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The Greenhouse Effect

A New Accountability Concern

For a number of years now, federal, state and local governments have been in a pattern of status quo or budget reduction. Fostered in part by citizen demand for process improvements over tax increases, resources have been scarce and stretched to maximum limits. Frequently, this has resulted in reducing government employees, reducing time devoted to monitoring, and experimenting with new and different ways of carrying out the business of government. In some cases, the fate of the governmental entity itself is at stake.

Coping mechanisms used in this era are referred to as “privatizing”, “outsourcing”, “public-private partnerships”, and other names that describe similar activities. “Privatizing” is the common descriptor used in this article. “Privatizing” differs from traditional contracting in a governmental entity which usually involves buying a good or service at the best price with acceptable quality. Characteristics are arms-length transactions with several competitors offering specific deliverables. In “privatizing”, a contractor is hired to carry out a function or functions that are usually carried out by government. This entails providing services to third parties and in many cases with large amounts of money at stake. The deliverables may deal with such intangibles as “satisfaction”, “adequacy”, or future unverifiable savings.

Additionally, non-traditional companies are venturing into the government services market. As demands change, auditing firms, for example, are deeply involved in management consulting and systems development firms, that once specialized in aerospace engineering are now managing employment placement and job training programs. The information age has brought about a proliferation of companies contracting with government to provide new computer systems and substitutes for human intervention. Sometimes, these new initiatives result in untested systems and processes which make the deliverables less reliable.

How does the entity which is “privatizing” assure itself that (1) the taxpayer is getting a dollar’s value for a dollar spent, (2) services are rendered in an efficient and effective manner, (3) only needed services are provided, (4) clients are receiving what the government is being billed for, and (5) the client is receiving service at least as good as was provided by the government?

There is a trade-off between governmental interference and due diligence for accountability. One school of thought promotes giving a contractor money for a purpose

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and entrusting the service provider to accomplish the goal—or in the vernacular—putting the money on a stump and walking away from it. This, however, does not assure accountability. A better approach might be to trust but verify; trust but respond quickly to non-performance; trust but limit the liability as if it were your own; and, trust but recognize and address fraud when and wherever it raises its ugly head.

There are several opportunities to achieve accountability. Before entering into a contract the governmental entity should: perform a needs assessment to determine the necessity for the service; conduct a cost/benefit analysis to determine whether the benefits outweigh the costs; and, perform a risk assessment to fully understand the risks involved and to incorporate the controls necessary to mitigate the risks. A conscious effort must be made to distinguish between a good marketing technique and the reality of having the initiative up and running. Most entities have procurement policies that they must follow. These policies include some standard contract language that, if adhered to, helps to provide controls necessary for some limited assurance.

The Inspector General role might include reviewing the contract language to assure that the language incorporates the following:

- A requirement for definable, measurable, and supportable performance measures.
- Include only requirements that can be objectively measured.
- A clear statement of the basis on which payments will be made. This would include a statement that the information provided is the basis for payment and that the statement is true and accurate to the best of knowledge of the responsible signatory under penalty of false claim statutes applicable to the entity.
- A clear statement of the basis on which payments may be delayed, withheld, or the contract terminated.
- A clear statement of the entity responsibilities that is associated with the contract.
- A reporting vehicle to provide data to document performance of the responsibilities contracted.
- In those contracts sublet to other providers, a requirement for an assessment to identify the risks that may be present so that adequate controls can be established and implemented.
- A requirement that the contractor conduct monitoring functions to assure that controls are established, in place, and working to mitigate the risks at the subcontract level.

The entity “privatizing” a function should assign a program or contract manager to work with the contractor. Among the responsibilities for this manager will include:

1. Monitoring the activities of the contractor.
2. Receiving and reviewing the reports of the contractor to determine whether the objectives of the contract are being accomplished.
3. Receiving and reviewing the reports requesting funds to assure that the requirements of the contract have been met and that a payment is appropriate.
4. Evaluating the process used by the contractor to monitor the activities of the subcontractors.

Throughout the process the Inspector General should:

- Advise and assist the governmental entity in performing needs assessments, cost/benefit analyses, and risk assessments.
- Assist the entity in developing and implementing standard contract language appropriate to mitigate the potential risks to the governmental entity, contractor, and subcontractors.
- Review selected contracts to assure that all standard contract requirements are included, and required analyses and assessments are appropriately performed.
- Review the actions of the contract manager to determine whether the process used was sufficient to ensure that the contract was being fulfilled, that progress was being made, and that the prescribed milestones have been met to justify payment of interim payments.
- Evaluate the contractor oversight process for subcontractors and test for accuracy, completeness, and appropriate follow-up.
- Audit a sample of contracts to test the internal controls and attest to whether performances were accomplished; only allowable expenditures were authorized and paid; and contract provisions were met.
- Establish ways to extract data from automated systems to identify red flags.
- Assist with background information (criminal histories etc.) to determine contractor suitability.
- Establish a process for fraud reporting that will alert the contracting entity as soon as possible.

As different methods are used to make government more like a business, we in the Inspector General community must be ever vigilant in our public watchdog role to make sure that taxpayer funds are protected. We can assist and advise management but must make sure that we never assume any of management’s roles. Our independence and objectivity must not be compromised. It matters not whether we are a federal, state or local IG. Our responsibil-

ities are the same and we are looked upon as protectors of the public interest.

After serving as a federal IG and working closely with the state and local IG communities, I have recognized a similarity in their missions, approaches, and needs. I have recognized that some funding is the same but just flows from the federal government to the state governments for contracting purposes. I have observed that the state government IGs have no less responsibility than their counterparts in the

federal sector. I have learned that the knowledge of the local IG can be the key to help unlock doors for the federal IGs and vice versa. I have learned that IGs around the table with different skills, knowledge, and experiences can help to establish the accountability for the private initiatives that should be in place and in full operation. I have learned that the way to optimum oversight in this area of "privatization" will take the help of all IGs, federal, state, and local. With this teamwork, accountability is certainly less elusive. 🏠

