

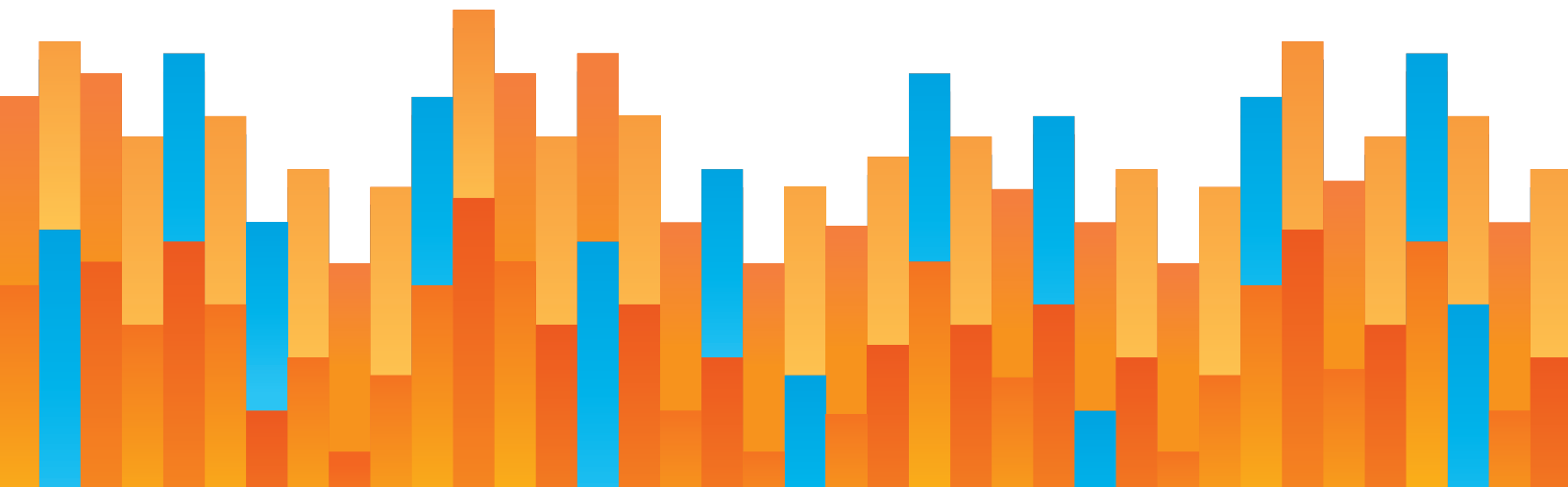


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CONTRACTING MASS TRANSIT SERVICES: A HOW-TO GUIDE

by Baruch Feigenbaum and Joe Hillman

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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 Services,” at <https://reason.org/policy-brief/contracting-mass-transit-services/>

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CONTRACTING TRANSIT: A HOW-TO GUIDE

By Baruch Feigenbaum and Austill Stuart

Contracting transit can improve service quality and reduce overall costs. Paratransit services for the elderly and disabled as well as microtransit services such as Via are contracted frequently. But contracting is not an easy process. For a full background on contracting including information on privatization options, contracting's effectiveness, and safeguarding the public interest, consult the companion guide: "Contracting Mass Transit Services."¹ But for a step-by-step view, Figure 1 lists each of the 20 elements of the contracting process. This how-to guide then discusses each step in detail.

¹ Baruch Feigenbaum and Joe Hillman, "Contracting Mass Transit Services," (Reason Foundation: Los Angeles, 2020). reason.org/contracting-mass-transit-services-policy-brief

FIGURE 1: 20 ELEMENTS OF THE CONTRACTING PROCESS

- Pre-Proposal Market Soundings and Conference
- Determination of the Best Procurement Option
- Preparation
- Requests for Qualifications
- Requests for Proposals
- Length and Components of the Procurement Process
- Proposal Evaluation
- Fair Cost Comparison
- Contract Pricing
- Extension/Renewal Options
- Contract Duration
- Contract Size
- Rotation of Procurements
- Service Specifications
- Provision of Vehicles, Equipment, and Facilities
- Insurance Coverage
- Performance and Bid Bonds
- Performance Standards
- Penalties and Incentives
- Public Supervision

EACH ELEMENT OF THE CONTRACTING MASS TRANSIT SERVICE PROCESS

#1 PRE-PROPOSAL MARKET SOUNDING AND CONFERENCES

Informally, transit agencies may perform a version of market sounding when initial technical plans and financial models are developed. The private sector can provide general feedback into plan feasibility and cost, as well as potential alternatives.

After a plan is more formalized, transit agencies should hold one or more pre-proposal conferences with potential proposers. Pre-proposal conferences often result in changes in the proposal package as the public authority makes corrections in the original specifications or, as a result of questions from the potential contractors, becomes aware of alternative ways to deliver the service. State-level transit associations often conduct conferences to attract private sector knowledge and expertise to explore potential projects and procurements, and to allow agencies a place to exchange experiences with their peers. Additionally, these conferences can assist both the public authority and the private providers by better articulating the service required, and this results in lower costs and more-responsive private proposals. Formal one-on-one meetings with potential bidders

allow the transit agency to explore private sector interest and market demand. Figure 2 displays an announcement template for a federal-level pre-bid/pre-proposal conference.

FIGURE 2: PRE-BID/PRE-PROPOSAL CONFERENCE

PRE-BID/PRE-PROPOSAL CONFERENCE (FEB 1988)

- (a) The Government is planning a pre-bid/pre-proposal conference, during which potential offerors may obtain a better understanding of the work required.
- (b) Offerors are encouraged to submit all questions in writing at least five (5) days prior to the conference. Questions will be considered at any time prior to or during the conference; however, offerors will be asked to confirm verbal questions in writing. Subsequent to the conference, an amendment to the solicitation containing an abstract of the questions and answers, and a list of attendees, will be disseminated.
- (c) In order to facilitate conference preparations, it is requested that the person named on the Standard Form 33 of this solicitation be contacted and advised of the number of persons who will attend.
- (d) The Government assumes no responsibility for any expense incurred by an offeror prior to contract award.
- (e) Offerors are cautioned that, notwithstanding any remarks or clarifications given at the conference, all terms and conditions of the solicitation remain unchanged unless they are changed by amendment to the solicitation. If the answers to conference questions, or any solicitation amendment, create ambiguities, it is the responsibility of the offeror to seek clarification prior to submitting an offer.
- (f) The conference will be held:
- Date:
- Time:
- Location:

Source: Federal Pre-Bid/Pre-Proposal Conference, 1988

#2 DETERMINATION OF THE BEST PROCUREMENT OPTION

Some transit agencies may find a Request for Information (RFI) and/or a Draft Request for Proposals (DRFP) useful.

RFIs allow the transit agency to request general information about its service and current technology to initially probe the private sector before issuing an RFP. RFIs can help shape the direction of the procurement. The biggest value of an RFI is making sure the government does not procure something that isn't feasible or valuable. Generally preceding the formal procurement process, RFIs may be issued before or in conjunction with any pre-proposal conferences. RFIs can accompany an initial phase of market sounding.

Tompkins County in upstate New York, with a population of about 100,000, issued an RFI in 2018 to modernize its fare collection systems.² In addition to wanting to see how its system could be modernized, the county sought expertise to smooth the transition to the improved

² Tompkins Consolidated Area Transit, "TCAT RFI 601-2018 Transit Farebox System," 2 April 2018. <https://www.bidnet.com/bneattachments?/508215107.pdf>

technologies, including backwards compatibility with legacy fare collection systems, and physical designs that facilitate installation of new equipment.

#3 PREPARATION

Before procurement begins, public authorities should consult with private transportation providers as they design Requests for Qualifications (RFQs) or Requests for Proposals (RFPs). P3s are different types of contracts with different types of risk. It is critical to hire outside financial and legal advisors that are familiar with contracting practices. Finding the right advisor is crucial to the success of the project. This consultation may be through informal meetings or hearings, or through formal committees of private providers sponsored by public authorities. Advance consultation permits the public authority to consider service and contract design alternatives that take full advantage of private sector capabilities, while still meeting public requirements.

#4 REQUESTS FOR QUALIFICATIONS

Some transit agencies may begin the formal procurement process with a Request for Qualifications (RFQ). RFQs outline the contract's general scope and scale as well as set technical requirements for potential contractors. Qualifications required may include a proven track record to deliver the service in question, the employment of relevant professionals such as engineers, and the financial resources to begin service.

By a predetermined date, typically within 45-60 days, private entities respond to the RFQs with Statements of Qualifications (SOQs) that detail all requested information. Within six months, the transit agency or local government should process all SOQs and create a shortlist of at least three "preferred proposers" that meet all technical requirements. The preferred proposers go on to receive an RFP.

In 2018, Birmingham issued an RFQ to seek qualified vendors to serve as design consultants for a transit center as part of a larger metro area bus rapid transit plan.³ Even though this contracting arrangement focused on the delivery of infrastructure with little consideration for day-to-day operations and maintenance, the scope of services and qualifications included within the RFQ was still expansive. Elements included were initial

³ City of Birmingham, Alabama: Planning, Engineering, and Permits Department, "RFQ for West Community Transit Center Design," 18 May 2018. https://maxtransit.org/wp-content/uploads/2017/12/RFQ-for-West-Community-Transit-Center-Design-Services_20180518.pdf

site evaluation, design of the physical building and all of its utility systems (electric, HVAC, water), landscaping, and exterior structures and signage, while ensuring compliance with the Americans with Disabilities Act guidelines.

RFQs have the added benefit of ensuring capable companies submit all full proposals, cutting down on the time and manpower required to process and score proposals. Some transit agencies choose to forgo a separate RFQ and, instead, include technical capability qualifications within an RFP's scoring guide (see #7). Combining both may simplify the process and encourage more proposals, but there is no guarantee that all final proposals will actually be feasible. On the other hand, the two-step process focuses more on price and assumes strong technical capabilities of all parties, and might not be best for parties with limited P3 experience.

#5 REQUESTS FOR PROPOSALS

RFPs should describe service requirements completely, including schedules, service miles, service hours, service standards, and safety standards. Additionally, RFPs must set the proposal format and timeline requirements and set deadlines for the procurement process and all proposal evaluation criteria. RFPs are often called Instructions to Proposers. Transparency and clear expectations simplify the procurement process, encouraging private sector participation and competition, increasing service quality, and decreasing costs.⁴

New Orleans' Regional Transit Authority even provides detailed questionnaires and cost forms, which, once completed, are part of the private company's proposal.⁵ This approach reduces uncertainty about what is required in a proposal, encouraging smaller companies, which tend toward lean management, to participate in the process.⁶

Ideally, the transit contracting procurement will have at least three bids. However, if there are fewer than three it is possible to work through a contract as an open book process. An RFP that results in one or two bids only can be reworked to foster more competition, or completely rewritten to better address market demands.

⁴ "A Bid for Better Transit," TransitCenter and the Eno Center. 140.

⁵ "Request for Proposals # 2019-030," Regional Transit Authority, *NORTA.com*. September 2019. <https://drive.google.com/file/d/1LWYTNUOp2m-ZB4sUI-XvCWjupOg33cO/view> (26 June 2020.)

⁶ "A Bid for Better Transit." 122.

Requests for proposals should, at a minimum, demand completion and submission of detailed cost proposal forms as a part of the proposal. A well-crafted RFP is both simple to follow and detailed in content.

#6 LENGTH AND COMPONENTS OF THE PROCUREMENT PROCESS

The time span between issuing the request for proposals and the deadline for submitting them may be the single greatest deterrent to the number of competitors. Agencies should give all potential proposers sufficient time to solicit and receive copies of the RFPs, to attend any pre-proposal conferences, and to prepare their proposals. In general, the amount of time allotted should increase with the size of the proposed service and with the extent that the contractor would have to provide facilities, capital equipment, and vehicles.

While less time is required for very small and emergency contracts, two to four months is generally sufficient for the procurement process when transit agencies provide vehicles.⁷ Six to nine months may be necessary when private entities have to purchase their own bus fleet. Contracts with a large scope, such as those involving rail construction, may require more time to craft and evaluate proposals, sometimes stretching to a year or more.⁸ Procurement generally follows the sample schedule below:

- Pre-procurement activities: project identification, industry forums, and public outreach all may occur before an RFP is issued
- Issuance of the RFP
- Question and answer period on the RFP within a predetermined window following the RFP's release, typically within a couple of weeks
- Proposal submission generally within a one-month deadline of the RFP's release
- Proposal evaluation and scoring within a week or two of the proposal submission deadline
- Final approval of the proposal from the transit agency within two weeks of the proposal submission deadline

⁷ "Request for Proposals # 2019-030," Regional Transit Authority, 10.

⁸ "Best Practices Procurement & Lessons Learned Manual," Federal Transit Administration, *Transit.DOT.gov*. October 2016. 20. <https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/funding/procurement/8286/fta-best-practices-procurement-and-lessons-learned-manual-2016.pdf> (26 June 2020.)

- Crafting and finalization of the contract after the proposal approval
- Financial close, whenever both parties agree to the contract, should occur directly after the contract is finalized
- Service should commence within five days of financial close; those large projects transitioning from in-house operation may require a transition period of one to two weeks.

Some examples can further illustrate how the procurement process length can vary with the scope of the project. Figure 3 provides a procurement schedule taken from a 2020 RFP for paratransit and rural transit services for Peoria, Illinois’ transit agency, the Greater Peoria Mass Transit District (GPMTD):

FIGURE 3: PROCUREMENT SCHEDULE DOCUMENT 1 FOR 2020 PARATRANSIT AND RURAL SERVICE RFP, PEORIA ILLINOIS

The projected schedule for this procurement is:

Request for Proposals available:	June 1, 2020
Pre-Proposal Meeting at 3:00 pm (CST):	June 11, 2020
Deadline for questions and clarifications:	June 19, 2020
Deadline for responses to questions and clarifications:	July 2, 2020
Proposals due by 4:00 pm (CST):	July 23, 2020
Evaluation of proposals & possible interviews:	July 27 – August 21, 2020
Recommend Contract Award at GPMTD Board Meeting:	September 14, 2020
Anticipated Start Up Date:	December 1, 2020

Source: Greater Peoria Mass Transit District Procurement Process, Greater Peoria Mass Transit District, “Request for Proposals: Professional Transit Management Services,” 1 June 2020. 18. <http://www.ridecitylink.org/wp-content/uploads/RFP.ADA.Rural.Service.Provider.FED2020.08.pdf>

As the schedule shows, the time between the RFP and contract initiation date is separated by six months, with windows of a few weeks for potential contractors to submit questions relating to the RFP, and about 10 days for agency responses to any RFP questions, and about a month after the question deadline to submit final proposals. Financial close would occur just before the anticipated start date, though the agency has not selected a

proponent as of yet. A separate RFP from GPMTD for paratransit software resulted in a contract award earlier this year, and took about four months to complete:⁹

FIGURE 4: PROCUREMENT SCHEDULE DOCUMENT 1 FOR 2020 PARATRANSIT AND RURAL SERVICE RFP, PEORIA ILLINOIS

The projected schedule for this procurement is:

Request for Proposals available:	May 22, 2020
Pre-Proposal Meeting at 3:00 pm (CST):	May 28, 2020
Deadline for questions and clarifications:	June 03, 2020
Deadline for responses to questions and clarifications:	June 09, 2020
Proposals due by 4:00 pm (CST):	June 25, 2020
Evaluation of proposals & possible interviews:	June 26 – July 17, 2020
Recommend Contract Award at GPMTD Board Meeting:	August 2020
Anticipated Start Up Date:	September 2020

Source: Greater Peoria Mass Transit District Procurement Process

#7 PROPOSAL EVALUATION

Most public transit agencies evaluate proposals with two criteria: the technical component and the cost-effective component.¹⁰ The technical component addresses service qualifications, specifications, coverage area, and other non-cost considerations. Cost-effectiveness is measured by the lowest cost over the life of the contract. The RFP should establish a clear rubric, with a point system based on the two-part evaluation process.

New Orleans Regional Transit Authority issued an RFP for ferry service in September 2019 that included the following scoring criteria:¹¹

⁹ Greater Peoria Mass Transit District, “Request for Proposals: Professional Transit Management Services,” 1 June 2020, 18. http://www.ridecitylink.org/wp-content/uploads/RFP.ADA_.Rural_.Service.Provider.FED2020.08.pdf

¹⁰ “Best Practices Procurement & Lessons Learned Manual,” Federal Transit Administration, 93-94.

¹¹ “Request for Proposals # 2019-030,” Regional Transit Authority, 10.

1. Technical Qualifications, worth 90% of the overall score:

- Firm qualification (40% of overall score): measures a firm's track record and ability to deliver transit as described in the RFP.
- Staff and key personnel qualifications (20% of the overall score): ensures all needed professionals are available for implementation of the contract and operation of the transit.
- Technical measures (20% of the overall score): includes service frequency, scope of service, reliability of design, maintenance plan, and other service components outlined in the RFP. While all scored proposals have to meet certain service baselines, additional frequency and service quality can increase a proposal's technical measures score.
- The Disadvantaged Business Enterprise Participation Plan (10% of the overall score): provides a boost to organizations that are owned and operated by socially or economically disadvantaged groups; these organizations also tend to be smaller.

2. Pricing, worth 10% of the overall score:

- The proposal that meets all requirements with the lowest cost receives the full 10 percentage points.
- All other organizations receive a score with the formula below, which measures each proposal's first-year cost proportionally with the lowest cost proposal.

$$\text{Pricing Score} = (\text{Lowest 1}^{\text{st}} \text{ year score} / \text{Proposal in question's 1}^{\text{st}} \text{ year score}) \times 10$$

Ferries differ from traditional fixed-routes in that they are a more specialized mode of transit. Accordingly, the ability to deliver ferry service and maintenance is more highly weighed in the RFP.

Some public authorities require separate sealed envelopes—one with the service proposal and qualifications and the other with the price. The price envelope is opened only for companies that have qualified in the first step. This approach is useful in building the confidence of private providers in the procurement process and minimizes the potential for challenges by unqualified companies.¹²

¹² "Best Practices Procurement," Federal Transit Administration. 73-74.

#8 FAIR COST COMPARISON

Transit agencies compare a contracted proposal's cost with market prices and in-house service to determine whether a given proposal is priced accurately. The Federal Transit Administration provides best practices for both cost and price analysis. Cost analysis is less complicated than price analysis and directly compares a proposal's cost to competition catalogs, government catalogs, industry catalogs, or the government price index. Cost analysis attempts to project and incorporate long-term costs, such as labor, materials, and maintenance.¹³

For multiyear transit contracts, cost analyses play an important role in determining whether contracting works in a particular case. Accordingly, transit agencies need to include overhead costs for the in-house operations that private companies include in their cost analysis, such as work benefits and pension contributions. Where the private sector suspects understatement of in-house costs, it is less likely to respond to requests for proposals.

In determining public sector and in-house costs, a transit agency should either separate the internal proposal team from the procurement team or hire an accounting firm to prepare its internal proposal that remains sealed until all private entities submit their proposals. Alternatively, a financial advisor could manage the procurement, simplifying the administrative process.

When one transit agency bids to provide service for another transit agency, hidden overhead costs are covered by taxpayers. Accordingly, transit agencies need to provide transparent and fair cost estimates or face consequences, such as proposal disqualification and a ban on bidding in the future.

#9 CONTRACT PRICING

Pricing transit contracts is a major component of the contracting process, since a price set too low will fail to attract private sector interest and a price set too high will negate the financial benefits of contracting. The contract price will be informed by initial estimated

¹³ "Pricing Guide for FTA Grantees," Federal Transit Administration, *Transit.DOT.gov*. February 2020. <https://www.transit.dot.gov/funding/procurement/third-party-procurement/pricing-guide-fta-grantees> (26 June 2020.)

costs of private and in-house options and information provided at any pre-proposal conferences, as explained previously.

Contract pricing takes two general forms: “gross cost” and “net cost.” Pricing also usually takes into account expenditure fluctuations and service quality.¹⁴ For example, the quality-incentive (price increases as quality increases) model of pricing combines gross cost or net cost with service quality bonuses.

Gross cost, or fixed price, contracts are those that set a single, fixed price for the life of the contract. Any cost fluctuations are the responsibility of the private company, decreasing risk to the transit agency and taxpayers. The high level of uncertainty from the greater financial risk involved, however, makes gross cost contracts less attractive to private companies, which will increase their bid prices accordingly. There is no inherent incentive to promote service quality with a fixed price contract. Agencies retain farebox revenues in a gross cost contract.

Net cost pricing occurs in a transit contract when transit agencies pay private operators a fixed subsidy based on ridership projections; private operators retain the farebox revenue. Similar to fixed price contracts, uncertainty is low for transit agencies and high for the private operators who rely on ridership for profit. Unlike fixed price contracts, however, net cost pricing encourages private operators to provide better service, which attracts more ridership and thus more revenue.

Contracts can include predetermined financial penalties and discretionary incentives to shape service quality. Explained in more detailed below, penalties and incentives are particularly useful tools for fixed price contracts where ridership levels have no intrinsic impact on a private operator’s profits, though incentives can work to promote service quality under a net cost pricing model as well. London incorporates such considerations into what it calls “Reliability Performance Payments”:

Reliability Performance Payments

These are calculated on an annual basis by comparing the Operator’s annual reliability performance on each route against the contracted MPS. Payments are based on a graduated scale with an increase or decrease in the payment for every whole 0.10 minute change in Excess Wait Time (EWT) for High Frequency routes and every whole 2.0

¹⁴ “A Bid for Better Transit.” 42.

percentage point change in percentage On Time for Low Frequency routes. Bonus payments are paid at a rate of 1.5% of the contract price for each step above the standard. Deductions are made at a rate of 1% of the contract price for each step below the standard. Bonus and deduction payments are capped at 15% and 10% respectively of the contract price.¹⁵

Additionally, a transit contract can take into account extraordinary and universal escalation of some costs like fuel, without traditional price indexing, which unduly places increased costs on the taxpayer. In “pass-through arrangements,” bidders do not include the price of fuel in their cost estimations, or they are given a constant price (one dollar per gallon) for estimation purposes. The winning bidder’s reimbursement is based on that cost component’s current market price. Negotiation is a less formal approach; the winning bidder may request that the authority adjust the contract price to reflect the increase in the designated cost component, usually fuel. Limited negotiation and pass-through options reduce the private operator’s risk, thus potentially reducing contract prices.

Both fixed price and net cost contracts work well when paired with appropriate incentives, penalties, and escalating cost mechanisms. A fixed price contract with penalties and incentives is especially effective at limiting risk for taxpayers while promoting service quality. Net cost contracts paired with pass-through arrangements are particularly attractive to bidders, increasing competition and possibly bringing down costs, though transit agencies take on more risk for the lower initial cost.

#10 EXTENSION/RENEWAL OPTIONS

Public authorities can define contract duration in two ways. Some public authorities offer contracts that have a specified term, such as three years, while other public authorities may award contracts for a basic term plus renewal options.¹⁶ For example, a public authority may award a three-year contract with a two-year renewal option for a total contract term of five years. At the end of three years, the public authority may decide to exercise the two-year option and have the incumbent company continue to provide the service. On the other hand, the public authority may decide to competitively procure the service again at the end of three years. Such options can increase the contractor’s incentives to provide quality

¹⁵ Ibid. 42.

¹⁶ Ibid. 139.

service and can give the public authority a way to change contractors without invoking termination.

#11 CONTRACT DURATION

Costs are likely to be higher for shorter contract durations because the risks will be greater, since proposers must recover fixed costs over a shorter period of time. Further, start-up costs are incurred when a new private provider assumes a service. Costs will also tend to be higher because the number of proposers will decline as the risk increases. Contract duration can be shorter in cases where the public authority provides vehicles for the private contractor, since acquiring its own vehicles increases capital costs for the private entity and, thus, takes longer for the private entity to recoup costs.

Alternatively, contract periods can be too long. Longer contracts entail greater risks for both parties, since it is much harder to project costs. Generally, transit contracts (including extensions) last no more than five to eight years.¹⁷ While the FTA used to limit all bus transit service contracting to a maximum of five years when federal funding was provided, it has since peeled back the provision to apply only for contracts with “rolling stock” (vehicles) or parts. Regardless of requirements, long contracts provide their own disincentives, as lack of competition through the longer term is likely to drive up costs for any price adjustments required. Long contracts, however, are appropriate for projects with relatively large capital costs and long-term construction timelines (such as LA Metro’s Sepulveda Pass project mentioned earlier), as private entities are usually better positioned to recover their costs over time than agencies are themselves.

Massachusetts Bay Transit Authority (MBTA) provides an example of a longer-term contract working effectively for both contracted parties and for customers. MBTA contracts out its commuter rail operations to Keolis, and in June, approved a four-year extension of its eight-year contract, citing greater opportunity to take advantage of capital improvements, while also continuously working with its partner to optimize performance.

¹⁷ Ibid. 51, 139.

As MBTA General Manager Steve Poftak noted in a press release announcing the extension approval:

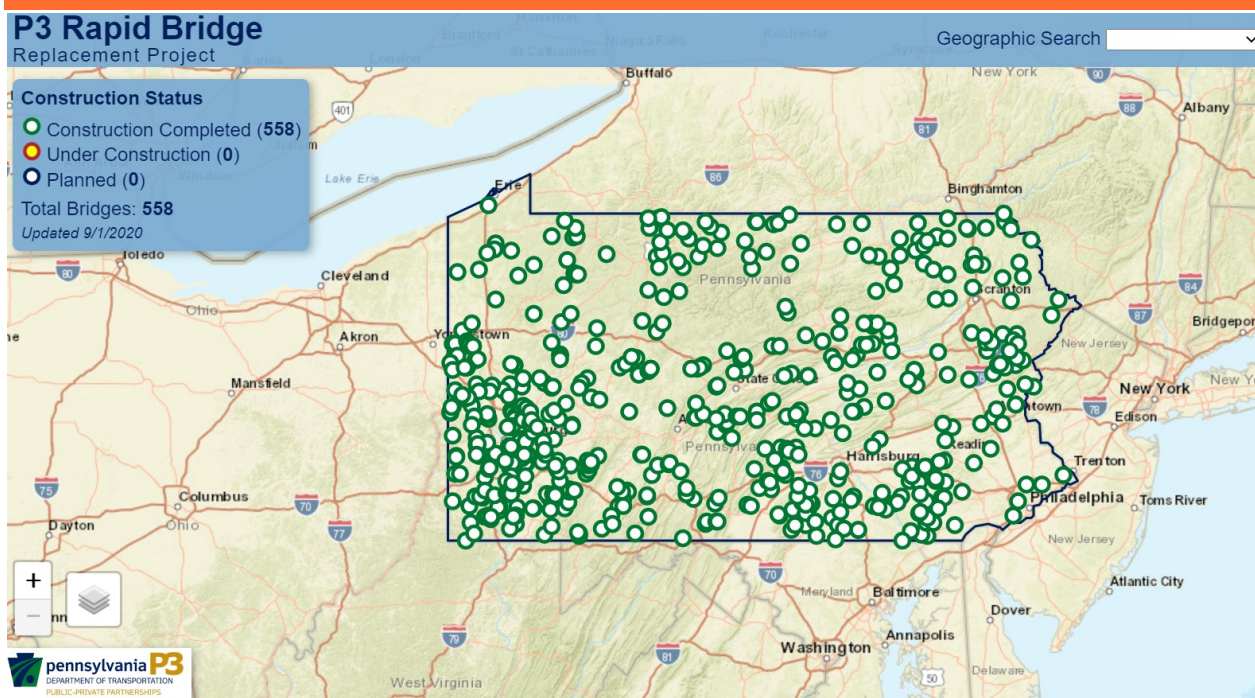
Our main goals are to provide continuity and the best possible service for our Commuter Rail customers, as well as provide adequate time to plan for a future transformational procurement. With this extension in place, we look forward to continuing this partnership with Keolis. This extension includes a number of additional benefits for riders, including further incentives for on-time performance, measures to address fare evasion, and flexibility and cost certainty in a challenging market.

#12 CONTRACT SIZE

Many transit agencies believe it is more convenient to deal with a few large contracts. The transit industry is characterized by diseconomies of scale, where increased scale after a certain point actually increases costs per unit.¹⁸ A preference for large contracts limits competition and raises public costs. The smaller the proposal package, the more likely that smaller companies will be among the proposers, increasing competition. Using the earlier steps to vet companies is also crucial for achieving the right contract size; having robust competition balances attracting interested firms and ensuring only qualified ones remain once the project reaches the RFP stage.

Seeing the difficulties of repairing and replacing its many structurally deficient bridges, the Pennsylvania Department of Transportation sought a single procurement where contractors bid on replacing over 500 bridges. Earlier this year, construction was completed for 558 projects (see Figure 6), which are scattered throughout the state.

¹⁸ Michael Keough, "Scale Economies Among United States Bus Transit Systems," Urban Mass Transportation Administration of the U.S. Department of Transportation [now called the Federal Transit Administration]. 1989.

FIGURE 6: P3 RAPID BRIDGE REPLACEMENT PROJECT MAP

Source: Pennsylvania Department of Transportation, “Rapid Bridge Replacement Project.”

By bundling projects together, PennDOT was able to generate greater interest from firms, as well as save money through scale and time considerations.

#13 ROTATION OF PROCUREMENTS

When public authorities have more than one contract, they should rotate the procurement and expiration dates. London contracts out all of its bus services, so that each year about one-fifth of the network is up for a new round of contracting.¹⁹ Rotating the procurement dates reduces the incentive for an incumbent company to seek undue political advantage in the award process. It allows for winning proposers to acquire equipment and losing contractors to dispose of equipment in small parcels, thus reducing the overall risks associated with entry and exit. Finally, rotation increases the likelihood of consistently good performance by current contractors who also wish to propose additions to the new service package.

¹⁹ “A Bid for Better Transit.” 39-40.

Another alternative is managed competition. In managed competition one company cannot manage any more than two zones at a time. This ensures competition and provides incentives for the companies to offer quality, competitively priced service or risk losing the contract in the future.

#14 SERVICE SPECIFICATIONS

Public authorities clearly describe route alignments, public timetables, estimated annual service miles and service hours, and vehicle descriptions and appearance (color and exterior markings) in their contracts and RFPs. The public authorities also specify what ancillary services are to be provided, such as marketing or customer service.

#15 PROVISION OF VEHICLES, EQUIPMENT, AND FACILITIES

Vehicles and maintenance facilities for competitively contracted transit services may be provided by public authorities or by the private companies. Specialized transit equipment, such as fareboxes, usually are provided by the transit agency (which they typically obtain through a separate procurement contract, as is the case in the example given in #1) even when the agency does not supply vehicles. Expanded private involvement can bring down capital costs for the transit agency. The contractor, however, will need more time to recoup its capital investment, requiring a longer contract, which may reduce competition.

When the transit agency provides vehicles, equipment, and facilities, the barriers to entry and capital risk for the private sector decrease, encouraging more bids and bringing down costs on the operation side.²⁰ Additionally, when a new provider takes over service, another private operator can more quickly commence service if the transit agency owns the infrastructure.

All in all, both private and public ownership of assets have benefits. When contracting a new route, expanding service, or replacing vehicles, the private sector can deliver with less cost and risk to the transit agency. When the transit agency has a functioning fleet, more private entities can bid and contracts can have shorter durations, encouraging competition, which increases service quality and decreases costs.

²⁰ "Analysis of Contracting for Fixed Bus Service," National Center for Transit Research and the University of South Florida, June 2011. <https://www.nctr.usf.edu/wp-content/uploads/2011/08/77923.pdf> (26 June 2020.)

Contracts need to guarantee that vehicle specification, such as length, size, and amount, are clearly predetermined regardless of which party provides the vehicles. When the public sector provides buses, for example, the private operator needs to know how many buses and what types it will have access to, as this affects its maintenance and operation plans. Similarly, when the private operator sources its own vehicles, it must conform to transit agency standards, be it on bus length, air conditioning performance, electrical outlet availability, or branding.

In looking to procure vehicles for its developing Bus Rapid Transit program, Birmingham, Alabama issued an RFP in 2018. The initial section of technical specification, describing the scope of the procurement, is straightforward enough:

Scope

These technical specifications contain the requirements for ten (10) 60-foot low-floor articulated CNG transit buses that are intended for the widest possible spectrum of passengers, including children, adults, the elderly, and people with disabilities. Buses shall have a minimum expected life of twelve (12) years or 500,000 miles, whichever comes first.

Specifications are provided for six (6) buses that will be branded for BRT service and four (4) buses that will be used for fixed route service. The BRT vehicles will have distinct design, system, and branding specifications from the fixed route buses. A “Default” specification indicates the standard design. A “BRT Option” is provided to indicate where the specifications for the BRT vehicle differ from the fixed route vehicle. If no BRT Option is provided, the Default specification applies for both vehicle designs.

The contractor shall conform to these technical specifications and shall not omit any unit or component or both, part or detail to make these buses ready for service, even though such part or detail is not mentioned in these specifications. In absence of a specification, the Contractor shall adhere to its manufacturing standards. No changes or substitutions are permitted without the prior written consent of the City.²¹

²¹ City of Birmingham, Finance Department, Purchasing Division, *Birmingham Bus Rapid Transit (BRT) Request for Proposal(sic): Solicitation #19-16 BRT Vehicle Procurement*, 30 August 2018. 65. <https://maxtransit.org/wp-content/uploads/2018/01/RFP-Solicitation-19-16-BRT-Vehicle-Procurement.pdf>

A deeper dive into the technical specifications reveals how extensive and thorough such concerns can quickly become: Dimensions of the buses themselves certainly include height and length considerations of the bus’s exterior, but also for ground clearance, the height of steps to enter the bus itself, the bus’s floor height, also capacity and numerous other interior considerations. Locations of dozens of gauges and instruments inside the vehicles are specified, as are AC/heat systems and their components, levels of acceptable interior and exterior noises caused by the bus’s operation, and even specifications dealing with the steering wheel’s tilt adjustment mechanisms. The entire specifications section alone takes over 100 pages of the RFP and includes over 100 subsections.²²

However, if the contractor was providing and operating the vehicle, the government would be more focused on the outcome. Common questions include how frequent the service is, what the cost is, and how satisfied the riders are.

#16 INSURANCE COVERAGE

Most public authorities require contractors to maintain accident and liability insurance limits at least as high as the public authorities carry themselves and similar to those required by the U.S. Interstate Commerce Commission (ICC). Agencies may also establish minimum coverage levels based on contract size, and require insurers to meet certain ratings and size standards. Some of California’s insurance requirements appear in Figure 7:

FIGURE 7: LIABILITY INSURANCE MINIMUMS

Liability Insurance Minimums / Limits for California Transportation Contractors (2018)				
Total Bid Amount	Per Occurrence (combined bodily / property damage limit)	Aggregate Products / Completed Operations Coverage	General Aggregate	Umbrella / Excess Liability
≤ \$1,000,000	\$1,000,000	\$2,000,000	\$2,000,000	\$5,000,000
> \$1,000,000 ≤ \$10,000,000	\$1,000,000	\$2,000,000	\$2,000,000	\$10,000,000
> \$1,000,000 ≤ \$10,000,000	\$2,000,000	\$2,000,000	\$4,000,000	\$15,000,000
> \$25,000,000	\$2,000,000	\$2,000,000	\$4,000,000	\$25,000,000

Source: Office of Safety, Insurance, and Special Projects, Division of Construction, California Department of Transportation, “Insurance Requirements,” Dot.ca.gov. Updated 27 April 2018. 2. <https://dot.ca.gov/-/media/dot-media/programs/construction/documents/construction-compliance/insurance-requirements.pdf>

²² Ibid. 65-167.

However, any requirements above the common industry practice of adhering to ICC guidelines, even where it may be justified, adds to the costs of the contract.

#17 PERFORMANCE AND BID BONDS

Most public transit authorities require contractors to post bid (proposal) bonds and performance (service) bonds or their equivalents such as irrevocable letters of credit.²³ Bonds and letters of credit are financial instruments that guarantee payment to the transit agency if the contractor or bidder defaults.

Bid bonds or their equivalents are submitted by all bidders with their proposals and cover the agency's costs of re-awarding the contract plus the incremental costs of service during the extra time needed to award and start contracted service should the current bidder fail to begin service. Bid bonds or similar instruments are returned to losing bidders and to winning bidders upon commencement of service.

Performance bonds or similar instruments serve two primary functions:

- 1) To demonstrate the contractors' business soundness; and
- 2) To compensate the public authority for any losses resulting from contractor default.

Performance bonds and their equivalents represent the simplest and most reliable indicator of the contractor's financial ability to perform. Public authorities are not skilled in judging the fiscal condition of private businesses, and it can be unwise for a public authority to perform such a task. Performance bonds and their equivalents can be an easy, cost-effective way for public authorities to minimize risks.

A survey of 31 transit agencies from 2010 found that 94% of the agencies set performance bond requirements for a 100% value of the contract. However, 60% of the transit agencies, such as the Metropolitan Atlanta Rapid Transit Authority and Miami-Dade Transit, allowed for parts of the bonding requirement to be waived for projects with decreased financial risks.²⁴

²³ "Issues Involving Surety for Public Transportation Projects," Federal Transit Administration (available through the National Academies Press, *NAP.edu*, 2012. 83-94, Appendix A. <https://www.nap.edu/read/22738/chapter/17> 26 June 2020.

²⁴ "Issues Involving Surety," Federal Transit Administration, 46-47.

Unlike other forms of private sector involvement in transit, such as vehicles procurement or technology services, transit contracting is long term with an immediate impact on transit service. Accordingly, performance bonds should be limited to the public authority's maximum potential loss should a private transportation provider default. As the contracting process takes approximately two months, bonds should cover that lost service period between default and the financial close of a new contract. In reality, the prospect of decreased service due to default is exceedingly rare and easily remedied, since other private operators can receive an emergency contract to fill-in service gaps, especially when the private operators are already contracted, further stressing the value of many smaller contracts.²⁵

#18 PERFORMANCE STANDARDS

Most contracts provide for some performance standards, measuring safety, service quality, or both. Safety standards cover vehicle maintenance records and other safety requirements. Service quality metrics include on-time performance, trip completion, vehicle cleanliness, driver courtesy, and passenger complaint rates.²⁶ Interestingly, the standards set for contracted services routinely exceed previous standards, if any existed, for the public agency, since the federal government requires only limited performance records.

Contract sections or appendices that outline service scope and requirements are lengthy. Exhibit A, Scope of Work of the fixed-route bus agreement between the city of Phoenix and First Transit is 49 pages. Some details are listed, such as Phoenix's responsibility to provide First Transit with 66 diesel buses, 66 liquid natural gas-powered buses, and nine unleaded gasoline-powered buses.²⁷

Within the maintenance subheading, the Phoenix contract requires the contractor to ensure all buses "have fully operational air conditioning, wheelchair ramps and lifts, securement

²⁵ "On the Bus: The Benefits of the Private Sector Involvement in the Delivery of Bus Services," LEK and the Australia Tourism & Transportation Forum. *LEK.com*, 29. https://www.lek.com/sites/default/files/insights/pdf-attachments/On-The-Buses_Australian-Bus-Franchising_LEK_Feb2016%281%29.pdf (26 June 2020.)

²⁶ "Analysis of Transit Contracting Models and Proper Incentives for Long-Term Success," National Center for Transit Research, *NCTR.USF.edu*. VII. <https://www.nctr.usf.edu/wp-content/uploads/2015/06/77952-Transit-Contracting-Models.pdf> (26 June 2020.)

²⁷ "Agreement No. 135719–0 Between the City of Phoenix and First Transit, INC," The City of Phoenix. *Phoenix.gov*. 9 April 2013. <https://www.phoenix.gov/publictransitsite/Documents/First%20Transit%20135719%20Operation%20of%20Fixed%20Route%20Services.pdf> (26 June 2020.)

belts, flip seats, radios, DVRS, VMS components, Automatic Passenger Counters (APCs), fareboxes and destination signs, and any other on-board systems required for service. A current list of on-board equipment the Contractor is responsible for installing or maintaining is provided in section 8.16.”²⁸ Details are key to contract success, since all components of the agreement must be spelled out, such as facilities, penalties and incentives, insurance requirements, bonding requirements, lost and found policies, data collection, and how often fareboxes must be cleaned. Other performance standards, such as on-time rates or customer satisfaction are defined through penalties and incentives as shown in #19.

#19 PENALTIES AND REWARDS

Penalties and rewards guidelines found in performance-based contracts serve as incentives to optimize performance. Many public authorities specify financial penalties for unsatisfactory performance, including the ultimate penalty: the cancellation of the contract. Judiciously administered, financial penalties can enhance the likelihood that contracted service maintains high standards of quality and performance. Excessively high penalties or penalties based upon unreasonable standards impose additional costs on both the public authority and the contractor, since the private entity increases its price based on the increased risk of penalty.

The United States and Western Europe have successfully used incentives, with London’s example of rotating procurements noted earlier. Importantly, incentives not only preserve and increase service quality, but also allow transit agencies to enact policy goals without burdensome unfunded mandates. In other words, private contractors can find the most cost-effective path to reach a policy goal and receive a bonus, rather than following a top-down policy.

An example of a penalty is found in the agreement between the city of Phoenix and First Transit, which targets low on-time performance with payment deductions, following the chart in Table 1.²⁹ Similar penalty schedules exist for cancelled trip, customer complaint, and accident rates.

²⁸ Ibid.

²⁹ Ibid. A-44.

TABLE 1: SAMPLE DELAYS PENALTY SCHEDULE

On-Time Performance %	Liquidated Damage
94% and above	-\$0.00 per route
93.99% - 91%	-\$5,000 per route
90.99% - 88%	-\$10,000 per route
87.99% and below	-\$15,000 per route

Source: Fixed-route bus contract between the city of Phoenix and first Transit from April 2013, page A-44.

Along with rotating procurements, London also sought more-performance-driven contracts, introducing “Quality Incentive Contracts” in 2001 to hold contractors accountable for providing services reliably and safely through performance-based contracting, a practice that had not been incorporated previously. “Reliability Performance Payments” are tied to wait times, providing bonuses for exceeding expectations and deductions for failing to achieve them, capping bonuses and deductions at 15% and 10%, respectively.³⁰

By 2015, the renewed focus on coordinating and rotating procurements through incentive-based contracts that financially reward and deduct contractor payments had achieved substantial benefits:

- Bus ridership has grown by 70% between 2000-2001 and 2014-2015.
- Buses in London now carry the highest number of passengers since 1959.
- In the year to March 2015, there were 2.4 billion passenger trips on the Network.
- Bus kilometers-operated in London are higher than at any time since 1957, with 490 million-km-operated in 2014-2015.³¹

Other than being on time, performance penalty/reward provisions can account for ridership levels, driving records of operators, and customer satisfaction.³²

³⁰ Transport for London, “London’s Bus Contracting and Tendering Process,” 8 August 2015. 15. <http://content.tfl.gov.uk/uploads/forms/lbsl-tendering-and-contracting.pdf>

³¹ Ibid. 5.

³² National Center for Transit Research, *Analysis of Transit Contracting Models and Incentives for Long Term Success*, November 2013. vii. https://www.tucsonaz.gov/files/transportation/files/Attachment_A_Analysis_of_Transit_Contracting_Models.pdf

#20 PUBLIC SUPERVISION

Public transit services require extensive supervision, whether they are provided by the public authority itself or by private contract. Monitoring ensures service quality is met and practices are cost-effective. Transit contract monitoring takes four major forms: customer satisfaction surveys, levels of service provision, customer complaints, and secret shoppers.³³

Customer satisfaction surveys can occur with relative ease and minimal cost online. Similarly, the private operator or the transit agency itself can have phone numbers or online submission forms to efficiently capture complaints. With modern tracking technology, level of service indicators, such as bus frequency and speeds, are easier to measure than in the past. Secret shoppers can be more costly, but provide more-qualitative information about rider experience.

While modern studies tend to inflate monitoring costs by grouping the activity with all administrative costs, capital spending on monitoring hardware is minimal.³⁴ As part of its latest capital program, Foothill Transit, which contracts all service, spent \$34,000 on new electric bus monitoring hardware and \$250,000 on fuel and mileage monitoring systems, together making up less than 1% of its \$159,902,921 capital program.³⁵ Transit agencies can administer contract monitoring through existing administration or a dedicated monitoring unit. Of transit agencies with a monitoring unit, 74% contract 100% of their transit.³⁶

³³ Olga Smirnova, Juita-Elena (Wie) Yusuf, and Suzanne Leland, “Managing for Performance: Measurement and Monitoring of Contracts in the Transit Industry,” *Journal of Public Procurement* 16(2) (Summer 2016). 215. https://digitalcommons.odu.edu/cgi/viewcontent.cgi?article=1010&context=publicservice_pubs (26 June 2020.)

³⁴ Ibid. 214.

³⁵ “Foothill Transit FY 2018-2019 Business Plan and Budget, Adopted,” Foothill Transit, *FoothillTransit.org*. 2018. 46. <http://foothilltransit.org/wp-content/uploads/2018/08/FY2018-2019-Business-Plan-and-Budget-Adopted-Digital-Version.pdf> (26 June 2020.)

³⁶ Smirnova et al., “Managing for Performance.” 219.

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