

Harnessing the Power of Procurement:

*Issues, Considerations, and
Best Practices to Advance Equity
in the Contracting of Public
Goods and Services*

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Introduction

State and local governments across the country spend an estimated \$2 trillion in goods and services every year.¹ This means that \$2 trillion flows from governments to private entities for everything from city services, such as trash pickup and park maintenance, to public health programs, to the purchase of textbooks for students, to the complex technological systems that undergird many public services.

Given the immense amount of public money transferred to the private sector through government contracting, it is crucial that local and state governments use an approach to procurement that drives toward equity. State and local governments that use a traditional procurement approach—typically by prioritizing cost savings over all other considerations—are potentially undermining their own goals and missing out on the opportunity to advance meaningful progressive change. Without an approach to procurement that reflects public values, government contracting can result in unchecked private control over public goods and services. We already see this play out in many jurisdictions, where private corporations drive how and to whom public goods and services are delivered, often exacerbating racial inequities and paving the way for the creation of privatization schemes.

While there are important questions about whether various public goods and services should be operated or provided by private entities, a traditional procurement approach can result in the privatization of services that would be provided better and more equitably through the public sector. Privatization, a key pillar of political attacks on government in the last few decades, has weakened many public goods and services and excluded an increasing number of Americans from full participation in the political and economic systems that shape their lives. Local and state governments should ensure that procurement is truly being used to solve public problems and that resulting contracts are responsive to public needs, especially for those who rely on or are most impacted by the service or good.

Even on its own terms, traditional procurement approaches may do more harm than good. By focusing solely on short- and immediate-term cost savings, governments can lose sight of longer-term costs and benefits that accrue to their communities. A procurement process stripped of longer-term considerations may appear more “efficient,” but when the aim of government procurement is to achieve good outcomes in the provision of public goods and services, and ultimately help achieve public goals, traditional procurement approaches may actually make these goals more difficult to obtain, delayed, and/or more expensive. In other words, these types of approaches may be ultimately less “efficient.”

Incorporating requirements and standards that reflect public values can turn procurement into a multi-faceted tool that can help governmental entities tackle pressing issues, such as the undermining of support of public services, eroding economic security and worker power, racial inequities, climate change, and more. In states where local governments are facing pervasive preemption, localities may be able to use procurement to help more public money flow to contracts that address or contain provisions that help address the issues that localities are otherwise barred from addressing through legislation.² Additionally, the immense amount of public spending on contracts can give governments leverage to influence and set standards in how private contractors design and provide their services and products to better meet public needs. For example, local and state governments can use their spending power to set high job quality standards, which can in turn have ripple effects beyond any individual contract and raise standards for all employers.

It is important to note that the power of procurement goes beyond any individual jurisdiction. By sharing information and working with one another, jurisdictions can improve their negotiating positions to further public values, as demonstrated in the case study about prison and jail phone contracts in Section 5. And the aggregate impact of many jurisdictions fully engaging in the power of procurement to advance public values could have real and significant impact addressing national economic inequality, racial and social justice, and climate change.

This report will explore this power of procurement, examining how governmental entities can better design their processes to incorporate public value. These values include:

- Provision of high-quality public services and goods
- Equitable access to public goods
- Advancement of workers' rights
- Positive and equitable social and racial impact
- Environmental sustainability
- Maximum transparency
- Effective oversight and accountability

The next section discusses the nuts and bolts of procurement with examples of procurement processes and policies from various localities. Section 3 explores nine major issues related to government procurement, including common issues that come up during the procurement process as well as issues reflected in contracts. It is important to note that the issues explored are not exhaustive of the full range of issues that can arise in government procurement and the resulting contracts, but cover many of the issues that governmental entities should address to harness the power of procurement. Section 4 discusses a few select special and emerging issues related to technology contracts, including artificial intelligence (AI) and algorithmic decision-making systems, privacy and surveillance concerns, and transparency and trade secret issues. Section 5 offers high-level best practices and recommendations for both governmental entities seeking to improve their procurement policies and practices and advocates using procurement to advance their

policy campaign goals. We conclude Section 5 with a checklist of questions related to best practices that public policymakers and administrators, as well as advocates, can use to better understand how to improve their jurisdictions' procurement policies and process.

We hope that by reframing procurement as an opportunity for jurisdictions to advance and protect the public interest, we highlight the need for critical examination of current procurement policies and practices in localities and states with an eye toward reform.

Legal Considerations for this Report

This report is not intended to be a procurement how-to guide for governmental entities, and anyone using this report should consult legal counsel before implementing any of the recommendations. The goal of this report is to raise awareness of the potential power of procurement that can be unlocked when jurisdictions are able to incorporate standards, requirements, and processes that center community needs and the public interest. This approach can influence how a significant amount of dollars from jurisdictional budgets are spent and maximize the impact and benefits this spending brings to the community. However, the ability of local governmental entities to address the issues and considerations raised in this report depend on the relevant local, state, and federal rules that attach to the funding and govern the specific location. Failure to follow the rules can result in negative consequences, such as the loss of funding.

For example, localities must ensure that their local procurement rules and requirements are consistent with state procurement laws. These laws are different in each state and territory. Each state also has state and federal court decisions that interpret these laws.

Likewise, when localities use federal grant dollars in a contract, there are explicit federal rules and procedures that local and state governments must follow. This includes the Uniform Guidance (2 C.F.R. Part 200) and specific regulations at each federal agency that grants the funding. The Uniform Guidance specifies contracting methods, how winning bids are chosen for various contracting methods, how contracting opportunities must be advertised, and what constitutes a responsible bidder, among other specific provisions. As discussed in greater detail in Section 3, the Uniform Guidance currently limits how local and state governments can approach procurement when a given contract contains federal grant dollars, including some limitations on innovative procurement policies that could be used to bring greater social, economic, and environmental benefits to communities. Advocates around the country are currently working to amend these federal rules so that localities and states can address the issues discussed in this report and have greater autonomy to maximize the impact and benefits from their own contracting.

We encourage any jurisdiction considering reform of their procurement system to carefully review and understand current local, state, and federal rules and regulations related to procurement as a first step in the process. We also encourage jurisdictions to consult legal counsel to ensure that reform efforts do not violate the relevant legal requirements.

SECTION
2

Nuts and Bolts of Procurement

While procurement policies and processes vary from jurisdiction to jurisdiction, there are some general similarities in how procurement works across local governments. This section will describe how procurement can work in localities and who the different actors are that can be involved in a jurisdiction's procurement process.³ To contextualize some of the similarities and differences in procurement, we will highlight a few of the variations in how specific jurisdictions approach procurement throughout the section.⁴

To better understand how the procurement process can generally unfold, we communicated with procurement officials and policymakers and/or reviewed procurement policies for several local governments, including New York NY; Seattle, WA; Washington, DC; Miami-Dade County, FL; San Diego, CA; Houston, TX, Alexandria, VA; Mt. Rainier, MD; and Somerville, MA. Local governments reported contracting⁵ for a variety of goods and services related to human services, information technology, waste management, utilities purchasing, transportation, emergency services, police purchasing, consulting engagements, and more.

The larger localities we interviewed all had codified policies and/or non-codified but formal policies around how the jurisdiction procured various goods and services. Typically, larger contracts above a specific dollar threshold are required to follow a competitive bidding process, while small contracts under the dollar threshold could be procured using a simpler bidding process. This threshold varied in each jurisdiction. Some types of commonly-used solicitation methods include "Invitation to Bid" (IBT), "Competitive Sealed Bid" (CSB) or "Request for Proposal" (RFP) methods. Jurisdictions typically use RFP solicitations when they need to evaluate bids on a broader set of criteria, rather than just cost. The use of RFPs allows jurisdictions to evaluate bidders with many of the issues discussed in Section 3 in mind. Most larger contracts, especially for service and program provision, are procured through the RFP method. In some cases, jurisdictions may issue a solicitation before the RFP, such as a "Request for Information," to gather information from potential bidders on how they would approach the service or project. This information is then usually used to inform and shape the RFP. Jurisdictions may use other types of solicitation methods than discussed here, such as those listed in the Washington D.C. "[Types of Contracts](#)" chart.

For goods that are repeatedly purchased, some jurisdictions utilize a "blanket contract" or something similar that allows the governmental entity to order the goods for an agreed upon price when needed for the term of the contract without having to utilize the

procurement process each time it needs to purchase them. For goods that are less expensive and not on-going needs, or are not covered by a blanket contract, some jurisdictions will allow individual departments to directly purchase the goods from a vendor.

Some smaller localities may not have formalized procurement policies, but follow comparable and sometimes simplified procedures in procuring goods and services. For example, in our review, some small localities did not have procurement processes and

For most localities, the state law contains baseline rules about procurement that local governments in the state must follow.

requirements codified in code, but have information on their website directed at potential vendors about how they procure goods and services and how potential vendors can engage in the process.

For most localities, the state law contains baseline rules about procurement that local governments in the state must follow. For example, Massachusetts has rules about how different types of goods, services, and public works contracts must be procured by localities, but individual localities can have stricter or additional requirements in their procurement process.⁶ Likewise, as discussed above, there are federal statutory and regulatory requirements that localities utilizing federal funds to contract must also abide by.

Pre-Procurement

Before the formal procurement process begins, some jurisdictions require some type of analysis or review to estimate the cost of the contract and/or compare the cost of providing the service in-house versus contracted out. While the requirement for these types of pre-procurement analyses is spotty, there is also wide variation in how they are done and what their aims are. As discussed in the next section, these types of analyses can be important tools in ensuring that contracts are financially sensible decisions and that any cost savings are the result of true efficiencies instead of cutting operational costs that can impact the quality of the public service, and that contracts truly meet public needs. However, in some cases, these types of analyses can simply be a box-checking exercise to justify privatization of a public service.

The Process

In many larger localities, individual departments or agencies are responsible for planning for their procurement needs, but the procurement function is centralized through a single department, especially for routine goods and services. In many cases, a procurement agency or department is responsible for carrying out most procurements for most departments or agencies within the jurisdiction and managing the process from the beginning of a process until the contract is awarded. The contracting agency (the agency or department seeking to contract) will notify the procurement agency of their contracting needs, and in some cases work with the procurement department to craft specifications for the procurement. The procurement department then carries out the appropriate procurement process. The division of responsibility between the contracting agency and the procurement agency is different in each jurisdiction. In some jurisdictions, the contracting agency may have its

own contracting directors or lead staffers that engage or participate in many aspects of the procurement process, while in other jurisdictions, the procurement agency carries out the procurement process with less participation and input from the contracting agency.

Some localities allow individual agencies or departments to procure certain types of contracts outside of the central procurement department. For example, the City of Seattle has a central department, Purchasing and Contracting, that procures most goods and services for the city. However, each individual agency procures its own consultant contracts.

Some localities require that potential bidders pre-qualify or pre-register with the locality before they can bid on a contract, but the presence and/or scope of registration requirements varies in each jurisdiction. Many localities have this information on their websites to provide potential contractors with the information they need to fulfill any registration requirements and engage with the jurisdiction's procurement process.

Evaluation

While the central procurement department has responsibility for evaluating bids in many jurisdictions, almost all of the larger cities we interviewed indicated that they will often convene a committee or technical advisory group made up of experts from other agencies to help inform the evaluation process. This type of evaluation assistance is especially important for procurements that require specialized or technical knowledge to accurately evaluate bids.

Several larger cities we interviewed indicated that technology contracts can present especially challenging and complicated issues. Several localities highlighted that they are currently trying to improve their process for evaluating and negotiating technology contracts, since contracts for these types of goods and services can require particularly specialized knowledge and can have significant impacts on public services and residents, as discussed in the Section 4. Some localities have or are undertaking the creation of specialized policies or programs to address the challenges in technology procurements. In some localities, the department responsible for technology or a technology-related committee in the jurisdiction may have a greater role in the procurement process, and assist with tasks such as reviewing or approving technology-related purchases.⁷ In the City of Houston, the Information Technology Department assists the city's central procurement department, called the Strategic Purchasing Division, and any contracting departments in developing Requests for Proposals, evaluating responses, selecting and negotiating with bidders, and preparing contract documents.⁸

Typically, if legislative approval is required, it is for large contracts over a certain monetary threshold. For example, Miami-Dade County requires the County Board of Commissioners to approve contracts over \$1,000,000. However, this requirement varies greatly among jurisdictions.

Contract Approvals

Once the procurement process is completed, some contracts will need final approval by the jurisdiction's legislative body, such as the City Council or County Commission. Typically, if legislative approval is required, it is for large contracts over a certain monetary threshold.

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Some jurisdictions have other approval processes after the bidder is selected and contract terms finalized. For example, some jurisdictions send final contracts to their city or county attorney or law or legal department for review or sign-off to ensure that contracts contain required provisions or meet certain requirements. In other jurisdictions, city/county attorneys or legal departments may be consulted on an as-needed basis to provide legal advice in contract formulation and other related matters.

The Comptroller's Office in a locality may also review and/or approve contracts. For example, in New York City, contracts must be registered by the Bureau of Contract Administration of the Office of the City Comptroller before they are legally effective. This review is to ensure that "appropriate funds exist for the City to make payments to vendors, confirms that the contracting agency followed proper procurement rules, and that there was no corruption in the decision-making process."⁹ This review must be completed within 30 days, but in 2022 the Bureau completed the review in an average of 16 days.¹⁰

Contract Monitoring

In many cases, each department or agency will have staff that oversees and monitors the contracts for which the department enters. As discussed in the next section, contract monitoring is an important and ongoing responsibility that helps identify and correct problems that may occur throughout the life of the contract and routinely ensure that a contract is meeting the needs of the public. Some agencies even have their own contract monitoring guides and procedures that are specific to the unique scope of contracts related

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to that department/agency. For example, Seattle's Human Services Department has a Contract Monitoring Manual for its staff.¹¹

The Office of the Auditor for a jurisdiction can also play a role in monitoring, sometimes examining issues related to the procurement process, contracting practices, or groups of

contracts, instead of monitoring individual contracts. For example, the City of Virginia Beach, VA, released an audit in August 2022 regarding the use of sole-source contracts (a type of procurement that does not utilize competitive bidding) and examined whether there was adequate documentation to justify this type of solicitation.¹² Less often, auditors will examine a single large contract, determining whether the contract is providing promised service levels or examining whether the contract is being adequately monitored.¹³ Audits will typically provide recommendations for the jurisdiction for improving or fixing identified problems. Audits can be important tools for bringing about systemic and/or large-scale changes to a jurisdiction's procurement policies and practices.

This section discusses different responsibilities between the procurement department or agency that typically carries out procurement processes and legislative bodies that may be tasked with approving large contracts. However, there are other dimensions in how these positions can engage in building the power of procurement in a jurisdiction. As discussed above, many larger jurisdictions have their procurement process codified at some level of detail in their local code. Legislative policymakers can pass legislation that can improve a jurisdiction's procurement process, adding requirements and provisions that can address many of the issues discussed in the next section. But not all change has to come about through legislative means.

Staff working for local procurement departments or agencies can include provisions that address problematic contracting issues and advance public values in procurement solicitations, such as RFPs, and contracts. These types of provisions can become enshrined in departmental policies and practices, and become default provisions in contract guidance and templates. Departments or agencies that enter into contracts can focus procurement planning and requests on meeting the needs of their constituencies and the public, and ensuring that contractors are held accountable to meeting these needs. All public actors that interact with a jurisdiction's procurement process, including comptrollers, auditors, legal staff, and other administrative departments, have the ability to reform, improve, and incorporate a values-driven approach in how procurement dollars are spent.

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PROCUREMENT IN SCHOOL DISTRICTS

While this report is primarily focused on procurement in local governments, such as cities and counties, school districts are also local governmental entities that engage in procurement and contracting. School districts purchase a variety of goods, including food products, cleaning products, instructional materials, school buses, teaching supplies, and more. Districts also procure services, such as technology services or training services, but some also contract for school support services such as custodial services, food services, or transportation services. These types of contracts result in the privatization of school support staff and threaten the quality of school operations.

Almost all the same issues, recommendations, and best practices directed to local governments in this report apply to school districts, too. School districts typically have contracting and procurement departments or personnel in charge of the procurement process. School boards may be tasked with approving large contracts. Some states have procurement rules in the state education code that all districts must follow, but districts can also have their own procurement policies and rules, which can encompass the values and best practices discussed in this report. School districts can

— continued —

and should ensure that their contracting decisions meet the needs of students, staff, parents, and the community. About 20 percent of school district expenditures are made through procurement,¹⁴ making the money spent on educational goods and services a valuable lever in advancing public values in the district and beyond.

For example, Austin (TX) Independent School District is using procurement to improve community environmental outcomes. The school district has plans to put three electric buses on the roads this year, with a plan for 25 percent of its school bus purchases to be electric vehicles. The district's bus fleet will be fully electric by 2035. The Austin ISD board voted unanimously in favor of the measure, which aims to have half of its bus fleet electric vehicles by 2027, and purchasing only electric vehicles for the district by 2030.¹⁵

SECTION
3

Considerations in Procurement

There are many common issues and problems that arise in the procurement process and resulting contracts or among jurisdictions that contract out public goods and services. Failure to address these issues can have wide-ranging consequences, including the decline in public service quality, inequitable access to public goods and services, and mismanagement of public fiscal resources. Such failures can also have broader community-wide impacts, such as hurting the stability of local economies, increasing economic and racial inequities, increasing the number of low-wage jobs, contributing to climate change, taking away community voice and trust in the institution of government, and so much more. This section explores the following nine issues in greater detail and offers examples of some jurisdictions that have taken steps to address them.

1. Analyzing the Decision to Contract
2. Public Participation
3. Ensuring High Performance and Quality
4. Equitable Access to Contracted Goods and Services
5. Job Quality
6. Contractor Diversity and Workforce Equity — Where the Money Flows
7. Environmental Impacts
8. Transparency and Public Information
9. Accountability and Contractor Oversight

1. Analyzing the Decision to Contract

Before the procurement process begins, it is important for governmental entities to have a thorough understanding of why it is seeking to contract and whether a proposed contract will meet public needs. Unfortunately, few jurisdictions have formal processes or practices that require agencies or departments to answer critical questions aimed at ensuring that contracting decisions are thoughtful, responsible, and in the public's interest. Contracting decisions can have profound impacts on public goods and

services, making it critical that a governmental entity engage in meaningful analysis and preparation before jumping into the procurement process. Public input and rigorous assessment of potential impacts is vital to answering these questions. Generally, governmental entities should be able to answer questions such as:¹⁶

- Why do we want to contract?
- What are we trying to accomplish with this contract?
- What are the potential risks or impacts of implementing the contracted program, service, or technology, etc.? Are there other ways to accomplish the intended goal?
- Why this scope for the proposed contract? Are there other contract scopes that are more appropriate so we can assess impact or mitigate potential risks/harms?
- Who is defining what the future of this public good or service looks like?

Specifically, one of the first decisions that a jurisdiction should make before it begins the procurement process is whether the good or service should be contracted out. This means that the governmental entity should have a thorough understanding of the issue or problem it seeks to address and identify possible solutions to the problem. The governmental entity must also be capable of and have the capacity to engage in this analysis, evaluate possibilities, and ultimately implement a solution. In many cases, governmental entities use contracting as a default approach for solving problems with public services and operations without any analysis of potential solutions, including those that do not include contracting out. For example, governmental entities looking to contract out a service in an attempt to save money might examine ideas from frontline workers for increased internal efficiencies before deciding to outsource the service.

Analyses should account for all expenses associated with contracting, such as contract administration, ongoing contract oversight and monitoring, transition costs, and the contractor's use of public equipment and facilities.

If contracting is determined to be a possible solution, the government entity should

perform an analysis to understand the potential risks, benefits, and costs associated with contracting. Too often, jurisdictions do not require or perform any pre-procurement analysis and/or never investigate corporate claims that contracting will save money and/or improve quality. This lack of pre-procurement analysis and planning increases the chance that a jurisdiction signs a risky contract to quickly solve a problem and/or privatizes a public function that is better performed by public sector staff.

An analysis should include a cost comparison between contracted and in-house service provision. However, when these types of analyses are performed, they often fail to include the full costs of contracting out. Analyses should account for all expenses associated with contracting, such as contract administration, ongoing contract oversight and monitoring, transition costs, and the contractor's use of public equipment and facilities. The Government Finance Officers Association estimates that indirect and hidden costs can add up to 25 percent to the price of the contract.¹⁷ These costs add up,

making the true costs of contracting often much higher than what contract estimates may indicate.

In addition, governmental entities should perform an impact analysis that examines the social, economic, and environmental impacts of a proposed contract, especially for contracts that could have broad impacts on the community. This process must be transparent and public, so governmental entities can fully capture critical impacts in an analysis, and determine whether the impacts for a given proposal are acceptable or unacceptable, especially to those most impacted.

If contracting is determined to be the path forward, the scope of the solicitation and resulting contract should be carefully considered. In many sectors, corporations devote staff and resources to marketing their goods and services to governmental entities. It is important that governmental entities investigate beyond the information and “solutions” presented to them by corporations and carefully design contracts that make sense for the jurisdiction and its needs. This includes thinking through important questions around what functions should be public responsibilities and what functions can be handled by the private sector, which informs the scope of the contract and how a contract is structured.

Lastly, public input and participation, especially among those who are most impacted by or rely on the public good or service in question, is critical in any planning and pre-procurement stages. Contracting necessarily means inserting private interests in the provision of public goods and services and it is essential that the public has a valued and respected voice in determining the future of public goods and service regardless of delivery method.

2. Public Participation

Public participation is critical to ensuring that public contracts respond to public needs and concerns, represent public interests, and incorporate values that are important to the community. Often, governmental entities and procurement agencies are in frequent contract with for-profit contractors and organizations representing corporate interests, which typically have dedicated staff to push their ideas, needs, and concerns. Robust and regular public participation is a critical and necessary counterpoint to allow the public interest to be consistently represented and upheld.

Meaningful public participation is not a one-time public meeting or comment period, but instead should be embedded throughout the procurement process and the life of the contract. During the procurement process, governmental entities should outreach to the public, specific populations that will be most impacted by the contract, community groups and other experts that understand public considerations related to the contract, and other stakeholders. These groups should be invited and encouraged to provide feedback on a contract before the procurement process has started and throughout the contract as more information becomes available. Through public hearings, comment periods, meetings, surveys, and other methods and venues, governmental entities should

creatively cast a wide net to capture various public perspectives. Without transparency and disclosure of information and documents pertaining to the planning, procurement process, and the resulting contract, the public cannot fully participate in any public participation process.

Ensuring that vulnerable populations and/or populations most impacted¹⁸ by a proposed contract are able to participate meaningfully in any public participation process means that jurisdictions must understand the barriers that these populations face in participating. As Professor Michele Gilman explains, “the people whose voices are most needed tend to face the largest hurdles to participation.”¹⁹ For example, people from vulnerable and marginalized populations may have little time for involvement, and participation may come at the expense of economic activities or family and personal time. Jurisdictions should compensate individuals for their time in participating and providing feedback in any procurement process. Additionally, for activities in a public participation process that involve in-person meetings or events, jurisdictions should carefully consider how to make it easier for individuals to participate. Some participants

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may need after-hours meeting times, language translation services, or help with logistics, such as child care or transportation.²⁰

Public participation should generally consist of interaction, feedback, and responding to and incorporating this feedback. In a procurement process, this might look like using public comments and feedback to better design an RFI, RFP, and/or contract that solves the problem the procurement is trying to address in a way that maximizes public and social value. One way to ensure regular feedback from the public is to set up a community advisory board that can advise on project development as the procurement process gets underway, and ultimately on project and contract implementation, once the contract is executed.²¹ This type of board should complement, but not replace, direct community participation.

Once a contract is signed, public participation remains critical in ensuring that the contract is performed in a way that meets goals, standards, and requirements. It is important that governmental entities understand how the contracted program/service/project is impacting the public, especially those who are most impacted or who are part of vulnerable populations. This feedback should help identify problems in real-time and inform improvements. The public should be treated as partners instead of consumers or mere users in each stage, including contract planning, the procurement process, and in overseeing the resulting contract.

3. Ensuring High Performance and Quality

One consideration that most jurisdictions can agree on is the importance of procuring a quality service or good. However, not all procurement documents, such as Requests for Proposals (RFPs), or the resulting contracts, are designed and written in a way to

communicate to contractors the governmental entity's expectations. This is especially important for service contracts where the way the contract is written can encourage and/or incentivize contractors to approach the service in a specific way and different language can result in different outcomes. However, there is no one-size-fits-all approach. Different types of contracts require different types of metrics and performance standards, which must reflect the varying goals of different government contracts.

As discussed above, it is critical that the governmental entity identify and understand the problem or issue that a contract is seeking to address. There should also be meaningful public participation at this stage to identify public needs and considerations. This should inform how procurement documents and the resulting contract describes the service and the scope of the service, program, or project, as well as performance standards, expected outcomes, deliverables, and required services levels. Making these terms explicit in procurement documents and the contract helps the contracting agency and the contractor share an understanding of what is required to adequately perform the work. Importantly, they also lay out what the contracting agency will actually monitor to determine compliance with the contract. Specific expectations mean the contracting agency can better monitor performance and decrease the likelihood of contract problems.

Performance standards and metrics chosen for a specific contract must be appropriate to the specific program, project, or service. As the Harvard Kennedy School Government Performance Lab explains, "contract performance is rarely tracked in a meaningful manner...with contractors held accountable for inputs and activities rather than outcomes and impacts (if performance is measured at all)."²² Procurement solicitations and contracts should reflect an emphasis on performance, outcomes, and impacts, instead of merely listing activities that a contractor is required to perform.

Designing effective contracts is not a simple exercise though. In some cases, overly prescriptive and quantitative metrics may not be as appropriate or may be at odds of certain programmatic objectives. Research that examines the provision of contracted social services found that this approach can have limitations in these types of contracts. It can negatively impact the relationship between front-line workers and clients in need of assistance, and ultimately, the ability of social service workers to help those clients in a real and sustainable way.²³ Front-line social service workers explained in interviews with researchers that contracts that require adherence to specific metrics can overly standardize provision of care for people with unique needs, instead of addressing root causes of social issues.

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Furthermore, contractors may feel pressure to meet certain metrics or performance targets by engaging in practices that favor easier to serve people (known as "creaming" or "cherry picking"), or providing minimal services to those who have more difficult or complex problems.²⁴

Front-line social service workers report that their professional discretion and judgment has been limited. This contributes to a de-skilling of the workforce, as contractors try to separate functions that require judgment from those that are perceived as more routine.²⁵ As one front-line social service provider explained to researchers, “Work that is not easily quantifiable—such as a focus on quality, creative problem solving, assessment and diagnosis, client engagement, and the power of relationship building — is not recognized or valued. Yet these are the very tasks that are critical to making things happen and achieving successful outcomes.”²⁶

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use of financial incentives or disincentives to encourage or discourage the contractor from specific types of behavior. But it is important to understand how a proposed incentive or disincentive will influence contractor behavior in a variety of situations. In 2005, the state of Texas hired a private consortium headed by Accenture LLP to develop, operate, and staff Texas’s eligibility and enrollment system for Medicaid, Children’s Health Insurance Program (CHIP), Food Stamps, and Temporary Assistance for Needy Families (TANF). Almost immediately, problems occurred, such as high call center wait times, technical issues, insufficiently trained contractor staff, delays in application processing, and improper benefit denials.²⁷ Many families eligible for public benefits failed to receive the assistance they needed when they needed it.

The State Comptroller analyzed the contract and found that it provided Accenture with perverse financial incentives to process applications inefficiently. The contractor was paid for each time that it processed any transaction or “touched” an application. The state thought that it was encouraging the contractor to work quickly to get families approved, but the effect was to motivate the contractor to process many “touches” to a client’s application, making the process longer and more complicated. The contractor would notify clients of incomplete portions of missing information one piece at a time so that it could generate multiple “touches” on the file, increasing its payment from the state.²⁸

In addition, the contract should detail how the contracted service or function will be monitored, including scheduled and unscheduled inspections, information the contractor will provide, and any reporting requirements. The contract should also specify clear penalties for non-compliance. This not only deters contractors that may try to take short cuts, but limits confusion and preempts arguments if the contractor fails to live up to expectations.

Many governmental entities automatically renew contracts that have expired, since it is administratively easier than rebidding the contract. These renewals often happen with no serious review of whether the contract results in cost savings or enhanced quality of services, or whether internal or external conditions have changed since the contract was signed. Automatic renewal of government contracts circumvents the competitive bidding process and gives one company an unfair advantage. By conducting a review

of the contract and determining whether it achieved intended goals before renewing it, governmental entities can often understand where problems may be occurring and make corrections or alter course to produce better outcomes.

For example, in 2016, the city of Seattle had about 200 contracts with 60 providers for homeless services. When the contracts expired, the city routinely automatically renewed any compliant contract, and rarely evaluated the effectiveness of services. The following year, the city worked with Harvard Kennedy School Government Performance Lab, to change its practice and instead competitively re-bid \$30 million worth of contracts for the first time in a decade. The city also began tracking data on how the contracts were performing and achieving outcomes.²⁹ The goal of these changes was to improve the homeless services contracts “to meet system-wide needs, and transform the homeless services system to be person-centered, evidence-based, and racially equitable.”³⁰

Lastly, local and state governments can require contractors to enter into labor peace agreements to ensure the uninterrupted delivery of public services or protection of government investments as a market participant. From the government’s perspective, labor peace agreements include guarantees by labor unions which decrease or eliminate the risk of labor disputes (strikes, picketing, etc.) which could disrupt public services or construction or reduce certain income to the government. Labor unions only make such commitments if the agreements contain waiver by the employer of certain rights they have under federal law to oppose unionization by their employees. Some localities like Miami-Dade County, Philadelphia, and San Francisco, require certain contractors operating at the airport to enter into labor peace agreements with labor unions.³¹

4. Equitable Access to Contracted Goods and Services

There has been much discussion and examination of the inequities in both the distribution of public goods, services, and programs, and the outcomes of different populations related to the provision of public goods.³² In response to this examination, many states and localities have recently released statements about advancing economic and racial equity in their communities, while examining the ways to reduce inequities in public service provision.³³ One important, but often overlooked, consideration is how to prioritize equitable access to public goods and services that are contracted to a private entity. Unfortunately, contractors can bring biases and judgments to the delivery of public goods and services, impacting the access and experience of different populations. Moreover, contract design may even inadvertently or advertently encourage or incentivize limiting access to the public good or service.

To combat the perpetuation of inequities in contracted goods and services, an equity lens must be applied at the very beginning stages of a procurement, from pre-planning and problem identification, through the continued oversight of the final contract. As research from the Government Alliance of Race and Equity shows, “When racial equity is not explicitly brought into operations and decision-making, racial inequities are likely to be perpetuated.”³⁴ However, governmental entities may choose not to prioritize this type of analysis or dedicate the time and capacity it takes to embed equity in the procurement process.

THE JUSTICE40 INITIATIVE

Under the Biden Administration's Justice40 Initiative, federal funds used for procurement have a new mandate to be used equitably: 40 percent of the benefits of federal funds must flow to disadvantaged communities.³⁵ The new mandate, created through Executive Order 14008 of January 2021, applies to federal procurement spending in any covered program areas, including climate change, clean energy and energy efficiency, clean transit, affordable and sustainable housing, training and workforce development, remediation and reduction of legacy pollution, and the development of critical clean water and wastewater infrastructure, in both existing and new programs created by the Inflation Reduction Act, the Bipartisan Infrastructure Law and the American Rescue Plan.³⁶ In order to aid agencies and other stakeholders to identify disadvantaged communities, The White House created the Climate and Economic Justice Screening Tool, which identifies overburdened and underserved communities by census tract.³⁷ Local governments have a role to play in ensuring that any local procurement aided by federal funds is fulfilling the Justice40 mandate, by helping identify and engage disadvantaged communities in procurement decisions.

Procurement documents, such as RFPs and contracts, often fail to specify target or vulnerable populations or geographies, allowing contractors to decide how to prioritize or sequence service delivery to various populations. Moreover, governmental entities may not explore or assess potential contractors' cultural competencies and understanding of vulnerable or disadvantaged populations and the barriers they may face accessing the public service when evaluating bids. The resulting contract may not have specific performance standards to assess whether a contractor is delivering public goods or services in an equitable manner, and whether there are improved outcomes to vulnerable or disadvantaged populations. Once the contract begins, data may not be collected by the governmental entity to accurately assess whether certain populations or subgroups are getting what they need in a timely manner. All this can add up to a procurement process that leaves equitable access and outcomes as an afterthought instead of a purposeful part of the procurement process and contract design.³⁸

One important consideration is whether and to what extent impacted communities and those with experience working with impacted communities are consulted and given opportunities for public participation in the procurement process. The participation and input of vulnerable populations, who often have limited political power, is critical. This type of public participation can inform how a contract is designed. A well-designed contract can require maximum access to vulnerable or disadvantaged communities and service provision that addresses unique needs. Targeted outreach and engagement starting from the pre-procurement planning stages throughout the process can shed important light on considerations and standards that should be included to increase equitable access.

It is worth noting that while this discussion centers on how to better ensure equitable access to public goods and services in the procurement process, the very act of

privatizing a public good and service can be intended to reduce access. Privatization, a key pillar of political attacks on government in the last few decades, has weakened many public goods and services and excluded an increasing number of Americans from full participation in the political and economic systems that shape their lives. As former Secretary of Labor Robert Reich explains, “‘Privatize’ means ‘Pay for it yourself.’ The practical consequence of [privatization] in an economy whose wealth and income are now more concentrated than at any time in the past 90 years is to make high-quality public goods available to fewer and fewer.”³⁹ Privatization has threatened the very goals and missions of many public goods and services, especially those that vulnerable and disadvantaged populations interact with the most. For more discussion of this dynamic, see In the Public Interest’s report, “[How Privatization Increases Inequality](#).”

5. Job Quality

Governments at all levels have long provided public-sector jobs with family-supporting wages and important benefits such as health insurance, retirement benefits, and sick leave. In doing so, governments have historically created intentional “ladders of opportunity” to allow workers and their families to reach the middle class.⁴⁰ However, as governments have increasingly contracted out the provision of public services and programs, we see a reversal of this trend. Many contracted positions offer lower wages, reduced benefits, and little or no retirement security. These positions can turn into poverty-level jobs as contractors reduce labor costs to increase their bottom line. Without intervention, contracting can set off a downward spiral in which low- and middle-income communities are deprived of good jobs, stability, and economic development.

This dynamic disproportionately impacts women and Black workers, both of whom are employed by the public sector at high rates.⁴¹ The public sector is the third largest employer of women, regardless of race.⁴² In 2019, women made up fully 60 percent of all state and local public-sector workers.⁴³ The public sector affords women greater opportunity to move from lower-income entry level work, such as janitorial services, to higher positions within the governmental entity, when compared to job mobility within a contractor company.⁴⁴ In some sectors, workers in the public sector are better able to upwardly progress within a job classification than workers employed by private contractors.⁴⁵

For Black Americans, the public sector is the most important source of employment, as approximately one in five Black workers hold jobs in government. As of 2019, 48 percent of all Black women and 21 percent of Black men in the workforce were employed by state and local governments.⁴⁶ Black workers are 30 percent more likely than non-Black workers to work in the public sector.⁴⁷ Public sector jobs—with strong equal opportunity requirements, higher rates of unionization, and greater enforcement of anti-discrimination laws than in the private sector—have been an important ladder for Black Americans to move into the middle class.⁴⁸ Because state and local governments employ a disproportionate share of Black workers, they are more likely to be affected when jobs are outsourced to contractors that pay reduced wages and benefits, potentially losing

their once-stable footing in the American middle class, which can have long lasting impacts for future generations.

The loss of public sector employment can also have devastating effects on Black workers' economic conditions during retirement years. Public pensions are an important source of retirement income for Black workers. Research shows that for Black retirees and other retirees of color, "a public pension is literally the difference between a secure retirement and one spent in or near poverty."⁴⁹ In 2014, less than 3 percent of Black retirees with public pensions lived below the poverty line, but 21.8 percent of Black retirees without public pensions did.⁵⁰ Black retirees were nearly twice as reliant on public pensions to provide a secure retirement as the retiree population as a whole.⁵¹ When jobs are outsourced to private companies, not only do workers typically experience a reduction in current living standards as wages plummet, but with the loss of important retirement benefits, the quality of life in later years is also severely compromised. This double loss is especially felt by workers of color as stable public sector employment opportunities disappear.

Additionally, when government contractors pay low wages and provide minimal benefits, the costs of filling in income gaps are shifted to taxpayers through increased use of public assistance programs. In many cases, contractor pay is so low that employees must turn to public social safety net programs to make ends meet. When contractors fail to provide health insurance for their employees and their dependents, or if the cost of buying into the employer's plan is too expensive, workers and their families are forced to enroll in public programs, such as Medicaid or the state Children's Health Insurance Program (CHIP), or simply rely on emergency room visits which are very costly for the public.

Research shows how declines in wages means workers have less money to spend in their communities, which directly affects local businesses.

This spending amounts to a hidden cost to governmental entities and a subsidy to the contractor that is rarely considered when deciding whether to outsource a particular public service. By slashing labor costs, a company may be able to show a governmental entity cost savings on paper through contracting. However, low wages often mean that the number of Americans on public assistance increases and these supplemental income and healthcare costs, instead of being the private contractor's responsibility, are merely shifted onto other parts of the government budget.

Lastly, reducing wages and benefits has real consequences for local economies. Research shows how declines in wages means workers have less money to spend in their communities, which directly affects local businesses. Lower wages mean that workers spend less in local retail, restaurants, and other establishments. Lower wages also mean that local and state governments collect less in sales, income, property, and other types of taxes.⁵² In short, less money flows into the local economy and more money is routed to corporations that are located away from local communities.

A recent report from the Center for New York City Affairs and The New School reveals that these issues are present in New York City's human services contracts. While the primary focus of this report is on for-profit contractors, some jurisdictions contract with non-

profit organizations that may have specialized or localized expertise or experience. But contracts with non-profit organizations can have some of the same issues as contracts with for-profit companies. In FY 2022, New York City has about 4600 contracts, which are largely with nonprofit organizations, to provide \$5.6 billion in social services, such as child and family services, homeless services, mental health services, services for seniors, and more. The human services contract workforce has over 80,000 workers and is staffed predominately by workers of color (75 percent) and women (70 percent). Women of color constitute 55 percent of this workforce. The 2019 average annual pay for these workers was about \$34,000, and roughly two-thirds had earnings below the City's near-poverty threshold (incomes below 200 percent of the federal poverty line). One in five contracted human service workers received SNAP benefits. The report recommends a prevailing wage approach, establishing a wage and benefit schedule for all contracted human services workers so that wages are comparable to similar City positions, which would be adopted into all contracts.⁵³

Governmental entities should require that government contracts meet and maintain job quality standards. Government contracting directly supports jobs in the private sector, which enables localities and states to set standards for the quality of those jobs. Many cities have enacted living wage policies for public and contracted employees. In addition to increased wage standards, the policies can also include paid sick days and family leave, anti-retaliation language, and responsible contractor stipulations that require disclosure during the bidding process of a firm's history of labor and other legal violations.⁵⁴

For example, in the City of Boston, workers employed by contractors that have a contract with the city for at least \$25,000 must be paid a living wage, which is recalculated each

Many cities have enacted living wage policies for public and contracted employees.

year. In 2023, the living wage rate is set at \$16.38 per hour.⁵⁵ The City of Austin has a living wage ordinance that requires city contractors and subcontractors to pay their employees working on the contract at least

\$20 per hour for fiscal year 2023.⁵⁶ In 2015, the mayor of the City of Pittsburgh signed an executive order mandating a \$15 minimum wage for all city and contracted employees. The state prohibits the city from passing citywide wage increases, but it can set standards for its contracted workers. Importantly, these types of measures can improve job quality standards even in a preemption state environment. They can also influence private employers. The University of Pittsburgh Medical Center, which is the largest non-government employer in Pennsylvania, raised their minimum wage to \$15 per hour four months after the executive order on city and contractor employee wages was signed.⁵⁷

Some jurisdictions have passed laws that require contractors to provide or fund benefits such as health insurance and/or sick days. The City of Houston has a contractor "Pay or Play Program," which requires that city contractors with contracts over \$100,000 and subcontractors with subcontracts over \$200,000 to either contribute prescribed amounts to the Contractors Responsibility Fund (CRF) for their uninsured employees or provide their employees a minimum specified level of healthcare benefits. The CRF helps offset the costs of caring for uninsured residents and provides various health programs that are affordable to those who are uninsured.⁵⁸

ENSURING GOOD WORKING CONDITIONS THROUGHOUT SUPPLY CHAINS

Going beyond the examination of direct contractor employees, there has been growing awareness of the working conditions for workers further down the supply chain for a given public good. While many supply chain initiatives have been shown to be ineffective,⁵⁹ there are a few programs that have been documented to produce effective results. For example, the Fair Food Program creates partnerships between farmworkers, growers, and buyers. Participation requires that farmworkers are not subject to sexual assault, forced labor, and violence. The program also requires that workers are paid for all the hours they work, and benefit from safe and improved working conditions, all while allowing them to report issues without fear. Participating growers are able to competently address any problems and learn to prevent them, and participating buyers are guaranteed a secure and ethical supply chain.⁶⁰ Similarly, the Milk with Dignity Program brings together farmworkers, farmers, buyers, and consumers to secure dignified working conditions in dairy supply chains.⁶¹ By giving preference to vendors that participate in these types of programs, governmental entities can take initial steps to direct public dollars to down-chain supply vendors without poor track records of labor abuse.

6. Contractor Diversity and Workforce Equity — Where the Money Flows

One important question in procurement is *who* is getting the public money that flows from a government contract. In many jurisdictions, public dollars awarded through procurement do not benefit the communities they serve, proportionate to the demographics of the community.⁶² There are two ways that governmental entities can examine this question. One way to examine this question is through the lens of which private entities are receiving contracts or subcontracts in public procurements and who owns these private entities. Another important, and arguably more impactful, way to examine this question is through understanding and identifying who receives the jobs that government contracts create. While many localities have examined and made varying efforts to improve contractor diversity and help firms with owners from disadvantaged communities compete for and receive government contracts, there has been less emphasis on the examination of who is ultimately receiving the jobs the contract creates, and whether these jobs benefit disadvantaged workers in the community. It is critical that governmental entities leverage public money distributed through contracting as a tool to lift up disadvantaged communities and help chip away at economic and racial inequities. This subsection examines each of these approaches, and includes examples of how various jurisdictions have designed programs to improve both contractor diversity and workforce equity.

Contractor Diversity

Many governmental entities, researchers, and community advocates have drawn important connections between which companies are receiving public funds through procurement and persistent economic and racial inequities. Historical and structural discrimination has left minority- and women-owned business enterprises (referred to as “MWBEs” and sometimes called “Historically Underutilized Businesses” or “HUBs”) at a disadvantage in receiving public procurement dollars, and thereby left out of important wealth-building opportunities.

Generally, there are two categories of policies and programs that localities can utilize to promote inclusivity of bidders in the procurement process. The first is through race and gender conscious policies. Some localities have engaged in policies that seek to increase the participation of minority-owned business enterprises in the jurisdiction’s procurement process. These policies are considered “race-conscious.” While set-aside programs for minority-owned enterprises proliferated in the 1980s, these types of policies have been limited through judicial challenges and state preemption. Current “inclusive procurement” policies must be narrowly-tailored and backed up by a study showing the disparity between the availability of minority- or women-owned enterprises for a specific type of work and the utilization of these firms for that type of work. These disparity studies can

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be expensive undertakings for localities, but can be used to set mandatory goals around the use of minority-owned enterprises as contractors and/or subcontractors on government contracts.

For example, the city of Houston has undertaken race-conscious policies in an effort to diversify the firms receiving city contracts. Houston’s Office of Business Opportunity sets goals for MBE and WBE participation in city contracts. For goods and services contracts over \$100,000, the current goal is 11 percent MWBE participation and for all professional services contracts, the current goal is 24 percent. Although construction contracts are outside the scope of this report, the City of Houston also sets a 34 percent MWBE goal for construction contracts. Participation by MWBE firms as prime contractors, subcontractors, or joint venture partners all count toward fulfillment of the city’s goal. To ensure that the program is narrowly-tailored within legal requirements, “MWBE contract goals are established based on the divisibility of work on each project and the availability of certified MWBEs to perform the work.”⁶³ Contractors are required to make a “good faith effort” in fulfilling MWBE goals in their contract. The city reports that, from July 1, 2021 through June 30, 2022, 47 percent of dollars from professional services contracts and 19 percent of dollars from goods and services contracts went to MWBE firms.⁶⁴

The second category is through race and gender-neutral policies and programs. This category is important, especially for jurisdictions where race-conscious policies are not allowed or preempted by state law. Six states currently do not allow race-conscious programs at the state or local government levels, including California, Washington, Michigan, Nebraska, Arizona, and Oklahoma.⁶⁵ Race-neutral strategies remove barriers

for MWBEs in bidding for contracts, but do not contain mandated preferences. Governmental entities may utilize race-neutral strategies such as encouraging large contractors to subcontract with MWBEs, performing targeted outreach to minority-owned business enterprises in the community, providing technical assistance to help MWBEs access the procurement process, or unbundling large contracts to increase bidding opportunities for smaller businesses, of which MWBEs are overrepresented.

The City of Seattle has engaged in several race-neutral strategies to encourage utilization of MWBE firms. Even though Washington state prohibits race-conscious policies, the City of Seattle requires contractors to make a commitment to utilize a certain percentage of MWBE subcontractors in their bids. If the contractor wins the contract, the MWBE utilization promised in its bid gets written as a requirement into the contract. Importantly, the percentage is created by the bidder, not mandated by the city, to prevent it from running afoul of the state's race-conscious policy prohibition.⁶⁶

Beyond contractual commitments, the city has implemented several other race-neutral strategies. A 2019 executive order lays out various strategies for the city to engage in to increase economic inclusion and contracting equity. For example, the order directed the city to expand outreach to MWBE firms by requiring executive agencies to submit annual contracting equity outreach plans, participate in contracting equity outreach events, and assist women- and minority-owned businesses in navigating procurement opportunities. Additionally, the order directed the Mayor's Office to bring together an advisory committee, which included

MWBEs and other underutilized firms, and solicited feedback about the city's contracting equity initiatives and made recommendations on how to improve.⁶⁷ The order also requires agencies to promote good faith efforts to include MWBEs in prime and

A recent study examining whether minority-owned businesses receive a fair share of Washington's contracting dollars found that while 37 percent of contracting dollars went to disadvantaged firms, 70 percent of that money went to only 9 percent of all the disadvantaged firms that the District used.

subcontracting roles in consultant contracts. The city also expanded its Prompt Payment policy to ensure that MWBEs and other underutilized firms get paid promptly by the city.⁶⁸ In 2021, the City reported contracting with Northwest Mountain Minority Supplier Development Council to provide technical assistance to MWBE firms in doing business with the City. In addition, they hosted dozens of meet-and-greet events for MWBE firms, including monthly virtual meetings to connect with City procurements staff and learn more about the City's procurement system.⁶⁹ That year, Seattle reported that the city spent 24.8 percent of purchasing dollars with MWBEs, exceeding its 20 percent goal.⁷⁰

Inclusive procurement policies and strategies can also include policies or programs that favor small business enterprises and/or local business enterprises. A small business enterprise program may be operated in conjunction with the minority-owned business enterprise program since small business contractors tend to be more diverse than larger contractors.⁷¹ The promotion of small and local businesses in public procurement can help create jobs in the community, keep public dollars in the local community, and ultimately contribute to more equitably-distributed economic benefits.⁷²

Studies show that local and small businesses often face barriers to obtaining government contracts, as larger corporations have the resources and relationships to track, respond to, and ultimately capture a large share of contracts.⁷³ In response to these barriers, many jurisdictions have incorporated strategies, similar to those targeting MWBEs, to help increase utilization of small and/or local firms.

While inclusive procurement policies focusing on increasing utilization of MWBE, small, and local firms in contracting can accomplish important goals of diversifying the firms that receive government contracts, these actual policies can face implementation barriers that can make accomplishing these goals harder. For example, Washington, DC has a policy for non-construction contracts over \$250,000 that requires at least 35 percent of the dollar volume of the contract to be subcontracted to small local businesses.⁷⁴ While the goal of the law is to create wealth within the community, there have been issues with politically-connected certified business enterprises (the term Washington uses for small or disadvantaged firms that qualify as a local business) receiving subcontracts on city contracts. A recent study examining whether minority-owned businesses receive a fair share of Washington's contracting dollars found that while 37 percent of contracting dollars went to disadvantaged firms, 70 percent of that money went to only 9 percent of all the disadvantaged firms that the District used.⁷⁵ There have also been issues with certified businesses enterprises being sham entities, not actually meeting the requirements to qualify as a certified business enterprise.⁷⁶

This was an issue that arose in a highly-publicized contract that Washington D.C. entered into with a Greek company, Interlot, to run its lottery system. Interlot subcontracted with a Certified Business Enterprise, Veterans Service Corp., promising that Veterans Service Corp. would "perform the ENTIRE subcontract with its own organization and resources," and explaining that "Mindful of the District's support for minority vendors and Intralot's commitment to diversity, Intralot searched for [an approved] minority firm as a subcontractor."⁷⁷ However, an investigation by the *Washington Post* found that Veterans Service Corp. had no actual employees on record, had employees on its website that didn't actually work there, and had based its designation as a local business on the residency of the mother of an Interlot subsidiary employee representing Veterans Service Corp. Essentially, Veterans Service Corp. did not actually meet the requirements of a Certified Business Enterprise and was a sham entity being used to fulfill a legal requirement.⁷⁸ While the contract was plagued with multiple other problems, the example underscores how contractors can take advantage of these programs if governmental entities do not exercise careful review and oversight. It is important that these types of inclusive procurement programs are not just another box to be checked off in the procurement process, but that their implementation meets the letter and spirit of these policies.

Relatedly, researchers and practitioners warn that merely having an inclusive procurement policy or program is not enough to achieve desired outcomes. Effectively putting these policies in practice and ensuring compliance is difficult and requires dedicated personnel and capacity. Some localities have created offices that are

responsible for implementing and overseeing contracting equity programs, but ensuring that these offices are staffed and have the resources they need to fulfill their mission is a challenge that is consistently reported in surveys and research.⁷⁹ Ensuring supplier and contractor diversity requires investment, time, and capacity to successfully implement these types of programs and policies.

Workforce Equity

The focus on helping MWBEs capture more procurement dollars is important and a critical step to ensure that public dollars are equitably distributed. However, a harder, yet crucial, question examines how public procurement dollars flow to workers and whether money is being used to lift up disadvantaged workers and their families, including workers of color or women workers.

Research shows that opportunity in the U.S. is growing increasingly unequal. Workers who have fewer formal skills or education are disproportionately impacted by this dynamic, especially those who come from disadvantaged communities and populations.⁸⁰ It is imperative that public dollars, especially those distributed to private sector employers through government contracting, are used to help reverse these trends and create the types of high-quality job opportunities that are in decline.

Policies and programs aimed at increasing job access for specific populations, such as targeted and local hire programs and policies can be found in some jurisdictions' public works, construction, and infrastructure contracts. Targeted hiring programs are designed so that a fair share of jobs created by public contracting benefit those who have the greatest need. For example, these programs may target specific populations based on criteria such as veteran status, sex, race and ethnicity, long-term unemployment, disability, etc. Local hire programs are designed so that jobs created by public contracting reach and benefit those who live in the local community, typically defined as a specific local geographic area.⁸¹

For example, Seattle's Priority Hire program, which "puts people living in economically distressed communities to work on the City's construction projects"⁸² contains a blend of activities and goals related to both targeted and local hire programs, and has been successful in getting jobs and public dollars to disadvantaged communities. Since 2013, workers in identified economically distressed areas earned an additional \$36.7 million due to the city's Priority Hire program. The city also reports that African Americans on Priority Hire projects earned double the income earned by the average African American in the region.⁸³

While these types of programs are used in some public works and construction contracting, they are often not a part of contracts for the provision of services or programs. However, some localities have first source hiring programs that seek to connect local jobseekers, who meet certain requirements, with city contractors that need to hire new workers. While these types of programs are more common in construction-related contracts, there are some localities that have extended them to non-construction service contracts.

For example, for contracts with the City of San Francisco for services or goods over \$50,000, contractors must make a good-faith effort to hire economically disadvantaged San Franciscan residents for new entry level positions.⁸⁴ The City's Office of Economic and Workforce Development (OEWD) administers the program and does the following: promotes job announcements to over 2,000 recipients in the San Francisco community; connects employers with a pool of qualified, pre-screened candidates; refers graduates of OEWD-funded industry sector training programs to employers; and coordinates customized recruitment and hiring events.⁸⁵ It is worth noting that local advocates have questioned the use of "good faith effort" approaches in these types of programs, arguing that a mandate approach can achieve better outcomes.⁸⁶

Similarly, New York City has a program, HireNYC, that seeks to connect residents receiving cash assistance with jobs with contractors that provide human services. Contractors that

Some jurisdictions have passed worker retention policies that aim to ensure that workers can continue working in the public service or program when the contractor changes.

contract with the seven participating agencies for human services must hire one cash assistance recipient for every \$250,000 in annualized contract value.⁸⁷

The types of jobs that are filled through this program include security, maintenance, healthcare support positions, educators, counselors, administrative support, and managers. During Fiscal Year 2022, over 4,800 individuals were placed into human services jobs through the HireNYC program.⁸⁸

Any type of policy or program that seeks to ensure that public contract dollars create and support jobs for disadvantaged workers must be coupled with measures that require high-quality jobs, including living wages and benefits (as discussed earlier in the report) and opportunities for career advancement, since the goal should be to ensure equitable access to good jobs that lead to long-term career opportunities. However, government contracts for services are not always long-term arrangements, which can lead to job instability for workers who gain access to created jobs. Indeed, the shifting nature of government contracting can conflict with the goals of creating equitable access to stable jobs and investing in workers to aid career advancement.

Some jurisdictions have passed worker retention policies that aim to ensure that workers can continue working in the public service or program when the contractor changes. The City of Los Angeles has a worker retention policy that requires that when a city contract over \$25,000 has been terminated and will be replaced by a new contractor for the same services, the outgoing contractor must provide the successor contractor with a list of employees who meet certain requirements. The successor contractor must retain these employees for at least 90-day transition period,⁸⁹ with the goal of them becoming permanent employees of the successor contractor. Not only can these types of policies help ensure career stability for workers, but Los Angeles points out that workers that have gained knowledge and experience providing a public service are valuable in providing quality public services and that replacing these employees with workers without this experience "decreases efficiency and results in a disservice to the City."⁹⁰ While the Los Angeles worker retention policy only applies to contracts that are being terminated and

replaced with a new contractor, these types of policies should also extend to instances where a government entity brings the service back to public sector provision.

Job quality and workforce equity measures can also be adapted for and incorporated into the manufacturing of goods that governmental entities purchase. There has been a historic exclusion of women and people of color from the manufacturing sector and some of these jobs that once provided good wages and benefits and worker protections are being degraded through current corporate practices.⁹¹ States and localities that purchase manufactured goods, such as vehicles, can use the power of procurement to require contractors to make commitments to create good jobs that are domestically-based and make efforts to hire and train disadvantaged workers facing barriers to employment.

The non-profit organization, Jobs to Move America, has extensively studied these issues and created the U.S. Employment Plan, which contains provisions around job quality standards and worker equity and access that procurement agencies can tailor and incorporate into their RFPs and contracts for manufactured goods. The U.S. Employment plan has three main parts:

- require companies to detail the number and quality of U.S. jobs that will result from a contract. Companies can strengthen their proposals by explaining plans to create jobs, locate facilities in the U.S., and generate opportunities for underrepresented workers.
- help governmental entities evaluate proposals from bidders by providing a scoring method that rewards companies for robust commitments to creating good U.S. jobs, advance workforce development, and invest in U.S. factories.
- legally obligate companies that win manufacturing contracts to implement their proposed plans and commitments, ensuring implementation of the plan through the resulting contract.⁹²

Cities and states across the country have used the U.S. Employment Plan, including Los Angeles Metro, Chicago Transit Authority, and Amtrak in contracts for the manufacturing and purchase of rail cars. To learn more about the U.S. Employment Plan and its outcomes improving job quality and worker equity, see Jobs to Move America's website at <https://jobstomoveamerica.org/resource/u-s-employment-plan-2/>.

REFORMING THE OFFICE OF MANAGEMENT & BUDGET (OMB) UNIFORM GUIDANCE TO PERMIT MORE INNOVATIVE PROCUREMENT PRACTICES

The OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. 200), commonly referred to as the "Uniform Guidance," is the federal regulation that applies to almost all federal pass-through grants to state and local governments. These regulations are important because they set rules and conditions related to contracting and procurement for every federally appropriated grant dollar. Many state and local governmental entities use federal grant money to procure a wide range of goods and services. The Uniform Guidance applies to contracting amounts that typically total around \$800 billion in federal grant spending annually.⁹³

However, the current provisions of the Uniform Guidance limit, or effectively preempt, the ability of cities and states to enact procurement rules that could positively impact job quality as well as economic and racial equity. The Reagan administration adopted a misguided and ideologically driven approach that contract specifications unrelated to price, especially those designed to maximize the economic and social benefits of procurement, would inhibit full competition in the contracting process. This interpretation of competition was incorporated in the Uniform Guidance and placed limits, including a complete ban on geographic preferences, on state and local governments engaging in procurement that uses any federal grant monies.

In February 2023, the Office of Management & Budget made public their intent to update the Uniform Guidance and released a Request for Information (RFI) for stakeholders to submit public comment regarding these updates. This is a significant opportunity to add key provisions to the Uniform Guidance that would allow state and local governments to use the power of procurement to improve job creation, job quality, and worker equity on work procured with federal grant dollars.

A coalition of organizations called the Local Opportunities Campaign, led by the non-profit organization Jobs to Move America, submitted a response to the RFI in March 2023 and called for updating the Uniform Guidance with provisions that would address racial equity by allowing state and local governments to encourage hiring local residents for federally-funded projects, and allowing states and local government to implement policies that address barriers to employment, promote quality jobs, and protect jobs through workforce transition plans. For more information, See the Local Opportunities Campaign website: <https://localopportunities.org/>.

7. Environmental Impacts

It is widely accepted that governmental entities must take a leadership role in combating and mitigating the impacts of climate change. However, a focus on reducing negative environmental outcomes of spending decisions can be at odds with a procurement process that prioritizes low cost and ease of acquisition. As major purchasers of bulk goods, governmental entities have the ability to not only ensure that spending is used in a way that minimizes environmental impacts, but can also assert influence over the sustainability of private market product development and offerings.

Local and state governments are beginning to understand that procurement is a critical strategy to achieving broader sustainability goals and plans.

Local and state governments are beginning to understand that procurement is a critical strategy to achieving broader sustainability goals and plans. Surveys from 2017 indicate that about a quarter of cities have “green” or “sustainable” procurement policies.⁹⁴ Additionally, 20 states reported having this type policy in a 2022 survey.⁹⁵ For example, King County, WA passed a Sustainable Purchasing Policy that seeks to “ensure the purchase of sustainable goods and services whenever they meet price, performance, and availability requirements of the County and advance the goals and priority actions of the King County Strategic Plan, Strategic Climate Action Plan, Green Building Ordinance, and Equity and Social Justice Strategic Plan.”⁹⁶ This policy directs agencies to abide by sustainable purchasing requirements, environmental standards, and certifications, and consider the environmental impacts of purchasing decisions.

In 2021, city of Dallas passed a Sustainable Procurement policy which establishes an interdepartmental working group to maintain product lists for environmentally preferred products, identify sustainability standards and specifications, and examine waste reduction and efficiency opportunities, among other duties.⁹⁷ Importantly, in both these examples, the localities have broadly defined sustainable procurement to link environmental policies and goals with those related to equity and inclusion and local economic development, recognizing the integral intersection of these values and goals.

Another important impact of sustainable procurement considerations and measures is improving the occupational health for workers and public health of residents. For example, San Francisco’s law detailing its Environmentally Preferable Purchasing Program specifically states that an aim of the program is to “Reduce occupational health hazards for City staff as well as reduce exposure of City residents and visitors to potentially toxic chemicals by purchasing products for use in City operations that do not harm human health or the environment.”⁹⁸

Many environmental harms disproportionately impact disadvantaged communities, and sustainable procurement policies and programs should prioritize public health improvements for communities that bear the greatest public health burden. This dynamic can be seen in many jurisdictions around the country where medium and heavy-duty vehicles owned by local governments, such as school buses and garbage trucks, emit

significant amounts of pollution. Bus depots and other fleet storage facilities are often located in disadvantaged communities, disproportionately impacting the public health of communities of color.⁹⁹ Sustainable procurement measures that encourage and/or require the purchase of electric vehicle fleets, such as the measure adopted by the Austin Independent School District discussed above, or Miami-Dade County's Environmentally Preferable Purchasing goal to convert its fleet to 100 percent electric vehicles by 2030 discussed in Section 5, not only reduce environmental harm, but can also have clear environmental justice outcomes.

SUSTAINABLE PROCUREMENT IN THE FEDERAL GOVERNMENT

Many state and local sustainable purchasing requirements echo federal recommendations from the Environmental Protection Agency's (EPA) Environmentally Preferable Purchasing Program, which helps federal agencies identify and procure environmentally preferable products and services.¹⁰⁰ These standards have resulted in significant cost savings to the federal government. For example, in 2020, the federal government purchased more than 27.4 million EPEAT-registered (an ecolabel for the IT-sector) products, resulting in a cost savings to the federal government of around \$1 billion.¹⁰¹ The EPA's compilation of resources related to green procurement can be found here: <https://sftool.gov/greenprocurement>.

In November 2022, the Biden Administration proposed the Federal Supplier Climate Risks and Resilience Rule, requiring large federal contractors to develop carbon reduction targets and disclose their greenhouse gas emissions.¹⁰² The administration seeks to use its position as the world's single largest purchaser of goods and services to influence corporate behavior related to environmental practices, and sees this rule change as an "integral part of the President's Federal Sustainability Plan, which set a goal to achieve net-zero emissions procurement by 2050." This rule has yet to be finalized as of the publication of this report.¹⁰³

It is important to note that the higher potential cost of a sustainable product or service may be a deterrent to governmental entities seeking to minimize cost through procurement. However, it is important that governmental entities take a longer-term view of costs beyond the initial expenditure. A more sustainable product may cost more in the short-term, but the long-term aggregate benefits to the community and/or to the local environment for consistently making sustainable purchasing choices may more than make up for the price difference. For example, the King County sustainable purchasing policy requires that agencies "Think beyond purchase price [to] consider the life cycle of goods and services including the costs and environmental impacts associated with raw material extraction, manufacturing, packaging, distribution, use, maintenance, and disposal of the product."¹⁰⁴

In the medium and long-term, sustainable procurement policies can influence and change the product offerings of corporations. As more governmental entities demand

sustainable products and processes, corporations will have to adapt to changing public sector customer needs and requirements. This type of changed demand can result in a “race to the top” where contractors compete to offer additional and/or more innovative sustainable goods and services.¹⁰⁵ It can also have the spillover effect of the private market producing more sustainable goods and services as the default offering, instead of as an alternative to less sustainable options. As San Francisco points out, its Environmentally Preferable Purchasing Program “will encourage market development of new, healthy environmentally preferable technologies and products and will demonstrate the efficacy of this approach to other governmental agencies, residents and businesses which will help generate regional demand for healthy products, a healthy way of doing business, product innovation, and business development and competition.”¹⁰⁶

For more information and examples of sustainable purchasing policies, see this guide from the Urban Directors Sustainability Network: http://responsiblepurchasing.org/purchasing_guides/playbook_for_cities/rpn_usdn_playbook_for_cities.pdf

8. Transparency and Public Information

Government transparency strengthens democracy, promotes fiscal responsibility, checks corruption, and bolsters public confidence. Transparency in public procurement is also critical to designing government contracts to meet the needs of the public. As discussed above, public participation gives stakeholders the opportunity to make their voices heard during the procurement process and throughout the life of the contract. But without transparency in the process and timely public access to important procurement documents, such as any pre-procurement analyses, procurement solicitations, the contract, and ongoing data related to contract monitoring and oversight, it is difficult, if

Transparency in public procurement is also critical to designing government contracts to meet the needs of the public.

not impossible, for the public to understand, engage, and provide feedback about a contract.

Jurisdictions can ensure planning related to procurement is transparent by making public future and/or anticipated contracts into which

agencies or departments plan to enter. This can allow stakeholders to understand what contracts the jurisdiction is planning for and engage in the process at the very beginning stages. For example, New York City’s Local Law 63 of 2011 requires mayoral agencies to publish a plan detailing the anticipated contracting actions of each City agency for the upcoming fiscal year for certain categories of procurement.¹⁰⁷ This policy aims to increase pre-procurement transparency.

In some jurisdictions, it can be difficult to know how much a contract costs or basic details about contracts, since this information is not systematically collected and made available to the public. To make it more transparent, some cities and states have made information, such as copies of contracts, amendments, and government spending data related to contracts, easily available to the public by creating websites with searchable databases. For example, New York City’s Comptroller operates the [Checkbook NYC](#),

which tracks spending, city contracts, and other budget-related information. The robust database allows the user to obtain information about an individual contract or examine the city's contract spending by different variables, such as contractor or city agency, to get a more aggregated look at the city's contracting practices. The city is also starting to explore how it can release other procurement information to the public in a more proactive way.¹⁰⁸ The City of Seattle also has a [contract database](#) that allows users to search for information about individual contracts and includes the full contract with each contract summary entry. Data can also be exported to Microsoft Excel to allow for the user to further analyze and aggregate data.

Transparency is also critical in holding contractors accountable for upholding the public values discussed in this report. State open records laws, while varying from state to state, generally allow the public access to government documents and other types of information, which can be critical in understanding how public funds are being spent, how public programs are performing, and how decision-makers are responding to obstacles and challenges. Yet government contractors, paid with public dollars, are often able to circumvent open records laws. Some contractors claim that information related to their contract with a governmental entity is a "trade secret" or "proprietary," and therefore exempt from disclosure under state public records laws. However, much of the information contractors seek to conceal would be public if the service or program was being performed by the public sector. Trade secret exemptions are widespread. Every state except Massachusetts has a trade secret exemption to public records laws.¹⁰⁹ Moreover, governmental entities often rely on the contractor to decide what is a trade secret and whether disclosure would harm the company,¹¹⁰ or they defer to confidentiality clauses in contracts as blanket denials.

However, much of the information contractors seek to conceal would be public if the service or program was being performed by the public sector.

For example, in 2013, LA Metro signed a \$500 million contract with Canadian multinational bus manufacturer New Flyer to produce buses for the agency. The company won the contract in large part because they promised to create 250 new good-paying jobs in California and the U.S. In early 2016, the non-profit organization Jobs to Move America asked the agency to provide data on whether New Flyer was keeping its hiring and wage promises. The company provided very general information that had been heavily redacted. When the agency moved to release the rest of the information, New Flyer filed a lawsuit to block that disclosure, claiming the data were exempt from disclosure because they were trade secrets. In 2018, the Los Angeles Superior Court ruled that information related to jobs promises should be released to the public and that the public's interest in knowing whether the company fulfilled its contractual promises overrode the company desire to keep the information secret. It is important to note though that the ruling did not invalidate California's trade secret exemption.¹¹¹ This example clearly illustrates how the lack of transparency regarding information related to contracting can hamper efforts to hold contractors accountable and uphold the public interest.

An additional discussion of transparency and trade secrets in government contracting is included in Section 4.

9. Accountability and Contractor Oversight

The ability of a governmental entity to oversee a contract for the life of contract term and hold the contractor accountable for its performance and adherence to contract requirements is essential to the success of the contract. However, recent research and the experiences of cities and states across the country show that too often contract oversight is lax.¹¹²

Robust oversight means that the government can hold contractors accountable for their performance, and ensure that the public receives quality services at a reasonable cost. Proper oversight can protect public health and safety. Strong oversight allows governments to catch waste, fraud, and abuse in real time instead of long after the fact, and correct mistakes before they result in serious harm.

Lax oversight has detrimental impacts for the people served by a program or service, and for the public at large. Poor oversight of government contracts can mean wasted public tax dollars, fraud and abuse, poor quality of service and underperformance by

contractors, and increased risks to vulnerable residents and to public health and safety.

Cities and states should have laws and/or rules and procedures related to contract oversight.

Cities and states should have laws and/or rules and procedures related to contract oversight. These rules should clearly specify who is responsible for various aspects

of oversight before, during, and after a contract term, and requirements for contract oversight. Additionally, contracting agencies should adopt rules that provide additional guidance related to their specific mission—for example, oversight of a technology contract will be different than oversight of a waste pick-up contract.

While auditing is an important aspect of contract oversight, by the time a contract audit takes place, serious problems have often already occurred and public funds have already been spent. Real-time and on-going oversight of contracts by public contract personnel can prevent or at least decrease the severity of contract problems. Contract oversight rules can require contracting agencies to provide ongoing monitoring, in addition to audits conducted by auditing professionals.

Research supports this recommendation. Professor Janet Rothenberg Pack of the Wharton School of Business at the University of Pennsylvania found that comprehensive oversight consists of “real interaction usually involv[ing] daily meetings between liaison personnel of the government and the contractor.” She explains that this type of interaction is different from the “far more common routine monitoring that generally consists of reviewing periodic activity reports submitted by the contractor, spot checks of performance, and receiving and transmitting complaints about performance.”¹¹³ Rules can specify the type of monitoring required by contracting agencies, and incorporate best practices.

Substantial time and personnel are necessary to adequately monitor contracts. If government agencies are unable to dedicate sufficient personnel and time to overseeing contracts, they should not outsource the service. The National State Auditors Association recommends that once a decision to contract has been made, the contracting agency should identify the specific staff responsible for monitoring contractor performance, including a contract manager with the authority, resources, and time to monitor the contract, and ensure that sufficient staff is available to handle contract oversight.¹¹⁴

All government staff involved in contract oversight, including formal contract managers as well as other positions that may include this responsibility or act as de facto contract managers, should receive training. Well-qualified contract managers should have substantive knowledge of their agency's service and mission as well as contract management skills. Managing contractors requires a different skill set than managing in-house employees, including specialized knowledge about contracting best practices, applicable rules and laws around contracting, incentive structures, and how to manage costs and performance of the contractor.

Relatedly, it is important that even when a service or function is contracted out, governmental entities retain staff that have the specialized knowledge and ideally responsibilities related to that service or function. Often, departments or agencies that contract out will retain minimal staffing related to the contracted service or function, creating a serious hazard of the governmental entity not being able to adequately oversee the function and monitor the contractor. This has been especially documented in technology contracts, where governmental entities contract out entire systems to private contractors, retaining minimal responsibility and staff related to the system. Without public sector capacity and knowledge, governmental entities cannot fully evaluate the quality or cost of the contractor's services. This gives private contractors significant leverage in the relationship. Given the often large transition costs of changing contractors, this makes governmental entities vulnerable to low-quality service, cost overruns, delays, and other problematic issues in contracting.¹¹⁵

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Lastly, cities and states should not outsource contract oversight responsibilities to third-party contractors. This practice introduces additional confusion into the process, and delegates crucial functions to contractors that may have different priorities and interests than the government. While it may be appropriate to involve independent monitors or auditors to supplement robust government oversight, the contracting agency must always conduct and be ultimately responsible for contract oversight.

SECTION
4

Special and Emerging Issues in Technology Contracts

While all the issues discussed in Section 3 apply to technology contracts, there are some unique issues and considerations in this emerging area, especially as technology continues to change and evolve. Technology has and will continue to fundamentally change the way that public goods, services, and programs are delivered. A central issue is how governmental entities, especially through procurement and government contracting, can ensure that these new technologies enhance the safe, dependable, and equitable delivery of public functions. Technology has the potential to improve and bring efficiencies to public service provision, but there are also great risks if governmental entities do not perform careful, thorough, and participatory project planning, evaluation, and implementation. These risks include further exacerbation of social and economic inequities, reduced access to public goods, the erosion of public trust and security, the takeover and loss of public sector jobs, and the loss of democratic control of public goods as private technology corporations control increasingly complex aspects of these goods, and more.

Policymakers and administrators in localities that we interviewed acknowledged that technology contracts were complex and that procurement guidelines and processes needed to be updated to reflect these new complexities. In many cases though, localities had not yet made those updates. As governmental entities consider how they procure technology-related goods and services, it is clear that a traditional procurement approach cannot be used.

This section discusses a few select special and emerging issues related to technology contracts, including artificial intelligence (AI) and algorithmic decision-making systems, privacy and surveillance concerns, and transparency and trade secret issues.

Artificial Intelligence and Algorithm-Driven Systems

Some localities and states have entered and are considering entering into contracts that utilize emerging technology, such as artificial intelligence and algorithm-driven systems. These technologies are being incorporated into contracts that impact many types of public services, including those related to criminal justice, healthcare, housing, human services, child services, and more. In many of these contracts, the technological products and systems utilized are used to make profound and sometimes life-altering decisions about people.

While the use of emerging technologies can bring efficiencies to public goods and services, these efficiencies cannot be at the expense of the wellbeing and safety of the public.

As of August 2021, nearly every state had adopted some type of algorithm for making risk assessment determinations for matters related to the criminal justice system.¹¹⁶ For example, some jurisdictions are using “predictive” algorithms in determining bail outcomes, meaning that the algorithm may use various factors about a person, such as demographic data, socioeconomic status, employment status, and family background, to make a prediction about a person’s future behavior and therefore determine whether a person should be eligible for bail. Beyond bail determination, some jurisdictions are also using algorithmic technologies for criminal sentencing, facial recognition, DNA matching,¹¹⁷ unemployment insurance (UI) services,¹¹⁸ public assistance eligibility determination, and more.

The algorithms, sometimes called “risk assessments” or “evidence-based models,” that underpin these systems can be biased and discriminatory, reflecting the biases of the

The algorithms, sometimes called “risk assessments” or “evidence-based models,” that underpin these systems can be biased and discriminatory, reflecting the biases of the people who created the algorithmic tool and the data used in its creation.

people who created the algorithmic tool and the data used in its creation. Beyond bias embedded within technology, bias also exists more systematically. This prompts important questions around who benefits from the utilization of risk assessments and who is harmed by them. Moreover, jurisdictions should understand why they are deploying

algorithm-related tools and whether they are a good fit for the intended task. This has been an issue raised by advocates and experts in the proposed use of the Bureau of Prisons (BOP) risk assessment system, the Prisoner Assessment Tool Targeting Estimated Risk and Needs (PATTERN), which makes parole decisions by predicting the likelihood that a person in federal prison will reoffend upon release. This tool, as originally designed, used arrest data that was not well suited for making predictions about recidivism, and also relied on data that was already subject to historical and current patterns of bias and discrimination. Advocates raised these and other important issues related to the tool to the federal government to push back against the use of an assessment that would further entrench racial and gender biases.¹¹⁹

Algorithm-driven systems are also being used to determine public benefit levels in health programs, such as Medicaid, making life-changing decisions for recipients. In 2019, the District of Columbia’s Department of Health Care Finance hired a new contractor to review client eligibility for the Elderly and Persons with Physical Disabilities (EPD) Waiver program.¹²⁰ The review process utilized an algorithm-driven assessment tool, which led to negative impacts for many recipients whose safety and well-being relied on this program.¹²¹ For example, many disabled people and older people saw drastic cuts in their home care hours, even though many of them depended on consistently available care. Others found their program eligibility terminated after reassessment by the new tool.¹²²

In some instances, algorithms can produce inaccurate results. This was an issue with the system that was adopted to root out fraud in Michigan’s unemployment insurance

program. The state spent \$44,400,558 to create the new automated algorithmic system, and laid off one-third of agency staff due to perceived efficiency gains. In 2013, the system algorithmically generated about 48,000 fraud accusations against unemployment insurance recipients, which was a five-fold increase from the prior system. The new system did not require any human intervention or review of a fraud claim. The state demanded large penalties from those accused of fraud, including repayments of the original benefit, plus interest and civil penalties of four times the alleged amount owed. This meant that residents accused of fraud had their wages garnished, bank accounts levied, and tax refunds intercepted by the state. Journalists reported that the financial stress on the accused resulted in evictions, divorces, destroyed credit scores, homelessness, bankruptcies, and even suicide.¹²³

However, a state review later determined that 93 percent of the fraud determinations were wrong.¹²⁴ Investigation into the system found that it utilized missing or corrupt data and that the underlying assumption of the system was that UI claimants were trying to commit fraud, and the burden was on claimants to prove otherwise.¹²⁵ These serious issues raised important questions around whether the system was built to actually serve the public, how these systems can perpetuate societal biases about claimants, and how removing the judgment and expertise of human public employees results in a system that has little oversight until after lives are destroyed. These questions are not limited to Michigan's experience. In 2017, the National Association of State Workforce Agencies reported that approximately 20 states were using predictive modeling or using analytics in their UI systems.¹²⁶

Inaccuracy has also been reported with services from ShotSpotter, a corporation that manufactures gunshot detection technology, relying on artificial intelligence and algorithmic methods to detect and locate gunshots.¹²⁷ The company claims on its website that over 135 cities contract with them to utilize their technology aimed at assisting law enforcement departments.¹²⁸ However, there have been numerous concerns with the technology's ability to accurately pinpoint gunshots. A 2013 investigation showed that 75 percent of the shots reported by ShotSpotter were false positives.¹²⁹ The technology has not improved over the years. An investigation examining 19 months of ShotSpotter use in the City of Chicago from 2019-2021 found that 89 percent of ShotSpotter's reports led police to find no gun-related crime, and 86 percent of reports turned up no crime at all. This led to 40,000 unfounded police deployments, disproportionately impacting communities of color in which residents were stopped and/or interrogated without reason.¹³⁰

The results of the investigation were echoed by Chicago's Office of the Inspector General (OIG), which stated, "The [Chicago Police Department] data examined by OIG does not support a conclusion that ShotSpotter is an effective tool in developing evidence of gun-related crime."¹³¹ Other cities have also reported high levels of inaccuracies by the technology.¹³² The use of ShotSpotter technology has led to profound negative consequences for residents, including jail time and wrongful prosecutions based on faulty evidence.¹³³

It is important to note that technology corporations are often able to devote resources to helping governmental entities procure their goods. For example, ShotSpotter has staff

dedicated to helping local police departments identify grants and acquire funding to purchase ShotSpotter equipment and support.¹³⁴ The company also relies on academic validation of its product. It has engaged with the New York University Policing Project by providing financial support for its policing technology work since 2018. In 2021, the Policing Project released a cost-benefit analysis of ShotSpotter's product that claimed that the company's technology can be expensive, but that there are few social costs associated with it.¹³⁵ This type of corporate attention, influence, validation, and "education" makes it more likely that governmental entities enter arrangements that are largely developed and informed by private sector interests.

Along with spending significant resources to court and influence governmental entities, another important corporate strategy is to serve as the critical expert and provider of the technological infrastructure. This often leads to the governmental entities becoming reliant on the corporation, and allowing the contractor wide latitude in inserting their interests in the design and delivery of the good or service.¹³⁶ While this dynamic certainly occurs in other types of public services and goods, public goods and services relying on emerging technologies may be particularly susceptible, due to the lack of widespread public sector expertise in this ever-changing area. This over-reliance on the contractor can result in the governmental entity not having, hiring, or training public sector staff with the experience and expertise to run the contracted-out system or perform the function. As the Surveillance Resistance Lab and Northeastern University School of Law Center for Law, Information, and Creativity explain in their recent report examining contracting for "Smart City" projects, "This corporate strategy of infrastructural dominance has been dubbed 'lockin.'"¹³⁷

Along with spending significant resources to court and influence governmental entities, another important corporate strategy is to serve as the critical expert and provider of the technological infrastructure.

Many governmental entities do not have processes or policies that help contracting staff accurately assess, negotiate, and monitor these types of contracts. Moreover, many governmental entities do not even have guidance or best practices for the general use of artificial intelligence-based technology and tools. For example, the New York state auditor recently released an audit that assessed the city's progress in establishing an appropriate governance structure over the development and use of artificial intelligence tools and systems. The audit found that, "NYC does not have an effective AI governance framework. While agencies are required to report certain types of AI use on an annual basis, there are no rules or guidance on the actual use of AI."¹³⁸

However, at the federal level, there have been some new efforts to help procurement personnel better understand the potential risks and capabilities of artificial intelligence so they can make more informed purchasing decisions. The Artificial Intelligence Training for the Acquisition Workforce Act passed in October 2022, creates a training program for federal employees responsible for purchasing and managing AI technologies to better understand AI and stay on top of ever-changing developments.¹³⁹ However, most local and state governments do not have similar programs yet.

By truly understanding new technologies, and asserting standards and requirements that protect the public interest in the procurement process and resulting contracts, governmental entities can use the power of procurement to influence and improve these emerging technologies. Governmental entities are major purchasers of these technologies, and as the World Economic Forum explains, “Shaping the norms for AI procurement in the public sector will significantly influence best practice in the rest of the market and throughout the industry.”¹⁴⁰

Privacy and Surveillance

Technology contracts can carry serious privacy and surveillance risks. In some cases, like the IDNYC example below, the actual product that the government is procuring has technology with the ability to track users’ personal information, such as location or usage patterns. In some cases, collecting this data is not central to the public service or good, but a byproduct of the types of technologies that are being utilized. However, corporations that contract with governmental entities for these types of products, such as smart cards or electronic monitoring devices and services, may also be collecting and selling gathered data.¹⁴¹ It may be unclear to the governmental entity exactly what data is being collected by a contractor, how data is being stored, and if, how, and with whom data is being shared. However, these are critical questions that must be answered during the procurement process and addressed in the contract. Without this information, governmental entities may also lack the

Vulnerable populations could be at a particular risk if personal data collected from the use of a public technology product ends up being used against them by other governmental authorities.

necessary knowledge for ensuring compliance with statutory requirements, including possible constraints on the secondary use and sharing of the data.

The data economy is widely acknowledged as a lucrative source of income; indeed data

is commonly referred to as “the new gold.” Data about the public may be sold to other corporations, such as Google, to banks, or to insurance companies.¹⁴² Data may also be shared with other governmental entities and possibly aggregated with other databases. For example, one concern with the IDNYC smart card proposal was that data collected from undocumented immigrants who use the card could be shared with U.S. Immigration and Customs Enforcement (ICE), to identify and track these individuals.¹⁴³ Vulnerable populations could be at a particular risk if personal data collected from the use of a public technology product ends up being used against them by other governmental authorities.

It should be noted that mergers and acquisitions are occurring in this sector more frequently, with larger companies buying up smaller companies or companies merging. This raises issues around how the new owner will use the data it acquires and how data is merged between the two firms.¹⁴⁴ Data that may have been relatively protected under one contractor may be at risk of abuse under another.

Beyond the selling and sharing of data, contractors may simply not keep the data that it collects secure. For example, the company, ID.me, a major provider of identity verification

and fraud detection software for state unemployment agencies, promised that it would keep data shared by unemployment insurance applicants secure, but there have been reports that employees shared recipients' social security numbers in Slack messages and that the company gave employees access to confidential user data without any background checks or other privacy precautions.¹⁴⁵ Likewise, personal and medical information of 4.6 million retired and active military patients and their families was compromised by data contractor Science Applications International Corp (SAIC). These patients and families used the federal government's TRICARE health provider, for which SAIC handled data. The records, contained on back-up tapes, were stolen from a SAIC employee's car.¹⁴⁶

Even for more routine technology contracts, many states and localities do not have the capacity or funding to comprehensively ensure the security of the technology it procures. Dugan Petty, the former Oregon CIO explained to *Government Technology*, "Certifying and evaluating suppliers is a huge undertaking and one that most states are not equipped to do. Not even the largest states have the capability to certify a supply chain or determine if hardware or software have malware built in."¹⁴⁷ For example, cloud services, which have become a more routine technology procurement, often involve multiple vendors in the same chain. These companies typically have access to large amounts of sensitive government information and data, making it critical for governmental entities to be able to understand the track record of each company involved in the service, as well as be able to evaluate and oversee the full scope of the service.¹⁴⁸

Transparency and Trade Secrets

As discussed above, issues around transparency, disclosure, and trade secret exemptions plague procurement generally, but are especially salient as they relate to public goods that rely on emerging technologies. The public and even governmental entities are often in the dark about what data informs algorithmic models and other technologies that rely on artificial intelligence and how these models make their assessments, even though much of this technology is currently used in public goods and services that can significantly impact people's lives. Contractors routinely claim that these types of information constitute trade secrets and that disclosure would impact the corporation's competitive standing.¹⁴⁹ Unfortunately, some courts have supported contractor efforts to shield information related to algorithms from disclosure.¹⁵⁰

Until open records laws change and trade secret exemptions are narrowed, the procurement process can and should serve as an avenue for governmental entities to demand this information. As Elizabeth A. Rowe and Nyja Prior argue in their *Alabama Law Review* article, *Procuring Algorithmic Transparency*, "[procurement] policies allow for the kinds of flexibility that would permit government agencies to negotiate and contract for the kinds of terms that facilitate greater transparency." The authors point to several areas in procurement that could support the push for greater transparency in contracts. First, transparency requirements can be included in the solicitation or RFP. Additionally, as discussed in Section 2, some governmental entities require bidders to be qualified before engaging in a solicitation. Bidders without a positive reputation for disclosing information

deemed proprietary or providing accurate technology could be excluded for qualification. Lastly, governmental entities can add transparency as a requirement in the contract.¹⁵¹ For example, legal scholars have suggested that “contracts can require vendors to accept limited waivers of trade secret protections, so that agencies can monitor the algorithms they deploy for inaccuracies and biases and so that impacted members of the public can find out, at a minimum, what inputs those algorithms analyze and what results they generate.”¹⁵² Increasing inclusion of these types of provisions in contracts can help spur popular adoption of transparency requirements, the way that governmental entities have with other policy priorities, such as the mass adoption of policies for small business preferences.¹⁵³

Case Study: New York City ID Card¹⁵⁴



In 2015, New York City rolled out a new municipal identification program, called IDNYC. The goal of this program was to provide government-issued ID cards for all New York City residents, especially populations that face barriers in obtaining other forms of government-issued identification, such as unhoused, undocumented immigrant, gender non-conforming youth, and the formerly-incarcerated. It is important that vulnerable communities have access to a form of state-issued ID that allows for fewer and safer interactions with law enforcement and allows them to participate in the workforce and marketplace more fully. A coalition of advocacy organizations, called NYC Municipal ID Coalition, worked with the city to ensure that the design of the cards protected the privacy and security of users. The coalition also worked to encourage residents, especially those in vulnerable communities, to obtain these new ID cards. The original process for designing and implementing the IDNYC program was community-centered and largely a success.

In May 2018, the city unexpectedly, and without consulting with members of the NYC Municipal ID Coalition, issued a Request for Expressions of Interest procurement solicitation aimed at financial services providers interested in helping the city embed smart-chip technology (RFID chips) in the IDNYC cards that would provide cardholders with “card funding/loading options” that would be accessible to various populations that utilize IDNYC card. This type of function was not only unnecessary, as many banks and financial institutions in the city allowed residents to use IDNYC to access banking services, but advocates and experts raised concerns about the problematic track record of the prepaid debit card industry, including high and hidden fees, low protections, and privacy concerns. Advocates also explained that the fintech (financial technology) companies that the city was interested in contracting with were not banks, and that pre-paid cards did not replace bank accounts and banking services that can help achieve financial goals.

Additionally, the city proposed that the card be connected to the city’s contactless fare payment system and its NYC Health + Hospitals medical records, as well as allow for use for payment with private vendors. As Privacy International explained in their 2018 study, “Smartcard metadata are usually sufficient to identify an individual with a high degree of precision. Behavioral patterns, physical movements, and purchasing habits can then all be inferred and attributed to the identified individual(s). Should these data become

accessible to a third party...they can be used to track and persecute vulnerable groups.”¹⁵⁵ This knitting together of various identifying data about individuals, especially those who are part of vulnerable or disadvantaged communities, could result in negative and hurtful impacts if data is shared. For example, one concern was that U.S. Immigration and Customs Enforcement (ICE) could use information from this digitized ID card to identify and track these individuals.

In December 2018, the City issued a solicitation for negotiated acquisition. Unlike the process for the original iteration of the IDNYC program, advocates found this new phase to be marked by a closed off process with little transparency and few opportunities for public input. Throughout the following year, the Municipal ID Coalition, working with national experts on technology security, repeatedly raised the issues and risks with the proposal and called for meaningful public input. They also raised concerns about contracting with fintech companies, citing their “consistent and aggressive attempts to weaken or circumvent consumer protection laws” and asked questions about how users’ personal data could be used and the potential consequences of fintech corporations collecting, analyzing, and possibly sharing this data. However, city administrators failed to address many of the concerns and questions raised by advocates and experts, citing an active procurement process that did not allow for the disclosure of information.

Essentially, the trust, security, and protection for users, many of whom belonged to vulnerable and often targeted populations, would be forfeited for the insertion of private interests and control of the ID cards. If implemented, the smart-chip proposal would undermine the public’s needs and ignore their concerns that were central to the original design of the project. The community advocates and experts that the city consulted and relied on for the original design of IDNYC were now viewed by the city and its administration as “obstructive to the goals of this project.”

A series of revolving door incidents raises red flags about whose interests were driving the project. The Chief Technology Officer (CTO) left a month before the publication of the IDNYC smart chip solicitation to work for Mastercard’s new executive vice president for Global Cities, while he continued to participate on the advisory council of the CTO’s partner organizations and a trade association for the New York technology sector while the smart-chip proposal process occurred. The day that the former CTO joined Mastercard at an event sponsored by both Mastercard and Microsoft, the Mastercard-Microsoft City Possible alliance was announced. Mastercard’s City Possible initiative aims to establish public-private partnerships with cities around the world to develop digital IDs, as well as related financial and municipal services. Before the current CTO assumed the role, the City’s last two CTOs held positions with Mastercard and Microsoft respectively. Similarly, media outlets reported of ties that the NYC Deputy Mayor of Strategic Policy Initiatives at the time had with Microsoft, creating what he acknowledged was “an appearance of conflict.”

While the status of the smart-chip proposal is unclear, responses to advocates’ requests for information related to the proposal have continually been delayed. Most recently, in April 2023, advocates learned that the city signed a three year Demonstration Project contract

with Mobility Capital Finance, Inc. (MoCaFi), of which Mastercard was an early investor and continued as partner.¹⁵⁶ This contract, worth \$5,602,017, is for the development of a digital wallet for disbursement of benefits and related financial services to residents in need, including unbanked and underbanked individuals.¹⁵⁷ This project poses similar risks and concerns as the City's plans for the IDNYC. As a Demonstration Project, it is not subject to the same level of review and analysis as standard procurement contracts over \$100,000.¹⁵⁸ However, community members in other cities that have contracted with MoCaFi for municipal ID programs have raised concerns about MoCaFi's selling of data to data brokers, who are known to share and sell data to Immigration and Customs Enforcement.¹⁵⁹

This case study illustrates how technology procurement introduces complex and often unknown risks into the provision of contracted public services and programs. In many cases, these technology contract proposals seek to address multifaceted social and economic issues and can have profound impacts on the public. Corporations seeking to push forward proposals to integrate emerging technologies into public services and win the resulting contracts often use language such as "inclusion" and "access" when describing their products. However, these types of initiatives can undermine access to the public good or service and as well as work against public goals of access and inclusion.

Moreover, community groups and advocates representing impacted communities may be sidelined from discussions around these types of proposals and procurements, allowing private interests to dictate the direction of public policy at the expense of democratic accountability and control. As discussed above, procurement of emerging and complex technology must be subject to additional scrutiny and analysis to ensure that public programs and services are truly enhanced by its inclusion and that the public interest is at the center of any proposal, process, design, and implementation.

SECTION 5

Best Practices and Recommendations

This section discusses using the power of procurement from two perspectives. First, this section will discuss how state and local governments can implement best practices to reform their procurement process and advance public values. Second, this section will discuss how advocates can use procurement to advance campaign goals. Both perspectives are important in fully harnessing the power of procurement. This section will conclude with a checklist of questions related to best practices that public policymakers and agency administrators, as well as advocates, can use to better understand how to improve their jurisdictions' procurement policies and process.

How Jurisdictions Can Reform Their Procurement Policies and Systems to Advance Public Values

In many jurisdictions, obtaining the lowest price drives procurement decision making and becomes the most important value in its approach to procurement. In some jurisdictions, quality of the good or service has joined cost as a primary consideration when making procurement decisions. But, as this report argues, other factors important to the community and the public interest can also be incorporated into how procurement proposals are designed, evaluated, and contracted out. Indeed, procurement policies and practices should reflect and advance broader governing and policy goals for the jurisdiction.

For example, if local policy priorities include measures to improve environmental outcomes for the community or promote racial equity among residents, having a procurement system that fails to adequately address these issues undermines a locality's larger goals. In our interview with the Chief Procurement Officer for Miami-Dade County, she explained that governmental entities tend to take a shorter-term view of procurement due to budget constraints or political considerations,¹⁶⁰ but they need to understand the longer-term costs to the community of their procurement decisions. The longer-term costs of failing to consider the impacts of contracts on, for example, workers, the environment, community outcomes, social and economic equity, and public transparency can actually result in greater fiscal problems, more intractable policy issues, and ultimately, weaker communities. Instead, using a values-based procurement approach as a tool to address these issues can inspire contracting decisions that are part of the solution to building strong communities.

As listed in Section 1, some values that jurisdictions may consider as guideposts to a values-based procurement approach are listed below. The checklist at the end of this section

contains questions related to best and recommended policies and practices that help center and incorporate the above values.

- Provision of high-quality public services and goods
- Equitable access to public goods
- Advancement of workers' rights
- Positive and equitable social impact
- Environmental sustainability
- Maximum transparency
- Effective oversight and accountability

As detailed in Section 2, while there is a very general procurement process that jurisdictions often follow, the details of the process, rules, roles, and more differ greatly. Larger jurisdictions tend to have more rules and/or requirements, while smaller jurisdictions may have a simpler process. The current processes and rules of each jurisdiction are different, the needs of each jurisdiction are different, and the priority values may differ. In other words, there is no one-size-fits-all process or set of rules. But, community values can be the base of any procurement system, no matter the size or complexity.

Jurisdictions typically engage in reform of their procurement policies when one of two circumstances occur. The first is when there is a high-profile contracting disaster that jumpstarts policymakers' appetite and political will for passing new policies and/or changing rules and regulations. Media reporting, audits, and other public analyses of the problem(s) can be useful for raising awareness and will for reform. The second is when a strong leader with the authority and vision to change procurement policy and/or rules comes into power with procurement as a priority reform. The next case study explores this second circumstance in Miami-Dade County, where a newly-elected mayor uses public values to guide a reform of the county's procurement process.

Procurement reforms can take several different paths, depending on what is politically feasible and who is pushing for change. The first path is through legislative action. A state or locality can pass legislation that would add requirements and/or rules to their procurement process. Legislative change is the most long-lasting approach, as the changes are codified in local or state law. However, it is often the most difficult approach as it requires a comprehensive legislative campaign to gain passage in a multi-person legislative body.

While legislative changes to the procurement process can create the framework for more permanent change, the implementation of any new ordinance or law requires relevant departments or agencies to develop the rules, programs, and/or processes needed to carry out the new law. This may mean that new programs are developed, new positions are created, and/or new rules or guides are created to actualize the requirements of the law. Positions in procurement departments and other related or relevant departments have power in ensuring that the details of implementation support the underlying values of the new law.

In many cases, reform through legislative change may not be politically feasible. However, executive decision makers can implement procurement reform initiatives administratively. Appropriate agencies or departments can conduct reviews of a jurisdiction's procurement process and make improvements to the procurement process. As discussed in the Miami-Dade County case study below, the new mayor issued a memorandum directing various departments to undertake specific changes and improvements in the procurement process to address challenges in the county's procurement process and create a values-based procurement approach. These initial changes happened outside of the county's legislative process. Many changes can be made without legislative approval, using the resources the jurisdiction already has.

Even when system-wide law, policies, or initiatives are not feasible, public values can still be incorporated into the procurement process informally and/or through individual procurement efforts. For example, RFPs can be designed to require bidders to disclose information about its current operations, such as worker wages and benefits or environmental practices. RFPs can also require bidders to abide by job quality standards, worker equity standards, environmental standards, explicit disclosure and transparency requirements, and more. Bidders' responses to these requests and/or requirements in the RFP can be included in the evaluation of bidder proposals, as costs and quality measures typically already are. These requirements and standards then get incorporated into the final contract, ensuring that the contractor must abide by what they promised in their bid and any subsequent negotiations.

While system-wide reform may not be realistic at this time for some jurisdictions, the conversation can start with how a jurisdiction will procure just one high-profile contract. Creating a different conversation around a framework for one contract can make it easier to apply that framework to future contracts. These types of ongoing community conversations are important in creating the type of demand and momentum necessary for systemic reform.

As previously noted, values-based procurement can be a powerful tool in a single jurisdiction, but many jurisdictions using a values-based procurement approach can result in meaningful and measurable change on a larger-scale. Values-based procurement on an aggregate level can contribute to macro-level impacts on social and environmental outcomes, as well as positively influencing corporate behavior to help shape a private market that is more responsive to the public interest.

To achieve aggregate procurement reform, governmental entities should share information about procurement policies and practices with each other. They should also share information relevant to specific types of contracts, what they require in those contracts, how they evaluate those contracts, and the terms and conditions of signed contracts. As seen in the last case study in this section about prison and jail phone contracts, jurisdictions often do not share information about contracts, leading to a weaker negotiating position. Contractors are able to offer vastly different terms of different governmental entities for the same scope of service. Governmental entities that have information about contracts in other

jurisdictions, especially when those jurisdictions use a values-based procurement approach, can achieve a better negotiating position, and ultimately, a contract that encompasses as many public values as possible.

Lastly, while this discussion has centered on what policymakers, administrators, and procurement personnel can do to create a valued-based procurement approach, it is important to mention that stakeholders, such as community advocates, are critical in pushing for these types of procurement reforms. Community members and stakeholders must demand that a jurisdiction's procurement system is reviewed and reformed to fully harness the power of procurement. Advocates and stakeholders must also demand that their values and needs are incorporated into any system reforms.

Case Study: How Miami-Dade County Implemented a Values-Based Procurement Reform

Miami-Dade County is the largest county in the state of Florida, with a \$10 billion budget. In 2020, Miami-Dade County elected a new mayor, Daniella Levine Cava. In a speech the following year, she laid out four values that she intended to infuse in policy across the county—economy, environment, engagement, and equity. While these values guide her approach to all policymaking, they also became the foundation for her reform of the county's procurement system, and ultimately, the Strategic Procurement Department's mission. The county calls this values-based approach "Purpose Driven Procurement."¹⁶¹

In 2022, Mayor Levine Cava issued a memorandum to all county department directors that included a review of key aspects of the procurement process as well as changes and improvements to be implemented in the county's procurement process. She explained the rationale for the changes to county leaders as follows:

“...the procurement function provides many opportunities to advance the County's goal of expanding opportunities for our residents by providing competitive-paying jobs, helping small businesses grow, and providing a ladder of opportunity and economic self-sufficiency. The billions of dollars expended by the County should be used to grow economic prosperity...Another key responsibility for the County is to ensure that public funds are leveraged to meet the many environmental policies the Board of County Commissioners has adopted over the years. We are at a pivotal moment in determining the long-term resilience of our County...Procurement processes must reflect these environmental policies and goals.”¹⁶²

The memorandum introduced a number of changes to the county's procurement process, rooted in the Mayor's four key values. One action that the memo directed was for the county to develop a "Values Checklist" to be implemented by all departments, which would have "at a minimum, key values that must be included in all solicitations and contracts."¹⁶³ This allows for standardization of practices across departments issuing procurement solicitations. The county developed and will soon start using this checklist, which provides a list of best practices and requirements for solicitations and contracts, including criteria related to worker wages and benefits structures, working conditions, local hiring, small

business opportunities, environmentally sustainable practices, and more. It also includes a list of current county policies related to procurement that address the protection of the environment, and long-term community resilience, including policies that address equity, inclusion, and worker protection. The checklist helps departments ensure that references to these policies are explicitly included in solicitations and contracts.¹⁶⁴

Additionally, the mayor called for adding values-based evaluation criteria to the bid evaluation process.¹⁶⁵ As the Chief Procurement Officer for the county explained, previous administrations placed the emphasis for evaluating bids on cost and quality, but the new mayor expanded this emphasis to include issues related to values. The allocation of quantitative points bidders receive in the evaluation of their responses now covers issues tied to each of the values.¹⁶⁶ For example, the evaluation criteria now include requirements regarding living wages and benefits, good working conditions, and secure job protections.¹⁶⁷

The Miami-Dade County's Economic Advocacy Trust (MDEAT) estimates that less than 2 percent of the County's procurement contracts are with Black-owned businesses.¹⁶⁸ While estimates of county contract attainment by other demographic groups are unavailable at this time, the county acknowledges that "many women, Black, and Hispanic-owned local businesses are still prevented from obtaining County contracts."¹⁶⁹ The county has committed to conduct a long-awaited disparity study by 2023 that would bring a deeper understanding of racial and gender disparities in contract awards.¹⁷⁰ This could pave the way for the county to introduce race-conscious policies around WMBE utilization. Additionally, agencies have implemented a variety of race-neutral strategies, such as the unbundling of large solicitations and training and workshop opportunities for potential contractors.¹⁷¹ The Mayor established the Office of Equity and Inclusion in the Division of Innovation and Performance to lead these efforts alongside the County's main procurement agencies.¹⁷²

The county will also provide assistance to local, small, and micro-businesses to help them participate in the county's procurement process. It is estimated that 96 percent of businesses in the region have 49 employees or fewer.¹⁷³ As explained in the county's 2021 Action Plan, "A disproportionate amount of the County contracts are going to a consolidated group of large businesses, many from outside of the County, in which case profits and economic benefits are leaving our region altogether."¹⁷⁴ On March 1, 2023, Miami-Dade County launched the Vendor Academy, which includes free education, training, and resources in multiple languages for prospective and current vendors with the aim to "promote equity in our contracting, foster economic development, and enhance engagement of all stakeholders."¹⁷⁵

The mayor also acknowledges that Miami-Dade County has unique environmental challenges given its geography, such as the rising sea level, and the county's purchasing power must be maximized to "leverage environmental priorities." This includes setting stronger Environmentally Preferable Purchasing (EPP) goals, ensuring that the county procures electric vehicles, converting its fleet to 100 percent electric vehicles by 2030, and ensuring the inclusion of green building standards into all contracts related to building and infrastructure projects.¹⁷⁶ The procurement department has incorporated specific measures related to sustainability into its yearly departmental scorecard. For example,

the department will be evaluated on how many conventional goods it can procure this year as environmentally-conscious products instead.¹⁷⁷ Additionally, the county is in the process of updating its green procurement guide, which was not a priority in previous administrations.¹⁷⁸

Directives for improving the efficiency of the process, as well as improving the training and expertise of procurement personnel are addressed as well. It is noted in the memo's review of the county's procurement system that many County procurement processes are tracked manually, which results in inefficiencies and lost time. The memo directs the county to create a centralized database that can capture vendor performance for all contracts, which can "bring uniformity, and enable departments to make better decisions."¹⁷⁹ Additionally, the Strategic Procurement Department created and offers courses and training for County staff involved in the procurement process through its Procurement Academy.¹⁸⁰

The County also identified the need for procurement personnel to understand complex and emerging issues that can intersect with procurement, and highlights the importance of the ability to consult experts, such as technology professionals, financial experts, and accountants, that can directly support the county in the procurement process. The memo directs the county to identify and acquire needed expertise that can help develop better solicitations, procurement documents, and analysis.¹⁸¹ The County's Chief Procurement Officer also noted that the county is in the process of developing a robust program to better evaluate and procure technology-related services and goods, since these contracts can be challenging and complex.¹⁸²

Many of the above initiatives have been or will be implemented administratively, and the mayor has directed departments to design and carry out these activities. The Mayor's office plans to introduce Administrative Order 3-67, which formally describes the "Purpose-Driven Procurement" approach that the County is currently implementing. It will also establish a Purpose-Driven Procurement Review Group, that will have the responsibility to review new contracts and contract renewals for adherence to purpose-driven procurement requirements and goals. This group will consist of representatives from the Mayor's Office, Strategic Procurement Department, the Small Business Development Division of the Internal Services Department, and the Office of Resilience.¹⁸³

This example demonstrates the wholesale impact that a passionate and values-driven leader with vision can have on procurement. Importantly, it also shows the immense amount of reform that can happen administratively. These changes add up to a system that supports and furthers the County's larger values and goals, fundamentally changing the mission and impact that procurement can have on the community.

How Advocates Can Engage in the Procurement Process to Advance Public Policy Goals

As discussed above, advocates are critical to creating and communicating community demand for procurement reform. Advocacy and community organizations pushing for important outcomes, such as environmental sustainability, greater racial equity, more opportunities for small businesses owned by women and people of color, or broader government transparency, can and should target procurement as an important prong in their campaigns.

Procurement can also be an important avenue for advocates in their campaigns that may not, at first glance, appear to be related to procurement. Many aspects of the public services, functions, and goods that advocates care about have some contracting component. Advocacy around issues as varied as improving access to social services, improving the environmental sustainability of a city's waterways, and helping unemployed residents find jobs, all intersect with procurement in some way. Procurement can be an overlooked lever for achieving campaign goals. The next case study examines how advocacy organizations used procurement as a main avenue for pushing back against expensive prison and jail telephone calls. The goal of ensuring that incarcerated people can inexpensively communicate with their loved ones may not immediately seem related to procurement, but advocates understood that governmental entities needed to change their arrangements with private prison phone companies in order to achieve the goal. The mechanism for changing this arrangement was through the procurement process.

Advocates that have knowledge of the target jurisdiction's general contracting activities and an understanding of the jurisdiction's procurement system, including important points of public participation and intervention, are in a better position to make connections between the issues they care about and how they can use the procurement system to advance campaign goals. Likewise, an understanding of the role that private entities play and/or the strategies that private entities use to influence or interact with public services, functions, or goods that an advocate cares about, can help inform how procurement can be used to support campaign goals.

Lastly, this is especially true if public services, functions, and goods that advocates care about are publicly-delivered and governmental entities are considering proposals to contract out important components. As ITPI's previous research has detailed, contracting of public services and goods can have negative impacts on the service, especially if the procurement process is not backed by thoughtful planning and analysis and meaningful public participation.¹⁸⁴ Advocates that already possess a basic understanding of their jurisdiction's procurement process are able to intervene at the earliest stages of the procurement process where the most change can occur. This can make all the difference in a successful effort to ensure that public goods and services continue to serve the public interest.

Case Study: How Advocates Use Procurement to Advance Campaigns for Prison and Jail Free Calls

This example digs into how advocates can engage in the procurement process to change contracts that undermine the public interest. Specifically, this example examines the



work of advocates, such as the non-profit organization, Worth Rises, and their work using procurement to implement policies that prohibit regressive and expensive prison and jail telephone services.

Currently, the financial structure of many contracts for telecom services in prisons and jails does not rely on charging the correctional agency for telecom services. Instead, the contracts typically allow for the prison phone company to directly charge the user, or in other words, the incarcerated individual and/or their loved ones. Many of these contracts provide a commission to the governmental entity. The contract then provides a commission or profit-sharing arrangement that gives correctional agencies a share of the profits that the phone company makes. These “commissions” are paid to correctional agencies either as a percentage of revenue that the companies take in, a fixed up-front payment, or a combination of the two.¹⁸⁵ On the state level, departments of correction typically receive between 20 percent and 70 percent of revenues in commission payments through these types of contracts.¹⁸⁶ In some counties, the percentage of revenue given to the county is even higher.¹⁸⁷ This contract structure creates a perverse incentive for governments to award a contract to the company that will provide the highest commission, which often means charging the highest rates.

Indeed, many correctional agencies often award monopoly contracts to prison phone companies that charge high rates. While exact rates and fees charged to incarcerated people and their families vary from contract to contract, this structure enshrines a regressive revenue collection method in which incarcerated people and their families fund corrections budgets. This makes it burdensome and expensive for incarcerated individuals and their loved ones to talk to each other, even though research shows that keeping incarcerated people connected with their family support systems reduces recidivism and prison violence, both of which are in the public interest.

Moreover, this type of financial arrangement places the cost of the services solely on those who are least likely to be able to afford it. The vast majority of families supporting incarcerated loved ones are typically lower-income and have less money to spend on phone calls.¹⁸⁸ Indeed, one in three families with an incarcerated loved one goes into debt paying to stay in touch.¹⁸⁹

Researchers have found that high commission rates drive high phone rates and fees—in other words, companies charge incarcerated individuals and their families higher rates when they pay the governmental entity higher commissions. Unsurprisingly, researchers also found that governmental entities’ primary factor in choosing a contractor was which one could offer the highest commission rate.¹⁹⁰ This type of decision-making in the procurement process fails to adequately consider the impact that high phone rates have on incarcerated

individuals' ability to communicate with family. On a larger scale, it undermines a number of public policy goals, including progressive funding of public services, racial and economic equity, and successful reintegration of incarcerated individuals,

In response, some localities and states have passed policies requiring free phone calls from their jails and/or prisons. Advocates at the organization Worth Rises have been instrumental in helping a number of jurisdictions adopt these types of policies, and importantly, use the procurement process to implement these policy changes.¹⁹¹ Once a policy is enacted, jurisdictions may need assistance procuring a different type of contract with a different financial structure to meet the new policy requirements. Advocates develop trusted relationships with agencies that allow them to consult and offer best practices throughout the procurement process.

For example, Worth Rises has helped correctional agencies develop new RFPs for correctional phone services. To comply with new policies, RFPs must incorporate a new financial model that places the cost of phone service on the correctional agency instead of incarcerated individuals and their families. Worth Rises helps agencies consider and adopt more modern approaches to the financial structure of the procurement, such as the contractor charging a set price per phone line or phone device per month, instead of charging for each minute of a phone call. The goal in developing a better financial structure is to remove any incentives that would discourage the phone communications between incarcerated individuals and their loved ones in the RFP.

Additionally, Worth Rises encourages agencies to drop any requirements around security and surveillance capabilities in the phone service. These are often expensive and add to the cost of the contract. In many cases, agencies pay for these "add-ons" under the regressive commission-based model, since they are not directly paying for the service, and these additional services may help to increase their overall commission earned from the contract.

Worth Rises also encourages agencies to adopt a Most-Favored Nation provision in their RFP and resulting contract, which ensures that if the contractor gives a better rate to any other jurisdiction, they must also give that rate to the agency. One issue that Worth Rises observed was that correctional agencies in various jurisdictions traditionally had not shared information with each other about their contracts, even if they contracted with the same contractor for the same service. For example, a contractor might contract with a correctional agency at 32 cents per minute, while another correctional agency might have negotiated a rate as low as 0.9 cents per minute. There is a general lack of transparency across jurisdictions, leaving behind bargaining power that governmental entities could be using to negotiate better contracts. Most-Favored Nation provisions help ensure that even in a contractual arrangement with an updated financial model, agencies are receiving the best pricing a company offers. For additional detailed discussion of other best practices for prison and jail phone RFPs, see Prison Policy Initiative's guidance: https://www.prisonpolicy.org/phones/rfp_guidance.html.

Once an RFP has been developed and released by the correctional agency, the next phase is evaluating bids. Worth Rises has aided correctional agencies in reviewing and evaluating

bids, ensuring that the eventual contractor is offering terms that fulfill policy goals and protect the public interest. In some cases, Worth Rises might also help a correctional agency negotiate the final contract with the selected bidder.

Lastly, Worth Rises helps with the implementation of the contract. It is important that the final contract results in positive outcomes and accomplishes the various goals set out by the agency so that the same type of policy and procurement process can be replicated in other jurisdictions. This means that advocates must stay involved once the contract is signed to ensure that intended outcomes are achieved.

This is the process that Worth Rises and other advocates followed in 2019 when San Francisco became the first county in the country to require free phone calls in jails and stop generating revenue from its phone contracts.¹⁹² Worth Rises worked with the County in each step of the procurement process, ultimately resulting in a new contract that paid a fixed monthly rate per phone device to the contractor, GTL, and allowed for free video calls. Prior to these policy and procurement changes, if an incarcerated person made two 15-minute phone calls a day in San Francisco, it would cost \$300 over 70 days, which is the average jail stay, or \$1,500 over the course of the year.¹⁹³ The County revealed that in 2018, the year before the policy change, incarcerated people and their families paid over a million dollars for phone calls from San Francisco jails.¹⁹⁴ As San Francisco Treasurer José Cisneros said at the time, “As a City we should invest in the most marginalized populations in our city, not profit off of them. These reforms reflect our values as San Franciscans. I hope other counties take a hard look at them and commit to do the same.”¹⁹⁵

Checklist of Best Practices

The checklist follows the broad categories discussed in Sections 2, 3, and 4, and includes specific questions to better assess whether your jurisdiction has gaps in its procurement system. As discussed above, while some of these questions are about procurement policies, others are about the procurement process. Moreover, many of these issues can be addressed in a variety of ways, such as through legislative policy, administrative action, agency process, etc., depending on a jurisdiction’s particular environment and circumstances. Note that this checklist can serve as a standalone document that governmental entities and advocates can use in their assessment of a procurement system.

1. Procurement Policies and Roles

- Does the jurisdiction have a formally adopted procurement process? What are the jurisdiction’s informal procurement procedures and guidelines?
 - Does the jurisdiction use a competitive procurement method to procure most goods and services over a reasonable monetary threshold?
 - Does the jurisdiction allow for RFPs to include additional values-based criteria, beyond cost and quality? Has the jurisdiction identified these values-based criteria?
 - Does the jurisdiction have the capacity and expertise to manage all aspects of the procurement system, including performance of any pre-procurement analyses,
-

design and execution of the procurement process, contract negotiation, and contract monitoring and oversight?

- Is the jurisdiction able to convene committees or technical advisory groups made up of experts and specialized personnel from other agencies to help inform the bid evaluation process when specialized technical knowledge is required for accurate evaluation and comparison?
- Does the jurisdiction have legal or oversight personnel or another similar role to review and/or sign-off on final contracts to ensure that contracts contain required provisions or meet certain requirements?

2. Analyzing the Decision to Contract Out

- Before engaging in the procurement process for a contracting proposal, does the jurisdiction have a process for understanding whether the goods or services should be contracted out? The analysis should also explore why the jurisdiction is seeking to contract, what problem(s) a proposed contract is seeking to solve, whether there are other solutions to solve the problem, and whether a proposed contract will meet public needs.
- Does the jurisdiction perform a cost-benefit analysis prior to contracting that compares the costs of contracted and in-house service provision for the life of the contract? If so, does the cost analysis include the full costs of contracting, such as costs associated with drafting bid documents, analyzing proposals, monitoring the contract, training private contractor staff, etc.?
- Does the jurisdiction perform an impact analysis prior to contracting that examines the short-term and long-term social, economic, and environmental impacts of a proposed contract?
- Does the jurisdiction have the capacity to fully engage in all aspects of the procurement system, including performing these types of pre-procurement analysis, overseeing the procurement process, negotiating the contract, and overseeing the contract for the life of the contract?

3. Public Participation

- Does the jurisdiction offer specified opportunities for meaningful public participation and input during all stages related to the procurement process, including:
 - Pre-procurement planning?
 - Design and scope of solicitation(s)?
 - Regular opportunities for feedback after the contract is executed, especially for vulnerable groups and/or those most impacted by the contract?
 - What does public participation look like in the jurisdiction? Are there multiple venues for public participation, such as public hearings, comment periods, meetings, surveys, etc.?
-

- Does the jurisdiction allow for transparent and public disclosure of appropriate information so the public has the relevant information it needs to properly provide input and feedback in all stages of the procurement process?

4. Ensuring High Performance and Quality

- Does the jurisdiction ensure that all procurement documents, such as RFPs and final contracts, contain performance standards, requirements, and metrics that reflect the goal(s) of the contract?
- Does the jurisdiction ensure that the financial structure of its contracts is appropriate for the contracted good or service and is incentivizing and/or disincentivizing the desired contractor behavior in a variety of situations?
- Does the jurisdiction ensure that its contracts detail how the contracted service will be monitored, including scheduled and unscheduled inspection, information the contractor will provide, and any reporting requirements? Contracts should also specify clear penalties for non-compliance.
- Does the jurisdiction have a policy or process for ensuring that contracts are not automatically renewed without some type of review of the contract?

5. Equitable Access to Contracted Goods and Services

- Does the jurisdiction have a process for applying a racial and economic equity lens in each stage of the procurement process?
- Does the jurisdiction ensure that procurement documents, such as RFPs and final contracts, specify target or vulnerable populations or geographies that need particular focus to prioritize access to the contracted good or service?
- Does the jurisdiction ensure that contracts, as appropriate, specify performance standards to assess whether a contractor is delivering the contracted good or service in an equitable manner, and whether there are improved outcomes to vulnerable or disadvantaged populations?
- Does the jurisdiction ensure that impacted communities and those with experience working with impacted communities are consulted and given opportunities for public participation in the procurement process?

6. Job Quality

- Does the jurisdiction require that contractors and subcontractors pay living wages and benefits, such as health insurance, paid sick days and family leave, and retirement, to employees working on public work?
- Does the jurisdiction require disclosure of bidders' history of labor and other legal violations during the procurement process? Is there a policy or practice for excluding contractors that have a history of labor violations?

7. Contractor Diversity

- Does the jurisdiction regularly examine which private entities are receiving contracts and subcontracts?
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- Does the jurisdiction use race-conscious policies and/or race-neutral strategies to increase the utilization of contractors that are minority-owned business enterprises?
- Does the jurisdiction have policies, programs, or strategies that seek to increase the utilization of contractors that are small business enterprises and/or local businesses enterprises?
- Does the jurisdiction have the capacity and dedicated personnel to oversee contractor diversity and equity policies, programs, or strategies?

8. Workforce Equity

- Does the jurisdiction have local hire, targeted hire, first source hiring, or similar programs that seek to get disadvantaged residents into jobs created by government contracts? (Note: Some jurisdictions have programs like these for construction and public works projects and contracts, but do these programs extend to service contracts?)
- Does the jurisdiction have worker retention policies that aim to ensure that workers can continue working in the public service or program when the contractor changes?
- Does the jurisdiction have workforce equity measures or requirements for contracts for manufactured goods?
- Does the jurisdiction incorporate job quality and job equity measures into its procurement documents, including RFPs, bid evaluation documents, and final contracts?

9. Environmental Impacts

- Does the jurisdiction have sustainable procurement policies, requirements, and/or practices that help ensure the purchase of sustainable goods and services?
- Has the jurisdiction developed or used existing resources that list environmentally preferable products and services for easy reference during the procurement process?
- Does the jurisdiction incorporate environmental impact criteria into its procurement documents, including RFPs, bid evaluation documents, and final contract?

10. Transparency and Public Information

- Is the public able to see documents related to the contract, especially through online disclosure? Does the jurisdiction have a publicly-accessible web-based contract database that contains information about all its contracting activity, including copies of contracts, any amendments, spending data, etc.?
 - Does the jurisdiction have transparency policies or requirements that can be included in contracts that prevent or disallow the contractor from shielding important information about the contracted public good or service from the governmental entity and/or the public?
 - Do legislative or other oversight bodies in the jurisdiction have access to the information they need to effectively evaluate contracts?
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11. Accountability and Contractor Oversight

- Does the jurisdiction have policies, rules, or procedures related to contract oversight, which at a minimum, specify who is responsible for various aspects of oversight before, during, and after a contract term, as well as requirements for contract oversight?
- Does the jurisdiction have rules or procedures for oversight of different types of contract or contracts at different agencies (i.e., oversight of a waste contract versus oversight of a technology contract)?
- Does the jurisdiction require the real-time oversight of contracts through on-going and regular monitoring and interaction with the contractor?
- Does the jurisdiction have the capacity and sufficient staffing to adequately monitor its contracts? Does the jurisdiction identify specific staff with the authority and responsibility for monitoring contractor performance before a contract is signed?
- Does the jurisdiction ensure that it retains in-house staff that have the specialized knowledge, experience, and responsibilities related to a service or function before it contracts out the service or function?
- Does the jurisdiction have policies or rules to prevent conflicts of interest during the procurement process? For example, are any public officials or evaluators involved in the procurement process former employees of potential contractors?
- If the private contractor for a given contract will be privy to sensitive or confidential information about the public or constituents, does the jurisdiction have mechanisms in place to prevent the mismanagement of sensitive information?

12. Special Issues in Technology Contracts

- Does the jurisdiction have updated technology procurement guidelines and processes that reflect new complexities and emerging issues in technology-related contracts?
 - Does the jurisdiction, and specifically personnel involved in technology procurement, have the capacity, expertise, and technical understanding of evolving technologies, such as artificial intelligence and algorithm driven systems, especially as they relate to public goods and services?
 - Does the jurisdiction have the capacity and expertise to understand and evaluate the ethical considerations related to evolving technologies, such as artificial intelligence and algorithm driven systems, especially related to public goods and services? Has the jurisdiction developed or adopted external guidance or best practices around the general use of artificial intelligence-based technology and tools?
 - Does the jurisdiction have processes or policies that help contracting staff accurately assess, negotiate, and monitor technology-related contracts?
 - During the pre-procurement or planning stages, does the jurisdiction require a risk assessment of the proposed technology contract, including the risks related to safety, discrimination, privacy, transparency, and accountability?¹⁹⁶
 - Does the jurisdiction have policies, rules, standards, or contract provisions to prevent contractors from sharing or selling public or personal data it collects as part of a government contract?
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- Does the jurisdiction have policies, rules, standards, or contract provisions that hold contractors and vendors accountable for ensuring the security and privacy of data related to the public good or service, and the security of the procured technology itself?
- Does the jurisdiction have policies, rules, standards, or contract provisions that require contractors to disclose the data and information to the governmental entity that informs algorithmic models and other technologies that rely on artificial intelligence, and disclose how these models make their assessments related to the public service or function? (Note: Courts have supported contractor efforts to shield information related to algorithms from disclosure under “trade secret” exemptions of open records laws, making jurisdictional requirements especially important.)
- Does the jurisdiction have a process to ensure that selected bidders in technology-related procurements have a track record or a positive reputation for disclosing important information about the contracted technology to governmental entities?
- Is the use of artificial intelligence and algorithmic decision-making technologies appropriate for the intended purpose?
- What measures has the jurisdiction taken to mitigate potential discrimination as a result of the use of artificial intelligence and algorithmic decision-making technologies? Are these measures limited to bias within the system or do they address discrimination in the development and deployment phases?
- Will the use of artificial intelligence and algorithmic decision-making technologies make it more challenging for the jurisdiction and the public to understand how a procurement and/or programmatic decision was arrived at? What measures have been deployed to mitigate this outcome?
- Additional and more specific questions related to technology procurement can be found in the publication, [“Best Practices for Government Procurement of Data-Driven Technologies,”](#) by Rashida Richardson (2021).

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- ² Abusive state preemption, which has been systematically pushed by corporate and right-wing interests, has skyrocketed in the past decade, especially affecting localities in the South and Midwest. Procurement is typically considered an exercise of propriety authority, which means that local governments may have more legal latitude. Local Solutions Support Center, “The Threat of State Preemption,” webpage, accessed February 13, 2023, <https://www.supportdemocracy.org/preemption>.
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- ⁵ In this report, we use the terms “procurement” and “contracting” (and other derivatives of these terms) interchangeably. While “procurement” may be used more often for goods and “contracting” may be used more often for services, different jurisdictions use different terms in their related laws, policies, and communications. To account for these differences and be inclusive of varying vocabulary, we use the terms interchangeably.
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