



Performance-Based Competitive Contracting

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Why Contract?

Performance-based contracting allows state agencies to open work normally performed by in-house employees to bids from a variety of sources. Public employees are allowed to bid for contracts along with contractors from the private sector. Competition allows government managers to provide improved services to the public at lower cost to taxpayers.

Research by the Reason Foundation finds that competitive contracting at the state and local level has resulted in documented savings ranging from 10% to 20% (Reason Foundation analysts note this is a conservative estimate).

Performance-based contracting provides program managers greater flexibility in working with scarce public resources. Competition achieves higher efficiency by allowing managers to choose the best-cost option while delivering high-quality service to the public. Even when work is not selected for competitive bidding, the very possibility tends to drive down the cost of an agency's in-house operations.

JLARC Audit

A 2007 performance audit conducted by the Joint Legislative Audit and Review Committee (JLARC) found that:

“...few agencies have competitively contracted for services in the 16 months since receiving authorization to do so. Agency managers reported two main reasons for not competitively contracting. First, managers perceive the process itself to be complicated and confusing, providing a disincentive to pursue competitive contracting.

Second, competitive contracting is a subject of collective bargaining, which creates additional challenges by requiring labor negotiations. Managers must bargain, at a minimum, the impacts of competitive contracting. Additionally, some agency collective bargaining agreements include provisions which prohibit agencies from competitively contracting.”

Survey of Agencies

In 2009, WPC surveyed state agencies to determine whether and to what extent managers were using their competitive bidding authority under the 2002 law.

Typical of agency responses was this answer from Washington State University:

“I have been advised that WSU has not executed any contracts under this 2002 Civil Service Reform/RCW 41.06.142 process. It’s apparently a complicated process and the administrative decision was made early on that WSU would not participate or take any action that would implicate this process (i.e., contract for purchased services that would displace classified staff).”

Executive Order 10-07

“The Office of Financial Management (OFM) shall issue minimum performance contracting standards for client and personal services contracts. Performance-based contracts identify expected deliverables, performance measures or outcomes; and payment is contingent on their successful delivery. Performance-based contracts also use appropriate techniques, which may include but are not limited to, consequences and/or incentives to ensure that agreed upon value to the state is received.

Executive Order 10-07

“All state cabinet agencies shall:

- a. Require that new contracts for products and services meet performance-based contracting standards.
- b. Review existing contracts prior to renewal and update as necessary to reflect performance-based contracting standards.
- c. Ensure performance-based contracts are actively managed to meet performance-based standards.”

SAO Performance Audit

“We distinguish between two types of performance-based contracts:

- Deliverables-based contracts that link payment to specific products or project milestones.
- Outcomes-based contracts that tie payment to results, connecting performance measures and/or outcomes to payment.

Performance-based contracting is not a one-size-fits-all solution. Deliverables, performance measures and outcomes must be tailored to support the purpose of the contract and the goals of the program it supports. Writing performance-based contracts offers many challenges, but some agencies are using promising techniques, such as setting due dates for deliverables, tying the distribution of funds to completion of specific deliverables, and withholding payments if grant recipients do not meet requirements.”

SAO Performance Audit

Among the Auditor's recommendations:

- Increase the use of performance or outcome measures for payment;
- Improve contract management and contracting processes;
- Increase staff expertise and capacity; and
- Educate and collaborate with contractors.

SAO Performance Audit

One of the Auditor's long-term recommendations as the state moves forward with robust performance-based contracting is to:

“Create a centralized office or staff with a high degree of expertise in performance measurement and performance-based contracting to provide technical assistance to agencies in developing and improving their use of performance measures and outcomes.”

The report notes that this is a "leading practice." It also mirrors our recommendation for the state to create a competition council to help take the politics out of contracting and provide the business case and monitoring expertise necessary to ensure taxpayers are receiving contract value and results.

Competition Council

Though not identical to the State Auditor's recommendations, bills were introduced in 2011 to create a version of this reform (HB [1873](#) and [SB 5316](#)) but they were not acted on by the legislature.

According to the digest for these bills:

“Creates the Washington competition council as an advisory council within the office of financial management to, among other duties: (1) Examine and promote methods of providing select government-provided or government-produced programs and services through the private sector by a competitive contracting program; and (2) Develop an institutional framework for a statewide competitive program to encourage innovation and competition within state government. “

Next Steps

The contracting reforms enacted with the adoption of SB 5931 combined with Governor Gregoire's Executive Order and the State Auditor's report provide policy makers with a good roadmap to transition more of its activities to real performance-based contracting. These are important steps to ensuring government spends more of its time buying meaningful results and not just intentions.

The next step is to simplify the 2002 competitive contracting law while removing the requirement that contracting be subject to collective bargaining negotiations. Lawmakers should also consider creation of a formal, non-political, Competition Council to provide agencies assistance in identifying services that could benefit from performance-based competitive contracting and report these savings to the legislature and the public.

Finally, the searchable contract database being created by DES should be merged with the state's budget transparency website (fiscal.wa.gov) and RFPs from WEBS should also be accessible from the budget site.

Resources

Policy Guide for Washington State

<http://www.washingtonpolicy.org/pages/policy-guide-washington-state>

JLARC: Performance Audit of the Implementation of Competitive Contracting

<http://www.leg.wa.gov/JLARC/AuditAndStudyReports/2007/Documents/07-1.pdf>

Governor Gregoire Executive Order 10-07

http://www.governor.wa.gov/office/execorders/eoarchive/eo_10-07.pdf

SAO: Performance-Based Contracting - Review of Current State Practices

<http://www.sao.wa.gov/AuditReports/AuditReportFiles/ar1004877.pdf>

Reason Foundation

<http://reason.org/areas/topic/state-government>



Questions?

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