public agents to manage increasingly globalized transactions (Frederickson, 1999). In an attempt to define New Public Management, Frederickson examined the relationship between those who govern and those who are governed. "Public management is now understood to include government but also all of those organizations and institutions that contract with government to do governmental work…and the wide range of organizations and institutions that are essentially quasi-governmental in their relationship with citizens (Frederickson, 1999, p.703).

Scholars suggest that the *government* and *governance* are not synonymous. In the context of contracting, where government consists of local, state, federal institutions bound by democratic values, governance is the mechanism in which government is executed by non-state actors.

Private vendors have financial incentives to achieve contract outcomes. If a vendor does not perform contract outputs to achieve contract success, they may not get paid. Unless democratic values are written with contract provisions and are also monitored by public managers, private vendors determine what contract success means and how to achieve it in ways that are efficient for business, not necessarily the public interest. The ways in which contracts are drafted by public managers and are subsequently perceived by private actors, determine how private vendors achieve contract goals (Amirkhanyan & Lambright, 2007). This feature of contracting is widely considered a function critical to the modern administrative process (Van Slyke, 2002; Snider & Rendon, 2010).

Contracting for public service delivery provides promise for improving government performance. This practice is not new. The growth, size, and scope of contracting at all levels of government continues to expand. (Bertelli & Smith, 2010; Light 2000). Light (2000) argues that the size of government is not merely the number of civil service employees who hold government jobs. The true size of government should also include number of non-government actors such as private vendors, non-profit entities, and grantees hired to carry out public service delivery. Light (2000) measured the true size government in 1999 and 2002 using data from the Office of Personnel Management's "Fact Book" of Federal Civilian Workforce Statistics, the U.S. Bureau of Economic Analysis; input/model of the U.S. economy, and the Federal Procurement Data System.

Contrary to claims that the size of government consisted of less than 1.9 million employees in both 1999 and 2002, Light (2000) argued that this measure only accounted for civil service employees. According to Light, civil service workers only account for a fraction of the total number of government employees. These numbers failed to account for the section of the workforce which included private vendors performing government services. Rather than government shrinking to 1.9 million workers, Light (2000) found that the actual size of government (accounting for both civil servants and private vendors) comprised of over 16 million employees. While the number of public servants remained at 8.7 million in 1999 and 2002, the number of private vendors increased from 6.9 million in 1999 to 8 million in 2002.

In 1997, federal agencies spent $175 billion on private contracting. Seven years later, in 2004, spending rose to $328 billion; an increase of 87 percent. In 2011, federal procurement accounted for over $534 billion, nearly 13% of the total federal budget (Federal Procurement Data System, 2011).

Hollow State

Milward and Provan (2000) examined factors that drive private contracting, network structures, and government accountability. Their research introduced the notion of the 'hollow-state,' referring to the capacity in which public agencies retain power and control over the goods and services they outsource. Their findings suggest that the more public agencies outsource service delivery to private vendors, the more likely they are to lose their ability to retain control over production and oversight of service delivery.

Third-Party Bureaucracy

Salamon (1998) used the term "third-party government" to suggest that government is no longer provided by public service workers but by a variety of private vendors contracted to deliver public goods and services. Heinrich, Lynn, and Milward (2009) suggest that "even if they are not engaging directly in-service provisions, governments play a far more vital role than just funding (private) services" (p. i17). Heinrich et al. argue "there is a basic agreement that third-party entities … play influential roles, and how the government (drafts) contracts … has critical implications for what is accomplished and how" (p. i5).

Contracting

Amirkhanyan, Kim, and Lambright (2007) discuss why government agencies choose to contract out for service delivery by asking two fundamental questions. 1. "What factors may impact a government agency's decision to contract out a particular service?" and 2. "What factors influence contractor performance?" Understanding why services are outsourced and how services are outsourced provides vital information for public administrators in contracting environments.

The complexities inherent in contracting create unique challenges. First, managers should understand the nuances unique to contracting relationships as no two contracts are the same. It is also important for managers to understand the motivation of the private vendor. Vendors may or may not operate according a democratic value set that serves the public. If the manager does not identify gaps inherent in the role of the vendor and the value sets of the public organization, contract ambiguity can threaten the outcome of service delivery. Managers should be systematic in identifying, initiating, designing, implementing, and measuring the lifecycle of the contract (Kettl, 1993). If the manager fails to clearly communicate contract provisions and intended outputs, the vendor can achieve contract outcomes contrary to the public interest.

Milward and Provan provide fair warning to public managers who outsource government services (2000). If contract provisions don't clearly define the outputs to achieve the intended outcome, private vendors are provided the opportunity to determine the means in which they meet the outcome of the contract. Without clear contract expectations, incentives, and consequences for contract violations, private contracting can illicit fraud, waste, and unethical behavior. What is good for private vendors can be devastating to the public if public managers don't include necessary contract provisions and oversight.

Transaction Cost Framework

According to Brown and Potoski (2005), public managers responsible for "government contracting can benefit from a theoretically informed framework that provides … guidance about whether to contract (out) for particular services and what capacities are needed to effectively manage contracts" (p. 327). Brown and Potoski (2005) introduce the transaction cost framework as a tool to guide managers through the contract management process. The transaction cost framework suggests that the costs of "negotiating, implementing, monitoring, and enforcing contracts are higher when services have outcomes that are difficult to measure and … require asset specific investments" (Brown & Potoski, 2005, p. 327).

The promise of quality and efficient service delivery largely depends on a managers' capacity to decide when to contract out and for what services, select a viable vendor, and their ability to monitor performance throughout the life cycle of the contract (Ferris & Grady, 1986; Brown & Potoski, 2005).

Brown and Potoski (2005) argue that successful contracting is illustrated by three sets of tasks. The public manager must decide whether a service should be contracted out, determine a vendor or contractor for delivery of the service, and identify a process for maintaining oversight of the vendor throughout the lifecycle of the contract.

Transaction Costs

Managers should also consider potential transaction costs associated with the contracting process. Williamson (1981) defines transaction costs as the "comparative costs of planning, adapting, and monitoring task completion under alternative government structures" (p. 552-553). Brown and Potoski (2005) suggest that transaction costs "arise because of limited information, uncertainty about the future, and the prospect that people or organizations behave opportunistically in their interactions with others" (p. 328).

Transaction costs can also be a result of limited information and varying levels of expertise between the manager and the private contractor, which can create role ambiguity, uncertainty about the execution and delivery of the contract, and opportunities for parties on both side of the contract to protect their own interests due to the unforeseeable future of contract performance.

To minimize the impact of transaction costs, managers should establish clear performance measures, monitor vendor performance and the execution of benchmarks throughout the contract, and assign penalties where contract provisions are not executed as written.

Transaction Cost Theory provides a framework that can help managers assess the nature of services be considered for contracting out and the varying degrees of transactions costs associated with outsourcing those services (Brown & Potoski, 2005; Williamson, 1981). Brown and Potoski focus on two key components of Transaction Cost Theory*: asset specificity* and *ease of measurement* (2005).

Asset specificity can increase or decrease market competition. Specific assets, or large specialized investments, may have fewer vendors as they are not easily adopted, mass produced, or transferable for other uses or services. They are specific and unique to the service(s) in which they are utilized (Brown & Potoski, 2005).

Ease of measurement defines the capacity of the public manager to adequately measure vendor performance to assess whether they are meeting contractual provisions. “Easily measured services have identifiable service metrics that accurately represent service quantity and quality” (Brown & Potoski, 2005, p. 330).

Services that are easy to measure and require less specific or unique assets are more likely to result in contracts with fewer transaction costs (Brown & Potoski, 2005). Because these types of services are easy to measure and do not require non-transferable assets or assets specific to the service, a greater number of vendors can compete to win the contract – providing leverage to public manager to negotiate for quality and cost. Contracts with fewer transaction costs allow public managers to better specify vendor performance standards. Brown and Potoski (2005) argue that service contracts with low transaction costs have high promises for cost savings and limited risk of contract failure. These types of contracts require simple processes, specify common use assets, and contain provisions that allow the manager to measure and monitor outputs and outcomes for service delivery throughout the lifecycle of the contract.

Alternatively, contracting out for services that are difficult to measure and require specific investments or assets for service delivery, are associated with high transaction costs. These services are defined by the need for specialized, expensive, or non-transferable assets and are difficult for managers to create measures that effectively monitor progress. Services with high transaction costs are often specialized, complex, and the very nature of their implementation or delivery is often outside the scope of the managers expertise – posing a challenge for managers to write contracts that are clear and well received by stakeholders (Brown & Potoski, 2005; Ferris & Graddy, 1986). Brown and Potoski (2005) recommend that public managers keep these services internal or carefully analyze the cost benefit of outsourcing due to the high probability of contract failure.

CHAPTER 3

CASE STUDY #1

In 2002, Brown and Potoski (2005) used survey results from the International City/County Manager Association's (ICMA) survey "profile of Local Government Service Delivery Choices" and asked 75 randomly selected city mayors and managers nationwide to rank local services relating to asset specificity and ease of measurement. Brown and Potoski argue that "the ICMA survey is possible the strongest large sample study of governments' service production practices" (p. 334). Providing a half-page description of both asset specificity and ease of measurement, Brown and Potoski asked participants to rate each of the 64 services included in the ICMA survey on a scale from 1 to 5 for both transaction cost factors. "For the ease of measurement scale, the high end of the scale point was anchored by the word *difficult* (scored 5) and the low end of the scale was anchored by the word *easy* (scored 1)" (p. 334). Similarly, asset specificity was scaled as *high* (scored 5) and *low* (scored 1). Higher values on each scale indicated that the service was more asset specific or more difficult to measure.

Results from Brown and Potoski's (2005) research demonstrate that respondents ranked services such as prisons/jails to have high asset specificity (4.04) and are difficult to measure (3.21). However, services such as buildings and grounds maintenance that are easy to measure (2.00) also tend to lack assets that are highly specific (2.00).

Case Study #1: Privatizing Sandy Springs, Georgia and Weston, Florida

Both Sandy Springs, Georgia and Weston, Florida outsource most of their government services to private vendors. Studies have addressed why these towns chose to privatize and how they have been successful in doing so. Similar in size, Sandy Springs as a population of 65,000 with an annual operating budget of 90 million; Weston has population of 94,000 with an annual budget of 121 million. These affluent suburban communities have been criticized for isolating government resources from surrounding towns. Critics argue that wealthy communities who choose to incorporate cost the county more than they contribute. In Weston, a large majority of the local townspeople are in favor of privatization – so much so that they have written their preference for the private government model into their city charter. For a service to move back into the hands of the government, city council members must vote of 4/5 in favor of transitioning a service away from private vendors. Similarly, residents of Sandy Springs argue that a 94% majority voted in favor of outsourcing most of the local government. Small, local government in Weston operates with a total of 9 government employees while Sandy Springs operates with 7 employees and 285 full-time private vendors (Holeywell, 2012; Segal, 2012).

Brown and Potoski (2005) argue that services with high asset specificity that are difficult to measure should not be contracted out because these services have a high-risk contract failure. Their research suggests that services such as schools, health and human services, police, and fire services should be delivered by government, not private vendors. In both Weston, Florida and Sandy Springs, Georgia, tax-payers send half of their annual dollars to the counties they reside. The few services they keep in-house (schools, health and human services, police, and fire) are paid for by property tax dollars and are provided by county government (Holeywell, 2012; Segal, 2012).

Proponents of the enterprise model government in Weston argue that government is more efficient and does not have to worry about pensions, labor disputes, layoffs, or personnel issues. Mayor Eric Hersh believes that contract employees work harder because they don't have the same job security as public service workers. According to Hersh, Weston doesn't "…have to put up with a sub-par person just because (we) can't get rid of them…From an efficiency standpoint, that’s a huge benefit” (Holeywell, 2012, p. 7). Likewise, Sandy Springs officials support the private model because they too don’t have to worry about pensions, long-term debt, or personnel issues. Sandy Springs City Manager argues that “corporations hire superior workers and give them better training” (Segal, 2012, p. 2). Where it may take 15 public service workers to complete a job, private contractors can do the same work with only 12 employees. In Sandy Springs, contracts are written where non-performing employees can be terminated by the city government – it is then up to their private employer to determine how to handle the employee moving forward (Segal, 2012).

Table 1

Contract Comparison between Weston, Florida and Sandy Springs, Georgia

	Weston, Florida	**Sandy Springs, Georgia**
Contract Provisions	Consequences - Terminate vendors for non-performance Specific, defined services Low asset specificity Easy to measure Vendor incentive = employment	Consequences - Terminate contract and give to competitor to resume contract Specific, defined services Low asset specificity Easy to measure Vendor incentive = employment
Contracted Services	Maintenance Engineering Emergency Dispatch Code Enforcement Building Permits Public Works Custodial Services	Maintenance Engineering Emergency Dispatch Licensing Permits City Court and Judge Waste Management
Public Services (High Transaction Costs)	Schools Fire Police Health and Human Services	Schools Fire Police
Impact	Costs county Pays county ½ of property taxes County provides public services $121,000,000 annual budget Socioeconomic divide	Costs county Pays county half of property taxes County provides public services $90,000,000 annual budget Socioeconomic divide
Personnel	9 government employees No pension No "personnel issues" No union No labor disputes No layoffs	7 government employees No pension No "personnel issues" No long-term debt
Demographics	65,000 population Wealthy Suburban Predominantly white	94,000 population Wealthy Suburban Predominantly white
Risks	Impact on County Process centered	Impact on County Process centered
Behavior	Privatization preference written in city Charter Requires 4/5 vote by City to make reverse private model	Privatization preference 94% city approval in favor of contracting

Both communities have clear contract provisions written in to their agreements with private vendors. In the event a vendor doesn't perform, the city maintains the right to tell the private employer to terminate the employee from the position. In Sandy Springs, Georgia, if a private company doesn't fulfill their contractual obligations, the lower bidding competitor, who originally lost, will be asked to step in and complete the contract. The incentive for the vendor in both systems is to perform to maintain their job. If they don't perform, Weston and Sandy Springs draft their contracts to take the job away and give it to someone who can complete the contractual obligations (Holeywell, 2012; Segal, 2012).

Additionally, both Weston and Sandy Springs contract their services out to multiple vendors and "slice the work into pieces" so it is easier to manage and oversee. Brown and Potoski (2005) suggest that dividing contracts out for specific services and to vendors who are experts in those services make contracts easier to measure and result in successful outcomes. Weston outsources public building maintenance, engineering, emergency dispatch, code enforcement, building permits, public works and custodial services. Sandy Springs contracts out maintenance, engineering, emergency dispatch, licensing, permits, the city court and judge, waste management, road services, and maintenance storage facilities (Holeywell, 2012; Segal, 2012).

Supporters in Weston argue that prior to the enterprise model, they weren't receiving the amount of services they were actually paying for with their tax-dollars. After privatizing most government services, locals found that the government became more efficient. Similarly, residents in Sandy Springs took a survey and results demonstrated that the private model improved quality of life and government services (Holeywell, 2012; Segal, 2012).

While government leaders in both Weston, Florida and Sandy Springs, Georgia support outsourcing government services in the name of efficiency, it is important to identify potential risks associated with the privatization of government. Successful in their endeavors, city officials claimed that privatization has created a more efficient government. Both Weston and Sandy Springs align with the theory of 'when and what to contract out' supported by Brown and Potoski (2005). They keep services (schools, health and human services, fire, and police) with high-asset specificity, that are difficult to measure in-house. They divide and outsource services with low-asset specificity and are easy to measure to multiple vendors. Using the Transaction-Cost Framework promoted by Brown and Potoski, Weston and Sandy Springs have seemingly demonstrated how to successfully outsource public service delivery to private vendors (Holeywell, 2012; Segal, 2012).

The 'hollow-state' refers to the capacity in which government loses control and oversight over production and service delivery (Milward & Provan, 2000). Weston and Sandy Springs succeeded in maintaining control and oversight of public service delivery by writing clear contract provisions and maintaining the ability to control the outputs of the contract. Government leaders chose to outsource services that had low transaction costs, wrote clear and measurable contracts, and issued consequences for non-performance. Referencing Milward and Provan, Weston and Sandy Springs did not become hollow-states. However, critics of the enterprise model argue that the loss of control and oversight, or becoming hollow, is not the only risk in outsourcing government. Perhaps the more important feature of the privatization of these two communities, is a potential threat to democratic values and ethics.

With limited literature on success stories about the privatization of local government, and fewer proponents than critics, perhaps the narrative written about Weston, Florida and Sandy Springs, Georgia largely focuses on the efficiency of the model while overlooking the risks. The transaction-cost framework assumes easily measurable services with low asset specificity have few transaction costs and result in successful contract outcomes (Brown & Potoski, 2005). However, Brown and Potoski also suggest this framework does not address or consider the role and potential impact of democratic values in public service delivery.

While successful, Weston, Florida and Sandy Springs, leaders who drafted and implemented vendor contracts focused on the efficiency of privatization. Oliver W. Porter, the founding father and 'architect in chief' of Sandy Springs, is a retired AT&T Engineer whose "philosophical inclinations were formed by a life spent in private enterprise" (Segal, 2012, p. 9) One could argue that Porter is highly trained in the art of drafting a contract. However, Georgia State Senator Vincent Ford believes that Sandy Springs is "… seeking to leave the rest of Fulton County behind and doing so with … arguments about corruption and inefficiency of local government" (Segal, 2012, p. 7). In response, Sandy Springs Mayor Eva Galambos claims that "a 94% vote in favor of incorporation speaks to the broad community support" (Segal, 2012, p. 7).

While the community may be in favor of privatization, Frederickson and Dubnick (2009) warn public managers that ethics and democratic value system can be lost when a majority of government services are outsourced to private actors.

While contracting can improve the functions of government, if not strategically executed, it can blur the role of government and the ways in which it serves the public (Agranoff, 2006; Koppell & Auer, 2012). Considering the growing momentum towards contracting, Frederickson and Dubnick (2009) address factors that impact public administration today. The role of accountability is addressed in a framework which focuses on the inputs, processes, and outcomes of privatization as a measure for time, and the means (mechanisms) and ends (virtues) as a measure for value.

CHAPTER 4

CASE STUDY #2

Case Study #2: Performance at Pelican Bay State Prison

In California, inmates, state officials, and human rights groups have accused private administrators at Pelican Bay State Prison of misusing state funds, breaking contract obligations, and violating state law for the cruel and unusual treatment of prisoners by prison officials.

Pelican Bay State Prison (PBSP) is a supermax prison built in 1989 located rural Crescent City, California. The prison was commissioned by the California Department of Corrections (CDC) to house 1,059 prisoners in solitary confinement otherwise referred to Secure Housing Units ("the SHU") (Reiter, 2011; Parenti, 1999). The prison was intended to hold "the worst of the worst" offenders with cells in the SHU designed to inflict extreme sensory deprivation (Reiter, 2011; Ruiz et al. v. Brown Jr. et al., 2012). Cells in the SHU are windowless 8 x 10 feet concrete rooms with no temperature control and florescent lights that remain on 24 hours a day. Prisoners are held in cells for no less than 22 hours a day—only permitted to exit to shower or exercise in slightly larger cells called 'dog runs.'

Contrary to policies and rules outlined by the California Department of Corrections and Rehabilitation (CDCR), most inmates are denied medical and mental health care, fresh and adequate amounts of food, showers, educational programs, human contact, or exposure to daylight. Thousands of inmates across the state of California organized three massive hunger strikes (in 2002, 2007, 2011, and 2013) to show solidarity against many call the harshest solitary confinement regulations in the country (Law, 2013, Morain, 2013). In July 2013, more than 30,000 inmates across California organized the largest prison strike in U.S. history (Morain).

In 2012, inmates – legally representing all prisoners detained in the SHU – filed a class action lawsuit against California Governor Jerry Brown, Jr., Matthew Cate (Secretary of the California Department of Corrections and Rehabilitation), Anthony Chaus, (Chief of the Office of Correctional Safety), and G.D. Lewis (Warden of Pelican Bay State Prison) (Ruiz et al. v. Brown Jr. et al., 2013). The plaintiffs claimed that they were detained in the SHU for excessively long periods of time without receiving meaningful reviews of their placement in solitary. Of the large plaintiff class, more 500 prisoners have been in the SHU for more than 10 years and 78 have remained there for more than 20 years. Prisoners are placed in the SHU if they are suspected of being affiliated with a gang in any capacity. The only way to get out of the SHU is through a process called ‘debriefing’ in which prisoners must ‘snitch’ on other prisoners by telling correctional officers names of people associated with gangs.

Organizations like PBSB might compel people workers to continue unethical behavior due to a history of correctional officer retaliation against those who broke the code of silence. The roles of various PBSP officials are perceived as not only a means to an end, but also as a mechanism for advancing a hierarchical and exclusive culture of survival rather than one based on ethics (Dubnick & Frederickson, 2009). Role definitions don’t account for the entirety of behaviors necessary to perform the job and workers will therefore exercise some degree of moral judgment to fulfill their role.

Is it a Problem with the People or the Rule?

Various statements from both sides of the case provide evidence to the argument that prison leaders have advanced an unethical culture among correctional officers and staff and PBSP. Ex-County Assessor Jerry Cochran described the massive economic benefit of the prison. Prior to the prison being built, Crescent City was one of the poorest rural communities in

California. In 1986, Del Norte County—where Crescent City resides—collected $76 million in sales tax. Just over ten years later in 1997, the county collected $142 million—nearly double the amount collected prior to the prison being built. Cochran stated that “without the prison, we wouldn’t exist” (Parenti, para. 5, 1999). PBSP official Tom Hopper stated that “the prison saved the community and people are grateful” (Parenti, 1997, para. 26). Parenti (1997) discusses that economic impact of the community and the impact it has had on the decisions and behaviors of prison officials. Most officials argue against claims from the prisoners noting that prisoners housed in the SHU want out because the unit prevents them from conducting necessary gang business. The official union for correctional officers at PBSP, the California Correctional Peace Officers Association, has stuck by their defense stating that prison officials have the right to place prisoners in the SHU and choose the duration of their punishment to limit gang violence (Carroll, 2013).

Defense Attorney John Levy provides more insight into unethical behaviors of prison officials. He suggests that the prison brings so much economic relief to the area that officials and community members alike employ a code of silence—hiding the fact that any wrongdoing against prisoners is taking place. Levy argues that the CDCR has power extending far beyond the actual prison claiming that officials leverage economic benefits and violent intimidation to silence any form of dissent among criminal defense attorneys, former guards, or community members who challenge the system (Parenti, 1997). Nicole Hanrahan, California Prison Focus investigator believes that prison convictions are job security for the town. The more inmates placed in indefinite detention, the more certainty that there will be a cash flow (Parenti, 1997).

Similarly, defense attorney Tom Easton believes that “the more prisoners they can pack in, the more money comes down the pipe” (Parenti, 1997, para. 16). Easton was the former head of operations for the prison and was harassed after filing suit against the prison for making death threats to four ex-maintenance workers who testified against the prison in a corruption case. Easton notes that the prison has two undercover units—the Special Services Unit (SSU) and the Investigative Services Unit (ISU) operate with classified budgets. These units conduct surveillance on the community and keep dossiers on lawyers and activists who support the defense of prisoners (as confirmed by CDC officials) Officials in these units have been caught intimidating whistle blowers and in one case they chased down a guard as he attempted to deliver condemning evidence to the FBI (Parenti, 1997).

In 1991, John Cox broke the officer's code of silence by testifying against a fellow guard who allegedly framed a prisoner and then beat him in the head with the butt of a gun. Cox claims that PBSP officials called him a snitch and warned him to "watch his back" (Parenti, 1997).

Cox also became a target because he required that his guards complete 100 extra hours of on-the-job training—well beyond the normal 40 hours of training. His training requirements were perceived by administrators and treason against the prison (Parenti, 1997).

Cox points to cases in the past to illustrate the horrendous acts of PBSP staff. In one case, guards and medical experts boiled an inmate alive while reciting racial slurs (Parenti, 1997).

Cox claims that guards are constantly framing prisoners so that their sentences grew decades beyond original prison-time (Parenti, 1997). "Cox, playing by the rules, found it almost impossible to do his job" and decided to leave the prison after deciding he could no longer stand by and support his fellow employees and prison administrators (Parenti, 1997, para. 22). "They called … (my jurisdiction) of the SHU the 'fluffy SHU' because we didn't hog-tie inmates to toilets or kick them in the face after cell extractions" (Parenti, 1997, para. 21).

Since leaving, Cox claims that he has been continuously harassed by local prison supporters. Cox has had found bullets shot through windows in his house, prank calls, sugar in his gas tank, slashed tires, and various death threats to him and his family. Cox claims that the DA has refused to investigate his claims, recommending that he talk to the prison to resolve any issues he may have.

Various human rights groups and PBSP prisoners have filed lawsuits against the prison for committing what many call ‘state-sanctioned torture.’ While some lawsuits remain open, others have resulted in court orders requiring the prison to eliminate unwritten policies that support violence against prisoners (Ruiz v. Brown, 2012).

Dubnick and Frederickson (2009) argue that people working in complex public-sector organizations like PBSP are held accountable to public constituencies. Policies and behavioral conduct advanced by administrative officials at PBSP impact correctional officers perceptions of right and wrong. Furthermore, administrative officials exemplify unethical actions and therefore can substantiate unwritten policies and standards of operation that reach outside the scope of ethical practices or the law. As such, administrative officials who have condoned unethical or illegal practices by way of allowing prisoner abuse set examples that have advanced a outputs that achieved contract provisions

PBSP employed most of the rural town it was situated. It brought new economy and opportunity for what had been a struggling low-income area. Where private vendors are typically motivated by monetary incentives government agents are often motivated to outsource services for government efficiency. While California government officials outsourced PBSP to protect citizens, PBSPs motivation was to keep the prison full as it relies on prisoner retention to make a profit. PBSP arguably uses solitary confinement and, denying inmates rights to hearings for release, as a means to achieve contract success. They ways in which they achieve that outcome is promoting outputs that challenge democratic values. PBSP continues unjust treatment and unethical practices because it is not bound by a democratic value system and receives limited oversight while providing a service that highly difficult to measure.

Policies and behavioral conduct advanced by administrative officials at PBSP impact correctional officers perceptions of right and wrong. Furthermore, administrative leaders promote unethical behavior further substantiating behavioral outputs that benefit the prison while challenging democratic values such as a fair judicial system, accountability, transparency, and responsiveness to the public.

Brown and Potosky (2005) suggest outsourcing prisons has high transactions costs and often results in contract failure. Furthermore, public officials trained in law and justice may offer more specialized expertise than private vendors with no public training or experience.

CHAPTER 5

DISCUSSION AND RECOMMENDATIONS

Discussion

These examples align with the Transaction Cost Framework. Sandy Springs, Georgia and Weston, Florida outsourced services that were east to measure and had low-asset specificity. Government officials in both communities drafted clear contract provisions, maintained control over outputs, provided contract oversight, and enforced consequences for non-performance. The first case study demonstrates that when government services are outsourced selectively and strategically, government contracts can be successful.

While both towns achieved a largely successful outsourced government, scholars acknowledge that the predominantly white wealthy suburban communities isolated themselves and created economic hardship for surrounding low-income minority communities. This example of success also indicates that contracting can have negative implications for promoting public service delivery with a democratic value system.

Prison officials at PBSP are private vendors employed in part by funding from California to house inmates convicted by way of the U.S. legal system. It is true that rules for PSBP are clearly defined.by state laws and regulations operating in conjunction with of a democratic justice system. However, PBSP demonstrates that clearly written contracts don't necessarily encourage or create a democratic ethos among private delivering public services. Public managers should carefully compare the transaction costs with as well as the unique contract provisions that must be considered when outsourcing prisons. Theoretical frameworks are often contextual tools that can assist public administrators seeking to analyze complex policy issues such as the one presented by Ruiz v. Brown (2012).

Dubnick and Frederickson (2009) suggest that input mechanisms promising control through hierarchy and standardized procedures, create accountability; whereas virtue is created through promises of integrity. This suggests individuals working in both sectors are more accountable when they feel they are part of an accountable culture. Processes promising ethical behavior suggest corruption and unethical behavior are preventable in the presence of mechanisms that hold people or groups accountable. Similarly, virtues are suggested to be upheld when the promise of democracy is modeled by horizontal and vertical procedures for accountability (p. 145).

Ultimately, private vendors work to achieve the outcome of the contract for the incentive of profit. In some cases, the drive to perform contractual duties outweighs democratic standards written in contracts as mechanisms for accountability.

Recommendations

NASPAA (National Association of Schools of Public Affairs and Administration) recommends that accredited public administration programs ensure graduates are prepared for professional roles in public to private contracting (Cunningham, 2008; Snider & Rendon, 2010).

As the accrediting body for professional degrees in public administration, NASPAA urges accredited programs to incorporate contract curriculum as a core focus for degree requirements. NASPAA provides clear standards on contract curriculum using the principles outlined by the Federal Acquisition Institute Contracting Competencies.

Scholars have urged for contract curriculum with fiscal management and budgeting courses (Snider & Rendon, 2010; MacManus & Watson, 1990). Furthermore, Snider and Rendon argue that private-public contracting education is just as important as traditional coursework in public administration such as budgeting, strategic management, and human resource management. Public managers who are trained before entering the field will have the capacity to know when to contract out for services, how to draft clear contract provisions, incentives, and consequences, and design mechanisms for overseeing and monitoring the lifecycle of the contract.

The case studies of Sandy Springs, Georgia and Weston, Florida demonstrate what the townspeople argue as successful contracting. Alternatively, Pelican Bay State Prison illustrates the complexities of contract failure. Both Sandy Springs and Weston outsource services that according to Brown and Potoski (2005), can often result in contract success. On the other hand, PBSP outsourced services that are difficult to measure, hard to define, and have high asset specificity. According to the Transaction Cost Framework, outsourcing these services have a high risk for contract failure.

While the Transaction Cost Framework can be used as tool for deciding when and when not to contract, it does address the role of democratic values and a potential 'transaction cost.' Traditional government models promoted core democratic values including accountability, transparency, responsiveness, and efficiency (Snider & Rendon, 2012). "New Public Management brings a business-like approach to governing with values such as cost effectiveness, responsiveness to the citizen as a customer, market preferences (e.g. competition among public entities), and performance measurement" (p. 333).

Snider and Rendon (2012) define legal values in contracting to include constitutional integrity, individual rights, equal protection, due process, contract law, ethics, resolutions, and disputes adjudication. The case of PBSP not only demonstrates a contract with high transaction costs, it points to a problem of training and performance. The private and public prison system in the United States is a complex cross-sector relationship where government judicial systems are intended and constitutionally bound to govern the imprisonment and release of prisoners, private vendors are contracted to provide prison services. In the case of PBSP, private contractors were not incentivized to act according to a democratic value set. Prison officials, guards, and community members valued the economic benefit the prison brought to the community. The motivation for the private vendor for monetary – the more prisoners, the more profit. Perhaps due process was denied to prisoners in solitary confinement because the goal of the vendor was to keep as many assets, or prisoners, as possible to remain profitable. Furthermore, prison services are not only hard to measure, they are hard to define. A potential solution could be to draft contracts incentivizing vendors to reduce the rate of recidivism by providing educational and re-entry programs. However, the evidence supporting outsourcing prisons suggests that prison services are extremely challenging to measure. Because private vendors may view prisoners directly correlated with financial gain, public managers should consider the necessity for government oversight, clear contract provisions, and effective tools to measure success.

Snider and Rendon (2012) researched the number of NASPAA accredited master's degree programs in 2011. Of the 165 programs, 4 had contracting and procurement related concentrations, 1 program required 1 core contracting course, and 44 offered contracted related electives. Both Rendon and Cunningham (2008) suggest that educators include more contracted related core curricula to NASPAA accredited graduate programs. The researchers consider public service values and public procurement broken down by policies, processes, and practices.

The emergence of private contracting has influenced public agencies to create and provide tools for public managers to use in the contracting process (Cooper, 1980; Snider & Rendon, 2010). Federal agencies like the Department of Defense (DoD) and Department of Energy (DOE) provide free guidebooks, measurement instruments, and contract templates for public managers. Agencies such as ICMA offers research and articles on best practices for public managers in contracting and examples of contract services.

The value-sets of traditional government models and models under New Public Management remain consistent: efficiency, accountability, and responsiveness are vital for maintaining a democratic ethos in public-private service delivery.

Table 2

Contracting and Procurement Perspectives

Public Service Values	**Policies**	**Processes**	**Practices**
Pursuing the public interest • Accountability • Transparency	• Appointing contracting officers • Publicizing contract actions	• Agency review of contract documents • Public disclosure of RFPs and contracts	• Conducting industry conferences for contracting • Solicit industry feedback
Serving Professionally • Competence • Efficiency • Objectivity	• Education/training requirements for procurement workforce • Procurement reform legislation/initiatives	• Procurement planning • Source selection • Contract administration	• Conducting market research • Evaluating proposals • Best value contract awards
Acting Ethically • Uphold the public trust	• Standards of conduct • Conflict of interest • Revolving door policies	• Source selection • Contract negotiations	• Determining fair and reasonable prices • Monitoring contractor performance
Demonstrating • Respect • Equity • Fairness	• Preferred sources of supply • Socioeconomic programs • Promoting competition	• Determining contractor responsibility • Planning procurement strategy	• Service contractor surveillance • Negotiating contract modifications • Processing contractor payments

Snider, K.F. & Rendon, R.G. (2012). Public procurement: Public administration and public service perspectives. *Journal of Public Affairs Education, 18*(2), 327-348.

REFERENCES

Agranoff, R. (2006). Inside collaborative networks: Ten lessons for public managers. *Public Administration Review, 66*, 56-65.

Amirkhanyan, A., Kim, J.K., & Lambright, K.T. (2007). Putting the pieces together: A comprehensive framework for understanding the decision to contract out and contractor performance. *International Journal of Public Administration, 30,* 699-725.

Bertelli, A.M., & Smith, C.R. (2010). Relational contracting and network management. *Journal of Public Administration Research & Theory, 20*(1), 121-140.

Bloomfield, P. (2006). The challenging business of long-term public – private partnerships: Reflections on local experience. *Public Administration Review*, *66*(3), 400–411

Brown, T. L., & Potoski, M. (2005). Transaction costs and contracting: The practitioner perspective. *Public Performance and Management Review, 28*(3), 326-351.

Brown, T. L., & Potoski, M. (2003). Contract-management capacity in municipal and county governments. *Public Administration Review*, *63*(2), 153–164.

Carroll, R. (2013, September 27). California prison hunger strike leader: “If necessary we”ll resume. This is war’. *The Guardian*. Retrieved November 1, 2013, from http://www.theguardian.com/world/2013/sep/27/california-prison-hunger-strike-todd-ashker

Cohen, S., & Eimicke, W. (2008). *The responsible contract manager: Protecting the public interest in an outsourced world.* Washington, DC: Georgetown University Press.

Cooper, P. (1980). Government contracts in public administration: The role and environment of the contracting officer. *Public Administration Review*, *40*(5), 459–468.

Cooper, P.J. (2003). Governing by contract: Challenges and opportunities for public managers. Washington, DC: CQ Press.

Cunningham, V. (2008). An analysis of contract management coursework in NASPAA accredited master of public administration programs. Retrieved from http://www.mpa.unc.edu/sites/www.mpa.unc.edu/files/VictoriaCunningham.pdf

Denhardt, R.B. & Denhardt, J.Z. (2000). New public service: Serving rather than steering. *Public Administration Review, 60*(6), p. 549-559.

Dubnick, M.J. & Fredrickson, H.G. (2009). Accountable agents: Federal performance measurement and third-party government. *Journal of Public Administration Research and Theory, 20*(i), 143-159.

Ferris, J. & Graddy, E. (1986). Contracting out: For what? With whom? *Public Administration Review, 46,* 332-344.

Frederickson, H. G. (1999). The Repositioning of American Public Administration. *PS: Political Science and Politics, 32*(4), 701-711. doi: 10.2307/420159

Gibson, E. (2004). Admitting a bad influence: Contracting the public service. *International Journal of Public Administration*, *27*(7): 481–490.

Government Accountability Office (GAO). (2007). *Rebuilding Iraq: Reconstruction progress hindered by contracting, security, and capacity challenges.* No. GAO-07-426T. Washington, DC: Author.

Grant, B. (2002). Customer service vs. accountability. *Government Procurement*, *10*(1): 31.

Heinrich C.J., Lynn, L.E, & Milward, H.B. (2009). A state of agents? Sharpening the debate and evidence over the extent and impact of the transformation of governance. *Journal of Public Administration Research and Theory, 20:* i3-i19.

Holeywell, R. (2012, May 14). How Weston, Florida, a city of 65,000 gets by on 9 employees. *Governing*, p. 1-3. Retrieved from http://governning.com/blogs/view.html

Kettl, D.F. (1993) *Sharing power: Public governance and private markets*. Washington DC: Brookings Institution.

Law, V. (2013, September 6). California prison hunger strike ends after 60 days. *Truthout*. Retrieved November 18, 2013, from http://www.truth-out.org/news/item/18649-california-prison-hunger-strike-ends-after-60-days?tmpl=component&print=1

Light, P.C. (2000). The empty government talent pool: The new public service arrives. *The Brookings Review, 18*(1), 20-23.

MacManus, S., & Watson, S. (1990). Procurement policy: The missing element in financial management education. *International Journal of Public Administration*, *13*(1): 155–179.

Milward, H. B., and Provan, K.G. (2000). Governing the hollow state. *Journal of Public Administration Research and Theory*, *10*: 359–380.

Morain, D. (2013, August 12). Dan Morain: The real story behind hunger strike. *The Sacramento Bee*. Retrieved November 18, 2013, from http://www.sacbee.com/2013/08/11/5638362/the-real-story-behind-hunger-strike.html

Parenti, C. (1999). *Lockdown America: Police and prisons in the age of crisis*. Verso Books.

Parenti, C. (1997.). Rural prison as colonial master. *Pelican Bay Prison Project*. Retrieved from http://pelicanbayprisonproject.org/history.htm

Reiter, K. (2013). A brief history of pelican bay. *Prisoner Hunger Strike Solidarity*. Retrieved November 1, 2013, from http://prisonerhungerstrikesolidarity.wordpress.com/pelican-bay/305-2/

Rendon, R. (2005). Commodity sourcing strategies: Processes, best practices, and defense initiatives. *Journal of Contract Management*, *3*(1): 7–21.

Romzek, B. S., & Johnston, J. M. (2005). State social services contracting: Exploring the determinants of effective contract accountability. *Public Administration Review*, *65*(4): 436–449

Ruiz, G., Franklin, J., Ashker, T., Franco, G., Reyes, G., Johnson, R., … Dewberry, R. Ruiz et al. v. Brown, Jr. et al. , No. 4:09-cv-05796-CW (United States District Court Northern District of California Oakland Division 2012). Retrieved from http://ccrjustice.org/files/Ruiz-Amended-Complaint-May-31-2012.pdf

Salamon, L. (1998). Beyond privatization: The tools of government action. Washington, DC: Urban Institute Press.

Segal, D. (2012, June 23). A Georgia town takes the people's business private. The New York Times, p. 1-9. Retrieved from http://nyti.ms.mpnikj

Schooner, S. (2004). Mismanaged competition. *Government Executive*, *36*(8): 70–73.

Snider, K.F. & Rendon, R.G. (2010). Public procurement: Public administration and public service perspectives. *Journal of Public Affairs Education, 18*(3): 327-348.

Van Slyke, D. (2002). The public management challenges of contracting with nonprofits for social services. *International Journal of Public Administration*, *25*(4): 489.

Williamson, O. (1981). The economics of organization. *American Journal of Sociology, 87*, 548-577.

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Dolezal, K., Sack, N., Knaus, L. (2014). The creative economy in southern Illinois: Opportunities for reshaping Carbondale and SIU. *The Simon Review, #39,* 1 -33. Paul Simon Public Policy Institute. Carbondale, IL.