



# Out of Control:

The Coast-to-Coast Failures of Outsourcing Public Services to For-Profit Corporations

A publication of *In the Public Interest* | DECEMBER 2013



**E**ager for quick cash, state and local governments across America have for decades handed over control of critical public services and assets to corporations that promise to handle them better, faster and

**cheaper.** Unfortunately for taxpayers, not only has outsourcing these services failed to keep this promise, but too often it undermines transparency, accountability, shared prosperity and competition – the underpinnings of democracy itself. As state legislatures soon reconvene, policy makers likely will consider more outsourcing proposals. *Out of Control: The Coast-to-Coast Failures of Outsourcing Public Services to For-Profit Corporations* serves as a cautionary tale for lawmakers and taxpayers alike.

Too often, outsourcing means taxpayers have very little say over how tax dollars are spent and no say on actions taken by private companies that control our public services. Outsourcing means taxpayers cannot vote out executives who make decisions that hurt public health and safety. Outsourcing means taxpayers are contractually stuck with a monopoly run by a single corporation – and those contracts often last decades. And outsourcing too often means a race to the bottom for the local economy, as wages and benefits fall while corporate profits rise.

This report highlights the failed experiences of cities and states across the country that recently experimented with outsourcing in a variety of sectors. Organized by failures in transparency, accountability, shared prosperity and competition, these stories will show how hastily and ill-conceived outsourcing deals fail to protect taxpayers and the public interest.

The last section will provide recommendations of responsible contracting practices, including implementation of ITPI's Taxpayer Empowerment Agenda, which can mitigate the risks of outsourcing and ensure that public dollars are not blindly funneled into corporate coffers, but used to further a communities best interest.

## Transparency

**O**pen access to public information helps taxpayers hold elected officials and the people who provide public services accountable. Taxpayers deserve to know who works in our children's school, how the state's transportation department spends public funds, why the health and human services agency decides to adopt new public policies, what is discussed at public meetings, and much more.

Unfortunately, the same rules do not necessarily apply once for-profit companies take over these public services, even though they receive tax dollars to perform public functions. Corporations can — and do — circumvent open records requirements claiming that documents and records related to government functions are “proprietary information” exempt from disclosure. Even basic information about a government contract and the accompanying procurement process can be difficult to obtain. Corporations may not diligently collect data and information related to public programs and services, leaving the public record incomplete. As a result, the public loses access to information about our own government. The debate about the size of government at the state and local level becomes meaningless because no one knows exactly how many people — including contractors — are on the government payroll. By skirting open records laws, private corporations essentially perform public functions behind a veil of secrecy that would not be tolerated by public agencies. The results speak for themselves:

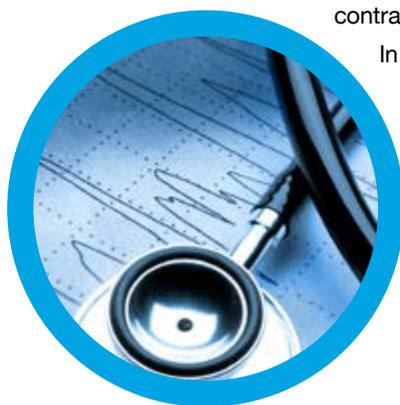
### Same Company, Different Rules for State Health Care Exchanges

#### *Connecticut, Hawaii and Vermont*

Maximus, a company that provides “business process services” to government health and human services agencies,<sup>1</sup> is one of the largest privatizers of social services in America, and has several contracts with state governments to run state health exchanges associated with the Affordable Care Act.

National Public Radio recently examined Maximus contracts from several states, including Connecticut, Hawaii, and Vermont. In Connecticut, the investigator was able to receive a copy of the call center contract between Maximus and the state, but all of the language about pricing was redacted.

In emails to the state, the company argued that releasing its pricing information would “result in irreparable economic damage to Maximus and significantly weaken its competitive position in the marketplace.”<sup>2</sup> As a result, taxpayers don't know how much Connecticut is paying its contractor. The company values the Connecticut contract at \$15 million, but the description of those fees and how they are calculated is not public information. Connecticut law allows the contractor to black out what it thinks is proprietary information. Even worse, in Hawaii, Maximus' contract with the state is completely exempt from open records laws.



<sup>1</sup> Center for Media and Democracy, Maximus, Inc. profile. <http://www.sourcewatch.org/index.php/Maximus>

<sup>2</sup> Jeff Cohen, “Call Centers Got Big Deals Under Health Law, But How Big?,” National Public Radio, November 05, 2013. <http://www.npr.org/blogs/health/2013/11/05/243054535/call-centers-got-big-contracts-under-health-law-but-it-s-not-clear-how-big>

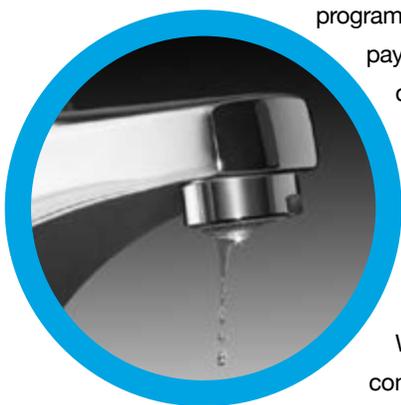
However, Maximus' concerns in Connecticut weren't enough to prevent it from signing a contract with Vermont. The state publicly posted a complete copy of its contract with Maximus on a state website. The public has easy access to the entire contract, which contains all pricing information and other important standards, like how long a call can be on hold.<sup>3</sup> What is public information in Vermont should not be considered "proprietary" in Connecticut and Hawaii.

## Water Company Fails to Pay Taxes, Loses Millions of Gallons of Water

*Jenkinsville, SC*

Unlike Vermont, many cities and states allow government contractors to circumvent common sense transparency laws and hide from taxpayers what should be public information about services and programs. Recently in South Carolina, the Jenkinsville Water Company failed to pay state employee payroll taxes, lost millions of gallons of water, and could not account for tens of thousands of dollars.<sup>4</sup> Concerned about mismanagement of funds, residents and journalists submitted open records requests to the company seeking copies of financial records, including audited financial statements and budgets. The company refused to comply.

State Senator Creighton Coleman (D-Fairfield) sought an opinion from South Carolina Attorney General Alan Wilson to determine whether the company was bound by the state's open records laws.<sup>5</sup> The Attorney General's office stated that the Jenkinsville Water Company had to disclose the records.<sup>6</sup> But even after the opinion was issued, the company refused to hand over documents, leading to a lawsuit filed by *The Independent Herald* newspaper.<sup>7</sup>



## CEO to Taxpayers: "That's None of Your Damn Business"

*Jonesboro, AR*

A similar disregard for taxpayers occurred in Arkansas in the fall of 2013 when a *Jonesboro Sun* journalist asked the CEO of Tiger Correctional Services, a company that contracts for jail commissary services with the Craighead County Sheriff's Department, about information regarding the company's monthly sales and profits related to the contract. The chief executive officer of the company told the reporter, "That's none of your damn business."<sup>8</sup>



Tiger's attorneys have asserted that none of the company's records are subject to public open records laws, even though all financial information related to commissary services was public when it was operated by the Sheriff's Department.

<sup>3</sup> Jeff Cohen, "Call Centers Got Big Deals Under Health Law, But How Big?," National Public Radio, November 05, 2013. <http://www.npr.org/blogs/health/2013/11/05/243054535/call-centers-got-big-contracts-under-health-law-but-it-s-not-clear-how-big>

<sup>4</sup> Jill Cincotta, "Questions Fly at Water Board Meeting," *The Herald Independent*, January 19, 2012. [http://www.heraldindependent.com/view/full\\_story/17189711/article-Questions-Fly-at-Water-Board-Meeting?](http://www.heraldindependent.com/view/full_story/17189711/article-Questions-Fly-at-Water-Board-Meeting?)

<sup>5</sup> South Carolina Office of the Attorney General, Opinion regarding Jenkinsville Water Company, August 8, 2011. <http://www.scag.gov/wp-content/uploads/2011/08/coleman-c-b-os-9308-8-8-11-jenkinsville-water-company-foia.pdf>

<sup>6</sup> Jill Cincotta, "Attorney General: Jenkinsville Water Co. Public," *The Herald Independent*, August 12, 2011.

<sup>7</sup> Jill Cincotta, "Jenkinsville Water Co. Not in Compliance, CPA Says," *The Herald Independent*, February 11, 2011.

<sup>8</sup> Roy Ockert, "FOIA issue arises when private entity becomes entwined with public agency," *Jonesboro Sun*, October 28, 2013. <http://arkansasnews.com/roy-ockert/foia-issue-arises-when-private-entity-becomes-entwined-public-agency>

## Recordings of Public Meetings Deemed Private Property *Truth or Consequences, NM*

In 2011, Deborah Toomey, a concerned citizen of Truth or Consequences, New Mexico, asked her city government to review video recordings of city commission meetings. The city contracts with Sierra Community Council, Inc., a private company, to record the meetings and maintain the video recordings. The city refused to hand over the recordings, stating that the videos were not subject to open records laws because the city did not have these recordings in its possession.<sup>9</sup> Even though the recordings were of public meetings of elected city officials and pertained to government business, taxpayers were denied access to them because they were considered the property of a private company.

Toomey took the issue to court, where a Sierra County district judge ruled against transparency. Fortunately in 2012, the New Mexico Court of Appeals reversed that decision and ruled that the state's Inspection of Public Records Act (IPRA) applies when services are contracted out. In her opinion,<sup>10</sup> Judge Linda Vanzi stated, "to allow such entities to circumvent a citizen's right of access to records by contracting...would thwart the very purpose of IPRA and mark a significant departure from New Mexico's presumption of openness at the heart of our access law."<sup>11</sup> Having explicit, common sense transparency laws on the books could have prevented the legal wrangling.

Court rulings in other states have also found in favor of increased transparency of government contracting. The Tennessee Court of Appeals ruled that the for-profit prison giant, Corrections Corporation of America, must make public certain documents that they previously refused to disclose, including reports and audits in which they had been found in violation of their contracts and lawsuit settlements where the company had to pay damages.<sup>12</sup> The Florida circuit court ruled that Aramark, the company that took control of housekeeping and maintenance services at the Florida State Hospital in Chattahoochee, must divulge information regarding the number of formerly public employees that were offered positions with the company following the privatization effort.<sup>13</sup>

However, leaving the matter to the courts to decide, which can be costly and time consuming, is far less preferable than putting clear, common sense sunshine laws on state and local books.



<sup>9</sup> New Mexico Foundation for Open Government, *Brief of New Mexico Foundation for Open Government as Amicus Curiae in Support of Plaintiff/Appellant*. <http://nmfog.org/uploads/FileLinks/09763c4c8cca422d8a09ed79bcf61cea/NMFOG%20Amicus%20Brief%20FINAL%20092611.pdf>

<sup>10</sup> State ex rel. Toomey v. City of Truth or Consequences, 2012-NMCA-104, 287 P.3d 364 (July 26, 2012) <http://caselaw.findlaw.com/nm-court-of-appeals/1607914.html>

<sup>11</sup> "New Mexico decision: public records law can apply to outside contractors," Ballot News, August 7, 2012. <http://ballotnews.org/2012/08/07/new-mexico-decision-public-records-law-can-apply-to-outside-contractors/>

<sup>12</sup> Human Rights Defense Center, "Corrections Corp. of America Loses Another TN Court of Appeals Ruling," HRDC Press Release, March 2, 2013. <http://tnreport.com/2013/03/02/cca-again-ruled-against-in-public-records-suit-by-tn-court-of-appeals/>

<sup>13</sup> Tallahassee Democrat Editorial Board, "Our Opinion: Open records," Tallahassee Democrat, February 22, 2013. <http://www.tallahassee.com/article/20130224/opinion01/302240010/our-opinion-open-records?gcheck=1>

## Accountability

**O**ur tax dollars pay for our roads, schools, libraries and for public services such as water treatment and food inspection. But when for-profit corporations assume control of these public functions, the opportunity for meaningful and effective oversight is hampered. Taxpayers and elected officials have too little say over decisions that impact public health and safety, and have little recourse to challenge bad decisions made by corporate officials who may have priorities other than the public's best interest. And too often, once a for-profit corporation controls a public service, it is not necessarily accountable to taxpayers.

### Lack of Drug Testing, Disabled Residents Left Stranded *North County Transit District, California*



Strong oversight is especially important to correct contracting problems before they become serious. A recent audit report by SC&H Group uncovered a host of problems with for-profit companies contracted by the North County Transit District in California, which is responsible for the bus and train systems in the northern region of San Diego County.<sup>14</sup>

Auditors found that private security guards did not have critical required training, private bus drivers did not complete drug and alcohol testing, bus performance was not tracked, and contractors did not pick up disabled passengers in a timely manner.<sup>15</sup>

The report concluded that “there are no clear documented requirements as to how contracts are monitored, communicated, and reported.”<sup>16</sup> As a result of the agency’s lack of adequate oversight of their private contracts, serious problems occurred that jeopardized public safety.

### Relying on the Honor System *Maryland*

The Canal Place Preservation and Development Authority ensures the historic preservation and vitality of the Chesapeake and Ohio Canal and adjacent areas in the City of Cumberland. A November 2013 audit by the Maryland General Assembly’s Office of Legislative Audits found that the Authority did not exercise proper oversight of its janitorial and facilities contractor.<sup>17</sup>

Specifically, the Authority failed to obtain and review required documentation necessary to approve payments to the contractor. The contractor should have provided documentation that included the actual numbers of hours that contractor employees worked, before the Authority made monthly payments. Without these supporting documents, the Authority has no proof that the contractor actually worked the minimum 6,000 hours per year required by the contract.<sup>18</sup>

<sup>14</sup> SC&H Group, “Review of Contracts Administration Performed by North County Transit District,” September 14, 2012. <https://www.documentcloud.org/documents/698758-sept-2012-review-of-contract-administration.html>

<sup>15</sup> Brad Racino, “Auditor Finds Major Deficiencies in NCTD’s Contracts Department,” KPBS Public Radio, June 11, 2013. <http://www.kpbs.org/news/2013/jun/11/auditor-finds-major-deficiencies-nctds-contracts-d/>

<sup>16</sup> SC&H Group, “Review of Contracts Administration Performed by North County Transit District,” September 14, 2012. <https://www.documentcloud.org/documents/698758-sept-2012-review-of-contract-administration.html>

<sup>17</sup> “Canal Place Preservation and Development Authority,” Maryland General Assembly, Office of Legislative Audits, November 2013. <http://www.ola.state.md.us/Reports/Fiscal%20Compliance/CanalPlace13.pdf>

<sup>18</sup> Ibid.

## Broken Promises on Cost Savings

Florida



Accountability also means that taxpayers can penalize companies that fail to keep their promises. In October 2013, the Palm Beach Post examined the costs of running private and public prisons, using 2009-2012 cost data produced by the Florida Department of Corrections. Though state law requires the private prison arrangement to achieve at least a 7% cost savings for taxpayers, the Post's analysis found that four of the state's six private prisons failed to meet this criteria and three of those four prisons failed to save any money at all.<sup>19</sup>

Tellingly, there is no oversight body that ensures that the contracts are meeting the 7% savings requirement each year. Instead, the cost savings are evaluated every three years when the contract is up for renewal, and uses a formula that significantly favors the private facility. Even when the state finds that the private prison company has not met the savings requirement using its skewed methodology, the company can still simply rebid for the same contract and is not subject to any fines or penalties.<sup>20</sup> This lack of accountability allows, and may even encourage, the contractor to continue skirting savings requirements.

## Despite Abuse of Foster Children, Annual Contract Renewals

Los Angeles, CA

Los Angeles County continued to annually renew a foster care services contract with an outfit called Wings of Refuge. Despite the aspirational name, multiple reports surfaced of children placed in homes where they experienced severe abuse, including cases in which children were beaten and locked in their rooms for days.<sup>21</sup> For years Los Angeles County's Department of Children and Family Services renewed the company's \$3 million annual contract, making it one of the largest private foster care providers in the county, responsible for thousands of vulnerable children.



The county only canceled its contract after the contractor failed to file required financial forms for three years, had accumulated \$458,000 in delinquent payroll taxes and was more than \$2 million dollars in debt, according to licensing records. Los Angeles County admits that foster care contractors are only audited once a decade and audits can take years to complete, and carry little or no punishment.<sup>22</sup>

<sup>19</sup>Pat Beall, "Do Taxpayers Benefits? State's math is misleading," Palm Beach Post, October 27, 2013.

<sup>20</sup>Ibid.

<sup>21</sup>Garrett Therolf, "Financial issues cost foster care agency its L.A. County contract," Los Angeles Times, October 6, 2013. <http://www.latimes.com/local/la-me-foster-wings-20131007,0,826696,full.story#axzz2jEtI3wDP>

<sup>22</sup>Ibid.

## A 1,000% Cost Overrun

### New York, NY

In 1998, New York City contracted with a private company on a project called CityTime, an effort to save money by consolidating and automating records of the time clocked by city workers. The CityTime project was originally supposed to cost \$63 million. But after 12 years and many missed deadlines, the project remained unfinished and cost taxpayers more than \$700 million — a 1,000% increase from the original contract amount.<sup>23</sup>



In 2012, the company, Science Applications International, repaid \$500 million to New Yorkers to avoid federal prosecution.<sup>24</sup> The US Attorney also indicted 11 people working for the for-profit company and its subcontractors for fraud. The city comptroller issued an audit in 2010, finding that the contract was plagued with “poor management decisions,” but until then, no other audits had been performed, and all contract price increases in the preceding years had been automatically approved.<sup>25</sup> The city council, which approved the original contract, was not given the opportunity to vote on the steep contract increases. It all added up to one of the most expensive and corrupt outsourcing scandals in history.

## Benefits Denied to Patients with Muscular Dystrophy, Cerebral Palsy

### Kansas

At the beginning of 2013, Kansas Governor Brownback outsourced KanCare, the state’s Medicaid program, to three private companies: United HealthCare, Centene Corporation, and Amerigroup.

Brownback maintained that by awarding contracts to private companies to cover the medical costs of state’s 380,000 low-income Medicaid recipients, the state would save \$1 billion over five years.<sup>26</sup> It has yet to be seen whether the cost savings will be realized, but families across the state have experienced reduced service levels from the private contractors resulting in serious life or death consequences.



One insurance company is looking to scale back home care for Finn Bullers, a former *Kansas City Star* reporter with advanced muscular dystrophy and father of two young children. Bullers relies on the care for assistance with basic needs, such as administering insulin, helping him use the bathroom and operating a machine that removes phlegm from his lungs.<sup>27, 28</sup> Jill Bronaugh, a Topeka resident whose son Nicholas has cerebral palsy and other serious health concerns, spent two weeks trying to restore coverage of Nicholas’ prescriptions after being dropped without warning by Sunflower State Health Plan, the plan operated by Centene.<sup>29</sup>

<sup>23</sup>Diane S. Williams, “Citytime contract: 1,000% over budget,” AFSCME DC 37 Public Employee Press. [http://www.dc37.net/news/pep/2\\_2010/Citytime\\_contract.html](http://www.dc37.net/news/pep/2_2010/Citytime_contract.html)

<sup>24</sup>Michael Grynbaum, “Contractor Strikes \$500 Million Deal in City Payroll Scandal,” *New York Times*, March 14, 2012. [http://www.nytimes.com/2012/03/15/nyregion/contractor-in-citytime-payroll-scandal-to-pay-record-500-million.html?\\_r=1&ref=nyregion](http://www.nytimes.com/2012/03/15/nyregion/contractor-in-citytime-payroll-scandal-to-pay-record-500-million.html?_r=1&ref=nyregion)

<sup>25</sup>Graham Rayman, “NYC’s Computer-System Cash-Dump Disaster,” *Village Voice*, January 12, 2011. <http://www.villagevoice.com/content/printVersion/2326562/>

<sup>26</sup>Ibid.

<sup>27</sup>Steve Rose, “KanCare savings result in hardship for some,” *The Kansas City Star*, November 2, 2013. <http://www.kansascity.com/2013/11/02/4592113/kancare-savings-result-in-hardship.html>

<sup>28</sup>Steve Vockrodt, “Kansas’ most vulnerable now have even less health care, thanks to Gov. Brownback,” *The Pitch*, November 19, 2013. <http://www.pitch.com/kansascity/kancare-sam-brownback-finn-bullers/Content?oid=4031015>

<sup>29</sup>Steve Otto, “KanCare is bad for the health of Kansas,” *The Examiner*, October 31, 2013. <http://www.examiner.com/article/kancare-is-bad-for-the-health-of-kansas>

Along with a reduced level of care for patients, other problems have been reported, including slow payments to providers, increased paperwork and costs for provider seeking reimbursements, and inconsistent and inaccurate payments.<sup>30</sup>

## Nun Wrongly Dropped from Food Stamps in “Perfect Storm” of Misguided Government Policy and Overzealous Corporate Ambition”

### Indiana

It is often very difficult for taxpayers to get out of contracts, even if the company fails to deliver. In 2006, Indiana signed a 10 year, \$1.6 billion contract with IBM to manage its food stamp and Medicaid eligibility screening.<sup>31</sup> Thousands of low-income Hoosiers were erroneously dumped from the system, including an Evansville resident, who died of heart ailments in October 2009 more than a year after he was denied Medicaid benefits. His wife testified to the Indiana Legislature that he was denied assistance after repeatedly mailing in information requested by IBM.<sup>32</sup>

According to the *Los Angeles Times*, an 80 year old woman from Terre Haute was dropped from her Medicaid payment “without warning” when a hospitalization for congestive heart failure prevented her from calling an eligibility hotline.<sup>33</sup> And a nun suffering from cancer was denied benefits, including food stamps, because a hospitalization forced her to miss a recertification interview. She tried in vain to reschedule the interview six times.<sup>34</sup>



In 2009, Indiana tried to end its relationship with IBM after numerous reports of lost paperwork, long delays and wrongly denied benefits. But the matter remains in court today, costing taxpayers millions in legal fees, increased personnel costs associated with fixing contractor mistakes, and unrecovered payments from IBM.<sup>35</sup> According to Marion County Superior Court Judge David Drier, “This story represents a ‘perfect storm’ of misguided government policy and overzealous corporate ambition. Overall, both parties are to blame, and Indiana’s taxpayers are left as apparent losers.”<sup>36</sup>

<sup>30</sup> Steve Otto, “KansCare is bad for the health of Kansas,” *The Examiner*, October 31, 2013. <http://www.examiner.com/article/kanscare-is-bad-for-the-health-of-kansas>

<sup>31</sup> In The Public Interest, Indiana Public Benefits Eligibility System case. <http://www.inthepublicinterest.org/case/indiana-public-benefits-eligibility-system>

<sup>32</sup> Associated Press, “Indiana panel OKs Bill to End Welfare Privatization,” *Indiana Business Journal*, December 14, 2009. <http://www.ijb.com/article/print?articleId=15130>

<sup>33</sup> Matea Gold, Melanie Mason and Tom Hamburger, Indiana’s bumpy road to privatization, *Los Angeles Times*, June 24, 2011. <http://articles.latimes.com/2011/jun/24/nation/la-na-indiana-privatize-20110624>

<sup>34</sup> Ken Kusmer, “Indiana agency, IBM sue each other over \$1.3B deal,” *Bloomberg Businessweek*, May 13, 2010. <http://www.businessweek.com/ap/financialnews/D9FM5E580.htm>

<sup>35</sup> In The Public Interest, Indiana Public Benefits Eligibility System Case. <http://www.inthepublicinterest.org/case/indiana-public-benefits-eligibility-system>

<sup>36</sup> Tim Evans, “IBM, state in court Monday,” *Indianapolis Star*, November 20, 2013. <http://archive.indystar.com/article/20131120/NEWS/311200021/IBM-state-court-Monday>

## Shared Prosperity

**O**f the 5.4 million people working for federal service contractors in 2008, an estimated 80% earned less than the living wage for their city or region.<sup>37</sup> The situation is similar for many local and state contract workers. When government contractors pay employees poverty-level wages and provide little or no benefits, taxpayer dollars fuel the low-wage economy and contribute to growing inequality.

Moreover, workers in these low-wage jobs often must rely on public assistance such as food stamps to make ends meet, use emergency rooms when they need medical care, and have less spending power in their local communities which can slow economic growth. All of this puts strain on other parts of local, state and federal budgets, which means any taxpayer savings realized in an outsourcing deal are likely more than negated by the increased societal costs of low wages and benefits.

Government contracts should not undermine the community's economic well-being. Unfortunately, many outsourcing deals adversely impact residents, neighborhoods, local businesses, and other important civic institutions. If done recklessly, contracts can contain provisions that tie the hands of policymakers for generations, and burden communities at the expense of corporate profits. Governments may conduct a cost analysis to determine if outsourcing makes financial sense, but it is equally important that cities and states consider the broader social and economic impacts as well.

## Food Service Workers Forced onto Public Assistance

### *New Jersey*

A 2009 study by Mary McCain of the Center for Women and Work at Rutgers University studied the effects of outsourcing on contracted food service workers in K-12 public schools in New Jersey. She found that contractors, including Aramark, Sodexo and Compass, cut cafeteria workers' wages by \$4-6 an hour following the privatization of food service. As one of the workers interviewed for the report explained, "we use our personal sick days just to get paid so we can pay rent for the next month..."<sup>38</sup>

Following outsourcing, most of the workers completely lost or received very few health insurance benefits from private contractors, leaving them either uninsured or enrolled in state public health insurance programs. In fact, food service contractors have among the highest levels of employees and their children enrolled in the New Jersey FamilyCare program.<sup>39</sup>

<sup>37</sup>David Madland and Michael Paarlberg, "Making Contracting Work for the United States: Government Spending Must Lead to Good Jobs" Center for American Progress Action Fund American Worker Project, December 2008.

<sup>38</sup>Mary McCain, "Serving Students: A Survey of Contracted Food Service Work in New Jersey's K-12 Public Schools" Rutgers University Center for Women and Work.

<sup>39</sup>Mary McCain, "Serving Students: A Survey of Contracted Food Service Work in New Jersey's K-12 Public Schools" Rutgers University Center for Women and Work.

## Water Workers Underwater

*Wilmington, DE; Atlanta, GA; Indianapolis, IN; New Orleans, LA; Holyoke, MA; Lynn, MA; Springfield, MA; Sunnyside, WA; Milwaukee, WI*



A 2009 Food and Water Watch report that examined water privatization drew similar conclusions about the loss of middle class jobs.<sup>40</sup> The study examined ten drinking water and wastewater outsourcing efforts around the country and found that on average, corporate control led to an average job loss of 34% in the water system.

Researchers also examined Bureau of Labor Statistics data and found that, on average, workers earned 7.4% less at private utilities, than at publicly-run water utilities. Many workers did not have access to retirement benefits or health benefits after the system was outsourced. If contractor employees were offered health benefits, they had to pay more than twice as much for those benefits.<sup>41</sup>

## Low Wages at For-Profit Prisons Means High Risk of Violence

*Nationwide*

Corrections officers working in private prisons experience depressed wages and benefits and for-profit prisons typically staff facilities with fewer employees and provide less training.<sup>42, 43</sup> A 2004 article in the *Federal Probation Journal* compared private and public sector prisons and concluded that, on average, public sector corrections officers undergo 58 hours more training than their private sector counterparts.<sup>44</sup>

As a result of reduced wages and benefits and the lack of training, employee turnover is high at private prisons. In 2000, the private prison industry reported that turnover was 53% at private facilities, compared to 16% at public prisons.<sup>45</sup> The low quality of private prison staff also contributes to increased violence in these prisons. According to the Bureau of Justice Assistance, in 2001, the most recent year that data is available, private prisons experienced 49% more assaults on staff and 65% more inmate-to-inmate assaults than public prisons.<sup>46</sup> This finding was echoed in the *Federal Probation Journal*, which found that private prisons had more than twice as many inmate-on-inmate altercations than public prisons.<sup>47</sup>



<sup>40</sup> Food and Water Watch, "Water Privatization Threatens Workers, Consumers and Local Economies," May 19, 2009. <http://www.foodandwaterwatch.org/reports/water-privatization-threatens-workers-consumers-and-local-economies/>

<sup>41</sup> Ibid.

<sup>42</sup> Private Corrections Institute, Quick Facts about Prison Privatization (2009)

<sup>43</sup> Ibid.

<sup>44</sup> Curtis R. Blakely and Vic W. Bompus, Private and Public Sector Prisons: A Comparison of Selected Characteristics 68 Fed. Probation 27, 29 (2004). <http://www.uscourts.gov/viewer.aspx?doc=/uscourts/FederalCourts/PPS/Fedprob/2004-06/index.html>

<sup>45</sup> Private Corrections Institute, Quick Facts about Prison Privatization, 2009.

<sup>46</sup> Grassroots Leadership, Considering a Private Jail, Prison, or Detention Center?, High Turnover and Unique Security Problems Created by Private Prisons, 2009.

<sup>47</sup> Curtis R. Blakely and Vic W. Bompus, Private and Public Sector Prisons: A Comparison of Selected Characteristics 68 Fed. Probation 27, 29, 2004. <http://www.uscourts.gov/viewer.aspx?doc=/uscourts/FederalCourts/PPS/Fedprob/2004-06/index.html>

## “Insourcing” Boosts Wages and Still Saves \$1 Million Hernando County, FL

Before the Hernando County sheriff took over its jail from Corrections Corporation of America (CCA) in 2010, the facility was in serious trouble. During the course of the contract, CCA failed to adequately maintain the facility, and engaged in practices that compromised safety and increased the chance of inmate escapes and incidents of violence. In 2006, the *Tampa Bay Times* reported that half of corrections officers in the Hernando jail were uncertified and made lower wages than officers in every facility in the region, with the exception of another CCA-run prison.<sup>48</sup>

Former corrections officers voiced the same concerns — the private jail’s low wages translated into real problems recruiting good employees.<sup>49</sup> After the sheriff took back control of the jail, he increased the salaries of qualified corrections officers by more than \$7,000 annually to bring them in line with the salaries of the county’s public corrections deputies.<sup>50</sup> He made sure that the officers were well trained and met all standards.<sup>51</sup> Since bringing the facility back into public control, the county has been able to significantly improve the quality of the facility, while running it more cost-efficiently than CCA. In the first year of public operation, the county saved \$1 million.<sup>52</sup>



## Chicago Parking Meters: Exhibit A in Reckless Outsourcing Chicago, IL

In 2009, Chicago signed a 75-year contract with a consortium of companies backed by Wall Street giant Morgan Stanley for the operation of the city’s 36,000 parking meters. It has since become Exhibit A for reckless outsourcing schemes in America. Though Chicago got \$1.2 billion in the deal, Chicago drivers will pay the private companies at least \$11.6 billion to park at meters over the life of the contract.<sup>53</sup> However, the broader economic and social impacts of the contract will haunt the city for generations. Upon signing the contract, the company dramatically increased parking rates, to \$7 for two hours of parking in some parts of the city, and extended paid parking to seven days a week.<sup>54</sup> Downtown businesses blamed the price increases for a decrease in economic activity.<sup>55</sup> Residents complained that parking downtown was cost prohibitive.<sup>56</sup>



<sup>48</sup>Jonathan Abel, “Jail troubles tangled in purse strings,” *Tampa Bay Time*, February 5, 2006. [http://www.sptimes.com/2006/02/05/Hernando/Jail\\_troubles\\_tangled.shtml](http://www.sptimes.com/2006/02/05/Hernando/Jail_troubles_tangled.shtml)

<sup>49</sup>Ibid.

<sup>50</sup>Alex Friedmann, “The Societal Impact of the Prison Industrial Complex, or Incarceration for Fun and Profit—Mostly Profit,” *Prison Legal News*, November 18, 2013. <https://www.prisonlegalnews.org/%28S%281qzu3n5542bzte45zga2jo45%29%29/displayArticle.aspx?articleid=24106&AspxAutoDetectCookieSupport=1>

<sup>51</sup>John Woodrow Cox and Barbara Behrendt, “Hernando County’s takeover of jail brings year of sweeping changes,” *Tampa Bay Times*, August 27, 2011. <http://www.tampabay.com/news/localgovernment/hernando-countys-takeover-of-jail-brings-year-of-sweeping-changes/1188387>

<sup>52</sup>Ibid.

<sup>53</sup>Darrell Preston, “Morgan Stanley Group’s \$11 Billion Makes Chicago Taxpayers Cry,” *Bloomberg*, August 9, 2010. <http://www.bloomberg.com/news/2010-08-09/morgan-stanley-group-s-11-billion-from-chicago-meters-makes-taxpayers-cry.html>

<sup>54</sup>Mayor Rahm Emanuel renegotiated the contract to exchange Sunday free parking for increased hours to 10 p.m. for the rest of the week.

<sup>55</sup>In *The Public Interest*, Chicago Parking Meters case. <http://inthepublicinterest.org/case/chicagos-parking-meters>

<sup>56</sup>The Expired Meter, “2008: The Worst Year Ever For Chicago Drivers,” December 3, 2008. <http://theexpiredmeter.com/2008/12/2008-the-worst-year-ever-for-chicago-drivers/>

The contract was written so broadly that taxpayers will be penalized whenever “any action...is reasonably expected...[to have] a material adverse effect on the fair market value of the Concessionaire Interest (whether as a result of decreased revenues, increased expenses or both).” As a result taxpayers must reimburse the company whenever the city needs to temporarily close its streets, even for community parades and street fairs.<sup>57</sup> Even more outrageous, the city is restricted from making improvements to streets that contain parking meters, such as adding bicycle lanes, sidewalk expansion, streetscaping, loading zones, or rush hour parking for the length of the contract because these projects might “compete” with the parking meters, and decrease revenues for the company. These restrictions severely limit the future city’s ability to accommodate residents, including bicyclists, pedestrians, and transit users.<sup>58</sup>

## No Public Road Improvements — For 99 Years

Denver, CO



Contracts can limit policymakers’ options when planning for community needs. A corporate consortium led by Portugal-based Brisa Auto-Estradas holds a 99 year contract to operate the Northwest Parkway in Denver, Colorado. In 2008, the consortium objected to improvements to a free local road near the parkway, citing contract language that prevented such improvements on city-owned and maintained roads that “might hurt the parkway financially” by providing an alternative route for travelers, thus potentially reducing toll revenue.<sup>59</sup>

Specifically, the contract included a section stating that construction of a “competing transportation facility” would entitle the toll-road operator compensation from the government.<sup>60</sup> Even as residents’ needs and travel patterns change, the city will be unable to make improvements on “competing” free public roads for the next 99 years.<sup>61</sup>

## Taxpayers Penalized for Carpooling

Virginia



A long-term contract between Virginia and a corporate consortium comprised of Australia-based Transurban and the Texas-based Fluor Corporation penalizes Virginia taxpayers for increased carpooling on its high-occupancy express toll lanes on the Capital Beltway. In language only a lawyer could love, the contract stipulates that “The Department agrees to pay the Concessionaire...amounts equal to 70% of the Average Toll applicable to vehicles paying tolls for the number of High Occupancy Vehicles exceeding a threshold of 24% of the total flow of all Permitted Vehicles...” In layman terms, the contract puts Virginia taxpayers on the hook if too many carpoolers use the high occupancy lanes because it could adversely affect contractor

<sup>57</sup>David Futrelle, “Chicago’s Parking Meter Debacle: The Check Is Not in the Mail,” Time Magazine, May 11, 2012. <http://business.time.com/2012/05/11/chicagos-parking-meter-debacle-the-check-is-not-in-the-mail/>

<sup>58</sup>Whet Moser, “The Parking Meter Lease, and Non-Compete Clauses, Rear Their Heads Again,” Chicago Magazine, May 4, 2012. <http://www.chicagomag.com/Chicago-Magazine/The-312/May-2012/The-Parking-Meter-Lease-And-Non-Compete-Clauses-Rear-Their-Heads-Again/>

<sup>59</sup>Jeffrey Leib, “Toll firm objects to work on W. 160th,” Denver Post, July 24, 2008. [http://www.denverpost.com/news/ci\\_9976830](http://www.denverpost.com/news/ci_9976830)

<sup>60</sup>Ibid.

<sup>61</sup>Ellen Dannin, “Infrastructure Privatization Contracts and Their Effect on Governance.” Pennsylvania Dickinson School of Law, Legal Studies Research Paper No. 19-2009. 2009.

revenues — even though carpooling accomplishes important public goals of cutting commute time and reducing pollution and congestion<sup>62</sup>

For the next 40 years, the contract requires Virginia to reimburse the private companies whenever Capital Beltway carpoolers using the tolled high-occupancy express lanes exceed 24% of the traffic, or until the builders make \$100 million in profits.<sup>63</sup>

## Competition

**C**ompetition is key to cost savings in government contracting. Yet, recent research shows that local government outsourcing processes lack sufficient competition which can significantly drive up costs.<sup>64</sup> Researchers found that when one firm has control of a public service, the governmental entity may experience “cost creep,” in which the private company increases costs over time because there is little or no competition in the bidding process. In one example, Kansas City put its ambulance service out to bid because the contractor was underperforming. The incumbent firm was the only bidder, and used the opportunity to increase the cost of the contract by 20%.<sup>65</sup>

Contracts often contain automatic contract renewal clauses, completely circumventing the competitive bidding process. Instead of allowing government and the public to assess the contractor’s performance and determine whether the contract meets community needs, automatic contract renewals give one company a monopoly over the public service.

Further, contracts can contain fine print that shield companies from risk and put taxpayers on the hook for making sure corporations see a profit even when services are no longer needed. Non-compete clauses and compensation clauses in public infrastructure contracts, and occupancy guarantee clauses in private prison contracts are examples of how corporations eliminate or limit competition to protect their profits at the expense of taxpayers.

Finally, researchers have found that “insourcing” or “reverse privatization,” is an effective way to combat cost creep or poor performance that can occur when companies are not subject to competitive bidding.<sup>66</sup> Some cities require that in any outsourcing initiative, public service workers are given an opportunity to compete for the contract. Existing public workers often have solutions that promote efficiency and save money.

<sup>62</sup>Ryan Holeywell, “Public-Private Partnerships Are Popular, But Are They Practical?,” *Governing Magazine*, November 2013. <http://www.governing.com/topics/transportation-infrastructure/gov-public-private-popular.html>

<sup>63</sup>Ellen Dannin, “The Toll Road to Serfdom,” *American Constitution Society blog*, May 14, 2011. <http://www.acslaw.org/acsblog/node/18553>

<sup>64</sup>Girth, Hafetz, Johnston, and Warner, “Outsourcing Public Service Delivery: Management Responses in Noncompetitive Markets,” *Public Administration Review*, Vol.72, Iss. 6, pp. 887-900.

<sup>65</sup>*Ibid.*

<sup>66</sup>Girth, Hafetz, Johnston, and Warner, “Outsourcing Public Service Delivery: Management Responses in Noncompetitive Markets,” *Public Administration Review*, Vol.72, Iss. 6, pp. 887-900.

## Lack of Competitive Bidding Process Leads to Overcharging Taxpayers

### Minneapolis, MN

In 2012, Minneapolis learned that Unisys, its information technology contractor, did not provide the city with favorable pricing on technology-related equipment and services, as required by the contract. The contract cost taxpayers \$143 million over nearly a decade and was extended twice without seeking competitive bids. Upon discovery of the pricing problems, a member of the city's audit committee expressed her surprise at the automatic contract renewals, stating that competitive bidding is just a “basic control” for ensuring that the city gets the best deal.<sup>67</sup>



## Contract Renewals in Exchange for Donations to Sports Stadium

### Northwest Missouri State University

In September 2011, the Missouri State Auditor investigated the bidding practices of Northwest Missouri State University and found the school had not solicited competitive bids or proposals for their contracts for support services, including food services, facilities management, vending and bookstore services for almost 15 years. Instead, the contractors made donations to the university in exchange for automatic renewal of their contracts.<sup>68</sup> The food services and facilities management contracts were originally awarded in 1997. The university automatically extended its nine one-year renewal options, and then renewed the entire contract in 2007 without any competitive bidding. The contracts were amended to require the contractor to make a donation to the sports stadium fund. If the school did not renew the contract on an annual basis, it would have to repay the contractor a pro-rated portion of the donation. The auditor aptly noted that this effectively ensures that these contracts are extended until 2017,<sup>69</sup> regardless of whether the contractor's performance actually merits renewal.



Unsurprisingly, the audit report also noted that the university failed to adequately oversee its contracts. For example, the school did not verify the accuracy of sales reports provided by contractors, even though those numbers determined how much commission the school would receive. The university formed a facilities management joint review committee to regularly assess the performance of services being provided, but the oversight committee had not met since July 2008.<sup>70</sup>

<sup>67</sup>Eric Roper, “Minneapolis Spent Millions on No-Bid IT Contract,” *Star Tribune*, August 2, 2012. <http://www.startribune.com/local/minneapolis/165022966.html>

<sup>68</sup>Missouri State Auditor, “Northwest Missouri State University,” September 2011. <http://www.auditor.mo.gov/press/2011-47.pdf>

<sup>69</sup>Ibid.

<sup>70</sup>Ibid.

## Governor Tries to Help British Corporation Hit the Jackpot *Pennsylvania*

In Pennsylvania, the governor's effort to privatize the state's lottery system has been a rushed, top-down approach occurring outside of the public's view.<sup>71</sup> When Governor Tom Corbett requested bids, only one company submitted a proposal. The Governor awarded the contract to the sole bidder, Britain-based Camelot Global Services, without full input from the Pennsylvania Gaming Control Board and the General Assembly. The contract was rejected in 2013 by the state's attorney general.<sup>72</sup> The lone bidder extended its proposal, in hopes that legal issues could be resolved. Even in the midst of the outsourcing battle, the current state-operated lottery continues to succeed, as the public system achieved records in sales and public investments in 2013.<sup>73</sup>



## Taxpayers on Hook for Tolls Despite Emergency Flood Evacuation

### *Indiana*

In 2006, Indiana leased its toll road to a conglomeration of companies, including transportation infrastructure giant Macquarie and Spain-based Cintra. In 2008, Gov. Mitch Daniels declared an emergency during a massive flood and waived tolls for motorists escaping the affected areas. Because the contract contained a compensation clause, state taxpayers were required to pay the privatized toll road operator \$447,000 for the cost of those waived tolls.<sup>74</sup> The company prioritized profit over safety again when it did not allow Indiana state troopers to close the toll road during a snowstorm, claiming it was a private road.<sup>75</sup>



<sup>71</sup>The Philadelphia Inquirer Editorial Board, "Inquirer Editorial: Hard to bet on lotteries with so little public input," The Philadelphia Inquirer, February 1, 2013. [http://articles.philly.com/2013-02-01/news/36686640\\_1\\_camelot-global-services-scratchers-state-lotteries](http://articles.philly.com/2013-02-01/news/36686640_1_camelot-global-services-scratchers-state-lotteries)

<sup>72</sup>Jan Murphy, "AG Kathleen Kane rejects Pennsylvania lottery privatization contract," The Patriot News, February 14, 2013. [http://www.pennlive.com/midstate/index.ssf/2013/02/ag\\_kathleen\\_kane\\_rejects\\_lotte.htm](http://www.pennlive.com/midstate/index.ssf/2013/02/ag_kathleen_kane_rejects_lotte.htm)

<sup>73</sup> WTAE-TV Pittsburgh, "Pennsylvania Lottery hits sales, profits records amid privatization fight," July 18, 2013. <http://www.wtae.com/news/local/pennsylvania-lottery-hits-sales-profits-records-amid-privatization-fight/-/9681086/21035324/-/13f4lnfz/-/index.html#ixzz2j27gyu1X>

<sup>74</sup>Ellen Dannin, "Infrastructure Privatization Contracts and Their Effect on Governance," Pennsylvania Dickinson School of Law, Legal Studies Research Paper No.19-2009, 2009.

<sup>75</sup>Daniel C. Vock, "Indiana Highway Building Ramps Up, as Daniels' Term Winds Down," Stateline, June 19, 2012. <http://www.pewstates.org/projects/stateline/headlines/indiana-highway-building-ramps-up-as-daniels-term-winds-down-85899399309>

## Lockup Quotas in For-Profit Prison Contracts

### Nationwide



A recent study by In the Public Interest found that 65% of state and local for-profit prison contacts studied include quotas, which require state and local governments to maintain a high occupancy level in private facilities.<sup>76</sup> These clauses incentivize keeping prison beds filled, which run counter to many states' public policy goals of reducing the prison population and increasing efforts for inmate rehabilitation.

In 2012, Corrections Corporation of America (CCA), the largest private prison company in the country, sent a letter to 48 state governors offering to buy up their public prisons. CCA offered to buy and operate a state's prison in exchange for a 20 year contract, which would include a 90% quota for the entire term or a requirement that taxpayers pay for unused beds.<sup>77</sup> While no state took CCA up on its offer, many existing prison privatization contracts contain such occupancy guarantees, with some as high as 100%.<sup>78</sup>

## Competitive Bid from Public Workers Shows Outsourcing is Rubbish

### San Diego, CA

In 2012, the City of San Diego sought to sell its landfill to a private corporation. Several companies, as well as a team of local public service workers, submitted competing bids. Once all bids were evaluated, the review board decided to keep the operation of the landfill in-house and awarded to contract to the city workers.<sup>79</sup> According to the report from the review board, "The [Technical Evaluation Committee] found the [Employee Proposal Team] to be knowledgeable, comprehensive in approach, committed to achieving efficiencies and saving, interested in thinking 'outside the box' and prepared to meet or exceed performance requirements."<sup>80</sup>



<sup>76</sup>In the Public Interest, Criminal: How Lockup Quotas and "Low-Crime Taxes" Guarantee Profits, September 2013. <http://www.inthepublicinterest.org/sites/default/files/Criminal-Lockup%20Quota-Report.pdf>

<sup>77</sup>Chris Kirkham, "Private Prison Corporation Offers Cash in Exchange for State Prisons," Huffington Post, February 14, 2012. [http://www.huffingtonpost.com/2012/02/14/private-prisons-buying-state-prisons\\_n\\_1272143.html](http://www.huffingtonpost.com/2012/02/14/private-prisons-buying-state-prisons_n_1272143.html)

<sup>78</sup>AFSC Arizona, "Part II: Arizona For-Profit Prison Costs Rose 14%, Now Guarantee 100% Occupancy," Cell-Out Arizona, August 3, 2012. <http://tucsoncitizen.com/cell-out-arizona/2012/08/03/cell-out-arizona-exclusive-part-ii-arizona-for-profit-prison-costs-rose14-now-guarantee-100-occupancy/>

<sup>79</sup>Dorian Hargrove, "Managed Competition Process for Miramar Landfill Now Complete. City Employees To Continue Running Landfill," San Diego Reader, July 18, 2012. <http://www.sandiegoreader.com/weblogs/news-ticker/2012/jul/18/city-employees-wins-managed-competition-bid-for-mi/>

<sup>80</sup>Dorian Hargrove, "Managed Competition Process for Miramar Landfill Now Complete. City Employees To Continue Running Landfill," San Diego Reader, July 18, 2012. <http://www.sandiegoreader.com/weblogs/news-ticker/2012/jul/18/city-employees-wins-managed-competition-bid-for-mi/>

## The Road to Cost Savings is Public

### Minnesota



Every year, the Minnesota Department of Transportation's (MnDOT) eight districts solicit bids from private contractors as well as MnDOT's own striping division to paint lane stripes on every highway in Minnesota. Without fail, MnDOT's public striping crew beats the private competitors by a large margin. The public striping division is able to quote a flat price statewide of 15 cents per foot to paint an epoxy stripe. Private contractors charge 32 cents – more than double – per foot.

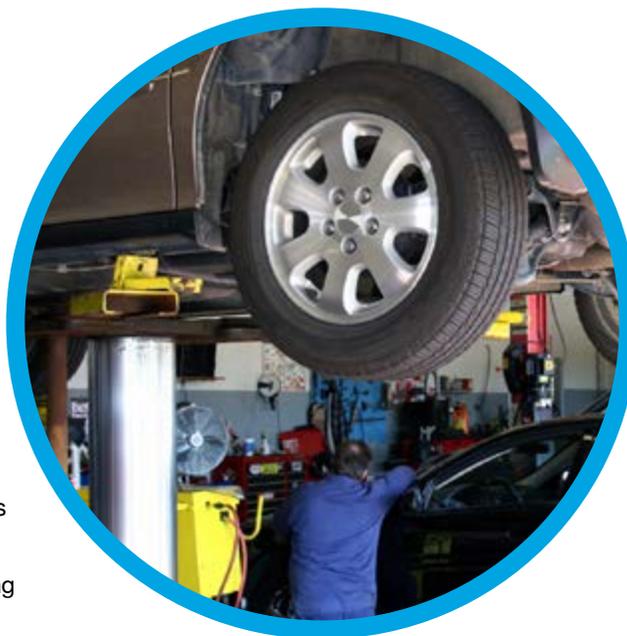
The public division also provides impeccable quality. The stripers work together as an effective team to ensure that the paint truck is moving at the right speed, turning corners tightly, and that lanes are painted smoothly and accurately. One of the stripers even invented innovative bead guns that allow the truck operator to directionally adjust the stream of paint beads to compensate for wind conditions. The price and quality of the public striping crew has led to local counties in the state using them to paint their roads.<sup>81</sup>

## Bid by Public Workers

### Increases Efficiency, Saves Tax Dollars

#### Tulsa, OK

In June 2011, Tulsa Mayor Dewey Bartlett considered outsourcing many city services, including the maintenance of fleets, facilities and streets and opened the bidding process to public workers. Because the public service workers had extensive knowledge of these services, their bid eliminated unnecessary expenses, relinquished two rarely used vehicles and upgraded technology. The public proposal was chosen over local and national firms, saving taxpayers \$224,000 in a few short months.<sup>82</sup>



<sup>81</sup>AFSCME Minnesota Council 5, "The Bottom Line: MnDOT's crews paint highway stripes at a private that private contractors can't beat, Stepping Up, September-October 2011.

<sup>82</sup>AFSCME, "What's Your Bid?" <http://www.afscme.org/news/publications/privatization/pdf/Whats-Your-Bid.pdf>

## Recommendations

**A**s the examples above show, outsourcing deals can wreak havoc on communities and undermine important public values. Based on the lessons gleaned from the experiences this report, and the many others that were not included, In the Public Interest has developed The Taxpayer Empowerment Agenda, a set of policy recommendations designed to promote responsible contracting.

By implementing these proposals, taxpayers will keep or reclaim control of their services. And state and local lawmakers who champion these proposals will stand on the side of taxpayers — and plain common sense.

### Transparency



**Regularly post online 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.**

Paul Light, professor at New York University, found that in 2005, private companies received \$400 billion from the federal government through government contracts.<sup>83</sup> This enormous figure does not even include the billions of dollars spent by cities and states on contracts with private companies. The amount of money spent by local and state governments through contracting with private entities is difficult, if not impossible, to estimate since many of these jurisdictions do not systematically collect and make public this information.

Similarly, experts estimate that there are more than three times as many contract workers as civil service workers at the federal level.<sup>84</sup> However, estimates for state and local governments do not exist because most do not keep track of how much they spend on private contracts or how many workers are employed by contractors. Tracking this spending and personnel data, which all public agencies do for their own workforce, would allow taxpayers to better understand where tax dollars are going and the level of service they can expect. By collecting this important data from contractors, governmental entities are able to ensure a complete public record from the start.



**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. Important information that was once public, may be forever lost if companies that take over core public functions are able to successfully shield this information.

<sup>83</sup>Paul C. Light, "The New True Size of Government," New York University Wagner School of Public Service, August 2006. [http://wagner.nyu.edu/performance/files/True\\_Size.pdf](http://wagner.nyu.edu/performance/files/True_Size.pdf)

<sup>84</sup>Louis Peck, "America's \$320 Billion Shadow Government," The Fiscal Times, September 28, 2011. <http://www.thefiscaltimes.com/Articles/2011/09/28/Americas-320-Billion-Shadow-Government.aspx#page1>

## Accountability



### **Ensure that every contract includes sufficient staffing levels for oversight to make sure taxpayers are getting what they pay for.**

Substantial time and personnel are necessary to adequately monitor contracts, especially those involving critical government functions. If government agencies are unable to dedicate sufficient personnel and time to overseeing contracts, they run a high risk of poor contractor performance and wasting large amounts of money. Effective oversight means that when a government outsources a public function, it can ensure that tax dollars are spent wisely, that communities receive the highest quality services, and that public health and safety is protected. In many types of contracts, especially those involving social services, oversight also ensures that the state is fulfilling its duty to protect the most vulnerable members of our society.



### **Ensure that every contract includes language that allows 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. Every contract should contain a provision that specifies that the government can cancel the contract if the contractor is not fulfilling its promises. Taxpayer money should not continue to fund an outsourcing contract that fails to deliver cost savings or high quality services.



### **Prohibit any company that has evaded taxes or broken the law from taking over public services.**

Governments can take the initial step of holding contractors accountable by not awarding contracts to companies that break laws. Not only does this give government a means to reprimand companies that fail to abide by public laws, but also helps weed out contractors that may not have good judgment. Furthermore, 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<sup>85</sup>



### **Require a thorough cost analysis of all bids and guarantee taxpayers a minimum 10% savings before any service is outsourced.**

Governments must account for all expenses associated with contracting, such as contract monitoring and administration and the contractor's use of public equipment and facilities. But too often these expenses are not included in a cost-benefit analysis of a proposed contract. Before governments decide to outsource public functions, they should require a thorough cost analysis that incorporates all costs,

<sup>85</sup> 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.

including transactions costs, oversight costs, and transition costs. Using this full costing approach, a proposal should be required to show substantial savings before a contract is awarded to a bidder.

## Shared Prosperity



### **Require companies that privatize public services to pay their employees a living wage and provide reasonable benefits.**

Public jobs have long played a role in growing the middle class. This includes teachers, social workers, police officers and firefighters. Janitors, postal and sanitation workers, and bus drivers, have also been able to earn a decent living in the public sector.<sup>86</sup> However, as the examples in the report show, many contractors increase their profit margins by cutting labor costs. This means that workers' wages and benefits are slashed when private companies assume control of public functions, degrading middle and working class jobs. If a contractor is going to employ workers to perform public work using public dollars, those jobs should fulfill the goal of using public money to strengthen our economy and build the middle class. Workers should be paid a living wage and provided reasonable benefits, such as health insurance by their contractor employer.



### **Require a study to determine how outsourcing would affect the larger community and post the results online before any contract is signed.**

The effects of outsourcing go beyond costs. Privatization can have unintentional negative impacts on community residents and businesses, and prevent the government from addressing serious national and regional issues. As the examples in the report show, outsourcing can have a broad impact, negatively affecting workers, local businesses, residents that rely on public services and assets, and even frustrate future planning efforts of policymakers. A study of the potential impact of outsourcing should be completed and made public before any decision regarding outsourcing is made. The analysis should include potential impacts such as:

- The possible loss of employment or income in a local area
- Impacts on social services and public assistance programs
- Economic impact on local businesses
- Possible loss of tax revenue for the local area
- Environmental impacts that may result from the private contract, including any upgrades or possible degradation

This will ensure that policymakers and the public fully understand the ramifications of any outsourcing decisions before the contract is signed.

<sup>86</sup> Janice Fine, "Six Reasons Why Government Contracting Can Negatively Impact Quality Jobs and Why it Matters for Everyone," In the Public Interest backgrounder brief, October 2012. <http://www.inthepublicinterest.org/article/six-reasons-why-government-contracting-can-negatively-impact-quality-jobs-and-why-it-matters>

## Competition



### **Require competitive bidding when a contract is up, rather than automatically renewing it.**

Automatic renewal of government contracts circumvents the competitive bidding process. Instead of allowing government and the public to assess the contractor's performance and determine whether the contract meets community needs, automatic contract renewal gives one company a monopoly over the public service. When a contract expires, governments should require that the contract be competitively rebid. Competitive bidding allows the government to examine its options and ensure that it is still receiving the best deal.



### **Ban contract language that guarantees company profits.**

Many government contracts contain language that shields companies from risk and obligates taxpayers for ensuring that corporations make a profit even when services are no longer needed. Non-compete clauses in public infrastructure contracts and occupancy guarantees in private prison contracts discussed earlier in this report are examples of how corporations protect their profits at the expense of taxpayers. Risk is an essential element of our American marketplace, and contracts that shift the risk to the public and guarantee revenues for the contractor are simply uncompetitive. These types of provisions should be banned from government contracts.



### **Ensure that public service workers have the opportunity to submit their own plan to save money and provide quality services.**

Existing public workers have vast institutional and working knowledge of a service and can be a great asset in figuring out solutions that promote efficiency and save money. When a governmental entity is considering outsourcing a public function, it should always allow public service workers to submit their own plan. As the examples in the previous section clearly illustrate, public sector workers can often beat out private corporations when they are able to fairly compete in a competitive bidding process. In the city of San Diego, public employees have demonstrated they can do the work most efficiently and have won the competitions for all five city services put out to bid since the competition process was established in 2007.<sup>87</sup>

*For additional information about In the Public Interests' Taxpayer Empowerment Agenda, please visit our website at <http://www.inthepublicinterest.org/article/taxpayer-empowerment-agenda>*

<sup>87</sup> Center on Policy Initiatives, <http://onlinecpi.org/campaigns/managed-competition/>.



## ACKNOWLEDGEMENTS

Design and layout by Terry Lutz.

*Any errors or omissions in this report are the sole responsibility of In the Public Interest.*

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