

Stewardship and Accountability in Public Contracting

With the increasing scrutiny of public contracting today, the traditional unilateral perspective of contract management is no longer sufficient—therefore, a paradigm shift to a bilateral perspective is called for.

BY ALEX DENIS

Over the last several decades, the field of public sector contract management in the United States has placed much attention on the need to adequately manage contracts awarded by federal, state, and local governments, as well as other publicly-funded agencies. With the hundreds of billions of tax dollars spent each year by the public sector, one can see why the professional literature in the field is so full of best practices on managing public sector contracts. Simply put, the need to do so is paramount.

Although the body of knowledge in this field has increased significantly over the years, much of the research and literature has focused predominantly on the following topics:

- Contract type (e.g., performance-based, professional services, etc.);
- Contractor selection (e.g., procurement and negotiation methods);
- Contract creation and document management;
- Risk management; and
- Managing contractor commitments and obligations.

It has been reported that the U.S. government, including federal, state, and local agencies, purchases more goods and services than any other entity in the world.¹ With this fact in

mind, it is understandable why so much time and energy has gone into the development of best practices and tools for public contract management. Yet, it seems as if the advancements and successes gained in this field may, at times, be paled by reports from media and watch groups, such as the Project on Government Oversight (POGO), of mismanaged government contracts, contractors misusing public resources, and, worst of all, the perception that no one is watching either. For example, POGO's 2006 report, "Federal Contracting: Lessons Learned from Hurricane Katrina," states that poor oversight of vague contracts with inadequate cost controls in the aftermath of Hurricane Katrina, along with other factors, such as the use of government purchase cards and minimal transparency, led to serious contracting abuses.

Among other examples of abuse, POGO's report includes a well publicized case of a Federal Emergency Management Agency (FEMA) contract whose price increased, apparently without justification by the contractor or questioning by

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officials, to the tune of nearly \$8 million immediately after the disaster.² Further, a 2006 congressional review and report of abuses committed by the U.S. Department of Homeland Security, “Waste, Abuse, and Mismanagement in the Department of Homeland Security,” stated that there was pervasive mismanagement of contracts, including irresponsible contract planning, failures in the determination of program requirements, and inadequate contract oversight.³

While not to minimize the significant advances in public sector contract management in the last several decades, continued reports of such abuses highlight the fact that much more work remains to be done. The public sector, including its agency leaders and contract professionals, are currently and will continue to be held accountable for the stewardship of the billions of taxpayer dollars spent each year in acquiring the goods and services necessary for carrying out agency missions. However, the reality of such scrutiny is further compounded by the more recent economic situation facing the United States and the fact that the need for financial resources is far exceeding their availability in many public sector coffers. Now more than ever, the public sector will be scrutinized and held accountable for the stewardship of its allocated financial resources.

Without question, the government’s fiduciary responsibility demands prudent protections against contractor abuses.⁴ But are prudent protections against contractor abuses sufficient? With as much practical knowledge as there is in the field of contract management, the reports of waste and abuse continue. With this in mind, one must ask the question, what else needs to be done to minimize the waste and abuse of allocated taxpayer resources in the public sector? Further, what drastic changes need to take place? It may be that while the attention of watch groups and the media on such contracting abuses continues to shed an unfair negative light on an overburdened contracting workforce, that same attention could be the impetus for government leaders to implement changes to eliminate or mitigate the chance of continued abuses in the future.⁵

It is becoming evident that the United States’ new economic reality, coupled with the abuses of the past, will require leaders and change agents in the field of public sector contract management to take a closer look at their current practices in order to see if there is a better way. This new reality demands the public sector and those that manage its contracts to fully embrace and incorporate the values of stewardship and accountability in public sector contract development and management.

For the purposes of this article, “stewardship” and “accountability” are defined as follows:

- *Stewardship* involves the administration, management, and guardianship of resources, namely financial resources (but not exclusively), provided by the public or taxpayer; and
- *Accountability* means to be held responsible or to be required to account for the proper stewardship of said resources.

A way of ensuring a basic level of stewardship and accountability in public contracting is to start with a good contract. There is a wealth of evidence that suggests that in order to serve the taxpaying public and meet agency requirements, contract professionals must:

- Accurately describe, through clear specifications and contracts, the goods or services required;
- Select the most capable supplier;
- Ensure value and cost effectiveness;
- Structure contracts for good contractor performance; and
- Evaluate contractor performance.⁶

There are myriad examples of best practices and tools to help achieve these contracting goals, yet reports of contract mismanagement, contractor abuse, and waste persist and citizen watch groups are constantly highlighting problems in the system. Could this mean that a good contract alone is not the answer for the cited abuses? Not really; at least not *exclusively*. The real problem is that the public contracting workforce is insufficient in both numbers and training.⁷ The number of contracting professionals has not kept pace with contracting dollars and public agencies have not sufficiently invested in the training of their contracting staffs.⁸ It has therefore been proposed that in order to avoid contracting scandals, what is needed is an overhaul of the contracting system—beginning with a significant investment in a greater number of more adequately trained contracting professionals and a focus on improving the morale of the current contracting workforce.

While these initiatives may help to mitigate some of the reported abuses for the obvious reasons of increased and better oversight, it is proposed herein that these resources and steps are only part of the way to full stewardship and accountability for the use of public dollars. True stewardship requires the management of the full life cycle of the product or service being acquired by the public agency. What good does it do a public agency if a contractor executes a contract deliverable in

full accordance with contract requirements, only to have the agency waste what has been delivered? For example, in 2005, The Heritage Foundation, a public policy research institute, cited that between 1997 and 2003, the U.S. Department of Defense (DOD) wasted \$100 million of unused, fully refundable airline tickets for which refunds from the airlines were available but not sought.⁹ Who is accountable? In a May 2005 report, the U.S. Government Accountability Office (GAO) reported significant waste and inefficiency within DOD when \$2.2 billion of excess commodity disposals—reported to be in new, unused, and excellent condition—were transferred and donated outside of DOD, sold for pennies on the dollar, or destroyed.¹⁰ Again, who is accountable?

In the traditional “unilateral view” of public contracting, most, if not all, contract management efforts are focused solely or predominantly on the public contractor’s compliance with contract requirements. However, neither of these few examples of waste and abuse have anything to do with contractor abuse and malfeasance. Therefore, it is evident from these abuses that the traditional unilateral view of contract management is no longer sufficient. It is also evident that the public and the media will continue to demand greater scrutiny of the activities and results of contracting professionals and their agencies and will continue to call for accountability from those perceived to have violated the public trust.

Government agencies must and will continue to rely on the private sector to supply the goods and services they need—from brooms to missiles, paper clips to computers, and hand tools to vehicles.¹¹ Government agencies will also continue to increase their reliance on the private sector for the outsourcing of certain functions. This may even be increased to such a great degree that virtually every government service will have been contracted out at some time.¹² The need for public contract professionals to continue to monitor contractor performance to enforce resource stewardship will certainly not wane in the future; and with the increased attention by the media and watch groups, the contract professional is sure to become more accountable for compliance.

Therefore, focusing solely on public contractor compliance is no longer sufficient, and nothing less than a complete paradigm shift in public sector contract management is required. Public contract management must expand from a *unilateral* perspective to a *bilateral* perspective, which includes both the contractor *and* the public agency as stewards of the public’s resources, and where both are held accountable for their actions. In the “bilateral perspective” of public contract

management, the contract professional monitors both the compliance of the contractor to established contract requirements and deliverables, as in the traditional unilateral approach, but also the agency department’s use of contract deliverables and resources provided as a result of the contract. Some may argue that the proposed expanded role of the contract professional to hold agency uses accountable for the stewardship of contract resources should be left to inspector generals or auditors. It is argued, however, that by the time inspector generals or auditors complete contract reviews, it is too late to prevent pervasive abuses that may have already occurred.

Initially, this may be a hard pill to swallow for contract professionals, who may see their already burgeoning list of responsibilities expand even further. But with continued media and watch group interest in government waste, along with the fact that government agencies continue to increase their reliance on the private sector, the call for both sides—agency and contractor—to become stewards of public resources and to be held accountable for their respective actions, if not fully here yet, is surely just on the horizon. If for no other reason, the recent reports of federal, state, and local budget woes may mandate such a paradigm shift.

With the bilateral perspective of public contract management, contract professionals would track not only how well contractors are complying with contract requirements, but also how well agency departments are utilizing the goods and services provided to them as a result of the contract. Nearly every contractor deliverable stated within a contract can and should be tied to a verifiable action by the receiving agency department. Tracking the actions of both contractors and agency departments could minimize instances of waste or misuse. To illustrate this point, consider the previous examples of waste and abuse of expired, unused, refundable airline tickets and new, unused disposed equipment in DOD. None of these abuses would be the focus of the traditional unilateral perspective to public contract management. However, both could have been avoided or significantly minimized with appropriate management and monitoring by a contract professional with a bilateral focus on contract management.

Without shifting public contract management to a bilateral perspective, public sector contract professionals will never be able to maximize the value they bring to their agencies. The stories of waste reported by the media will continue, as will the pervasive attitude by the public of the wasteful inefficiencies of government spending. However, a bilateral perspective will assure the public that allocated resources are being used judiciously.

Like any other paradigm shift or significant change, transforming an agency's contract management function from a unilateral to a bilateral perspective will not be easy. There will be many aspects of the new paradigm to consider, including (but not limited to):

- Management support for increased oversight of agency departments;
- Considerations of both contractor and agency department responsibilities, timelines, and reporting methods when developing contracts;
- Increased work and responsibility for the contracting staff;
- Potential for required postaward contract modifications to assure deliverables remain consistent with departmental actions, timelines, and requirements;
- Contract closure considerations and how, or if, to continue to track departmental responsibilities after contractor completion; and
- Communication of the new plan agencywide, including new or revised policies and procedures.

There is doubt that this paradigm shift will require superior leadership to communicate and carry out the new vision. Additionally, the leadership will need to be prepared to take action when abuses are discovered, both to minimize continued abuse and to curtail abusive behavior in the future.

Yet, while there is a great body of work to assist public sector contracting professionals with managing contracts from a unilateral, or "contractor-focused," perspective, there is very little information on best practices or tools to assure that agency departments are maximizing stewardship of allocated resources while being held accountable for violations, as a contractor would be. This article is, therefore, a call to action for both public contract professionals and agency chiefs to embrace the need for a bilateral perspective of public contract management and to begin increasing the development of tools, methods, and best practices that will ensure both contractors and public agencies serve as stewards of public resources and are both held accountable for their actions.

Conclusion

The change from the traditional unilateral perspective of contract management to the bilateral perspective will not be easy, but it is a necessary change for the public sector to undertake. Now more than ever, the public demands several things from the government:

- That the resources the public provides to the government be used judiciously,
- That the government should view itself as a steward of those resources, and
- That the government should be held accountable for how those resources are used.

While we cannot go back and correct the abuses of the past, we can start today to make sure they do not occur again. *JCM*

ENDNOTES

1. Mike Pickett, "How Government Procurement is Changing for the Better," *Contract Management* (June 2006): 18–23.
2. Project on Government Oversight, "Federal Contracting: Lessons Learned from Hurricane Katrina" (April 28, 2006).
3. U.S. House of Representatives, Committee on Government Reform, "Waste, Abuse, and Mismanagement in Department of Homeland Security Contracts" (Washington, DC: July 2006).
4. See, e.g., Steven Kelman and Steven Schooner, "Scandal or Solution?" *Contract Management* (July 2006): 62–63.
5. *Ibid.*, 62.
6. *Ibid.*, 63.
7. *Ibid.*
8. *Ibid.*, 62–63.
9. Brian M. Riedl, "Top 10 Examples of Government Waste," The Heritage Foundation (April 4, 2005).
10. U.S. Government Accountability Office, GAO-05-277, "DOD Excess Property: Management Control Breakdowns Result in Substantial Waste and Inefficiency" (Washington, DC: May 2005).
11. See, generally, Susan MacManus, *Doing Business with the Government* (New York: Paragon House, 1992): 6.
12. *Ibid.*