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CONTRACTING MASS TRANSIT SERVICES

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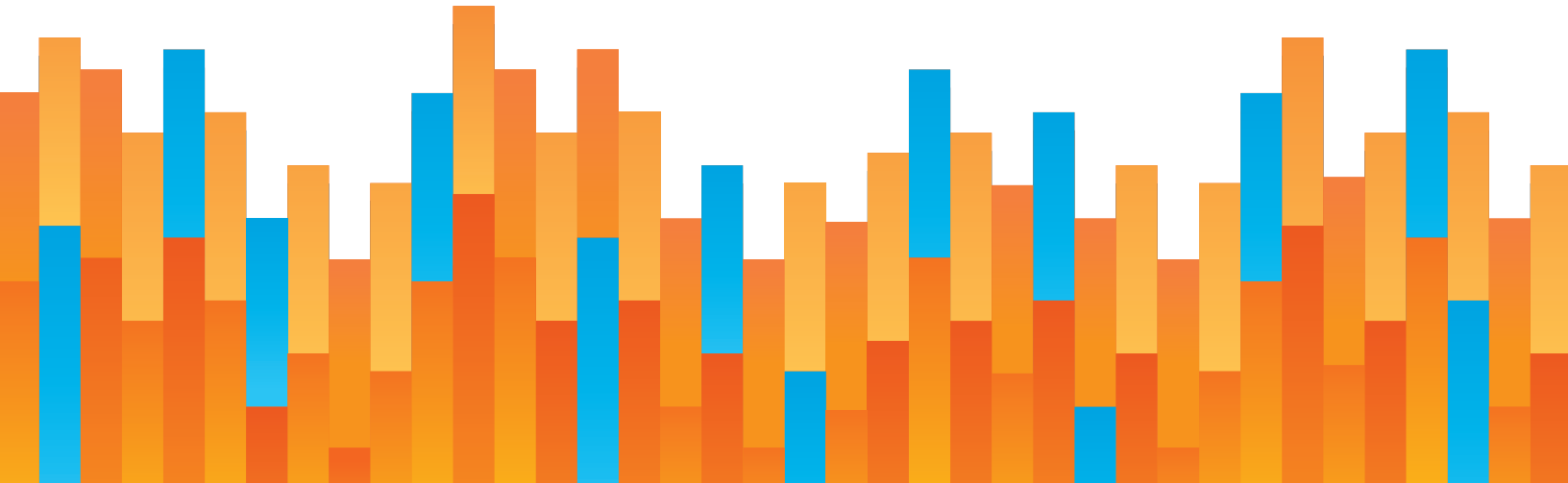

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For a step-by-step discussion on implementing the mass transit contracting process, please see the companion brief "Contracting Mass Transit: A How-To Guide," at https://reason.org/how-to-guide/contracting-mass-transit-services/

EXECUTIVE SUMMARY

During the latter half of the 19th century, public transportation in the United States was generally provided by private streetcars granted franchises by the local governments to operate on public streets. Lacking competition, these streetcars formed an integral component of transportation in most American cities. The rise of the affordable automobile, which offered door-to-door service, changed urban commuting patterns. Today, while transit ridership will never reach its earlier peaks, buses play an important role in the mobility of transit-dependent individuals.

The competitive contracting of buses saves transit agencies money, brings down the overall cost of public sector operations, and increases service quality. The private sector has a clear track record of doing more for transit riders with less cost and subsidies, both in the United States and Western Europe. In Stockholm the government contracts out numerous individual bus zones, rather than specific routes.

Contracts can be crafted to promote a fair and transparent process that addresses service quality, service scope, and costs, among other factors, to target the best overall value. Additionally, government transit providers can place incentives and penalties on the private bus operator based on customer service satisfaction, allowing the government to shape transit quality without operating transit in-house. As technological advances allow for cost-effective, on-demand private transit, as is seen today with companies such as Via, contracted ridesharing could even replace traditional fixed-route public transportation.

For best results, transit contracting should follow three principles: guaranteeing public control, promoting competition, and ensuring transparency. To promote competition, government bodies should lower barriers to entry, which allows smaller operators to compete for fairly sized contracts, driving down costs, increasing service quality, and spurring innovation. Another means of promoting competition is ensuring transparency, which sets clear expectations for the private sector, encouraging competition by allowing the public to properly understand and judge the contracting process. This brief offers an overview of the transit contracting process, exploring the above benefits in great detail and explaining what to consider when beginning the contracting process and crafting the contract itself. Transit agencies can improve service and reduce costs significantly with smart contracting practices. It is vital for agencies to explore how contracting can help both the transit operator and the rider.

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PART 1

INTRODUCTION

With the rise of the affordable automobile in the 20th century, Americans overwhelmingly switched to cars, which offered private, door-to-door service.[1] By the 1960s, privately owned streetcars and bus lines, operating under municipal franchises, were almost all replaced by public sector buses receiving government subsidies. Unfortunately, government-operated transit has low overall ridership and is highly subsidized, with each ride costing taxpayers $5.00 in operational and capital expenses.[2]

With the rise of the affordable automobile in the 20th century, Americans overwhelmingly switched to cars, which offered private, door-to-door service.

1 Jay Young, "Infrastructure: Mass Transit in 19th- and 20th-Century Urban America," *Oxford Research Encyclopedia of American History,* 2 March 2015. https://oxfordre.com/americanhistory/view/10.1093/acrefore/9780199329175.001.0001/acrefore-9780199329175-e-28 (31 March 2020).

2 Randal O'Toole, "Why We Need to Stop Subsidizing Public Transit," Cato Institute, 2018. https://www.cato.org/publications/commentary/why-we-need-stop-subsidizing-public-transit (26 June 2020).

Over the course of a decade, the Urban Mass Transportation Act of 1964 provided more than $3 billion in federal subsidies to transit capital projects.[3] Despite substantial taxpayer money being directed toward transit, ridership continued to decline. By the 1980s and 1990s, local governments felt the pinch of transit's financial burden, even with all of the federal and state subsidies.

As a result, the United States and Western Europe saw an initial wave of transit contracting. A 1998 survey of 259 American transit agencies found that 20.4% of transit vehicles, 16.5% of vehicle revenue-miles, and 9.4% of operating expenses were delivered through purchased services.[4] Contracting for demand-response services far outpaced contracting for fixed-route bus services, as 74.7% of demand-response vehicles were operated under purchased services compared to only 6.7% for buses. The discrepancy in contracting prevalence between the two modes is primarily due to the higher labor costs associated with demand-response systems.

For fixed-route buses, the initial wave of contracting brought direct savings ranging from 30% to 60%, and the competitive market brought down public sector costs as well. For example, prior to adopting a competitive contracting program in 1979, San Diego's transit costs per mile increased at a similar rate to U.S. transit overall. After the conversion, costs per mile increased at half that rate through 1990. This initial wave of transit contracting also saw service quality maintained or improved in cities such as Denver.[5] Table 1 provides an overview of the prevalence of fixed-route bus contracting and overall bus operating costs at select transit agencies in 1995.

[3] Young, "Infrastructure."

[4] "Contracting for Bus and Demand-Responsive Transit Services," Transportation Research Board, National Research Council. *NAP.edu*. 2001. 69 https://www.nap.edu/read/10141/chapter/6#68 (23 July 2020).

Jean Love and Wendall Cox, *Competitive Contracting of Transit Services*. How-To Guide #5, Los Angeles: Reason Foundation, March 1993. 5.

TABLE 1: PREVALENCE OF CONTRACTING AND OPERATING COSTS FOR TRANSIT AGENCIES IN 1995

Metro Area or State	Transit Agency	Percent of Buses Purchased	Percent of Revenue-Miles Purchased	Overall Operating Cost Per Revenue-Mile
Los Angeles	Foothill Transit	100.0%	100.0%	$3.22
Seattle	Snohomish County	44.6%	26.4%	$5.73
Denver	RTD	23.2%	24.3%	$4.89
New Jersey	NJ Transit	9.9%	9.6%	$5.71
Kansas City	KCATA	2.4%	0.9%	$5.08
New Orleans	RTA	0.0%	0.0%	$7.19
Dallas	DART	0.0%	0.0%	$7.71

Source: Tables 10 and 26 from *1995 National Transit Database Report* from the Federal Transit Administration

Like any newly adopted practice, transit contracting's best practices were not entirely known by the 1990s. For example, the Conservative government that enacted transit contracting in the United Kingdom switched the contract structure, allowing the private operator to retain all fare revenue as the sole source of funding.[6] However, service quality declined as providers looked to cut costs and focus only on transit-dependent riders. Reforms in 1997 created service quality standards and incentive bonuses based on exceeded requirements. Today, London continues to contract out its bus service.

In the United States, however, transit contracting, particularly for fixed-route bus services, stagnated among principal cities and their transit agencies. In 1992, the Kansas City Area contracted 10% to 14% of buses, but contracted none in 2018. Many smaller transit agencies and municipal bus systems continued and began contracting. While Los Angeles' principal transit agency contracts only 7.6% of its buses, the total contracting rate across the metropolitan area is 30% in 2018, up from under 15% in 1992.[7]

[6] "A Bid for Better Transit: Improving service with contracted operations," TransitCenter and the Eno Center for Transportation, September 2017, 39. https://www.enotrans.org/wp-content/uploads/2017/09/A-Bid-For-Better-Transit.pdf (10 June 2020).

[7] For 1992 figures see Table 1 in Love and Cox's *Competitive Contracting of Transit Services*. For 2018 figures see Table 2 of this brief, which utilizes 2018 the National Transit Database's transit agency profiles.

A 2013 Government Accountability Office survey of 463 transit agencies found that 42.3% of agencies with fixed-route buses contracted at least some of their service, with the remaining 57.7% operating all bus routes directly.[8] As in 1998, a greater percentage of transit agencies contracted their demand response service than their fixed-bus routes. Fifty-seven percent of ADA paratransit systems utilized purchased services, as did 62.4% of non-ADA demand response systems.

[8] "Transit Agencies' Use of Contracting to Provide Service," U.S. Government Accountability Office, *GAO.gov*, 26 September 2013, 6. https://www.gao.gov/products/GAO-13-782 (23 July 2020).

PART 2

EFFECTIVENESS OF THE CONTRACTED BUS INDUSTRY

Few riders are aware whether the bus they are riding is directly operated by the transit agency or contracted. Contractors can offer higher quality service at a lower price. The contracted bus industry in the United States is difficult to quantify, encompassing intercity buses, transit buses, jitneys, charter buses, and school buses. The American Bus Association's 2017 Motorcoach Census, using 2015 data, found there to be at least 2,990 motor coach companies operating 34,885 vehicles; motor coaches, in that study, refer to larger buses with storage underneath that are primarily used for intercity routes or charter services.[9] These private companies operate buses without subsidies to meet intercity travel demand far above and beyond the capabilities of highly subsidized Amtrak.[10]

For intracity buses, the best estimates come from the National Transit Database (NTD), which includes organizations that received federal subsidies or were claimed by an agency that received federal subsides; for example, the ridership of Atlantic City, New Jersey's

[9] "Motorcoach Census," American Bus Association Foundation, 2017. https://www.buses.org/assets/images/uploads/pdf/Motorcoach_Census_2015.pdf 26 June, 2020.

[10] Randal O'Toole, "Private Buses: The Forgotten Mode," *TI*.org. 4 June 2020. https://ti.org/antiplanner/?p=17183 (26 June 2020).

private jitney operators are included as NJ Transit ridership. According to the NTD, there are around 5,553 privately owned transit buses, 3,782 of which are "cutaway" buses, some of which can be used for paratransit. An additional 1,306 buses are leased to or borrowed by private operators from the government. Still these figures over and underestimate the scope of transit contracting. Privately owned buses may be owned by non-profit companies such as universities. Some private companies own and operate transit buses, while other private companies operate government-owned buses.

> *Few riders are aware whether the bus they are riding is directly operated by the transit agency or contracted. Contractors can offer higher quality service at a lower price.*

Additionally, microbuses add to the complication of measuring the scope of the private bus industry. New Jersey has two distinct jitney fleets, which are low-cost privately owned and operated microbuses. The Atlantic City Jitneys consist of private companies that together form an association to coordinate routes and other details, such as which microbus models to purchase. While they receive no federal funding, Atlantic City jitneys are in the NTD since their ridership figures have been claimed by New Jersey Transit. In Northern New Jersey, there are at least 494 jitneys that travel a cumulative 2.3 million miles each year, though exact figures are difficult to determine as these jitneys receive no federal funding, require no permit, and have no formal association. These jitneys supplement transit service in high-demand areas, such as Hudson County and the city of Paterson, providing cheap (around $1.50 per ride) and frequent (up to every two minutes) service.[11]

Via is a private company that operates on-demand microbus transit in dense urban cities such as New York City, Chicago, Washington, D.C., London, and Berlin. While operating with a similar interface to ridesharing companies, Via owns its vehicles and serves as a potential model for the future of transit. In the Seattle metro area, King County Transit is in the second year of pilot with Via to deliver on-demand transit services to previously underserved areas. Jersey City also began an on-demand transit program with Via in

[11] "Jitneys of Northern New Jersey," *JerseyJitneys.info*, Jitney Buses of New Jersey. https://www.jerseyjitneys.info (26 June 2020).

February 2020 in which the city subsidizes a portion of a rider's fee. During the coronavirus pandemic, Via has actually out-performed projections, demonstrating how the service may represent a more desirable, direct, and efficient version of transit for the 21st century.

The most useful measure of contracted transit buses is from the NTD's transit agency profiles, which provide the percentage of "purchased transit," as opposed to directly operated in-house transit for each transit agency. Table 2 compares the percentage of purchased transit across different metropolitan areas, taking into account secondary transit agencies and municipal-level bus systems.

TABLE 2: PERCENTAGE OF PURCHASED TRANSIT BUS VEHICLES BY METROPOLITAN AREA

Metro Area	No. of Buses Purchased	Total No. of Buses	Percent Purchased Transit
Las Vegas	537	537	100%
Austin	347	347	100%
Phoenix	292	292	100%
Reno	57	57	100%
San Diego	293	525	55.8%
Denver	375	840	42.3%
Atlanta	258	723	35.7%
Baltimore	296	934	31.7%
Los Angeles	1119	3731	30.0%
Washington, D.C.	579	2262	25.6%
Houston	165	1011	16.3%
Seattle	131	1484	8.8%
Miami	61	1112	5.5%
Chicago	83	2205	3.8%
San Francisco	26	1467	1.8%
Dallas	4	664	0.6%
Minneapolis	0	758	0.0%
Kansas City	0	171	0.0%
Sacramento	0	155	0.0%

Source: 2018 Transit Agency Profiles from the Federal Transit Administration's National Transit Database

Southern and western cities that have seen rapid growth in the past half-century, such as Austin, Las Vegas, and Phoenix, seem particularly amenable to transit contracting. Possibly,

the lack of a strong incumbent transit agency and the sprawling nature of these metropolitan areas make contracted bus services more feasible and economically desirable. Greater Washington, D.C. and the Baltimore Metropolitan Area, however, demonstrate the viability of contracting for fixed-bus routes within dense, old urban areas.

But even metropolitan areas vary significantly in the percentage of transit vehicles operated under purchased services. The Los Angeles County Metropolitan Transportation Authority's purchased services use 135 (or 7.6%) of the agency's 1,781 buses, but smaller transit providers in the area, such as Foothill Transit, the city of Pasadena, and the city of Burbank contract out all bus operations. Similarly, the Washington Metropolitan Area Authority operates all 1,278 of its buses directly, while Arlington County and Prince George County, both part of greater D.C., contract all their buses.[12]

The presence of multiple transit agencies prevents one central authority from forgoing contracting for an entire metropolitan area. Legacy transit agencies with strong union ties are often precluded from contracting due to collective bargaining agreements or state labor laws, which place undue burdens on the private sector but not the public sector.

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Clearly, contracted and private bus service can provide a valuable service. Many of the agencies with the highest contracted service have lower costs, happier riders, and more innovative service types. While inertia and union ties may complicate contracting in some areas, contracted service dominates in Las Vegas and Austin.

[12] See the National Transit Database's 2018 agency profile for the mentioned transit providers.

PART 3

PRIVATIZATION OPTIONS

While the exact scope of intracity private buses is difficult to quantify, a demand clearly exists for purchased transit across the country, from sunny Las Vegas to rainy Seattle and dense New York City to sprawling Houston. Additionally, with rising transit costs, many transit agencies in the United States can turn to privatization as an alternative. Privatization can include deregulation (load shedding) and competitive contracting.

3.1 LOAD SHEDDING THROUGH DEREGULATION

Public transit agencies are often the only legal provider of transit services within a metropolitan area.[13] Private entrepreneurs may be arrested or fined, and their vehicles impounded for offering nonsubsidized transit services to the public. Other metropolitan areas allow private operators but over-burden private transit with regulations. For example, New York City, the heart of the "Tri-State Area," counts all buses that cross state lines as "intercity buses" and requires intercity permits.[14]

[13] Wendell Cox, "Competition, Not Monopolies, Can Improve Public Transit," Heritage Foundation, 2000. https://www.heritage.org/report/competition-not-monopolies-can-improve-public-transit (26 June 2020).

[14] "Intercity Bus Permits," *Portal.311.NYC.gov*, the City of New York. Web. https://portal.311.nyc.gov/article/?kanumber=KA-02822 (26 June 2020);

Deregulation could save public money; it could result in innovative and responsive van and bus service, particularly in low-income minority neighborhoods. And, because of low barriers to entry and almost universal driving skills, it could foster the development of entrepreneurial activity, particularly for minorities, as it did in South Africa after the fall of apartheid.[15]

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Private on-demand transit companies, such as Via, already operate in the United States and Europe. Ridesharing companies, such as Uber and Lyft, and micro-mobility companies, such as Lime and Bolt, have also filled a transportation demand in numerous cities during the 21st century, providing more-direct, door-to-door service.

To meet growing demand most efficiently, state and local governments should legalize private sector transportation options and simplify or eliminate the permit process (subject to minimal regulatory requirements for safety, insurance, proper licensing, and coordination).

3.2 COMPETITIVE CONTRACTING

Competitive contracting is the most viable private sector solution to high and rising public transit costs in low-demand markets such as U. S. cities and where full public control of transit is desired. Competitive contracting is used by a variety of transit agencies across the United States, large and small, urban and rural, to provide cost-effective, safe, reliable transit services.

Cody Lyon, "Taming the Intercity Bus Industry," *Gotham Gazette*, 18 June 2013, *GothamGazette.com*. https://www.gothamgazette.com/transportation/4288-to-tame-an-industry (26 June 2020).

[15] Johannes Peter NgCamu, *The History and Development of Black Entrepreneurship in South Africa*. Short Diss. Rand Afrikaans University, 2002. https://core.ac.uk/download/pdf/18219248.pdf (26 June 2020).

3.3 SALE OF ASSETS

While the sale of assets and operations to the private sector is appropriate for profitable public services, such as water and electricity, public transit in the U.S. is generally unprofitable.[16] U.S. demand for transit (market share) is low and seems destined to stay that way, even after millions of dollars in subsidies have been funneled to transit capital projects.[17] In addition, transit is overcapitalized. Public transit facilities tend to be larger than private facilities, and they tend to be in high-cost locations.[18] Lacking competitive incentives for efficiency, public transit probably owns more vehicles than would be needed to produce the same service by the private sector.

Agency rules designed to ensure a fair market value sale price typically govern the sale of transit assets,[19] though some state DOTs and transit agencies require revenue from a sale to be reinvested into the same purpose, further reinforcing the overcapitalization of transit.[20] In theory, vehicles, facilities, and equipment could all be sold to the private sector. A government fleet, however, does decrease capital costs for contractors that replace in-house service.

16 "Valuing Municipal Utilities—The Case of the Potential Sale of JEA in Jacksonville," Public Utility Research Center, 2018. https://bear.warrington.ufl.edu/centers/purc/docs/papers/1808_Kury_JEA_Final_Report_113018.pdf (26 June 2020);
"A Toolkit for Municipal Asset Management," RTI International. https://community - wealth.org/sites/clone.community-wealth.org/files/downloads/tool-rti-asset-mgmt.pdf (26 June 2020).

17 Randal O'Toole, "Charting Public Transit's Decline," Cato Institute, 2018. https://www.cato.org/publications/policy-analysis/charting-public-transits-decline#related-content (26 June 2020).

18 Matthew Karlaftis, Patrick McCarthy, and Sinha Kumares, "The Structure of Public Transit Costs in the Presence of Multiple Serial Correlation," *Journal of Transportation and Statistics,* December 1999, 120. https://rosap.ntl.bts.gov/view/dot/4674/dot_4674_DS1.pdf (26 June, 2020).

19 "Transit Asset Management Plan," Minnesota Department of Transportation's Transit Asset Management Plan, DOT.State.MN.US. 2018. http://www.dot.state.mn.us/transit/reports/transit-report/pdf/OTAT%20TAM%20 Plan%2010-1-18.pdf (29 July 2020).

20 "Transit Asset Management Group Plan," Arizona Department of Transportation, AZDOT.gov. 2018. https://azdot.gov/sites/default/files/2019/08/transit-asset-management-plan.pdf (29 July 2020).

PART 4

WHY CONTRACT FOR PUBLIC TRANSIT?

4.1 PROVIDING DIRECT AND RIPPLE SAVINGS

During a wave of initial transit privatization in the 1980s and 1990s, competitively contracted public transit services achieved average direct cost savings of more than 30%.[21] For example, the first competitively contracted services mandated by state law resulted in cost savings of more than 31% for Denver.[22] In Snohomish County, Washington, part of the Seattle metro area, contracted express service saved more than 30%.[23] St. Louis saved more than 50% on competitively contracted routes.[24]

A competitive environment also improves public cost performance for services that are not yet contracted. This is referred to as the ripple effect. Lower public cost increases have occurred in transit agencies such as San Diego, Norfolk, and London upon introduction of competition.

[21] Love and Cox, *Competitive Contracting of Transit Services*, 6.

[22] Ibid.

[23] Ibid.

[24] Ibid.

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Transit contracting is common in Texas. In 2018, Austin's 100% purchased bus service had an operating expense per revenue-mile of $9.89, compared to the $14.32 per revenue-mile cost for transit buses at the top 50 American transit agencies.[25] Dallas, purchasing less than 1% of buses, contracts out all demand-response and vanpool service, creating a competitive overall transit market. Buses in Dallas operate at $9.40 per revenue-mile. Similarly, San Antonio's VIA Metropolitan Transit operates all buses in-house, but purchases all vanpool and demand–response services. These additional services actually carry the majority of passengers and vehicle-miles each year in San Antonio.[26] VIA's buses had operating expenses of $7.24 per revenue-mile.[27]

4.2 ENHANCING SERVICE QUALITY

During the initial wave of transit contracting in the 1980s and 1990s, public administrators rated the quality and performance of contracted services as equal to or better than in-house public service.[28] Where there were third-party evaluations of service quality, auditors have found that the safety, reliability, and quality of contracted service is equal or superior to in-house agency provision.[29]

[25] "Transit Profiles: 2018, Top 50 Reporters," National Transit Database, *FTA.DOT.gov*. December 2019. https://cms7.fta.dot.gov/sites/fta.dot.gov/files/docs/ntd/transit-agency-profiles/146711/2018-transit-profiles-top-50-summary.pdf (26 June 2020).

[26] "Comprehensive Annual Financial Report: Fiscal years 2017 and 2018," VIA, *VIAinfo.net*, 2018. 126 https://www.viainfo.net/wp-content/uploads/2019/03/VIA-Metropolitan-Transit_-CAFR-2018.pdf (26 June 2020).

[27] See NTD's transit profile for VIA. https://cms7.fta.dot.gov/sites/fta.dot.gov/files/docs/ntd/transit-agency-profiles/146711/2018-transit-profiles-top-50-summary.pdf (26 June 2020).

[28] Wendell Cox and Jean Love, "Designing Competitive Tendering Systems for the Public Good: A Review of the U.S. Experience," *Transportation Planning and Technology* 25 (June 1990).

[29] For example, Price Waterhouse, Subhash R. Mundle and Associates, Benjamin D. Porter, and Patti Post and Associates, "Bus Service Continuation Project: Final Report" (Los Angeles: January 1992) and KPMG Peat

In the 21st century, contracting is most often cited as a way to save money or preserve service and quality levels when transit agencies face budgetary shortfalls.[30] Even with such cost savings, contracting remains an effective way to increase service quality. With a well-crafted contract, the private sector can operate transit more efficiently, with better service levels, a business-like approach, and innovation.

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Transport for London (TfL), the government body that oversees all transportation in greater London, contracts out all bus service. Working within a long-term transit plan and increased investment, private companies saw increased ridership and all-time high satisfaction levels that persist to today.[31]

London's modern contracting system is the result of both Conservative and Labour governments, introduced by the former while reformed effectively by the latter. Namely, the Labour Party shaped the current system by highlighting specific operational expectations and providing for, at the total discretion of TfL, bonuses based on reliability indicators, allowing the government to shape transit service by carrot and stick.[32] Similarly, Oslo embeds quality incentive payments into its bus and ferry contracts, while setting clear proposal evaluation criteria for overall value, beyond just cost.[33]

Marwick, Subhash R. Mundle and Associates, and Transportation Support Group, "Denver RTD Privatization Performance Audit Update" (Denver: November 1991).

30 "Analysis of Contracting for Fixed Route Bus Services," National Center for Transit Research, June 2011. https://www.nctr.usf.edu/wp-content/uploads/2011/08/77923.pdf (10 June 2020).

31 "A Bid for Better Transit," TransitCenter and the Eno Center.

32 Ibid. 34-40, 45.

33 Ibid. 63-64.

Despite a rough start to contracting post-Hurricane Katrina, the New Orleans Regional Transit Authority (RTA) adjusted service expectations, compensation, and procurement policy to fit the city. The RTA currently contracts out all transit, which spurred the agency to work on pension solvency and restore needed services after Katrina.[34] Private involvement in transit allows for a business-like approach that discourages politicization and embraces new technology.

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Transit contracts can also directly spur innovation. For example, rather than stipulating exact bus routes, in Stockholm the government contracts out numerous individual bus zones, rather than specific routes, allowing private companies to operate the most effective route within that service area.[35] A private company can adjust the route to maximize ridership within its zone, as long as certain frequency and service requirements are met.[36]

Some other major cities that deliver effective transit service using contracting are Lisbon, Malaga, Lyon, and Singapore.

[34] Ibid. 70,76.

[35] "A Bid for Better Transit: Improving service with contracted operations," TransitCenter and the Eno Center for Transportation, September 2017, 55. https://www.enotrans.org/wp-content/uploads/2017/09/A-Bid-For-Better-Transit.pdf (10 June 2020).

[36] Ibid. 53.

4.3 IMPROVING SAFETY STANDARDS AND OVERSIGHT

Transit agencies often lack comprehensive oversight, if any at all. Private operators, on the other hand, are subject to numerous mechanisms that enforce service standards. Some transit agencies fail to provide comprehensive metrics of their safety performance, while requiring stricter safety standards for their contractors.

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A 2019 Safety Review Panel found the Massachusetts Bay Transportation Authority's (MBTA) approach to safety for its directly operated rail lines, known as the T, to be questionable, noting that "deficiencies in policies, application of safety standards or industry best practice, and accountability were apparent." The MBTA, furthermore, lacked long-term planning to address problems and create permanent changes, instead offering only limited responses to very specific deficiencies.[37]

Tellingly, the Safety Review Panel found that MBTA's private commuter rail operators lacked the aforementioned deficiencies and performed well in addressing long-term problems, such as vegetation control. One factor that contributes to this discrepancy is that private operators abide by Federal Railroad Administration guidelines, which are both clearly defined and enforced. Transit agencies often fail to meet even self-imposed standards.[38] The process of contracting itself, with penalties and incentives, can serve as an additional mechanism to enforce safety standards.

[37] "Safety Review Panel, Final Report," Massachusetts Bay Transportation Authority, *Cdn.MBTA.com*, 9 December 2019. https://cdn.mbta.com/sites/default/files/2019-12/2019-12-09-fmcb-B-safety-review-panel-final-report-accessible.pdf (29 July 2020).

[38] Ibid.

4.4 INCREASING BUDGETARY STABILITY

Transit contracting mitigates taxpayer risk by clearly outlining costs and allocating unforeseen expenses to the private provider. Payments, incentives, and penalties are all predetermined, allowing transit agencies and local governments to create more-stable budgets. Budget stability reduces the risk of a service cut spiral, where unforeseen expenses cause service cuts, which in turn reduces ridership and fare revenue.

4.5 PREPARING FOR THE FUTURE OF TRANSIT

As companies like Via have demonstrated, the future of transit may consist of on-demand services that are reminiscent of ridesharing. With Jersey City and King County Transit both currently working with Via, there is the potential for other cities to contract out transit services to similar private providers. Setting up proper contracting practices today will allow local governments and transit agencies to contract service to innovative companies in the future.

Some transit agencies are reluctant to contract because they fear they will lose control of services. Administered properly, however, competitive contracting results in lower costs and better service quality than in-house operations. Modern contracting practices, such as penalties and incentives, are effective checks on the private operator. The contract may even be cancelled for unsatisfactory performance.[39]

[39] "A Bid for Better Transit," TransitCenter and the Eno Center, 11.

PART 5

BARRIERS TO COMPETITIVE CONTRACTING

The Government Accountability Office (GAO) surveyed 463 transit agencies on contracting practices in 2013.[40] Table 3 details the reasons why transit agencies do not contract for each mode of transit. While these transit agencies are prudent to be cautious, the impacts of modern contracting practices differ from contracting's perceived effects.

TABLE 3: WHY TRANSIT AGENCIES CHOOSE NOT TO CONTRACT BY MODE OF TRANSIT

Reason to not contract	Heavy and Light Rail	Fixed-Route Buses	Demand Response	Paratransit	Commuter Rail
Maintain control	62%	67%	66%	61%	50%
No reason to contract	31%	56%	50%	46%	50%
Contracting not cost effective	27%	28%	26%	33%	0%
Section 13(c) challenges*	19%	19%	9%	14%	25%

[40] "Transit Agencies' Use of Contracting to Provide Service." *GAO.gov*.

Reason to not contract	Heavy and Light Rail	Fixed-Route Buses	Demand Response	Paratransit	Commuter Rail
Union agreement does not allow contracting	15%	20%	4%	11%	25%
No. of agencies	26	272	100	182	4

*** 13(c) challenges refer to labor laws and are detailed in section 5.2.**
Source: From the GAO's 2013 survey and study: Transit Agencies' Use of Contracting to Provide Service

5.1

PERCEIVED BARRIERS

The two most common reasons to forgo contracting are, by far, the desire to maintain control of service and a lack of an impetus to contract. In reality, employees of transit agencies that have adopted contracting noted an increased focus on delivering high quality service as they were no longer bogged down in day-to-day operational issues, such as flat tires or engine repairs.[41]

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Contracting with incentives and penalties provides both control of service and enhanced quality. Part 4 of this brief demonstrates the ability of contracting to decrease costs, enhance service quality, and enforce standards.

Transit agencies may also perceive that the total cost of contracting, including legal and administrative fees, outweigh the cost savings. A poorly designed contract, such as those that allocate the risk of unforeseen expenses to the transit agency, may, in fact, run more expensive than direct operation, but that is not representative of contracting. Even the

[41] "Transit Agencies' Use of Contracting to Provide Service." *GAO.gov.*

presence of contracting within a transit agency has been shown to create savings among in-house operational costs.

There are four major barriers to transit contracting: federal regulations, collective bargaining agreements, political barriers, and bureaucratic barriers.

5.2 FEDERAL REGULATIONS

Public transit agencies frequently cite the labor-protective provisions of 49 U.S.C. § 5333, commonly referred to as Section 13(c) of the Federal Transit Act, as a barrier to contracting transit. One provision of Section 13(c) requires that an employee whose job is eliminated due to economies or efficiencies be provided up to a year's severance pay.

Agencies can avoid issues with Section 13(c) and still see financial savings by implementing the contract within the employee turnover rate so that no employees are terminated or, as in Denver, pay public sector employees while idle. Section 13(c) has never prevented a transit agency from contracting, though it has made certain agencies more reluctant to initiate the process.

5.3 COLLECTIVE BARGAINING AGREEMENTS

Transit labor unions generally do not support contracting, primarily concerned that contracting inherently means lower wages for their workers. Labor unions fight for collective bargaining agreements (CBAs) that explicitly prohibit or restrict contracting, with some agreements going as far as claiming exclusive rights to provide transit service.[42] Others restrict contracting to activities that cause no layoffs and have no effect on renewals, amendments, or extensions to the agreement.[43] In other words, preparing to

[42] "Collective Bargaining Agreement Between City of Yakima, Washington and Council 2 Washington State Council of County and City Employees," City of Yakima. *MRSCE.org*, 2015. http://mrsc.org/getmedia/dca37ed1-1fca-4af7-a159-adc6a5180e02/y33cbatranist.pdf.aspx (26 June 2020).

[43] "Collective Bargaining Agreement 2018-2020 by and between the Regional Transportation District and Amalgamated Transit Union Local 1001," Regional Transportation District, *RTD-Denver.com*. 74-75. https://www.rtd-denver.com/sites/default/files/files/2018-10/2018-labor-agreement.pdf (26 June 2020);

"Collective Bargaining Agreement between MTA Bus Company and Transport Workers Union of America, AFL-CIO Local 100." Transit Workers Union of America, *TWULocal100.org*. 27. http://www.twulocal100.org/sites/twuloca l100.org/files/mta_bus_cba_11.19.18.pdf 26 June 2020;

contract service after the current collective bargaining agreement expires may be considered a breach of the existing agreement.

> *Labor unions fight for collective bargaining agreements (CBAs) that explicitly prohibit or restrict contracting, with some agreements going as far as claiming exclusive rights to provide transit service.*

Moreover, where contracts are silent on the issue, arbitrators may construe competitive contracting to be prohibited. Prohibitions and restrictions to contracting can be eliminated by passing public prerogative legislation (separately or as part of a competitive contracting bill), which forbids restrictions on competitive contracting and specifies the right of the citizenry to obtain public services for no more than the market rate.

When CBAs restrict contracting, policymakers can either work with unions to craft a more contracting-friendly CBA in the future or create new transit bodies unconnected to existing unions when permitted by state law.

States without right-to-work statutes may require private sector transit employees to pay dues to a public sector transit union and, furthermore, allow the union to negotiate a collective bargaining agreement for those private sector employees.[44] While this practice hurts the overall savings incurred by transit contracting, the private sector can still deliver service at a lower cost and drive down costs of the public sector as explained earlier.

Private companies do successfully operate transit contracts in conjunction with local unions, as First Transit, Inc. does in Phoenix. The CBA between First Transit, Inc. and Amalgamated Transit Union Local 1433 largely resembles a CBA between a public transit

"Collective Bargaining Agreement [for WMATA]." Washington Metropolitan Area Transit Authority, *WMATA.gov*. 17. https://www.wmata.com/about/records/public_docs/upload/L689_CBA_2012-2016.pdf (26 June 2020).

[44] "Can I be required to be a union member or pay dues to a union?" National Right to Work Legal Defense Foundation. https://www.nrtw.org/required-join-pay-public (26 June 2020).

agency and its employees.[45] In 2015, First Transit paid its bus operators $12.99 to $22.62 per hour based on their years of employment. The city of Tucson, operating its buses directly, paid bus drivers $13.30 to $19.52 per hour that same year.[46]

In recent years, some collective bargaining agreements have included language that makes automation equivalent to contracting. For instance, where automation does occur, transit workers in San Francisco are entitled to 13 weeks' pay.[47] In doing so, these labor unions are denying technological progress and trying to preemptively prevent autonomous vehicles from driving down operational cost. Rail operations, which are more heavily subsidized than buses, are particularly conducive to automation. Transit agencies and unions need to understand that automation is routine and allows for the long-term survival of transit. Two recent examples of automation are automated fare collection and GPS bus tracking.

Any transit agency looking to contract transit needs to acknowledge the legitimate labor concerns and work with the union to craft a contract that benefits workers, the transit agency and transit riders.

Any transit agency looking to contract transit needs to acknowledge the legitimate labor concerns and work with the union to craft a contract that benefits workers, the transit agency and transit riders. The CBA should not eliminate current union jobs or decrease union wages. Private operators can successfully pay union-level prevailing wages and still

[45] "Collective Bargaining Agreement Between First Transit, Inc. Mesa and Tempe Division and Amalgamated Transit Union Local 1433," United States Department of Labor, *DOL.gov*, 2016. https://www.dol.gov/olms/regs/compliance/cba/2018/private/FirstTransitIncMesaandTempeDivision_K9718_063021.pdf (23 July 2020).

[46] Ibid. Article 39; "SUN TRAN Agreement By and Between Teamsters Local Union No. 104 and Professional Transit Management Of Tucson, Inc," Arizona Public Media, *Media.AZPM.org*. 2015. 30 https://media.azpm.org/master/document/2015/9/28/pdf/sun-tran-contract.pdf (23 July 2020).

[47] "Collective Bargaining Agreement Between the San Francisco Municipal Transportation Agency and Service Employees International Union Local 1021," San Francisco Municipal Transportation Agency and Service. *SFMTA.com*. 2019. 14. https://www.sfmta.com/sites/default/files/reports-and-documents/2019/05/sfmta_sei u_sc_cba_final_redline_fy20-22.pdf (26 June 2020).

decrease operational costs. First Transit pays wages akin to the public sector and operates buses at a cost of $8.37 per revenue-mile, well below the $14.32 per revenue-mile operational cost average at the top 50 transit agencies.

By adopting CBAs that remove bans on shift-splitting, unions can actually contribute to financial savings while immediately increasing options for their workers. Demand for transit is split between both the morning and evening rush hours, limiting the financial viability of a traditional eight-hour shift for bus drivers and train operators. Shift-splitting creates two main work blocks, typically four hours each, around both rush-hours. This saves the public money by decreasing costs when demand is low. Some workers would still work a traditional eight-hour shift, while others would prefer an alternative schedule. Additionally, a private operator can even utilize drivers for purposes other than fixed-route transit between periods of high demand, such as charter services.

Fundamentally, it is in the best interest of workers, unions, transit agencies, riders, and taxpayers to have a financially sustainable transit system. An unsustainable system is more vulnerable to elimination or replacement over the long run, which completely eliminates union jobs. Communities have even seceded from centralized transit agencies to pursue contracted transit. A group of suburban communities in greater Los Angeles formed the entirely contracted Foothill Transit,[48] and other cities such as Pasadena and Anaheim created municipal-level contracted bus networks.[49]

5.4 POLITICAL BARRIERS

Some transit agency managers have opposed competitive contracting programs even where current employees were protected, and they have opposed commercial operation even when these operations do not infringe upon public transit routes and services.[50] Those in management have fostered political opposition to competitive contracting and commercial operation. Political opposition declines, however, in response to other circumstances such as when:

[48] "Foothill Transit: 2018 Annual Agency Profile," National Transit Database, *FTA.DOT.gov*. https://cms7.fta.dot.gov/sites/fta.dot.gov/files/transit_agency_profile_doc/2018/90146.pdf (26 June 2020).

[49] "City of Pasadena: 2018 Annual Agency Profile," National Transit Database, *FTA.DOT.gov*. https://cms7.fta.dot.gov/sites/fta.dot.gov/files/transit_agency_profile_doc/2018/99424.pdf (26 June 2020); "Anaheim Transportation Network: 2018 Transit Agency Profile. National Transit Database, *FTA.DOT.gov*. https://cms7.fta.dot.gov/sites/fta.dot.gov/files/transit_agency_profile_doc/2018/90211.pdf (26 June 2020).

[50] Love and Cox. *Competitive Contracting of Transit Services*. 7.

1) Local governments are unable or unwilling to fund large and rising transit deficits;
2) Transit funding is insufficient to cover the increase in operating costs, and riders are confronted with cuts in service, higher fares, or both; or
3) The public becomes aware of the high cost of public transit.

Transit board members and elected officials may have vested interests in preserving a transit system as-is, such as staying in line with their allied labor interests. Contracting, however, can preserve and enhance service, while paying wages akin to those in the public sector. Local officials who support contracting need to work with opponents in creating contracts tailored to the needs of their community. Also, state governments can legislate competitive contracting mandates or the deregulation of public transit.

5.5 BUREAUCRATIC BARRIERS

While not always the case, many public transit agencies have not fairly evaluated, awarded, and administered the competitive contracting process when the agency itself also is a proposer (bidder). In most countries that convert to competitive contracting, governments create separate bodies to determine transit policy.[51] This separation of policy from operations helps to ensure that the policy agency is unencumbered by self-interested operating concerns and is focused upon obtaining the safest and highest quality service for the public money expended.

“While not always the case, many public transit agencies have not fairly evaluated, awarded, and administered the competitive contracting process when the agency itself also is a proposer (bidder).”

Furthermore, transit contracting can fall victim to “bureaucratic inertia,” the tendency of bureaucracies to preserve the status quo in which they operate even to the detriment of

[51] Ibid.

public policy goals.[52] An example of this could be a reluctance to contract due to concerns over how to measure private sector service quality, even if the private sector clearly outperforms the public sector in terms of service quality.

[52] Herbert Kaufman, "Major Players: Bureaucracies in American Government," *Public Administrative Review* 61(1) (2001). https://www.jstor.org/stable/977534?seq=1 (26 June 2020).

PART 6

THE DECISION TO CONTRACT

Contracting has a clear track record of bringing down costs and improving service quality, leading to a better overall value, though this is not always the case. Under competitive contracting, the public authority retains the service franchise (ownership) and controls the service. The public authority specifies route alignments, service frequencies, fares, schedules, and any other requirements deemed to be in the public interest. Private companies provide specific services for a limited period of time (usually no more than five to eight years).[53] The most common contract length in the United States is five years with an option to extend for an additional year.[54] The public authority awards a contract to the lowest-cost responsive and responsible proposer.

A transit agency needs to first evaluate whether contracting provides the better overall value. Typically, contracting can provide better service at a lower cost. To do so, a transit agency follows three general steps:

1) Conceptualize all required components of the service,
2) Create a budget based on current and projected in-house costs, and

[53] "A Bid for Better Transit," TransitCenter and the Eno Center, 139.

[54] "Transit Agencies' Use of Contracting to Provide Service." *GAO.gov*.

3) Compare those costs to private sector estimates from trade journals, industry insiders, or consultants.

> *The public authority awards a contract to the lowest-cost responsive and responsible proposer.*

To fully capture in-house costs, transit agencies need to examine direct costs, such as employee salaries, maintenance costs, and facilities costs. Additionally, transit agencies need to include indirect costs, especially those that are shared across departments. These indirect costs may include administration, growth in pension liabilities, depreciation, cross-departmental labor, and federal grant expenditures.

Agencies should make winning cost proposals, final contracts, and requests for proposals available to the public. In some cases, the public authority leases the vehicles (buses, etc.) to the successful contractor; in other cases, the contractors supply their own vehicles.

PART 7

SAFEGUARDING THE PUBLIC INTEREST

Changes in circumstances and supplier markets may require alterations in competitive contracting processes and practices. Despite modifications in design, circumstances, and markets, the success of competitive contracting rests on three fundamental principles: guaranteeing public control, promoting competition, and ensuring transparency.

Despite modifications in design, circumstances, and markets, the success of competitive contracting rests on three fundamental principles: guaranteeing public control, promoting competition, and ensuring transparency.

First, the public authority has a responsibility to the riders and taxpayers to ensure that public services meet government-set quantity and quality standards. Second, competitive contracting programs must foster the development and maintenance of a truly competitive market so that costs are kept under control. Third, serving these two principles requires all interested parties to have access to the procurement process and records.

The implications of these three principles are described below:

Principle #1: Public oversight is vital for effective contracting:

- Public authorities should stipulate service levels and fares, while leaving the delivery of those services to the private provider, allowing for innovation.
- Public authorities should closely monitor service contract compliance as a routine activity. Public authorities should be prepared to invoke the contract provisions required to ensure public service of specified quality and quantity.
- Contracts should be awarded to the proposal with the best overall value: the public authority should ensure that it is obtaining service from a company that is capable of providing the service, having proven its financial and management responsibility in similar services. Further, the public authority should ensure that it awards the contract to a company that understands the service package, having submitted a proposal that is sufficiently responsive to the public request for proposals that was issued for the service.

Principle #2: Public agencies must foster a competitive supplier market to ensure the most cost-effective service:

- Public authorities should participate in market soundings, industry forums, and informal private sector outreach to better understand private sector capabilities and ensure the protection of the public interest.
- Public agencies should provide requests for proposals (RFPs) to all potential proposers in sufficient time to permit well-considered responses.
- Each RFP should cover the most effective overall transit unit, based on overall value. This most often means the RFP should cover individual or a limited number of routes so that the maximum number of qualified proposers may respond.
- RFPs should clearly specify all service requirements and contain clear and concise information on the required format of proposals.
- Service contracts should be subject to new requests for proposals at least every five to eight years.
- Public agencies should rotate contract expiration dates to minimize the increment of service being competitively contracted at a particular time.

- Contract prices should be subject to negotiation after contract award only in extreme cases or in response to incentive bonuses. No payment adjustment should be permitted except as specified in the contract according to the provisions of the RFP, or where extremely unusual circumstances have resulted in cost increases that are both outside the control of the contractor and have similarly impacted all potential contractors in the supplier market.
- Public authorities should participate fairly in the procurement process, if also bidding.
    - Individuals and departments involved in preparing a public authority proposal should not take part in the evaluation of proposals.
    - Public authorities should submit sealed proposals subject to the RFP deadline.
    - Public authorities should be subject to the same proposal and contract terms, conditions, and performance criteria as would apply to a private company—including termination provisions.
    - Public authority proposals should include the attributable fully allocated operating and capital costs for the functions proposed for purchase through the request for proposals.
    - Public authorities should include cost-saving innovations in their proposals only to the extent that such innovations are used in other services provided by the public authority. (To permit otherwise encourages public authorities to reduce proposal costs for the purpose of winning contracts without reducing overall public costs.)
    - If a public authority fails to perform to standards, it should face the same penalties as the private sector, including fees or disqualification for participating in future procurements.
- Where there are public capital facilities, they should be made available to the successful public or private proposer to provide the specified service. This will minimize capital and financing costs.
- Public authorities should impose no contractor employee requirements beyond compliance with applicable labor laws.

Principle #3: Transparency is essential:

- Requests for proposals and final contracts and prices should be disseminated to any and all parties that solicit the information.
- Pre-proposal conferences should be open to all private operators and their designees.
- Public authorities should formally adopt, advertise, and abide by this principle of open process to assure the integrity of the procurement system and to encourage healthy, fair competition.

PART 8

CONCLUSION

The current scope of the private intracity bus industry is a testament to the effectiveness of contracting, as the metropolitan areas of Las Vegas, Austin, Phoenix, and Reno, among others, contract out all bus services successfully. While private sector transit and the deregulation of micro-mobility and ridesharing can decrease demand for traditional transit, contracting transit offers a more widely applicable method to decrease transit costs and increase service quality.

Direct savings, which can be over 30%, is only one of the benefits, as savings will ripple throughout a city's and state's transit sectors. San Antonio, for example, doesn't contract buses due to its current low cost of $7.24 per revenue mile. It does, however contract all of its vanpools and half of its paratransit service, employing contracting's cost savings where needed. Other cities in Texas, a state comfortable with contracting, sees transit costs well below the largest 50 agencies' cost of $14.32 per revenue mile. Austin's and Dallas' costs are $9.89 and $9.40 per revenue mile, respectively.

The private sector brings a business-like approach that is more willing to adopt new technology and work hard to establish positive experiences for its passengers. Cities such as Stockholm have allowed private companies to innovate by letting them choose exact routes within a given service area. Private contractors also helped New Orleans begin to address transit pension challenges and restore much of the service lost to Hurricane Katrina.

Barriers exist to contracting transit but can be overcome. Unions, fearing contracting will decrease labor prices and their political influence, prevent contracting through collective bargaining agreements. Policymakers should reach out and work with unions to explain why contracting, financial stability, and improved service quality constitute a mutually beneficial proposition. Private operators can follow collective bargaining agreements, pay workers more and still cut costs.

Policymakers should reach out and work with unions to explain why contracting, financial stability, and improved service quality constitute a mutually beneficial proposition.

When unions do not cooperate, cities and counties should leave established centralized transit agencies and provide transit outside of a legacy union's jurisdiction. Even in states that require private transit workers to be part of the public sector union, contracting has been found to bring down costs and improve service quality.

Most other barriers to contracting transit are perceived. Transit agencies can maintain and expand control of service with a well-crafted contract. Savings, service quality improvements, and preparing for the future of on-demand private transit are ample impetus to pursue contracting. Federal regulations, such as Section 13(c) of the Federal Transit Act, have never actually prevented a transit agency from contracting. Policymakers and transit agencies should work to communicate the effective and long-term benefits of transit contracting within the context of their metropolitan area.

Setting up a contract begins with determining if the transit agency can provide service with the best overall value. Often it cannot. The procurement process, from informal market sounding to financial close, must set clear expectations that encourage participation and, thus, competition. The final proposal should be chosen from a predetermined rubric that calculates the best overall value, factoring in service quality, scope, and cost.

The contract must be detailed and encompass all areas including duration, bonding, service scope, maintenance, insurance, and pricing. Pricing is the most important component of the

contract, as it must encourage competition and mitigate taxpayer risk. Fixed-priced contracts work well when coupled with financial penalties and discretionary incentives set at predetermined levels to promote service quality. Net-price pay fosters a direct relationship between riders and the private entity through the farebox, fostering service quality; to attract bidders to a net-pricing system, a pass-through arrangement can be used to address unpredictably escalating costs such as for fuel.

Transit contracting should always follow three principles: guaranteeing public control, promoting competition, and ensuring transparency. Public control allows transit to serve its desired function, which is best delivered by private operators. Those operators are, in turn, more cost-effective. A transparent process is one that encourages competition, has clear expectations, and establishes trust, decreasing costs further and promoting service quality.

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