Introduction

Capital Metro, the transit agency for the Austin, Texas area, has a history of contracted operations that evolved in three distinct stages: a first stage of fully delegated management, a second stage which simulated contracting but in actuality was a non-competitive public sector arrangement, and a third (and current) stage of contracting operations and maintenance to competitive private bidders while retaining significant planning, management and oversight capacity within the public agency.

The early years: delegated management

Capital Metro was established by referendum in 1985 after the region realized it needed a mass transit system. The newly created agency was designated as a political sub-division of the state, and funded partially by a 1 percent sales tax. Initially, Capital Metro's operations were conducted through a fully delegated management contract – as a new entity, without the expertise to manage and operate transit, it was decided contracting was the best option.

The paradox of contracting with a controlled subsidiary

After several years, the agency leadership decided it wanted more direct control over operations. However, Capital Metro's intention to bring operations in house were complicated by Texas law, and specifically how those laws appear to be at cross-purposes with federal law. As a public entity, Capital Metro is bound by Chapter 617, Texas Government Code, which prohibits either an official of the state or a political subdivision of the state from entering into a collective bargaining agreement with a labor organization.. At the same time, the authority also had to comply with US federal statute 13c, which protects the rights of transit workers, including the ability to collectively bargain. Capital Metro resolved this apparent conflict in state and federal laws by creating a new entity, StarTran, that was a legally separate non-profit entity from Capital Metro, , yet was able to act as Capital Metro's agent in managing its unionized workforce. While StarTran was technically a separate entity, in practice it functioned as a subsidiary of the authority[1], involved in all aspects of management and operations of Capital Metro's service.

The Transition to truly contracted operations by competitive private operators

For approximately a decade this system worked well - StarTran managed and operated the system ostensibly as an arms-length separate entity on behalf of Capital Metro, but functionally as an intrinsic arm of Capital Metro. However, in 2005, labor-management conflict drew fresh political attention to this arrangement when StarTran workers staged a one-day strike. Again in 2008, workers went on strike over issues regarding wages and pension obligations, this time for five days. In an attempt to create a public narrative that Capital Metro had plenty of money and

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[1] This arrangement is similar to the arrangement Coast Mountain Bus Company and B.C. Rapid Transit have with Vancouver TransLink, as discussed in *A Bid For Better Transit*

should pay its workers more, the local of the Amalgamated Transit Union (whose bargaining agreement was with StarTran) claimed that the management of Capital Metro was not spending responsibly. The union called for an audit of Capital Metro, and subsequently a state senator arranged for Capital Metro to receive a review from the state's 'Sunset Commission' to evaluate Capital Metro's budget and operations.

In 2011, after an extensive review process, the Sunset Commission found, among other things, that, "StarTran exists as a perpetual sole-source provider that offers no better performance for its higher costs than Capital Metro's two other contracted transit providers." The results went to the states Sunset Commission and the legislature and were ultimately implemented as a state law requiring Capital Metro to competitively bid all transit services not directly provided by its own employees. This law forced Capital Metro and StarTran to decide between one of two fates: either contract out operations – meaning private sector employees who do have the right to strike but bargain with a private employer – or to directly operate service with the caveat that the unions would become public employees and therefore give up their right to strike. During this same 2008-10 period, the Wisconsin union-busting was prominently in the news. Neither of these choices were the result the ATU had hoped for, namely a switch to in-house operations and becoming public sector employees. Ultimately, the ATU decided they would rather be private employees with the right to strike than be public employees.

The transition to contracted operations started in 2011. Some StarTran management personnel, who had been employees of the separate entity, became employees of Capital Metro in order to conduct the competitive procurement for services. From the outset, Capital Metro realized the critical importance of public sector-side oversight staff.

While the management and central office staff transitions from StarTran to Capital Metro were less complicated, the transition of front-line staff was more complicated, largely related to pension issues. After lengthy negotiation, arbitration, mediation, and litigation Capital Metro and ATU agreed to a freeze of the public pension plan with an escalated option for an early retirement benefit to members of the plan with significant years in the plan. During subsequent collective bargaining with the private employer, the workforce was transitioned to a defined contribution retirement model, using 401k plans as a retirement benefit with employer contributions at a level equivalent to the prior employer contributions to the defined benefit pension plan..

In June of 2011, Capital Metro issued two Requests for Proposals (RFPs) for fixed route bus services and paratransit services, respectively.. Capital Metro carefully allocates responsibility and risk between itself and its contractors. The agency provides buses, garages, and buys the fuel. It also is responsible for all service planning and scheduling. The contractor provides the labor for operations (drivers), and is responsible for all maintenance and dispatching. While Capital Metro retained responsibility for service planning and scheduling, the agency included provisions to encourage the private operator to participate in planning and scheduling as necessary.

The procurement timeline for the first RFP issuance was 14 months – which, in retrospect, Capital Metro staff recommends a longer period between issuing the RFP and mobilization. To evaluate the bids, both for the first and subsequent RFPs, Capital Metro meticulously outlines the evaluation criteria in the RFP. Bids are evaluated on both cost/price and technical factors, each evaluated by separate teams. The technical evaluation team reviews the bids without knowledge of the cost/price bid. This is intended to be able to purely evaluate bids on technical merit.

Section header: "Capital Metro's Approach to Contracting Today"

Since beginning the transition to contracted operations and maintenance in 2011, Capital Metro has honed its procurement and oversight practices. In addition to the $130 million worth of contracted operations, the agency spends approximately $1 million on staffing the agency itself with operations oversight staff of varying expertise – from planning to engineering to maintenance to operations. The agency was and is cautious of hiring duplicative staff to their contracted operators.

Overall, Capital Metro states that technical factors are significantly more important than cost or price. The technical evaluation factors are as follows (in descending order of importance):

1. **Management Competence and Staffing Plan**: Evaluates the bidder's proposed organizational structure and staffing to accomplish work required in the scope of work.
2. **Quality of Maintenance Work Plan**: Evaluates the bidder's approach to ensuring high quality maintenance of the agency's assets, including vehicles, buildings and equipment.
3. **Quality of Service Delivery and Safety Plan**: Evaluates the bidder's approach to ensuring high quality service delivery, including a focus on safety.
4. **Quality of Training Plans and other required submittals**: Evaluates the bidder's approach to training staff.
5. **Start-up and Mobilization Approach**: Evaluates the bidder's approach to start-up and mobilization to ensure a timely and smooth start-up of services.
6. **Capability, Experience and Past Performance**: Evaluates the bidder's relevant present and past performance.

For a company to win a bid, it must demonstrate that the proposal is competitive technically as well as cost/price. Occasionally, during the evaluation process, the evaluations teams will query the bidders on various aspects of their bids. This can result in changes to the final bid, if necessary. Unlike other agencies, who enter into negotiations after selecting the winning bidder, Capital Metro views the accepted contract as the best and final offer.

In August of 2012, the first contracts went into effect, 14 months after the initial RFP release. McDonald Transit Associates (a subsidiary of RATP Dev as of 2009) was awarded the bus contact for a three-year term with four optional one-year extensions This contracted operation represented approximately 70% of Capital Metro's fixed route bus service[2]. MV Transportation was awarded the paratransit contract for a three-year term with two, two-year optional extensions. This contracted operation represented approximately 75% of Capital Metro's paratransit services. The varied extension terms were designed so that the contracts did not come up for evaluation at the same time upon their expiration.

Using performance metrics to ensure quality service

The private operators are paid a flat fee to cover fixed costs and paid on a per-hour basis for variable costs. Additionally, private operators are awarded financial incentives or disincentives based on four key performance indicators:

1) On-time performance,
2) Accident rate,
3) Miles between road calls or maintenance failures, and
4) Customer complaints rates.

If performance exceeds a particular KPI benchmark, company gets a bonus of 0.25% of the monthly billing. Similarly, disincentives of up to 0.5% are assessed for failure to achieve the stated goals. If all four KPIs are exceeded in a month, they get an additional 0.5% bonus. The maximum achievable incentive is 1.5% per month. Additionally, Capital Metro has established a penalty structure, as Performance Deficiency Credit (PDC) – "credit" meaning a credit back to Cap Metro on the monthly invoice.

While incentives are calculated entirely on the four KPIs, PDC's are assessed for a variety of infractions. s. Infractions range from incidents like a driver not having the proper uniform or a bus GPS transponder not being turned on, to organizational infractions such as the contractor's general manager resigning prior to completing two years on the job. All infractions have dollar values specified in the contract. Since Capital Metro began contracting, they have levied more penalties than paid incentives, and contracts are running 0.25%-0.5% under invoice.

To effectively oversee the contract and evaluate the performance indicators, Capital Metro has a variety of highly skilled staff that are responsible for oversight. There are between 3-5 quality assurance inspectors for maintenance to review all work orders, do periodic spot checks, randomly inspect spare parts inventory, run analyses of maintenance logs, and ensure the agency's capital asset management system is being followed. The agency also has 3-5 quality assurance inspectors for operations who oversee dispatching, reliability, and customer service, among others.

Lessons Learned

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[2] https://www.statesman.com/news/20120901/cap-metro-oks-520-million-in-contracts-outsourcing-all-bus-service

1. Compliance with section 13-c led to the artifice of “contracting” to a non-competitive entity fully controlled by the public transit agency, which ultimately was not a sustainable format. Labor-management conflict, which perhaps was masked by this odd arrangement for some time, eventually led to its doom.

2. In the transition from public to private, among the 13-c requirements and other considerations, pensions and retirement rights loom large as an issue. The public agency, the workers, and prospective private bidders who might employ the workers in the future all need to have certainty on this issue. Without it, the unrest between management and labor will be chronic, and the private operators’ uncertainty will translate into risk, which has a big cost.

3. Capital Metro didn’t “flip a switch” and go from essentially public sector operations to contracting with private operators overnight. A long lead time was required to establish the parameters of who would be responsible for what under the new system, and to run a responsible procurement process. Any agency thinking of emulating Capital Metro should pay attention to the deliberate and time-consuming steps that Capital Metro took to get it right.

4. Capital Metro has continued to learn and evolve in its expertise in procurement and oversight, a continual process of improvement.