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VERLOOKING VERSIGHT:

*A Lack of Oversight in the Garden State is Placing
New Jersey Residents and Assets at Risk*



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EXECUTIVE SUMMARY

Governments and to some extent scholars have long treated contract oversight as a trivial or at best mundane sideline to broader issues of privatization. This is a critical mistake. In the context of human services, contractor oversight can prove to be a life or death question. In all contexts, it is crucial to protecting taxpayers' investment in their government. From services provided to the most vulnerable among us, like child protection and the treatment of the disabled, to prisons that protect us from harm, to more prosaic tasks like maintaining infrastructure, states provide a broad array of services that dramatically affect our lives. The fact that states contract with private companies to provide ever more of these services therefore takes on a heightened sense of urgency. As a corollary, the means by which states oversee these contractors goes from a mundane matter of public administration to a vital matter of public interest. Bucking the trend against detailed examinations of administrative capacity, we conducted an in-depth analysis of how New Jersey oversees its contractors. Our findings were eye-opening.

Recent events highlight the urgency of this issue. Failure to properly oversee the contractors responsible for the Department of Corrections' Residential Community Release program resulted in the death of innocent people. More recently, the failure to properly manage the administration of recovery funds following Hurricane Sandy delayed needed aid to Sandy victims for many months and led to millions of dollars in unexplained costs.

Contracting for services is not inherently bad. Contracting can be an important tool for government if it is done for the right reasons and if it is done well. Government can legitimately contract in order to tap into special expertise, to carry out activities that would be better delivered in a community setting or to augment state capacity in a specific area. Research tells us that to be effective however, contracts must be carefully managed. Management at its core is about the construction and maintenance of collaborative communities¹ who share large amounts of information in real time and among whom cooperation is incentivized and rewarded and led by skilled individuals given the time to do the job. Contracting units must educate contractors about performance measurement and monitoring requirements.² Moreover, contracting units must develop standards and communicate clear and explicit guidance on what is expected from contractors.³ Research also tells us that government must engage in thorough contract costing before a contract is

¹ Adler, Paul S., and Charles Heckscher. "Towards collaborative community. The firm as a collaborative community: Reconstructing trust in the knowledge economy (2006): 11-105, <http://www-bcf.usc.edu/~padler/research/01-Heckscher-chap01%20copy-1.pdf>. (accessed Feb. 2014)

² Amirkhanyan, Anna. "Privatizing public nursing homes: Examining the effects on quality and access." *Public Administration Review* 68, no. 4 (2008): 665-680.

³ Weil, David, *The Fissured Workplace* (Harvard University Press, 2014).

let, ensure transparency from the bidding stage through contract execution, put in place a system of monitoring and auditing to ensure that standards are being followed, set outcomes-based benchmarks with clear performance measures, conduct regular, qualitative multi-stakeholder evaluations of services provided, impose significant penalties in the face of failure to meet goals and rebid all contracts at most, every 3 years. This list highlights two key points. First, overseeing contracts is difficult to do well. Second, it requires experienced, well-trained government employees given the time to manage with care.

Our review of contractor oversight in New Jersey shows that the state is failing in its duty of protecting vulnerable citizens from poor service and taxpayers from wasted funds. At the core of the problem is a complete lack of priority given to oversight despite a preference for contracted service provision. This is best exemplified by the massive shortage in qualified staff to manage contracts. Our recommendations are designed to drastically improve the quality of the state's oversight of its contractors and thus make it a better steward of the public interest. We base our recommendations on the simple principle that quality oversight should be seen not as a luxury to be dispensed with in the face of austerity but as an inseparable element of the contracting process.

Finally, it is important to note that the current state of affairs evolved over a long period of time, under both Democratic and Republican administrations.

KEY FINDINGS

Significant Neglect of On-the-Ground Oversight

Effective oversight of contractors involves:

1. adequate staffing and training of contract managers
2. thorough contract costing and design
3. strong ongoing communication and cooperation between contract managers and contractors
4. strategic contract monitoring with clear performance requirements and standards

Capacity in all four elements of contractor oversight is severely lacking.

Attrition is a predominant problem, depriving every contracting unit we studied of practical expertise while simultaneously increasing the burdens on those workers that remain. This is not surprising, given the structural lack of priority given to oversight. It occurred in all four of the departments for which we were able to obtain such information. Here are a few examples:

- Office of Information Service's workforce, critical to providing the data necessary for oversight, has dropped from 82 in 2003 to 54 in 2012
- The Office of Auditing within the Department of Health Services has been reduced from 60 staff to 30
- The Department of Transportation has lost approximately 50% of its staff in the past ten years, putting tremendous stress on remaining staff particularly with respect to Contract Managers

No contract costing and minimal specification of contract terms prior to the issuance of RFP's. Every official we asked confirmed that, to their knowledge, costing was not done in any systematic way.

Contract Managers are not always qualified or properly trained to fulfill their roles effectively. According to officials from every department studied, there are not enough human resources being assigned to oversight and effective oversight is not being fulfilled by many of the individuals who are being designated as Contract Managers.

Contracts had weak performance requirements and standards. Only a minority of contracts had outcome-based performance measures and there was little evidence of performance targets being integrated into a comprehensive oversight system. Only the Department of Mental Health Services (DMHS) had clear, outcome-based performance measures in contracts combined with a comprehensive system of oversight.

Very few contracts required specific data collection and reporting, outcomes-based benchmarks with clear performance measures and milestones tied to payment despite these being widely accepted best practices. Similarly, very few contracts had automatic sunset provisions and requirements that contractors would have to reapply in a competitive bidding process.

There are substantial impediments to transparency. The biggest of these is that contract data for human service contracts is not kept in any systematic way. As a result, it is nearly impossible to gather information on these contracts.

Structural Deficiencies in State Oversight

Many of the most significant oversight decisions and processes are subject to few if any formal rules. The Department of Public Purchasing (DPP), which has primary responsibility for procurement in NJ, regulates and enforces only one part of the process: bidding. Moreover, contracts that go through DPP are estimated to account for only 50% of the total number of contracts in which the state is engaged. Strikingly, services provided directly to NJ's citizens through third party contracts are exempt entirely from DPP oversight, including bidding requirements.⁴ In 1976, the Attorney General issued an opinion indicating that DPP is not required to exercise oversight of the procurement process where the end user of a purchase is a third-party, rather than the state itself. Notably, this includes most of the services with which the public is concerned, for example, the provision of the overwhelming majority of human services, such as those provided to the developmentally disabled, to abused children or to struggling families, not to mention the detention and rehabilitation of a large number of criminals. As a result of this exemption, regulations governing the contracting process for these critical services are left to the individual departments. While some departments have created their own regulations, others have not. In all cases, the regulations fail to ensure sufficient protections for the vulnerable clients who received the services and the taxpayers who pay for them.

The Independent Office of the State Comptroller (OSC) and the legislative Office of the State Auditor (OSA) both have authority to review decisions and audit processes.

⁴ This opinion continues to define the parameters of DPP oversight today so that oversight of contracts for which the end-user is a party other than the state ("Third-Party Contracts") is entirely decentralized, handled by each department as it sees fit.

However, both agencies' roles are limited by resources and regulations to after the fact, retroactive analyses of only a small group of contractors. The State Commission of Investigation (SCI) also conducts investigations relevant to oversight, but is similarly limited. They investigate only when there is reason to think there is something that needs investigation and are, as currently constituted, not in a position to evaluate systemic issues and recommend changes before disaster strikes or money is wasted.

There are no institutionalized mechanisms within state government to ensure that sufficient resources exist so that individuals responsible for the majority of oversight are able to do the job well. Simply put, the budgetary process does not build in the cost of oversight of contractors at individual state agencies.

There does not appear to be any agency within the state with the capacity or competence to monitor the overall efficiency or effectiveness of resources allocated to contractors. OSC and the Office of Management and Budget (OMB) are prime candidates, with relevant competencies, but neither currently has a mandate or the resources to do so.

Lack of Oversight has had significant consequences for vulnerable people and for New Jersey taxpayers and is continuing to place assets at risk

- A lack of contract monitoring at DCF's Division of Child Protection and Permanency (DCPP) leaves children vulnerable to being served by inadequate providers
- Lack of oversight at DHS's Department of Developmental Disabilities led to substantial waste of taxpayer money with little assurance that services for which the state has contracted are being provided
- Lack of oversight at DOC's Residential Community Release Program (RCRP) led to assaults and deaths in the facilities as well as in communities
- Lack of oversight of the state's Hurricane Sandy relief and rebuilding programs led to the inappropriate denial of aid to thousands of families and businesses

RECOMMENDATIONS

In drafting recommendations, our biggest priority is to ensure the institutionalization of oversight as an unseverable element of the contracting process. We do this primarily through statutory and regulatory changes or additions that do the following:

- Eliminate the budgetary disincentive to fund administration, ensuring sufficient resources for other recommendations
- Eliminate the blind spot for third party contracts
- Fill gaps in oversight for both the RFP generation and contract management stages of the process, and
- Create capacity and a mandate for systemic oversight.

Statutory Changes and Additions

Eliminate the Gaping Hole Caused by the Exemption for Third-Party Contracts Every statutory change listed below should make explicit that its provisions apply to third-party contracts.

Sufficient Resources Requirements The legislature should enact legislation that conditions the issuance of service contracts on sufficient resources to oversee those contracts and provides a floor on the level of resources that may be deemed sufficient.

New State Contract Manager Requirements The sufficient resources requirements should explicitly include managers to rebuild the corps of State Contract Managers. Every State Contract Manager should also have expertise in both contract management and the substantive area of the agency.

A Ban on Outsourcing Oversight The State should eliminate any ambiguity around whether oversight can itself be managed by a contractor with a clear statute precluding the outsourcing of oversight activities.

Compulsory Contract Costing Before a contract is let, the state should require a three-step cost comparison including ABC accounting, an avoidable cost analysis and a comparison of avoidable cost with the contract price.

Make Certain State Commission on Investigation's Recommendations Binding The legislature should enact legislation making recommendations from SCI investigations binding under certain conditions.

Require all human service contracts to establish mechanisms for client, family and line worker voice. The legislature should enact legislation that requires DHS to establish an ombudsperson to represent clients, their families and line workers and community oversight committees that have formal and ongoing roles in enforcement.

Include all state contract managers, state employees, contractors and contractors' employees who raise questions about the quality of service being delivered under the New Jersey Conscientious Protection Act (CEPA). At present, only nurses are covered for whistleblowing related to quality of service issues. We propose to extend this protection to all state and contract workers and managers.

Rebidding Requirements The State should require that all human service contracts be rebid after, at most, 3 years.

Transparency from bids through contract execution All information relevant to determining the effectiveness and efficiency of every contract should be made publicly available in a centralized and standardized format.

Authority and Appropriations for Data Systems Legislation mandating and enabling the development of appropriate data systems will facilitate the other recommendations included here.

Regulatory Changes

Exemplary service providers should be involved in the drafting (as opposed to just the comment period) of the regulatory requirements derived from the authority granted in the above statutory requirements. In addition, the following regulatory changes should be made under existing authority, again with exemplary service provider input in the drafting stage. These changes should apply to third-party contracts.

Additional Requirements for all RFP's and Contracts DPP should provide additional standard language to be included in all RFP's to ensure contract terms that provide additional protections to the state and taxpayers

Detailed requirements for Data Systems To be effective, systems and the data contained in them must be standardized. Regulations should be created to effectuate this.

Improve Data System to Facilitate Better Oversight and Meta-Oversight

A data system should be created that is ubiquitous, centralized, accessible and includes data that can be used to hold contractors and contracting units accountable.

FULL REPORT

Introduction

States provide a broad array of services that directly affect residents' lives. Foremost among these are critical human services provided to the most vulnerable among us, from child protection to the treatment of the disabled. Equally critical are those services involved in the protection of the rest of the population from others, such as the handling of convicted criminals. Add to these the construction and management of infrastructure, the protection of the environment and the administration of social programs like Medicaid and welfare and the picture of just how much we are all affected by what government does becomes clear. Because of this, we all have a great interest in how well these things are done. At the same time, because these services are taxpayer funded, we also have an interest in the cost of their provision. As such, the fact that the state contracts with private companies to provide ever more of these services takes on a heightened sense of urgency. As a corollary, the means by which states oversee these contractors goes from an archaic matter of public administration to a vital matter of public interest. While there is much debate surrounding the merits of privatizing public services, to the extent that it is being done, all sides should agree that states have a duty to ensure that clients are receiving quality services and taxpayers are receiving a good value.

Issues in the wake of Hurricane Sandy bring the issue into focus. Documents released by the Fair Share Housing Center paint a disturbing portrait of what can happen when oversight is neglected. Contractors awarded multi-million dollar contracts and charged with administering millions in Sandy Recovery funds were supposed to be overseen by the Department of Community Affairs (DCA). But last December, the Christie Administration terminated the largest Sandy contractor, HGI (Hammerman & Gainer) which had a 3 year, \$67.5 million contract to manage the RREM program⁵, and more recently, the URS Corporation, which had a \$20 million contract to supervise the rebuilding of homes destroyed in the hurricane⁶. Their failures had far-reaching consequences for Sandy victims. Official guidelines for the Renovation, Reconstruction, Elevation and Mitigation (RREM) program that DCA was in charge of overseeing were not adopted until five months after the program started and were not made available to the public. Recovery centers frequently lost applications or provided misleading advice on what documentation was needed, ultimately thousands of homeowners were wrongly found to be ineligible and the appeals process was poorly publicized.⁷

⁵ Colleen O'Dea, "Botched Process Denied NJ Residents Millions in Sandy Relief," *NJ Spotlight*, Feb. 7, 2014.

⁶ Matt Katz, "NJ Quietly Fires Second Contractor Hired to Help Sandy Victims," *NJ Spotlight*, Feb. 14, 2014.

⁷ Fair Share Housing Center, et al., "The State of Sandy Recovery: Fixing What Went Wrong with New Jersey's Sandy Programs to Build a Fair and Transparent Recovery for Everyone," Housing and Community Development Network of New Jersey, January 2014, <http://www.hcdnnj.org/assets/documents/report%20state%20of%20sandy.pdf> (accessed Feb. 2014)

This is not merely a matter of poor governance of emergency funding, however. While state governments are actively engaging in government contracting, research strongly suggests that government capacity to provide adequate and effective oversight has dwindled.⁸ The two keys to contract oversight are (1) well-written contracts adequately defining the responsibilities of the contractor and the protections of the state and (2) strong, experienced, well trained managers with a deep knowledge of the activities they are monitoring and time to do the job well. Unfortunately, between 2004 and 2011, the size of the state workforce in New Jersey shrank by 36,319 while the total value of contracts held steady and in some years increased quite significantly⁹. Management professionals in both public administration and private sector supply chain management agree that strong, relational contract oversight is critically important to ensuring that contractors are fulfilling their obligations and that taxpayers are receiving quality public services.

When employment is shifted to another party that is paid to provide services, the lead employer is simply “less able to monitor performance, since those doing the work are now potentially hidden within another organization.”¹⁰ Best practices in the business literature¹¹ suggest that lead firms maintain quality in services delivered by their subcontractors, by providing for 3 things:

- Clear and explicit guidance on what is expected
- A system of monitoring and auditing to ensure that those standards are followed
- Significant penalties in the face of failure to meet goals

Given the drastic decline in the state workforce, and the number of Garden State citizens dependent upon the services of contractors, it is crucial that we understand the state’s capacity to manage and oversee them. What we have uncovered is a stunning lack of effective oversight in the state due to the stripping out of experienced state contract managers and the overloading of those who remain. As a consequence, largely what we have is oversight by audit and expose, which only catches problems after they arise and in many cases only once they have become quite severe.

The contracting process proceeds in three stages:

1. RFP generation
2. Bidding
3. Contract management

The RFP generation stage is critical because it is here that the terms of the contract are created. Prospective contractors bid on the RFP and the terms of that RFP ultimately become the vast majority of the terms of the contract between the state and the winning bidder. Thus, over the course of the process the RFP essentially becomes the contract, meaning that the RFP also effectively defines what the state can demand of the contractor and what remedies are available if the contractor fails to live up to its duties. We focused

⁸ Van Slyke, David M. “The mythology of privatization in contracting for social services,” *Public Administration Review* 63, no. 3 (2003): 296-315.

⁹ Despite our best efforts to arrive at comprehensive numbers, we have only been able to obtain figures regarding Department of Purchasing and Property contracts. The state Office of Management and Budget generally estimates that these contracts account for approximately 50% of all state contracts. We have no data about the other 50%, which includes all human service contracts.

¹⁰ Weil, *The Fissured Workplace*, 59.

¹¹ *Ibid.*, 63-73.

far less on the bidding process, as this process is the most heavily regulated by far and has been studied by others. Contract management covers the process by which the state ensures that contracts are being properly executed by contractors. It involves both people who maintain relationships with contractors and clients, and systems that facilitate the work of those people. In analyzing these three stages, we also learned about the overarching institutions — laws, regulations and policies — governing the entire process. We found significant issues in both of the stages that we studied in depth as well as in the overarching institutions. Where legal and administrative structures exist, they are not being effectively implemented. Where they do not exist, people and systems are not sufficient to compensate.

Our recommendations, based both on our findings and our review of the literature, are designed to drastically improve the quality of New Jersey’s oversight of its contractors and thus make it a better steward of the public interest. We argue that quality oversight should be seen not as a luxury to be dispensed with in the face of austerity but as an inseparable element of the contracting process. Where our recommendations would lessen the cost savings sought from privatization, the conclusion should not be that oversight is too expensive, but that that the particular service may not be a good candidate for privatization. We are not taking a side in the debate about the merits of contracting with third parties to provide services to state government — beyond stating that there are instances where it makes sense and instances where it does not. We aim instead to inform that debate by demonstrating that to reap the benefits of hiring contractors, New Jersey cannot continue to overlook oversight.

Methodology

In conducting our review of the New Jersey state government’s capacity to oversee its contractors, we analyzed a rich source of relevant documents, including applicable New Jersey statutes, administrative code provisions, executive orders, government circulars, organization charts, service contracts/RFP’s, select reports from the Office of the State Comptroller and news articles. We also interviewed current and former state employees from as many departments as possible, as well as outside experts. In addition, we reviewed two OSC audits of contractor oversight — Department of Human Services’ (DHS) Department of Developmental Disabilities (DDD) and the Department of Correction’s (DOC) Residential Community Release Program (RCRP) — to support a more in-depth look at particular instances where oversight issues we had identified in our research had significant consequences in practice. Finally, we reviewed reports and data available on the yourmoney.nj.gov website.

We had a difficult time getting at what we needed: data about state contracts not held by the Department of Purchasing and Property was not available and much data on employment in oversight-related positions was not kept in any way that made it easy to request. One overarching issue with OPRA requests is that they are for specific documents, rather than answers to research questions. This often made us feel as though we were playing a game of twenty questions with NJ state agency officials. Additionally, responses

to our OPRA requests were often considerably delayed, redacted and in some instances, never provided. DCF refused to cooperate with our requests to speak with staff. Although Executive Order 8¹² was an attempt to add some level of transparency, in truth it provides overly general and vague performance data.

This report is divided into four sections. Part 1 discusses why oversight is such a critical component of the contracting process. Part 2 describes problems commonly associated with government oversight and highlights their specific impacts in New Jersey. Part 3 includes several case studies that illustrate how oversight failures manifest themselves in practice and what the consequences are for taxpayers and the impact on critical public services. The case studies feature examples from four New Jersey agencies: the Department of Children and Families' Division of Child Protection and Permanency (DCPP), the Department of Human Services' Department of Developmental Disabilities (DDD), the Department of Corrections' Residential Community Release Program (RCRP), and the Department of Community Affairs-Administration of Hurricane Sandy recovery efforts. Lastly, Part 4 provides detailed recommendations designed to specifically for New Jersey but which we hope will serve as best practices that can be applied to other states.

PART I: Why is Oversight Important?

Oversight is a critical component of the contracting process for several reasons:

Protecting the public's investment

The state has a fiduciary responsibility to manage tax dollars and protect precious public assets such as forests, parks, beaches, rivers, roads, and bridges for future generations. Short-term thinking focused on income maximization can lead to disinvestment and neglect. When the state contracts out a service, it is still taxpayer money that is going to pay private contractors and the duty to protect the public's investment remains with the state. It is the responsibility of government to ensure that those who are most knowledgeable about the service being performed are involved in oversight so as to do the best job of stewarding our resources.

Ensuring a high quality of service

The state has a responsibility to ensure the quality of service provided. Whether government provides services directly or does so through a contractor, citizens expect their government to ensure the highest quality services for our communities.

Protecting vulnerable members of our society

The state has a duty to protect vulnerable members of society. We as a society have made a decision to utilize government to collectively care for our developmentally disabled, our elderly, and our children in crisis, our indigent ill, those in the criminal justice system when they are deprived of their freedom, and those struggling with addiction. These people cannot protect themselves. When private entities are entrusted with caring for

¹² Executive Order 8 was issued by the Christie Administration to improve transparency and increase the use of performance measures in government contracts. It is discussed in more detail below.

vulnerable populations, government is expected to ensure that they are carefully looking after those in its care.

Ensuring public health and safety

The state is obligated to ensure public health and safety. Everyone in society depends on government to ensure that we drink clean water, breathe clean air, and safely travel over roads and bridges. When we entrust private entities with these activities we are literally putting our lives in their hands. Careful oversight of government contractors is critical to community wellbeing.

Catching mistakes in real time

Finally, a central challenge is ensuring that the state fulfill these obligations in a timely way. State and local governments often identify and expose abuses after they happen and the damage has been done. Mechanisms that ensure effective ongoing monitoring are necessary so that problems can be identified and dealt with before people are harmed or state assets are destroyed, depleted or misspent.

In the supply chain literature, there is growing understanding about the danger of shifting too much responsibility to outside actors: “Businesses face significant risks if outsourced functions interact with decisions central to core competency or require nuanced understandings of customers, markets, or other external factors,” David Weil cautions. He goes on: “For example, companies have found that shifting major human resource and IT functions can backfire if it impinges upon the development of key staff positions in the case of personnel...The problem is intensified if business functions are hard to bring back in-house once outsourced.”¹³ Like supply chain management in the private sector, oversight is only as strong as the government’s capacity to undertake it — in other words, there have to be adequate numbers of people in government charged with doing it and the people who carry it out on the ground day in and day out must possess significant skill, experience and area-specific expertise. Also, once allowed to atrophy through attrition and lay-offs of skilled and experienced managers, this capacity is difficult to regain.

PART II: Findings from a Review of Contractor Oversight in New Jersey

Our interviews with state workers and analysis of the New Jersey documents described above reveal several common problems related to government oversight of private contractors. In particular, we found problems in contracts and the process by which the state creates the contracts, a critical issue given that the contract defines both the contractor’s obligations and the remedies available to the state in the event of a violation. We also found problems in contract management, the process by which the state ensures contractors are doing what the contract requires of them. At the heart of both of these problems is an overarching problem: a lack of institutional prioritization of oversight as evidenced by a severe lack of systemic oversight capacity. While these findings are based on state-specific evidence, many of these problems are endemic to poor government oversight and it is probable that New Jersey’s experience is not unique to our state.

¹³ Weil, *The Fissured Workplace*, 58.

Problems with Contracts and the Process by Which They are Created

Oversight costs are not incorporated into contracts or the decision to contract

Oversight requires that adequate funding be provided for government personnel to monitor performance. Yet, states' experiences have shown that contracting managers typically do not allocate sufficient levels of financial support to perform administrative and oversight duties.¹⁴ Establishing a process to estimate costs, including the costs of oversight and performing a cost-benefit or cost-effectiveness analysis, improves government decision-making regarding contracting out. However, government agencies tend to underestimate or exclude indirect and overhead costs associated with additional internal capacity to monitor, manage and oversee contracts.¹⁵ Researchers suggest that these hidden monitoring and transaction costs are approximately 20% of the total contract cost.¹⁶ The additional administrative costs associated with contracting out, in particular the cost of oversight, routinely fail to be incorporated into the contracting-out decision.¹⁷ Contract administration costs tend to be difficult to calculate since they include costs associated with contract negotiations, contract amendments and contract oversight.¹⁸ It is critical for states to fully understand how these additional costs offset or completely reduce any projected savings or efficiency gains promised by contracting out.¹⁹

In New Jersey, we found that the state failed to perform routine contract costing and/or included minimal specification of contract terms prior to the issuance of RFP's. This leaves the foundation upon which oversight might be built extremely weak. In most cases the bidding process locks in place the costs and requirements associated with contracting for a service. Thus, any RFP that is based on a poor (or non-existent) estimate of the costs and lacks thorough, clearly defined contract terms will make it extremely difficult to ensure that services are being delivered well and cost-effectively.

The decision of when to contract and when not to do so is fundamental and must be made with great care and deliberation. Yet, every official we interviewed confirmed that to their knowledge costing was not done in any systematic way. We found two concrete example of an agency comparing the costs of keeping a service in-house with the costs of contracting for it for the purpose of making a decision. The first was the Department of Corrections (DOC) in assessing how to best provide education services to inmates. The second was the Department of Transportation (DOT), which compared the cost of replacing highway lighting in-house against the cost of contracting for it. In both cases, however, costing was not done as thoroughly as best practices might suggest, in particular ignoring the cost of oversight in the calculation of the cost of contracting.

¹⁴ Hodge, Graeme. "Contracting Public Sector Services: A Meta-Analytic Perspective of the International Evidence." *Australian Journal of Public Administration* 57, no. 4 (1998): 98-110.

¹⁵ Young, Richard D. *On Cost Analysis Comparisons: Government In-house Provision vs. Contracting Out*. USC, Institute for Public Service and Policy Research, 2005.

¹⁶ See Sclar, Elliott D. *You don't always get what you pay for: The economics of privatization*. Cornell University Press, 2001; Marvel, Mary K., and Howard P. Marvel. "Outsourcing Oversight: A Comparison of Monitoring for In-House and Contracted Services." *Public Administration Review* 67, no. 3 (2007): 521-530; Pack, Janet Rothenberg. "Privatization and cost reduction." *Policy Sciences* 22, no. 1 (1989): 1-25.

¹⁷ Durant, Robert F., Amanda M. Girth, and Jocelyn M. Johnston. "American exceptionalism, human resource management, and the contract state." *Review of Public Personnel Administration* 29, no. 3 (2009): 207-229.

¹⁸ Young, *On Cost Analysis Comparisons*, 2005.

¹⁹ Carr, Jered B., Kelly LeRoux, and Manoj Shrestha. "Institutional ties, transaction costs, and external service production." *Urban Affairs Review* 44, no. 3 (2009): 403-427.

Very few officials were aware of the possibility of internalizing oversight costs into contracts. It did not appear to be a consideration for many contracting units. Not a single contract we reviewed included oversight cost recovery terms. The only explicit indication of a cost of oversight being built into an RFP was in the Department of Human Services (DHS) and it was fairly limited. DHS vendors are required to include the \$30,000-\$80,000 costs of CPA audits as line items in their budgets. However, CPA audits cover only the financial integrity of the vendors, not the specific contracts, nor the vendors' performance under them. This audit cost is only one small element of the overall cost of oversight.

Our analysis of RFP's shows similar findings. Most RFP's only require the bidder to provide program related costs such as the number of staff required or the number of beds, which leads us to conclude that the contracting out decision-making process lacks a robust cost comparison methodology. Few if any of the RFP's analyzed required bidders to include the proportion of overhead and administrative costs associated with providing the service. Therefore, contracting units are comparing their internal costs with an underspecified cost from a contractor. In the context of our RFP analysis this also means that costs such as management information systems and data collection systems associated with delivering the services are not routinely itemized or proportioned per contract, thereby limiting the effectiveness of making a cost comparison. Moreover, requests for the cost of tasks associated with monitoring and oversight of a specific contract were notably absent from the RFP's we reviewed. The proportion of administrative and overhead costs is necessary to ensure an accurate cost comparison between in house service delivery and contracting out. Additionally, once the contract is let, the RFP becomes one of the documents governing the contractual relationship, and therefore makes the RFP a critical document that should require and contain enough detail to be useful as a contract. The bottom-line is that contracting units are making the decision to contract out without having a complete picture of all the costs associated with contracting out the service.

Contracts do not contain adequate performance requirements and standards

Another challenge to performing oversight involves how contractor performance is measured. Research finds that states are struggling to develop strategies for gauging service outcomes or program effects. Developing sound and reliable performance indicators is an extremely difficult task because in truth, many of the most important outcomes cannot be quantitatively measured—instead what is required is the presence of knowledgeable, experienced individuals who remain close to the action, regularly in touch with all parties and can use all of their capacities to evaluate performance.

While it may be appropriate to consult contractors in determining which performance indicators will be used, ultimate responsibility and authority must reside with the state. Once government separates itself from its oversight and monitoring functions, state capacity continues to erode, and it becomes increasingly difficult to ensure transparency and accountability to the state.

Several best practice measurement and monitoring tools are available for contracting units to ensure quality service outcomes. For example, contracting units can employ onsite spot checks, unannounced site visits, and regular progress reports as routine built-in contract

monitoring and oversight tools.²⁰ Specific measurement criteria, understood by the contracting unit and communicated to the contractor are key for effective contract oversight. As a best practice, contracting units should clearly detail performance measures and specifications as early as the RFP process.²¹ By defining precise contract monitoring requirements in advance, contracting units communicate their goals, needs and requirements to potential vendors.²² This requires contracting units, especially contracting units delivering complex human services, to invest in developing and communicating explicit standards to bidders.²³ The specificities of the contract and effective contract oversight are closely linked; therefore as a best practice, contracting units must pay careful attention to articulating the outcome they want to achieve during the contract specification process.²⁴

Best practices research urges contracting units to specify as early on as the RFP what is being monitored and how this will be done. The New Jersey contracts we reviewed lacked detailed and meaningful performance requirements and standards. Only a minority of contracts had outcome-based performance measures and there was little evidence of performance targets being integrated into a comprehensive oversight system. Only the Department of Mental Health Services (DMHS) had clear, outcome-based performance measures in contracts combined with a comprehensive system of oversight. Additionally, very few contracts required specific data collection and reporting, outcomes-based benchmarks with clear performance measures and milestones tied to payment despite these being widely accepted best practices. Similarly, very few contracts had automatic sunset provisions and requirements that contractors would have to reapply in a competitive bidding process or specific evaluation procedures in cases when, given the specialized nature of the service or facilities being provided, they were not going to be competing against others for a contract.

Best practices suggest that contractors failing to deliver on performance standards should be subject to escalating sanctions and penalties. Sanctions and penalties typically entail a combination of fees or costs borne by the contractor or in severe cases cancellation of the contract.²⁵ A review of RFP's found that termination of the contract for cause was the typical sanctioning tool. This may be due to the complex nature of social service provision and the difficulty of evaluating outcomes and monetizing potential losses. The criteria for these sanctioning efforts should be based on the information gathered from monitoring and oversight of service inputs, outputs and outcomes, consistent with specific standards and measures previously developed and communicated to the contractor.²⁶ In general, we found neither the capacity to identify whether any outcome targets were being met nor the appetite to take action when they weren't.

²⁰ Amirkhanyan, Anna A. "Collaborative performance measurement: Examining and explaining the prevalence of collaboration in state and local government contracts." *Journal of Public Administration Research and Theory* 19, no. 3 (2009): 523-554.

²¹ Chen, Yu-Che, and James Perry. "Outsourcing for e-government: Managing for success." *Public Performance & Management Review* (2003): 404-421.

²² Lamothe, Scott, Meeyoung Lamothe, and Richard C. Feiock. "Examining local government service delivery arrangements over time." *Urban Affairs Review* 44, no. 1 (2008): 27-56.

²³ Weil, *The Fissured Workplace*

²⁴ Warner, Mildred E., Mike Ballard, and Amir Hefetz. "Contracting back in: when privatization fails." *The Municipal Year Book* (2003): 30-6.

²⁵ Weil, *The Fissured Workplace*

²⁶ Lambright, Kristina Trent. "Getting What You Ask For: Barriers to Proper Use of Service Monitoring Tools." *The American Review of Public Administration* 38, no. 3 (2008): 362-379.

In our analysis of RFP's, only four cases (*see Table 1, p. 37*) identified that the contracting unit would monitor and oversee service provision, via a formal monitoring system that was specified to some degree in the RFP. This is problematic for contractors because the majority of contracts we reviewed did not convey the information necessary for contractors to effectively perform their duties and how those duties would be evaluated/monitored.

Additionally, every RFP reviewed called for a pre-award or bidders' conference to discuss the particulars of the service being required. Yet, analysis of the RFP's presents little evidence to suggest that contracting units and vendors engage in any robust collaborative processes to jointly develop contract performance measurement and monitoring systems. For example, 14 out of 17 RFP's analyzed did not require or identify whether the contracting unit worked with or collaboratively developed service procedures and protocols, even though case study research suggests a collaborative approach to contract monitoring and oversight is more likely to yield successful outcomes.²⁷ This is the case because it allows for flexibility in determining contract specifications and may reveal specific performance standards and service delivery requirements that may be beyond the scope of the contractor.

New Jersey has attempted to fill this gap in a couple of ways. Executive Order 8 is an attempt to create systems that can improve oversight across the board. It requires the Treasury to implement performance-based budgeting, which should require contracting units to obtain performance data and incentivizing the inclusion of performance benchmarks in all contracts. Meanwhile, the publication of data on a free website should increase accountability. However, while performance-budgeting reports are available for 22 Departments, they collect and provide only aggregate information on the quantity of services provided, and no information on the outcomes for those served or the performance under individual contracts.

Problems in Contract Management

Decline in the number of experienced contract managers and inadequate training and qualification of remaining contract managers

A crucial step in ensuring effective contract monitoring and oversight is developing and maintaining the fiscal and human resource capacity necessary to implement and execute oversight. The contracting process requires implementation and interpretation of costing methods, contract management, management of third parties and effective communication practices. Effective supervision of these core elements requires that contracting units maintain strong management capacity.²⁸

In New Jersey, we found that there has been attrition at the level of experienced state workers who could function as contract managers and those who are acting as contract managers are not always qualified or properly trained to fulfill their roles effectively.

²⁷ Brown, Trevor L., and Matthew Potoski. "Transaction costs and contracting: The practitioner perspective." *Public Performance & Management Review* 28, no. 3 (2005): 326-351.

²⁸ Brown, Trevor, and Matt Potoski. "Contracting for management: Assessing management capacity under alternative service delivery arrangements." *Journal of Policy Analysis and Management* 25, no. 2 (2006): 323-346.

According to officials from every department studied, individuals who are designated contract managers often cannot provide effective oversight. An ideal contract manager must have an extremely high level of skill, experience and sophistication in dealing with private contractors. Unfortunately, many current contract managers are assigned this role by default and do not possess the necessary skills and training. Officials from every contracting unit studied echoed the sentiment from a DHS official that agencies “work with what [they] have.” With the exception of DOT, which has created its own internal training program, the only training most of these default contract managers receive is a three hour online tutorial. Other contract managers told us that they had repeatedly requested contract management training and never been provided it.

In addition, the skill set needed to manage and oversee in-house service provision can be quite different from the skills required to oversee contractor performance.²⁹ The shift in service delivery from the state, to a private contracting organization, is a transition that state personnel may not be prepared for³⁰ as it requires that they now manage outside vendors and contractors rather than follow procedure. This shift requires that contract monitoring personnel be [re]trained to address their new responsibilities. Budgeting officials must recognize this need, and as a best practice, allocate sufficient resources to [re] train procurement personnel to effectively monitor service outcomes regardless of the type of delivery. In short, contracting units require an infusion of budgetary resources to train employees and develop oversight capacity rather than reductions.

Most of the RFP’s we reviewed only include a cursory mention of overall staff training and they are mute on the specifics of contract monitoring staff. This silence hinders the contracting unit’s ability to assess whether or not bidders can effectively oversee and monitor the services provided.

Insufficient On-the-Ground Oversight Capacity

In addition to having well-trained contract management personnel, a state must also have enough staff to adequately oversee contractors. Unfortunately, our examination of staffing levels in New Jersey agencies shows that capacity of contractor oversight has been significantly reduced. Attrition is a predominant problem, depriving every contracting unit we studied of practical expertise while simultaneously increasing the burdens on those workers that remain.

The most prevalent theme that came through in the interviews we conducted is that attrition of contract management staff has significantly hampered the capacity of contractor oversight. This information was corroborated by our broader analysis. Examples from the Office of Information Services (OIS) and the Office of Auditing (OOA) within DHS and DDD are illustrative. OIS is responsible for many of the largest and most critical contracting projects in the state. There are two current large and vital projects currently underway. The first is the Consolidated Alliance Support System (CASS), a data management system used to consolidate data from welfare, Medicaid, child care, and food

²⁹ Lamothe, “Examining local government service delivery,” 29

³⁰ Romzek, Barbara S., and Jocelyn M. Johnston. “Effective contract implementation and management: A preliminary model.” *Journal of Public Administration Research and Theory* 12, no. 3 (2002): 423-453.

stamps and integrate these across agencies. The second is a digital imaging system designed to digitize paper documents and ultimately integrate them with CASS. Such projects are relatively new, as federal data management requirements rise and technology advances to make more sophisticated systems possible. They require enormous manpower and are conducted on top of the ordinary, ongoing responsibilities of OIS. Nevertheless, OIS's workforce has dropped from 82 in 2003 to 54 in 2012. A 2011 request by administrators for an increase of 28 workers to handle the additional work of CASS was denied. OOA is suffering from a similar problem. The Office of Auditing is responsible for ensuring adherence to contract requirements of the over 400 vendors hired by DHS, most of which provide services to DHS clients (e.g., the disabled, mental health patients, family development and welfare recipients). More specifically, OOA conducts full contract audits, desk reviews (i.e., review of financial audit) of all 400+ vendors' contractually required CPA audits (obtained and paid for by the vendor); and risk reports. All this work is being done by 30 staff. 12 years ago, there were 60.

The result of the decline in staffing in OOA is a concurrent decline in the number of audits conducted. There used to be roughly 150 full contract audits annually. Now only about 125 audits are conducted a year, split 50/50 between full contract audits and consulting reviews. This is problematic because full contract audits are thorough rather than perfunctory, and the only ones that cover any programmatic checks (e.g. number of clients served, number of beds provided etc.). Consulting reviews are lower-level audits looking at particular issues agreed between OOA and the agency. In other words, the most thorough audits have been reduced by almost 60%. Furthermore, the more than 400 annual desk reviews are conducted by only 1.5 DHS staff members.

The Department of Developmental Disabilities' (DDD) contract managers have suffered a similar fate. The contract managers for the fiscal side of the DDD play an essential role in oversight because, unlike the program side of DDD, these managers know how much each residential facility receives to operate and they have the ability to stop payments. Knowledge of a facility's budget means that their site visits can be especially important because their inspections can be particularly thorough--for example, they can tell when they walk into a house and inspect refrigerators and pantries whether funding is being appropriately channeled. But these site visits are taking place less frequently. Managers spoke candidly: "They don't get out nearly as often because we are buried in paper." While a decade ago they had 12-15 contract managers, they are now down to eight people with one supervisor responsible for overseeing all contracts at DDD.

An Oversight of Oversight: Systematic oversight is not a priority across agencies

Our analysis of New Jersey oversight policies and practices suggest that there are significant structural deficiencies in the state's overall approach to oversight. First, many of the most significant oversight decisions and processes are subject to few if any formal rules. The burden falls to the individuals within contracting units to ensure that contractors are performing honestly and delivering services well and cost-effectively.

There are two structural issues in particular that contribute to this dynamic. Even though the Department of Public Purchasing (DPP) has primary responsibility for procurement in New Jersey, it only regulates and enforces one part of the contracting process: bidding. Despite a few regulations designed to protect the state from poor performance, development of RFP terms and the actual oversight responsibility is left almost entirely to the contracting units themselves. Furthermore, for services provided directly to New Jersey's citizens, contracts are entirely exempt from DPP oversight, including bidding requirements. This leaves the governance of the contracting process for these critical services to the discretion of understaffed Departments. Individual Departments like DHS, DCF and DEP can issue their own regulations to govern the contracting process. Some do. Some do not. But in all cases, the regulations fail to provide the necessary requisites to ensure that RFP terms protect the state, taxpayers and clients receiving the services. They also fail to ensure sufficient resources for performance management. It is worth mentioning that the independent Office of the State Comptroller (OSC) and the legislative Office of the State Auditor (OSA) both have authority to review decisions and audit processes. Their role, however, is limited by resources and regulations to post-hoc retroactive analyses of only a small group of contractors.

Second, there are no institutionalized mechanisms to ensure that sufficient resources exist for the individuals responsible for the majority of oversight to do the job well. In fact, departmental decision-makers may be facing strong incentives to cut oversight while maintaining or increasing contracted services, leading to the lack of qualified contract managers and quality systems. Much of this derives from a budget process that prioritizes service delivery over administration, which includes oversight resources. Not only is it more difficult to get funding for oversight at the outset; oversight also belongs to a class of expenditures most likely to be cut when cuts are necessary.

Finally, there does not appear to be any agency within the state with the capacity or competence to conduct analyses across agencies, looking at the overall efficiency or effectiveness of resources allocated to contractors. The OSC and the OMB are prime candidates, with relevant competencies, but neither currently has a mandate or the resources to do so.

Together, these deficiencies reflect the lack of priority given to oversight, which is all the more troubling given the significant amount of contracting going on. This lack of priority has predictable results for oversight in practice, as seen in the case studies in the next section.

PART III: Case Studies: Examples of Failed Oversight and Their Consequences

Four cases highlight how oversight failures manifest themselves in practice and what the consequences are for taxpayers and the services the respective agencies are meant to deliver. The first case is DCF's Division of Child Protection and Permanency (DCPP), where a lack of contract monitoring systems makes it difficult to hold service providers who provide poor quality services accountable. The case remains somewhat general, as DCF would not cooperate with our requests for information, but the broad point remains. The second is the DHS's Department of Developmental Disabilities, where poor oversight has led to substantial waste of taxpayer money with little assurance that services for which the state has contracted are being provided, let alone provided well. The third case is DOC's Residential Community Release Program (RCRP) which has recently been the subject of a great deal of publicity for oversight failures that have had tragic consequences. The fourth and most recent case is DCA's Reconstruction, Rehabilitation, Elevation and Mitigation RREM program, which was implemented to assist in Hurricane Sandy recovery efforts. In all four cases, contractors are used to provide services to particularly vulnerable or high-risk clients. In all four cases, at least one of the key phases of the contract oversight process has failed to ensure that clients are well provided for, that taxpayer's are getting good value for their investments, and that citizens are protected from danger.

CASE STUDY 1 — ***Department of Children and Families: Division of Child Protection and Permanency***

The Department of Child Protection and Permanency (DCPP), formerly the Division of Youth and Family Services, provides a good example of the challenges posed by a lack of a designated point person responsible for monitoring contracts and for contract monitoring systems. DCPP is charged primarily with protecting children from abuse and neglect. DCPP provides services to families designed to reduce the risks of abuse and neglect, services to children to help them cope with the consequences of abuse, and services to both children and their parents designed to rehabilitate families that have been disrupted by abuse and/or neglect. In most cases, these services involve therapy and/or education programs provided directly to family members. In some cases, residential treatment programs are required. The vast majority of these services are provided by for-profit and not-for-profit contractors, at a cost of hundreds of millions of dollars a year. DCF intervenes in the lives of an estimated 100,000 children each year.

Most contractors operate on fee for service (FFS) contracts that render them eligible to provide services to DCPP clients provided they meet and continue to meet certain conditions. For example, therapy providers and psychological evaluators must maintain minimum licensing requirements within their fields.

This creates a pool of providers who should all be qualified to provide necessary services to DCP's clients. While the pool is generated by a contracting unit within DCF, contractors are matched with clients by state-employed social workers that serve as case managers for a given number of clients. When a family or family member on a caseworker's caseload needs a service, the caseworker chooses a contractor from a list of those in the pool that are contractually eligible to provide that particular service. The list generally contains the names of groups, such as psychologists' practices, rather than the names of all individuals employed by the group. Once the service is provided, the contractor submits an invoice to the caseworker, who, along with his or her supervisor, signs off on the invoice, before submitting it for payment.

Under this system, the caseworker is the primary state employee in a position to assess the quality of the services being provided to the client. Unfortunately, caseworkers are not informed of the terms of provider's contracts or any individuals who might be precluded from providing services under contract for a particular reason. Because of this lack of communication, it is possible that work could be subcontracted to someone who has a record of endangering children or has even lost their license because the state does not follow up with its subcontractors adequately. For example, if John Smith Medical Group employed Bob Johnson, who for licensing or other reasons is not permitted to provide therapy to children for DCP, a caseworker who needed child therapy for a client and chose John Smith Medical Group would be the only individual in a position to know if Bob Johnson was providing the service in violation of the contract but would not know that the use of Bob Johnson was a violation. Nor is there any institutionalized mechanism for caseworkers to communicate to the contracting unit any quality issues they see with particular providers. Because there are dozens of caseworkers in each local office and contractors generally serve multiple local offices, a contractor can provide poor services to dozens of clients with no repercussions. Thus, psychologists who routinely provide poor reports and therapists whose services are routinely ineffectual continue getting paid taxpayer money to provide services even though many caseworkers are aware of the poor quality of their work.

This issue is compounded by time pressures of litigation, which is common in child protective services and often compels caseworkers to choose the available provider rather than the best provider. As long as they remain on the list, contractors continue to be used. Because there is no institutionalized means for the state to hold poorly performing contractors accountable, they are likely to remain on the list, providing services that impact children, families and taxpayers. The solution to this may be fairly simple: a database in which caseworkers can see a "no-fly-list" and can enter complaints about providers which can then be referenced by the contracting units and a point person who will keep track of such reports and function as the agency's institutional memory with regard to contractors.

Please note, DCF refused requests to interview people for this study.

CASE STUDY 2 - *Department of Human Services: Department of Developmental Disabilities*

The Department of Developmental Disabilities (DDD) provides a more dramatic picture of oversight problems that have resulted in substantial waste of taxpayer dollars and little information about the quality of services provided. DDD provides services to individuals with legally defined “developmental disabilities.” These include, among other disabilities, mental retardation, autism, cerebral palsy, epilepsy and spinal bifida. DDD serves over 35,000 of New Jersey’s most vulnerable citizens with residential treatment programs, training, medical services, therapy and more. These services are funded by DDD at a cost of nearly a billion dollars and generally provided by for-profit and not-for-profit contractors. Like those in DCPD, DDD employs case managers to coordinate services for its thousands of clients while the contracts themselves are supposed to be monitored by contract administrators.

In 2009, OSC audited DDD’s oversight of these third-party contracts.³¹ The Comptroller found that “DDD does not adequately oversee the third-party contracts it awards. As a result, taxpayer dollars are not being spent efficiently and providers may not be delivering all services as required by the operative contract.”³² OSC found the following general weakness in DDD’s oversight:

- Contracts were renewed without a competitive process and with little review of past performance
- Contract modifications were granted with little review of the merits of the request
- Most contracts were either fee-for-service (FFS) or general service (GS) contracts which, when combined with other oversight failures, led to payment for services that were not being provided.
- DDD’s system of contract monitoring was not designed to uncover inappropriate or unreasonable expenditures.
- DDD’s system of contract monitoring was also not designed to ensure that services were being delivered as prescribed.³³

These specific failures have resulted in both inefficient expenditures and poor information about the quality of services being provided. The contracting process is hampered by limited review of renewals and modifications and by the lack of performance-based payment structures. In 2008 alone, 95 contracts worth over \$2 million each, including 23 worth over \$10 million each, were renewed without competitive bidding and with limited review of past performance due to the absence of procedures and systems to collect, compile and maintain data on past performance. According to OSC, “if a provider is not identified as having had any significant problems in its delivery of services within the fiscal year, the contract is routinely renewed without DDD undertaking *any* deliberative process that considers fiscal and program performance.”³⁴

³¹ State of New Jersey Office of the State Comptroller, Department of Human Services, Division of Developmental Disabilities. A Performance Audit of Oversight of Third-Party Contracts, 2009, PA-05, Trenton, New Jersey.

³² *Ibid.*, p.6

³³ *Ibid.*

³⁴ *Ibid.*, p. 19, emphasis added

Similarly, contract modifications are approved throughout the year with limited review. OSC reviewed a sample of 10 contractors and found that modifications increasing payments by over \$21 million were approved with little review of the merits of the modification. DDD did not obtain documentation from its contractors, so it had no way of knowing if a request for new equipment, such as vehicles, was appropriate or necessary. While DDD did implement an electronic modification tracking system, OSC suggested that the system would not provide assurance that requests were appropriate.³⁵

The lack of performance-based payment structures compounds the problem, leading the state to pay for more individuals than actually received services. In 2008, DDD had 174 GS contracts and 106 FFS contracts. OSC found that the GS contracts did “not appear to be in the best interests of the state” because contractors were paid for the contracted amount of individuals serviced even though they did not actually service that many.³⁶ As a result, in 2008 taxpayers paid for service provision for 405 individuals even though only 323 were served, for an excess cost of \$1.4 million. Furthermore, some contractors did not even have the capacity to serve the number of individuals required by their contract. DDD indicated to OSC during the audit that it intended to switch contracts for all future providers to FFS. OSC expressed concern. While FFS contracting does ensure that contractors are paid only for the number of individuals served — subject to a monitoring system that can verify the accuracy of invoices — FFS continues paying regardless of outcomes. In effect, ineffectual or poor quality services are reimbursed at the same rate as effective services. OSC recommended the use of a Milestone Payment System (MPS) that would pay contractors for the results of their efforts.³⁷

Fiscal performance in existing contracts was also poorly monitored. For example, in 2008, DDD did not review contractors’ expenditure reports thoroughly enough to identify \$160,000 of inappropriate expenditures by one provider that included Mediterranean and Caribbean cruises and trips to Nashville and Florida. DDD simply did not analyze specific expenditures for any providers. While the DHS Contract Policy and Information Manual (CPIM) doesn’t require such specific analysis, it does require on site reviews to be performed by contract administrators. This was not done. Instead, case managers were the de facto on site reviewers and, as in DCCP, communication between these social workers and the people with contract expertise was minimal. The result was very little scrutiny of expenditures. Just as problematic, DDD was up to three years behind in closing out contracts, a process designed to identify recoverable funds by the end of each fiscal year. As a result, up to \$15 million in over-payments to contractors had not been recovered. Finally, DDD also failed to follow up on legally required independent audits, with a significant number of contractors sampled having failed to provide any audit reports. DDD also experienced low oversight staffing capacity during this period. In 2008 fourteen contract administrators were responsible for nearly 280 contracts worth well over \$800 million.³⁸

³⁵ Ibid., p. 20

³⁶ Ibid., 21.

³⁷ Ibid., 22.

³⁸ Ibid., 3.

Monitoring of program performance was equally poor. DDD case managers monitor the individuals who are receiving services through the agency. They are required to conduct either monthly or quarterly in-person visits with clients, depending on the clients' circumstances, and to generate specific reports for each visit. Given the role of case managers as the primary advocates for highly vulnerable people, these reports contain critical information. However, OSC found that a sample of case managers regularly did not fully complete required reports or did not sign off on supplementary forms such as medical records. OSC reviewed over 1200 reports and identified well over one-third as incomplete or copied verbatim from prior reports. As with fiscal oversight, lack of capacity may be a significant factor: case managers had caseloads as high as 500 individuals whereas national standards are 50 or fewer.³⁹ The OSC has made several recommendations to DDD aimed at improving contract oversight and monitoring. The recommendations include establishing procedures to ensure that provider expenditures and reports are complete and supported by relevant documentation, and implementing systems to ensure competitive procurement of third party contracts.⁴⁰ A follow up OSC report suggested that even though DDD was moving in the right direction, significant work remains to be done regarding developing procedures to ensure provider compliance with contract requirements,⁴¹ in particular, ensuring that case managers complete accurate site visit reports.⁴²

CASE STUDY 3 — *Department of Corrections (DOC): Residential Community Release Program*

DOC Office of Community Program's halfway houses, formally called Residential Community Release Programs (RCRPs), present perhaps the most egregious example of the dire consequences that can result from a lack of oversight of contractors: poor oversight contributed not merely to substantial waste of money, but also to several violent deaths. In 2010, David Goodell, escaped from an RCRP in Newark and killed a young woman in Newark who had spurned him. The same year, Rafael Miranda escaped from another RCRP and shot a man in Newark on the sidewalk after 4 months at large. He was three miles from the RCRP. The year before, Valerie Parziale escaped from an RCRP in Trenton and slashed a man's ear in a liquor store. Prosecutors had no idea she was a fugitive.⁴³ And in 2009, Derek West Harris was killed at an RCRP by gang members looking for \$20 when he only had three. Mr. Harris was in the RCRP awaiting a hearing after his arrest for driving an unregistered vehicle.⁴⁴

OCP is the office within DOC charged with preparing criminal offenders to re-enter society productively and reduce their risk of recidivism. Towards that end, OCP contracts with not-for-profit companies to provide RCRP services to inmates who meet certain criteria.

³⁹ Ibid., 15.

⁴⁰ State of New Jersey Office of the State Comptroller, *A Performance Audit of Oversight of Third-Party Contracts*

⁴¹ State of New Jersey Office of the State Comptroller, Department of Human Services, Division of Developmental Disabilities. *Follow-up Report on Oversight of Third-Party Contracts*, 2011, F-05, Trenton, New Jersey.

⁴² State of New Jersey Office of the State Comptroller, *Follow-up Report on Oversight of Third-Party Contracts*, 5

⁴³ Dolnick, Sam, "At a Halfway House, Bedlam Reigns," *New York Times*, June 17, 2012, US Edition, New York Region

⁴⁴ Dolnick, "At a Halfway House, Bedlam Reigns," 2012

RCRPs are basically lower security facilities that increase the freedom of inmates to allow them to gradually acclimate and build the skills and job prospects necessary to ease their transition back to society. They are staffed by counselors who make roughly \$11 hourly, do not carry weapons and are not permitted to use force to restrain residents. RCRPs are a fast growing segment of the criminal justice system in New Jersey and were home to over 2,700 people by 2011.⁴⁵

Given the goals of RCRPs, eligible inmates are essentially required to be relatively low risk to public safety and close to getting out of confinement.⁴⁶ Facilities are supposed to provide for different target populations so that, for example, violent offenders are not placed with non-violent offenders. Prospective residents are funneled through two not-for-profit assessment centers charged with identifying proper placements. OCP is primarily responsible for overseeing RCRP contracts which were worth over \$64 million in Fiscal Year (FY) 2011. It had 18 employees charged with developing and overseeing RCRP contracts and tracking inmate movement as of FY 2010.⁴⁷

In 2011, OSC conducted an audit “to determine the effectiveness of DOC’s oversight of the contracts it awards to RCRPs.”⁴⁸ In addition to review documentation and interviewing DOC personnel, OSC examined six RCRPs run by 5 contractors. OSC found (1) that DOC did not adequately monitor RCRP providers, (2) that it overpaid them by almost \$600,000 over the nearly three-year span covered by the audit, (3) that it did not enforce provisions designed to ensure key practices, especially those for public and RCRP resident safety, (4) its process for disciplining RCRP residents was flawed, and contract decisions were made with limited information, making it difficult to know what the state was getting for its \$60+ million.

On top of OSC’s findings, the New York Times (NYT) investigated the facilities in 2012, and found that escapees were not properly reported to authorities and were not prioritized by authorities.⁴⁹ DOC also failed to ensure that eligibility requirements were met for RCRP residents: violent offenders and individuals with relatively low bail were being placed together in RCRPs.⁵⁰

While all of the flaws in oversight created the environment that allowed the tragic deaths highlighted by the NYT to occur, three of these flaws directly contributed to the outcomes: 1) failure to enforce escapee provisions, report escapees and pursue them, 2) failure to ensure proper disciplinary procedures followed, and 3) failure to review the assessment centers and monitor compliance with eligibility requirements. Lackluster oversight of basic regulations within the prisons also contributed in at least one case. While these measures would not have absolutely assured that these tragic events would not have taken place, failure to honor the limited requirements of contract provisions may be blamed for creating an environment in which bad things were more likely to happen.

⁴⁵ See Dolnick, “At a Halfway House, Bedlam Reigns,” 2012; State of New Jersey Office of the State Comptroller, Department of Corrections, Office of Community Programs. *Residential Community Release Program*, 2011, PA-13, Trenton, New Jersey.

⁴⁶ State of New Jersey Office of the State Comptroller, *Residential Community Release Program*, 1

⁴⁷ State of New Jersey Office of the State Comptroller, *Residential Community Release Program*, 2

⁴⁸ *Ibid.*, p. 3

⁴⁹ Dolnick, “At a Halfway House, Bedlam Reigns,” 2012

⁵⁰ *Ibid*

Escape prevention was a precondition of the law that allowed the creation of the RCRPs in the first place. New Jersey laws require that the DOC Commissioner must certify annually that each RCRP is secure and appropriately supervised, reflecting “concern for security when entrusting inmate rehabilitative programs to private nonprofit groups” and “because of frequent expressions of concern about escapes from work-release-type programs.”⁵¹ That poor enforcement of escapee provisions directly contributed to the two murders and the assault is all the more disturbing. All three crimes were committed by individuals who escaped and were not searched for by agency officials thoroughly or quickly. The murderers were more violent than was appropriate for RCRPs. David Goodell was in jail for assault. Rafael Miranda was in on weapons charges.⁵²

Meanwhile, Derek Harris was a victim of DOC’s failure to ensure that the facilities only accepted eligible inmates and properly oversaw that disciplinary procedures were followed. Mr. Harris was awaiting a hearing for traffic violations and was therefore not eligible to be in an RCRP in the first place. His killers were part of a higher risk population that did not belong in an RCRP, let alone the same RCRP as someone who failed to register his car.⁵³ Moreover, they planned the attack knowing that late at night, inmates were rarely punished for roaming outside their rooms. The overnight supervisor knew that inmates routinely left their rooms at night. The security camera overlooking Mr. Harris’s room had not been functioning for a month, which should have been identified on the oversight checklist and fixed. The men who killed Mr. Harris had recently been disciplined, sent briefly to jail, and then returned to the RCRP. One was sent to county jail after a fight in his room two weeks before the murder and returned only two days later. The other had been previously transferred into county custody and returned to the RCRP after only a week.

Our review of the RCRP contracts suggests that the problem had less to do with inadequate contract terms and more to do with enforcement of them. The RFP included performance targets and required the contractors to include plans to meet these targets in their proposals. The targets were also fairly clear, although they were output based not outcome based. And all proposals requested Quality Control and Quality Assurance Plans to be submitted by the bidder. The RCRP plans included, for example, procedures for facilities inspection, communication protocols with the contracting unit, surveillance techniques (redacted in OPRA requests), and procedures for complaints. The plans were designed to ensure that the bidder meet all the requirements of the contracting units Statement of Work. Moreover, as OSC noted in its audit, there were penalties built in for failure to perform key functions, such as escape prevention. The poor on-the-ground oversight and lack of enforcement, however, rendered these provisions functionally irrelevant.

For good reason, the law conditioned RCRPs on fairly stringent oversight requirements. In the end, the violations that led to three killings and an assault could have been identified by even the most basic of oversight; an occasional walk through, documentation and the enforcement of automatically enforceable contract provisions. As such, recommendations

⁵¹ State of New Jersey Office of the State Comptroller, *Residential Community Release Program*, 13

⁵² Dolnick, “At a Halfway House, Bedlam Reigns,” 2012

⁵³ See N.J.S.A. 30:4-91.2; N.J.A.C. 10A:20-4.4 – 4.7; Dolnick, “At a Halfway House, Bedlam Reigns,” 2012

from OCS's audit included updating RCRP evaluation forms and ensuring that internal DOC monitoring staff adheres to the requirements of the forms.⁵⁴ Additionally, OSC recommended unannounced spot visits and random selection of files to be reviewed.⁵⁵ As one of the killers said, his RCRP was "run by [a gang]" that does what it wants". To counter this perception, OSC also recommended that DOC strictly enforce contract requirements that RCRPs have secure holding areas, document and investigate escapes, develop and implement procedures to deter escapes, including appropriate security training for RCRP staff.⁵⁶ Certainly it should not have taken much for the state to notice that it was not actually being run by the agency.

CASE STUDY 4 — *Department of Community Affairs: Sandy Recovery*

The State's response to the impact caused by Hurricane Sandy presents a stark example of shortcomings in contract oversight and monitoring. In October 2012, Hurricane Sandy made landfall as a Category 1 Hurricane along the New Jersey coastline. The Federal Emergency Management Agency (FEMA) estimated that 56,100 residences sustained severe or major damage.⁵⁷ Moreover, of those reporting severe or major damage to their residence, approximately 49% were low to moderate income households.⁵⁸ In the months immediately following the storm, FEMA estimated that businesses incurred commercial property losses of \$382,000,000 and another \$63,900,000 in business interruption losses.⁵⁹ The storm had significant and crippling effects on statewide infrastructure from roads, railways and other public transport systems that sustained heavy flooding and damage from debris. These physical losses pale in comparison to the loss of life, physical and psychological effects associated with a natural disaster of this magnitude.

In order to best facilitate a coordinated response and recovery effort by both state and local entities, New Jersey was put under a state of emergency. This state of emergency significantly impacted the contracting out process in New Jersey. Under the state of emergency, purchases of goods and services could be made without regard to public bidding pursuant to N.J.S.A. 40A:11-6 and N.J.A.C. 5:34-6.1.

Various agencies such as FEMA and the Small Business Administration, and initiatives such as the Reconstruction, Rehabilitation, Elevation and Mitigation (RREM) Program — funded at \$710 million and Homeowner Resettlement Program (HRP) — funded at \$215 million⁶⁰ were established to assist in the recovery efforts. Our analysis examines the RREM program under the auspices of the Department of Community Affairs — Sandy Recovery Division. Three other programs also fall under the auspices of DCA as it relates to Sandy Recovery efforts — The Resettlement Grant Program, the Landlord Rental Repair Program (LRRP), and the Housing Mitigation Grant Program (HMGP). All of these

⁵⁴ State of New Jersey Office of the State Comptroller, *Residential Community Release Program*, 15-16

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ State of New Jersey, Department of Community Affairs, *Community Development Block Grant Disaster Recovery Action Plan*, 2013, Public Law 113-2, Trenton New Jersey.

⁵⁸ *Ibid.*, i

⁵⁹ *Ibid.*, ii

⁶⁰ State of New Jersey Governor's Office of Recovery and Rebuilding, *Recovery Initiatives*, <http://www.state.nj.us/gorri/plan/index.html> (accessed Feb. 2014).

programs have different policies and procedures in place with regard to administration and monitoring of Sandy Recovery Efforts. These overlapping and complementary programs greatly increase the complexity of meta-oversight at the state level. Given the fact that technology plays a crucial role in aggregating data streams, to effectively monitor the three programs and their interactions, DCA would have needed to allocate resources to enhance already antiquated data collection and processing systems and train staff in their use.

One key component of the RREM program is the establishment of two categories of contractors — those who administer the program and those who monitor the program.⁶¹ This further complicates the overall monitoring of the program as it relates to the compatibility and integration of systems, capacity of staff to evaluate contractor reports, and sharing of knowledge and information. Even though the RFQ for the management of the RREM Program states that the State Contract Manager is responsible for the overall management and administration of the contract⁶², RREM contractors were required to “perform management, file review, reporting and document management for compliance with all program policies and procedures. File documentation, document management, quality control, reporting, program and federal compliance, and issue tracking are also embedded requirements for this functional area” (RFQ for the Management of the RREM Program, 2013, p. 25). This ultimately means that RREM contractors remained at the forefront of contract monitoring and compliance. To aid in monitoring and compliance, contractors were required, per the RFP, to have data collection and storage systems that were compatible with the State’s MIS and the SSHIP HP-CMIS systems.⁶³ It remains unclear if this RFP requirement was met. The DCA did identify an internal monitoring agent⁶⁴ however it is unclear if the monitoring agent was provided with the requisite training, financial resources, and additional staff required to engage in effective contract oversight. Given the size and scope of the contract, and in light of our recommendation that oversight costs approximately 20% of contract value, this signals to us that the State quite likely lacked the internal capacity to effectively monitor and oversee the RREM program.

Contracting out under emergency circumstances presents tremendous challenges, but there must be protocols in place to ensure that those at risk are treated carefully and equitably. A 2014 analysis by the Fair Share Housing Center found that 79% of residents who appealed denials of funds for housing recovery were successful which raises questions about how well the firm hired to determine eligibility did its job. The report also found troubling racial and ethnic disparities. African Americans were rejected for RREM and resettlement grants at two and a half times the rate of whites. Latinos were also disproportionately rejected.⁶⁵ Moreover, numerous media reports suggest that those applying for, or those in the process of receiving, RREM funding lacked access to the

⁶¹ State of New Jersey, Department of Community Affairs, *Reconstruction, Rehabilitation, Elevation and Mitigation Program and Procedures* (RREM), 2013, Number 2.10.36, p. 6

⁶² State of New Jersey, Division of Purchase and Property, *Request for Quote for Management of the Reconstruction, Rehabilitation, Elevation and Mitigation Program* (“RREM”) for the State of New Jersey Department of Community Affairs, 2013, RFQ775040S, p. 53

⁶³ *Ibid.*, p. 27

⁶⁴ New Jersey Department of Community Affairs, “*RREM Program and Procedures*,” 2013, p. 6

⁶⁵ Fair Share Housing Center, et al., “*The State of Sandy Recovery*,” 2014, p. 8

feedback mechanisms required to voice their concerns and issues.⁶⁶ ⁶⁷ These deficits are in direct contradiction to the process stated in the DCA's Community Development Block Grant Action Plan.⁶⁸ Finally, documents analyzed by the Fair Share Housing Center suggest that even after contracts were let, program details and policies continued to be amended without going out for public comment.⁶⁹ Worse, in many cases, there were no policies in place until after the program started.

PART IV: Recommendations

The issues in the case studies above are not isolated problems but are widespread across state agencies and are rooted in inadequate institutions, systems and staffing. Based on the problems identified in our study of New Jersey contracting oversight policies and practices, we developed the following recommendations. While these recommendations are discussed in a New Jersey-specific context, the ideas behind them are applicable to any state or local government looking to improve their oversight of contracts.

In drafting recommendations, our biggest priority is to ensure the institutionalization of oversight as an unseverable element of the contracting process. We do this primarily through statutory and regulatory changes or additions that do the following:

- Eliminate the budgetary disincentive to fund administration, ensuring sufficient resources for other recommendations
- Eliminate the blind spot for third party contracts
- Fill gaps in oversight for both the RFP generation and contract management stages of the process, and
- Create capacity and a mandate for systemic oversight.

When operationalizing these goals, we were guided by several broad principles. *Underwriting all of the principles below is the bedrock notion that proper oversight is not negotiable. If the resources do not exist to properly oversee a contract, that contract should not be let. Oversight is a core governmental function and should not be outsourced.* The state must rebuild and preserve its oversight capacity. In such situations, it is the contract as a whole, including proper oversight, that is too expensive, not the oversight itself.

- *The quality of public services is as important as the cost.* A contract that lowers costs by sacrificing service quality is no great value. Good oversight is the only way to ensure that lower costs come from innovation and efficiency rather than a reduction in service quality.
- *Respect and Inclusion of providers and ground-level workers in formulating policy.* Many contractors do excellent work and have developed institutional knowledge and expertise that the state lacks. The current process does not serve providers either,

⁶⁶ *ibid*

⁶⁷ Katz Matt, New Jersey Quietly Fires Second Contractor Hired to Help Sandy Victims, *NJ Spotlight*, February 14, 2014, <http://www.njspotlight.com/stories/14/02/13/amid-criticism-nj-quietly-fires-2nd-sandy-contractor> (accessed Feb. 2014)

⁶⁸ State of New Jersey, Department of Community Affairs, *CBDG Disaster Recovery Action Plan*, 2014, p. 6-12.

⁶⁹ "Documents Obtained from Christie Administration Through Litigation Raise Questions of Mismanged Sandy Relief Funds", *Fair Share Housing*, press release, November, 2013, on the Fair Share Housing Website, <http://fairsharehousing.org/media/> (accessed Feb. 2014).

with surveys showing that they are frustrated and limited by the irregularity of the current system. Surveys of human service nonprofits found that current formal government feedback mechanisms do not generate the systematic change needed to improve the contracting out process^{70 71}. These reports indicated that human service nonprofit organizations do not have the opportunities or mechanisms to provide feedback directly to contracting unit officials or policy makers with the power to address structural deficiencies on the contracting out process.⁷² In fact, the reports suggest that nonprofits were more likely to provide feedback in direct meetings. As such, providers should have opportunity for input when regulations and rules are promulgated. Likewise, no one in the state knows more about service quality than the workers who have direct contact with clients and providers. Their voices must also be included in the process of creating new policy. What we are recommending are broad requisites to institutionalize and rationalize oversight to benefit all parties and allow the public to reap more of the benefits of the devolution of providers.

- *Systemic oversight is critical.* Meta-oversight is necessary to ensure that institutional requirements are being properly executed by the respective contracting units (state agencies). It also allows for analysis that can be useful in making changes to the system.
- *Competition is a necessary condition for privatization to be beneficial.* Absent competition, a contract goes from an incentive to innovate to provide better service more efficiently to an opportunity for patronage.
- *Retaining the discretion of well-trained experts is better than strict bureaucratic controls.* This applies to both contract managers and human services agencies as a whole. The goal is not to supplant the judgment of those with the most direct knowledge but to create institutional priorities that empower them. The qualitative aspects of service delivery are critical, especially in human services, and should not be reduced to a handful of discrete metrics. Retaining judgment and discretion is crucial.
- *Rebuilding administrative capacity will help line workers focus on delivering quality services.* It is crucial to recognize that the change in governance to involve more private providers involves a fundamental shift in the state's primary role and functions. Analogous to corporations that devolve their supply chains, the state must closely manage its contractors to ensure quality control and staffing should reflect this. The reporting should not fall entirely on line workers. Although it will always be important for workers to document their work, resources devoted to contract management could free them from some of the administrative burdens they currently handle by shifting them onto contract management staff for whom this is their primary competence and duty. Moreover, if contracting involves cost saving efficiencies, the additional resources we request should at least in part be paid for by recapturing some of those efficiencies, not to mention savings from proper execution of cost-recovery provisions that are not currently being enforced.

⁷⁰ Boris, de Leon, Roeger & Nikolova, "Human Service Nonprofits and Government Collaboration: Findings from the 2010 National Survey of Nonprofit Government Contracting and Grants," Urban Institute, Washington DC, 2010

⁷¹ Pettijohn, Boris, De Vita & Fyffe, "Nonprofit-Government Contracts and Grants: Findings from the 2013 National Survey," Urban Institute, Washington DC, 2013

⁷² *Ibid.*, 34

In sum, our recommendation is that the decision to contract out must be contingent upon a fully resourced and fleshed out system of oversight that is in turn contingent upon the restoration, articulation and preservation of the contract development and management role in state government. In other words, to ensure proper oversight, there must be an experienced manager who has deep knowledge of the service that is being delivered and the tools to do it well. This manager must serve as the node of the network, taking in information about what is going on in real time, and exercising the discretion to manage in the best interests of all. At its core, the work entails ongoing, active, flexible, relational management of the contract that respects, supports and consults the direct service providers and does not put the entire burden of performance measurement on them.

Here is how we would achieve this:

Statutory Changes and Additions

Eliminate the Hole in Third-Party Oversight

Every statutory change listed below should make explicit that its provisions apply to third-party contracts. While these contracts can still be designed and managed within the contracting unit — the entity with the most substantive expertise and the most direct connection to the contractors — they should be subject to these broad requirements and systemic oversight.

Ensure that Emergency Contracts are Not Exempt from Oversight

While there is a legitimate argument for the relaxation of competitive bidding requirements in the case of the dispensation of contracts to provide emergency relief, the case of Sandy relief shows that this raises the importance of the contract management stage of oversight. Legislation should make clear that where bidding requirements are relaxed, contract management requirements must remain.

Sufficient Resource Requirements

The legislature should enact legislation that conditions the issuance of service contracts on sufficient resources to oversee those contracts and provides a floor on the level of resources that may be deemed sufficient. In New Jersey, the law should require the State Treasurer to promulgate regulations detailing what constitutes “sufficient resources.” At a minimum, “sufficient resources” should be defined to ensure that every contract has enough qualified staff with sufficient capacity to properly oversee it. The U.S. Office of Management and Budget’s staffing formula provides a guide to what ratio should be deemed sufficient.⁷³ Human services contracts should have more staff relative to the size of the contract. The law should also provide a mechanism for evaluating whether a contracting unit’s resources, and in particular its staff ratios, are sufficient to maintain proper oversight. This will effectively cap the number and scale of contracts that can be let without an increase in management staff. While this may seem expensive, better oversight will offset some of the upfront costs through improvements in service delivery and better collection

⁷³ Michel, R. Gregory. *Cost Analysis and Activity-based Costing for Government*. Vol. 6. Gfoa, 2004. The ratio is roughly 1 contract manager to every 20-25 employees providing the service. The ratio declines slightly as the contract gets larger owing to economies of scale.

of penalties due to the state. Accounting for this true cost will also on occasion identify scenarios where services can be more efficiently provided in house. Insofar as the state OMB currently has the authority to evaluate contracting units' performance, it should be tasked with conducting assessments of "sufficient resources" in conjunction with its review of overall performance. The law should also appropriate funding to allow Treasury and the state OMB to increase their capacity accordingly. The State Comptroller and or the SCI should be granted the authority and resources to oversee the process and issue recommendations.

New State Contract Manager Requirements

In addition to ensuring sufficient numbers of contract managers, legislation must ensure that they have sufficient expertise. The State Contract Manager role should accomplish two things: (1) it should ensure that all contracts are managed by someone with the expertise and resources to protect the states' interests and (2) it should free up workers providing direct services from administrative burdens so they can focus on serving clients. To accomplish this, the State Contract Manager or Managers (depending on the demands of the contract) assigned to each contract should be individuals whose sole job is to oversee the contracting process, from RFP design through contractors' performance. State Contract Managers should both directly oversee contractors and aggregate information received from direct service workers, such as DCPD caseworkers. They should also serve as liaisons to OMB, Treasury, SCI and/or OSC, to facilitate systemic oversight. And they should be assigned to only one contracting unit. Treasury should be tasked with issuing regulations defining the minimum qualifications of this person. These qualifications must include both management capacity and substantive knowledge of their contracting unit's services. The hiring decision for State Contract Managers should therefore be made jointly between Treasury and the individual contracting unit. Comprehensive, ongoing training should be mandated for those not already qualified. This strengthened corps of contract managers would be paid out of the oversight and monitoring charge recommended above.

A Ban on Outsourcing Oversight

The State should eliminate any ambiguity around whether oversight can itself be managed by a contractor with a clear statute precluding the outsourcing of oversight activities. Outsourcing oversight does not absolve the state of its responsibility as steward of public resources. It merely adds another layer to be managed and remove final service provision further from the accountable state. The state is better served by developing internal expertise as the primary manager of its own contracts.

Compulsory Contract Costing

Before a contract is let, the state should require a three-step cost comparison:

1. There should be activity-based cost (ABC) accounting for the specific activity being proposed.
2. Once the ABC accounting has been done, an avoidable cost analysis in terms of actual dollars saved should be estimated.
3. The avoidable cost of the activity plus or minus the new costs of contract bidding and supervision should be compared to the contract price.

Make Certain State Commission on Investigation's Recommendations Binding

The legislature should enact legislation making recommendations from SCI investigations binding under certain conditions. SCI should be required to provide contracting units with overall ratings and those with the worst ratings should trigger binding recommendations. For example, on a three-point scale of Poor, Fair, Good, a contracting unit receiving a rating of Poor, would be required to follow through with SCI's recommendations within a timeframe set by SCI. It would be enforced through the same funding-denial mechanism instituted by Treasury, above.

Require all human service contracts to establish mechanisms for client, family and line worker voice

The legislature should enact legislation that requires DHS to establish an ombudsperson to represent clients, their families and line workers and a community oversight committee that has a formal and ongoing role in enforcement. These organizations would become partners in monitoring and enforcement of projects or facilities, which involves according them clearly delineated and publicly recognized responsibilities, providing access to the information a regulator has about non-compliance, standing to file complaints or sue under the regulatory statute and a seat at the table along with government investigators and contractors in negotiations regarding improvements, fines and penalties.

Include all state contract managers, state employees, contractors and contractors' employees who raise questions about the quality of service being delivered under the New Jersey Conscientious Protection Act (CEPA).

At present, only nurses are covered for whistleblowing about quality of service. We propose to extend this protection to all state and contract workers and managers.

All contracts should be rebid after, at most, 3 years.

Competition is an essential element of the argument in favor of privatization and cannot just be a matter of ensuring a minimum numbers of bidders. Contracts that do not require rebidding eliminate the key incentive for private companies to provide quality services. Instead they create a strong incentive for paying to play and leave legal, rather than market, mechanisms as the primary mode of contract enforcement. While any rebidding requirement opens the possibility for loss of the contract for poor performance that remains short of a full breach of contract, if the tenure is too long, the likelihood of any competitors being available when the contract is rebid goes down. Conversely, for many contracts, continuity is important. In such cases, too short a term is problematic. For most contracts, 3 years will achieve the appropriate balance. Where 3 years provides insufficient continuity, the state has a strong incentive to provide that service itself. Finally, to maximize the effectiveness of a rebidding requirement, data gathered using the mechanisms already listed here should be used to evaluate contractors' past performance (both on the particular contract and on any other contracts with the state). The contract should also be costed again in light of lessons learned from the prior contract. In this way, the state can benefit from its data gathering efforts and become a more informed consumer of contractors' services.

Transparency from bids through contract execution

At present, it is too difficult and time-consuming to obtain access to actual RFP's, bids and contracts. All of this information, not just for contracts overseen by DPP, but all contracts let by individual agencies to third party vendors must be made available on a publicly accessible database.

Authority and Appropriations for Data Systems

Technology has advanced far beyond the systems in place in most state agencies. Improved data systems can drastically reduce the resources required to provide direct and meta-oversight. Funding for a statewide data-system should therefore be appropriated for that purpose. In New Jersey, the Office of Information Technology, within Treasury, should be charged with responsibility for the system, in coordination with OSC, OMB, and relevant personnel from the various contracting units. DPP should be granted authority to promulgate regulations requiring all contracting units to have oversight data systems and providing the specifications such data systems must meet.

Regulatory Changes

Service providers should be involved in the drafting (as opposed to just the comment period) of the regulatory requirements derived from the authority granted in the above statutory requirements. In addition, the following regulatory changes should be made under existing authority, again with service provider input in the drafting stage. These changes should apply to third-party contracts.

Additional Requirements for all RFP's and Contracts

DPP should provide additional standard language to be included in all RFP's to ensure contract terms that provide additional protections to the state and taxpayers. Among these requirements should be:

- Regular, qualitative, multi-stakeholder evaluations of services provided conducted by a skilled, experienced manager who looks to service providers, line workers, clients and their advocates as people on the ground who know and care about how their clients are doing as important sources of information
- Specific data collection and reporting requirements
- Pre-established monitoring points (specific times) as well as an understanding that some monitoring will be random
- Independent monitoring or auditing of the contractor by certified professionals or community oversight committees,
- Outcomes-based benchmarks developed in consultation with the contractor with clear performance measures against which the process and acceptability of the work will be evaluated and corrective measures taken,
- Milestones tied to payment performance evaluation would include: consulting clients, client families and employees about their experiences with the contractor, monitoring consumer complaints, sanctions for poor performance and rewards for strong performance,

- End the practice of automatic contract renewals. All contracts would sunset after 3 years after which contractors would have to reapply in a competitive bidding process.
- Compliance with existing labor and employment laws including: the National Labor Relations Act, Fair Labor Standards Act, Occupational Safety and Health Act

Improve Data System to Facilitate Better Oversight and Meta-Oversight

Data systems serve several purposes, all of which make it easier to evaluate performance. A good system allows performance outcomes and expenditures to be tracked on a larger scale, it facilitates the work of “boots on the ground” by making it easier to orchestrate reviews and catalogue information, it bridges the gap between the “boots on the ground” and those that know what is in the contracts and it allows supervisors to track the work of the “boots on the ground.” Unfortunately most departments systems in New Jersey are antiquated or non-existent and none are currently capable of being mapped onto others. A data system should be created that has the following features:

- **Ubiquity:** All contracting units that issue service contracts should have data systems.
- **Centrality and Accessibility:** If all data systems are not the same, all individual data systems should be made to map directly onto a centralized system viewable at different levels to different groups (Legislature, OMB, OSC, and the Public). State Contract Managers should have primary responsibility for data entry within contracting units. They should input data on overall contract performance (e.g. cost overruns, fidelity to contract terms) and caseworkers’ complaints and assessments of client outcomes (e.g. client’s condition has substantially improved or this psychologist’s reports are frequently late and nearly identical to prior reports). Contractors should log objective, administrative data (number of beds, number of visits etc.) and performance data as set forth in their contracts, that can be cross-checked by the State Contract Manager and audited by higher-level reviewers (e.g. OMB, OSC, the Legislature, Researchers, the Public).
- **Accountability:** Systems should include data on contractor performance, including outcomes related to service quality as well as financial performance with respect to several measures (e.g. cost per client, cost per outcome, overall cost effectiveness, etc.)⁷⁴

These recommendations are intended to catalyze a conversation about how to redesign state contracting systems with the fundamental principle that oversight is a necessity — not an optional luxury—embedded in their DNA. Contract oversight is an essential element of a responsible contracting system that protects the public interest.

⁷⁴ State of New Jersey, Department of Mental Health and Addiction Services, 360 dashboard reviews may provide a good model. This model aggregates data from numerous data fields and benchmarks it alongside of statewide and regional averages.

TABLE 1: Request for Proposal (RFP) Analysis

Department	DHS	DHS	DHS	DHS	DHS	DHS	DHS	DOC	DOC	DOC	DCF	DCF	DHS	DHS	DHS	DHS	DHS	
Division	DMHAS	DMHAS	DMHAS	DMHAS	DMHAS	DMHAS	DMHAS	OCF	OCF	County of Mercer	Central NJ	Hudson County	DDS - Camden	DDS - Hudson	Family Development	DFD	DFD	
Case	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	
Comprehensive contract costing and design																		
Detailed program costs	H	H	H	H	H	H	H	H	H	M	M	M	M	M	M	H	M	
Detailed personnel costs	H	H	NP	H	H	H	H	H	H	H	H	M	M	M	L	H	M	
Specify monitoring / oversight personnel costs	L	M	L	M	M	M	M	L	L	L	L	L	NP	NP	NP	L	NP	
Detail and define impact on clients or recipients	L	L	M	M	M	L	M	L	L	L	H	H	H	H	L	L	H	
Outline how services delivered	H	H	H	H	H	H	H	H	H	H	H	M	H	H	H	NP	L	
Require identification of who delivers the service	M	M	M	H	M	M	M	M	L	H	M	M	NP	NP	M	L	L	
Compliance with laws and regulations	H	H	H	H	H	H	H	H	H	H	H	H	M	M	H	H	H	
Specify the workload of service providers	H	H	M	H	H	H	H	H	H	H	H	H	L	L	L	L	M	
Require contractor to carry insurance	H	H	H	H	H	H	H	H	H	H	H	H	NP	NP	NP	NP	L	
Specify clear and detailed incentives	L	NP	NP	M	NP	NP	NP	M	M	NP	NP	NP	NP	NP	NP	NP	NP	
Specify penalties and sanctions	L	M	NP	NP	L	L	L	L	L	L	NP	NP	NP	NP	L	L	NP	
Contract oversight and monitoring																		
Require service statistics to be reported	L	NP	H	H	L	H	L	L	H	H	H	L	L	L	L	M	L	
Performance -based acquisition and service contracting	L	L	NP	M	NP	NP	NP	L	M	L	NP	NP	M	M	L	NP	L	
Contracting unit established a formal monitoring system				H				H	H		M	M	NP	NP	L	L	M	
Is the monitoring system specified in the RFP	L	L	NP	M	L	L	M	L	L	M	M	NP	NP	NP	L	L	M	
Collaborate to develop performance measurement and monitoring system	L	L	NP	NP	M	NP	NP	M	M	L	L	L	NP	NP	NP	L	NP	
CU identified specific data to monitor performance	M	L	M	H	M	L	L	L	M	M	H	L	L	L	L	L	L	
CU identified specific data for benchmarking purposes	L	L	M	L	L	L	L	H	M	M	L	L	NP	NP	NP	NP	NP	
Identify who is responsible for monitoring contracts	L	L	NP	H	L	L	NP	M	M	L	H	NP	L	L	NP	L	L	
Continuous monitoring	L	L	NP	M	L	M	L	M	M	L	L	NP	L	L	L	L	L	
Mechanisms to evaluate contractor monitoring capacity	L	L	L	L	L	L	L	L	L	L	L	NP	NP	NP	L	NP	NP	
Adequate staffing and training																		
Contractors provide training to contractor monitoring staff	L	L	L	H	H	M	M	L	L	L	M	L	NP	NP	NP	NP	NP	
Contracting unit staff provided with service specific monitoring training	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	
Contractors identify and train contract monitoring staff	L	L	L	M	H	M	M	L	L	L	L	L	NP	NP	NP	NP	NP	
Mechanisms to evaluate staffing, financial management capacity	M	M	M	H	M	M	M	H	H	M	H	M	M	M	M	L	L	
Relational contracting and communication																		
CU to meet / discuss the operation of the contracted service or activity	L	L	NP	M	L	L	L	L	L	L	L	NP	NP	NP	NP	NP	NP	
CU communicate with the contractors solve operational problems	NP	NP	NP	L	NP	M	NP	L	M	L	M	NP	NP	NP	NP	NP	NP	
Communication protocols for monitors to access decision-makers	L	L	L	L	L	L	L	L	L	L	L	L	NP	NP	NP	NP	NP	
Clients served communicate to contractor	M	M	L	M	M	M	L	L	L	L	H	M	H	H	L	NP	L	
Clients served communicate to contracting unit	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	
CU and contractors develop standardized service procedures and protocols	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP	L	M	M	NP	NP	NP	
Frequency monitor contractor performance	L	L	L	L	L	H	L	M	M	H	H	NP	L	L	L	L	L	
Frequency monitor fiscal performance	L	L	L	L	L	H	L	H	H	M	NP	NP	NP	NP	L	L	L	
Frequency monitor service performance	L	L	NP	L	L	H	L	M	M	M	L	NP	L	L	L	NP	L	
	\$1.68M	\$8.41M	\$3.00M	\$5.337M	\$1.75M	\$0.570M	\$1.00M	\$64M				\$1.005M	\$0.258M	\$0.60M	\$0.255M	\$5.20M	\$1.06M	\$5.56M

*Reviewer Guidelines and Scoring Criteria*⁷⁵

The following describes the guidelines for evaluating contracting unit Request For Proposals (RFP's'). The overall goal is to have all reviewers have consistent evaluative criteria for screening the presence of an item in the RFP. The criteria will be used by the reviewers to evaluate RFP's in two major areas — Performance measures (i.e. does an RFP identify, detail and require systems to assess service outcomes) and Contract Oversight (i.e. how the contracting unit monitors contracted work). A third category, Signed Contract (i.e. RFP's that have been awarded) will also be evaluated based on availability of the documentation. Each major area is broken into particular items suggested by the literature to be best practices in contract development. Reviewers will judge each item based on the following non-numeric scale:

NP: Not present — refers to an item not mentioned in the RFP.

For example, item 35 — Has the contracting unit identified specific sets of data they are collecting to monitor performance — e.g. program products, caseloads ratios, donor client satisfaction? If the RFP makes no reference or contains no narrative relating if the contracting unit collects data to monitor contractor performance, this item would be coded as NP

L: Low — refers to an item mentioned in the RFP narrative but contains no further description.

For example, item 35 — Has the contracting unit identified specific sets of data they are collecting to monitor performance — e.g. program products, caseloads ratios, donor client satisfaction? If the RFP mentions that the contracting unit collects data for monitoring purposes, BUT does not say what type of data then this item would be rated as L

M: Medium — refers to an item that is both mentioned in the RFP narrative and contains a description of the item.

For example, item 35 — Has the contracting unit identified specific sets of data they are collecting to monitor performance — e.g. program products, caseloads ratios, donor client satisfaction? If the RFP mentions that the contracting unit collects data for monitoring purposes, and also identifies what type of data is being collected (e.g. caseloads) then this item would be rated as M

H: High — refers to an item that meets three criteria. The item must be mentioned in the RFP narrative, must contain a description of the item, AND must be quantified and measurable.

For example, item 35 — Has the contracting unit identified specific sets of data they are collecting to monitor performance — e.g. program products, caseloads ratios, donor client satisfaction? If the RFP mentions that the contracting unit collects data for monitoring purposes, and also identifies what type of data is being collected (e.g. caseloads), AND the data is quantified and measurable (e.g. case load as a ratio of number of clients to number of case managers) then this item would be rated as H

⁷⁵ Savas, Emanuel S. "Competition and Choice in New York City, Social Services." *Public Administration Review* 62, no. 1 (2002): 82-91.

Document Analysis

Documentary evidence, in this case contracting unit Request for Proposals (RFP's), is used to corroborate and augment evidence from the interview data. Specifically, the RFP's were gathered from 6 contracting units within three state agencies. The RFP's analyzed were for the delivery of human services including supportive services for individuals with mental illness, supportive services for individuals with substance and drug abuse problems, and support services for reintegration of inmates into the community. The RFP's ranged in value from \$500,000 to \$64,000,000. The RFP service areas included both state wide and county specific focus.

The documents were analyzed and coded as indicated above.