

Privatization Is More than Contracting Out

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Privatization is rapidly becoming a popular option for increasing the efficiency and effectiveness of service provision. Unfortunately, too often privatization is equated with contracting out. In this paper privatization is distinguished from contracting out, when privatization is necessary is discussed, and a four-step approach to implementing privatization is suggested. An understanding of privatization concepts requires an analysis of the services to be delivered and the contracting environment. If agencies blindly apply traditional contract procedures in the wrong environment, the result is frequently the "publicization of private service," which has the worst characteristics of both the public and the private sector.

Some people view privatization as another fad like urban renewal; others consider it a philosophic stance. Privatization is more than a simple fad or philosophy; it is, or should be, an expansion of traditional economic and management thought. Nobel laureate James Buchanan initiated much of the interest in privatization when he emphasized that government financing of an activity is not the same as government production of a service. These are two distinct and separate activities. This is clear from his statement that "governmental financing of goods and services must be divorced from direct governmental provision or production of these goods and services" (1). Many individuals have taken this to mean that the private sector should provide all goods and services because it is more cost-effective than government. This is too simplistic a view.

Successful privatization requires a thorough understanding of the contract marketplace, for this is where the interaction between the government buyer and the private-sector provider takes place. Successful privatization is more than issuing an invitation for bid (IFB) and awarding a contract. Successful privatization requires a thorough understanding of the contract environment, the nature of the service desired, and the response to the various soliciting methods. The contract marketplace is just as complicated as the traditional marketplace around which many disciplines such as microeconomics and marketing have developed.

FRAGMENTATION OF ACADEMIC DISCIPLINES

The study of economics and management has been fragmented into many different disciplines, each studying a different sector of the economy within carefully defined parameters. Unfortunately, none of these disciplines specifically addresses the contract marketplace or the interaction of public, private, and nonprofit sectors. Examples of the most familiar disciplines follow.

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1. Microeconomics studies for-profit firms producing products for sale in the marketplace. The public sector and the nonprofit sector frequently do not fit the assumptions of this discipline.

2. Public finance traditionally studied the collection of funds to provide public goods in a command economy in which authority is derived from the electoral process. Only recently have specialists in public finance discussed the need to separate the production of public good from the financing of public goods. There are fewer alternatives for management when the public sector procures goods and services.

3. Regulatory economic theory addresses firms that require such an extensive network of facilities to deliver services that they are in essence natural monopolies. This discipline provides the basis for regulating firms such as railroads, distributors of electrical power, bus lines, and communications.

4. Business administration courses address the management of for-profit firms producing products for the marketplace. The accounting discipline does recognize the other sectors but has three different sets of accounting practices: one for for-profit firms producing products, one for government organizations, and one for nonprofit organizations. A case can be made that there is still a fourth approach for public utilities. Each practice is substantially different in many ways, such as the handling of depreciation and budgeting.

5. Public administration focuses on command management of public organizations that receive a mandate (authority) from a legislative body and are responsible for carrying it out according to the guidelines given.

Generally missing is a comprehensive approach to understanding the dynamic interaction among the various sectors (private, public, nonprofit), especially when they provide services rather than produce products. This fragmentation is not new; it can be traced from the very roots of economic and business disciplines.

Privatization is an evolving managerial process operating without the benefit of a well-understood body of management principles such as business administration or public administration. What is needed is a set of principles to guide public administrators as they procure goods and services from nonprofit and for-profit providers. These principles need to answer questions such as

1. What actions encourage more effective delivery of the desired services?
2. What factors control costs?
3. Is there more than one way to contract for goods and services?
4. When should the various contracting methods be used?

5. How can the contracting environment be controlled to reduce the risk and hassle of contractual arrangements?

If privatization is to evolve successfully from a theoretical concept to a widely used mechanism for controlling costs and improving the fit between agency needs and contractor-provided benefits, the way the contract marketplace works must be better understood.

WHAT IS PRIVATIZATION?

Kolderie (2), building on Buchanan's definition, suggests a model for classifying privatization efforts. According to this model, service delivery consists of two parts: provision (initiation and funding) and production. Provision "is the policy decision actually to provide a good or service." Production "is the administrative action to produce that good or service." This classification suggests four ways that services might be provided:

- Case 1: Government does both when the legislature establishes and funds a public organization to provide the service so that neither function is private.
- Case 2: Provision is public but production is private when government hires a contractor to provide a needed service such as road construction.
- Case 3: Government produces the service but the private sector pays for it as would be the case when a builder contracts with the city to provide policemen to control traffic where large trucks enter the highway.
- Case 4: Both provision and production are private as would be the case if the contractor hired a private security service to control traffic.

These four cases can be displayed graphically as shown in Figure 1.

		Provision of Service	
		Government	Private
Production	Government	Case 1	Case 2
	Private	Case 3	Case 4

FIGURE 1 Provision of products and services.

This classification system identifies several approaches to privatization:

- Case 1 or Case 2 to Case 4 privatization. Government-provided and government-produced activities such as fire protection, ambulance service, or trash pickup may be converted to totally private activities. This is typically done when the private sector rises to provide services that the public sector ceases to provide. Frequently this shift is accompanied by the regulation

of the emerging private-sector industry as in the case of ambulance services or private fire departments.

- Case 3 to Case 4 privatization. Governments have been selling off Case 3-type government-owned enterprises such as British Steel, British Air, and British Telecom in England and Conrail in the United States. This usually occurs because the private sector is already buying the products or services and privatization is simply a matter of finding a willing buyer for the organization. Exceptions occur when the operation is heavily subsidized and shows no potential for profitability.
- Case 1 to Case 3 privatization. Government activities such as parks and recreation facilities may be partly privatized by charging those who use the service or facility. This is especially appropriate when government is reluctant to give up title to national properties such as parks and recreational facilities.
- Case 1 to Case 2 privatization. In the United States the word "privatization" is typically used to describe Case 1 to Case 2 privatization. In this case the production function that was formally performed by government is contracted out to a private operator. The private operator simply produces the product or service but looks to government as the source of revenue. The word "privatization" as used in this paper refers to Case 1 to Case 2 privatization.

Unfortunately, it has been too easy to equate contracting out with privatization. When this is done it often creates a system that is less cost-effective, less responsive, and more bureaucratic than in-house provision of public services. If privatization is to be effective, it must be based on a clear understanding of the process required to privatize successfully and a recognition of the economic principles that lower cost or improve effectiveness of delivery, or both. Success does not occur because private organizations are more responsive or efficient than public agencies. Success occurs when the service provider's success is dependent on improving the effectiveness of the service provided. Cost savings occur when the operating environment rewards providers for controlling costs. Thus successful privatization must be based on the use of correct procurement procedures and principles. The purpose of this research is to identify these procedures and principles and indicate the conditions that allow successful privatization.

CONTRACTING OUT IS NOT SYNONYMOUS WITH PRIVATIZATION

In the private sector, when markets are working effectively, contracts are typically implied, not written, especially when relationships are continuous over an extended period of time. The bread producer delivering bread to a grocery store will typically do so on an implied contract. The customer buying bread will do so on an implied contract. Under the implied contract the buyer agrees to pay the sum agreed on, and the seller agrees that there is no hidden defect, fraud, or misrepresentation. If the product or service is unsatisfactory it is made right. "Satisfaction is guaranteed" not by court action but by keeping the value of regular, repeat future business always worth more than the value of any current transaction. Under this arrangement, the bread manufacturer does whatever is necessary to keep the merchant happy and the manufacturer's

brand on the shelf. The merchant's self-interest requires keeping the customer happy and coming back to buy more bread. Thus, in the market allocation world of day-to-day business, there are few written contracts.

Written contracts have an entirely different objective than does privatization. The principle of written contracts began in 1677 when the English Parliament prohibited bringing suit for fraud more than a year after an agreement was made unless the agreement was written (3). Thus written contracts were a method of spelling out all of the conditions of long-term agreements as understood by both parties at the time of agreement. This was done to prevent the confusion that occurred in court when the testimony of the two parties, polarized by the emotions of conflict and time, provided no objective method of determining intent at the time the agreement was made.

Written contracts are required by law when the agreement

1. Cannot be carried out fully in less than 1 year;
2. Is made in consideration of marriage;
3. Is for the sale of land;
4. Is to serve as an executor or administrator of an estate;
5. Is for suretyship to be responsible for the debt of another person (4).

In practice written contracts are typically used only when

1. The desired benefit is clearly understood by both parties to the extent that all details can be stated explicitly in advance. If the need is still so general that it can only be stated in terms of "high quality," "satisfactory service," "fair prices," and "to be provided when needed," it is difficult to write a contract.
2. The agreement, such as a conditional sales contract or a lease, is for an extended time period.
3. A large purchase is involved and there may be extreme risk to either or both parties, as with the purchase of a home or business.
4. Delivery is to occur in the future as in the case of constructing a home or payment of insurance.

Attorneys who write contracts are trained to write comprehensive, consolidated contracts. Contracts are considered comprehensive when they cover all possible future eventualities. Contracts are considered consolidated when all possible aspects of the agreement are covered. A comprehensive contract would cover not only the price but also such items as method to be used, conflict resolution, performance criteria, all possible conditions for nonperformance, and contract changes.

The purpose of contracts is to create certainty and stability. A contract is appropriate when the intent of both sides is explicit (certain) and the agreement is for an extended period of time (stability). The objective of privatization is to increase cost-effective delivery. Privatization encourages flexibility, multiple suppliers, competition, improved fit, and reduced hassle. Contracting typically tends to reduce flexibility, reduce variation in service provided, and eliminate competition. A marriage contract, for example, does not encourage the husband or wife to seek new competitors but to make a long-term commitment that excludes competition regardless of future situations.

An example is the Corrections Corporation of America's offer to pay the state of Tennessee \$250 million for a 99-year

lease on the entire Tennessee prison system. Like a marriage contract, this offer was designed to establish a long-term operating agreement with the state for a period of 99 years without fear of competition. Consider the situation if the state had entered into this agreement. If the state later sought a "divorce" within the 99-year period, a massive "property" suit could follow before the state would be able to operate its prisons again. If the state became dissatisfied with the operating arrangement, the court might require "alimony payment" to finalize the "divorce."

Agencies should remember that the contracting process can cancel out all of the hoped-for benefits of privatization and even eliminate much of the flexibility currently available under agency production of service. When this is done, the problems that result are not the results of privatization; they are caused by the way privatization has been implemented. Successful privatization requires that each step in the process be planned and executed with a thorough understanding of the consequence of not following each principle.

PRIVATIZATION PROCEDURES

The four steps to privatization are

1. Defining the need and selecting a procurement strategy,
2. Soliciting qualified providers,
3. Developing contracts that control but do not increase risks, and
4. Monitoring contracts to improve the fit between desired and delivered benefits.

Each of these four steps must be based on an understanding of the service needed and the contracting environment. Traditional procurement procedures function best when a need is recognized, the planning process can be followed to determine the best way of meeting the need, and procurement is completed after the need is recognized. But what happens when the need cannot be defined before procurement?

NEED TO DEFINE FUTURE NEEDS THAT ARE NOT YET KNOWN

The first step in privatization is defining the need to be privatized. The more detailed the definition, the more exact the bidder can be in responding. On the other hand, the more vague the requirements, the more the bidder needs to "pad" the bid to cover unexpected contingencies. If the service definition is too vague, the bidder cannot be responsive. (A responsive bidder is one who meets all of the qualifications and specifications.)

Consider the case of providers of transportation for the elderly and handicapped attempting to define specialized service needs. The total number of trips for the contract period is not known. The origin and destination of trips are not known and will only be determined after the individuals who need to travel and their trip purposes are known. The trip schedule will not be known until the purpose of the trip, such as a doctor's appointment, is known. Because these details will often not be known until the day of the trip, it is impossible to define the service for purposes of competitive bidding.

Attempts to provide this type of service using competitive bidding force an agency to define something that cannot be

known. Consequently, to meet procedural requirements, the agency defines the way it thinks the contractor should organize. The resulting organization ends up being similar to what would have been provided by the agency itself. The number of vehicles to be available, the dispatching system, vehicle specifications, driver qualifications, and management style are specified. When the procurement process forces an agency into this type of contracting, it tends to eliminate most of the options that enable private management to be more cost-effective. In essence, the procurement process forces the agency to procure equipment and an organization instead of service. This approach can "publicize private providers" rather than privatize the provision of public services.

NEED TO DEFINE TECHNICAL SPECIFICATIONS THAT ARE NOT YET UNDERSTOOD

Often an agency is faced with procuring an unfamiliar product or service. When buying unfamiliar goods such as a new computer, a special-use vehicle, or a software package for the first time, staff are often unsure of the best options. Certainly they are unlikely to be knowledgeable about highly specific dimensions and technical specifications.

Having heard "horror stories" of van suppliers delivering vehicles without seats because they were not included in the specifications for the 15-passenger van, the agency staff want to make sure that all details are covered adequately. To do this they will look at the product provided by a vendor whom they trust. This trust may come from personal experience, from friendship, or from the halo effect of a firm that is large or highly publicized, or both. (How often has it been said that no data processing manager has ever been criticized for deciding on IBM because so many others have made the same choice?) If the staff are comfortable with the vendor's salesperson, they frequently ask the vendor to supply a list of specifications because they recognize that the vendor is more knowledgeable about the technical aspects of what the agency needs than are the staff. Not surprisingly, the vendor-supplied specifications may unduly emphasize those specifications that will preclude competition, whether or not the requirements are relevant. Thus competitive bidding becomes sole-source acquisition—a potential problem.

SOLICITATION

The federal government has a long history of procuring products and services. Traditionally procurement was for military supplies; for products and services for use in government operations; and for the construction of facilities such as buildings, roads, and bridges. Beginning with the New Deal programs, government began to procure services that were offered directly to the public. These programs include public transportation, social service programs, and care of the elderly. As these programs began to evolve, procurement methods received new attention.

The systematized organization and formulation of rules and methods of procurement began with the Federal Procurement Regulations (FPR) codified by the Administrator of the General Services Administration (GSA) pursuant to the Federal Property Administration Act of 1949. For more than 30 years the

FPR contained the chief governing rules for a myriad of executive agencies that were procuring more and more goods and services for particular groups of clients. In 1984 attention was finally turned to developing a unified single set of rules for federal procurement that would allow all agencies to procure at a cost-effective rate, preferably by competitive bidding. This desire was expressed by Congress in the Competition in Contracting Act of 1984. At the same time, the Federal Acquisition Regulation (FAR) system (codified at 48 CFR § 1-15) became effective as the governing rules and regulations for federal procurement. Although concise and uniform, the FAR represents literally volumes of procurement rules.

The FAR may be intimidating reading, but it does systematically prescribe the procedures that should be followed to contract for a product or service. Unfortunately, the FAR is organized by procurement type. This organization and the size of the FAR virtually assure that readers will simply use the index to look up a specific procedural question without considering the document in its totality and understanding the more basic concept of when each method should be used.

VENDOR SELECTION METHODS LISTED IN THE FAR

The FAR not only includes a list of vendor selection methods but also presents them in an order of preference. The methods are

1. Acquisition through other agencies if they have usable surplus;
2. Procurement lists of goods and services available from institutions employing blind or severely handicapped persons or federal prison industries;
3. Supply schedules indicating goods and services available from various vendors at previously agreed on prices and conditions;
4. Invitations for bids, including requirements contracts, bids from qualification lists, bids with samples, and two-step process;
5. Requests for proposals (these may be preceded by requests for information);
6. Sole-source contracts; and
7. Unsolicited proposals.

Acquisition Through Other Agencies

Highest priority for acquisition is given to redistribution among agencies and solicitation from protected sources. The top priority is for agencies to satisfy their needs from agency inventories (in-house) or excess inventories in other agencies. This is an effort to encourage agencies to use existing supplies, especially when other agencies have a surplus.

Protected Sources

The second priority, if the needed goods or services are not found in inventory, is to select a provider from the procurement lists of goods and services available from institutions employing blind and other severely handicapped persons or federal prison industries.

Supply Schedules

If the required items or services are not available from other agencies or protected sources, agencies should turn to the supply schedules negotiated by the GSA. The supply schedules provide federal agencies with a simplified process for obtaining commonly used supplies and services while still providing the economies of volume buying. The schedules are basically open-ended supply contracts negotiated on a periodic basis by GSA personnel. The individual agencies do not have to contract for items on the supply schedule. Instead, they can order and receive goods through a process similar to mail order purchasing via catalogs. The supply schedules are not limited to products; they include a wide variety of services such as hotel rooms, car reservations, and airline fares.

The strength of the supply schedules is their ability to supply a diversity of products and services with short lead times and a minimum of contracting effort. Supply schedules can be updated quickly and frequently. The GSA is continually adding new providers to the list. Any time a new product or service is introduced, an addition can be made to the supply schedule to handle this new variation. If a need occurs only intermittently, the supply is still there in the form of an open-ended contract at a stated price for a stated period of time. When the product or service is needed the providers deal directly with the agency that needs the supply (48 CFR § 38).

Invitations for Bids

When a need cannot be satisfied from the supply schedule, a provider may be found through competitive bidding. This typically occurs when

1. The purchase is of a nonstandard good or service,
2. Delivery conditions and terms are somewhat nonstandard, or
3. The purchase is so large that providers can be expected to quote an even lower price in a bid.

The competitive bidding process requires that the agency completely define the need so the specifications can be incorporated into the IFB. Next, a list of potential bidders must be compiled so they can be sent the IFB. Because the need has been totally defined, the only remaining decision is the selection of the provider and this is done on the basis of price. Thus the contract is automatically awarded to the lowest responsive bidder as of the submission deadline.

Managing the solicitation process requires the careful balancing of two factors. Theoretically, the larger the number of responsive bidders, the greater the competition and the lower the price. Therefore the list of potential providers must be inclusive enough to allow a number of responsive bidders. Potential providers can ask to be placed on bidders' lists or agencies may add providers on the basis of past experience or recommendations from other agencies. On the other hand, attention needs to be given to the bidders' list to make sure that only qualified bidders are allowed to bid. Unless this is done, an unqualified bidder may submit the lowest bid and win the contract.

Not surprisingly, sealed competitive bidding is unpopular among contracting officers because they have no subjective

control over the award. If conditions or needs change, the chances of having to renegotiate, modify, or terminate the contract after it has been awarded can be relatively high (5). For this reason, sealed bidding should only be employed when the goods or services required are so well defined that any responsive bidder could provide them successfully.

There are several key variants of the IFB procurement process. The first of these, the requirements contract, allows postprocurement variation in definition. The last three are methods for qualifying respondents.

Requirements Contracts

Often a contracting officer will need products or services that are well defined except for the quantity needed or the exact delivery dates, or both. For example, for a construction site the specific type of cement needed may be known but not the exact quantity needed or the specific days that the cement will be poured. In such instances indefinite-delivery or indefinite-quantity contracts (commonly referred to as requirements contracts) are the best procurement methods. Usually the agency's obligation under these contracts is stated as some minimum quantity to be purchased over a maximum time period for delivery. Requirements contracts are awarded under competitive sealed bidding and in some cases under requests for proposals.

IFBs with Qualification Lists

When there is wide variation among the ability of various providers to successfully deliver the desired products or services, the procurement officer will attempt to qualify those that are allowed to bid. The agency does not want to risk the simple IFB procedure because inexperienced providers may attempt to "buy in" by bidding low (5). For example, an agency may require an architectural firm specializing in free-span bridge construction consultation services to prove that it has successfully completed bridge projects of similar size and complexity. The contracting officer knows that although there are numerous potential providers, many are relatively inexperienced. To avoid the danger of an inexperienced firm buying in, an officer may employ the IFB with qualification lists method. Bids will be accepted only from providers on the list (or who meet the requirements). This method encourages competition but only among contractors who have a high probability of successful delivery.

IFBs with Bid Samples

Another method of making sure that the delivered product effectively meets the need is the IFB with bid samples required. The samples may either show design improvements or serve as a portfolio of previous work. For instance, a wildlife and fisheries agency may need a customized inventory software package. Many providers may be able to write such a program, but there may be a big difference in user friendliness, completion time, and documentation. IFBs with bid samples, often referred to as first-article testing, allow the agency to be sure the potential providers can fill the need but still allow for competition. Each potential bidder must present a sample for

testing or evaluation before being allowed to place a bid. Ultimately the lowest bidder is automatically chosen, as in the regular IFB process. Although the bid sample process allows the procuring officer to "kick the tires and blow the horn" before making a purchasing decision, it requires lengthy periods for preparation and testing on the part of the providers (5). The added costs may tend to drive potential bidders away unless the item is a relatively standard off-the-shelf item.

Two-Step IFB

Another variation on the simple IFB process is useful when the specifications and definition of goods and services are somewhat vague but the goods or services are potentially obtainable from many sources. An example of this would be contracting out for handicapped transit services when the exact customized facilities needed are not yet known by the contracting officer. Several providers may be capable of transporting the clients, but just how is a question. The two-step IFB process begins with potential bidders submitting technical and administrative proposals. On the basis of these proposals the contracting officer eliminates those providers that he or she believes are not qualified to bid on the contract. This subjective process allows the officer enormous flexibility in eliminating less-than-desirable providers. Again, the contracting officer does not have any choice in selecting the ultimate contract winner—the low bidder among the firms allowed to bid—and the additional screening will require additional planning and effort on the part of the procurement officer.

Requests for Proposals

Often the contracting officer really cannot define the best way of satisfying the agency's need. This lack of definition may result from the agency's lack of technical knowledge or simply because the need is unique or new to the people involved. For example, an agency may need to research a problem that it is facing for the first time. When such a situation exists, the agency will typically use a request for information or request for proposals (RFP) so the agency can evaluate the proposers' understanding of the problem and approach to solving it. This way the evaluators can increase the chance of successful contract completion. According to one source, 80 percent of federal procurement monies in 1978 were awarded using RFPs (5).

RFPs have the added benefit of providing the agency staff with many suggestions that can be used to further define an approach to meeting the need before the final award is made. The final award need not conform to the approach proposed by any single provider; it may be a composite that the agency believes will be most effective after considering all approaches submitted. Some proposers are reluctant to submit ideas if the agency is likely to integrate them into the final definition and then award the project to another contractor. RFPs do not restrict the award to the lowest bidder or even the proposer with the most creative ideas; RFPs allow agencies to select the provider they believe will produce the best results.

Sole-Source Contracting

When goods and services can only be responsibly delivered by a single provider, sole-source and unsolicited proposal procurement methods may be employed. The FAR authorizes agencies, with appropriate justification, to negotiate with a single provider if no other responsible providers exist and no substitutes are acceptable.

Unsolicited Proposals

The unsolicited proposal method of procurement is often employed by procurement officers when a research entity devises a new product or method of providing a service that will enhance an agency's ability to serve its clients. These entities, which may be institutional or private, are given research contracts to develop the good or the method of delivering the service in question.

APPLICATION OF SOLICITATION METHOD

Too often agencies believe they are constrained by solicitation options. Success is too often viewed as being able to "get a contract through." Likewise, procurement is too often viewed as a gatekeeper, an inhibiting factor that limits the agency's service to its clients.

This need to "beat the system" often indicates that the individual does not understand the procurement process, especially not the way the solicitation process can help create an environment that reduces the hassle and increases the effectiveness of procurement. To understand how the procurement process can be used to create a more favorable contracting environment, it is necessary to first understand how each procurement method can and should be used.

The competitive bidding process works well for a single, totally defined need. The need has been recognized and alternative approaches have been explored before the procurement process is begun. Because everything has been totally defined, only two questions remain to be answered in the procurement process: Is the potential provider able to meet the specifications? What are the costs of meeting the specifications? The variations in the bidding process (qualification list, bid samples) are simply efforts to qualify the bidders to ensure that they are able to meet the specifications.

RFPs are used for a single purchase when the need is totally defined by the agency but many alternate approaches may exist for delivering the defined benefits. RFPs allow providers to suggest the methods that they would use and explain their understanding of the problem. The solicitation process has three parts: (a) deciding which delivery approach appears most promising, (b) determining the ability of the provider to do what is proposed, and (c) determining the cost of delivering the needed benefits using the approach proposed.

A requirements contract is used when the agency knows exactly what is needed but not the time of delivery or the expected quantity. For example, the GSA has a requirements contract for airline services between approximately 1,951 city pairs. The rates and carriers are agreed on, but the number of trips made and the date and time of each trip are left open.

Because requirements contracts are generally for a specific product or service, they are only negotiated when there is an

existing and continuing need for the predefined product or service. When there are many diverse needs, a supply schedule is used. The supply schedule is a list of all requirements contracts for certain categories of products or services. For example, the GSA has a supply schedule for microcomputers and related software and repair services. The supply schedule was not negotiated in response to an actual need; GSA recognized the general need for products and services such as office supplies, computers, travel services, and other routinely needed benefits. Instead of conducting a new solicitation each time another purchase is proposed, GSA asks all qualified providers to submit specifications and prices. These conditions and prices are reviewed by the contracting officers. If the price appears to be reasonable and the discounts are significant (government should receive the largest discount because it is the largest purchaser), the supplier is included in the supply schedule. A given vendor may have many different items included in the supply schedule. Likewise, many different vendors of similar products or services are included in the supply schedule. Because there are so many different vendors on the supply schedule, an agency has the option of selecting the vendor whose product or service is most effective in meeting the agency's specific needs.

The bidding method, the proposal method, and the requirements method are predicated on several assumptions:

1. There is adequate lead time between recognition of need and procurement to allow the solicitation process to work. Specifications can be developed and potential providers can be notified and given adequate time to respond.
2. Solicitation is for a single purchase.
3. There are many potential providers willing and able to provide what is needed.
4. The price is determined primarily by the size of the purchase and not by the timing of the purchase.
5. The procurement process will not disrupt or change the marketplace (i.e., create a monopolistic situation).

Unfortunately, these theoretical conditions do not hold for many services purchased by local governmental bodies. Some of the reasons for this follow.

1. Many services must be purchased before the need is defined.
2. Instead of independently soliciting for each need, agencies attempt to collectively procure to satisfy many different needs at one time. Transportation for the elderly and handicapped is a prime example. Each trip is a separate need just as each construction contract project is a different need. When the agency attempts to group needs to "make procurement easier," it tends to negotiate noncompetitive "marriage" contracts.
3. When a community is in the transition stage between system and network, potential providers do not exist.
4. Because service providers cannot inventory their capacity, prices may fluctuate more widely by time of purchase than size of purchase. For example, where a network of private school bus operators exists, inexpensive transportation can be obtained when the provider is not transporting school children. If service is needed at the same time as regular school bus runs, then the cost will be quite high because added capacity will have to be scheduled.

5. When an agency awards an all-or-nothing "marriage" contract for a category of service over an extended time period, such as transportation for the elderly and handicapped for a year, it tends to monopolize the marketplace.

When the solicitation environment does not meet the five conditions required for competitive bidding and RFP solicitations, modifications must be made to meet the intent of the Competition in Contracting Act of 1984.

CONCLUSION AND SUMMARY

Privatization is not a simple process. It is complex and has many different dimensions depending on when the agency can define the need and the nature of the contracting environment. Most of the criticism of privatization occurs when procurement officers and agency attorneys incorrectly use "approved methods" that are simply wrong for the conditions. The authors are currently completing a study that addresses several basic questions: How should a need be evaluated to determine the most appropriate way of meeting it? When should the solution consist of a system and when should a network be used? What is the basis for determining the most appropriate solicitation method? Is a contract needed and, if so, when should various clauses be included? What is the role of the contract monitor? Is it the same when the contract is for a system, for a network, or for something that is not totally defined? It appears from this analysis that the public procurement market under privatization is fully as complex as the marketplace for goods. Just as the disciplines of economics and business consider many different markets, so they must begin to address the many different procurement markets.

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