

Remarks for Suffolk County Legislature Republican Task Force on Budget and Taxation
Public Hearing
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In the Public Interest
April 16, 2014

Distinguished Members of the Suffolk County Legislature Republican Task Force on Budget and Taxation:

My name is Shar Habibi. I am Research and Policy Director of In the Public Interest, a non-profit resource center dedicated to responsible contracting. We are committed to equipping citizens, public officials, advocacy groups, and researchers with the information, ideas, and other resources they need to ensure that public contracts with private entities are transparent, fair, well-managed, and effectively monitored, and that those contracts meet the long-term needs of communities.

ITPI does not believe that outsourcing public services is an inherently bad thing. For example, contracting can be an important tool for government to bring in specialized expertise if that capacity does not exist in the public sector. However, to protect taxpayers, it must be done right, done well and done responsibly. And doing that requires a fiscally conservative approach to outsourcing, which is at the heart of our policy recommendations today.

We've reviewed dozens if not hundreds of government contracting laws and private sector outsourcing practices. The recommendations that I'll share today represent best practices in contracting— in both private sector contracting and government outsourcing.

Private businesses that outsource functions have faced the same problems that plague public sector outsourcing and are increasingly adopting these practices. A 2005 study by Deloitte found that senior executives in the private sector often fail to recognize "the inherent complexities and common pitfalls of outsourcing."¹

Contracting for services is actually more complex than in-house delivery and requires highly skilled management to plan, analyze, assess risk and monitor compliance. I don't have time to go into great detail, but the recommendations I will outline today are focused on the important themes of accountability and transparency in contracting. It's critical to keep in mind our common goal of providing high quality services in the most cost effective way regardless of who is providing the service – public employees, large corporations, or smaller businesses seeking to grow.

¹ Deloitte Consulting, "Calling a Change in the Outsourcing Market: The Realities for the World's Largest Organization, April 2005. http://www.deloitte.com/assets/Dcom-Luxembourg/Local%20Assets/Documents/Global_brochures/us_outsourcing_callingachange.pdf

First, ask the right questions before the decision is made

ITPI's Taxpayer Empowerment Agenda calls for outstanding fiscal prudence and stewardship of taxpayer funds. Business is in business to make a profit. It's the American way and there is nothing inherently wrong with that. But if a private entity promises to provide public services better, faster and cheaper, it's critical to do a thorough analysis of costs before decisions are made and after services are performed. That means all contract costs — including the costs of the contracting process, robust contract management, effects of service failures, change orders and potential cost overruns — must be included in the decision-making process and be monitored carefully.

Our proposal requires a thorough and rigorous analysis of costs, impacts, and risks before contracting decisions are made. A 10% cost savings requirement is one of the most important ways to ensure success. A number of states and cities across the country include these thresholds as a way to establish a clear and objective metric to guarantee that the decision to outsource will actually generate savings. For example, Maryland requires as much as 20%, Michigan as high as 25%, the city of San Diego has a 10% savings requirement.

Second, trust but verify. Maintain a rigorous commitment to accountability.

ITPI's Taxpayer Empowerment Agenda includes robust accountability features to monitor and audit financial and performance metrics to guarantee that the county – and taxpayers – are getting what they paid for.

Too often, in both public and private sectors, contractors overpromise services and under-estimate costs in their bids, leading to cost overruns, expensive fixes by government employees and other problems. Many of you, like me, have probably hired contractors to paint your house, add a porch or some other house project. And halfway through the contractor says they need more money because they didn't anticipate some problem.

Our Taxpayer Empowerment Agenda helps government hold contractors accountable in several ways. First, it allows governments to take the initial step of holding contractors accountable by not awarding contracts to companies that break laws. Not only does this give governmental entities a means to reprimand companies that fail to abide by public laws, but also helps weed out contractors that may not have good judgment. Governments should make sure that they understand the track record of a company before outsourcing public functions. If a company has evaded taxes or broken laws, it should not be allowed to run critical services. If a contractor breaks the laws while engaged in a contract, the governmental entity should be able to bar the company from receiving future contracts. State and local governments that require prospective bidders to provide information about their company track record and policies, and use this information to identify "responsible" bidders, report that contracts result in better outcomes – higher quality, more reliable services, reduced cost overruns and project delays, and reduced compliance and litigation costs.²

Second, in the worst cases, it allows the government to cancel the contract if the company doesn't live up to its promises of quality and cost savings. Governments should not be locked into contracts with companies that fail to deliver.

² David Madland, Karla Walter, Paul Sonn, Tsedeye Gebreselassie, "Contracting that Works: A Toolkit for State and Local Governments," Center for American Progress Action Fund and National Employment Law Project, 2010.

Third, require excellent in-house contract management staffing.

Hiring adequate staff with procurement expertise is a must -- to design performance specifications, supervise contractors, and to ensure taxpayers are getting what they paid for. Again, too often governments outsource important services but fail to assign enough monitoring staff. It's a basic and universal truth -- whether contracting for public services or for a room addition to your home -- if you don't watch, problems happen. The rigorous contract management and monitoring procedures included in the Taxpayer Empowerment Agenda are best practices that require sufficient skilled in-house contract administration staffing and demand excellence in government while preserving management discretion.

Fourth, demonstrate a commitment to transparency in the procurement process.

Regarding transparency, ITPI makes two recommendations. First, the county should collect and make publicly available how much taxpayers are spending on private contracts and how many workers are employed by those contracts - the same way government must report these things for public work. Tracking this spending and personnel data, which all public agencies do for their own workforce, would allow policymakers and taxpayers to better understand where tax dollars are going and the level of service they can expect. Too many local governments do not keep track of this information, making it difficult to assess how much of its budget it is spending on contracting and other important trends because aggregate data does not exist. Collecting this data will help the county better compare the costs and efficiencies of contracting versus public provision of services.

Second, the county should require any company being paid with tax dollars to open its books and meetings to the public, just as government does. When a contractor performs a public function, it should be required to open its books and meetings to the public, just as any public agency would be required to under state sunshine laws. This allows taxpayers to understand how public dollars are being spent and understand important decisions that a contractor makes related to important public services and assets. Without strong sunshine laws that fully apply to government contractors, companies will continue to operate in the dark, without public oversight. Meaningful oversight dictates that the county must have access to important information from contractors related to the public services they are providing.

When a governmental entity decides to contract, we encourage them to "do it right," and follow the principles and practices in our Taxpayer Empowerment Agenda. Successful contracting is difficult -- by conducting a thorough and thoughtful analysis from the start, providing expert contract accountability and oversight, ensuring maximum transparency, and retaining control at all stages of the process, the county increases the probability of success. In The Public Interest solely focuses on public contracting. We are happy to lend our expertise and resources in helping the task force craft policy to strengthen its procurement process. Thank you for your time and consideration.