



POLICY BRIEF

Competitive Contracting for Highway Maintenance: Lessons Learned from National Experience

**A critique of the Washington Department of Transportation
report “Synopsis of WSDOT’s Review of Highway
Maintenance ‘Outsourcing Experience’”**

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January 2004



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Introduction

In 2002 the Washington state legislature passed the Personnel System Reform Act which, among other things, allows state agencies to competitively contract for services historically provided by state employees. The competitive contracting provision of the Act, which takes effect in July 2005, offers new flexibility to state managers facing tight budgets and an intense focus on maintaining service levels while reducing overall cost.² In many other states, competitive contracting is used to boost the quality of services, while ensuring the best cost for taxpayers.

¹ This report was submitted for review to the Transportation Research Board by Nicole Ribreau of the Washington State Department of Transportation.

² While competitive contracting is scheduled to begin in July 2005, collective bargaining begins in July 2004, creating the possibility that state negotiators and union officials may bargain away or significantly restrict opportunities for competitive contracting.

In Washington, highway maintenance is one area of government historically recommended for competitive contracting.³ An independent audit commissioned by the legislature in 1998 found that competitive contracting for highway maintenance could save state taxpayers up to \$250 million, without reducing the high level of service expected by state motorists.⁴

The findings of the legislature's audit reflect the generally positive experiences of other states. Highway maintenance contracting is used by many states to increase flexibility, ensure high quality and reduce cost for vital highway infrastructure. These positive results are distorted by a recent Washington State Department of Transportation (WSDOT) analysis of highway maintenance contracting. Competitive contracting is a vital component of a modern and efficient state government. For that reason Washington Policy Center and Reason Foundation have combined to provide a critical review of the WSDOT research.

The following study provides a brief but informative response to WSDOT's review of highway maintenance contracting out, which is titled, "Synopsis of WSDOT's Review of Highway Maintenance 'Outsourcing' Experience." The report has been submitted to the national Transportation Research Board for review in early 2004. In many circumstances the WSDOT report provides inadequate, misinformed or simply distorted explanations of the vast positive experience of other states with competitive contracting for highway maintenance.

To illustrate these misconceptions, we asked officials in other states and private sector executives with intimate knowledge of their state's competitive contracting programs to review the WSDOT report. The results provide a revealing and often contradictory view of the generally negative analysis of competitive contracting provided in the WSDOT paper. This response will provide a more accurate reflection of the impressive operational efficiencies and quality improvements that competitive contracting has brought to other states.

The Semantics of Competition

Throughout its paper WSDOT uses multiple words and phrases to describe competitive contracting. In its analysis the terms outsourcing, contracting out and privatization are used interchangeably to describe the same basic process. While the first two are fairly similar in practice, privatization is an entirely different policy and one that rarely, if ever, truly happens in the United States.

³ See, "Competing for Highway Maintenance: Lessons for Washington State," Parts I and II, published by Washington Policy Center, September 1998 and January 1999, available at www.washingtonpolicy.org.

⁴ "Department of Transportation Highways and Rail Programs Performance Audit," prepared for the Joint Legislative Audit Review Committee by Cambridge Systematics, Inc., March 13, 1998.

The difference is subtle but important. To be fair, privatization in its modern usage has come to embrace a wide range of practices. However, the term “privatization” often carries a negative connotation. Thus it is important to note that states are not “privatizing” per se, that is, they are not selling the roads. A more appropriate term is “contracting out” (or “outsourcing”). This more accurately describes the process by which government competitively contracts with a private organization or public employee group to provide a service or part of a service through a management contract. Public employee groups often submit bids for, and win, competitive contracts.

The Role of Politics in Public Policy

In its analysis WSDOT implies that politics should not be part of the decision to introduce competition to government service. In reality, politics is part of any policy decision, because ultimately representatives elected by the people are responsible for setting policy. Additionally, politics is evident throughout the WSDOT analysis. For example, several states examined in the analysis either have their success dismissed because of political motivations, or political opposition is characterized as an indication that the programs are unsuccessful. In one example, the Abstract of the WSDOT analysis states, “Florida is poised to expand highway maintenance outsourcing programs as part of a government wide privatization commitment.”

Later the Abstract states, “Massachusetts did not expand a much-criticized pilot program.” This characterization is both factually inaccurate and fails to consider the political nature of the anti-privatization forces that tried to block the Massachusetts program. As a result of the success of the program, Massachusetts expanded highway maintenance contracting statewide through a managed competition platform. With this new program state employees not only bid on, but won several contracts, effectively reducing cost and increasing service levels for state taxpayers and drivers.⁵ If any one factor can be blamed for the slowdown in competitive contracting in Massachusetts it is the highly restrictive outsourcing law recently passed by the state legislature. The new law hampers the ability of agency managers to expand successful outsourcing programs.⁶

Characterization of the Oklahoma Pilot Program

In the Abstract WSDOT states, “Oklahoma cancelled their pilot program.” This is simply wrong. Both sides sued for breach of contract, the case is in litigation, and it is very difficult to determine who is at fault. Careful analysis shows that this particular circumstance is more a function of a poorly written contract than anything else. Later in

⁵ Geoffrey F. Segal, Adrian T. Moore, and Samuel McCarthy, “Contracting for Road and Highway Maintenance, published by the Reason Foundation, Los Angeles, February 2003, pp. 6-7.

⁶ Passed in 1993 and commonly known as the “Pacheco Law,” the statute sets up a series of strict tests that a state agency must meet before it can award a contract that allows a private company to provide services previously performed by state employees.

the paper WSDOT correctly states that a well-written performance-based contract with strong reporting and monitoring provisions is essential for a successful outsourcing program. Without these important elements, even the most well-intentioned contract can run into unforeseen problems. In Oklahoma, many key contract components were lacking, leading to the eventual failure of the competitive highway maintenance program.

Cost Savings from Highway Maintenance Contracts in Massachusetts

WSDOT contends Massachusetts' experience with competitive contracting has been mixed, if not largely negative. Both the Kennedy School of Government at Harvard University and the Coopers & Lybrand accounting firm conducted independent analyses of the Massachusetts highway maintenance contracting program. Both reviews concluded that the savings generated through competition were likely greater than 21 percent. The reports also found that highways were better maintained and received a higher level of service than before.⁷

Additionally, because of the success of the pilot program competitive contracting was expanded to the entire eastern part of the state in 1993. Seven contracts were put out for bid; private firms winning four and public employees three. The contracts saved the state \$7.5 million the first year and delivered an additional \$10 million worth in services.⁸

Despite WSDOT's claim, the Massachusetts program was eventually expanded statewide in 1996.⁹ Overall, 14 contracts were offered for bidding – with half of contract awards going to private firms and half to public employees. In 1998, the contracts were re-bid, and five additional contracts were reviewed in the last year without any controversy or negative media attention. Because of the program's success, competitive contracting has become a way of doing business. As a result, the maintenance budget for the Massachusetts Department of Transportation fell from \$40 million in 1991 to \$25 million in 1999 (in real dollars), with the same amount of work being performed at a higher level of performance.

Maintenance Contracts for Massachusetts Route 3

⁷ David Gow et al., *From Public to Private: The Massachusetts Experience 1991-1993*, John F. Kennedy School of Government, Cambridge, Massachusetts, 1993, p. 40; and Coopers & Lybrand LLP, *Independent Assessment of Massachusetts Highway Maintenance Privatization Program*, June 1996.

⁸ Charles Kostro, Deputy Commissioner, Massachusetts Highway Department, interview with authors, June 2002 – as quoted in Segal et al., "Contracting for Road and Highway Maintenance."

⁹ This particular assertion is important because in an earlier passage WSDOT discredits information in favor of outsourcing because it was based on statements from an interview, but to support its own view WSDOT relies on the same type of source - an interview. In WSDOT's use of interview information no title or additional information is given, whereas earlier in the analysis WSDOT discredits information from an interview with the Deputy Commissioner of the Massachusetts Highway Department.

Continuing with its analysis of the Massachusetts experience, WSDOT implies that the contractor hired to design, build and operate a new section of Route 3 acted inappropriately by accepting a contract extension that was not put out for bid. Not competitively bidding the operating and maintenance contract is a failure of the contracting agency, not the contractor. Additionally, this example does not fit in the context of the larger paper, and even this case does not condemn outsourcing as such. Rather, it provides a valuable lesson: Contracting out is only as successful and productive as the binding agreement that governs the relationship between the government and the contractor. All performance standards and potential areas of conflict should be clearly established in writing before the work begins.¹⁰

The Virginia Experience

WSDOT's review of the Virginia experience with competitive contracting for highway maintenance distorts the true results of the program. Shirley Ybarra, former Virginia Secretary of Transportation, was asked to review the WSDOT report on highway maintenance outsourcing. She said this about the report's characterization of Virginia's experience: "I have read this entire report and am very concerned. All of the facts are just not accurate!!!"¹¹

Further review shows that many of WSDOT's findings do not properly illustrate Virginia's experience with contracting for road maintenance. The first bid in 1996 was indeed unsolicited, however, after the initial bid was received additional bids were sought and an extensive round of negotiations was completed. WSDOT also points to the uncompetitive extension of the contract as a sign of poor contract performance. A provision was placed in the original contract that allowed the contract to be automatically extended if the Virginia Department of Transportation was satisfied with the level of service and the price. This is a common practice in all contracting.

Additionally, it should be noted that in 1995 the Virginia legislature passed the Public and Private Transportation Act (PPTA) mandating that the state Department of Transportation evaluate alternate proposals to maintain and rebuild roads. The Act also authorizes the Department to evaluate both solicited and unsolicited bids. The legislature's goals were simple: to improve efficiency and save valuable tax dollars. Proposals are compared against the Department's traditional work methods.

A number of cost savings estimates have been produced which illustrate the benefits of competitive contracting to Virginia taxpayers. WSDOT quickly dismisses each of them with little objective consideration of their validity. Original savings estimates by the Virginia Department of Transportation were based on comparing the usual cost of maintenance work in the contracted area and against the costs proposed in the contract. Savings from competitive contracting were identified as \$23 million over

¹⁰ For more information on designing an effective road and highway maintenance contracting policy, see the privatization resources at Reason Public Policy Institute, available at www.rppi.org/htg.html.

¹¹ E-mail communication with authors, October 28, 2003.

five years using standard methodology and actual cost data.¹² A second analysis performed by Virginia Tech found savings from contracting out of between \$16 and \$23 million, or 12 percent.¹³ Finally, the contractor completed an analysis showing contracting out saved Virginia taxpayers nearly \$8,000 per lane mile of maintenance.¹⁴

WSDOT's claim that allowing private competition did not save as much as originally planned does not take into consideration changing contract conditions that made the original estimates inaccurate. The claim also fails to recognize the real savings that, while not identical to what was originally predicted, still represent a valuable savings to Virginia taxpayers and motorists.

WSDOT does note that the Virginia Assembly and its research wing have requested additional and better data, but to date that data does not exist. Thus, it seems unfair to criticize the contracting process. Shirley Ybarra adds, "This is not all about savings, it is also about getting 'more bang' for the bucks and having [a] guaranteed price." Ms. Ybarra's statement helps explain that competitive contracting is about more than money. Competitive contracting is also about improving the culture of state agencies, so they provide better quality service to state taxpayers and improve the stability of the transportation budgeting process.

Furthermore, WSDOT fails to even acknowledge the quality or performance-based portion of Virginia's experience. Elsewhere in the Virginia report that WSDOT cites, we learn the contractor met or exceeded performance targets for nearly 90 percent of the items evaluated.¹⁵

Texas: A Model of Continuous Improvement

In its report, WSDOT cites newspaper articles about poor contractor response to icy road conditions in a Texas contract for highway maintenance. The particular articles WSDOT selected failed to note these were the worst ice storms the region had seen in years, that the contractor had responded and in many cases road-clearing equipment was stuck in traffic and was unable to reach the affected areas. Road-clearing crews manned by public employees would have faced the same severe conditions. The performance problems, while certainly something that needs to be addressed with the contractor, do not provide objective evidence that competitive contracting itself is less effective and more costly than a government monopoly.

Even considering the problems mentioned by WSDOT, Texas Transportation Director Kris Heckmann said that district managers, "would be willing to try more

¹² Virginia Joint Legislative Audit and Review Commission, "Review of VDOT's Administration of the Interstate Asset Management Contract," Richmond, Virginia, October 2003, p. iv. Available at <http://jlarc.state.va.us/reports/rpt259.pdf>

¹³ *ibid.*, p. 12

¹⁴ *ibid.*, p. 48.

¹⁵ *ibid.*, p. iii.

private maintenance if the project was written differently...to incentivize [the contractor] to be more diligent with primary duties than the way the contract was written before.” Heckmann wisely recognizes that the problems encountered in Texas were largely because of a poorly written contract. Indeed, in its analysis WSDOT does note that one of the keys to success is a strong contract. The WSDOT fails, however, to see the vast improvement made between some of the initial contracts and the newer ones coming on board now.¹⁶

Competitive contracting in Texas shows how experience has improved the contracting process for many government agencies. As private companies are allowed to bid for more public services, state agencies are learning the most effective ways to provide high quality, cost effective services to the public. With the added flexibility to choose among public and private providers, agency managers can select the best alternative for providing high quality transportation services to taxpayers.

Brooke Leslie Rollins of the Texas Public Policy Foundation notes that WSDOT is wrong about the status of future contracting endeavors, stating, “Texas is not moving away from private maintenance contracts. The legislature just passed a bill to allow more liberal bonding requirements for TxDOT maintenance contracts that should increase competition in the private maintenance bidding and result in a better product for TxDOT. Remember that TxDOT lets [manages] \$3 billion a year in construction contracts and all of it is done by private companies. Privatized maintenance is a new experience for TxDOT but one that they are learning from and committed to.”¹⁷

The Florida Experience

Similar to Virginia, WSDOT notes that Florida’s cost savings are based on estimates of what the state would have spent to maintain highways during the contract, and then compared that against the final value of the contract. In each of the contracts the state administers annually, the state has saved several million dollars over what it would have cost under the state monopoly system. According to “Asset Management Program Summary,” a report published by the Florida Department of Transportation in November 2003, the state has saved \$83.7 million, or 15.3 percent throughout the life of the contracts.¹⁸ Furthermore, an additional six contract awards for highway maintenance are planned in the next fiscal year (FY 2004). By July 2008, Florida expects to have 28 active asset management contracts. At the local level, the two major toll operators in Orlando and Miami also successfully contract out road maintenance.¹⁹

¹⁶ States have learned from past mistakes. As contracting practices have evolved almost every new contract is now performance-based. Florida provides perhaps the best example.

¹⁷ E-mail communication with Brooke Leslie Rollins, President, Texas Public Policy Foundation, October 28, 2003.

¹⁸ Florida Department of Transportation, Asset Management Program, November 2003, available at: <http://www.dot.state.fl.us/statemaintenanceoffice/Asset%20Management%20Program%20November%2024,%202003.pdf>

¹⁹ International Road Federation, Symposium on Road Maintenance Contracting, Orlando, Florida, October 21-22, 2003.

Marshall Shivers, former Florida State Maintenance Engineer, added this about WSDOT's use of an Auditor General's report, "the report...was based on all of Florida Governmental Outsourcing and only slightly mentions FDOT and any experience it has had. Since the title of the Washington report talks about Highway Maintenance Asset Management experience I see no reason for them to mention anything but Highway agency experiences."²⁰ Shivers' point is that much of the report WSDOT uses to highlight problems with Florida's experience with highway maintenance contracting had nothing to do with the Department of Transportation, but rather with other state agencies.

General Observations about the WSDOT Analysis

- In several places WSDOT points out that most state transportation departments lack the ability to provide detailed analysis or cost data for internal activities. The agency argues that this makes comparisons difficult. However, the bottom line is that competition consistently reduces cost and improves performance. While individual cost factors are sometimes difficult to establish, governments that use competitive contracting regularly achieve lower overall cost and better service to the public.

- WSDOT dismisses several successful contracting experiences because of political motivations. As we discuss earlier in this paper, politics is part of any policy decision. In the end, success or failure is driven not by politics, but by a strong competitive contracting program with clear contract terms and effective oversight.

- Concerns about not having true market conditions are easily solved through a true competitive process and re-bidding when the contract is up for renewal. As WSDOT correctly notes, competitive contracting requires a strong, consistent contracting process that properly harnesses market forces to save tax money and improve the quality of public services.

- While WSDOT notes that attention needs to be given to performance to make sure that work is being completed, the agency's analysis spends too much time on the cost side of the equation. A best-value approach, taking into account both cost and performance, is better suited to accomplishing the goals of most contracting programs.

- Officials need to consider risks of performance failure. Reasonable bonds or other sureties can assure that contractors are capable of performing the service. If the contractor fails to perform, the government receives the bonded funds to cover any damages and costs associated with replacing the services of the failed contractor.²¹

- Fears about worker displacement, expressed by WSDOT in the analysis' conclusion, are similar to largely unfounded claims made by public employee unions that

²⁰ E-mail communication with authors on October 28, 2003.

²¹ For further discussion see Segal et al.

wish to discourage competition and maintain their monopoly. Two recent studies by the United States General Accounting Office and the University of Wisconsin show that the vast majority of employees affected by outsourcing find jobs in other areas of government or with the winning contractor. Very few involuntary separations result from competitive contracting.²²

- WSDOT states that business, not politics, needs to be at the center of the policy making decision. Rightfully so. However, it seems apparent that in its analysis the agency itself fell victim to the influence of politics and failed to remain impartial and free from political influence throughout the analysis.

- Perhaps most importantly, the analysis largely ignores critical review provided by officials in the states evaluated by WSDOT. In one example, Mike Hall, highway maintenance program manager for the Virginia Department of Transportation, provided a number of critical comments directly to WSDOT. His comments were largely ignored in the draft we reviewed. (See Mr. Hall’s full comments in Appendix A.)

- Also important to a full understanding of national experience with competitive contracting for highway maintenance is WSDOT’s failure to consider the experiences of New Mexico, Utah, the District of Columbia and the many international examples of contracting out success, including New Zealand and Australia.²³

Conclusion

It is vital for Washington policymakers to have a complete understanding of competitive contracting programs in other states before making a decision about the best policy for Washington state. In its limited review, WSDOT has not provided a full and accurate review of other states’ experiences. Considering the highly controversial nature of this issue, the best approach for Washington leaders is to establish their own contracting out policy to incorporate the lessons learned in other states, and to aggressively pursue the service improvements and cost savings that come from a well-managed competitive contracting program.

²² U.S. General Accounting Office, DoD, “Competitive Sourcing: Effects of A-76 Studies on Federal Employees’ Employment, Pay and Benefits Vary,” GAO 01-388, GAO 2001, Washington, D.C. Also see Steven Deller et al., *Local Public Services in Wisconsin: Alternatives for Municipalities with a Focus on Privatization*, University of Wisconsin, Madison, Wisconsin, 2001, available at www.uwex.edu/lgc/program/pdf/privpaper/pdf.

²³ See Segal et al.

Appendix A: Sample Response to WSDOT Research

Response to the WSDOT analysis by Mike Hall, Highway Maintenance Program Manager for the Virginia Department of Transportation

Hello Nicole,

I reviewed your paper and would like to make a few comments. Please understand and take it as constructive only.

Into the read, I was somewhat confused as to what outsourcing method you are critiquing. The reader may not know if you are discussing all types of outsourcing, i.e. unit price, lump sum, per DOT specifications or just (outcome-based) performance contracts?

VMS [Virginia Maintenance Services] is providing us (and some others) a performance based service, where they must meet the performance measure (outcome) per activity/asset, not the method of accomplishing it, per the DOT.

Some mistakes (in regards to the VA report):

- VMS maintains parts of I-95, and 81 (not 91) and all of I-77 and 381.
- 381 is not in Northern Virginia, but in Washington County.
- The contract was renewed on June 30, 2001, not in 2002 .

Other contracts of its kind are being considered, although no longer can we accept unsolicited proposals. I will be going out to bid for two performance based contracts in the very near future.

VMS did not submit a proposal for a design-build-operate project for I-81. They were proposed (separately) within a submission for an offer to maintain and operate the roadway after the fact. The proposal(s) were refused at that time.

I sense that your paper is more negative than positive. I might suggest that the DOT's have learned a lot and now can get the necessary services at an affordable cost. Also, there are many more players (vendors) available at this time. I understand that performance based contracts have merit and (depending on the asset type or service) they can provide us with better value than any traditional unit price.

Good Luck

Mike Hall / VCO
Program Manager
Performance Planning & Development
Asset Management Division

About the Authors



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Mr. Segal holds a Master's in Public Policy from Pepperdine University with specializations in Economics and Regional/Local Government and a Bachelor of Arts in Political Science from Arizona State University.



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