In the PublicInterest
A Comprehensive Resource Center on Privatization and Responsible Contracting

The Taxpayer Empowerment Agenda

A Project of In the Public Interest

Eager for quick cash, state and local governments across America are handing 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.

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.

The Taxpayer Empowerment Agenda will help taxpayers reclaim control of our democracy. 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.***

  Why we need it:
  Experts estimate that there are more than three times as many contract workers as civil service workers at the federal level.[1] Similar 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.

[1] 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

Tracking this spending and personnel data, which all public agencies do for their own workforce, will allow taxpayers to better understand where tax dollars are going and the level of service they can expect.

- ***Require any company being paid with tax dollars to open its books and meetings to the public, just as government does.***

  Why we need it:
  In many cities and states, government contractors are able to circumvent sunshine laws and shield public information about services and programs from taxpayers. 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.[2] Concerned about mismanagement of funds, residents and journalists submitted open records requests to the Jenkinsville Water Company, seeking copies of financial records, including audited financial statements and budgets. The company refused to comply.

  A state senator sought an opinion from the state's Attorney General regarding whether the company was bound by the state's open records laws. The Attorney General's office issued an opinion, stating that the water company must disclose the records.[3] Even after this decision was issued, the company refused to hand over documents, leading to a lawsuit filed by *The Independent Herald* newspaper.[4]

ACCOUNTABILITY

- ***Ensure that every contract allows for regular audit and oversight, and agencies have sufficient staffing levels to adequately oversee contracts to make sure taxpayers are getting what they pay for.***

  Why we need it:
  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.

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[2] 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?
[3] Jill Cincotta, "Attorney General: Jenkinsville Water Co. Public," The Herald Independent, August 12, 2011. http://www.heraldindependent.com/view/full_story/15047559/article-Attorney-General--Jenkinsville-Water-Co--Public
[4] Jill Cincotta, "Jenkinsville Water Co. Not in Compliance, CPA Says," The Herald Independent, February 11, 2011. http://www.heraldindependent.com/view/full_story/11343207/article-Jenkinsville-Water-Co--Not-in-Compliance--CPA-Says

The necessity of oversight is especially important in correcting contracting problems before they become serious. A recent audit report uncovered a multitude of problems with contractors working for the North County Transit District in California, which runs the area's bus and train systems. Auditors found that contractor security guards did not have critical required training, contractor 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.[5] The report concluded that because the agency did not provide adequate oversight of their private contracts, serious problems occurred that jeopardized the public's safety.

- ***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.***

  Why we need it:
  It is often very difficult for state and local governments 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.[6] 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 the contractor.[7]

  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.[8]

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

  Why we need it:
  If taxpayers are going to trust a for-profit company to provide vital services, that company should prove it can be trusted.

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[5] 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/
[6] In The Public Interest, Indiana Public Benefits Eligibility System case. http://www.inthepublicinterest.org/case/indiana-public-benefits-eligibility-system
[7] Associated Press, "Indiana panel OKs Bill to End Welfare Privatization, Indiana Business Journal, December 14, 2009. http://www.ibj.com/article/print?articleId=15130
[8] In The Public Interest, Indiana Public Benefits Eligibility System Case. http://www.inthepublicinterest.org/case/indiana-public-benefits-eligibility-system

The Government Accountability Office estimates that companies that do business with the government owe as much as $5 billion in federal taxes.[9] In 2010, the President of the United States cited a company that received a lucrative defense contract even though it owed more than a million dollars in back taxes. Instead of paying the taxes, the owner of the company bought a boat, cars and a home overseas.[10]

Many of these same contractors do business with cities and states across the country. It is important that cities and states understand the track records of all companies they contract with, and ensure that only law-abiding companies receive taxpayer dollars, and bar those that fail to abide by local and state laws from participating in the contracting process.

- ***Require a thorough cost analysis of all bids and guarantee taxpayers a minimum 10 percent savings before any service is privatized.***

  Why we need it:
  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.

  The Government Finance Officers Association estimates that indirect and hidden costs can add up to 25 percent to the price of the contract.[11] These costs add up, making the true costs of contracting much higher than a company's bid may indicate.

SHARED PROSPERITY

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

  Why we need it:
  Of the 5.4 million people working for federal service contractors in 2008, an estimated 80 percent earned less than the living wage for their city or region.[12] The situation is similar for many local and state contract workers.

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[9] Jim Dimsdale and Bill Radke, "Obama Combats Contractor Tax Evasion, American Public Media, January 20, 2010. http://ssl.marketplace.org/topics/business/obama-combats-contractor-tax-evasion
[10] Jim Dimsdale and Bill Radke, "Obama Combats Contractor Tax Evasion, American Public Media, January 20, 2010. http://ssl.marketplace.org/topics/business/obama-combats-contractor-tax-evasion
[11] AFSCME, "Government for Sate: An Examination of the Contracting Out of State and Local Government Services," Eighth edition.
[12] 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.

According to a recent study, contracted food service workers in K-12 public schools in New Jersey had their wages cut $4-6 an hour following the privatization of food service. Most of the workers received few if any health insurance benefits, 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.[13]

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

Why we need it:
Privatization can have an unintentional negative affect on community residents and businesses, and prevent the government from addressing serious national and regional issues.

In 2009, Chicago signed a 75-year binding contract with a consortium of companies backed by Wall Street giant Morgan Stanley for the operation of the city's 36,000 parking meters. 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.[14] Downtown businesses blamed the price increases for a decrease in economic activity.[15]

The contract also requires Chicago to reimburse the company whenever the city needs to temporarily close its streets, even for community parades and street fairs.[16] Even more outrageous, the city is restricted from making improvements to streets that contain parking meters, such as adding bicycle lanes, sidewalk expansion, streetscaping, pedestrian bulb-outs, 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 future city planning for residents, including bicyclists, pedestrians, and transit users.[17]

In 2008, the corporate consortium led by Brisa Auto-Estradas, which operates the Northwest Parkway in Denver, Colo., objected to improvements on a nearby local public

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[13] 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.
[14] Mayor Rahm Emanuel renegotiated the contract to exchange Sunday free parking for increased hours to 10 p.m. for the rest of the week.
[15] In The Public Interest, Chicago Parking Meters case. http://inthepublicinterest.org/case/chicagos-parking-meters
[16] 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/
[17] 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/

road. The contract allowed the Portugal-owned private entity to prevent improvements on city-owned and maintained roads, since the improvements "might hurt the parkway financially," by providing an alternative route for travelers, thus potentially reducing toll revenue. 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.[18]

COMPETITION

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

  Why we need 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.

  Last year, Minneapolis learned that its information technology contractor, Unisys, did not get the city favorable pricing on technology-related equipment and services, as required by the contract. The contract worth $143 million lasted 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.[19]

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

  Why we need it:
  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 and compensation clauses in public infrastructure contracts, and occupancy guarantee clauses in private prison contracts are examples of how corporations protect their profits at the expense of taxpayers.

  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. The state of Indiana was required to pay the

[18] Ellen Dannin, "Infrastructure Privatization Contracts and Their Effect on Governance." Pennsylvania Dickinson School of Law, Legal Studies Research Paper No. 19-2009.   2009.
[19] Eric Roper, "Minneapolis Spent Millions on No-Bid IT Contract," Star Tribune, August 2, 2012. http://www.startribune.com/local/minneapolis/165022966.html

privatized toll road operator $447,000 for the cost of those waived tolls.[20] 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.[21]

Many prison privatization contracts contain occupancy guarantees, which require states to maintain a high occupancy level in a private prison. 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 percent occupancy rate guarantee for the entire term.[22] Essentially, the state would have to guarantee that its prison would be 90 percent filled for the next 20 years, or pay the company for unused prison beds. While no state took CCA up on its offer, many existing prison privatization contracts contain such occupancy guarantees, with some as high as 100 percent.[23]

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

Why we need it:
Existing public workers often have solutions that promote efficiency and save money. 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.[24]

According to the report from the review board, "The [Technical Evaluation Committee] found the [Employee Proposal Team] to be knowledgeable, comprehensive in approach,

[20] Ellen Dannin, "Infrastructure Privatization Contracts and Their Effect on Governance," Pennsylvania Dickinson School of Law, Legal Studies Research Paper No.19-2009. 2009.
[21] 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
[22] 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
[23] 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/
[24] 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/

committee to achieving efficiencies and saving, interested in thinking "outside the box" and prepared to meet or exceed performance requirements."[25]

[25] 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/