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Article

Suzanne J. Piotrowski is an assistant professor of public administration at Rutgers University-Newark Campus. Her research focuses on governmental transparency at the federal, state, and local levels through mechanisms such as freedom of information and open meetings laws. She is the author of Governmental Transparency in the Path of Administrative Reform (forthcoming, SUNY Press).

E-mail: spiotrow@andromeda.rutgers.edu

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Suzanne J. Piotrowski
Rutgers University-Newark Campus

Brown, Potoski, and Van Slyke

Managing Public Service Contracts: Aligning Values, Institutions, and Markets

Professors Brown, Potoski and Van Slyke's article is a valuable contribution to the public service contracting literature. They rightly include values in their discussion on contracting and place values first in their theoretical framework on public service contracts. This inclusion correctly emphasizes the need to explicitly work values into the decision-making process of contracting out a public service. The authors do a nice job of weaving the competing values discussion throughout their article. This commentary elaborates and builds upon the theoretical framework they present.

Brown, Potoski, and Van Slyke set up a broad theoretical framework of public service contracting. They cover a lot of ground and offer an expansive

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view of the scholarly research on whether to contract out a public service or keep it in-house. In this brief commentary, I do not (and cannot) address all aspects of the discussion presented in the article. What I seek to do is supplement the authors' argument by explicitly raising the issue of transparency. In particular, I address this question: What functions does transparency play within the "values, institutions, and markets" contracting framework that they offer? My focus is premised on the idea that transparency is not only the ability to find out what is going on inside of government, but also what contractors are doing on behalf of government. My conclusion is that transparency takes different forms in different phases of the contracting process, and that practitioners and researchers

who ignore issues relating to it compromise their understanding of the implications of contracting for the public interest at all levels of government.

A Value Gone Missing?

Transparency, along with competitive bidding and the prevention of conflicts of interest, has been identified as a basic requirement of contracting out to serve the interests of the public (Baar 2001). Moreover, the need for transparency is eminently clear and highlighted by recent examples of waste and abuse of federal contracting dollars following Hurricane Katrina. Yet while Brown, Potoski, and Van Slyke implicitly address access to government contracting issues, they largely ignore the literature on governmental transparency and contractors. The omission is not one of oversight on the part of the authors, but rather due to the dearth of literature to draw upon in the context of the United States. In fact, most work completed in this area is based on non-U.S. or comparative examples (Baar 2001; Cho and Choi 2004; Deng et al. 2003; Magrini 2005; Roberts 2000). Still, both practitioners involved in and researchers studying government contracting ignore transparency at their peril.

Values and Transparency

Brown, Potoski, and Van Slyke recognize that values do, and should, play a key role in the decision to contract out a public service. They also recognize that values are frequently at odds with one another. The authors argue that, "Public managers operate in a crucible of swirling and often political values: effectiveness, efficiency, accountability, responsiveness, equality of treatment, and service delivery, to name a few." What values should be considered within the public service contract framework? At varying points in the manuscript, the authors

make reference to some of these values. They refer to the public values of innovation, efficiency, and control of service provision. Service delivery values are identified as efficiency, quality, and equity. Equality of treatment is used as an example of a public interest value.

One value not explicitly identified is governmental transparency. Francis Rourke (1960) wrote that "the tradition of disclosure might wither in the shade of administrative evasion or inertia were it not for the continued exercise of outside vigilance" (694). This outside vigilance for access usually is achieved through legal mechanisms such as freedom of information laws to access documents, open public meetings, or whistle blowing. Increasingly, websites are used as a conduit of proactively released government information. Of course, transparency also can be achieved through illegal channels such as leaked information.

Regardless of its source, transparency is a fundamental, though frequently overlooked, value of public administration. As former Supreme Court Justice Louis D. Brandeis (1933) wrote: "Sunlight is the best of disinfectants; electric light the most efficient policeman" (62). While Brandeis was referring to the banking industry, the sentiment also applies to the provision of government services. As such, while frequently overlooked in the past, there is a growing interest in the role of transparency in public administration in general (Cooper 1986; Feinberg 1986, 1997, 2004; Harlan 1986; Relyea 1986, 2003; Roberts and Darbishire 2003), as well as in contracting in particular.

In this regard, *PAR* readers will find useful a book chapter by Kenneth Baar (2001) entitled, "Open Competition, Transparency, and Impartiality in Local Government Contract-

ing Out of Public Services." Baar identifies basic issues related to the contracting out of public services in Central and Eastern Europe and compares these examples with Western European and U.S practices. He concludes that:

Without transparency, corruption is more likely and public trust in the fairness of the selection process is eliminated. Furthermore, without transparency, the general public is excluded from the contracting out process. As a result, the potential benefits of independent public review, criticism, and expertise are lost (104).

With this warning in mind, including transparency with other public administration values would be a valuable addition to the values, institutions, and markets framework offered by the authors.

Transparency as a Codified Value

Brown, Potoski, and Van Slyke also identify public law and organizational processes as institutions. In many ways, these institutions define the parameters of contracting relationships, with some values "codified through the political process into institutions, public laws, and organizational arrangements...." Indeed, certain aspects of transparency have been codified in this way through freedom of information and open meetings laws. As the authors correctly note, some legal provisions, such as freedom of information and open meetings laws, constrain government managers.

A related point, however, is that freedom of information acts and provisions also can be used to constrain organizations contracting with governments. Importantly, however, this is not always the case. At the U.S. federal level, contractors generally are not covered under the Freedom of Information Act (FOIA). Only in specific circumstances are contractor documents accessible through the

federal FOIA. Among the states, there is variation as to which governmental partners are covered under open public records acts (Campbell 2005; Feiser 2000). As a law review article analyzing state laws by Richard Feiser (2000) concludes, "Vigorous public and legal debate over the effect of privatization should continue, lest freedom of information laws develop huge loopholes for governments to jump through in this new millennium" (864). As such, not only do public managers need to consider the pitfalls of contracting when the transparency of contractor records and operations is opaque, but the public administration community needs to think and write more about what the appropriate level of access should be when private entities conduct the public's business.

In this regard, Brown, Potoski, and Van Slyke give nine features that managers typically have discretion to specify within contracts. A level of transparency could be included in the list of possible contract specifications. At the federal level, after all, personal privacy provisions routinely are included in contracts. Freedom of information provisions also could be built into arrangements with entities contracting for public services. Contracts, for example, could require that final products and interim documents be accessible to the public. Transparency also could be built into outcome measures (one of the nine features mentioned) by which contractors are evaluated. Contractors could then be judged on how well they meet transparency-based outcome measures.

Transparency and Information Flow

The final aspect of the authors' framework is the condition of markets with respect to contracting, with the availability of information a key component of successful markets. Governmental transparency enables the flow of specific kinds of information. It may sur-

prise some *PAR* readers to know that businesses are one of the top users of open public records acts. More precisely, government contractors request documents on their competitors' pricing information and the contracting process generally. This has long been true at the federal level in the United States and is now true in the United Kingdom with the implementation of that nation's new Freedom of Information Act (Beaumont 2005; Millett 2005).

In an effort to protect some of this information from release, the federal and most state freedom of information acts have provisions limiting the release of proprietary information submitted to governments by companies. Keeping this caveat in mind, transparency in the bidding process is nonetheless thought to lead to a reduction in corruption. Non-bid contracts may serve some purposes, such as expediency, but they do not promote transparency. Consequently, the style, timeliness, and location of proposal requests are important factors for practitioners and scholars to appreciate as they relate to the public's ability to understand the decision to contract out services, and the likelihood that a business will see the proposal and submit a bid. Thus, while transparency most clearly fits within the values and institutional portions of the authors' framework, it is relevant to the service market component as well.

Conclusion

In sum, Brown, Potoski and Van Slyke offer a valuable contribution to the contracting literature with their public service contracting framework. Their three-pronged structure allows the reader to apply the "values, institutions, and markets" framework to other dimensions of public service contracts as well. Building upon this contract framework, I sought in this commentary to begin a discussion on how transparency is a value that also must be considered and incorporated into

both practice and research on contracting in the U.S. and abroad.

On the practice side, I recommend to *PAR* readers two case studies where transparency was emphasized to combat corruption in contracting at the local government level. Practitioners may find these cases particularly useful when incorporating greater transparency into their management of public service contracts.

- *Transparency in Public e-Procurement: The Italian Perspective*. This Organisation of Economic Co-operation and Development publication describes two Italian case studies where the use of online procurement tools led to greater transparency and an increase in competition for public contracts (Magrini 2005).

- *E-Government to Combat Corruption: The Case of Seoul Metropolitan Government*. This is a case study of the Seoul Metropolitan Government's reform system, Online Procedures Enhancement for civil applications (OPEN). This is a web-based system premised on the notion of openness and was used for all government applications, including those for procurement and contracts (Cho and Choi 2004).

On the research side, there is a need for more study on the intersection of transparency and contracts. One avenue for future research is to identify and analyze programs initiated by U.S. local governments to incorporate greater levels of transparency into the contracting process. Given the dearth of prior research in the U.S. on this topic, detailed case studies would add to our understanding of how transparency provisions work in practice. What we do know, and as my commentary has sought to demonstrate, is that transparency takes on varying forms depending on the stage of the contracting cycle. For example, the steps taken to achieve transparency during the bidding process for a contract differ from the steps

taken to achieve greater transparency during the management of an existing contract.

Still, there is research to be done on systematically identifying how transparency relates to each of the phases of the contracting cycle. As researchers and practitioners think further about this issue, one major question that needs to be addressed is whether organizations contracting with governments should be held to the same standard of openness as the government whose business they are carrying out. Moreover, in this regard, possibly the most important unanswered question is: What is the appropriate level of transparency at each of the contracting stages? The authors point out that freedom of information and open meetings laws constrain government managers. With regard to the contracting process, when do these constraints become prohibitive? Work needs to be done to identify what is the appropriate level of openness at all stages in the contracting process.

References

Baar, Kenneth K. 2001. Regulation and Competition in Local Utilities Sector in Central and Eastern Europe. In *Navigation to the Market: Regulation and Competition in Local Utilities in Central and Eastern Europe*, edited by Tamás M. Horváth-Gábor Péteri. Budapest, Hungary: Local Government and Public Service Reform Initiative, Open Society Institute.

Beaumont, Alex. 2005. Shutting the Door on Open Government, October 2, www.publicprivatefinance.com.

Brandeis, Louis. 1933. *Other People's Money, and How Bankers Use It*. Washington, DC: National Home Library Foundation.

Campbell, Joel. 2005. Lawmakers Should Let Sun Shine on Quasi-Public Groups. *Quill Magazine* (Society of Professional Journalists) March: 22-23.

Cho, Yong Hyo, and Byung-Dae Choi. 2004. E-Government to Combat Corruption: The Case of Seoul Metropolitan Government. *International Journal of Public Administration* 27(10): 719-35.

Cleveland, Harlan. 1986. Government Is Information (But Not Vice Versa). *Public Administration Review* 46(6): 605-07.

Cooper, Philip J. 1986. The Supreme Court, the First Amendment, and Freedom of Information. *Public Administration Review* 46(6): 622-28.

Deng, Xiaomei, Qian Tian, Shizhao Ding, and Bob Boase. 2003. Transparency in the Procurement of Public Works. *Public Money & Management* 23(3): 155-162.

Feinberg, Lotte E. 1986. Managing the Freedom of Information Act and Federal Information Policy. *Public Administration Review* 46(6): 615-21.

———. 1997. Open Government and Freedom of Information: Fishbowl Accountability. In *Handbook of Public Law and Administration*, edited by Phillip J. Cooper and Chester Newland. San Francisco, CA: Jossey-Bass.

———. 2004. FOIA, Federal Information Policy, and Information Availability in a Post-9/11 World. *Government Information Quarterly* 21(4): 439-60.

Feiser, Craig D. 2000. Protecting the Public's Right to Know: The Debate Over Privatizing and Access to Government Information Under State Law. *Florida State University Law Review* 27: 825-64.

Magrini, Paola. 2005. *The Transparency in Public e-Procurement: The Italian Perspective*. Naples, Italy: Organisation of Economic Co-operation and Development, GOV/PGG/ETH(2005)3.

Millett, Carol. 2005. Act Helps Bidders Raise Their Game. *Contract Journal* 430, September 21, <http://www.contractjournal.com/articles/2005/09/21/48186/act+helps+bidders+raise+their+game.html>.

Relyea, Harold C. 1986. Access to Government Information in the Information Age. *Public Administration Review* 46(6): 635-39.

———. 2003. Government Secrecy: Policy Depths and Dimensions. *Government Information Quarterly* 20(4): 395-418.

Roberts, Alasdair S. 2000. Less Government, More Secrecy: Reinvention and the Weakening of Freedom of Information Law. *Public Administration Review* 60(4): 308-20.

Roberts, Alasdair S., and Helen Darbishire, eds. 2003. *National Security and Open Government: Striking the Right Balance*. Syracuse, NY: Campbell Public Affairs Institute.

Rourke, Francis E. 1960. Administrative Secrecy: A Congressional Dilemma. *The American Political Science Review* 54(3): 684-94.