



# *Strengthening the Standards: A Case Study of Disaster-Related Contracting Practices in Louisiana*

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## Executive Summary

State contracts with private entities are the citizens' window into how taxpayer dollars for goods and services are spent. They provide explanation of who has agreed to do what for the state, according to which timelines, prices and/or quality expectations. Ease of access to contract documents enables citizens to answer questions about government spending and allay suspicions about waste and conflicts of interest – often before the money is spent. When that access is limited or obscured, suspicion grows and public confidence in government falters. Louisiana's economic progress and recovery depend on the public's willingness to believe its interest is protected by the state.

In Louisiana, there are many hurdles to clear in order for a citizen to track down a state contract for a particular product or service that was, for example, mentioned in a news article. To obtain a copy of the document usually requires several phone calls, one or more letters or public records requests and a good share of persistence. Short of time and expertise, most citizens will rely on secondary sources and rumor to form their opinions about state spending. This has been the case for the most high-profile contracts since the storms of 2005. The documents are as available as they legally are required to be, but they are difficult to track down. Additionally, when updates are made, there is no way for citizens to be made aware of such unless and until the update is publicized. The state has no consolidated, centralized

access point for contracting specifics as it does, for example, for legislation data or budget data. This analysis examines the state's policies regarding post-disaster contracts for professional, social and consulting services – negotiated contracts with subjective selection criteria, which often raise taxpayer suspicion. This report makes recommendations that would increase citizen access to contract documents and require adoption of emergency contracting best practices to decrease the potential for misspending in expedited negotiations.

Contracts for the purchase of durable goods are fairly routine and are handled primarily by a centralized management agency within state government. In contrast, contracts for professional, social and consulting services like case management duties, accounting services, architectural design and policy research are highly individualized and incorporate varying degrees of competitive negotiation, performance expectations and transparency. In normal operating times, a certain degree of waste and favoritism can slip through such a complex process.

In times of emergency, the rules are relaxed even further, leaving room for misspending of state and federal dollars that could affect the state's ability to secure disaster recovery funding in the future. Specifically, the law provides that when an emergency is declared by either of the state's procurement management agencies or the governor, traditional procurement procedures are

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suspended in favor of whatever rules are put into place during that emergency.

This analysis examines a set of high-profile, recovery-related contracts for professional, social and consulting services awarded and amended throughout the two and a half years since the storms of 2005. These contracts provide services such as assistance to government in managing interaction with FEMA; monitoring the state's federal aid accounting documentation; preventing fraud; distributing housing grants and social services; analyzing health care and insurance reforms; and creating solutions for long-term community planning.

Programs like the Road Home and Louisiana Speaks are shaped by the work outlined in these contracts. In some cases, the contract itself has become a part of the public debate and in others the general public likely has little notion of the type of business arrangement that provided the public service or even that the service was provided. This analysis does not provide a performance evaluation of the contracts or attempt to audit the spending. Rather, the focus is on identifying ways to strengthen the state's contracting process, transparency and management.

Additionally, some of the agreements under study are contracts between private entities and involve no state spending. However, the services provided were specifically funded to assist government with research and inform policymaking in crucial post-disaster matters such as transportation planning, property insurance bail-out options and health care for the uninsured. Essentially, these agreements amount to donations made to government by the private sector.

Transparency is key to building public confidence in government, and this study shows that the view is rather opaque in the world of public contracting where state dollars enter the private sector. Since hurricanes Katrina and

Rita decimated much of south Louisiana in the fall of 2005, public and private contracts worth billions of dollars have been awarded to advise and accomplish the recovery effort. These funds have come from all sectors of society, including federal and state government, corporate, private and nonprofit. As resources have poured into the state, Louisiana has struggled to convince the nation that the days of backroom deals and political insiders being handed lucrative state contracts are over. Numerous audits by state and federal authorities have turned up no findings of misspending or corruption.

The state's unprecedented disaster spending responsibilities focused national attention on Louisiana's reputation for tolerating corruption and prompted a recent campaign to strengthen the state's ethics laws. An impressive set of reforms was enacted, a few of which directly affect state contracting. State officials now will be forbidden from profiting personally through contracts with the state, and the state will be required to provide Web-based information regarding its spending. Louisiana can build on these initial reforms and boost public confidence by improving emergency contracting processes and management and expanding transparency.

The unique way in which public and private resources were and continue to be deployed offers exceptional insight, which can guide government through future challenges. While public-private roles were cast in innovative ways to get things done quickly, additional steps should be taken by Louisiana agencies to ensure that the public is aware of the impact private dollars have on policymaking.

Further, although many agencies have become more proactive and better prepared in their approaches to disaster-related contracting, some solutions have yet to be implemented. The following recommendations will strengthen Louisiana's overall procurement process, in times of disaster and otherwise, improve public perception, and provide an improved model for catastrophic events still to come.

## PAR Recommendations

**Recommendation 1: Minimize conflict of interest by prohibiting contractors from competing for state contracts for which they were hired to design the scope and nature of services needed.**

**Recommendation 2: Require that copies of *all* public contracts and information related to their procurement, award and management be made available to the public via a free searchable Internet database.**

**Recommendation 3: Require public agencies that request donation of professional, social or consulting services from private entities to publish online reports outlining the public-private affiliation, the service donated and the use of the requested service for policymaking.**

**Recommendation 4: Require certain minimum standards for *all* public emergency contracts, such as identification of goals to be achieved initially, identification of tasks required to meet those goals and production of consistent status reports, to ensure goals are being met.**

**Recommendation 5: Require that all public emergency contracts are automatically reviewed within 90 days of inception to further define goals, responsibilities, performance measurements and incentives.**

**Recommendation 6: Require state agencies to conduct an annual review of their emergency procurement practices and determine ways in which they can prepare for disaster spending, such as negotiating contingency contracts and using multi-disciplinary teams to prepare emergency contracts.**

### Table of Acronyms

ADAMS	ADAMS Project Management Consulting, LLC	PwC	Price Waterhouse Coopers
Calthorpe	Calthorpe Associates	RFP	Request for Proposal
CDBG	Community Development Block Grant	SFO	Solicitation for Offer
Deloitte	Deloitte & Touche, LLP	SSBG	Social Services Block Grant
DSS	Department of Social Services	TANF	Temporary Assistance for Needy Families
FEMA	Federal Emergency Management Agency	Witt	James Lee Witt Associates
Guide	Seven Steps to Performance-Based Acquisition	Witt-K1	Initial James Lee Witt Associates Contract (Signed 9/15/05)
ICF	ICF International	Witt-K2	Second James Lee Witt Associates Contract (Signed 8/24/07)
KPMG	KPMG International		
LaPAC	Louisiana Procurement and Contract Network		
LA eCat	Louisiana Electronic Catalog		
LFRC	Louisiana Family Recovery Corps		
LFRC-K1	Initial LFRC Contract (Signed 11/30/05)		
LFRC-K2	Second LFRC Contract (Signed 8/1/06)		
LRA	Louisiana Recovery Authority		
LRA-SF	LRA Support Foundation		
Paragon	Paragon Strategic Solutions, Inc.		

## Introduction

Hurricanes Katrina and Rita shed a bright and unforgiving spotlight on how ill-prepared government was for a catastrophic, natural disaster. Within weeks of the storms, fierce public debate began regarding local, state and federal governments’ lack of readiness and inability to timely respond to the devastation.

Response efforts were perceived to be inappropriately slow. The fact that much of the affected area was economically disadvantaged only fueled the perception that government was either inept or apathetic in making Louisiana whole again. When help did come, poor communication by government as to realistic recovery timelines only furthered the opinion that recovery efforts were coordinated chaotically and managed poorly.

This study reviews a recognized set of high-profile, disaster-related professional, social and consulting services contracts. With regard to the award process, the state’s rules are complex and provide gaps in transparency and accountability. Conversely, while the media and public have faulted recovery contracts for not being “performance-based,” an examination of the language of these contracts reveals that this characterization is not entirely correct. The majority of contracts discussed did provide performance parameters and measurements although few included performance incentives—concepts that are commonly confused.

The complexity of the state’s contract award processes, poor communication from government to the people and the level of difficulty an average citizen encounters when collecting contract information have exacerbated the poor perception surrounding recovery efforts. The state should now create and implement policies that encapsulate lessons learned and best practices used to improve the process, transparency, minimum language standards and management of emergency contracts in a post-disaster environment.

The public contracts discussed relate to specialized services only, which include *professional, personal, social* and *consulting* service contracts. The contracts herein provide program management, technical support or research assistance to the state (see Textbox 1). Each is funded with public dollars (federal and/or state), private donations or a combination of both (see Table 1).

## Contract Award Process

### Procurement Management

Procurement is the acquisition of goods and services. In Louisiana, public procurement is accomplished by awarding contracts to private vendors in order to secure goods and services on behalf of the state. Generally, the award process is managed by either the state’s central procurement office (the Office of State Purchasing) or the Office of Contractual Review, both within the Division of

**Table 1. Identification of Specialized Service Contracts under Study**

Type	Purpose	Contractor	Originator	Funding Source
Program Management	The Road Home	ICF	OCD, State of LA	Public, Federal, “CDBG”
	Humanitarian assistance	LFRC-K1	DSS, State of LA	Public, Federal, “TANF” Public, State, General Fund
	Humanitarian assistance	LFRC-K2	DSS, State of LA	Public, Federal, “SSBG” Public, State, General Fund
Technical Support	Fraud prevention	KPMG	ICF	Public, Federal, “CDBG”
	FEMA assistance	Witt-K1	Military Dept, State of LA	Public, Federal, FEMA
	FEMA assistance	Witt-K2	GOHSEP, State of LA	Public, Federal, FEMA
	Accounting assistance	Deloitte	GOHSEP, State of LA	Public, Federal, FEMA
Research	Business plan for charity hospital	ADAMS	DOA, State of LA	Public, State, Capital Outlay
	Louisiana Speaks	Calthorpe	LRA Support Foundation	Private, LRA Support Foundation
	Louisiana Speaks	DPZ	LRA Support Foundation	Private, LRA Support Foundation
	Louisiana Speaks	UDA	LRA Support Foundation	Private, LRA Support Foundation
	Analysis of insurance catastrophe fund	Paragon	LRA Support Foundation	Private, LRA Support Foundation
	Health care solutions	PwC	LRA Support Foundation	Private, LRA Support Foundation

## **Textbox 1. Classification of Specialized Service Contracts under Study**

### ***Program Management***

Program management contracts include ICF International's (ICF) administration of the Louisiana Road Home program, a collection of housing solutions designed to assist property owners with rebuilding. Also included are two contracts (LFRC-K1 & LFRC-K2) with The Louisiana Family Recovery Corps' (LFRC) regarding coordination of humanitarian services for displaced citizens, such as mental health counseling, health care and child care, and information on the availability of employment opportunities and schools.

ICF, headquartered in Virginia, regularly consults with government and private sector clients regarding policy strategy, technical training and program evaluation and management. The LFRC, a Louisiana nonprofit, is one of three entities created by Governor Blanco after the storms in an attempt to streamline the recovery process. Both contracts are publicly funded—ICF, primarily with federal funds; LFRC, with state and federal funds.

### ***Technical Support***

Technical support contracts include fraud prevention services in conjunction with the Road Home program, provided by KPMG International (KPMG); two procedural assistance contracts (Witt-K1 & Witt-K2), provided by James Lee Witt Associates (Witt), designed to help the state maneuver through the complexities of receiving federal emergency "FEMA" aid; and accounting assistance, provided by Deloitte & Touche LLP (Deloitte), to support the state in appropriately handling and documenting the use of FEMA dollars.

KPMG and Deloitte are two of the nationally recognized "big four" accounting firms. Witt, whose founder was former director of FEMA under the Clinton administration, specializes in emergency preparedness and management. All four contracts were publicly funded. KPMG and Witt were paid for with federal dollars while Deloitte was funded by the state, although the state continues to seek reimbursement of the Deloitte costs from the federal government.

### ***Research Assistance***

Research assistance contracts were funded with both public and private dollars. State public funds supported a comprehensive business and recovery plan for Charity Hospital in New Orleans in the wake of the storms. ADAMS Project Management Consulting, LLC (ADAMS) was retained by the state to assess Charity Hospital and tell officials how it might be redesigned. ADAMS routinely provides project management, strategic planning and productivity improvement for the healthcare and health sciences industry.

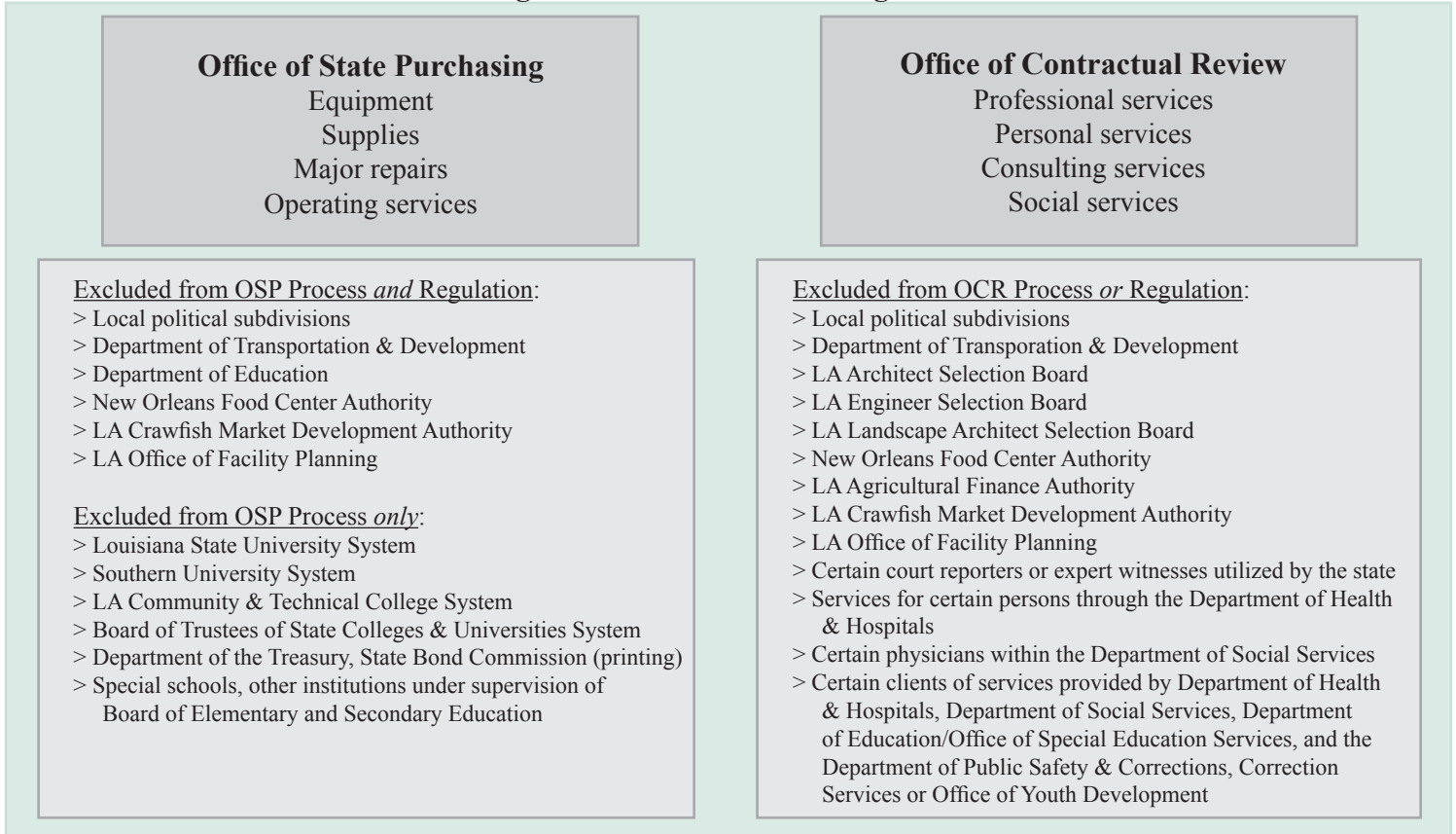
Three other research contracts discussed were funded privately. The Louisiana Recovery Authority (LRA), a state-appointed planning and coordinating body designed to implement the state's recovery process, enlisted the help of the LRA Support Foundation for this task. The LRA Support Foundation is a private entity, established to support the LRA's efforts through the funding of policy research and development, long-term community planning and the identification of best practices. To date, the LRA Support Foundation has issued more than \$11 million in grants for hurricane relief efforts.

The LRA Support Foundation was established by the Baton Rouge Area Foundation as a supporting organization. Baton Rouge Area Foundation has a long history of connecting philanthropists with nonprofits and investing in and managing community revitalization projects. Although the LRA Support Foundation has an independent board of directors to make policy decisions, Baton Rouge Area Foundation and one of its offshoots (the Center for Planning Excellence) supply financial and staff assistance for the supporting organization.

Each LRA Support Foundation contract discussed dealt with long-range planning and strategy for the state's rebuilding efforts. They include the regional planning "Louisiana Speaks" endeavor, provided by Calthorpe Associates (Calthorpe), Duany Plater-Zyberk (DPZ) and Urban Design Associates (UDA); the study of a possible insurance catastrophe fund in Louisiana, provided by Paragon Strategic Solutions, Inc. (Paragon); and research on possible health care solutions for the state, provided by Price Waterhouse Coopers (PwC).

Calthorpe, DPZ and UDA each specialize in long-range urban and regional planning; Paragon is the Minneapolis-based company that administers Florida's state-run insurance catastrophe fund; and PwC is one of the largest and best known professional service firms in the country.

**Figure 1. Procurement Management**



Administration. Which entity manages the process depends on the type of good or service being sought and which state agency or political subdivision is seeking the service (see Figure 1).

Procurement of generalized labor, goods and services for the state is managed by the state’s central procurement office, the Office of State Purchasing. The Office of State Purchasing’s jurisdiction includes services such as janitorial labor, office furniture, supplies, vehicles, equipment and storage. Upon receipt of an agency request for such, the Office of State Purchasing drafts solicitation language and contract parameters to fulfill the request and manages the procurement process on behalf of the agency.

Procurement of professional, social and consulting service contracts is managed by the Office of Contractual Review. These services include the program management, technical support and research assistance contracts discussed herein. The procurement of these was overseen exclusively by the Office of Contractual Review unless they were legally exempted from public procurement or Office of Contractual Review’s authority.

The Office of Contractual Review’s role in the procurement process is more of an oversight position than that of Office of State Purchasing. Whereas Office of State Purchasing

drafts solicitation language and contract measurements on behalf of requesting state agencies, Office of Contractual Review serves more of an advisory role to ensure that agencies are following the correct procurement procedures.

### Procurement Methods

The procurement of most professional, social and consulting service contracts are managed by the Office of Contractual Review. Professional service contracts, social service contracts worth less than \$250,000 per year and consulting service contracts worth less than \$50,000 are not required to be selected through competitive negotiation—although the state may utilize a competitive process if it so chooses.

Barring a few exceptions, social service contracts worth \$150,000 or more per year and consulting service contracts worth \$50,000 or more total must be awarded by Request for Proposal (RFP). The RFP is an extensive, transparent and competitive process, whereby vendors are solicited publicly and a successful vendor is selected based on several criteria including, but not limited to, cost of services. While some criticize the RFP process for being too subjective, others note that contractor experience is as important as cost when awarding contracts for specialized services.

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Exceptions to the RFP process exist when only one contractor (sole source) can provide a given service; the state Legislature appropriates money for a particular contractor; a quasi-public or nonprofit corporation is established with the state to provide a particular service; or an emergency occurs that will not permit the delays associated with a RFP. Additionally, upon the occurrence of a catastrophic event, the governor can issue an Executive Order declaring a state of emergency and outlining alternative procurement procedures to be followed, as was done shortly after the storms of 2005. Finally, the director of the Offices of State Purchasing or Contractual Review may declare an emergency procurement situation and permit agencies to forego procurement technicalities.

A second procurement method commonly used, although not defined or required by law, is the Solicitation for Offer (SFO), a similarly transparent but less rigorous and time consuming process than the RFP. SFOs are used to procure services that legally are not required to be awarded by RFP in an effort to provide competition and transparency, even when none is required by law. Whether contracts are solicited competitively (by RFP or SFO) or not, and no matter which procurement office manages the process, agencies are made parties to contracts depending on how the contract will be funded or managed.

For instance, the state's Office of Community Development was made party to ICF's consulting contract because Office of Community Development administers the federal, disaster-related dollars that fund the Road Home program. The procurement process was managed by Office of Contractual Review. Normally the consulting contract would have been negotiated by RFP, because its amount exceeded \$50,000. However, strict procurement requirements were set aside at Office of Community Development's request when the director of the Office of Contractual Review determined the level of emergency justified such. The state voluntarily utilized the SFO process in an effort to balance the need for a quick response with competitiveness and transparency (see Table 2).

### Conflict of Interest

The state sometimes will hire a company to help design a new service – like the Road Home program, for example. The company will research the state's needs and implementation options, and develop contract and proposal language. Louisiana law does not prohibit that same contractor from then competing for the job it helped design or contract it helped write— giving it an inside track to lucrative government business.

Agencies can request a ruling from the Board of Ethics to confirm that conflicts of interest do not exist in a given case. Further, legislation was introduced in the 2008 regular session in an effort to address at least part of the problem; the new bill prohibits those contractors who work on solicitation language from then competing for the contract.

Of the eight public contracts studied, three (ICF, Deloitte and Witt-K2) were awarded through a competitive negotiation process. Of those, each of the successful contractors previously had worked for the state on other projects. The Deloitte and Witt-K2 contracts were basically to extend work the companies had already begun to undertake for the state. The Road Home implementation contract, however, was awarded to the same company (ICF) that was hired initially to design the program services to be provided by the contractor. The initial design contract for \$934,133 was scheduled to run from March 2006 to March 2009, but was prematurely terminated by ICF after the contractor competed for and was awarded the more lucrative (initially, \$87 million) management contract to implement the Road Home program.

In the case of the ICF Road Home management contract, the Office of Community Development asked the Board of Ethics to rule on whether a conflict existed, as ICF had designed the program it was then negotiating to administer. The Board of Ethics ruled there was no conflict provided ICF terminated its original contract for design of the Road Home program.

To protect the interests of the state when it lacks expertise in an issue area, a legal firewall should be placed between the design and implementation phases of contracting. In cases where the state has used internal staff and expertise to develop a request for proposal or solicitation for offer, all qualified applicants should be considered. But, when the state must contract with outside professionals to design parameters for a larger contract, that entity should not be allowed to compete for the larger contract. In the case of ICF, the company relinquished the smaller program-design work, and its influence over subsequent parts of the process may have been limited. But, the company's early role raises reasonable suspicion about the level of influence it was able to exert over the final decision regarding who would implement the Road Home program.

**Recommendation #1: Minimize conflict of interest by prohibiting contractors from competing for state contracts for which they were hired to design the scope and nature of services needed.**

**Table 2. Procurement Methods**

Type	Purpose	Contractor	Start-End	Cost	Award Process
Program Management	The Road Home	ICF	06/12/06-06/11/09	\$912 million*	SFO
	Humanitarian assistance	LFRC-K1	11/30/05-09/30/08	\$32.8 million*	Exempt from procurement; contractor created for this purpose
	Humanitarian assistance	LFRC-K2	08/01/06-09/15/07	\$15 million*	Exempt from procurement; contractor created for this purpose
Technical Support	Fraud prevention	KPMG	06/12/06-06/11/09	\$4.6 million max.*	Subcontractor, chosen by contractor; approved by the state
	FEMA assistance	Witt-K1	09/15/05-365 days from start; ongoing renewals	\$57 million**	Exempt from procurement; direction of the Governor
	FEMA assistance	Witt-K2	08/24/07-08/23/09	\$58.5 million*	RFP
	Accounting assistance	Deloitte	07/10/06-90 days from start; amended to 135 days from start	\$4.5 million max.*	SFO
	Business plan for charity hospital	ADAMS	11/01/06-06/30/07	\$1.3 million*	Exempt from procurement; professional services contract
Research	Louisiana Speaks	Calthorpe	01/19/06-delivery	\$4.8 million*	LRA Support Foundation Board of Directors
	Louisiana Speaks	DPZ	01/23/06-delivery	\$825,000*	LRA Support Foundation Board of Directors
	Louisiana Speaks	UDA	12/16/05-delivery	\$515,000*	LRA Support Foundation Board of Directors
	Analysis of an insurance catastrophe fund	Paragon	02/06/07-06/30/07 or until terminated	\$62,400*	LRA Support Foundation Board of Directors
	Health care solutions	PwC	01/26/06-03/31/06	\$1.2 million*	LRA Support Foundation Board of Directors

\* Provided in contract language

\*\* Provided by GOHSEP



## Degrees of Transparency

Transparency in government is essential to accountability and building public confidence. Without easy access to information, suspicions of waste, fraud and business-as-usual will hinder the state’s ability to attract recovery dollars and new business. Public records laws ensure a minimum level of transparency by requiring documents to be released upon request. However, the state could improve its efforts to organize and publish information on the Internet regarding vendors who hold public contracts. Requiring a formal request for public records from authorities discourages the public from seeking those documents and encourages the suspicion that insider deals are being hidden.

Consider the onus an average citizen presently bears to retrieve information on the ICF contract—he or she would have to determine whether Office of State Purchasing or Office of Contractual Review is the proper management agency in order to find the contract; likely attempt to find details about the contract on either of the agency Web sites and find little to no information; call Office of Contractual Review to learn that a formal public records request will have to be made; make that request; thereafter find out that the ICF contract is exempt from procurement so it is more appropriate to request a copy of the contract directly from its managing agency (Office of Community Development);

and begin the public records request again. Even with the actual contract in hand, the average citizen would have to make further inquiries to determine exactly how much money had been spent on ICF, what the objectives were and whether the goals were met. Moreover, short of making regular public records requests, the citizen would have no way to track amendments to the contract.

The ongoing controversy over a contract amendment made by the Blanco administration to the ICF contract in December 2007 demonstrates the way in which difficulty accessing documents fuels suspicion and public outcry. The infamous amendment number seven raised the spending cap on the contract from \$756 million to \$912 million for extra work expected to be done to comply with policy changes and increased caseload. The public and legislators were taken by surprise months later with this “raise” that was not openly discussed until March 2008. Short of making regular inquiries, neither the public nor the Legislature currently has a way to monitor contract changes. Table 3 indicates the online status of each contract, contact information to obtain contracts not found online and number of amendments.

Office of State Purchasing features two procurement-related databases on its home page—The Louisiana Procurement and Contract Network (**LaPAC**) and the Louisiana Electronic Catalog (**LA eCat**)—neither of which was

**Table 3. Accessibility of Contracts\***

Contractor (Contract)	Purpose	Online	Offline Point of Contact	Amendments
ICF	The Road Home	Yes	Office of Community Development	7
LFRC (LFRC-K1)	Humanitarian assistance	No	Office of Contractual Review	11
LFRC (LFRC-K2)	Humanitarian assistance	No	Office of Contractual Review	9
KPMG	Fraud prevention	No	Office of Community Development	1
Witt (Witt-K1)	FEMA assistance	No	Governor’s Office of Homeland Security & Emergency Preparedness	
Witt (Witt-K2)	FEMA assistance	No	Governor’s Office of Homeland Security & Emergency Preparedness	
Deloitte	Accounting assistance	No	Office of Contractual Review	3
ADAMS	Business plan for charity hospital	No	Office of Facility Planning	
Calthorpe	Louisiana Speaks	No	Baton Rouge Area Foundation	
DPZ	Louisiana Speaks	No	Baton Rouge Area Foundation	
UDA	Louisiana Speaks	No	Baton Rouge Area Foundation	
Paragon	Analysis of insurance catastrophe fund	No	Baton Rouge Area Foundation	
PwC	Health care solutions	No	Baton Rouge Area Foundation	

\* as of April 1, 2008

designed to provide citizens with meaningful information relative to state contracting or contract holders. LaPAC highlights only certain contracts that are currently open for negotiation or bid. LA eCat is meant as a shopping tool for state agencies to access pre-approved supplies. Contracts managed by OCR are not found in either database.

Office of Contractual Review's Web site does offer limited information regarding certain contracts it manages via online annual reports. Only the contractor, dollar amount and purpose are identified. Presently there is no centralized online source in Louisiana that provides copies of current or archived state contracts for public viewing or information as to how contract dollars are being spent or whether contractors are meeting goals. While Office of Contractual Review has considered making copies of all contracts available online, the cost of labor and time to scan thousands of documents into a central system has been considered too high for the transparency to be gained.

States that have been cited as providing excellent transparency in procurement include Connecticut, Indiana, Kansas, Massachusetts and Washington. An examination of those state Web sites indicates that most provide more information than Louisiana regarding their contracting practices and those who contract with their states (see Table 4).

Louisiana's central procurement agency, the Office of State Procurement, should be the centralized custodian of all state contract documents to ensure ease-of-access to these important spending documents. They should be archived for five years from date of award and all state government Web sites should provide easily accessible links to the database.

This new responsibility would build on OSP's current database capacity and add to the data it now collects

regarding purchases of tangible goods. If the cost for posting contracts retroactively is prohibitive, the new transparency requirement could be applied only to all new contracts.

In the recent special session on ethics, the Legislature passed a law that will require the Division of Administration to establish and maintain a Web site detailing state spending each month. This directive is an unprecedented push toward transparency in spending and would be an appropriate portal for the posting of contract-related details.

**Recommendation #2: Require that copies of all public contracts and information related to their procurement, award and management be made available to the public via a free searchable Internet database.**

#### Disclosure of Public-Private Affiliations

Although there was no legal requirement for it to do so, the LRA Support Foundation held open meetings and made records available to the public. Also, the LRA Support Foundation's Web site does offer information relative to the contracts, including scope of work, deliverables, anticipated delivery dates and schedule of fees paid in conjunction with Louisiana Speaks. Additionally, the Louisiana Speaks plan, the Paragon report and the PwC health care report are available for download from several Web sites, including the state's LRA site.

Private entities such as the LRA Support Foundation are unique in their relationship with government. Although privately funded and operated, the LRA Support Foundation took substantial direction from the LRA, a state-created entity, to choose its research projects. In turn, the LRA relied heavily on the LRA Support Foundation for advice in addressing critical policy issues for health care, insurance and long-range planning. By all accounts

**Table 4. Comparison of Louisiana to states ranked highly for procurement disclosure**

State	Searchable database?	Professional service contracts included in database?	Copies of contracts available for download?
Connecticut	Yes	Yes	Yes, electronic copy without signatures
Indiana	Yes	Yes	Yes, scanned copy with signatures
Kansas	Yes	Yes	Yes, electronic copy without signatures
Louisiana (OSP)	Yes	No	No, standard form with contract information only
Louisiana (OCR)	No	N/A	No
Massachusetts	Yes	Yes	No, standard form with contract information only
Washington	Yes	Yes	No, standard form with contract information only

Source: PAR survey of state websites, March 20, 2008

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public-private relationships such as these have resulted in a benefit to the state in that government can explore solutions it might not have the resources or expertise to tackle otherwise, at no cost to the public. Public-private collaboration may expedite the mending of a community, however it also can blur the line between what is actually state work—subject to public procurement guidelines and transparency—and what is private philanthropy. Although this influence may be welcome, proper and necessary, the public should be fully informed of the lines of influence either to ease or raise cause for concern. However, there currently is no legal requirement that government disclose its use of the private sector in helping shape policy.

The LRA offered substantial disclosure of the affiliations under study by describing them in press releases and providing links to private-sector Web sites that offer additional details about the donated research services. However, the means of reporting these relationships was not consistent, nor was it required. Under other circumstances, private influences over public policies could be more difficult to track. The state should require agencies to post online a full accounting of the primary parties involved in these unique public-private affiliations.

**Recommendation #3: Require public agencies that request donation of professional, social or consulting services from private entities to publish online reports outlining the public-private affiliation, the service donated and the use of the requested service for policymaking.**

## **Contract Language and Management**

### **Contract Language**

Contract language is crucial to the success or failure of contract management. If appropriate parameters, performance measurements and details as to how the contract will be managed are not provided within the document, the project can run off course easily. Without necessary language, parties are left to dispute whether expectations are being met and have no guidelines for correcting problems. As such, both federal and state governments have expressed a preference for performance-based contracting.

Performance-based contracting is a unique procurement process that focuses on the goal of the contract and the outcomes to be achieved rather than the processes to be used. Performance-based contracting becomes even more relevant in times of recovery as the failure of contractors to deliver quality and timely results can devastate communities. In non-emergency situations, Louisiana law

requires performance-based contracts in specific instances only. Shortly after the storms, the administration declared a state of emergency and waived normal procurement requirements but ordered agencies to use performance-based contracts where practical.

Successful performance-based contracting should provide answers to three essential questions—what is needed, when is it needed and how does government judge the end result? Performance-based contracts typically itemize the overall objective and goals of the project, the work to be performed by the contractor, the sub-tasks necessary to complete the work and *performance measurements* to gauge whether or not the state is getting what it contracted for, in a timely manner. Table 5 demonstrates that almost all of the contracts discussed were performance-based, despite public opinion to the contrary. Only the initial Witt contract (Witt-K1) failed to meet the majority of these requirements.

By contrast, *performance incentives* are monetary penalties and rewards for meeting specific performance measures. Performance incentives were not widely used in the public or private contracts studied.

The LFRC contracts present an example of how performance penalties were used within a contract that has worked well for the state. The work of the LFRC continues today and the entity functions much like an extension of government as it assists citizens in maneuvering through the maze of post-disaster public services.

Conversely, ICF's contract demonstrates that performance-based language and incentives cannot guarantee a contractor will perform as expected. Some reports claim that ICF was given lax requirements to meet in the first place, that Office of Community Development failed to impose penalties when appropriate and that a huge spending increase was granted to the company in secret just before Governor Blanco left office. However, the Office of Community Development had fined ICF \$125,000 by the end of 2007 due to the contractor's failure to meet designated performance measurements. Additionally, the state notified ICF in 2008 that it would be assessed another \$800,000 due to performance failures. The most recent fines have not yet been collected however, as the contractor has 90 days to appeal the state's decision.

Clear performance measurements were established during the start-up phase of the Road Home program. However, performance measurements nor incentives were provided for the implementation phase of the program until the work was well under way. Additionally, the measurements and incentives eventually established were never properly

updated and expired in December 2007 leaving the contract once again without performance incentives in place. Subsequent amendments failed to re-establish the punitive provisions. Without performance incentives in place, the agency's ability to get what it paid for is undermined.

The Louisiana legislative auditor has released 12 reports regarding the Road Home Program with recommendations for improved management of the contract (see Textbox 2), and the inspector general has recently begun a separate investigation of the spending cap raise. Some of those reports were initiated by the legislative auditor while others were requested by the Office of Community Development.

### Emergency Requirements

Currently there is no requirement that emergency contracts contain clearly stated outcomes, performance metrics, a time frame for measurement of success or failure and a clear review process or end date. This practice can result in contracts like Witt-K1, where it is unclear what the state was supposed to get for the money, what the objectives were, how and when those objectives would be measured and when the contractor would no longer be needed. In times of disaster, some of the needs may not be known. However, even in times of emergency, certain minimum standards for contract language and an automatic review policy of the contract itself can be established.

Witt-K1 provides an example of the natural course of events when no automatic review period is established for emergency contracts. The deficiencies in the original Witt contract, which was signed by the governor shortly after the storms, were allowed to carry on for far too long. Witt-K1 was originally signed on September 15, 2005, with a term of 365 days and a provision that allowed for ongoing

renewal periods. Only when the Governor's Office of Homeland Security and Emergency Preparedness struggled to get FEMA to pay a portion of the Witt-K1 contract were officials forced to rewrite and renegotiate the agreement.

Witt-K2 by contrast, provides an example of how government can learn from mistakes and strengthen its process. Witt-K2 was awarded after rigorous negotiation and via a public, formal RFP process. Unlike its predecessor, the second Witt contract contained defined tasks, deliverables, overall goals and objectives and stringent performance measurements (see Table 5).

Even in times of emergency, contract language is crucial to the success or failure of contract management. If appropriate parameters, performance measurements and details as to how the contract will be managed are not provided within the document, the project can run off course easily. Further, only a mandatory review of the language and parameters, within a short time frame after the initiation of an emergency contract, will ensure that loosely worded agreements are not allowed to carry on for too long.

**Recommendation #4: Require certain minimum standards for *all* public emergency contracts, such as identification of goals to be achieved initially, identification of tasks required to meet those goals and production of consistent status reports, to ensure goals are being met.**

**Recommendation #5: Require that all public emergency contracts are automatically reviewed within 90 days of inception to further define goals, responsibilities, performance measurements and incentives.**

### Textbox 2. Legislative Auditor Reports Regarding the Road Home Program

1. Road Home Program - Resolution Process Follow-Up
2. Road Home Program Home Evaluations
3. Road Home Program - Review of Policy Change Approval Process
4. Road Home Program - Pipeline Reliability
5. Road Home Program - Review of LMI Determination
6. Road Home Resolution Process
7. Road Home Program - Pre-closing Process
8. Road Home Program - Analysis of Road Home Program Fiscal Shortfall
9. Road Home Program - ICF Contract and Deliverables
10. Road Home Housing Assistance Centers
11. Road Home Program - Additional Compensation Grant Documentation
12. Division of Administration - Office of Community Development - Road Home Program

**Table 5. Performance Measurements, Incentives and/or Penalties**

Type	Purpose	Contractor	Tasks or Specific Deliverables	Overall Goals and/or Objectives	Performance Measurements	Performance Rewards or Penalties
Program Management	The Road Home	ICF	Yes	Yes	Yes, tasks and date ranges provided (start-up phase only); added for program implementation phase at later date	Yes, penalties added later
	Humanitarian assistance	LFRC-K1	Yes	No	Yes, clear deadlines for work product	Yes, penalties
	Humanitarian assistance	LFRC-K2	Yes	No	Yes, clear deadlines for work product and agency responsible for monthly evaluations	Yes, penalties
	Fraud prevention	KPMG	Yes	No	Yes, weekly interim reports to evidence tasks being performed	No
	FEMA assistance	Witt-K1	Yes	No	No	No
	FEMA assistance	Witt-K2	Yes	Yes	Yes, weekly reports to evidence tasks performed and progress reports from previous week; provides for contract monitor and project manager within agency	No
Technical Support	Accounting assistance	Deloitte	Yes	Yes	Yes, weekly reports to evidence tasks performed	No
	Business plan for charity hospital	ADAMS	Yes	Yes	Yes, enumerated deliverables with time-sensitive deadlines	No
	Louisiana Speaks	Calthorpe	Yes	No	Yes, enumerated deliverables with time-sensitive deadlines	No
	Louisiana Speaks	DPZ	Yes	No	Yes, enumerated deliverables with time-sensitive deadlines	No
	Louisiana Speaks	UDA	Yes	No	Yes, enumerated deliverables with time-sensitive deadlines	No
	Analysis of an insurance catastrophe fund	Paragon	Yes	No	No, final deliverable date only	No
Research	Health care solutions	PwC	Yes	Yes, defined as long term priorities	Yes, contract scope requires weekly updates and conference calls	No

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## Best Practices

In 2001, a federal inter-agency and industry partnership established a guide to performance-based contracting best practices (Guide), to improve procurement and management of performance-based contracts. Those best practices are applicable to federal and state contracting.

### **Standard Review of Alternative Procurement Practices.**

In preparing public solicitations, the Guide advises procurement officials to examine private-sector and other public-sector procurement solutions. This practice allows agencies and industry to learn from one another, as well as examine contracts that have already been drafted elsewhere for similar needs. Soon after the storms, other states that also had suffered catastrophic disasters, sent model contracts to Office of State Purchasing to provide guidance to state officials in disaster-related contracting. Since that time Office of State Purchasing staff members routinely meet to examine what procurement practices are being utilized by other states. At present, Office of State Purchasing does not look to the private sector for guidance.

Office of Contractual Review does not routinely examine other public- or private-sector procurement solutions, nor does Office of Contractual Review negotiate contingency contracts for professional, social or consulting services in preparation for a disaster. However, Office of Contractual Review's role in the procurement process is more of an oversight position than that of Office of State Purchasing. For services such as the contracts discussed herein, the burden is on individual agencies to be current on procurement methods, as they are responsible for drafting the scope and parameters of their contracts.

### **Use of Procurement Support Teams to Bolster**

**Expertise.** Additionally, the Guide stresses the importance of establishing a multi-disciplinary, integrated solutions team to assist in the procurement process. Proper team composition is vital. The suggested team approach works best when team members include contracting staff, program or agency staff, financial experts and legal representatives.

Louisiana has codified this best practice, at least in part. State law provides that the procurement of consulting contracts with a total compensation of \$140,000 or more requires the use of a procurement support team. The procurement support team routinely includes representatives from Office of Contractual Review, the agency initiating the contract, the Attorney General's Office and the Legislative Fiscal Office. This team develops the RFP, evaluates responses to the RFP and makes recommendations to Office of Contractual Review concerning the final contract.

Several agencies report that they routinely involve integrated teams in the preparation of solicitation documents even when not legally required. However, no other areas of law or agency rules require a similar team to be involved in the procuring of goods or services. In times of catastrophic disaster, an even broader approach may be needed where teams include experts from other industries and states. When designing the Road Home program, Office of Community Development included housing experts and recovery specialists to broaden the team's point of view.

Although the private sector is not required to engage in performance-based contracting or management, foundations frequently employ comparable best-practice methods. In this instance, the LRA Support Foundation was created as a vehicle for private entities to donate resources to the recovery effort. The LRA Support Foundation board worked with an integrated team to determine the best use of those resources and choose appropriate contractors. Collaborative efforts such as these are an example of private foundations and state-created bodies working together to affect recovery and rebuilding.

**Inclusion of Contingency Contracting in Disaster Preparations.** A 2006 study by the United States Government Accountability Office suggested that agencies could improve disaster-recovery contracting and management by at least identifying commodities and services needed in times of disaster, establishing relationships and gaining commitments (contingency contracts) before they are needed. The literature supports agreements with vendors before a disaster strikes and claims these allow the state to avoid being overcharged, negotiate better terms and have contractors ready to provide services and supplies immediately.

Prior to the storms of 2005, most Louisiana agencies had not engaged in contingency contracting. Contingency contracting allows the state to strike a balance between the need to act quickly in times of crisis and the need to maintain competitiveness and transparency in bidding, since procurement occurs in advance through a rigorous process (RFP or SFO) and is then in place when disaster strikes. Office of State Purchasing and certain agencies have begun to secure contracts for the provision of emergency goods, labor and services before they are needed.

There is disagreement as to whether contingency contracting would work as well for professional, social or consulting services. Opponents of contingency contracting indicate that this practice is not always practicable for these services. In certain situations, such as large program

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management contracts (The Road Home), the state may be unable to clearly define the services in advance that will be needed once an emergency occurs. In these cases, some worry that a contractor will raise normal rates for services as the parameters cannot clearly be defined beforehand.

However, some agencies, for example the Governor's Office of Homeland Security and Emergency Preparedness, are reporting initial success in securing contingency contracts for such services. How well these contracts will work after the next disaster remains to be seen, but it is clear that a range of needs for post-disaster professional, social and consulting services has been identified and contingency contracting in many of these areas can begin.

The Guide's suggestions for improvement are as relevant to state and local government as they are to federal agencies and provide guidance for how policy should change to ensure disaster-readiness in the future. Although state agencies may be taking proactive measures to ready themselves for the next disaster, solutions should be translated into policies that will prepare the state as a whole. Without requiring agencies to implement best practices and function similarly to one another regarding emergency procurement, management will only be as good as the inherent abilities of the people—not the process.

**Recommendation #6: Require state agencies to conduct an annual review of their emergency procurement practices and determine ways in which they can prepare for disaster spending, such as negotiating contingency contracts and using multi-disciplinary teams to prepare emergency contracts.**

## Conclusion

Since hurricanes Katrina and Rita devastated the state, recovery resources have flowed through state coffers in historic amounts with no major findings of misspending or corruption. However, perceptions of waste and fraud persist and continue to erode the public trust necessary to encourage long-term investment in and individual commitment to Louisiana. Citizen desire for reform has never been more evident than in the most recent push for improved ethics and transparency in the first special legislative session of 2008.

Louisiana can seize this momentum to dispel the image of corruption that surrounds the state's political culture by unlocking some of the mystery regarding doing business with the state. It is time to take the next step by removing the barriers that currently discourage citizens from accessing information about the state's business transactions. Emergency contracting requirements should

be strengthened to achieve increased accountability and effectiveness in times of crisis. And, specific guidelines should be developed to achieve maximum disclosure of the lines of influence private funding exerts on policymaking.

The purpose of this report is not to examine the overall impact of the contracts studied or to provide a performance review or audit of those contracts, although those efforts should continue to be made. The scope of this review was to analyze the procurement and management processes for certain emergency contracts. The report suggests several ways to increase citizen access to contracting documents, improve accountability of taxpayer dollars and decrease potential for misspending during times of emergency. Combined with other reform efforts underway to expose influence, eliminate conflict of interest and enable citizens to follow the money, Louisiana can be transformed into a state that insiders are proud of and outsiders can trust.

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**Public Affairs Research  
Council of Louisiana, Inc.**  
4664 Jamestown Avenue, Suite 300  
P.O. Box 14776  
Baton Rouge, LA 70898-4776  
Phone: (225) 926-8414  
Fax: (225) 926-8417  
E-mail: [staff@la-par.org](mailto:staff@la-par.org)  
or [jim.brandt@la-par.org](mailto:jim.brandt@la-par.org)  
[www.la-par.org](http://www.la-par.org)

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