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Sweetheart Deals

Two years ago, as he took the oath of office for a second term as governor, Florida's Jeb Bush startled his audience at the capitol in Tallahassee by pointing to the surrounding complex of state office buildings and making a declaration. "There would be no greater tribute to our maturity as a society," he said, "than if we can make these buildings around us empty of workers."

There is still quite a bit of controversy over just what Bush meant that day. To some, he was merely expressing his vision of a future in which human betterment would make many government programs unnecessary. Others, however, believe he was making a subtle reference to privatization—to his preference for a system in which the state would serve more and more as a master contractor, removing programs from the public bureaucracy and bidding them out to the private sector, in his view a cheaper, more efficient alternative.

STATES ALL OVER THE COUNTRY ARE EAGER TO PRIVATIZE SERVICES IN THE WORST WAY. THAT'S JUST HOW SOME OF THEM ARE DOING IT.

BY ALAN GREENBLATT

In any case, the latter interpretation reflects to a remarkable extent the Florida that Jeb Bush is creating. During his six years leading the state, 138 projects worth \$1.6 billion have been outsourced to private contractors. In Florida as elsewhere, outsourcing has developed a bipartisan constituency, no longer restricted to conservatives who decry big government. Democrats as well as Republicans embrace it as a sensible expedient in lean economic times.

But if privatization has been a political success in Florida, it is turning out to be a substantial managerial embarrassment. The process of issuing contracts has led to an avalanche of stories about political favoritism and alleged sweetheart deals.

Take, for example, the Department of Children and Families, which has struggled for the past decade with inadequate and malfunctioning computer systems. Two years ago, following a scandal in which the DCF lost track of a five-year-old girl, nominally in its care, for a period of 15 months, new leadership charged into the department, claiming it knew a better way. The idea was a contract that offered large incentives to a private vendor who could guarantee that a new system would finally be up and running within a year. The contractor would also get \$21 million.

It sounded good, and all the relevant authorities signed off on the plan. But

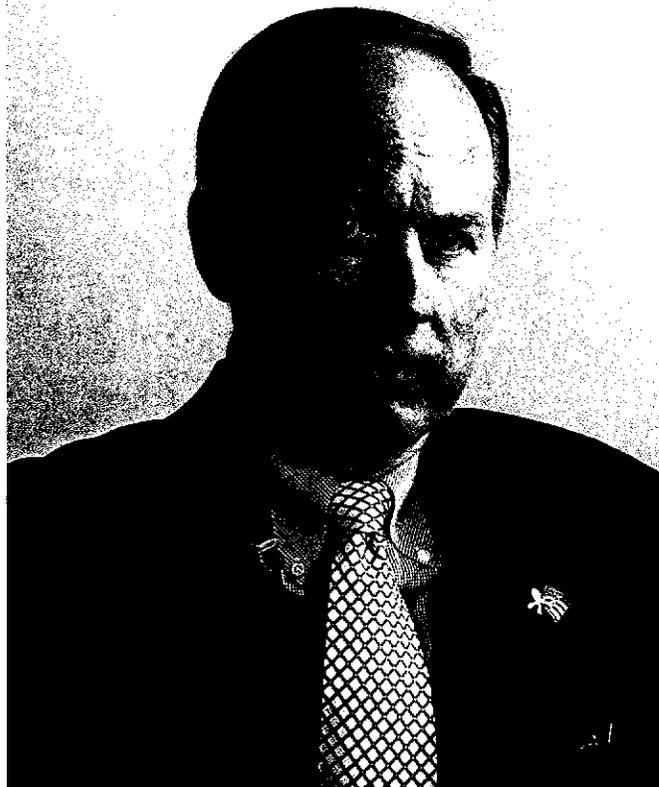
ALLISON DINNEN: PHOTOGRAPH, USA CHERKASKY: FOOD STYLIST

Ciber Inc., a vendor that didn't get the contract, claimed that AMS, the company that did, was given unfair advantages. The AMS bid, according to Ciber, was neither the lowest in price nor the most attractive, although the latter is more a matter of judgment than numbers. What was indisputable was the fact that an AMS board member had been the DCF secretary's boss and had recommended him for the job in Florida, while a former social services secretary served as a lobbyist for the company.

None of this constitutes proof of a conflict of interest, but Tom Hodgkins, director of state government relations for the newly merged CGI-AMS, says his company recognizes that perception is an especially tricky matter when working with taxpayer dollars. "There's a process that the state went through, and we as a company go out of our way to put together proposals that are responsive to the procurement policies," he says. "We followed the procurement process to the letter of the law." Nevertheless, DCF decided in November to rebid the contract rather than try to defend its decision in court.

As Florida pursues its aggressive program of privatization, it's running into this type of situation a lot. A bold new plan to save money and make government more efficient by turning to an outside contractor is alleged to have been tainted by favoritism. The number of state contracts that have offered significant benefits to well-connected individuals and companies is almost too large to tick off, although Florida media has made hay trying to do so. It's an especially big concern in a state now preparing to contract out the work of determining eligibility for food stamps, welfare and Medicaid—potentially the largest public procurement in the state's history.

That process has been put on hold, for the time being, because of scandals engulfing the Department of Children and Families. Members of the agency's top leader-



JERRY REGIER, FORMER HEAD OF FLORIDA'S DEPARTMENT OF CHILDREN AND FAMILIES, WAS DONE IN BY AN UNSAVORY MIXTURE OF GIFTS, TRAVEL AND NO-BID CONTRACTS.

ship, including Secretary Jerry Regier, have resigned in the wake of revelations that the agency had given more than \$4 million worth of no-bid contracts to companies owned by or associated with the former head of social services for the state, accepting personal gifts and travel all along the way. "Doing business in Florida," suggests a senior marketing executive with a major software vendor, "is a lot like doing business in Chechnya. You come with your steel and your animals and your oil, and you barter it out."

This year, the state technology office canceled more than \$250 million worth of contracts with Accenture and BearingPoint after the state auditor general found they were given an unfair leg up over

their competitors. Shortly after signing off on the deals, Kim Bahrami, the state's chief information officer, took a job with BearingPoint. The auditor's office also has criticized a \$350 million contract with Convergys to privatize the state's personnel management, having found evidence of illegal behavior among government officials and conflicts of interest.

Spokesman with all these companies deny any wrongdoing. John Di Renzo, who heads BearingPoint's state and local government practice, says that his company saved Florida nearly \$3 million during the 10 months its work was allowed to proceed, while apparently improving service. An Accenture spokesman notes that its contracts "were cancelled for convenience, not for cause." The vendors insist that many of the alleged sweetheart deals are actually sound and defensible decisions, victimized only by unsubstantiated suggestions of collusion.

ANGLING FOR PAYOFFS

The most familiar patronage abuses in American government used to involve public officials rewarding their friends with jobs in the public works department, or some equivalent. Now, in many places around the country, patronage abuse means something entirely different. It means friends and associates, campaign contributors and lobbyists angling for a payoff in the form of a multimillion-dollar contract with state government. Florida, of course, is hardly alone in this. Contracting scandals led directly to the resignation of Connecticut Governor John Rowland this summer and contributed to the downfall of Governor Gray Davis in California's recall election last year. Privatization is a growth industry at all levels of government, and investigations into ethical lapses and outright larceny are underway in virtually every corner of the country.

Throw a dart at the map and it won't land far from the scene of some contract-related investigation. Gary George, a long-

time Wisconsin state senator, was sentenced in August to four years in prison for a kick-back scheme that involved directing contracts to pals in construction and social services. Former Minnesota state Representative Loren Jennings was indicted in October on charges of steering \$650,000 in state grants to a telephone pole recycling company in which he had an undisclosed interest.

Members of the Los Angeles City Council are reviewing a \$540,000 contract given to a former port director who is the subject of a federal probe into contracting irregularities there. And the Wayne County Commission in Detroit has referred to prosecutors the case of county Treasurer Raymond Wojtowicz, who awarded \$4 million in contracts to associates after circumventing a formal bidding process. "He threw the bids out and he just awarded the bid to his former employees," says Commissioner Sue Hubbard. "It's totally unprofessional and not in accordance with standard governmental processes of competitive bidding."

Privatization also has created many success stories. The private sector simply has more expertise than public bureaucracy in certain crucial areas—notably technology—where states and other governments need help in order to modernize. That has made contracting more necessary, no matter which party is in charge of government. But it also has made the entire process ethically trickier. Some contracts, such as hiring a company to pick up trash, or run the prison cafeteria, are relatively straightforward. Tech innovations are a lot more complex, and the steps involved can lead to abuses that were unknown even a decade ago.

Among other things, the standard sequence of procedures involved in bidding out a major contract has changed significantly. It used to be that states decided what work they needed done, figured out the terms they could afford and then let a contract out for bid. Now, more and more governments are turning to the private sector as a first step. They ask vendors for guidance in helping them find out about new and forthcoming innovations. While



CONNECTICUT'S JOHN ROWLAND: PAYOFFS FROM CONTRACTORS FORCED HIM OUT OF THE GOVERNORSHIP THIS SUMMER.

lending professional expertise and advice to states looking to create, say, a better child tracking system, private companies also come in and help craft solutions designed around their own products and services. Government managers across the country face the difficult challenge of cultivating vendors who have helpful ideas, while being careful to avoid the perception that their relationships with those vendors are too cozy.

As the movement toward outsourcing picks up speed, these same managers face an opposite challenge: how to put in place enough safeguards to ensure that abuses are rare and quickly caught, without imposing new layers of red tape that stifle innovation and undermine the benefits of speed and efficiency that privatization promises. For example, most states have some sort of "double-key" system requiring more than one sign-off on substantial contracts. Adding additional requirements for approval might mean greater ethical precaution but also could reduce savings and innovations.

TALLAHASSEE TRANSFER

In the past decade, as the arguments for privatization have begun to take hold nationwide, no political leader has been

more supportive of them than Jeb Bush. And he has found himself in a position of political strength that allows him to try out many of the ideas. The first GOP governor to win a second term in Florida, he now enjoys control over a government and legislature that, following 120 years of Democratic dominance, are firmly in Republican control.

What's more, gubernatorial power has vastly increased during Bush's time in office. Florida shrunk the size of its cabinet and gave the governor more sway in that body's deliberations. Control of the machinery is now much more centralized in the governor's office, making for an executive branch that is committed to smaller government in general, and to outsourcing as a specific way of achieving that goal.

There is a lot of government to shrink. Over the past 40 years, Florida's government has grown even more dramatically than the Sunshine State itself. There were 31,000 state workers in 1957; by the time Governor Bush took office in 1999, the number was up to 207,000—more than a sixfold increase, compared with a tripling of the state's population as a whole. In 1977, a 22-story concrete monolith was completed and became the official capitol building, supplanting and miniaturizing its neighbor, the traditional domed structure that had served as the seat of government since the 19th century. The high-rise capitol overlooks a downtown of low-slung buildings filled almost exclusively with law firms and trade associations whose letterheads boast former state officials and senior gubernatorial aides. They are major players in lucrative and important work: the transfer of public functions to private contractors who need lobbying help in securing business.

Tallahassee still looks like a sleepy town, but it has become the dispensary for multimillion-dollar contracts, and the lobbyists who have the right connections have become less concerned with their traditional role of fighting regulation and more involved in the scramble to land money directly for their clients. "The gold in them thar hills are administrative dollars, available through the executive

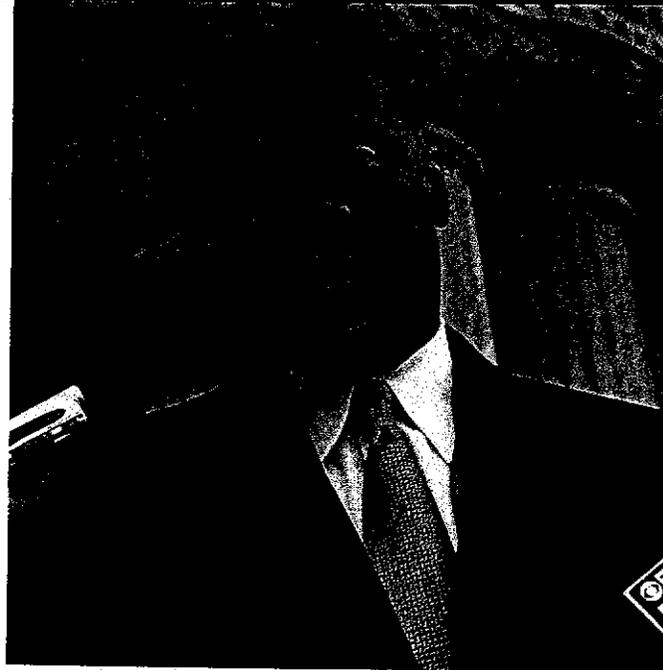
DOUGLAS HEALEY/AP WIDE WORLD

branch," says Jack Levine, a longtime children's advocate in Tallahassee. "When the stakes are so high and the dollars are so enormous, you can understand there's more power brought to bear."

In attempting to make the bidding process more fair and open, Bush this year created a new Center for Efficient Government within the state's Department of Management Services, charged with making procurement rules uniform and comprehensible across the maze of state agencies. The center provides training in contracting and contract management to agency officials, and has a board that is asked to sign off on all state contracts worth more than \$10 million at every step of a five-part development-to-implementation process. "We have to close a lot of loopholes in our procurement laws," says DMS Secretary William Simon, who notes that he favors time limits before former state employees can start lobbying, with tough financial penalties for violations. "The potential PR impact is worse if we ignore some of the problems we have."

Additional efforts are taking place in the state treasurer's office. Like Simon, Treasurer Tom Gallagher argues that one of the important transitions in moving from bureaucratic management to largely privatized management is training people to negotiate and monitor contracts. In some ways, Gallagher says, it's harder to make sure a private operation is meeting performance goals than to manage a group of traditional in-house employees. In many cases, he believes, not enough time was allowed for making the switch. "There might have been a rush to privatization by some agencies without taking the time to see to it that there were the right rules and accountability," he says. "Anytime you have aggressive programs being pushed by leadership, you're going to have growing pains. I look at these as growing pains."

To others, however, cancellations and criminal investigation of contracts totaling in the hundreds of millions are more serious than mere growing pains. Critics of the Bush administration say its reforms are too little and too late, and claim the



WISCONSIN STATE SENATOR GARY GEORGE WAS SENTENCED TO FOUR YEARS IN PRISON FOR KICK- BACKS ON CONSTRUCTION BIDS.

system is still too easily rigged in favor of well-connected friends of the most senior executive branch officials. "The biggest non-secret in this state is that this administration sees part of their business is giving business to their friends," says Mark Neimeiser, legislative director for AFSCME in Florida. "This administration is known to be the kind that does not tolerate whistleblowers who say the emperor has no clothes, or the clothes are paid for by somebody else."

But it was, in fact, a whistleblower who drew attention to the contracting scandals that have led to the resignation and criminal investigation of the top leadership at the Florida Department of Children and Families. The social welfare agency funneled millions to Jim Bax, who had headed the social services department in earlier years and, until just before the probe began, ran a research institute at Florida State University, down the hill from the capitol. The state's universities can be granted contracts on a no-bid basis, which is how things were done for Bax. He then subcontracted work either to companies he owned or to others that paid him a fee in the process.

The fact that Bax had thrown a birthday party for Secretary Regier and invited

him to stay as a guest in his waterfront home, coupled with the gifts Bax and other lobbyists gave to DCF officials, led to the resignation of Regier and two other top agency officials this past summer.

Ben Harris, the former DCF deputy secretary who has been at the center of the storm, contends, basically, that he was set up. He notes that he got prior approval for his sponsored trips from the state ethics commission. His argument is that the privatization program that he and Regier were pursuing was simply too threatening to a rear-guard bureaucracy that saw its livelihood put at risk. He notes that the plan to outsource eligibility selections for public aid alone threatens the jobs of one-third of all DCF employees.

"Whenever you have rapid change, you have people who wonder where they'll fit in the new world," Harris says. "Just as in any other agency, there's a

small group of people that want to preserve the status quo." (There are plenty of people in Tallahassee who are sympathetic to Harris' story—one state legislator says the DCF crew was a victim of "gotcha politics"—but his actions and contracting practices at DCF in general remain under criminal investigation.)

The best way to fight bureaucratic foot-dragging, says William Simon of the Department of Management Services, is not to rely on legal action but simply to make sure that contracts are done right and are aboveboard in the first place. "The only way to overcome some of the obstacles," he argues, "is to show that the contracts have worked the way they're supposed to and, by the way, saved money."

REFORM PACKAGE

That's the approach the new administration of Governor Jodi Rell is hoping to pursue in Connecticut. She took office in July, following Rowland's resignation in the wake of a scandal surrounding contracts awarded to his campaign contributors. Rell immediately ensconced an ethics czar in her office and appointed a task force to make recommendations to reform the state's contracting laws and processes.

The idea that Rowland was forced to

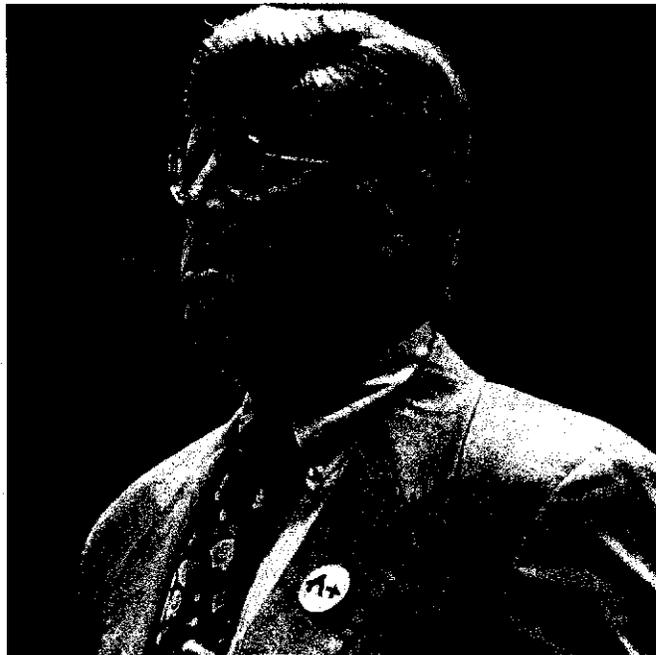
PETER ZUZGAP/WIDE WORLD

resign because state contractors built a hot tub in his summer home has passed into political lore, but the root of the problem came with the awarding of healthy amounts of state business to those contractors in the first place. "People just didn't bother to bid because they didn't think they were going to get a fair shake," says James Fleming, Connecticut's commissioner of public works and co-chair of the Rell task force. "That hurt the private sector and it hurt us because we had less competition in our pricing."

The task force has released a detailed set of recommendations in anticipation of the upcoming 2005 legislative session. Among them are bans on gifts worth more than \$10 to state employees, a uniform state code in bid evaluation and selection, and institutional changes to cut down on the number of times that the legislature signs off on "fast track" or sole-source contracts. There will be competing versions of reform legislation, but a bill of some kind seems certain to pass. "There's an old rule in politics, which is when you have the votes, you vote," says Fleming. Right now, he says, in the wake of the Rowland disgrace, the votes are there. "So this is the time to do it."

Whatever its final shape, Connecticut's package is likely to provide the most comprehensive changes in contracting rules anywhere in the nation. But other states are trying to change their rules to keep up with both the growth in contracting and the change in the nature of work contracted out. In New Jersey, Governor James McGreevey signed an executive order, shortly before resigning from office in November, that bans any state contracts from going to contributors to state or local candidates or political parties.

McGreevey had been hounded by accusations that his administration and fundraising team had engaged in just the sort of "pay-to-play" schemes that he ultimately banned. Similar accusations dogged former Governor Gray Davis of California and were among the complaints that led to his removal from office by recall vote last year. A no-bid \$95 million contract that had been awarded to software



FLORIDA TREASURER TOM GALLAGHER ADMITS THERE WAS A 'RUSH TO PRIVATIZATION,' BUT VOWS TO CLEAN THINGS UP

giant Oracle led to the resignation of four top Davis aides; this past May, the state attorney general announced he was dropping the last remaining legal charges against Davis' former policy director.

A CLEAR VIEW

With so much potential for things to go wrong—and such a large political price to be paid when contracts are handled improperly—why are governments eagerly handing ever-increasing shares of their workload to private entities? The reason, suggests William Eggers, director of research at Deloitte, is that they have to. Today's public sector relies heavily on specialized expertise and services available most readily through private companies, often at a greatly reduced cost. "Much of what government does today gets done today through third parties, whether they're nonprofits or some form of contractors," says Eggers, himself a long-time advocate of privatization. "There's very little that would actually get done in most levels of government today without involving the private sector."

Despite the headlines, most government contracts are fulfilled in more or less the intended fashion. The Internet has created more transparency in the bidding process,

and an open bidding process can prevent abuses in many cases. Vendors, such as Cyber, that feel they have been cheated are not hesitant to protest. Managerial problems that can be handled quietly in business-to-business transactions are more likely to reach the notice of the media when vast sums of public money are involved. "The nature of appearances—what something looks like to the person on the street—is something administrators are going to think about," says Levine, the children's advocate.

This is as true of Florida, and its Department of Children and Families, as it is of any government agency or contract in the country. Because of its long legacy of problems, DCF is falling under particular scrutiny from legislators and the media. Its mistakes, which involve the lives of children, naturally draw

more attention than problems in, say, road maintenance. Even before the recent scandals broke out, state Representative Sandra Murman, who chairs a subcommittee that oversees the agency, inserted into the state budget a provision that blocks DCF from entering into any contract worth more than \$100,000 without approval from the governor and the legislature. More restrictions of that sort may be imposed in the near future.

Murman says she shares Governor Bush's goal of contracting out an increased array of services, maintaining that there are plenty of private companies that can do at least as good a job determining welfare eligibility, for instance, as current state employees do, and probably at less cost. She says she just wants to make sure any major new deals meet her "comfort level" regarding conflicts of interest before the final deal is made. "Contracting management and oversight," Murman says, "need to be a little more well-defined." In the coming months and years, legislators and other public officials in much of the country are likely to be saying something similar. **□**

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