

July 5, 2011

TO: League of Women Voters of Frederick County  
FROM: Donald F. Kettl  
SUBJECT: Assessment of “Frederick County, Maryland, Services Assessment Study”

At the request of the League, I’ve taken a close look at the June 16, 2011 report, “Frederick County, Maryland, Services Assessment Study,” prepared by PPP Associates. Let me share the following assessment.

***Issues to Consider in Reviewing the Report***

1. *Public-private partnerships.* The report speaks repeatedly of “the PPP model.” However, this model is nowhere defined or explained. In the practice of public-private partnerships, there is no single model. In fact, there is a very wide variety of public-private partnerships, including the sale of public assets, long-term lease of public assets to private organizations, franchise arrangements, vouchers, and contracting out. The report appears to propose contracting out of Frederick County services to private companies. But even within this framework, there are wide variations in how this would work, from the county’s contracting of services on a case-by-case basis to turning over operations to one (or several) general contractors, who would be responsible for the delivery of public services.

Without a description of just what form of public-private partnership is being proposed, it is impossible to assess the proposal and the likelihood that it will produce solid results and substantial cost savings.

2. *Public versus private provision of public services.* There simply is no evidence, in the United States or anywhere in the world, that one sector is inherently more efficient than another. Private companies sometimes deliver public services more cheaply than public organizations; sometimes public organizations deliver public services more cheaply.

New Zealand has long recognized this and, in its world-class reforms, it has focused on a policy of “competitive tendering”: whoever can do the public’s work best ought to do it; the key is not assuming that one sector or another is more efficient but, rather, to create a *competitive process* to measure efficiency and effectiveness—and to give the job to whoever can do the job best.

In Chesapeake, Virginia, a competition for garbage collection led to the job being awarded to city employees. In Phoenix, Arizona, the city created an auction process to award contracts for municipal garbage collection. City employees won three of the competitions; private companies won the other three.

The public interest lies in determining what tasks government ought to perform on behalf of its citizens, identifying who can do the job best, and ensuring that the work is done as promised, in quality and cost. There is no evidence that simply turning the work over to private companies is always the way to go.

3. *Cost savings.* The report repeatedly asserts that “the PPP model” is projected to produce substantial savings. However, the report contains no methodology to explain how those projections were produced. It is impossible to accept the cost-saving projections without knowing how they were arrived at, or what the bases for comparison might be.

In other jurisdictions, contracting out sometimes has saved money. Sometimes it has not. There is no way to determine how much money will be saved without a careful cost study, based on the services to be provided in Frederick County and the likely bids of private contractors for those services. The savings obtained by other jurisdictions in other contracts might not provide a good base for comparison. And: there is no guarantee that contracting out will, in fact, save *any* money.

There are several ways that governments can save money. They can decide to provide fewer services. The analysis submitted by PPP Associates does not seem to suggest that. Governments can pay less for the same level of services. For most of the services identified in the report, a large share of the cost comes from labor costs, so savings would come from paying workers less: in wages and in fringe benefits (especially health care and retirement). In this case, the issue would be whether a contractor can find workers at that price level who can provide the quality of services that county residents expect—and whether a contractor could continue to do so over the long haul.

The report also concludes that the county can achieve substantial savings by selling assets, including equipment, and avoiding the purchase of such equipment in the future. The county can certainly get a boost of cash in this way. However, to produce the same goods and services, contractors would have to purchase the equipment to deliver those goods and services. To realize savings, the county would have to assume that private contractors could purchase new equipment at a lower cost than the cost of the equipment the county already owns. It seems unlikely that this would be the case.

Moreover, to pursue this strategy, the county would be making a bet in selling off all its equipment. If the contract does not work out, the county would incur substantial costs by having to re-purchase it at current costs, which are likely to be more expensive than the cost of the equipment in the county’s current inventory.

4. *Contract design and oversight.* No contract, public or private, is self-executing. Smart buyers in the private and the public sector: define carefully what they want to buy; create a careful process for ensuring they select the right provider; and assess the result thoroughly to ensure that they get what they are paying for. This requires substantial in-house capacity.[1] The report does not describe how Frederick County will take these necessary steps; without them, a successful public-private partnership is impossible.

Clear evidence comes from Harrisburg, Pennsylvania, where the state's capital city has been flirting with financial collapse for years because of a failure to oversee the privatization of the city's incinerator. City officials were told they could borrow \$125 million, refurbish and expand their incinerator, and make money through a private entity that would sell incinerator capacity. Instead, the city ended up with \$300 million in debt, with one of the lowest credit ratings in the nation, teetering on the edge of bankruptcy. Instead of making money, the city's residents pay some of the highest trash disposal fees in the nation. The ongoing crisis cost the job of the city's mayor, who had served 28 years and had once had been so popular that residents called him "mayor for life." This tumbling series of disasters stemmed from the city's decision to pursue the promise made by a private company that promised rewards it could not deliver, and by its inability to manage the private operations that were created.[2]

In New Orleans, Louisiana, the city's inspector general found that the city had not exercised adequate oversight of its municipal garbage collection contractors. As a result, the city paid substantial questionable costs. The contractors did not have up-to-date insurance, which exposed the city to substantial liability if one of the contractors did something that resulted in an award to an injured party.[3]

5. *Inherently governmental functions.* By long-standing practice and policy, governments should not contract out functions that are essential to the job of governing. In practice, these functions are known as "inherently governmental." The report assumes that all activities can, and indeed should, be contracted out. This position does not reflect two generations of effective practice in government management

At least at the federal level, there has been a policy for sixty years that those services that can be delivered more effectively by the private sector *should* be delivered by the private sector. This same policy, in Office of Management and Budget Circular A-76, also holds that the government should not contract out "inherently governmental functions." Although there is no straightforward definition of this term, it is generally held to mean that government should not contract out its core decision making, including the power to bind government to action; and that the government should not contract out its sovereign authority, such as arresting individuals or

imposing criminal penalties. The Federal Acquisition Regulations hold that the following activities are inherently governmental and should not be contracted out:

- Management and human resources
- Policy formation, including decisions on agency policy; the definition and administration of regulations; and priority-setting for budgets
- Procurement, including award and supervision of contracts
- Adjudication, licensing, and criminal prosecution
- Ethics[4]

The report calls for the contracting out of some services on this “inherently governmental” list. Before deciding which services to contract out, county officials need to consider carefully which functions are essential to their governance responsibilities.

### ***Questions to Consider for Frederick County Service Delivery***

As the county assesses its strategies for delivering services to its citizens, it would be useful to consider the following questions.

1. What kind of public-private partnership(s) is the county considering? There is a wide variety of options, and every one brings different questions.
  
2. If the county is considering the option of contracting out its services, which services will it contract out? The very best practices in contracting out have long demonstrated that government should not contract out inherently governmental functions—that is, functions that are required for government to govern effectively. Some of these are core governmental functions—such as personnel, accounting, auditing, and general management. Some are functions involving governmental powers that cannot be performed by private companies, such as arrest powers. Some are functions so important to the public that everyone will want tight accountability, including perhaps emergency communications for 911 and emergency dispatch of first responders.
  
3. How will the county act as a “smart buyer” of the goods and services it contracts out? No private company would simply turn the supply of important functions over to other companies. Ford would not place an order for thousands of satellite radios without specifying what functions those radios ought to perform, when they would be delivered, and how well they would work. Toyota wouldn’t contract out windshields without careful management of the contracting process, since it would know it would be ultimately responsible if a low bidder produced substandard glass that cracked six months after the cars rolled off the assembly line. This is a clear case where government ought to learn the lessons of the private sector. Those who buy goods and services under contract must ensure they have the capacity to specify what they will buy from contractors, ensure they get the best price through a competitive market, and to ensure

that they get what they paid for. That requires in-house capacity.

4. How will the county assess the cost savings a contractor promises? All bidders promise low prices. Buyers have often been disappointed when neither costs nor quality live up to the promises. If the county dismantles its operations, it will limit its options in case contractors fail to perform adequately.

5. Will the county have multiple contractors for each service, or contract all services within each function to a single contractor? The overwhelming evidence is that savings come from *competition*, not by awarding work to a particular sector. Private monopolies are no more efficient than public ones. Efficiency and effectiveness comes from a competitive process—in the initial bid to get the work, and in the supplier’s knowledge that it can be replaced if its work is substandard. This, again, requires government to be a smart buyer.

6. How will the county deal with worst-case situations? Prudent planning requires governments to anticipate and plan for problems. The proposal made by PPP Associates is a very ambitious one; no county in the country has shifted to private contracting on as large a scale as quickly as is being proposed. What if the contractors fail to deliver services, at the quality and the price promised? What if an event overwhelms the private company’s capacity, such as a snowstorm that overwhelms snow plowing operations or a flood that is beyond the capacity of water and sewer plants? What if a major event overwhelms the emergency communications system, and citizens cannot reach an operator for help or operators cannot effectively dispatch first responders? What is the county’s recourse? Citizens expect not only low-cost programs but government programs that work, regardless of who provides them.

7. How will elected officials govern? Governments can contract out service delivery, but they cannot contract out governing. Citizens with problems expect to come to their elected officials and to have them resolved. How will elected officials respond to citizens when service provision is in the hands of contractors? This question has answers, but the answers are sure to be different than traditional practice. Government officials—and citizens—need to think carefully about how the connection between citizens and services will work. As Harrisburg’s sad case illustrates, a failure to manage public-private partnerships carefully not only can prove enormously expensive. It can cost the jobs of the very elected officials who promoted the strategy.

Accountability in government can’t be contracted out.

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[1] Donald F. Kettl, *Sharing Power: Public Governance and Private Markets* (Washington, DC: Brookings Institution, 1993).

[2] See Michael Cooper, "An Incinerator Becomes Harrisburg's Money Pit," *New York Times* (May 22, 2010), at <http://www.nytimes.com/2010/05/21/us/21harrisburg.html>

[3] See Inspector General, New Orleans, LA, "The Department of Sanitation Contract Oversight: Performance Audit, OIG-A&R-2009000" (January 29, 2010).

[4] See Federal Acquisition Regulations, Section 7.5, at [https://www.acquisition.gov/far/current/html/Subpart%207\\_5.html](https://www.acquisition.gov/far/current/html/Subpart%207_5.html)