

# TRAINER'S GUIDE

181641

## PRIVATE SECTOR OPTIONS FOR JUVENILE CORRECTIONS

OT-PP

Office of Juvenile Justice and Delinquency Prevention Service (NCJRS)  
4801 LBJ Freeway, Suite 2000, Dallas, TX 75244-3042  
1-800-368-5868

181641-5794

# ***Instructions to Trainer***

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The American Correctional Association is proud to offer you this lesson plan in Correctional Privatization. One of ACA's major goals is to make training available to the largest number of corrections employees as possible.

This goal is especially crucial now, when corrections is growing rapidly, and privatization has become a major issue in corrections. We believe that providing scripted lesson plans will help new trainers and supervisors keep up with the training demand.

Before we begin, we'd like to tell you a little bit about this package.

## **WHAT'S IN THE PACKAGE**

The Correctional Privatization Lesson Plan package contains three sections: the Trainer's Guide, the Participants' Manual and a set of overhead transparencies.

The Trainer's Guide includes your word-for-word script with complete directions for presenting the workshop. It also contains trainer's tips for lecturing and group work, and for using visual aids.

The Participants' Manual includes the workshop objectives and a note-taking outline of each section of the lesson plan. It also contains copies of the sample reports we use in the lecture. Participants can use these workbooks as resources after the workshop is over.

The Overhead Transparencies are the third portion of the lesson plan.

## **WAYS TO FORMAT THE WORKSHOP**

To help you design a personalized workshop, we have worked out the minimum amount of time you need to present each module.

- Introductory Module—1 hour
- Background on Privatization—1 hour
- Issues in Privatization—2 hours
- Introduction to the RFP—2 hours
- RFP Exercises—6 hours
- The Contract—2 hours
- The Monitoring Plan—2 hours
- Summary of Course—2 hours

We've built many individual and group exercises into this workshop. If you choose *not* to include all of them, the module times will change. How much the class participates will also affect the workshop time. If you do use smaller blocks of time to present this workshop, however, you will need to develop transitions from one module to the other.

## **SOME BASIC TRAINING TIPS**

Throughout the Introduction of this lesson plan, we have included many tips on how to use training aids, how to present a topic to the class and how to prepare for this workshop. But right now we'd like to give you some basic training tips to make this the most dynamic workshop possible.

- Begin and end the class *on time*.
- Give your participants a 5 or 10 minute break at the end of every hour or hour and a half.
- If you see the participants getting restless or fidgety, especially in the afternoon, stop the lesson and ask them to take a few minutes to do stretching exercises or to touch their toes. Any exercise that gets them moving is good to do.
- Keep the participants on the task they are doing; do not allow griping or backbiting.
- Be prepared.

## **TRAINER PREPARATION**

With little preparation, you can provide top-notch, quality training to your staff. To begin, become familiar with this lesson plan. Allow yourself about two days to:

- Read through the trainer's guide. Familiarize yourself with any instructions you need to give the class, or any questions you may need to ask the participants.
- Read through the participants' manual. Become familiar with the areas in the lesson where you ask the participants to take notes.
- Prepare your flip chart. Later on in this section we have provided more in-depth tips on how to prepare the chart.
- Practice with the overhead projector. Practice using the overheads as you would in the lecture. We also give tips on using overheads and the projector later in the section.

The next section explains several of the training techniques you might use, including Group Discussions, Lecture, Written Exercises and Demonstration as well as the training aids: Overheads and Flip Charts.

## **LARGE GROUP DISCUSSION**

Large group discussions are never easy to conduct. Many factors can interfere with a smooth discussion. Inattentive participants, a noisy room or extreme temperatures are just a few examples of interference.

To conduct effective group discussions:

1) Plan and prepare.

- Do your homework. Learn your subject.
- Develop a discussion plan. Although we have outlined the path of this workshop for you, take some time to outline how a discussion might go with your participants.
- Know your participants. Become familiar with their language and their problems.
- Anticipate situations, problems and questions which may arise. The more accurately you can predict these situations, the less likely you are to be thrown off balance during group discussion.
- Know the limits of your role. You are there to encourage and guide the discussion so that the objectives are reached. You are not there to validate your own ideas, concepts or philosophies.

2) Stimulate group discussion by asking questions at the end of each section. Tell the participants that you are interested in their reaction to the points you are presenting. You should:

- Design your questions to get reactions to specific points in your talk.
- Ask questions that are specific to keep the class from wandering from the topic.
- Don't ask questions that can be answered with a "yes" or "no."

3) Conduct the discussion.

- Get full participation. Remember: Good discussions mean participation. *All* participants should have an equal opportunity to contribute.



- Encourage self expression of thoughts and opinions. *Do not* allow unkind laughter, derisive comments or ridicule of anyone's contributions. Such behavior is the fastest way to shut down discussion.
- Keep the discussion moving on target and generally positive. If it becomes evident that the planned approach is not going to achieve your objectives, be flexible and prepare to adopt a different approach which *will* succeed.
- Give occasional summaries. Repeat the main points and issues frequently—at least at the end of each section.
- Listen carefully and intently. Show positive interest in the thoughts of the participants. Build on their comments. Be sure to understand what they have said—paraphrase it back. Sincere positive interest will set the tone for the group.
- Develop sportsmanship. Every participant is entitled to an opinion; make sure everyone realizes this.
- Maintain your sense of humor and patience. It takes time to think. Protect the sensitivities of participants.
- Never embarrass participants. This is particularly important if they are to continue working with peers, subordinates or supervisors who may be present.

Group discussion is one of the most effective training techniques you possess. Be flexible and open to change in direction if the original plan is not working. You can achieve the same goal through slightly different means.

## LECTURE

Sometimes lecturing is considered “old fashioned” and inadequate for today's training needs. That is why we have kept the actual lecture time to a minimum. Lecturing is effective, however, when you need to train large numbers of participants and they are not familiar with the subject. The lecture is also a time saver.

To be an effective lecturer, you must:

- Speak with knowledge, authority and experience on this topic.
- Speak clearly and concisely.
- Present dynamic and forceful traits while training.

- Challenge your participants with new ideas. Introduce fresh thinking about old problems.

## ANSWERING QUESTIONS

As a trainer, you will spend a good portion of the workshop answering questions. Questions from your participants tell you about the level of interest they have in your subject. Questions also help you clarify or modify the points you are teaching. Remember that answering a question is *not* a short, impromptu speech. Just relax, maintain your poise and answer participants with brief, concise answers.

You should follow these guidelines when answering questions:

- Be brief.
- Restate the question so that everyone can hear it. And when you answer it, direct the answer to the *group*, and *not* to the individual.
- Rephrase questions that are not clear.
- Do not get into an argument or a one-to-one conversation with one participant.
- If you don't know an answer, admit that you don't. Ask if someone else in the room knows the answer. If no one else does, tell the participant you will find out and get back to him or her.
- If you have a talkative participant who wanders away from the subject, or who tends to ramble, subtly say: "You've raised a number of interesting points. Would anyone else like to comment on them?"
- If someone asks a question about something you haven't covered yet, you could say: "Good point, and one I'm going to cover in a minute. Would you mind holding that question, and bring it up again if I don't cover it later?"
- Don't let one or two people dominate the class by asking questions. Likewise, don't always call on the same one or two people.
- Don't ask for approval of your answers.

## **SMALL GROUP DISCUSSION**

Often in large group discussions, not all participants offer ideas or suggestions. Some participants simply don't want everyone looking at them while they speak; others feel that their contributions are not worth much. Whatever the reason, not participating in a discussion is ineffective for the participant. For this reason, we have built in several small group discussions.

Follow these guidelines when dividing your class into small groups:

1. Divide the class into groups of between four and seven members—five, six or seven members in a group is perfect.
2. You can divide the class several ways:
  - Designate people who are sitting next to each other to a group, or
  - Assign people of the same job classification to a group, or
  - Count off around the class, giving each person a 1, 2 or 3. All number ones will meet in one corner, all number two's in another corner, etc.
3. Ask each group to choose a group leader. This person will be responsible for keeping the group focused on their task and for reporting group responses back to the class.
4. Encourage group productivity; set a time limit for each small group discussion.
5. Tell the group that each person needs enough time to complete the task—e.g., work through exercises, or write their reports.

## **PRESENTATION TIPS**

Read through the entire script before giving this workshop. Be familiar with every section. Your delivery of this material should sound as if you developed and wrote the material yourself.

In fact, rehearse the script at least four times before you give the workshop.

## **RAPPORT**

When you train, you want to establish a good rapport with your participants. As you train, therefore, add little phrases to the script such as, “. . . and Bill knows about . . .” or “Betty has believed this one as long as I've known her.” They will provide smoother transitions; and you will make the script more personal to the participants.

Also, tell stories about the trouble *you've* had. When you add personal stories, you ease any tension or embarrassment your participants might feel about revealing their own fears. Your stories will also help the group to open up. Be sure to include funny stories as well; injecting humor into this class is important.

One key rule when presenting a workshop is: Never embarrass your participants.

## **USING YOUR VOICE**

The sound of your voice has a tremendous influence on the participants. When you present the workshop, therefore, give it with energy. You want to inject your participants with your ideas and your enthusiasm.

Volume is important when you are speaking in front of a class. Always aim your voice at the last person in the back row of the room. At first you may feel that you are shouting, but you will soon become accustomed to this level.

A nasal quality in your voice detracts from your message. Remember that a shrill nasal voice has the same effect as scratching a chalkboard with your nails. To test yourself for nasal tones, place one of your hands flat on your chest. Then say the word “low” three times. Low, low, low. Lower your voice each time you say the word. If you feel different vibrations each time you repeat it, you are probably lowering the pitch of your voice. The lower pitch is the pitch you want to use.

We have italicized the words we think you need to emphasize in the script. You are certainly free to add others. To emphasize a word, it's best to lower your pitch. Many trainers think they need to get louder to emphasize a point. But that is not so. You create a forceful approach with a lower pitch.

Also, try a low pitch at the end of phrases and sentences, and especially at the end of questions.

## **PACE AND FILLERS**

A well-written script can be ruined by a monotonous delivery. When you speak, a good pace to use is about 170 words a minute.

As you move through the actual workshop, you might get stuck—or find that you can't remember what words come next. If this happens, just pause. Say nothing until you find the next topic. Don't pad your sentences with those “ers” and “uhms” that become irritating to listeners.

## EYE CONTACT

Making eye contact communicates sincerity and concern for your participants. Do not keep your eyes on your script. They should be up and looking at the class at least 80% of the time.

You may glance down to pick up the next idea, but then look up. When you ask questions, be sure you make eye contact. But don't stare at one person for more than five seconds. Any more than that becomes uncomfortable to the person you are looking at.

## GESTURES

Your hand gestures should *help* you deliver your message. But it's not a good idea to impose new hand gestures on yourself. You might look stilted or awkward. A good rule to use is: if you use your hands when you speak in one-on-one conversations, then use them the same way in front of the class.

Remember that nervous gestures distract from your training. Therefore, do not:

- Stuff and keep your hands in your pockets,
- Pace back and forth in front of the class,
- Jingle change in your pockets, or
- Play with pens, pencils or markers.

*Do* remember to stand squarely on your feet with your weight distributed evenly. And speak to the class as if you were having a conversation with them over dinner.

*Any* movement of yours that *distracts* the participants will interfere with their learning. Movement, however, can be natural. Move around during a lecture as long as the movement has some purpose. Be careful not to pace the floor just to dissipate energy.

One particular reason for moving is to close the distance between you and your participants to emphasize a point. You will see that communication is more effective when the distance between the trainer and the participants is minimal.

## TRAINING AIDS

You will use at least three types of training aids during this workshop: overhead transparencies, the flip chart and written exercises.

## OVERHEADS

Throughout this lesson plan, we ask you to use a number of overheads.

Tips on using overheads:

- Have separate spots on the overhead projector table for both the “used” and “to-be-used” overheads.
- Whenever possible, stand next to the screen instead of the projector. This keeps you from blocking the screen and allows you to project a more commanding presence.
- The screen should be placed to your left. Always point at the words in the same direction that people read.
- Before you present this workshop, practice rehearsing the script while using the overheads.
- Always check the light bulb in your overhead projector before the workshop begins. To be sure you are prepared, have an extra bulb in the room.

## FLIP CHARTS

The flip chart is an important tool in this lesson plan. You will need at least two charts for this workshop—one to record participants’ responses, and one with prepared material on it.

If you’ve never used a flip chart before, spend time practicing with one *before* the workshop. You will be recording participants’ responses during both large and small group exercises. If you prefer, you may also use a chalkboard or a dry erase board for recording responses.

The second flip chart should be prepared *before* the workshop. Notice that at various points in the lesson, we ask you to show the participants a page that is already prepared. We ask you to use the flip chart in this way so that you don’t rely exclusively on one visual aid.

You may want to use the flip chart and the overheads interchangeably. Use whatever you feel most comfortable with. Be careful, however, not to rely on only one aid. Using the same training aid repeatedly becomes monotonous and boring to the participants.

When you begin to prepare, take a new flip chart. Put your name and the name of the lesson plan on it. Review the lesson plan carefully to find the “instructor’s” boxes that ask you to have the material prepared ahead of time. Before you start, please read these tips:

- Write on the flip chart in the order the page will be used in the workshop.
- Leave a blank sheet of paper between each flip chart page that you write on. Words from another page often bleed through making it difficult to read.
- If you need to write *during* the workshop, you can also prepare pages ahead of time. With a pencil, write the information you need *lightly* on the flip chart page. Then during the class, write *over* your pencilled words with a colored marker.
- If possible, print your words. Using colorful markers, make your letters about 2 inches high. Leave white space between words and between lines. Remember: *less is more*. Do not cram the page full of ideas. Only two or three lines should go on a full page.
- Use masking tape tabs for each sheet you've prepared. This way you'll have handy tabs for each section and you can find your pages quickly.
- Also tape the bottom corners of each flip chart page. This adds weight to the bottom and allows you to turn the page in one fluid motion.
- Stand to the left of the flip chart and remember to speak to the participants, *not to* the flip chart.
- Test the markers you will be using ahead of time to make sure they will not run out of ink while you are training. Also, have more than one marker at hand in case one does run out of ink.

## WRITTEN EXERCISES

Written exercises are also excellent training tools. They allow the participants to experience and learn first hand about the subject you are teaching.

Tips for written exercises:

- Make sure all participants understand the directions. It is easier to clarify instructions beforehand than to remedy them afterwards.
- While the participants are completing an exercise, walk around the room. Ask the participants how they are doing. Show your interest in their activity, and offer them an opportunity to ask questions if they are confused.
- Give the participants adequate time to complete each exercise. If they are finished early or need more time, be quick to grant their requests.

The success of this workshop depends on how well you have prepared, how well you interact with the participants and on your effective use of training techniques, visual aids and presentation skills.

Here is a brief list of the materials you will need for a successful presentation:

- The Trainer's Guide
- A duplicated Participant Manual for each participant
- The overheads
- An overhead projector
- Two flip charts (or one flip chart and a dry erase or chalkboard)
- Two boxes of colored markers
- Masking tape
- Any administrative paperwork (sign-in sheets, certificates, etc.)
- Pens and pencils for the participants

Right before you begin your training session, check this list to make sure you have all the supplies you need. Also make sure that the room is set up in a semicircle or with round tables. This set-up is the most productive for this workshop.

Good luck with your Privatization Workshop!



# Module I

## Intoduction

# **MODULE SUMMARY**

## **MODULE 1 Introduction**

### **TARGET POPULATION:**

Juvenile Administrators and Technical staff

### **TIME ALLOCATION:**

1 Hour

### **SPACE REQUIREMENTS:**

Accommodations for 20 - 30 participants

### **PERFORMANCE OBJECTIVES:**

At the conclusion of this module, participants will be able to:

1. Discuss the workshop goals.
2. Define privatization.
3. List the most common reasons for privatization.

### **EVALUATION PROCEDURES:**

1. Large group discussion
2. Small group discussion
3. Activities and exercises

## Module I—Introduction

### A. INSTRUCTOR AND PARTICIPANT INTRODUCTION

**Introduce yourself and other staff and explain the rationale for the training.**

Good \_\_\_\_\_, my name is \_\_\_\_\_. I will be working with you in this workshop along with \_\_\_\_\_. The subject of this training program is *Private Sector Options in Juvenile Corrections*.

#### **Lecturette**

ACA originally received a Grant from the Office of Juvenile Justice and Delinquency Prevention in 1990 on this same subject and now we are re-visiting it. Obviously, a lot has changed since then. The primary focus of that training was the privatization debate—the pros and cons, the legality, the ethics. Now our focus is on the process—the how to. As we have found out and as you might know, private sector contracting is not a panacea; it is a complex and, at times controversial decision. Hopefully, by the end of our three days together, we will have given you new insights in both your decision making about whether to privatize and in your ability to handle some of the technical issues involved in the development of the RFP, Contract, and Monitoring System.

**Have Participants introduce themselves and list their goals for the training (list on board or flip-chart).**

**Review list of participant goals.**

**Refer participants to page 1 of their manuals.**

**Ask Questions.**

Because, this course is intended to provide those considering private sector contracting in the juvenile justice system with information and skill to aid in the decision-making process, it would be good to find out about you and what your goals for this training are.

## **B. COURSE GOALS**

On page 1 of your manual is a listing of our goals.

- To provide background information on juvenile privatization
- To review issues which affect contracting
- To discuss the major parts of the Request for Proposal, the Contract, and Monitoring Plans
- To prepare selected parts of a Request for Proposal, Contract, and Monitoring Plan

Are there any questions about our goals and your expectations?

**Refer Participants to Page 2 of their manuals. Discuss each topic and answer any questions.**

## C. AGENDA

Now, I want to go over our agenda.

### Day 1 Topic

Introductory Module -- 1 hour

Background on Juvenile Privatization  
-- 1 hour

Issues in Juvenile Privatization -- 2 hours

The RFP—Part I -- 2 hours

### Day 2 Topic

The RFP—Part II -- 6 hours

### Day 3 Topic

The Contract -- 2 hours

The Monitoring Plan -- 2 hours

Summary of Course -- 2 hours




## **Introduce the Parts of the Participants Manual**

### **D. PARTICIPANTS MANUALS**

Each of you have a participants manual which you will use throughout this training. There are several sections in your manual, I would like to take a few minutes to go over them with you.

First there is a note-taking guide that includes all overheads and space for you to take notes.

Your manual follows the presentation that will be given.



In addition to the note-taking section, your manual contains activities that you will work on individually or in a group.

Most of these activities are built around a facility that we call Twin Oaks.

Also, your manual contains four sets of reference material.

1. There is a 1999 survey of Private Sector Involvement in Juvenile Justice. This document is of particular significance because it deals exclusively with juvenile justice. It is located at the end of Module II. Turn there now so you can locate it. You will have the opportunity to read it later.

2. At the end of Module III, there is a synopsis of eighteen research studies on privatization.
3. There is a sample RFP at the end of Module IV.
4. A sample Contract is at the end of Module V.
5. A Contract for Residential Services from Texas, is at the end of the Module V.

We will be referring to each of these when we deal with specific topics.

## **Lecturette**

### **E. INSTRUCTIONAL INPUT**

As we approach our training, you will be introduced to a variety of concepts. Some of this information may already be familiar to you, while a great deal of it may be brand new. Whether this information is new or old, familiar or foreign, whether you agree or not, is not as important as how you approach your task and responsibility as a learner. Let me see if I can demonstrate what I mean. I want each of you to turn to page 3 of your manuals and follow my directions. On your own, without consulting anyone else, and without discussion, please:

**Refer participants to page 3 of their manuals.**

- Choose a number between one and ten  
Multiply the number you chose by  
nine

**Give these instructions, one step at a time.**

- Separate your answer into its digits (e.g.,  $4 \times 9 = 54$ —5 and 4)
- Add the digits together
- Subtract 5
- Correlate the answer to its alphabet equivalent (i.e., a = 1; b = 2; c = 3; and so forth)
- Write down the name of a country that begins with that letter
- Write down the name of an animal that begins with the last letter of the country's name
- Write down the last letter of that animal's name
- Write down the name of a color that begins with that letter

### **Ask for a show of hands**

I predict that 90% of you have written the same answer. How many chose a orange kangaroo from Denmark?

I am not really a fortune teller or a wizard; but how come so many of you chose the same answer? Well, it has to do with how we think, process information, and set our rules about how we perceive, that is see, our world. Sometimes, the way we process information and set our rules, prevents us from “seeing” what really is there. One of our goals is to help you see beyond your agency and to learn from others in this room as well as from your trainers.

### **F. PRIVATIZING TODAY**



Our subject is privatization of juvenile facilities—but it might be a good idea to step back and look at the universal concept of privatization, and a good way to begin is to come up with a definition.

### Display Overhead 1-1

<b>1-1</b>	<b>Privatization</b>
•	The transfer of government functions/services to the private sector.

Privatization is the transfer of government functions or services to the private sector. Worldwide, the concept of privatization has resulted in things such as:

In Australia, they contract out their coast guard operations. In Great Britain, all the airports are privately owned. Here, public schools are being contracted-out as are both adult and juvenile correctional services and facilities. The universal reasons for this transfer of government functions to the private sector are:

## **Display Overhead 1-2**

### **1-2 Reasons for Privatization**

1. Cost savings
2. Enhanced service quality
3. Flexibility and less red tape
4. Increased innovation
5. Speedy implementation
6. Politics
7. Follow the leader

**Refer participants to page 5 of their manuals.**

On page 5 of your manual, these reasons are listed—but with a different heading—why you or your organization is considering privatization. I want you to rank the reasons listed and if there are any others, add them so that we can come up with a consensus of what the most important reasons are.

**Discuss results by compiling a list on board or flip-chart.**

### **G. SUMMARY**

We will explore each of these reasons for privatization in depth in the next two days—because they impact our perception of the RFP, the Contract, and the Monitoring System that you will come up with.

**Ask if there are any questions.**

Are there any questions? We will take a short break before we start the Background in Juvenile Privatization session.



**Give participants a short  
break.**

## Module II

### Background on Privatization

# **MODULE SUMMARY**

## **MODULE 2**

### **Background on Juvenile Privatization**

#### **TARGET POPULATION:**

Juvenile Administrators and Technical staff

#### **TIME ALLOCATION:**

1 Hour

#### **SPACE REQUIREMENTS:**

Accommodations for 20 - 30 participants

#### **PERFORMANCE OBJECTIVES:**

At the conclusion of this module, participants will be able to:

1. Briefly describe the history of juvenile privatization.
2. Explain recent activity of both federal and state government about privatization.
3. List and discuss at least five pro's and con's of juvenile privatization.

#### **EVALUATION PROCEDURES:**

1. Large group discussion
2. Small group discussion
3. Activities and exercises

## Module II—Background on Juvenile Privatization

### A. INTRODUCTION

#### Show Overhead 2-1

**2-1**  
**What is Privatization?**

- Privatization is the concept of involving the private sector as a provider of juvenile correctional services which were traditionally managed by the public sector.

#### Lecturette

In this session, we will explore privatization—that is the concept of involving the private sector as a provider of juvenile correctional services which were traditionally managed by the public sector.

### B. HISTORY OF PRIVATIZATION FOR JUVENILE SERVICES

#### Lecturette

Contracting to the private sector for juvenile services and facilities is not new. In fact, the private sector has operated private juvenile facilities in the United States since the 19th century.

## Show Overhead 2-2

2-2

### History of Privatization

- Contracting to the private sector for juvenile services is not new.
  - Church related programs
  - Jails
- Problems often arose when programs were operated by individuals for profit.
- Abuse = government management and/or operation of correctional facilities.

As many of you know, early jails, which also housed juveniles, were operated by individuals who ran them for profit. The private jailers charged their inmates for food and clothing. Bribery and graft were commonplace.

In part, it was in response to these abuses that the government got into the management and operation of correctional facilities.

Now, we are going full cycle back to privatization. I'm sure each of you have some experience with privatization because juvenile corrections has been involved in service contracts for many years. Now, juvenile corrections is entering into another

phase and that is the privatization of secure facilities.

**Show Overhead 2-3**

2-3

QUESTION

- Where is your agency in the process of privatization of secure juvenile facilities?

**Ask question.**

Let's take a few minutes to see where your agencies are in the process of privatization of secure juvenile facilities. Who would like to start?

This shift to privatization got its start from the federal government.

**C. FEDERAL PRIVATIZATION**



## Show Overhead 2-4

2-4

### Federal Privatization

- Citing the need to reduce government spending and streamline operations, federal administrators advocated a greater role for the private sector in providing social services.
- Result—The Federal government became the leading force in privatization.

## Lecturette

The federal government has been a leading force in privatization. Citing the need to reduce government spending and streamline operations, federal administrators advocated a greater role for the private sector in providing social services. Additionally, federal policy, as stated in OMB Circular A-76 specifically advises the government about the areas that belong in the government's domain and those that belong in the private sector.

## Show Overhead 2-5

### 2-5 OMB Circular A-76

- *Point: Achieving Economy and Enhancing Productivity*
- The theory is that competition enhances quality, economy and productivity.
- According to the Circular: "...whenever privatization is practical, there should be a comparison of the cost of contracting and the cost of in-house performance to decide who will do the work."

There are three parts to A-76. The first is:

- *Achieving Economy and Enhancing Productivity.* The theory is that competition enhances quality, economy, and productivity. According to this Circular, whenever privatization is practical, there should be a comparison of the cost of contracting and the cost of in-house performance to decide who will do the work.

## Show Overhead 2-6

2-6

### QUESTION

- Why is it difficult to do a cost comparison between public agencies and private agencies?

### Ask Question.

Discussion Question: Why is it difficult to do a cost comparison between public agencies and private companies?

Possible answers include:

- It is difficult to compare exactly the same things;
- It is difficult to gather accurate information because the government does not do accounting on a project or facility basis.
- Public agency cost factors such as overhead, indirect labor and fringe benefits are difficult to calculate

**Show Overhead 2-7**

**2-7**

**OMB Circular A-76**

*Point: Retaining Government Functions in House*

- The theory is that certain responsibilities are so intimately related to the public interest that they mandate federal operation.

The second item is:

- *Retaining Government Functions in House.* Certain responsibilities are so intimately related to the public interest that they mandate federal operation.

**Show Overhead 2-8**

**2-8**

**QUESTION**

- Identify government functions that should not be contracted for.

Why?

**Ask Question.**

Discussion Question: Who can come up with some of these functions? Why should they *not* be contracted out?

Possible answers include:

- Military
- Police
- Space projects

Generally, the reasons for not contracting out are the nature of public interest and the possibility of lost control.

**Show Overhead 2-9**

**2-9**

**OMB Circular A-76**

*Point: Relying on the Commercial Sector*

- According to Circular A-76:  
“...the government shall not provide a commercial product or service if the product or service can be procured more economically from a commercial source.

The third item is:

*Relying on the Commercial Sector.* The Federal Government shall rely on commercially available sources to provide commercial products and services. According to the provisions of this Circular, the government shall not provide a commercial product or service if the product or service can be procured *more*

*economically* from a commercial source.

**Show Overhead 2-10**

<b>2-10</b>	<b>QUESTION</b>
•	Identify possible commercial products or services that the Federal Government should contract for.

**Ask Question.**

Discussion Question: Can anyone give an example of this?

Possible answers include:

- Printing
- Video production

These have no national interest and loss of control is not important.

**D. STATE INITIATIVES**

## Show Overhead 2-11

### 2-11

#### State Privatization Initiatives

- 1998 Council of State Government (CSG) Survey showed that there are few comprehensive privatization initiatives like the Federal A-76 one.
- Individual state agencies usually privatize their activities as necessary and manage the projects on a case-by-case basis.

## Lecturette

In addition to the federal government, most states are turning to the private sector for the reasons we listed in Session one.

## Show Overhead 2-12

### 2-12

#### Typical Reasons for Privatization

- Cost savings
- Enhanced service quality
- Flexibility and less red tape
- Increased innovation
- Speedy implementation

A 1998 Council of State Governments Survey showed that there are few comprehensive privatization initiatives like the federal A-76 one. Instead, individual agencies privatize their activities as necessary and manage the projects on a case-by-case basis. Some states attempt to streamline privatization activity, however, by creating government-wide institutions or policies.

**Ask Question.**

Are any of you aware of any state-wide privatization commissions or policies in your jurisdictions that affect juvenile corrections? If yes, tell us about them.



2-13

### CSG Survey Findings

- Most states privatize government activities without considering the experience of other states.
- More than 70% of state respondents said that their state had no comprehensive government privatization initiatives.
- 41.4% said that when designing and implementing their privatization programs they created their processes by trial and error.

This survey also showed a number of other factors. For example, most states privatize government activities without considering the experience of other states. More than 70 percent of state respondents said that their states had no comprehensive government privatization initiatives. When designing and implementing their privatization programs, 41.4 percent of state respondents created their processes by trial and error.

## Show Overhead 2-14

**2-14**

### **CSG Survey Findings**

- Only 19% modeled another state's privatization effort.
- Almost 75% said their states do not use a standardized decision-making process to determine which activities will be privatized.
- Almost 75% also reported that no standardized monitoring processes were used.

Only 19 percent of respondents modeled another state's privatization effort. Almost three-quarters of state respondents said their states do not use a standardized decision-making process to determine which activities will be privatized. The same number of respondents reported that no standardized monitoring processes were used.

## Show Overhead 2-15

**2-15**

### **QUESTION**

- How has your state responded to the privatization issue?

**Ask Question.**

Discussion Question: How has your state responded to the privatization issue? Why?

## E. THE PRIVATIZATION DEBATE

The privatization debate in juvenile corrections centers on private sector management of long-term juvenile *residential facilities* that traditionally were managed and staffed by public agencies.

**Ask Question.**

Discussion Question: Is this an issue in your agency? How has it been resolved?

**Participant Manual page 16.**

Earlier today you ranked reasons for privatization of juvenile facilities. Now, I want to rank a list of shortcomings in private sector contracts. On page 16 of your manual are nine reasons and I want you to rank them like you ranked the reasons for privatization. That is, place a #1 by the reason you think is the greatest shortcoming and a #2 by the second and so forth.

**Ask Question: How does your state/agency respond?**

● Show overhead 2-16

**2-16 Shortcomings**

- a. Contracting process too cumbersome
- b. High costs
- c. High turnover of vendors' staff
- d. Lack knowledge of DOC's procedures
- e. Monitoring/control problems
- f. Resist assessment/evaluation
- g. Resist taking difficult juveniles
- h. Unrealistic view of population
- I. Vendor's staff inexperience

●

Turn your papers in and we will take a short break.

# Private Sector Involvement in Juvenile Justice

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by  
Robert B. Levinson, Ph.D.  
and  
Raymond Chase

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The American Correctional Association (ACA), under a grant from the Office of Juvenile and Delinquency Prevention (OJJDP) conducted a survey regarding **Private Sector Involvement** in Juvenile Justice Systems. Results of this Survey are presented below, and compared with a similar study done in 1991 (Levinson and Taylor).

### Survey Findings

Fifty-seven replies were received from 41 different jurisdictions—including Puerto Rico and the Federal Bureau of Prisons. Of the total number of jurisdictions, 46 (81%) indicated that they had at least one currently active Private Sector (PS) contract; the remainder of this report deal with the replies received from those individuals/jurisdictions. This group has been contracting with the Private Sector for an average of 14.2 years—maximum 40- minimum 2-years. California reported the longest experience with private service contracting—40+ years. The number of contracts *per jurisdiction* (see Table below) ranged from 1 to 373, averaging 58.1 PS contracts; Oregon reported having the most.

Type/Number of Private Sector Contracts

Type Agency (n):	Number	Average	Minimum	Maximum
(35) <b>private</b> NOT-FOR-PROFIT <sup>1</sup>	1197	34.2	1	123
(31) <b>solely owned</b> FOR-PROFIT	732	23.6	1	240
(20) NOT-FOR-PROFIT <b>public</b>	208	10.4	1	164
(11) FOR-PROFIT <b>public</b>	107	9.7	1	55
(8) Other	138	17.3	1	100
<b>(41) Overall</b>	<b>2382</b>	<b>58.1</b>	<b>1</b>	<b>373</b>

(n) = Number of jurisdictions

<sup>1</sup> = see End Note.

The largest percent of the respondents (85%) had contracts with *private, not-for-profit* agencies, followed by *solely owned, for-profit* (76%), *public, not-for-profit* (49%), and *public, for-profit* (20%). Nine jurisdictions indicated they had contracts with other type agencies/entities — the largest proportion of which were with professional individuals.

The following table display both the types of services these jurisdictions contracted for, and the percent of their budgets they spent on these activities. (Because of the widely differing sizes of the responding jurisdictions, the survey results are reported in percentages. It should also be noted that some jurisdictions did not break-down their expenditures into the different sub-categories—those are included in “Operations & Programs.”)

**Types of Services Contracted For  
—% of budget spent**

<b>Types of Contract Services:</b>	<b>Average % of Budget</b>
<b>Operations &amp; Programs</b>	24.4%
<b>Community-based</b>	20.9%
<b>Specialized</b>	10.3%
<b>Maintenance</b>	2.6%
<b>Medical</b>	2.4%
<b>Clinical/Mental Health</b>	2.2%
<b>Education</b>	1.6%
<b>Food Services</b>	1.2%

Overall, the largest proportion of jurisdictions that responded (66%), expended an average of 24.4% of their contract funds for Operations and Programs. This was followed by 56% of the respondents who spent an average of 20.9% of their contract funds for Community-based pro-

grams. The area for which the fewest respondents expended contract funds was Facility Maintenance, while the smallest proportion of funds were spent on PS contracts for Food—1.2%.

Forty-one percent of these jurisdictions spent an average of 10.3% of their PS funds for Specialized interventions. For the 41 jurisdictions that responded to this survey item, the average proportion of budget funds expended for private sector contracts was 10.7%.

### Attitudes Toward PS Contracting

The main reason the survey respondents gave for contracting was that the private sector vendors could provide services and expertise that the jurisdiction lacked—mentioned by 33 (80%) of the respondents. Second most popular reason was that the private sector could offer services that were cheaper and more efficient—22 (54%) of the respondents. Provide flexibility/diversity of services was endorsed by 18 (44%) of those that replied; all together there were 29 different replies.

The following table displays the most frequently mentioned positive outcomes and shortcomings of contracting—from a total of 28 and 21 responses, respectively.

Positive Outcomes/Shortcomings  
of Private Sector Contracts (n)\*

Positives	Shortcomings
(15) Responsive to jurisdiction's needs	(19) Monitoring/control problems
(9) Provide specific service	(12) Lack knowledge of DOC's procedures
(8) Increase program variety	(8) High costs
(8) Provide good services	(7) High turnover of vendors' staff
(8) Saves money	(6) Contracting process too cumbersome
(6) Participants show positive changes	(6) Resist assessment/evaluation
(5) Have expertise/specialized staff	(6) Unrealistic view of population
(5) More flexibility	(4) Resist taking difficult juveniles
	(4) Vendors' staff inexperience

(n) = Number of endorsements



According to the respondents, these shortcomings were due, primarily, to the vendors. Most often the difficulties were with PS contracts with solely-owned, for-profit agencies and with public, for-profits; the fewest difficulties were experienced with public, not-for-profits followed by the private, not-for-profits. In other words, entities which arranged for private sector contracts had the most difficulty with for-profit agencies and the least problems with not-for-profits.

### **Future Plans**

Eight-five percent of the respondents listed service areas where new PS contracts were anticipated. Only one jurisdiction—Missouri—stated that it anticipated fewer such contracts in the future. However, more than half (54%) of those responding stated that their agency was moving toward more PS contracting—about two new contracts per agency; the rest expected to maintain about the same number of contracts. On the list of the 69 anticipated, new contractual services/programs, the most frequently mentioned (number in parenthesis) were:

- |   |                                  |
|---|----------------------------------|
| (6) health/mental health programs       | (4) community-based programs     |
| (6) programs for special need juveniles | (4) substance abuse (in-patient) |
| (6) services for females                | (3) more detention space         |
| (5) residential (secure) programs       | (3) non-residential services     |

Six states—Kansas, Massachusetts, Nebraska, New Hampshire, Virginia, Wisconsin—indicated that there was existing or pending legislation in their jurisdiction that encouraged PS contracting; for the remaining 85% of the jurisdictions there was no such legislation. Additionally, 87% of those responding mentioned there was no legislation or rules that hampered such contracting. Further, 95% of the survey replies indicated the criteria used to accept/reject a PS contract—high frequency responses were: compliance with agency regulations; cost; selection by a panel; and the vendor's history and/or past performance.

The two most frequently mentioned methods for monitoring private sector contracts were by specifically designated staff and by conducting on-site reviews. Annual reviews of documenta-

tion/reports and financial reviews of billing accuracy also received many mentions. Forty-nine percent of the respondents use a formal written monitoring/evaluation plan.

Overall, 78% of those replying expressed a willingness to participate further in this ACA/OJJDP project.

### Comparison With Prior Findings

The proportion of agencies that reported having at least one private sector contract decreased when 1991 figures (Levinson and Taylor) were compared with the present 1999 findings—98% then, 81% now. However, the average length of experience with private sector contracting increased—13.7 and 14.2 years, then and now, respectively. The jurisdiction with the largest number of PS contracts changed, from Georgia to Oregon, as did the number—385 then to 373 now; the average dropped from 81 to 58 per agency. The following table compares the types of private service contracts, then and now.

Type/Percent of Private Sector Contracts

Type Agency:	1991	1999
NOT-For-Profit	90%	89%
For-Profit	60%	80%
Other	8%	17%

From 1991 to 1999 the proportion of jurisdictions contracting with not-for-profits stayed the same while PS contracts with for-profit agencies increase as did the proportion of jurisdictions contracting with private individuals ("Other").

As displayed in the below table, the reasons given for signing private sector contracts in 1991 and 1999 were, essentially, the same. Despite the slight changes in rank, there was a higher level of consensus in the most recent survey data.

### Reasons for Private Sector Contracting

Reason :	1991 [rank]	1999 [rank]
Cost efficiency	22% [1st]	57% [2nd]
Service unavailable within agency	17% [2nd]	78% [1st]
Increase diversity of services	13% [3rd]	42% [3rd]

A somewhat smaller proportion of the respondents in 1999 than in 1991 indicated that their agency anticipated more private sector contracts—54% compared with 60%; while only a slightly greater percentage reported that the number of PS contracts would remain about the same—39% now compared with 35% then.

The types of contracts that agencies are seeking are displayed in the following table:

### Type of Anticipated Private Sector Contracts

Type :	1991 [rank]	1999 [rank]
Residential treatment	[1st]	[4th]
Day treatment	[2nd]	[5th]
Mental Health services	[3.5]	[2nd]
Programs for special need juveniles		[2nd]
Services for females		[2nd]

The type of PS contracts that were most frequently mentioned are listed in the left-hand column. In 1999, three areas received the highest (identical) number of endorsements; all three were assigned a rank of “2.” As can be seen, *Residential treatment*, which ranked first in 1991, eight years later received a rank of “4”; and, two of the areas (*Programs for special need juveniles*, and *Services for females*) were not among the top five listed in 1991.

The types of PS contracting that will be sought in the future have changed; and, the anticipated programs are more targeted now than in 1991.

## Conclusion

Findings from the recent ACA/OJJDP survey reflects a strong continuing interest in contracting with the private sector for correctional programs and services for juveniles. Overall, in the eight years since the previous assessment, there has been an increase in the use of For-Profit Contractors—from 60% in 1991 to 80% in 1999. Further, it appears as if this trend will continue into the future.

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### End Notes:

1. Contracts fall into the following groupings:

<b>FOR-profit</b>	<b>Private</b>	A corporation or business whose objective is to gain a return of funds greater than those expended to deliver a specified service.
	<b>Public</b>	A government entity whose objective is to gain a return of funds in excess of those expended to deliver a specified service.
<b>NOT-for-profit</b>	<b>Private</b>	A privately owned business whose objective is to deliver a service.
	<b>Public</b>	A charity whose objective is to deliver a specified service.

### References

- Levinson, R.B. and W.J. Taylor (1991) "ACA Studies Privatization in Juvenile Corrections,"  
*Corrections Today*, August (5); pp. 242-248.

## Module III

### Issues in Privatization

# **MODULE SUMMARY**

## **MODULE 3 Issues in Privatization**

### **TARGET POPULATION:**

Juvenile Administrators and Technical staff

### **TIME ALLOCATION:**

2 Hours

### **SPACE REQUIREMENTS:**

Accommodations for 20 - 30 participants

### **PERFORMANCE OBJECTIVES:**

At the conclusion of this module, participants will be able to:

1. List and discuss at least three legal issues affecting privatization in juvenile facilities.
2. List and discuss the impact of five cost factors involved in juvenile privatization.
3. Select the financing method that best suits the needs of the participant's agency.

### **EVALUATION PROCEDURES:**

1. Large group discussion
2. Small group discussion
3. Activities and exercises

## **Module III—Issues in Privatization**

### **A. INTRODUCTION**

#### **Lecturette**

The purpose of this session is to help you analyze the three most pressing issues involved in contracting juvenile residential facilities to the private sector. They are:

**List three areas of board or flip-chart.**

- Legal
- Cost
- Finance

The legal issues surrounding privatization have caused concern from public correctional officials and the general public. Over the past decade, however, we have learned a great deal from the experiences of various agencies and the courts.

### **B. LEGAL ISSUES**

#### **Show Overhead 3-1**

<b>3-1                      Legal Issues</b>
<ul style="list-style-type: none"><li>•        <b>The legality of delegating correctional services.</b></li></ul>

#### **Lecturette**

There was a good deal of controversy in the 1980's about how legal it is for governments to delegate the incarceration function to



private companies. Now it appears that objections to privatization on constitutional delegation grounds are not an issue.

**Show Overhead 3-2**

**3-2**

**LEGAL PRINCIPALS**

- State agencies have no inherent authority—they are creatures of statute and may exercise only specific powers conferred upon them by law.
- If a specific duty or function is granted to an agency, the intent is for the agency to have whatever authority is necessary to perform said duties.

**Write on board or flip-chart:  
Delegation Doctrine.**

To begin with, the federal constitutional delegation doctrine, is rarely invoked and has little direct application to private delegations, so the issue becomes a state one.

## Show Overheads 3-3 & 3-4

### 3-3

#### LEGAL PRINCIPALS

- Agencies may delegate *administrative* duties.
- Agencies cannot delegate *discretionary* duties.
- *Administrative* duties are duties performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment.

### 3-4

#### LEGAL PRINCIPALS

- *Discretionary* duties are duties that generally deal with life, liberty, and due process decisions.
- Examples of *discretionary* duties are tasks related to rulemaking [offender discipline, good time, release] and adjudication [parole revocation] functions.

The state courts have viewed privatization as a delegation of certain administrative functions.

However, courts have ruled that states can not delegate rule-making and adjudication functions.

Therefore, many states have enacted legislation directed at retaining release-related decision-making and rule-making in the public sector.

Other states have retained such powers by specific wording in their contracts.

In most cases, these statutory or contractual provisions require that initial decisions or recommendations, even where formulated by private contractors, must be subject to final approval or ratification by public authorities.

Private correctional facilities can't take away good time credits, or interfere with parole decisions.

### **Ask Questions.**

Do you have any questions about the legality of delegating correctional services?

Does your state have legislation on the subject?

Must you put delegation regulations in a contract?

## Introduce Liability

The second legal issue we will discuss is liability.

## Show Overhead 3-5

### Lecturette

3-5

#### LEGAL PRINCIPALS

- Liability for private facility conditions.

Originally, it was thought that contracting for beds would:

- insulate a public entity from liability;
- shield contractors from juvenile offender civil rights suits alleging constitutional harms.

For some time, extravagant claims were made by both advocates and opponents of privatization that contracting with private providers would insulate governments from liability exposure.

Claims were also made that privatization would substantially shield private contractors from inmate civil rights suits alleging constitutional harms.

**Show Overhead 3-6**

**3-6**

### **LIABILITY QUESTIONS**

- Can the rights of juvenile offenders be adequately protected in a contract facility?
- Does contracting reduce the exposure for liability for government juvenile correctional authorities?
- Does contracting reduce the price tag for litigation for government juvenile correctional authorities?

These three questions framed the debate:

**Ask Questions.**

- Can the right of a juvenile offender be adequately protected in a private correctional context? Let's see how you feel about this—is it yes or no? Why?

**Show Overhead 3-7**

3-7

### LEGAL PRINCIPALS

- Generally, the statutory basis for most litigation involving juvenile offenders is a violation of their civil rights under 42 U.S.C. §1983.
- §1983 allows juvenile offenders to sue those who *act under color of any statute, ordinance, regulation, custom, or usage*, for any violations of constitutional and federal statutory rights.

- Does the delegation of day-to-day responsibility for facility management to a private contractor yield lower potential liability exposure for government correctional authorities? What about this—yes or no? Why?

Show Overhead 3-8

3-8

### LEGAL PRINCIPALS

- Typical allegations under 42 U.S.C. §1983 involve violations of the:
  - 8th Amendment *prohibiting cruel and unusual punishment* which usually involves “conditions of confinement.”
  - 6th Amendment - *Right to counsel*;
  - 14th Amendment - *Right to due process*.

- Does correctional privatization result in a lower litigation price tag for the government? Again, yes or no? Why?

Research shows that the answer appears to be a qualified “yes” to the first and second questions and a “maybe” to the third.

Show Overhead 3-9

3-9

### LEGAL PRINCIPALS

- Examples of *protections* for public entities are:
  - Sovereign Immunity - 11th Amendment;
  - Qualified Immunity - state employee *reasonably believes* that their *discretionary* actions are *lawful*;
  - No Respondeat Superior - *acts of employee are acts of the agent*;

About safeguarding rights, it's generally accepted that private facilities will be treated as "state actors" for purposes of civil rights suits, so that all relevant constitutional requirements will apply with equal force to private as well as public correctional facilities.

Moreover, private facility employees will not be covered by the "qualified immunity" that shields from liability public correctional authorities who reasonably believe that their discretionary actions are lawful.

Finally, private facilities and officials will not be protected by other governmental



immunities that may otherwise limit the monetary damages available to those suing over facility conditions.

**Show Overhead 3-10**

**3-10**

**LEGAL PRINCIPALS**

- Judicial Deference To Juvenile Officials - the operation of facilities is peculiarly the province of the Legislative and Executive branches, not judicial, due to their expertise, comprehensive planning, and commitment of resources for administering juvenile facilities;

As for liability exposure, a government's exposure will generally be lower if a private contractor is running a private facility, but it will still exist.

A contractor will be the primary defendant in litigation, and government authorities generally will not have direct responsibility for the actions of contractor employees.

## Show Overhead 3-11

3-11

### LEGAL PRINCIPALS

- Limited Monetary Damages - if the public entity is liable, the type of damages are limited and the amount of damages are capped.

A contractor and its supervisory employees must be shown to have been directly involved in an alleged violation, have known about the violation or its likelihood of occurring, and been “deliberately indifferent” toward the risk, or have generated or validated a policy or custom that led to the violation. Since public correctional authorities will have contracted the day-to-day management of facilities to private contractors, they will be less likely to have knowledge of specific violations that may have caused injury to residents.

### Ask Question.

Let’s take a specific example. There is a suicide at a contractor managed juvenile facility. Under what circumstance might the agency be held responsible? How can they be protected?

While reliance on a private contractor will not prevent government authorities from being named in lawsuits or being exposed to liability for widespread or obvious problems relating to facility conditions, private contracting will greatly lessen the liability of

government supervisory officials for most claims alleging individual harm. These claims represent the most common type of lawsuit and assume a significant proportion of a correctional agency's litigation budget.

**Ask Question.**

Have any of your agencies been involved in litigation that involved private contractors?

**Show Overhead 3-12**

**3-12**  
**ANSWER - LIABILITY**

- A public entity's exposure to *liability* will generally be lower with a private provider.
- Contract provisions that help ensure this are:
  - Independent Contractor;
  - Indemnification & Hold Harmless;
  - Require Liability Insurance;
  - No Third Party Beneficiaries.

**Write on board or flip-chart**  
**Litigation Costs**

Government litigation costs at a particular facility may or may not be lower with management in the hands of a private contractor.

Even though your agency insists that a contractor indemnify and hold it harmless against all acts and omissions of the contractor arising under its management contract—and even though your agency will similarly insist that it be named as an insured on any private comprehensive general liability insurance policy—there is no way to tell for sure whether its litigation expenditures under privatization will be lower.

**Show Overhead 3-13**

**3-13**

**ANSWER - COST**

- The cost factors for contract beds may be:
  - contract administration staff;
  - monitoring staff;
  - cost of being sued, even if not liable [e.g. OAG];
  - agency staff who perform nondelegable, discretionary duties.

While some degree of liability exposure will still attach to governments that have privatized certain facilities, such exposure can be further reduced through the sensible use of monitoring plans and personnel.

Effective monitoring provides a way for government supervisory officials to take remedial steps upon learning of certain problems, thereby limiting the potential for a negligence lawsuit.

This is not the first or the last time you are going to hear about monitoring systems and their importance.

**Introduce the topic of  
Juvenile Records**

**Show Overhead 3-14**

The next issue is access to juvenile records.

3-14

LEGAL PRINCIPALS

- Contractor access to juvenile records.
- State statutes generally allow a private service provider for an agency access to confidential records.

To perform its management duties properly, private contractors need access to records for two purposes:

**List on board or flip-chart.**

1. For classification, programming, and care.
2. For screening of potential private correctional employees.

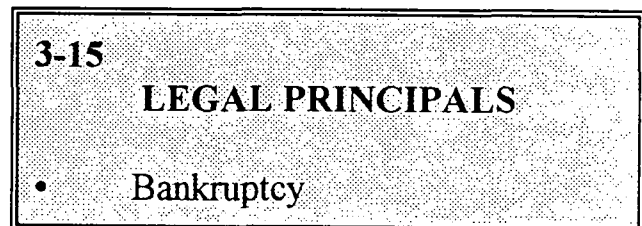
Both of these needs affect the privacy rights and expectations of juveniles and private citizens seeking employment.

The use of records is an area that is often over looked, but one that must be detailed in a contract.

**Introduce the issue of Bankruptcy**

One area that seems to cause some concern is bankruptcy.

**Show Overhead 3-15**



Bankruptcies involving private correctional facilities have been virtually non-existent. Those few that have occurred have been confined to firms concentrating on the building of private prisons on a speculative basis.

Most important, you should be able to protect your agency against a potential bankruptcy through proper monitoring and

contracting.

You can insist in the contract that a contractor purchase business interruption insurance that names your agency as an insured.

Your best safeguards against serious problems developing from a bankruptcy are careful contracting and effective monitoring.

A general “termination for convenience” clause with a ninety-day phase out or transition period can keep your agency outside the bankruptcy process and give it time to resume management of a facility or find another contractor.

## Show Overhead 3-16

3-16

### LEGAL PRINCIPALS

- Terms of contract need to reflect:
  - access
  - retention
  - confidentiality
- Pro-active and reactive contract terms are:
  - audits and copies of audits;
  - monitoring of financial records and invoices;
  - no delinquent franchise taxes;
  - notification of unfair business practices;
  - notification of subcontracting;

## Ask Questions.

Have any of you had bankruptcies in your contracts? Why might this become an issue, say, if the stock market had a crash?

A related issue to bankruptcy is that of mergers and acquisitions.

The merger of companies and the acquisition of companies are part of the American business landscape. In the corrections context, the question arises as to how the merger or acquisition of corrections



providers impact service contracts with corrections agencies.

**Show Overhead 3-17**

3-17

**LEGAL PRINCIPALS**

- prohibiting assignment of contract without prior approval;
- notification and approval of a business entity, such as a merger;
- a bond or business interruption insurance coverage;
- a “no cause” termination clause.

The rights and obligations of your agency and the private sector provider are detailed in the services contract. When another company merges with or acquires a private sector provider under contract with your agency, the rights and obligations of the services contract are acquired as well. The contract will have the same force and effect that it had when originally negotiated.

Problems arise when the personnel assigned to implement and monitor the services contract change when the original provider

merges with or is acquired by another company. While the terms and conditions of the service contracts cannot be renegotiated, it is important that new contractor personnel become familiar with the services contract and monitoring plan contained therein.

### Introduce the issue of Use of Force

Another issue is the use of force.

### Show Overhead 3-18

3-18

#### LEGAL PRINCIPALS

- Use of force.
- For *use of force* by contract staff on youth in the program, the terms of the contract should require:
  - approval by the public entity of an industry approved restraint method;
  - the method is certifiable;
  - contract staff obtain and maintain all proper certification training required by the certification standards.

A major issue for private facilities is whether the use of force is properly regulated by the relevant laws of the jurisdiction. Without proper enabling legislation or contractual provisions authorizing the use of force by designated private correctional officials, it's possible that personnel and the private firm could face criminal and civil liability.

The legal standards for the use of force vary from place to place. Some laws may adequately treat the use of force generally, but insufficiently address the use of force in specific situations.

## Show Overhead 3-19

3-19

### LEGAL SUGGESTIONS

- For *use of force* by contract staff on youth who escape, require approval by the public entity of a procedure which may include:
  - notification of law enforcement within a specified timeframe;
  - immediate oral notification to the public entity with a written report to follow within a specified timeframe;
  - consulting state statutes to determine who has authority to arrest or use force to apprehend.

## Ask Questions.

How does your state/agency handle the use of force issue?

Have there been any litigation arising out of the use of force by private contractors?

We are now going to look at cost issues.

## C. COST ISSUES

### Lecturette

As we learned in Session I, a good deal of the motivation behind correctional privatization is the belief that the private sector can provide high quality programs at a lower cost than is possible in the public sector. However, comparing public and private costs is not easy. Therefore, one cannot say with confidence that privatization is or is not less costly than the public operation of correctional programs.

### Show Overhead 3-20

Reveal one item at a time.

#### **3-20 Factors to Consider when Analyzing Costs**

- Characteristics of the Young Offender Population
- Characteristics of Facility or Program
- Location of Facility or Program
- Program and Services Issues

The characteristics of the young offender population affects costs, since programming,

**List on board or flip-chart:**

- **Seriousness of offense**
- **History**
- **Treatment**
- **Age/gender**

health care, and security needs will vary by the nature of the offenders. Typical issues which should be considered are: the seriousness of the offenses; the nature of the offense history; treatment needs; and age and gender. Also, the more diverse the population in terms of security or treatment needs, the more costly it is likely to be to staff and operate the program, particularly in the case of secure facilities. One of the exercises you are going to do tomorrow is writing this section of the RFP.

**Show next item on Overhead**

- **Characteristics of Facility or Programs**

Next, we'll look at the characteristics of the facility or program.

There are many factors relating to the physical plant which can have an impact on costs.

The size, design, and capacity of the facility are three important ones.

The age of a facility affects maintenance costs, depreciation costs, as well as offender supervision and the treatment regime.

The nature or type of residential facility, such as whether it is "open" or secure, is another important variable.

**Show next item on Overhead**

- **Location of Facility or Program**

Also, the geographic location of a facility, whether rural, suburban, or urban, can affect wages, land and property values, rental costs, construction costs, as well as the costs of

food, fuel, and utilities. When considering these types of costs, it is important to determine whether any differences between the compared programs are the result of their being located in different jurisdictions or in different parts of the state.

**Show next item on Overhead**

- **Program and Service Issues**

The next areas we need to consider deal with programs and services. These include the length of the resident's stay and the nature, quality, and variety of services being provided. In addition, it is important to consider the comparative degree to which the various services are being provided. For example, is the focus primarily supervision and accountability, or is the provision of treatment services the major component of the program.

**Show Overhead 3-21**

**Reveal one item at a time.**

**3-21 Factors to Consider when Analyzing Costs**

- Personnel Requirements
- Public Administrative Costs
- Private Takeover of a Public Program or Facility
- Start up Costs

The number and type of personnel needed for a program varies by the nature and purpose of the particular program. Important personnel cost issues to consider include numbers of personnel by job type, staff/offender ratios, shift coverage, personnel qualifications, and training needs. In costing training needs, it is important to identify the number of training hours per year and the type of training to be provided by job classification. For public corrections, it is important to factor in training provided free, at cost, or subsidized by another agency. Similarly, if public agency training is to be provided free or at a reduced cost to the private sector, this needs to be considered.

**Show next item on Overhead**

- **Public Administrative Costs**

Now, we will look at those public administrative costs caused by privatization.

Costs directly relating to contracting and monitoring should be factored into this analysis. In addition, it is important to weigh whether publicly operated programs are or should be monitored at a similar level as contracted programs. What do you think of this? Do you do it now? Why? Why not?

**Ask Questions.**

**Show next item on Overhead**

- **Private Takeover of a Public Program or Facility**

If a private company is to takeover the operation of one of your facilities or of a program in a facility, you must take into consideration any public benefits provided employees who are let go, and the cost of any hiring requirements imposed on the



company. Also to be assessed are the time and costs to the government in finding alternative public employment for displaced employees.

**Show next item on Overhead**

- **Start-up Costs**

You should also decide whether to allow contractors to charge start-up costs for correctional facility contracts. This may be a very relevant issue for large, secure facilities involving major cost outlays. Because of the relatively small size of most juvenile residential facilities, they may have less of a need for these funds. Where start up costs are permitted, they need to be considered in the cost analysis. Typical start-up costs are considered one time expenditures such as power and sewage hook-up charges, telephone and electricity, etc.

**Show Overhead 3-22**

**Reveal one item at a time.**

**3-22 Factors to Consider when Analyzing Costs**

- Financing and Construction Costs
- Liability and Insurance Costs
- Tax Revenues
- Cost Savings Requirements

In privatization initiatives involving construction or major renovations, public and private financing and construction costs need to be compared.

**Show next item on Overhead**

- **Liability and Insurance Costs**

You also need to take into consideration the degree to which potential liability related costs to your agency can be reduced or increased by privatization. For example, your costs may be reduced by requiring your vendor to get adequate contractual indemnification and liability insurance. However, one also needs to weigh the costs of liability insurance and its impact on the charges made by private companies as part of the contract price.

A final related issue centers around accreditation. Requiring private providers to be accredited by a national standards setting body, such as the American Correctional Association, may reduce liability costs to government and contracted programs. However, gearing up for accreditation can be costly.

**Show next item on Overhead**

- **Tax Revenues**

Also, any tax advantages given to a private company should be considered a cost to the government, and factored into the cost accounting. For instance, tax benefits might be given to investors when a new institution is being built. In addition, an economically deprived local jurisdiction might offer special tax and other benefits to lure a corrections company to locate a facility within their

jurisdiction.

On the other hand, government gains from the income, sales, property, unemployment, telephone, and utility taxes paid by corrections companies. Revenues also are produced for government through social security and unemployment compensation contributions, fees for water, sewage, and waste disposal, inspection fees, and license fees. While these costs are incorporated in the contractor's fees, they return to the public coffers as revenue and should be included in the analysis.

**Show next item on Overhead**

- **Cost Savings Requirements**

Some contracts and enabling legislation for the private operation of secure facilities require contractors to provide a level of service at least equal to that of the public facilities, but at a lower cost.

There are some legitimate concerns to consider about this type of requirement. However, as you have learned, there is a lack of reliable and uniform means of establishing the total cost of public and private operation. As a result, cost savings requirements are likely to be based on incomplete and inaccurate estimates. Prior to requiring a cost savings, government should establish a means of fairly and accurately assessing the full cost of corrections.

In addition, rigorous requirements for a cost savings like a 20% or higher savings for

secure facility contracts could stifle competition. That is, firms might be unwilling to bid on contracts with these requirements. In addition, contractors might eventually reach a point where the only way to save money is through reducing quality.

**Ask Question.**

I think we now all realize how different it is to define cost items. Are there any areas that need further clarification before we go on to financing?

**D. FACILITY FINANCING,  
OWNERSHIP AND  
CONSTRUCTION ISSUES**

Another area of correctional privatization at the forefront of the privatization debate is the financing, ownership, and construction of correctional facilities.

**Show Overhead 3-23**

**3-23 Facility Financing,  
Ownership, and Construction  
Issues**

- Facility Financing Through Government Bonds

## Lecturette

As you are probably aware, local and state government traditionally have paid for building publicly operated facilities with current operating revenues or by selling general obligation bonds. Using operating funds avoids interest payments and long-term liabilities. However, this approach is difficult to implement if construction costs rise and there are insufficient cash reserves to pay for the increase.

General obligation bonds allow the government to raise large amounts of investment capital at competitive interest rates, because their "full faith and credit" is pledged to repay the debt. However, selling general obligation bonds require voter approval. Also, these bonds may be subject to debt limits. In the past, obtaining such approval was a rather simple matter. But, beginning in the late 1980's, the public became less supportive of spending public funds for new correctional facility construction. Recent interest in private financing alternatives to traditional methods has resulted, in part, from the combined effect of increasing secure facility populations, overcrowded conditions, court orders to reduce overcrowding, along with the public's unwillingness to pay for the needed expansion.

### Show Overhead 3-24

#### **3-24 Facility Financing, Ownership, and Construction Issues**

- Difficulty in Floating Government Bonds

This difficulty in floating bonds was due to a number of factors. Numerous state and local jurisdictions had borrowed so much money as a result of poor economies, that their credit ratings decreased. Consequently, financial institutions were reluctant to risk buying bonds or, where willing, the interest rates were higher than in the past. Also, even when financial institutions were willing to buy bonds, the public did not support them in public referenda. This lack of support resulted from the public's rising antipathy toward increased public spending in general. The public sentiment, in turn, led to various states approving legal debt ceilings limiting governments' ability to borrow money.

### Show Overhead 3-25

#### **3-25 Facility Financing, Ownership, and Construction Issues**

- The Straight Lease and Sale/Leaseback

A variety of private financing strategies exist for correctional facilities. One option is the “straight lease” arrangement. In this approach, a private entity finances the construction of a facility, and leases it back to the contracting agency for a period of time which is less than the facility’s predicted useful life. The lease arrangement is independent of any contract for the private operation of the facility, and may allow the contracting agency to purchase the facility prior to the lease’s termination.

**Ask Question.**

Have any of your agencies done a straight lease for a facility?

In the “sale/leaseback” strategy, the contracting agency sells the property to private investors. The private entity builds the facility and then immediately leases the property back to the contracting agency. The contracting agency operates the facility.

**Ask Question.**

Have any of your agencies been involved in a sale/leaseback?

**Show Overhead 3-26**

**3-26 Facility Financing,  
Ownership, and Construction  
Issues**

- Combined Private Financing  
and Service Contracts

Sometimes the leasing agreement is part of a contract for the private operation of a facility. In this arrangement, the contractor is responsible for the financing, construction, and operation of the facility. A disadvantage of this approach is that it could limit government's ability to replace an inadequate contractor, unless the contract permits the contracting agency to take possession or ownership of the facility with limited advance notice.

Alternatively, the agency could separately contract for the ownership and operation of the facility .

### **Show Overhead 3-27**

**3-27 Facility Financing,  
Ownership, and Construction  
Issues**

- Lease-Purchase Agreements

Lease-purchase agreements represent a particularly popular method of privately financing correctional facilities, while avoiding the potential pitfalls of private ownership. Typically, a special legal entity like a non-profit corporation or a public building authority issues revenue bonds or certificates participation to private investors, on behalf of government. The investors receive tax-free interest on their investment



because the bonds are issued on behalf of the government. The special entity uses the raised funds to finance the construction, and is considered the facility's nominal owner. Subsequently, it leases the new facility to the contracting agency. The contracting agency agrees to make monthly lease payments until the bond is paid. However, the payments are conditional, subject to the legislature appropriating the necessary funds. The contracting agency receives title to the facility once the bond has been paid off.

While lease-purchase agreements normally involve the contracting agency operating its own facility, it can be used in private facility operation contracts. Because lease-purchase agreements are funded out of the operational budget and are subject to non-appropriation by the legislative branch, they are not considered as long-term debt. Therefore, they are not subject to debt ceilings. In addition, these agreements normally are not required to have voter referenda, since the issued bonds are not secured by the jurisdiction's taxing authority.

Because interest paid to the investors in the lease-purchase arrangement is tax exempt, it is an attractive investment for persons wanting a tax shelter. On the other hand, the lease payments may be terminated by government if funds are not appropriated during the budgetary process. This increases the risk of this arrangement for investors. As a result, higher interest charges have to be paid to attract investors. Also, during the

annual review government may decide to renew or extend the contract, regardless of whether funds have been appropriated.

**Show Overhead 3-28**

**On board of flip-chart write:**

**Real  
Estate  
Investment  
Trust**

**3-28 Facility Financing,  
Ownership, and Construction  
Issues**

- Real Estate Investment Trusts  
REITs

Another financing mechanism gaining favor in the private corrections industry is the use of prison real estate investment trusts (REITs). REITs offer a nearly unlimited source of capital because they are independent entities on the stock market. With the growth of REITs in the private corrections industry, private corrections companies are likely to become increasingly interested in building or purchasing facilities. With the purchase of existing public facilities, companies avoid the 12 to 15 month lag time involved in construction and revenues can be realized more quickly.

**D. SUMMARY**

In this session, we have examined three issues that have a bearing on privatization. They were legal, costs, and financing. If you

have any questions on these issues we will address them now.

**Studies of  
Residential  
Facility  
Privatization**

# National Institute of Corrections Study (1984)

In a National Institute of Corrections survey published in 1984, respondents generally reported privately operated services to be more cost-effective than could be achieved by the public provision of services. At that time, contracting most frequently occurred in juvenile corrections, and was "typically used to provide health services, educational and vocational training, aftercare services (including halfway house placements), and staff training." In particular, survey respondents appeared to favor privately as opposed to publicly provided medical services, believing that through the private sector the service quality and staff had improved.

Overall, the perceived advantages of service contracting outweighed the disadvantages, although the two most common problems mentioned by respondents were monitoring the performance of providers, followed closely by poor quality of service.

*Reference:* Mullen, Joan, "Corrections and the Private Sector," **Research in Brief**, National Institute of Justice, Washington, D.C. (October, 1984).

# **Cost Effectiveness Study of Private and Public Prisons in Louisiana (1996)**

Recently, Archambeault and Deis conducted a study on adult prison privatization in Louisiana. This study represented the most sophisticated empirical research the writer found comparing public and private correctional institutions. In fact, the authors themselves note this: “. . . the research design is one of the most comprehensive and in-depth ever used in the study of public versus private prisons.”

The study focused on two issues—whether there were measurable significant cost-effectiveness differences between privately and publicly operated prisons, and whether there were such differences between the two private prisons studied. Effectiveness measures used included risk to staff, inmate safety, and performance and efficiency in providing services to inmates. In addition, direct costs, indirect costs, and augmentation costs to the State were measured.

A unique aspect of this research is that the state, in essence, established a field experiment to compare privately and publicly operated adult prisons. The state built three prisons that were of the same design and size. All three were to house the same types of inmates. The State Department of Public Safety and Corrections operated one, and the other two were privately operated.

The prisons studied were the Allen Correctional Center, operated by the Wackenhut Corrections Corporation, Avoyelles Correctional Center, publicly operated, and Winn Correctional Center, operated by Corrections Corporation of America.

The study found that all three prisons adequately protected the public by preventing escapes and protecting visitors to the facilities. However, the private prisons were significantly more cost-effective to operate, reported statistically fewer critical incidents, provided a safer work environment, and had proportionately more inmates completing basic education and vocational training courses.

On the other hand, the public prison did out-perform the private prisons in some areas (e.g., more effectively preventing escapes, more aggressively controlling substance abuse among inmates, and providing a broader range of treatment, recreation, social services, and habilitative services).

Neither privately operated prison tried to maximize profits by trying to hold onto inmates. In addition, neither private facility decreased their educational services to increase their profits.

Archambeault and Deis's general conclusion is that

the two private prisons . . . significantly out performed the public, state operated prison . . . on the vast majority of measures used to compare the three prisons.

Nelson provides a rather in-depth critique of the study's limitations. A number of concerns are raised, such as problems in the consistency and accuracy of the cost data and problems resulting from comparing data that are reported at different points in time. She concludes that the operational cost savings of privatization is less than 5 percent, as opposed to the researchers' estimate of 12 to 14 percent.

Gaes, Camp, and Saylor also critique the Louisiana study, raising a number of criticisms, such as the lack of information on the characteristics of the inmate populations at the compared facilities and an incorrect use of statistical measures.

**Reference:** Archambeault, William G. and Donald R. Deis, "Executive Summary, Cost Effectiveness Comparisons of Private Versus Public Prisons in Louisiana: A Comprehensive Analysis of Allen, Avoyelles, and Winn Correctional Centers, Phase I "Baton Rouge, Louisiana: Louisiana State University, December 10, 1996, from the following internet web page: Private Prisons: The Prison Privatization Research Site, Charles Thomas and Charles Logan, Webmasters, <http://www.ucc.uconn.edu/~wwwsoci/exsumla.html>.

# State of Washington Adult Corrections Privatization Feasibility Study (1996)

In 1995, the Washington State Legislative Budget Committee conducted a cost comparison of privately and publicly operated multi-custody adult correctional institutions in Louisiana and Tennessee. In Louisiana, a state operated facility was compared with a Wackenhut Corrections Corporation and a Corrections Corporation of America (CCA) facility. In Tennessee, two state operated facilities were compared with a CCA operated facility. In addition to comparing costs, information was obtained on public safety (e.g., escapes and disturbances) and substantive differences in the operation of private and public facilities. The study suggests that there may be some cost savings advantage to the private facilities, that the private facilities were as safe and secure as the public ones, and that the private facilities provided the same quantity and quality of programs as did the public facilities.

However, based on the analysis of these data as well as additional analyses, the report concludes that privatizing adult correctional facilities in Washington would not necessarily result in a cost savings.

Much would depend on the care that was taken in estimating the state's costs, and in designing an RFP, choosing a contractor, and executing and monitoring the contract.

*Reference:* Archambeault, William G. and Donald R. Deis, "Executive Summary, Cost Effectiveness Comparisons of Private Versus Public Prisons in Louisiana: A Comprehensive Analysis of Allen, Avoyelles, and Winn Correctional Centers, Phase I "Baton Rouge, Louisiana: Louisiana State University, December 10, 1996, from the following internet web page: Private Prisons: The Prison Privatization Research Site, Charles Thomas and Charles Logan, Webmasters, <http://www.ucc.uconn.edu/~wwwsoci/exsumla.html>.



# Comparisons of Facilities in Kentucky and Massachusetts (1989)

A 1987–1988 Urban Institute study compared state correctional facilities in Massachusetts and Kentucky that were privately operated with similar facilities operated by public employees.

In Kentucky, a privately operated adult minimum-security facility, the Marion Adjustment Center, was compared with a publicly operated state adult minimum-security facility, the Blackburn Correctional Complex. The Marion Adjustment Center was operated by U.S. Corrections Corporation. In Massachusetts, two matched pairs of juvenile secure treatment facilities were compared. One of each pair was privately operated and the other was publicly operated.

The per inmate-day costs of the publicly and privately operated facilities were found to be similar for all three pairs studied, that is within 10 percent of each other. The private facility in Kentucky had a per-inmate day cost that was 10 percent higher than the public facility.

Based on a visual inspection of the Kentucky facilities, no substantial differences were found in the physical plant, institutional climate, staff-inmate interaction, and quality of life. However, the study concluded that the private facility generally scored higher on program quality and in the provision of inmate services. There were some areas where the public facility scored higher (e.g., food services). The program quality of the two private Massachusetts facilities showed an even greater advantage over public operations, than did the Kentucky comparison.

*Reference:* Harty, Harry P., Paul J. Brounstein, and Robert B. Levenson, "Comparison of Privately and Publicly Operated Correctional Facilities in Kentucky and Massachusetts," **Privatizing Correctional Institutions**, Burnswick, New Jersey: Transactions Publishers, 1993.

# Comparison of Public and Private Adult Correctional Facilities in Kentucky (1994)

In a 1994 report prepared for the Kentucky State Auditors' Office by Tewksbury, Wilson and Vito, two private minimum-security adult facilities were compared with the public minimum security Blackburn Correctional Complex. Problems in obtaining needed data hampered the researchers' ability to address all of the issues to be covered by the study. However, the researchers suggest that all three facilities provide the range of programs needed to meet the needs of the institutional population, the staff/inmate ratio is comparable among each facility, and the nature of the programs and services provided by all three appear adequate.

*Reference:* Tewksbury, Richard A., Deborah G. Wilson, and Gennaro F. Vito (June, 1994) "Correctional Program Effectiveness: Private Correctional Facilities in the Commonwealth of Kentucky," "Commonwealth of Kentucky: Auditor of Public Accounts Privatization Review of ICF/MR Institutions and Minimum Security Correctional Facilities," Frankfort, Kentucky: Auditor of Public Accounts.

# Texas Auditor's Report on Two Privately Operated Prisons (1991)

A study included in a 1991 Texas State Auditor's report to the Texas Sunset Commission found that Corrections Corporation of America and the Wackenhut Corrections Corporation had operated 500-bed prisons, at 10 to 15 percent less cost than the State would have been able to operate them. While earlier State reports identified problems regarding the quality of these programs, these problems later were corrected.

**References:** Thomas, Charles W. and Charles H. Logan, "The Development, Present Status, and Future Potential of Correctional Privatization in America," G. Bowman, S. Hakim, and P. Seidenstat, eds. **Privatizing Correctional Institutions**, Brunswick, New Jersey: Transactions Publishers, 1993.  
Lampkin, Linda M. "Does Crime Pay? AFSCME Reviews the Record on the Privatization of Prisons," **Journal of Contemporary Criminal Justice**, Vol. 7, No. 1 (March, 1991).  
Shichor, David (1995) **Punishment for Profit**, Thousand Oaks: Sage Publications, Inc.

# Logan and McGriff's Cost Analysis of the Hamilton County, Tennessee Penal Farm (Silverdale) (1989)

Logan and McGriff compared the Corrections Corporation of America's (CCA) management of the Hamilton County, Tennessee Penal Farm (a minimum- to medium-security county prison), with the cost were the county to re-operate the facility. The private facility operation showed annual savings in comparison to the estimated cost of county management. Also, the study suggests that services were better under private operation.

Brakel studied the quality of the CCA's program at Silverdale (i.e., the Hamilton County, Tennessee Penal Farm), primarily from the perspective of the inmates. Inmates were surveyed regarding such issues as the conditions of confinement, programs, and services. Some comparisons were made with inmate experiences during the prior public operation of the facility or at two other public facilities. The results were a mixed bag of favorable and unfavorable ratings for the private and public facilities, with the private facility generally being more favorably rated.

**References:** General Accounting Office (GAO) (February, 1991) **Private Prisons: Cost Savings and BOP's Statutory Authority Need to Be Resolved**, Report to the Chairman, Subcommittee on Regulation, Business Opportunities and Energy, Committee on Small Business, House of Representatives, Washington, D.C.: General Accounting Office.

Logan, Charles H. (1990) **Private Prisons: Cons & Pros**, New York: Oxford University Press, Inc.

Shichor, David (1995) **Punishment for Profit**, Thousand Oaks: Sage Publications, Inc.

## Sellers Paired Study (1989)

Sellers conducted a comparison study of three pairs of public and private institutions. The three private facilities were the Weaversville Intensive Treatment Unit (a maximum security juvenile detention facility) in Northampton, Pennsylvania, which was operated by Radio Corporation of America; the Silverdale facility, operated by Corrections Corporation of America; and the Butler County Prison in Butler, Pennsylvania, operated by Buckingham Securities.

Among other information, the comparisons provided weighted per diem figures, with the weighting taking into account the number of services being provided. In the Weaversville comparison, the weighted per diem cost for the private facility was substantially lower and the quantity of services available was the same as in the public facility. In the Butler comparison, the private facility was found to be well-kept, while the public facility was poorly maintained, overcrowded, and had a higher weighted per diem cost. In the Silverdale comparison, Silverdale's weighted per diem was lower. Study problems are noted by Shichor, such as judging program quality based on the number of services provided.

*Reference:* Shichor, David (1995) **Punishment for Profit**, Thousand Oaks: Sage Publications, Inc.

# Tennessee Prison Study on Cost and Quality (1995)

The Tennessee legislature compared three multi custody (minimum- to maximum-security) prisons—a Corrections Corporation of America prison and two state operated prisons. This was a two-part study, with one part comparing costs and the other assessing program quality. The study found the costs of operating all three facilities to be almost the same. The results of a quality of service index indicated that all facilities operated at basically the same performance level. The General Accounting Office regarded this study as a good systematic attempt to assess both the costs and quality of service. While Nelson complements the study's attention to detail and how it addressed cost data, she also identifies various shortcomings of the research (e.g., it covers only a single year and does not directly address whether privatization saved money). Gaes, Camp, and Saylor raise methodological concerns regarding the program quality assessment part of the study (e.g., no performance measures were used to compare the facilities and multiple data sources, while available, were not used in making final comparisons).

Nelson re-analyzed the Tennessee data reported in the 1995 study, along with a Washington State Legislative Budget Committee analysis of the Tennessee data. Among her findings, she noted that the non-medical operating costs per inmate day were virtually the same among the three prisons. Also, labor costs were lower for the private facility, primarily because less was spent on security staff.

**Reference:** General Accounting Office, **Private and Public Prisons: Studies Comparing Operational Costs and/or Quality of Service**. Washington, D.C.: United States General Accounting Office, August, 1996.  
Nelson, Julianne, Appendix, "Comparing Public and Private Prison Costs," in McDonald, Douglas, et al., **Private Prisons in the United States: An Assessment of Current Practices**, Cambridge, Massachusetts: Abt Associates, Inc., July 16, 1998.

## **Logan's Comparison of Three Women's Prisons (1991)**

In a study funded by the National Institute of Justice, the National Institute of Corrections, and the Federal Bureau of Prisons, Logan compared the quality of incarceration in three multiple-security level women's prisons. Included in the analysis were a privately operated female prison in New Mexico (operated by Corrections Corporation of America), the same prison a year before when it was state operated, and a federal women's prison. Logan concluded that the quality of the private facility was better than that of the public facilities. However, in some quality dimensions the public facilities were rated better. Also, the per diem rate was lower for the private facility.

*Reference:* Shichor, David (1995) **Punishment for Profit**, Thousand Oaks: Sage Publications, Inc.

# Study of California Community Corrections Facilities (1994)

Sechrest and Shichor conducted a comparison study of one privately-operated and two publicly-operated Community Corrections Facilities in California. These types of facilities handle parole violators, first prison commitments, and in the case of one facility, civil commitments. No major differences in cost or quality were found between the privately and publicly operated facilities.

**References:** Shichor, David (1995) **Punishment for Profit**, Thousand Oaks: Sage Publications, Inc.  
Gaes, Gerald, G., Scott D. Camp, and William G. Saylor, Appendix 2: "The Performance of Privately Operated Prisons: A Review of Research," in McDonald, Douglas, et al., **Private Prisons in the United States: An Assessment of Current Practices**, Cambridge, Massachusetts: Abt Associates, Inc. July 16, 1998. Mullen,



# **American Correctional Association Study of the Okeechobee School for Boys in Florida (1985)**

The American Correctional Association compared a previously publicly operated Florida training school that became privately operated, the Okeechobee School for Boys, with the state-run Arthur Dozier School for Boys training school. Okeechobee was taken over by the Eckerd Foundation. Staff morale was found to be lower and staff turnover higher at the private facility. A variety of negative and positive results of privatizing Okeechobee were identified for the private facility.

The report concluded that the privatization of Okeechobee neither substantially reduced costs nor significantly increased program quality.

**Reference:** Logan, Charles H. (1990) **Private Prisons: Cons & Pros**, New York: Oxford University Press, Inc.  
Shichor, David (1995) **Punishment for Profit**, Thousand Oaks: Sage Publications, Inc.  
Lampkin, Linda M. "Does Crime Pay? AFSCME Reviews the Record on the Privatization of Prisons," **Journal of Contemporary Criminal Justice**, Vol. 7, No. 1 (March, 1991).

# Federal Bureau of Prisons Privatization Research (1998)

Recently, the U.S. Attorney General was Congressionally mandated to conduct two studies on prison privatization. The first is a summary report on the state of correctional privatization, and was completed in July, 1998. This research was conducted by Abt Associates Inc. It addresses such issues as legal considerations and contract monitoring. In addition, it includes a survey of states' degree of satisfaction with correctional privatization and a review of privatization research. Based on its review of existing research and its own analyses, the authors conclude that too little well designed, recent research exists to draw conclusions on the relative costs and quality of public and private prison operation.

Only a few of the more than a hundred privately operated facilities in existence have been studied, and these studies do not offer compelling evidence of superiority.

The survey of state corrections agencies found that most respondents (68 out of 80) believed that private prison contractors had met contractual requirements. A very few judged contractors as having exceeded requirements (three), and a somewhat larger number (ten) indicated that contractual requirements were not met. Similarly, about three-fourths were judged to perform at a comparable level to publicly operated facilities. Ten were assessed as performing at a higher level, and twelve at a lower level.

The second study will be an intensive evaluation of the private operation of the Bureau of Prisons' Taft prison. The research will take several years to complete. While the final report is to be finished in 2002, preliminary reports will be generated to provide interim feedback on the study findings. Initially, the study was to be conducted by the Bureau's Office of Research and Evaluation. Subsequently, the Bureau's director decided to contract with independent researchers to conduct the research.

The Bureau intends the Taft evaluation to address many of the limitations found in existing privatization research. The research will compare the Taft facility with three similar, recently constructed Bureau operated low-security prisons—Yazoo City, Mississippi, Elkton, Ohio, and Forrest City, Arkansas. The actual design of the study will be determined during the contracting process.

**References:** Gaes, Gerald, G., Scott D. Camp, and William G. Saylor, Appendix 2: "The Performance of Privately Operated Prisons: A Review of Research," in McDonald, Douglas, et al., **Private Prisons in the United States: An Assessment of Current Practices**, Cambridge, Massachusetts: Abt Associates, Inc. July 16, 1998.  
National Institute of Justice, Solicitation: "Examination of Privatization in the Federal Bureau of Prisons," Washington, D.C.: National Institute of Justice, April, 1999.  
McDonald, Douglas, et al., **Private Prisons in the United States: An Assessment of Current Practices**, Cambridge, Massachusetts: Abt Associates, Inc., July 16, 1998.  
Camp, Scott, Social Science Research Analyst, Office of Research and Evaluation, Federal Bureau of Prisons, Washington, D.C., e-mail to Martin Schugam, January 27, 1999.

# **Recidivism Study of Private and Public Prisons in Florida (1998)**

Prior to Lanza-Kaduce and Parker's recent study of prisons in Florida, there has been a dearth of rigorous research comparing the recidivism of adult privately- and publicly-operated correctional facilities. In their research, the recidivism rates of two 750-bed privately-operated facilities—the Bay Correctional Facility (managed by Corrections Corporation of America) and the Moore Haven Correctional Facility (operated by Wackenhut Corrections Corporation) were compared with the recidivism of public facilities.

A limitation of this study is that only a one-year follow up period was involved, due to the newness of the studied private facilities. The researchers recognized the need for recidivism research to cover longer follow up periods, and plan to conduct such research in the future.

A sample of inmates released from the private institutions were matched, case-to-case, with a sample of inmates released from public facilities. A number of variables were used to match the public and private inmates, such as offense, age, and so forth. Five measures of recidivism were used: "(1) rearrest, (2) technical violation of the terms of conditional release, (3) resentencing on a new offense, (4) reincarceration, and (5) an overall measure reflective of any of the previous four indicators of recidivism."

Private facility releasees were found to have a lower recidivism rate than their public counterparts for each of the recidivism measures, except technical violations.

**Reference:** Lanza-Kaduce, Lonn, and Karen F. Parker, "A Comparative Recidivism Analysis of Releasees from Private and Public Prisons in Florida," Gainesville, Florida: Private Corrections Project, University of Florida, January, 1998.

# **Cost and Performance Comparison of Public and Private Prisons in Arizona (1997)**

In this research conducted by Charles Thomas, the aggregate operating costs and performance of fifteen Arizona Department of Corrections minimum security prisons were compared with the operational costs and performance of the privately-operated Marana Community Correctional Facility. The private facility was designed, constructed, financed, and managed by the Management and Training Corporation.

Thomas notes various limitations in the study design. For example, aggregated public costs and performance measures were used in the comparison because no comparable public facility existed. Marana is the only facility in Arizona housing both males and females. Also, the private facility has more substance abuse treatment resources than available in the state-operated prisons.

In general, the performance quality of the private facility was found to be superior to that of the publicly-operated facilities taken as a group. Also, the Marana facility cost less to operate, compared to the average operating cost for the state facilities. However, some of the individual public facilities had cost efficiencies and performance quality exceeding that of the private institution.

*Reference:* Thomas, Charles, Private Corrections Project, Center for Studies in Criminology and Law, University of Florida, "Immunities," January 5, 1997.

# **Studies of Non-Residential Programs and Services Public and Private Provision of Community Service Orders (1989)**

In a study by Vass and Menzies, the public administration of community service orders in England and Wales, is compared with its provision by the private sector in Ontario, Canada. Community service orders require probationers to perform unpaid work for the community as a form of reparation. The study generally concludes that in practical terms the public and private handling of community service orders is similar.

**Reference:** Vass, Anthony A. and Ken Menzies, "The Community Service Order as a Public and Private Enterprise: A Comparative Account of Practices in England and Ontario, Canada," **British Journal of Criminology**, vol. 29, no. 3 (Summer, 1989).

# Assessment of a Private Sector Juvenile Probation Initiative (1989)

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has provided descriptive information on the progress in implementing its Private Sector Probation Initiative. The project's intent was to study the feasibility of the private sector providing selected juvenile probation services, and was initiated in five jurisdictions as demonstration efforts. OJJDP's overall conclusion is that public juvenile corrections agencies can improve some of their functions by having them privately provided.

**Reference:** Office of Juvenile Justice and Delinquency Prevention, "Privatizing Juvenile Probation Services: Five Local Experiences," **Juvenile Justice Bulletin**, Washington, D.C.: Office of Juvenile Justice and Delinquency, (November/December, 1989).

# Private Presentence Reports for Juveniles (1993)

Greenwood and Turner conducted a study of the use of private presentence reports. The reports were prepared by the National Center on Institutions and Alternatives on serious Los Angeles juvenile offenders who otherwise would be committed to the California Youth Authority. A classic experimental design was used, with the experimental group receiving their presentence reports from the Center and the control group proceeding through normal sentencing procedures. The study found that offenders in the experimental group were less likely to be placed with the California Youth Authority, as hoped for, and many of the experimental group performed well in less restrictive settings.

*Reference:* Greenwood, Peter W. and Susan Turner, "Private Presentence Reports for Serious Juvenile Offenders: Implementation Issues and Impacts," **Justice Quarterly**, vol. 10, no. 2 (June, 1993), 229-243.

## Module IV

# The Request for Proposal



# **MODULE SUMMARY**

## **MODULE 4 The Request for Proposal**

### **TARGET POPULATION:**

Juvenile Administrators and Technical staff

### **TIME ALLOCATION:**

Part I - 2 Hours

Part II - 6 Hours

### **SPACE REQUIREMENTS:**

Accommodations for 20 - 30 participants

### **PERFORMANCE OBJECTIVES:**

At the conclusion of this module, participants will be able to:

1. Explain the important provisions of the RFP
2. Draft portions of the executive summary
3. Explain the background requirements section of an RFP
4. List and discuss the terms and conditions section of an RFP
5. Draft portions of the statement of work
6. List the most important proposal requirements
7. Develop an evaluation criteria
8. Explain what is contained in proposal attachments

### **EVALUATION PROCEDURES:**

1. Large group discussion
2. Small group discussion
3. Activities and exercises
4. Draft a services requirement portion of an RFP
5. Analyze evaluation criteria in an RFP

## Module IV—The Request for Proposal Part I

### A. INTRODUCTION

#### Lecturette

The previous session touched on general issues relating to privatization. Now we are going to get into specifics of the RFP.

#### Show Overhead 4-1

**4-1**

#### **REQUEST FOR PROPOSAL**

Everything you ever wanted to know, but were afraid to ask!

In many agencies, the drafting of the RFP is a team effort. Often contract specialist, program staff, and legal representatives work together on various parts.

Although you may have a specific role in the process, we want everyone to be familiar with all aspects of the process.

Throughout our work on the RFP, we will be using two documents in your manual—one is a sample RFP found on page 94. This is a good generic RFP that contains all the elements we will be discussing.

The second item I want to mention is a case study that we will be working on. We have taken a secure juvenile facility called Twin

Oaks and we will be developing elements of the RFP based on the information we have on it.

## B. BACKGROUND INFORMATION

### Show Overhead 4-2

4-2

#### WHAT IS A REQUEST FOR PROPOSAL?

A Request for Proposal is the document that a contracting agency uses to launch the process of private sector contracting.

There's a good deal of work that needs to be done before the first draft of an RFP is written. If you take the time to gather and analyze the necessary background information, your writing job will be easier. One area you should look into is the legal basis for contracting.

## Show Overhead 4-3

4-3

### BEFORE YOU BEGIN WRITING

- Identify the authority of the agency to contract
- Determine the manner in which the procurement process must be structured
- Solicit competitive responses
- Know your agency's needs

## Explain enabling legislation

Your agency has staff lawyers who probably will aid in this preparation. And you are not expected to become a legal expert.

However, it's important that you have an understanding of the law in two areas. First, the authority of your agency to contract is commonly called an enabling statute.

## Laws or regulations in procurement

You should also become familiar with any laws or regulations governing the procurement process. By familiarizing yourself with your jurisdictions enabling statute and procurement regs you will be able to answer two important threshold questions.

First, does my agency have the authority to contract with the private sector, and second,

how must the procurement process be structured.

Next, you need to have a clear understanding of your agency's needs.

#### Show Overhead 4-4

**4-4**  
**AGENCY'S NEEDS**

- **WHO**- Characteristics of juvenile population
- **WHAT** - Basics of the desired services
- **WHERE** - Location where services will be provided
- **WHEN** - Time period for services

This is the who, what, where, when information.

The "Who" is the juvenile population that is to be provided with services. Its important to know if these services are for first-time offenders, juveniles with diagnosed mental illness, or the entire juvenile population.

The "What" is the basics of the desired services. For example, offer an educational program designed for juveniles to pass the GED.

“Where” is this service going to be provided at one facility, county-wide, state-wide. Finally, you should make a reasonable assessment of the time period during which the service will be required.

#### Show Overhead 4-5

#### C. THE RFP CHECKLIST

**4-5**  
**RFP CHECKLIST**  

- ❶ The executive summary
- ❷ Background information
- ❸ The terms and conditions
- ❹ The statement of work
- ❺ The proposal requirements
- ❻ The evaluation criteria
- ❼ The proposal attachments

As you can see, there are seven distinct sections that comprise an RFP. What we're going to do next is to take a closer look at each of these sections. You will be drafting some of these sections. Let's start by examining the executive summary.

**Show Overhead 4-6**

**4-6**  
**EXECUTIVE SUMMARY**

- Agency Overview
- Enabling Legislation
- Goals
- Critical Dates
- Evaluation Process

The executive summary usually begins most request for proposals. The executive summary is brief and non-technical overview of the reasons that prompted the solicitation.

**Show Overhead 4-7**

**4-7**  
**CRITICAL DATES**

- Issuance Date
- Bidder's Conference
- Deadline for Questions
- Commencement of Services
- Response Deadline
- Oral Responses
- On-site Visits
- Award Announcement

A well-written executive summary should also contain critical dates in the procurement process including when proposals must be submitted, when review results will be announced, when contract negotiations will commence, and finally, when service delivery will begin.

**Introduce facts for Model Procurement**

In order to get a better understanding of the issues that come up when drafting a request for proposals, we will be using a model procurement. The facts of the model procurement will stay the same throughout today's training.

**Refer participants to page 69 of their manuals and review the fact sheet.**

The State Juvenile Corrections Agency (SJCA) has received funding to implement a new program for juveniles in your state.

The SJCA has identified a need to separately house and provide programs and services for violent youth in the juvenile system. A limited number of juveniles who commit violent offenses in your state are tried as adults, and if convicted, sent to adult facilities. However, in the past two years, the SJCA has noticed an increase of violent offenders in the juvenile corrections population. Many of these youth have failed to meet the statutory requirements necessary to be tried as adults (the use of a firearm in the commission of a dangerous felony, etc.) and must be accounted for by the SJCA.



These juveniles are often housed with juveniles committed for non-violent offenses and have placed a tremendous burden on SJCA's resources.

The Twin Oaks Juvenile Facility was chosen as the site for housing and providing programs and services for violent youth. The facility has been retrofitted in the past year to accommodate the needs of housing violent juveniles. Twin Oaks has the capacity to house 140 juveniles.

The SJCA has identified three distinct groups of juveniles who are to be housed at Twin Oaks.

1. Juveniles who have committed violent acts and are awaiting the prosecutorial decision of whether they will be tried as adults.
2. Juveniles who have committed violent acts against or other youth while in SJCA custody.
3. Juveniles who have committed violent acts that are not sufficient to bring adult charges.

The SJCA has decided that its resources would be best utilized by contracting with the private sector for the operation of Twin Oaks.

The SJCA has budgeted \$12 million for each of the next two fiscal years for the operation

of Twin Oaks.

Portions of Article 50 of title 24 of the State Revised Statutes read:

“24-50-501. Legislative declaration. It is hereby declared to be the policy of this state to encourage the use of private contractors for personal services to achieve increased efficiency in the delivery of governmental services.”

“24-50-506. Applicability of other laws.  
(1) Personal service contracts entered into pursuant to this article are subject to all other applicable laws, which may include but are not necessarily limited to the following:  
(a) State Procurement Law, including the following:

(I) The provisions of Part 14 of Article 30 of this title; and

(II) The “Procurement Code”, Articles 101 to 112 of this title.

**Note to Trainer:**  
**Break the class into groups of 3 or 4 to work in all activities**

**Refer participants to page 71 of their manuals**

**★★★ GROUP ACTIVITY #1 ★★★**

One part of the executive summary is the goals that your agency hopes to achieve through the procurement.

Based on the information, write a paragraph describing the goals that the SJCA hopes to achieve by operating the Twin Oaks facility.

**Note to Trainer:**

**Allow 15 minutes for the writing activity. Have the groups write their goal statements on the board or flip-chart and have members of the group read their goal statement.**

**Show Overhead 4-8**

<b>4-8</b>	<b>RFP CHECKLIST</b>
<ul style="list-style-type: none"><li>❶ The executive summary</li><li>❷ <b><u>Background information</u></b></li><li>❸ The terms and conditions</li><li>❹ The statement of work</li><li>❺ The proposal requirements</li><li>❻ The evaluation criteria</li><li>❼ The proposal attachments</li></ul>	

The next element in the RFP checklist is background information.

The first two items here are the proposal title and number and the name and address of the contracting officer.

## Show Overhead 4-9

**4-9**

### **BACKGROUND INFORMATION**

- Proposal Title and Identifying Number
- Contracting Officer and Address
- Legal Authority
- Eligible Applicants
- Applicant Workshop/Bidder's Conference
- Withhold Award
- Public Documents

The RFP should contain a precise statement of the legal basis for the contracting authority of the agency. This statement often will require identifying both the general procurement statutes and the specific authority of the agency to contract for the particular services described later in the RFP.

## Show Overhead 4-10

### 4-10

#### BACKGROUND INFORMATION

- Financial Parameters
- Cost of Preparing Responses
- Deadline for Receipt of Proposals
- Oral Presentations/On-site Visits
- Validation of Proposals
- Rejection of Proposals
- Multiple Contracts

Price considerations are important to both your agency and potential bidders. How you handle this factor may vary greatly from state to state and from agency to agency within a state.

Some agencies are inclined not to announce the amount of money allocated for a procurement initiative because doing so might cause all providers to offer an equal or nearly equal bid.

**Refer participants to page 97 of their manual.**

Others announce a cost above which your agency could not or would not contract. On page 97 of our sample RFP this agency has a maximum contract amount.

**Ask Question.**

What are the advantages or disadvantages of listing costs like this?

Some provide an estimate of the cost the agency is paying or believes it would pay if it were to provide the service themselves.

Also, we need to look at the nature of the services requested. Take a situation where an agency wants a contractor to design, build, and operate a 140 bed secure juvenile facility.

The agency might:

1. announce a maximum dollar amount for the services and plan for a fixed price contract
2. the construction might be a cost-plus contract with a maximum
3. a per diem rate for management and might be in the best interest of the agency.

Finally, it's likely that your agency will want to have a pre-submission conference. No amount of care will be sufficient to answer each and every legitimate question that potential providers will have once they review an RFP. Thus, everyone's interests are generally best served when you set a formal date is established and include it in the RFP.

If you decide on a pre-submission conference, you should request that questions should be submitted in advance and in writing. Formal responses to those questions should be made available to all potential

providers. Responses to all questions must also be made available to all potential providers whether or not they attend the conference.

**Show Overhead 4-11**

**4-11**

**BACKGROUND INFORMATION**

- Commencement of Services
- Award Notifications
- Contract Period
- Legal Action
- Proposal Format
- Definition of Terms

Following the submission and evaluation of proposals, your agency may want to schedule formal presentations by potential providers. Very often, your evaluation teams will encounter one or more aspects of the proposals they review that need additional information or clarification.

**Ask Questions.**

What are some advantages of an oral presentation?

Possible answers include:

- It allows both potential bidders and the agency to cover all possible issues prior to contract negotiations

### **Ask Question.**

What are some disadvantages of an oral presentation?

- They can be time consuming
- They can rely on personalities rather than substance

Often, after the oral presentation, agencies ask private providers to submit a best and final offer. The best and final offer is often, but not necessarily, about cost. Your agency may want to make a change in its requirements, such as a specific program for the juveniles, and they will allow the private providers time to make changes in their proposals.

Finally, you should include a definition of terms. This section can serve several purposes. It eliminates the need to use the same title or phrase repeatedly. For example, agency will mean the California Department of Juvenile Corrections.

Another purpose of this section is to clarify the meaning of unusual terms, or terms that have a special meaning in the context of the proposal. For example, terms such as:



- Special Education
- Anger Management
- Recreation Plan
- Detained Youth,
- Individual Counseling,
- Individual Education Plan,
- Unusual Incident, and
- Case Management, must be defined.

**Repeat Overhead 4-12**

**4-12**

**RFP CHECKLIST**

- ❶ The executive summary
- ❷ Background information
- ❸ **The terms and conditions**
- ❹ The statement of work
- ❺ The proposal requirements
- ❻ The evaluation criteria
- ❼ The proposal attachments

The next item we will examine is the terms and conditions.

## Show Overhead 4-13

4-13

### TERMS AND CONDITIONS

- Contract type
- Contract term and renewability provisions
- Method and basis of payment
- Subcontractors
- Insurance and indemnification

As you have learned, there are many types of contracts, for example, a cost plus contract, a fixed price contract, a per diem type, etc. The type of contract appropriate for the task at hand should be specified. You state the type, don't allow the potential bidder to select one that they think is best.

The next item is contract term and renewability provisions. The term of the contract must be stated. If one or more renewals of the contract are possible, the number of renewals and the term of each should be stated. For example, when funding is contingent on annual legislative appropriations this must be stated clearly in the RFP.

## Show Overhead 4-14

4-14

### TERMS AND CONDITIONS

- Performance bonds
- Access to youth records
- Measures of Performance
- Quality of Services

Your agency may not want to permit providers to enter into subcontracts with other providers as a means of delivering one or more of the services in the contract. The RFP should clearly indicate that potential providers must indicate any intent they have to subcontract, the services they wish to subcontract and the identity of the intended subcontractors.

The next item is insurance and indemnification. Potential providers must be told that they must provide satisfactory proof of their ability to provide protection for their company and its employees. They must also shield government and its officials from legal liability associated with their performance pursuant to the terms of any contract. As you learned earlier today, there is no guarantee that your agency will be immune from problems associated with a private contractor.

Also, we come to performance bonds. The purpose of performance or completion bonds is to guarantee that private companies will meet its contractual obligations. They are regularly used in construction contracts, and they are sometimes used in service contracts. For example, if you state in your contract that there are time-limits to specific achievements, such as accreditation, then a penalty can be imposed if it is not met.

Another area that some agencies detail in the Terms and Conditions Section of the RFP is the subject of access. By access, I am referring to access to youth, access to records and in some instances, the necessity to have access to the contractor's staff in hearings or depositions. Often a blanket statement that the contractor must provide access to "\_\_\_\_\_" is sufficient. However, some agencies detail what types of access they are referring to.

**Show Overhead 4-15**

**4-15**

**MEASURES OF PERFORMANCE**

- Service Provider's Evaluation of Success
- Performance Measures
  - Percent Positive Releases
  - Percent Negative Releases
  - Misdemeanor Arrests
  - Felony Arrests
  - Percent Early Movement
  - Number of Escapes
  - Percent of Students Escaping
  - Confirmed Mistreatments
- Financial Audit

**Show Overhead 4-16**

**4-16**

### **QUALITY OF SERVICES**

- Monitor, monitor, monitor
  - Complete a risk assessment
  - Determine number of visits per year
  - Define components of monitor
  - Develop forms
  - Determine who conducts monitoring
  - Schedule and track all visits
  - Conduct announced and unannounced visits
  - Track corrective action plans

**Show Overhead 4-17**

**4-17**

### **RFP CHECKLIST**

- ❶ The executive summary
- ❷ Background information
- ❸ The terms and conditions
- ❹ **The statement of work**
- ❺ The proposal requirements
- ❻ The evaluation criteria
- ❼ The proposal attachments

The statement of work section is the core of the procurement effort. Its objective is to communicate the goals and requirements of the state or local agency to all potential providers.

**Show Overhead 4-18**

**4-18**  
**STATEMENT OF WORK**

- Focus of the RFP
- Brief description
- Client characteristics and eligibility requirements

It's generally useful to provide a brief description of the factors that gave rise to the need for contracting. For example, the legislature may have enacted a new statute that mandates the delivery of a particular service at one or more locations in a jurisdiction.

Whatever the reason or reasons may be, this background information explains why the agency has decided to contract for a particular service or set of services.

This section should also concisely describe what the agency seeks to achieve through the efforts of an independent contractor.

It's critical that potential providers understand the client population. Your agency should share everything they know about those who are likely to enter the facility or program.

What is the probable distribution along ethnic lines? Are the clients likely to come from urban, suburban, or rural backgrounds? Are they likely to have lengthy prior records and, if so, what kind of records are they most likely to have? Are they likely to have histories of substance abuse, neglect, physical abuse, sexual abuse, and/or psychiatric problems? Are there eligibility requirements for referrals beyond those of age and legal status? How are those requirements defined?

For example, it's not sufficient to say that all referrals will be classified as serious and violent delinquents. Serious and violent are not precise enough. Valid and unambiguous client information is absolutely essential.

### \*\*\* GROUP ACTIVITY #2 \*\*\*

**Refer participants to page 78 of their manuals**

Your group's assignment is to draft the client characteristic and eligibility requirements section of the statement of work.

Use the information which was compiled from various departments to aid you in your task.



**Note to the Trainer:**

**Allow 20 - 30 minutes for this activity and 10 - 15 minutes for review and critique. Have participants list their client characteristics on the board or flip-chart provided.**

**Review and critique**

**Activity #2**

**Client Characteristics**

**Show Overhead 4-19**

**4-19**

**STATEMENT OF WORK**

- Service requirements

**Lecturette**

The service requirement section of the RFP is the most important and most difficult writing task. On the one hand, it's vital to communicate the nature of the services clearly to all potential providers. On the other hand, it's important that providers be given the opportunity to be creative in their description of how the agency's needs can be met most effectively and efficiently. Often, it's possible to simplify the drafting task by including a requirement that, at a minimum, all proposals must guarantee a level or quality of the desired service or services that meet or exceed the relevant standards for accreditation. It could be required that a facility be accredited a year

from the date of the contract award.

The drafting problems associated with this section of the RFP will vary both with the nature and scope of the services that are sought. An RFP for the procurement of food services at a juvenile facility which houses 100 juveniles could be approached in a fairly matter-of-fact fashion. An effort to contract for medical services for the facility would present a greater challenge. The complete privatization of a juvenile facility would be even more complex. Thus, as the complexity or diversity of the desired services increases, so too, would the need to subdivide this portion of the RFP into two or more subsections.

### **\*\*\* GROUP ACTIVITY #3 \*\*\***

**Refer participants to page 85  
of their manuals**

Your group has been assigned the task of organizing the service requirements section of the request for proposal for Twin Oaks. Given that Twin Oaks is going to be a completely privatized facility, formulate an outline organizing the major components that should comprise the service requirements section of the statement of work.

**Review and critique  
Activity #3  
The Service Requirements**

The outline should be divided into two major sections:

I. Program Design

## II. Program Implementation

### ★★★ GROUP ACTIVITY #4 ★★★

**Refer participants to page 86 of their manuals**

The SJCA has decided that an important part of Twin Oak's overall treatment plan for violent juveniles is the development and implementation of an anger management program.

Your group has been assigned the task of drafting the service requirements portion of the statement of work for the development and implementation of the anger management program.

The following information has been provided by a consultant to SJCA. Some of the information may be useful and some may not be appropriate for the Service Requirements of the RFP.

Write your description on the board or flip-chart provided.

\* The SJCA has determined that in order for the anger management program to be successful it should incorporate both group therapy and individual counseling.

\* Individual and group counseling for the anger management program is to be conducted only by a Ph.D. psychologist and/or a Masters level clinical/administrative supervisor with oversight by a Ph.D. psychologist on contract.

\* The SJCA has determined that each juvenile in the anger management program should receive a minimum of 2 hours in group counseling and 1 hour in individual counseling per week. The maximum number of students in a group counseling session should be no greater than 8.

\* A sum of \$100 / per program participant has been budgeted for materials. These materials can include but are not limited to: workbooks, handbooks, slides, overhead projections, and videotapes.

\* A methodology for assessing the juveniles' progress is to be developed to ascertain both individual participants progress and the programs overall effectiveness.

\* The SJCA has determined that the core components of the anger management program should focus on three topic areas:

1. Anger and Aggression
2. What Causes Anger
3. How to Manage Your Anger

**Review and critique**  
**Activity #4**  
**Treatment Plan**

**★★★ GROUP ACTIVITY #5 ★★★**

**Refer participants to page 88**

The area of rules and discipline has caused

**of their manuals**

several staff to prepare a preliminary list of items to be included in the RFP for Twin Oaks.

Review the list and modify or add items as you see fit.

“The offerer shall:

(A) Ensure that the program identifies and encourages the positive behavior of youth.

(B) Provide each youth and staff with a rule book containing acts prohibited by the program with accompanying disciplinary procedures.

(C) Provide a written policy and procedure that covers the use of room restriction for major rule violation, including the requirement that staff make visual and verbal contact with the youth at least every 15 minutes.

(D) Develop procedures regarding the use and preparation of a disciplinary report by employees when a youth has committed a major violation of facility rules.

(E) Develop policy and procedure for the investigation of alleged major rule violations.”

**Review and critique  
Activity #5  
Treatment Plan**

## Show Overhead 4-20

4-20

### RFP CHECKLIST

- ❶ The executive summary
- ❷ Background information
- ❸ The terms and conditions
- ❹ The statement of work
- ❺ **The proposal requirements**
- ❻ The evaluation criteria
- ❼ The proposal attachments

The proposal requirements should call for a budget that breaks down the cost projections into various areas so that they can be compared with the corresponding components of the proposal. You should require a line item budget for each important program area, such as: administration, security, education/vocational programs, food services, medical services, etc.

Beyond these basic notions, there are no hard and fast rules about this element of an RFP, although applicable legal requirements or agency regulations may mandate the submission of one or more types of information.

## Show Overhead 4-21

**4-21**  
**PROPOSAL REQUIREMENTS**  
Technical Proposal

- Statement of the scope of work
- Proposal approach
- Management plan
- Qualifications

For the purposes of this training, the assumption is that the proposal requirements call for the technical information to be submitted separately from the business or cost information.

### Ask Question.

Why do you think this is normally done?

### Write on board of flip-chart:

- **Scope of Work**

The initial section of the technical proposal requires potential providers to demonstrate their understanding of the needs and objectives of the agency's proposed approach. This section requires potential providers to explain in detail how they would handle the responsibilities stated in the statement of work section of the RFP,

especially in the service requirements.

**Write on board or flip-chart:**

- **The Management Plan**

This section requires potential providers to explain in detail how their proposed approach would translate into actual strategies. This portion of the proposal should include the number, type, and minimum qualifications of the project personnel and a statement of the project time schedule. Potential providers should also be required to state how they propose to handle problems such as construction delays, escapes, disturbances, or various types of emergencies such as employee strikes or natural disasters.

**Write on board of flip-chart:**

- **Qualifications**

Finally, we have the potential provider qualifications. State or local agencies clearly want to have a sound method of judging the qualifications of potential providers. One way is by requiring them to provide a detailed history and background of their companies, their mission statement, their corporate experience and staff qualifications.

This requirement should be exhaustive rather than selective. The agency should require information about the potential provider's experience with all similar or related projects during the past five years.

They should be obliged to identify the name, title, agency, address and current telephone number of the official to whom they were most directly responsible. They should not



be permitted to choose particular persons who are familiar with their prior contracts or to include what amount to canned endorsement letters in their proposals.

At the same time, an RFP should not preclude potential providers from submitting proposals only because they have no proven record of experience. A requirement proving successful performance on a similar or an identical contract is inappropriate. Although it's entirely fair and reasonable that experience plays a role in the evaluation process, it must never be a test that eliminates competition by a new firm.

Reported experience should be taken as nothing more or less than a claim until members of the evaluation team have directly verified it through personal contacts with one or more of the agencies who have contracted with potential providers.

#### Show Overhead 4-22

**4-22**

### **PROPOSAL REQUIREMENTS**

Cost Proposal

The cost or business proposal should establish the cost for the requested services given the approach, the management plan, and other various costs that may be associated with additional RFP requirements

such as insurance costs, travel per diem costs, etc.

Equally important, however, the agencies must require potential providers to present the business proposal in a format that allows all other elements of the proposal to be reviewed fairly and fully. For example, if the objective of a contracting agency were to procure facility management services, then it should mandate that business proposals include subsections with details, information about costs associated with administration, educational programs, facility security, treatment programs, etc.

The agency should also oblige potential providers to supply similar detail for any contract services that they intend to obtain through subcontractors such as medical services or food services.

#### Re-show Overhead 4-23

<b>4-23</b>	<b>RFP CHECKLIST</b>
❶	The executive summary
❷	Background information
❸	The terms and conditions
❹	The statement of work
❺	The proposal requirements
❻	<u>The evaluation criteria</u>
❼	The proposal attachments

Agencies vary dramatically in the weights

they assign to each element of the proposal. It's important to consider the evaluation process carefully and that, in the RFP, you alert potential providers to the weights.

**★★★ GROUP ACTIVITY #6 ★★★**

**Refer participants to page 91 of their manuals**

The following six evaluation criteria have been selected for this procurement—your first activity is to assign a point weight to each item with the total being 100 points.

Evaluation Criteria	Maximum Assigned Points
1. Potential provider's understanding of the background of, need for, and scope of the services being solicited.	_____
2. Evidence of potential provider's past experience with and performance of duties related to the present request for proposals.	_____
3. Adequacy of the proposal approach for service delivery.	_____
4. Adequacy of the proposal management approach.	_____
5. Qualifications and experience of key project personnel.	_____
6. Cost components	_____
Total	<u>100</u>

## Re-show Overhead 4-24

### 4-24 RFP CHECKLIST

- ❶ The executive summary
- ❷ Background information
- ❸ The terms and conditions
- ❹ The statement of work
- ❺ The proposal requirements
- ❻ The evaluation criteria
- ❼ The proposal attachments

Information that would assist potential providers in understanding the needs of the agency should be attached to the RFP; for example, the attachments could include: applicable procurement statutes, enabling legislation, state licensing requirements and other program standards, needs assessment reports, plans for a prototype structure and statistical profiles of client characteristics.

These and other documents may not be easily accessible to potential providers but might increase their understanding of the procurement process, the problems a contracting agency is confronting and how it hopes to attack those problems.

Those drafting an RFP should be able to imagine what they would need if they were in the provider's position. The greater the imagined need, the greater the wisdom either of providing the information in an appendix

to the RFP, or, at a minimum, directing

**4-25**

**Releasing the Request for  
Proposal**

potential providers toward sources from which the information can be obtained.

**Show Overhead 4-25**

Whether expressed in state or local statutes or agency regulations, procurement requirements generally impose obligations on agencies issuing RFPs to assure:

- that information on the release of RFPs is available to a broad range of potential providers and
- that potential providers have a reasonable amount of time to draft their proposals.

These requirements mean that a notice of the release of an RFP must appear in one or more publications and that the time between the RFPs release and the deadline for submissions of proposals is no less than a specific number of days. These requirements must be satisfied; to violate them can easily result in the invalidation of the entire RFP process and significant delays in the delivery of the necessary services.

The policy dimension of the proposal release process is no less important. Vital interests

of state or local agencies are at stake when they issue RFPs and those interests are best served when all aspects of a procurement process invite and encourage competition. The minimum requirements of state or local statutes or regulations may not be enough to serve those interests. For example, the appearance of a notice about an RFP in an official system, state, or local publication may satisfy minimum legal requirements but not reach a wide enough range of potential providers. Agencies may need to go beyond minimum requirements and forward the RFP to all firms with the ability to deliver the type or range of services needed. Similarly, procurement requirements may mandate that the deadline for proposals be no less than 30 days after the official release of an RFP. Policy interests often require a longer time for potential providers to respond.

#### **Show Overhead 4-26**

**4-26**

#### **Reviewing Submitted Proposals**

After the release of the RFP there are several details that should be worked out by the members of the proposal review committee.

- The committee members meet and discuss the selection criteria before receiving proposals so that they can reach an unbiased consensus on the criteria

- The scoring system to be agreed on before the process begins (e.g., will the overall ratings be pooled and averaged as opposed to category-by-category ratings being pooled and averaged; will the committee be subdivided into two subcommittees, one for the technical and one for the business proposal)
- Each committee member to have a written statement of how the selection criteria have been defined
- Each committee member to have a standardized proposal review form
- Opportunities to exist for the committee to convene during the review process to reach a consensus on unanticipated items that may need clarification
- Ratings to be arrived at independently, rather than during a committee meeting where one or more influential or persuasive members might exert improper control over the outcome of the review process
- A formal means for preserving review results and their accompanying rationales

Remember you and your agency have an ethical obligation to move through the

process in a fair and objective fashion.

Your agency should accept the responsibility for meeting with unsuccessful providers and providing constructive criticism of their proposals. Every responsible agency should create and maintain a positive reputation among providers.



STATE OF COLUMBIA  
DEPARTMENT OF CORRECTIONS

CONTRACT TO MANAGE AND OPERATE  
THE SOUTH WASHINGTON MINIMUM SECURITY FACILITY  
IN SOUTH WASHINGTON, COLUMBIA

CONTRACT DOC #99-101

Date of Issuance  
August 18, 2000

## **SECTION I**

### **GENERAL PROVISIONS**

#### **A. Contracting Parties**

This contract, made and entered into this first day of September, 2000, in River City, Columbia, between the State of Columbia Department of Youth Services ("Department"), whose offices are located at 1401 Capitol Street, River City, Columbia 27981, and the American Juvenile Corrections, Inc. ("Contractor"), a Columbia Corporation whose principal office is located at 101 Azalea Avenue, River City, Columbia 27901.

Witnesseth:

Now, in consideration of the mutual promises and covenants contained herein, the Department and the Contractor hereby agree as follow:

#### **B. Legal Basis**

The legal basis for contracting by the Department for management and operational services is provided by Chapter 39 of the Code of Columbia, which authorizes the Department to enter into contracts for the management and operation of juvenile residential facilities for juveniles with private non-profit and for-profit entities, and Chapter 401 of the Code of Columbia, which authorizes procurement of contract services by means of requests for proposals.

#### **C. Definitions of Terms**

1. ACA shall mean the American Correctional Association.

2. ACA Accreditation shall mean the satisfaction of all requirements imposed by the American Correctional Association for the accreditation of juvenile residential facilities.
3. ACA Standards shall mean the standards for juvenile residential facilities in existence at the time of a contract being entered into between the Department and the Contractor or as they may be amended subsequent to the execution of such a contract.
4. Additional Services shall mean any additional management and operation services required to be furnished by the Contractor beyond those otherwise provided for by this Contract which cause an increase in the cost of managing and operating the Facility and which are required by changes in ACA Standards, laws, government regulations, Department policies or court order applicable to the Department.
5. Affirmative Action Policy shall mean a policy adopted by the Contractor which is in full compliance with applicable provisions of federal law and the law of the State of Columbia that ensures equal opportunity in the areas of employee selection, retention, rate of pay, demotion, transfer, layoff, termination and promotion regardless of race, religion, age, sex or ethnic origin.
6. Facility shall mean the South Washington Juvenile Residential Facility located in South Washington, Columbia.
7. For Cause shall mean a failure by either party to meet provisions of the contract when such failure seriously affects the operation of the Facility or the failure of the Contractor to meet minimum standards of performance as specified in the contract.
8. Juvenile Delinquent shall mean a person below the age of 18 who has been adjudicated delinquent by a court or competent jurisdiction on the basis of proof of an act or omission to act that would have constituted a crime had the person been 18 years of age or older at the time of

the act or omission to act.

9. Non-routine Maintenance and Repairs shall mean any maintenance of the facility or repair to equipment within the Facility costing more than \$500 and which shall be the responsibility of the Department.

10. Non-routine Medical Services shall mean necessary dental and medical services, including necessary medical tests and prescription drugs, beyond those provided by medical professions working under contract with the Contractor, the costs of which shall be the responsibility of the Department.

11. Resident shall mean a juvenile delinquent who has been committed to the Facility by the Department.

12. Routine Maintenance and Repairs shall mean any act of maintenance of the Facility or repair to equipment within the Facility costing less than \$500 and shall be the responsibility of the Contractor.

13. Routine Medical Services shall mean necessary and routine dental and medical services, including necessary medical tests and prescription drugs, provided by medical professionals working under contract with the Contractor, the costs of which shall be the responsibility of the Contractor so long as the total cost of non-contractual services, including medical tests and prescription drugs, does not exceed \$250 for any one resident with any cost in excess of \$250 for any one resident being the responsibility of the Department.

14. Juvenile Residential Facility shall mean a facility for juvenile delinquents that is designed and operated to deliver services detailed in the RFP, proposal and contract.

15. Unforeseen Circumstances shall mean those acts or occurrences beyond the reasonable

contemplation of the Department and the Contractor at the time of the execution of a contract between them that materially alter the financial conditions upon which the Contract is based.

## SECTION II

### GENERAL TERMS AND CONDITIONS

#### A. Type of Contract

The Contract is a performance-based, fixed-price contract.

#### B. Term of Contract

The Contract will be in effect for the period of October 1, 2000 to September 30, 2002, subject to the availability of funds and unless the Contract is modified or sooner terminated as hereinafter provided.

#### C. Contract Renewal

The contract may be renewed by the Department on a no-bid basis and on like terms and conditions except with respect to compensation paid to the Contractor for two, two-year terms at the sole discretion of the Department.

#### D. Compensation, Compensation Adjustments and Method of Payment

1. Compensation to the Contractor for the period of October 1, 2000 to September 30, 2002 may not exceed \$7,000,000.
2. Compensation to the Contractor for the period of October 1, 2002 to September 30, 2004

may not exceed \$7,000,000 each year plus a percentage adjustment equal to the percentage increase, if any, in the Columbia Consumer Price Index as published by the Columbia Department of Economic Affairs on June 30, 1994.

3. Compensation to the Contractor for any extension or renewal of this Contract will be determined by negotiations between the Department and the Contractor with any such negotiations to begin at least 90 days prior to the effective date of any such extension or renewal.

4. Subject only to satisfactory performance by the Contractor and the timely receipt of an invoice submitted by the Contractor, compensation to the Contractor will be made on the first day of each month during the term of the contract with the amount of the compensation to be paid being equal to 1/12th of the total annual compensation due to the Contractor.

#### E. Unanticipated Compensation Adjustments

Notwithstanding other provisions of the Contract regarding compensation and compensation adjustments, the Department agrees to increase the total compensation of the Contractor upon submission of proof of either or both of two special circumstances.

1. The Contractor has entered into this Contract based on the requirements of law, court decisions, regulations and ACA Standards in effect as of the contract date. If one or more of these requirements change during the term of the Contract so as to increase the cost of managing and operating the Facility or of delivering the services contemplated in the Contract, the compensation to the Contractor will be increased by a sufficient amount to offset the cost of such increases.

2. Unforeseen circumstances may arise during the term of the Contract or extensions thereto.

Therefore, the parties agree that within 60 days after any unforeseen circumstance and upon submission to the Department of supporting documentation or information, the Department will adjust the total compensation in an amount sufficient to offset the increased cost to the Contractor in managing and operating the Facility because of unforeseen circumstances.

3. If the Department and the Contractor cannot agree on compensation increases caused by unanticipated changes in law, court decisions, regulations, ACA Standards, or unforeseen circumstances within 60 days following submission of a request for a compensation adjustment by the Contractor, the Department and the Contractor may initiate the dispute resolution procedures provided herein.

#### F. Contract Amendments

The Contract may be amended at any time if both the Department and the Contractor agree to any proposed amendment(s) in writing.

#### G. Documents Incorporated by Reference

In addition to the provisions of this Contract, the Department and the Contractor will adhere to all provisions contained in the following documents, which are attached to and are made a part of this contract:

1. Department of Youth Services Request for Proposals #00-101 (Appendix A);
2. Contractor's Proposal dated July 1, 2000 (Appendix B);
3. Chapter 39 of the Code of Columbia, which establishes the duties of the Department and of independent contractors who enter into contracts with the Department for the delivery of

correctional services to juvenile delinquents (Appendix C);

4. Title 39 of the Administrative Code of Columbia, which establishes the minimum standards adopted by the Department for the management and operation of juvenile residential facilities (Appendix D); and
5. Relevant standards established by the American Correctional Association (Appendix E).
6. Reimbursement/Invoice forms and required periodic programmatic reports (Appendix F).
7. Corporate Board Resolution Authorizing Officers to Enter into Contract (Appendix G).

If anything in the Department's Request for Proposals #00-1-1 or the Contractor's Proposal dated July 1, 2000 be different from the terms and conditions of this Contract, the language of the Contract will control.

#### H. Termination by Department for Cause

If the Contractor has unsatisfactorily performed its obligations under the Contract, the Department will have the right to terminate the Contract for cause upon giving written notice of termination. All obligations under this Contract will remain in full force and effect up to the effective date of termination. The notice of termination will specify the nature of the Contractor's failure(s) to perform. The Contractor will be allowed 30 calendar days to cure such failure(s) unless the Department agrees in writing to a time extension within which the Contractor will cure the failure(s). If the Department, exercising reasonable discretion, determines that the Contractor has cured the failure(s), the notice of termination will be rescinded and the Contract will not be terminated for the cause(s) stated in the notice of termination. If the necessary corrective action is not completed within the allowed 30 calendar days, the Department, if it has not granted an



extension of time during which the necessary corrective action is to be completed, may terminate the contract for the cause(s) stated in the notice of termination.

**I. Termination by Department Due to Emergency Conditions**

In the event of an incident or circumstance of any kind, including but not limited to fire or other casualty, the result of which poses a serious threat to the safety, health or security of residents of the Facility or to the general public, the Department, exercising reasonable discretion, may immediately terminated the Contract without penalty and on the same terms and conditions as a termination for cause.

**J. Termination by Department for Contractor Bankruptcy**

In the event of the filing of a petition of bankruptcy by or against the Contractor, the Department will have the right to terminate the Contract on the same terms and conditions as a termination for cause.

**K. Termination by Department Due to Unavailability of Funds**

In the event that sufficient appropriations by the Legislature of Columbia for the management and operation of the Facility are not available after September 30, 2000, the Department may terminate the Contract without penalty.

**L. Termination for Convenience**

This Contract may be terminated without cause or penalty by either the Department or the

Contractor by either party giving written notice to the other at least 120 days before the effective date of the termination. If a termination for convenience occurs, the Contractor shall be entitled to receive just and equitable compensation for management and operational expense under the terms of the Contract for any authorized work completed as of the termination date.

**M. Waiver of Terms and Provision**

No term or provision of this Contract will be deemed to be waived and no breach will be excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented.

**N. Invalidity and Severability**

In the event that any provision of this Contract is being held to be invalid, such provision will be null and void and the validity of the remaining provisions of the Contract will not in any way be affected thereby.

**O. Sovereign Immunity**

The sovereign immunity of the State of Columbia will not apply to the Contractor nor to any subcontractor, agent, employee, representative or insurer of the Contractor. Neither the Contractor nor any subcontractor, agency, employee, representative or insurer of the Contractor may plead the defense of sovereign immunity in any action arising out of the performance of, or failure to perform any responsibility or duty under this Contract.

**P. Arbitration of Disputes**

To the extent permitted by the law of the State of Columbia, any controversy arising out of this Contract which the parties are unable to resolve by mutual agreement may be submitted to arbitration in accordance with the rules of the American Arbitration Association. Issues under arbitration will be heard and decided by three arbitrators, one of whom will be designated by the Department, one of whom will be designated by the Contractor, and one of whom shall be designated by the American Correctional Association. The award, if any, of the arbitrators will be specifically enforceable as a judgment in any court of competent jurisdiction. Neither the Department nor the Contractor may designate an employee or agent as an arbitrator.

**Q. Applicable Law and Venue**

This contract will be construed in accordance with the laws of the State of Columbia and the District Court for South Washington, Columbia will be the venue in the event any action is filed by the Department or by the Contractor to enforce or to interpret provisions of this Contract.

**R. Inclusiveness of the Contract**

This contract contains all of the terms and conditions agreed on by the parties. No other understanding, oral or otherwise, regarding the subject matter of this Contract will be deemed to exist or to bind any of the parties to this Contract.

**S. Independent Contractor Status**

The Contractor will be an independent contractor and neither the Contractor nor its

employees, agents or representatives will be considered employees, agents or representatives of the Department.

T. Third Party Rights

The provisions of the Contract are for the sole benefit of the parties to the contract and will not be construed to confer any rights on any other person.

U. Notices

All notices will be sent certified mail, return receipt requested, to, for the Department:

Mr. Phillip Lesh

Department of Youth Services Building, Room 711

1401 Capitol Street

River City, Columbia 97711-0711

and to, for the Contractor:

Mr. Robert Weir

President, American Corrections, Inc.

101 Azalea Avenue

River City, Columbia 27901

### **SECTION III**

#### **CONTRACTOR RESPONSIBILITIES**

##### **A. Acceptance of Referrals**

The Contractor agrees to accept all juvenile delinquents assigned to the Facility by the Department.

##### **B. General Liability Insurance**

The Contractor agrees to obtain and to maintain general liability insurance sufficient to cover any and all claims that may arise out of the Contractor's management and operation of the Facility and to provide proof of such insurance to the Department prior to the commencement of the delivery of services. The Contractor further agrees to ensure that all dentists, nurses, physicians, psychiatrists, psychologists or other persons from whom the Contractor is authorized by the Department to obtain necessary services have suitable liability insurance.

##### **C. Worker's Compensation and Unemployment Insurance Compensation**

The Contractor agrees to provide unemployment compensation coverage and workers' compensation insurance in accordance with applicable federal and State laws and regulations.

##### **D. Indemnification**

The Contractor agrees to indemnify, defend and hold harmless the Department and the

Department's officers, agents and employees from any suit, action, claim or demand of any description whatsoever for losses or damages arising directly or indirectly from or in connection with the operation and maintenance of the Facility including, but not limited to claims against the Department, the Contractor, or any of their respective officers, agents and employees for alleged violations of civil and constitutional rights. However, nothing in this Contract is intended to deprive the Department, the Contractor or any of their respective officers, agents and employees of the benefits of any law limiting exposure to liability or setting a ceiling on damages or both or of any law establishing any defense to any claim asserted against any of them beyond limitations expressed in this Contract. The obligation of the Contractor to indemnify, defend, and hold harmless will not apply to any suit, action, claim or demand made by any person arising from any action or omission of any person or entity other than the Contractor, its employees or its agents.

**E. Accreditation**

The Contractor agrees to seek, to obtain and to maintain accreditation of the Facility by the American Correctional Association. The Contractor further agrees to obtain ACA Accreditation within 12 months following the commencement of the delivery of services.

**F. Subcontracts and Assignments**

The Contractor agrees not to assign this Contract or to enter into subcontracts to this Contract with additional parties without obtaining the prior written approval of the Department. The Contractor will be responsible for the performance of all assignees or subcontractors.

**G. Affirmative Action Policy**

The Contractor agrees to accept and to abide by the affirmative action policy detailed in the Contractor's Proposal (Appendix B).

**H. Staffing of the Facility, Personnel Qualifications and Personnel Training**

The Contractor agrees to provide the number and types of staff members necessary to meet all of the requirements of this Contract and that the numbers and types of staff members will be in full compliance with the staffing pattern detailed in the Contractor's Proposal (Appendix B). The Contractor further agrees that the qualifications and training, including in-service training, will be in compliance with ACA Standards, relevant requirements of Title 39 of the Administrative Code of Columbia, the personnel qualifications and training standards detailed in the Contractor's Proposal (Appendix B) and, should these sources of minimum personnel qualifications and training be different from one another, that the more demanding standards will control.

**I. Development of Policies and Procedures Manual**

The Contractor agrees, prior to the commencement of the delivery of services, to prepare and to submit to the Department a comprehensive policies and procedures manual and that the policies and procedures set forth therein will not be inconsistent with the relevant portions of the Contractor's Proposal (Appendix B). The Contractor further agrees that any amendments to the proposed policies and procedures manual required by the Department will be incorporated into the policies and procedures manual and reflected in the management and operation of the Facility

within no more than 30 days following receipt by the Contractor of the required amendments.

**J. General Standards for Management and Operation of the Facility**

The Contractor agrees to maintain and operate the facility in a manner that is at all times in full compliance with Chapter 39 of the Code of Columbia (Appendix C), Title 39 of the Administrative Code of Columbia (Appendix D), constitutional standards, all applicable federal laws, all applicable court orders, all local ordinances, all certification or licensing requirements that are effective or that become effective during the term of the Contract, and relevant ACA Standards (Appendix E). If any provision of Chapter 39 of the Code of Columbia, Title 39 of the Administrative Code of Columbia, or this Contract is more stringent than an otherwise similar ACA Standard, the more stringent standard will control. If any ACA Standard is more stringent than an otherwise similar provision of Chapter 39 of the Code of the Columbia, Title 39 of the Administrative Code of Columbia, or this Contract, the ACA Standard will control unless the ACA Standard is contrary to the relevant laws and regulations of the State of Columbia.

**K. Delivery of Management and Operational Services**

The Contractor agrees to provide all management and operational services detailed in the Department's RFP #00-101 (Appendix A) and the Contractor's Proposal (Appendix B), those services including but not limited to:

1. The involvement of all residents in an orientation program immediately following their commitment to the Facility;
2. The preparation of individualized needs assessments and treatment plans on each new



resident within no more than 15 days following his commitment to the Facility;

3. The involvement of each resident in a balanced program of education, vocational training, appropriate individualized or group therapy and recreation that is meaningfully related to the needs assessment and treatment plan prepared for him.

4. The delivery of food, hygiene, health, laundry and sanitation services that meet or exceed all relevant standards contained in Chapter 39 of the Administrative Code of Columbia and the ACA Standards;

5. Any and all other services necessary for the maintenance of a sanitary and secure facility within which the interests of the residents, the Department and the general public are protected; and

6. The development and implementation of a data collection system that systematically, reliably and objectively monitors the progress of each resident in all phases of his involvement in the programs being delivered by the Contractor.

#### **I. Confidentiality of Resident Information**

The Contractor agrees to abide by all State and federal laws and regulations concerning the confidentiality of information regarding residents provided to the Contractor by the Department and information regarding residents compiled by the Contractor during the course of the Contractor's delivery of services to those residents. The Contractor further agrees that all of its employees who work with or who have access to information regarding residents of the Facility will sign a written agreement that requires them to abide by the same confidentiality requirement and that the signed agreement will be available for inspection by the Department.

**M. Research Involving Facility Records or Residents**

The Contractor agrees that it will not authorize access to the Facility, its records or its residents without the prior authorization of the Department.

**N. Reporting Requirements**

The Contractor agrees to prepare and to submit to the Department monthly and quarterly reports containing a summary of Contractor activities that includes, but is not limited to a summary of information regarding admissions, releases, personnel changes, staffing adjustments and other relevant information about the management and operation of the Facility.

**O. Special Incident Reports**

The Contractor agrees to make immediate reports to the Department regarding events that fall within the meaning of special incidents (e.g., escapes, injuries other than minor injuries suffered by either residents or employees caused by accidents, assaults on residents or employees caused or believed to have been caused by either resident or employees, and significant damage to the Facility of whatever origin). The Contractor further agrees that special incident reports will be made within no more than 12 hours following the special incident.

**P. Access to the Facility by the Department**

The Contractor agrees that official representatives of the Department will have immediate access to the Facility for any official purpose at any time.

**Q. Facility Maintenance**

The Contractor agrees to develop and implement a maintenance program which includes the grounds, equipment and buildings of the Facility and which assures that the Facility will be maintained in a good state of repair and maintenance. The Contractor further agrees to assume liability for all routine maintenance costs and to not authorize any non-routine maintenance to be accomplished without a prior written authorization of the Department.

**R. Medical Costs**

The Contractor agrees to assume responsibility for routine medical costs for medical services provided to residents in accordance with the details of the plan for the delivery of medical services contained in the Contractor's Proposal (Appendix B).

**S. Employment of Existing Department Employees**

The Contractor agrees to accord all existing Department employees who are currently assigned on a full-time basis to the Facility equivalent employment by the Contractor in accordance with the employment program as detailed in the Contractor's Proposal (Appendix B).

**T. Background Investigations of Contractor Personnel**

The Contractor agrees that a thorough background investigation will be completed on all employees and agents of the Contractor who are assigned to responsibilities within the Facility on a routine basis prior to any such employees or agents being hired by the Contractor.

U. Selection of an Independent Program Evaluator

The Contractor agrees to retain, at no cost to the Department, an independent program evaluator who is fully qualified to conduct a qualitative and a quantitative evaluation of the quality of all services provided by the Contractor pursuant to the terms and conditions of this Contract, whose suitability for retention has the prior written authorization of the Department, and whose evaluation report must be submitted to the Contractor and to the Department no less than 30 days before the end of each 12-month period of service delivery by the Contractor.

SECTION IV

DEPARTMENT RESPONSIBILITIES

A. Existing Contracts

The Department agrees that there are no currently existing contracts between the Department and others relevant to the maintenance and operation of the Facility or, should any such contracts be in force, that they are not binding on the Contractor.

B. Transportation of Committed Juveniles

The Department agrees that all costs associated with the transportation of committed juveniles to and from the Facility will be the responsibility of the Department.

C. Facility Population

The Department agrees that the number of residents assigned to the Facility by the Department will not exceed 50 residents.

**D. Resident Referral and Release Criteria**

The Department agrees that all juvenile delinquents who are assigned to the Facility will be males between the ages of 16 and 18 whose backgrounds and needs, including their offense histories, psychological or psychiatric profiles and medical requirements, qualify them for assignment to the Facility. The Department further agrees that the Department, based on a review of case records, Contractor recommendations, and any other information it deems to be relevant, will have the exclusive power to determine release decisions for residents of the Facility.

**E. Technical Assistance and Transfer of Information**

The Department agrees to provide technical assistance to the Contractor on a timely basis when such assistance is requested by the Contractor and is necessary to assure the timely delivery of contractual services. The Department further agrees that all case file information will be transferred to the Contractor on or before the date of the transfer of any juvenile delinquent to the Facility.

**F. Appointment of a Contract Monitor**

The Department agrees to appoint a Contract Monitor who will serve as a liaison between the Department and the Contractor who will monitor contract compliance on the part of both the Contractor and the Department, who will submit a written evaluation of Contractor performance to the Department and to the Contractor on at least an annual basis, and who will be authorized to act on behalf of the Department regarding such issues as the release or transfer of residents.

**G. Non-routine Maintenance Costs**

The Department agrees to assume responsibility for all non-routine maintenance costs associated with the maintenance of the facility, including its paved walkways, parking lots, equipment and buildings if and only if the Department either arranged for the necessary maintenance or granted prior authorization to the Contractor to arrange for the necessary maintenance.

**H. Medical Costs**

The Department agrees to assume responsibility for the cost of non-routine medical services provided to residents.

**I. Facility Improvements**

The Department agrees that the Contractor may, at no cost to the Department, remodel or make improvements to the Facility subject only to the prior approval of the Department. The Department further agrees that Contractor requests to remodel or make improvements to the facility will not unreasonably be withheld.

**J. Assistance with Background Investigations of Contractor Personnel**

The Department agrees to assist the Contractor with the completion of background investigations of potential Contractor employees or agents at no cost to the Contractor. The Department further agrees that the scope of this assistance will include assisting the Contractor in the completion of criminal history reviews.

K. Assistance to the Independent Program Evaluator

The Department agrees to cooperate with and to provide technical assistance to the independent program evaluator selected by the Contractor and approved by the Department at no cost to the Contractor or to the independent program evaluator. The scope of this assistance will include be not be limited to authorizing access by the independent evaluator to secure detention facilities operated by the Department and the delivery to the independent evaluator of computerized data maintained by the Department on juvenile delinquents committed to the care and custody of the Department.

STATE OF COLUMBIA  
DEPARTMENT OF YOUTH SERVICES  
1401 CAPITOL STREET  
RIVER CITY, COLUMBIA 27981

RESIDENTIAL SERVICES CONTRACT

This Contract is entered into between American Juvenile Corrections, Inc., hereinafter referred to as the Contractor and the Director of the Columbia Department of Corrections, hereinafter known as the Department.

This document, including in the General Provisions, Scope of Services, Special Provisions, attachments, including any amendments or modifications approved in accordance with the General Provisions, Shall constitute the entire Contract between the parties and supersedes all other understandings, oral or written.

IN WITNESS WHEREOF, the parties hereto agree to carry out the terms of this Contract.

Contractor

Columbia Department of Corrections

\_\_\_\_\_  
Signature of Authorized Individual

\_\_\_\_\_  
Signature of Authorized Individual

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Typed Name



Typed Title

\_\_\_\_\_

Address

Additional Signatures as Applicable

\_\_\_\_\_

Signature

\_\_\_\_\_

Typed Name

\_\_\_\_\_

Typed Title

Typed Title

\_\_\_\_\_

Date

\_\_\_\_\_

Signature

\_\_\_\_\_

Typed Name

\_\_\_\_\_

Typed Title

Approved as to form this \_\_\_\_\_ day of \_\_\_\_\_, 2000

John Q. Smith, the Attorney General

By: \_\_\_\_\_

Assistant Attorney General

STATE OF TEXAS

COUNTY OF TRAVIS

§  
§  
§

## CONTRACT FOR RESIDENTIAL SERVICES

This contract entered into on «BDate», by and between the Texas Youth Commission, hereinafter TYC, and «SPCorpNam», «SPCorpAdd», hereinafter Service Provider, for the provision of residential services, located at «SPProgNam», «SPProgAdd». This contract, NUMBER «Contract», will expire on «EDate».

This contract is entered into under the authority of §61.037, Human Resources Code, for the mutual considerations described in this contract.

### I. SERVICE PROVIDER

For and in consideration of the payment of fees for residential services, Service Provider will:

- A. Obtain and maintain a license to operate a child-care facility as required by the Texas Department of Protective and Regulatory Services.
- B. Comply with the Applicant Response and all amendments to TYC RFP# \_\_\_\_\_ attached as Exhibit B. certification standards and TYC General Administrative Policies (GAP) take precedence over Service Provider's Response.
- C. Comply with applicable the TYC GAP, attached as Exhibit A, and incorporated into this contract as if set forth herein. Any amendments(s) made to the policies in Exhibit A during the term of this contract apply to the Service Provider as of the effective date of said amendment(s).
- D. Maintain an average or above average overall performance measure rating with the TYC Performance Measures, attached as Exhibit C.
- E. Obtain authorization and secure an encumbrance number from the TYC Quality Assurance Specialist prior to incurring medical and dental expenses. These requirements do not apply in the case of a bona fide emergency, in which case notification will be given no later than the next working day after the emergency. Private insurance and governmental assistance programs will be utilized for medical care when possible. Promptly send medical and dental bills to TYC District Office no later than five (5) days after receipt of the invoice. Costs incurred that do not meet these requirements are the responsibility of Service Provider.
- F. Notify the Director of Juvenile Corrections and Contract Care in writing of all revenue sources and reimbursements from third parties for any and all costs or

services associated exclusively with a youth served under this contract. Billing more than one revenue source for the same costs or services provided a single youth is prohibited and shall be recouped or administrative error sanctions shall be imposed as set forth herein. Neither a youth nor his/her parents or guardians will be required to pay for the support of the youth in the program, unless otherwise ordered.

- G. Submit claims to the TYC District Office on invoices bearing Service Provider's name and address no later than five (5) work days from the last day of the month for which payment is requested. Invoices must contain names of youth, TYC numbers and the dates present in the program. The youth is present for payment purposes when he/she is present until 12:01 a.m. or is authorized by the Quality Assurance Administrator to be away.
- H. Complete and submit annually to the TYC Director of Juvenile Corrections and Contract Care the TYC Cost Report for Residential Providers in accordance with the Rules and Overview, attached as Exhibit D. The TYC Cost Report for Residential Providers is due on or before June 30 of the year following the end of Service Provider's fiscal year.
- I. Afford TYC access to TYC youth and all records and/or information on TYC youth at all times.
- J. Forward copies of all audits, monitoring, and investigative reports completed by any entity to the Contract Specialist within five (5) work days of receipt.
- K. Allow TYC/designee to perform monitoring, performance evaluations, investigations, or audits.
  - 1. Provide access, inspection, and reproduction to all records related to services rendered under this contract which are necessary to facilitate monitoring, performance evaluations, investigations or audits.
  - 2. Records include, but are not limited to, contracts, notes, real property documents, accounting/financial records, written policies and procedures, correspondence, performance evaluation data and reports, and any other information pertinent to revenues, costs, expenses, and performance of services provided under this contract belonging to either the Service Provider, its subsidiaries, parent and/or affiliate(s), including subconsultants, subcontractors, employees, and any and all **related parties** to the contract. **Related Party** is defined below.
  - 3. Upon request by TYC and during reasonable business hours, provide facilities to TYC/designee to perform any of the functions listed in this subsection, as well as adequate and appropriate work space and copier.
- L. Maintain all financial records in accordance with generally accepted accounting principles promulgated by the American Institute of Certified Public Accountants;

and follow TYC fiscal management policies and procedures in submitting timely billing, and maintaining financial records, programmatic and supporting documents, statistical records or any other records required to be kept under this contract.

- M. Maintain and retain records for a minimum of three (3) years and 90 calendar days after the termination of the contract period, or for three (3) years after the end of the federal fiscal year in which services were provided, whichever is longer. If any litigation, claims, disputes, or audit involving these records begins before the three (3) years and 90 calendar days period expires, the Service Provider will keep the records and documents until all litigation, claims, disputes, or audit findings are resolved. Resolution is when a final order is issued in litigation, or a written agreement is entered into between TYC and the Service Provider. Contract period means the beginning date through the ending date specified in the original contract or any amendments.
- N. Disclose in writing to the Director of Juvenile Corrections and Contract Care any transactions with **related parties** providing goods or services to Service Provider for which Service Provider is reimbursed under the terms of this contract.
1. A **related party** always includes a family member by blood or marriage, (i.e., spouse, parents, grandparents, child(ren), grandchild(ren), aunt, uncle, niece, nephew, first cousins). In addition a **related party** is defined as any person or entity involved with Service Provider in any manner that would result in the ability of either party to significantly influence the management or operation of the other. Examples of **related parties** include, but are not limited to, parent companies, subsidiaries, as well as principal investors, owners, or managers and their relatives as listed above.
  2. Service Provider must report to TYC any transaction with a **related party** that could result in excessive profits from its relationship with the **related party**. If excessive profits are found to have occurred, administrative error sanctions maybe imposed.
  3. Any violation of this section can be considered a breach and could result in administrative error sanctions or termination.
- O. Provide a written Individualized Case Plan (ICP), with input from the TYC youth, and mutually agreed upon by the Service Provider's staff and the TYC Quality Assurance Specialist within thirty (30) days of placement. The plan will be written in a manner that the youth can understand and will include the following:
1. specified behavioral goals and objectives that reflect at minimum the following areas: ongoing work on offense, daily behavior, education, community reentry and identified needs; at least one must address underlying motivator for youth's delinquent behavior; and

2. the objectives must be specific and measurable and include expected outcomes with time frames and strategies for achieving them.
- P. Hold a monthly ICP review and notify the Quality Assurance Specialist and Parole Officer five (5) work days in advance of the review. The progress review documents the youth's progress in meeting ICP objectives, the behavior, progress in program, and any other relevant information. The Quality Assurance Specialist must participate in these reviews either in person or by phone. The Parole Officer is provided a written copy of the progress review within five (5) work days after the meeting.
- Q. Hold a formal ICP review every ninety (90) days to assess the youth's progress in the program, to modify the Individual Case Plan where necessary to meet the best interests of the youth, to identify aftercare needs, and to review continued need for the placement based on treatment needs and assigned length of stay. The Quality Assurance Specialist must attend these reviews. Families and Parole Officer must be invited by written notice to attend and participate in the ninety (90) day reviews. A follow-up phone call is preferred.
- R. Begin aftercare planning with the youth's first ICP in placement and include specific referrals and services identified for youth with input from family and Parole Officer. A final aftercare plan must be ready no less than thirty (30) days prior to the youth's release from the program and should include documented input from the family and Parole Officer.
- S. Require any of Service Provider's employees or employees of subcontractors to cooperate with or testify in judicial proceedings, legislative and administrative hearings or investigations, at the request of TYC.
- T. Obtain an independent audit of the Service Provider's financial statements in accordance with the following requirements:
1. If the Service Provider receives more than \$400,000 in payments under this contract, an annual independent audit must be obtained; otherwise the Service Provider must obtain a biannual independent audit.
  2. The audited financial statements, notes, opinions, and the report of material weaknesses and reportable conditions must be submitted to the TYC Director of Juvenile Corrections and Contract Care by June 1 of the year following the period covered by the independent audit.
  3. If the Service Provider is a nonprofit entity and receives more than \$300,000 in federal funds, the independent audit must comply with the Single Audit Act of 1984.

4. The independent audit must be performed by a licensed CPA or a practice unit registered in the state in which the audit is conducted.
  5. Independent audits must be performed in accordance with Generally Accepted Auditing Standards and Government Auditing Standards.
  6. In the audit report, an opinion must be expressed on whether the Service Provider's internal controls are designed and function effectively and provide reasonable assurance that:
    - Resources are safeguarded,
    - Laws and regulations are followed, and
    - Information reported to management and to outside parties is reliable and fairly disclosed.
- U. Ensure all direct care staff obtain and maintain certification in a restraint method that is TYC approved. Submit copies of certifications to the Contract Specialist upon request.

#### V. TYC

For and in consideration of the services provided to TYC youth in placement by Service Provider, TYC will:

- A. Determine which youth are eligible for referral to Service Provider's program and make appropriate referrals.
- B. Pay for services rendered by Service Provider at the rate of **«CostDay»** Dollars per day per youth, including up to five (5) days that youth may be authorized to be away from the program. This authorization may be granted and the limit can be extended for unusual circumstances by the TYC Quality Assurance Administrator.
- C. Pay for a placement for a youth for up to three (3) days following an escape, only if the youth is returned to the program.
- D. Terms of payment shall be in accordance with Chapter 2251, Texas Government Code.
- E. Pay medical and dental bills authorized by the TYC Quality Assurance Specialist. Encourage the use of vendors who use the current Maximum Affordable Payment Schedule (MAPS) established by the Texas Rehabilitation Commission.
- F. Complete monitoring of Service Provider's program according to the formal monitoring schedule developed by Central Office Contract Administration.

- G. Remove youth from the program within ten (10) days when Service Provider determines that the youth can no longer remain in the program due to treatment or behavioral issues.
- H. Remove TYC youth from Service Provider's program when conditions exist that threaten the health, safety and welfare of TYC youth in the program.
- I. Provide a complete and updated Common Application for Placement of Children in Residential Care for each youth.
- J. Assign a Quality Assurance Specialist for TYC youth in program and a Quality Assurance staff will make at least one on-site visit per month. If no youth are in program, visit is not required.
- K. Coordinate the formal 90 day Individual Case Plan Review.
- L. Provide amended General Administrative Policies to the Service Provider in a timely manner.

### **III. CERTIFICATIONS**

#### **Article 1: Equal Opportunity**

Service Provider certifies compliance with all terms, provisions, and requirements of Titles VI and VII, Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and any other Federal, state, local or other anti-discriminatory act, law, statute or regulation, along with all amendments and revisions of the acts, laws, statutes or regulations, in the performance of this contract, and will not discriminate against any child or youth, client, employee, or applicant for employment because of race, creed or religion, age, sex, color, national or ethnic origin, handicap, or any other illegal discriminatory basis or criteria.

#### **Article 2: Unfair Business Practices**

Service Provider certifies that it has not been found guilty in a judicial or state administrative agency proceeding of unfair business practices within the year preceding the effective date of this contract. Service Provider further certifies that no officer of Service Provider has served, within the past year, as an officer of another company which has been found guilty in a judicial or state administrative agency proceeding of unfair business practices. If the above certifications are false, this contract is void.

#### **Article 3: Franchise Taxes**

**Section 1:** Service Provider certifies that should Service Provider be subject to payment of Texas franchise taxes, all franchise taxes are current.

**Section 2:**

If such certification is false this contract may be terminated at the option of TYC or other administrative error sanctions may be taken. If Service Provider is exempt from payment of Texas franchise taxes, Service Provider shall so indicate by attachment to this contract.

**Section 3:**

If Service Provider's payment of Texas franchise taxes becomes delinquent during the term of this contract, Service Provider will notify TYC within 24 hours. If such delinquency cannot be cured within 24 hours and a copy of the Certification of Account Status proving payment of delinquent taxes cannot be provided to TYC, this contract may be terminated at the option of TYC or other administrative error sanctions may be taken under the provisions of the contract.

**Article 4: Asbestos Regulation Compliance**

Service Provider certifies compliance with the Asbestos Hazard Emergency Response Act of 1986 (AHERA) by having on file with the Texas Department of Health (TDH) a copy of Service Provider's AHERA Management Plan for each facility the Service Provider owns, leases, or otherwise uses as a school or is part of a school, grades kindergarten through 12, inclusive where applicable. Prior to the initiation of services under this contract, Service Provider shall provide to TYC a certification of an asbestos-free environment or a copy of the TDH acceptance and approval for the Service Provider's AHERA Asbestos Management Plan(s).

**Article 5: Human Immunodeficiency Virus Services Act Compliance**

**Section 1:** Service Provider certifies compliance with the HIV Services Act, [Vernon's Texas Code Annotated (VTCA); Health and Safety Code, Section 85.001, et seq] requirements for maintenance of confidentiality regarding HIV and its related conditions, including Acquired Immunodeficiency Syndrome (AIDS).

**Section 2:** Service Provider further certifies that workplace guidelines are developed and implemented. Service Provider may elect to use workplace guidelines developed and implemented by TYC.

**Section 3:** In the absence of confidentiality guidelines, Service Provider is not eligible to receive state funds.

**Article 6: Communicable Disease Prevention & Control Act Compliance**

Service Provider certifies compliance with the applicable provisions of the Communicable Disease Prevention and Control Act, [Vernon's Texas Code Annotated (VTCA); Health & Safety Code, Section 81.001 et seq].



## **Article 7: Federal Confidentiality Compliance**

Any program that specializes, in whole or in part, in providing treatment, counseling, and/or assessment and referral services for youth with alcohol or other drug problems must comply with the Federal confidentiality regulations. Said regulations apply only to programs that are federally assisted either directly or indirectly. Service Provider certifies compliance with these Federal requirements for confidentiality [42 USC Section 290 dd-2; 42 CFR Part 2].

## **Article 8: Educational Requirement**

Service Provider is responsible for implementing and ensuring that youth placed in their program are provided with the appropriate educational services as required by state and federal law.

## **Article 9: Possession of Weapons**

Service Provider agrees that weapons, as defined in the Texas Penal Code, §46.02, may not be possessed by anyone on the premises of Service Providers' program. No person shall carry or possess any type of firearm while providing services to a TYC youth. Premises is defined as a building or any portion of a building. This prohibition includes the carrying of a concealed handgun licensed under the authority of Texas Civil Statutes, Art. 4413(29ee).

## **Article 10: Required Disclosure of Lobbyist Activity**

Service Provider agrees that if any person who is an employee of, director of, subconsultant, or subcontractor for Service Provider is required to register as a lobbyist under Chapter 305, Texas Government Code at any time during the term of this contract. Service Provider shall notify TYC and provide timely copies of all reports filed with the Texas Ethics Commission as required by Chapter 305, Texas Government Code.

## **Article 11: Notification to TYC of Subconsultants & Subcontractors**

**Section 1:** TYC shall be notified of the selection and/or use of all subcontractors, or subconsultants regularly used by the Service Provider in performing or assessing the performance of Service Provider's duties under this contract if paid or anticipated to be paid an amount exceeding \$5,000.00 during the term of this contract, and they are subject to the approval of TYC; said approval will not be unreasonably withheld.

**Section 2:** No contractual relationship will exist between Service Provider's subconsultants or subcontractors and TYC. TYC shall have no responsibility whatsoever for the conduct, actions, or commissions

**Section 3:**

(active or passive) of any subconsultants or subcontractors in the performance of their duties under this contract.

Service Provider shall be solely responsible for the management of any subconsultants or subcontractors in the performance of their duties under this contract.

**Article 12: Compliance with Child Support, §231.006, Family Code**

"Under §231.006, Family Code, the vendor or applicant certifies that the individual or business entity named in this contract or bid is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if his certification is inaccurate."

SERVICE PROVIDER MUST PROVIDE, IN THE SPACE BELOW, THE NAME AND SOCIAL SECURITY NUMBER OF AN INDIVIDUAL OWNER, A SOLE PROPRIETOR AND ALL PARTNERS, SHAREHOLDERS, OR OWNERS WITH AN OWNERSHIP INTEREST OF AT LEAST TWENTY-FIVE (25) PERCENT OF THE BUSINESS ENTITY ENTERING INTO THIS CONTRACT.

For nonprofit corporations with no identifiable owner of twenty-five percent (25%) or more of the corporation, indicate with "none" on the first line below.

«ANameSSNPercent»

\_\_\_\_\_  
Name, Social Security Number, Percent (%)

«BNameSSNPercent»

\_\_\_\_\_  
Name, Social Security Number, Percent (%)

«CNameSSNPercent»

\_\_\_\_\_  
Name, Social Security Number, Percent (%)

«DNameSNPercent»

\_\_\_\_\_  
Name, Social Security Number, Percent (%)

**Article 13: Compliance with §572.054, Texas Government Code**

Service Provider certifies compliance with §572.054, Texas Government Code. Service Provider has not employed a former officer or employee of TYC to perform services on Service Provider's behalf, to secure this contract or to represent Service Provider in any manner prohibited by the referenced statute. A false certification could result in termination of this contract.

**Article 14: Signatory Authority**

The undersigned signatory certifies by his/her signature, that he/she has the authority to bind the Service Provider to the contract provisions stated herein.

## **IV. GENERAL PROVISIONS**

### **Article 1: Relationship of Parties**

The Service Provider is acting as an independent contractor and is wholly responsible for the day-to-day operations of its programs and employees; no joint venture, partnership, or agency exists nor shall be implied by the terms of this contract. No employee of Service Provider shall become an employee of TYC by virtue of this contract.

### **Article 2: Indemnity**

Service Provider agrees to be liable for, and hereby does indemnify and hold harmless TYC and its officers, directors, agents, employees and representatives from and against any and all liability for any and all claims, suits, demands, causes of action, and/or damages, (including costs of court and reasonable attorneys' fees) arising from or based upon misconduct, intentional or negligent acts or omissions on the part of Service Provider, its officers, directors, agents, representatives, employees, or visitors which may arise out of or could result from this contract.

### **Article 3: Liability Insurance**

- Section 1:** Service Provider shall maintain liability insurance in the amount of \$300,000 for each occurrence of negligence. The insurance must cover injury to a youth that occurs when the youth is in Service Provider's care, custody or control.
- Section 2:** Service Provider shall provide proof of insurance documents to the TYC Director of Juvenile Corrections and Contract Care.
- Section 3:** The required insurance coverage must be maintained during the term of this contract in the above stated amount. Failure to maintain the required insurance coverage may result in termination of this contract or any other administrative error sanctions.

### **Article 4: Confidentiality and Security**

- Section 1:** Service Provider agrees that all its employees will comply with state and federal law and with TYC policies regarding the confidentiality of student records and identifying information.
- Section 2:** Service Provider agrees that all information regarding TYC and/or its youth that is gathered, produced, or otherwise derived from this contract shall remain confidential subject to release only by permission of TYC.
- Section 3:** All Service Providers employees who visit any TYC facility will comply with that facility's security regulations.

## **Article 5: Administrative Error Sanctions**

- Section 1:** TYC, based on information from monitoring or other verifiable sources, may terminate this contract for the reasons set forth in the article dealing with termination below, or take other actions including, but not limited to:
- a. requiring the Service Provider to take specific corrective actions in order to remain in compliance with TYC policy and/or any contractual term; and/or
  - b. recoup payment made to Service Provider; and/or
  - c. impose recommendations from audit or investigative findings, or sanctions under GAP.83.35; and/or
  - d. suspend, place into abeyance, or remove any contractual rights including, but not limited to, withholding payment, cessation of placement and/or removal of all youth presently in the program.
- Section 2:** Service Provider shall cooperate fully with TYC and its authorized representative in carrying out corrective action plans.

## **Article 6: Termination**

- Section 1:** Service Provider may terminate its obligations under this contract by giving thirty (30) days notice and assisting in relocating youth in the program to other placements.
- Section 2:** TYC may terminate its obligations under this contract by giving thirty (30) days notice, or immediately in the event youth are removed from the program when conditions exist that threaten the health, safety or welfare of TYC youth in the program, or in the event of breach of contract by Service Provider.
- Section 3:** TYC may terminate its obligations under this contract according to GAP.83.35, regarding Quality Assurance.
- Section 4:** TYC shall terminate this contract in the event that TYC is not granted funding to pay for the herein described services or in the event that funding is lost due to either a reduction in the budget or a reallocation of budgeted funds.

## **Article 7: Waiver**

No waiver by either party of any breach or default of the other under this contract shall operate as a waiver of any future or other breach or default, whether of a like or different character or nature.

## **Article 8: Severability**

If any part of this contract is contrary to any federal, state, or local law, it is not applicable and such invalidity shall not affect the other provisions or applications of this agreement which can be given effect without the invalid provision or application and to that end the provisions of this contract are declared to be severable.

## **Article 9: Contract Amendment**

No other agreements, oral or written, shall constitute a part of this contract unless such be made in writing, executed by the parties hereto or their successors, and expressly made a part thereof.

## **Article 10: Contract Renewal**

The contract will not be automatically renewed. The contract may be renewed and the rate and services may be renegotiated based on performance and service delivery and the mutual agreement of both parties.

## **Article 11: Notice of Changes**

**Section 1:** Service Provider shall notify TYC immediately in writing in advance of any significant change affecting the Service Provider, including but not limited to change of Service Provider's name or identity, location of services, ownership or control, governing board membership, key personnel, payee identification number, and other significant changes that may affect the delivery of services under the terms of this contract.

**Section 2:** Service Provider shall refrain from transferring or assigning this contract or from entering into any subcontract for the services under this contract without prior written approval from TYC

## **Article 12: Notice**

Required notices will be provided to the Director of Juvenile Corrections and Contract Care at the TYC Central Office at 4900 North Lamar, Post Office Box 4260, Austin, Texas 78765; to the TYC District Office at «DistOffAdd», to the Contract Specialist at «ConSpecAdd»; to the Quality Assurance Specialist at «QAAdd»; and to the Service Provider at «SPNotAdd».

## **Article 13: Venue**

In any legal action or criminal prosecution arising under this contract, the laws of the State of Texas shall apply and venue will be in Travis County, Texas.

## **Article 14: Dispute Resolution**

1. The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used, as further described herein, by the Texas Youth Commission and Service Provider to attempt to resolve any claim for breach of contract made by the Service Provider.
  - A. Service Provider's claim for breach of this contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, Subchapter B, of the Government Code. To initiate the process, the Service Provider shall submit written notice, as required by Subchapter B, to the Executive Director. Said notice shall specifically state that the provisions of Chapter 2260, Subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of the Texas Youth Commission and the Service Provider otherwise entitled to notice under the parties' contract. Compliance by the Service Provider with Subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, Subchapter C, of the Government Code.
  - B. The contested case process provided in Chapter 2260, Subchapter C, of the Government Code is the Service Provider's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by the Texas Youth Commission if the parties are unable to resolve their disputes under subparagraph A. of this paragraph.
  - C. Compliance with the contested case process provided in subchapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this contract by the Texas Youth Commission nor any other conduct of any representative of the Texas Youth Commission relating to the contract shall be considered a waiver of sovereign immunity to suite.
2. The submission, processing and resolution of the Service Provider's claim is governed by the published rules adopted by the Texas Youth Commission pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended.
3. Neither the occurrence of an event nor the pendency of a claim constitute grounds for the suspension of performance by the Service Provider, in whole or in part.

## **Article 15: No Third Party Beneficiaries**

The terms of the Agreement are for the sole benefit of the parties to the Agreement and will not be construed to confer any rights on any other person.

**For the Texas Youth Commission:**

\_\_\_\_\_  
Director of Juvenile Corrections and Contract Care

\_\_\_\_\_  
Date

**For the Service Provider:**

\_\_\_\_\_  
Service Provider

\_\_\_\_\_  
Date

**Approved as to form:**

\_\_\_\_\_  
TYC Attorney

\_\_\_\_\_  
Date

Contract Number: «Contract»

## Module V

# The Contract and Contract Negotiations



# **MODULE SUMMARY**

## **MODULE 5**

### **The Contract and Contract Negotiations**

#### **TARGET POPULATION:**

Juvenile Administrators and Technical staff

#### **TIME ALLOCATION:**

2 Hours

#### **SPACE REQUIREMENTS:**

Accommodations for 20 - 30 participants

#### **PERFORMANCE OBJECTIVES:**

At the conclusion of this module, participants will be able to:

1. List and explain the three major sections of a contract.
2. Explain the relationship between the RFP, Proposal, and Contract.
3. Negotiate from both the contractor and agency position on selected sections of the contract.

#### **EVALUATION PROCEDURES:**

1. Large group discussion
2. Small group discussion
3. Activities and exercises

## **Module V—The Contract and Contract Negotiations**

### **A. INTRODUCTION**

#### **Lecturette**

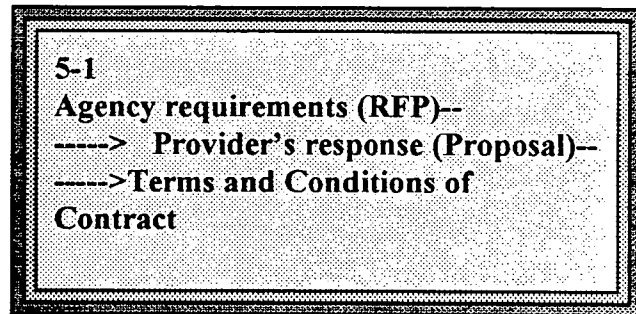
The final and most formal step that completes a partnership between the public and private sectors involves the preparation, negotiation and execution of a contract. A contract is a binding agreement between two or more parties that imposes a legal obligation to act in accordance with the terms and conditions of the agreement.

Any contracting discussion raises questions about contract law. Those questions are clearly important, but it is not the purpose of this training to go into detail about contract law.

Our goals to provide you with basic information that you need to know about contracts and to give you practice in negotiating.

## B. THE RELATIONSHIP BETWEEN THE RFP AND THE CONTRACT

### Show Overhead 5-1

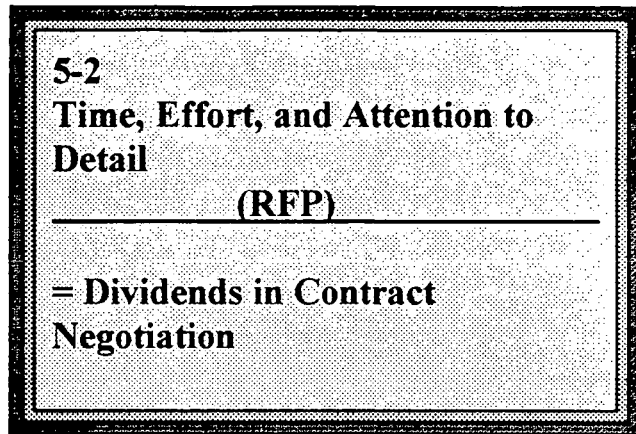


The terms and conditions of a contract for juvenile correctional services are a logical extension and a legal formalization of the requirements an agency expressed in an RFP and the manner in which a provider proposed to meet those requirements in its response to the RFP.

A contract may address issues that did not receive attention in either the RFP or the provider's proposal. However, most of these differences will be linked either to legal aspects of contracting or to a need to define general language from an RFP, the provider's response to the RFP, or the language in both documents more precisely.

If the parties to a contract confront a problem during contract negotiations, the cause can generally be traced to the RFP.

## Show Overhead 5-2



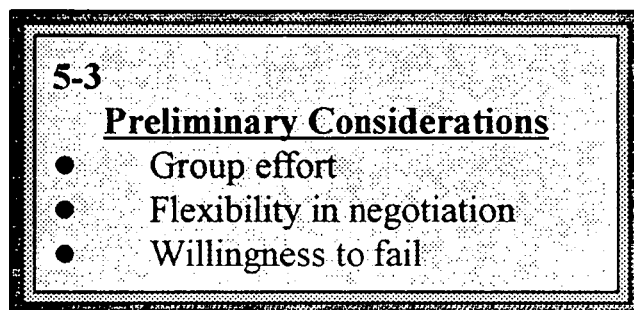
Also, the time, effort and attention to detail in a sound RFP will pay substantial dividends when contract negotiations begin. If you have a comprehensive RFP, quality proposals and a sound proposal review process, the task of contract negotiation should be simple.

### C. PRELIMINARY CONSIDERATIONS

## Show Overhead 5-3

### Reveal

#### • Group Effort



The drafting and negotiating of a contract is a group effort. The task requires the

availability of expertise and information from various people. Some of those people may not even be agency personnel and instead may work in various other offices or agencies.

**Ask Question.**

Who are some of the types of personnel that might assist?

Possible answers: the Office of the Attorney General, the Department of Purchasing and Procurement, the Department of Administration, and various others.

**Reveal**

**• Flexibility**

Those with little experience in preparing or negotiating contracts might believe that contracting agencies write a contract that is then merely submitted to a contractor for signature. This image of the contracting process seldom matches "real world" experience. Contracts are negotiated between agencies and providers rather than imposed by agencies. Those of you charged with the responsibility of negotiating contracts for services must approach the negotiation process with a thorough understanding of the objectives your agencies want to achieve. Such an understanding will encourage flexibility on some issues but inflexibility on others. It is important that the contracting process involve as much candor and flexibility as possible. Perhaps the greatest enemy of successful contract negotiations involves one or all parties approaching contract negotiations with rigid

preconceptions of what the final document will contain.

## **Reveal**

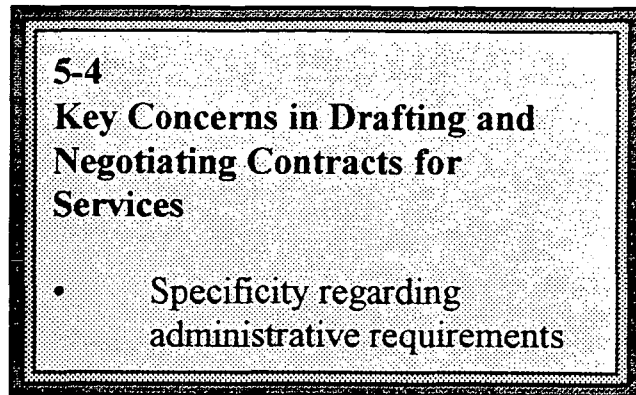
- **Willingness to Fail**

A related but difficult aspect of the contracting process involves what might be called a willingness to fail. One party to a contract negotiation cannot meaningfully negotiate with another if he or she approaches the process thinking that the only acceptable outcome of the negotiation will be a signed contract. If, despite good faith negotiations, a mutually acceptable contract remains beyond reach, then the agency must be willing to terminate the negotiations this could result in negotiations with another contractor or to re-issue the RFP. A potential provider must also be willing to walk away from the negotiating table. No productive purpose is served by signing a contract when one or both of the parties view the contract as fundamentally flawed.

The Contract generally references both the RFP and the Proposal in appendices.

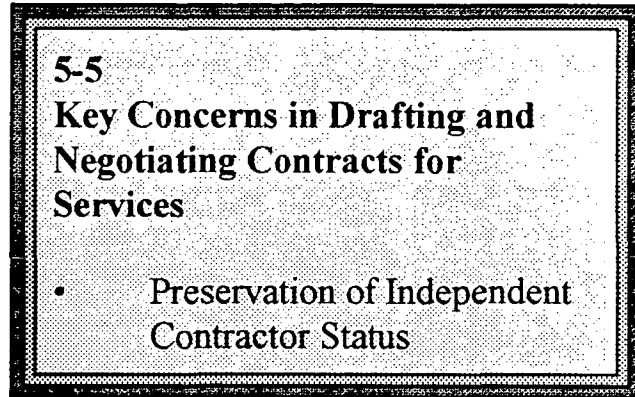
There are two key concerns that you need to be aware of in both preparing and negotiating a contract. The first of these is your administrative requirements.

## Show Overhead 5-4



The problem in this area is one of agency familiarity and contractor unfamiliarity.

Put differently, you may be quite comfortable with their agency's standards in such areas as the maintenance of files, the preparation of administrative reports and the submission and processing of invoices. Contractors are likely to have their own corporate standards for these matters. Very often, agency and corporate standards differ significantly and, equally often, independent contractors are unfamiliar with agency policies, procedures and standards. Thus, an important goal of contract negotiations and of contracts is to assure that contractors fully understand and appreciate the administrative requirements with which they will be obliged to comply.



Most contracts for juvenile correctional services contain a clause aimed at establishing the status of a contractor as an independent contractor. In the sample contract, for example, the language is as follows: "The Contractor will be an independent contractor and neither the Contractor nor its employees, agents or representatives will be considered employees, agents or representatives of the Department."

There are good legal and policy reasons for including similar language in contracts. The legal reason is one of limiting the legal liability of a contracting agency for the actions of those with whom it contracts for services. Generally speaking, a government agency is legally responsible for the torts of its employees, its agents and those who are its official representatives. A government agency is generally not legally responsible for the torts of its independent contractors. However, the "boiler plate" of a contract is meaningless if a contracting agency says that independent contractors are not "employees,

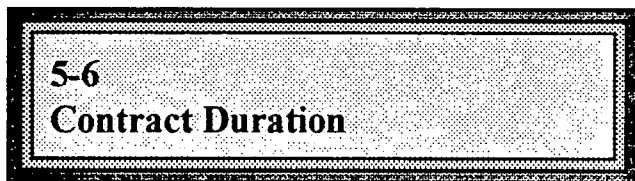


agents or representatives" and then in fact deals with them as though they were subject to the same controls as "employees, agents or representatives." Despite the careful definitions in contracts regarding this issue, the courts are inclined to ignore contractual terms when everyday practice suggests that the nature and scope of the agency's control was so pervasive that the independent contractor was, in effect, transformed into an agent.

We will now shift the focus to two specific areas of contract drafting: contract duration and termination. While it is impossible to include well-drafted clauses that would fit each agency's needs, it is important to discuss these areas broadly.

#### D. CONTRACT DURATION

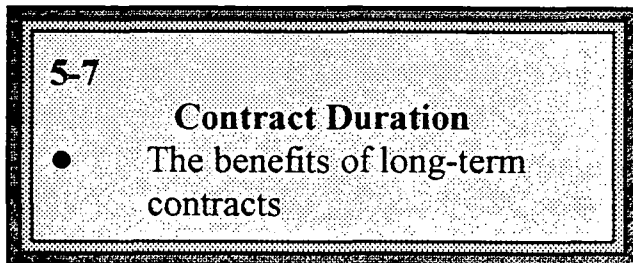
#### Show Overhead 5-6



Contracts for the operation of secure juvenile correctional facilities have a broad range. Normally, county and state contracts are limited by statutes to one to three years duration. Others maintain that most facility operations contracts range from three to five years.

Establishing a term for a contract involves a trade off between stability and the benefits of competition. The longer the term, the greater the program stability. However, in long-term contracts there is reduced opportunity for market competition and the potential for more cost-effective programming.

### Show Overhead 5-7



There are a number of disadvantages to short-term contracts (i.e., under three years). For example, the contracting agency must go through the time consuming competitive procurement process more frequently. It may be difficult to find an available, suitable contractor within the relatively short time period involved in rebidding. Also, if you want to recontract with the same vendor, the contract cost could increase as a result of new conditions being introduced by either party.

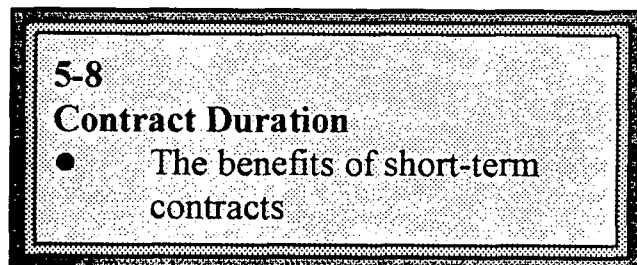
Further, were the rebidding to occur too frequently, the contractor might increase its costs to compensate for uncertainties, as well as for "added startup and shut-down costs." Short term contracts make it difficult for corporations to plan their revenues and budgets, develop programs and personnel,



provide in-service and professional development training to their staff, and remain financially competitive. As a result, these companies may require higher fees to cover their costs. Also, it may be difficult to find contractors willing to bid. This would reduce the advantages of competition.

Duration becomes a particularly significant issue for contractors who need to make substantial initial capital investments, such as facility construction or major renovation. They need several years of a financial relationship with government to recoup their initial capital expenditures. Further, with long-term contracts the contractor has an increased incentive to make long term commitments to improve the physical aspects of the facility services, and staffing.

#### **Show Overhead 5-8**

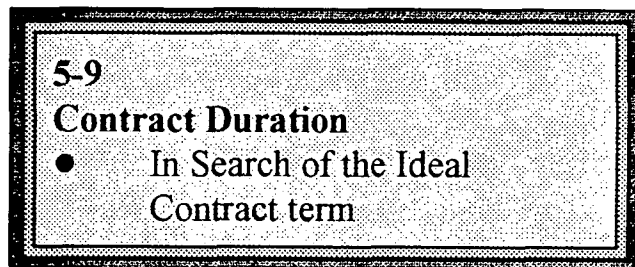


Yet, shorter term contracts have their own advantages. Competition is increased, potentially resulting in decreased or at least not increased contracting costs. For example, the incumbent contractor will see the need to keep costs down and maintain high quality programming to achieve contract renewal. Also, the contracting agency has increased

opportunities to select a new contractor who may be able to provide at least the same quality services at less expense.

Competition may be reduced at rebidding longer term contracts, as potential bidders might believe that the incumbent contractor has a competitive edge—the incumbent already has substantial knowledge of the program and the needs of the agency. Thus, short term contracts help to prevent “market entrenchment,” as well as “cronyism.” In addition, there is a reduced need for government and the contractor to anticipate all of the issues and problems that may arise in the future. And, it is easier to renegotiate contracts to address changing needs.

#### Show Overhead 5-9



The contract term should be long enough to allow the contractor to re-coup its front-end capital investments and to become fiscally efficient. It also needs to be long enough to give the program an opportunity to stabilize and show how well it can operate. Further, the contract duration needs to be at least three years to allow for a meaningful program assessment. However, the duration

must be short enough to encourage contractors to be innovative, perform well, and keep costs down to enhance its chances to be successful on contract renewal or re-bidding; prevent market entrenchment; encourage other vendors to compete; and provide the contracting agency flexibility in addressing changing program needs.

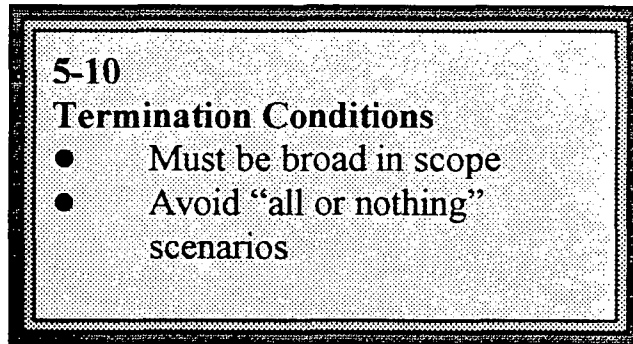
In establishing the contract duration, it also needs to be kept in mind that contracts often allow for one or more renewals, which provide the contractor a level of stability.

A good rule of thumb for secure facility management contracts is that the initial term range between three and five years. Where facility construction is not involved, the high end of this range becomes less important. For small community residential contracts (not involving construction) and non-residential programs (e.g., probation, diversion), a two or three year term would be appropriate, since major capital and start up expenses would not be an issue.

Whatever its duration, the contract should specify the time and date it begins and terminates. For multi-year contracts it is important to make clear that they are subject to the availability of funds.

## E. TERMINATION CONDITIONS

### Show Overhead 5-10



The hard reality of contracting for services is that even the best procurement process and the best contract do not guarantee success. Circumstances sometimes arise that require the relationship between a contracting agency and an independent contractor to be terminated. It's essential that those circumstances be reflected fairly and precisely in contracts.

There are two important points regarding termination clauses in contracts. The first of these requires recognition of the fact that provisions for termination must be broader in scope than may be immediately apparent to some. It might become necessary for an agency to terminate a contract because of unsatisfactory performance by an independent contractor. This is certainly the aspect of termination that tends to preoccupy those who draft contracts and those who are contract monitors. Beyond the obvious, however, are several other possibilities.

These include the failure of a contracting agency to meet its obligations under a contract, the impossibility of continuing a contractual relationship because of an insufficiency of funding, the impossibility of continuing a contractual relationship because of events beyond the control of both the contracting agency and the independent contractor for example, a facility managed and operated by an independent contractor is destroyed by a fire, a flood, a tornado or some other "act of God," or because the circumstances that prompted the agency to contract have changed in such a way that there is no longer a need for the services being provided by the independent contractor. Each potential reason for terminating a contract should be addressed in the body of the contract.

Second, care should be taken to avoid "all or nothing" scenarios in which an independent contractor is either in full compliance with each and every term and condition of its contract or at imminent risk of termination for cause. To be sure, state agencies have the right to expect that independent contractors will fully discharge their contractual responsibilities and state agencies have an obligation to satisfy that expectation. However, it's almost always true that no useful purpose would be served by an effort by either party taking action to terminate a contract for cause simply because non-compliance was detected.



The better and more reasonable strategy to follow—and to anticipate in the terms of a contract for services—calls for little more than a bit of common sense. Common sense recommends a relatively informal effort to achieve compliance with a contract before a formal effort unless the non-compliance detected by the complaining party involves an act or a failure to act that threatens the interests of the juveniles or the general public. Because typical contracts for services provide for contract monitors to be appointed by the state agency, there generally is someone through whom the parties to a contract can work in their efforts to achieve the necessary contract compliance. If the breach persists or is so serious that informal efforts would be inappropriate, common sense also recommends that there be one or more steps the complaining party can take prior to the actual termination of the contract. At a minimum, the complaining party to the contract should agree to give the offending party a reasonable period of time during which to remedy the problem.

#### F. CONTRACT NEGOTIATIONS

**Refer participants to page 124  
and read instructions for  
Activity 1**

#### **★★★ GROUP ACTIVITY #1 ★★★**

Assume that an RFP established the per diem cost of a facility operated by your agency at \$75 and required all qualified providers to include cost proposals that committed them

to providing the same services for the same number of juveniles at a cost at least 5 percent below the benchmark price of \$75. Thus, no provider submitting a cost proposal calling for a per diem above \$71.25 would meet the minimum requirement of the RFP (i.e.,  $\$75 \times .95 = \$71.25$ ). Also assume that XYZ Inc. was the most highly rated provider, that XYZ, Inc. committed to a per diem cost of \$71.25, and that during contract negotiations, XYZ, Inc. persuasively argued that the overall caliber of the services it could provide would be upgraded either if the per diem could be increased to \$78 or, if another 30 beds were added to its minimum. Given the persuasive argument advanced by XYZ, Inc., would it be reasonable for the agency to consider an increase in the per diem? Why or why not? What about an increase in the minimum capacity?

**After 10 minute, solicit answers from the participants**

The probable answer is no. All potential and actual providers were placed on notice that no cost proposal calling for a per diem in excess of \$71.25 would be considered. If the agency either awarded a contract that included a per diem of \$78 for the number of residents described in the RFP or per diem of \$71.25 for a facility of larger size, the decision of the agency would invite a challenge.

The better strategy for the agency would be either to terminate the procurement without awarding a contract and then re-issue an amended RFP or to contract with XYZ, Inc.

for the delivery of the basic, but not the augmented services it proposed to offer.

**\*\*\* GROUP ACTIVITY #2 \*\*\***

**Refer participants to page 112 of their manuals and read instructions for Activity #2.**

ACTIVITY: Your agency has selected YouthFirst to provide programming and services to juvenile at the Twin Oaks Facility. Before signing the contract, there are a few items which need to be negotiated between your agency and YouthFirst.

The items which need to be negotiated are:

1. The length of the contract
2. The staffing
3. Security issues

Use the following information to aid you in your task:

- Money has been appropriated for Twin Oak's privatization for 2 years.
- State law dictates that whenever a state facility is privatized that displaced workers be given priority for job placement at the private facility.
- YouthFirst would like to hire some of the previous employees from Twin Oaks, but is concerned that there are

not enough current employees who are fluent in Spanish. Since Twin Oaks has a marked increase in Hispanic juveniles over the last three years, YouthFirst would like to hire some new bilingual employees.

- A major concern of your agency is security in the surrounding communities. Your agency wants to negotiate an escape plan with YouthFirst which includes the following: developing a mechanism to inform the agency when an escape occurs; informing the public after an escape; and establishing liability for acts committed by an escaped youth.

**Note to Trainer:** The following page has additional information for the negotiating exercise. There are three different topics and different information for the agency teams and YouthFirst. You may play YouthFirst in the first senario and select a team to represent the agency. For the other senarios groups can be selected for each activity.

The following additional information will be provided only to the team members on each side of the negotiations.

### **YouthFirst**

#### **1. The length of the contract**

The management of YouthFirst would like the length of the contract to be as long as can be possibly negotiated but would settle for 3 years or 2 years with options to renew for at least 2 more years.

#### **2. The staffing of the facility**

The Human Resources Director of YouthFirst feels that the majority of current employees should not be retained so that YouthFirst's new policies, procedure, and programs can be better implemented. Only 1 of 12 care workers currently employed at Twin Oaks speak Spanish. While the Human Resources Director would like to see all existing staff replaced by staff who have bilingual capabilities, she would not object to bringing in just 3 new bilingual employees.

#### **3. Security Issues**

YouthFirst is concerned about liability with an escaped juvenile. They would like an escape plan to be drafted which minimizes YouthFirst's liability. The legal department has advised that they would like to insert language in the escape plan that reads:

"Once a juvenile has left the Twin Oaks premises without authorization it is the duty of YouthFirst to promptly notify designated agency personnel. Once prompt notification is made, YouthFirst assumes no liability for

### **Agency**

#### **1. The length of the contract**

The agency would like the length of the contract to be 2 years but realizes the need to be flexible. Funding has been appropriated for Twin Oaks for only 2 years. Your agency is flexible on extending options for renewal for up to 3 years provided YouthFirst meets and exceeds all outcome indicators in operating Twin Oaks.

#### **2. The staffing of the facility**

Agency lawyers have informed you that unless there are new requirements for a position, then existing employees must be given priority for jobs once privatization occurs. Only 1 of 12 care workers currently employed at Twin Oaks speaks Spanish and your agency agrees that at least 3 bilingual care workers should be on staff.

#### **3. Security Issues**

Your agency would like to establish an escape contingency plan detailing responsibility and liability if a juvenile escapes. Lawyers in the agency would like the following clause to be put in the escape plan:

"It is the duty of YouthFirst to immediately notify the agency if a youth escapes from the facility. Failure to notify the agency in a prompt and timely manner will result in YouthFirst becoming liable for costs

any subsequent claims arising from the escape.

associated with apprehending the juvenile. If the escape is due to the negligence of YouthFirst and its employees, agents, or representatives, YouthFirst will be liable for any and all claims arising from the escape.

STATE OF COLUMBIA  
DEPARTMENT OF CORRECTIONS  
REQUEST FOR PROPOSALS TO MANAGE AND OPERATE  
THE SOUTH WASHINGTON  
MINIMUM SECURITY FACILITY  
IN SOUTH WASHINGTON, COLUMBIA

DOC RFP #99-101

Date of Issuance  
February 1, 2000

Date of Response Required  
July 1, 2000

## EXECUTIVE SUMMARY

Funds appropriated for Fiscal Year 2000-01 by the Legislature of the State of Columbia to the Department of Youth Services ("Department") provided for the cost of design and construction of the South Washington Juvenile Residential Facility ("Facility"). This 200-bed facility received its first residents on January 2, 1999 and is currently being managed and operated by the Department. All aspects of the design and construction of the Facility were in full compliance with applicable standards of the American Correctional Association (ACA), but no effort has yet been made to date to obtain ACA accreditation.

Pursuant to the Cost Containment Act Legislation enacted by the Legislature of Columbia on February 15, 1992, CL Statute 39.1, that went into effect on July 1, 1992, the Department of Youth Services is obliged to solicit proposals for the private management and operation of the Facility and all other juvenile residential facilities now managed and operated by the Department from interested corporations, partnerships, or other legal entities ("Contractors") and to contract with the most highly evaluated potential provider if (a) the overall quality of the services proposed is equal to or better than those currently being provided by the Department and (b) the cost of the proposed services is less than the cost of the currently provided services. (In accordance with CL Statute 39.1 (2)(e), the full cost of the contract monitoring as provided for in this request for proposals shall be defined as a cost of contractor services.)

The Facility provides a broad range of programs, including counseling, drug awareness,



educational, recreational, and vocational training programs, that are provided for a maximum of 50 adjudicated male delinquents between the ages of 16 and 18. Support services required at the Facility include food, laundry, and maintenance services as well as limited dental and medical services. A profile of the present residents reveals them to have been drawn disproportionately from major metropolitan areas of Columbia, minority groups and dysfunctional families. Related data reveals that residents often have histories of substance abuse, prior commitments to juvenile residential facilities, educational achievement scores on accepted standardized tests that, on average, place them three to five years below those of typical males of similar age, and minimal work experience or vocational skills. The average length of stay for residents is approximately six months.

All proposals must provide for the delivery of a range of services equal to or more expansive than those currently being provided by the Department. All proposals must commit to the achievement of accreditation by the ACA within one year following the assumption of management and operational responsibilities.

Although the cost components of qualified proposals must be below the projected cost of services, \$92.55 per resident per day when the facility is operating at this maximum capacity of 50 residents, the dominant focus of the proposal evaluation process will be on the quality of services potential providers commit to provide and indicators of their ability to deliver those services.

The Department anticipates the award of a three-year contract for management and

operation of the facility. Subject only to annual appropriations and satisfactory contract performance, the contract may be renewed one time for two years subject to the same qualifications. For the first year of operation, the contract will be a fixed price contract the maximum value of which shall be the base per diem rate of \$92.55 times 50 residents times 365 days or \$1,689,037.50. Each year thereafter the maximum value of the fixed price contract shall increase or decrease in accordance with fluctuations, if any, in the Columbia Consumer Price Index (CR-CPI) as published by the Columbia Department of Economic Affairs on June 30 of each year.

Potential providers should note that there will be a pre-submission conference in Conference Room "A" of the Department of Youth Services Building, 1401 Capitol Street, River City, Columbia at 9:00 a.m. Eastern Standard Time on October 1, 1999. Although those attending will have an opportunity to raise questions that were not submitted in advance, staff will respond to all questions submitted in writing and received by Mr. George Washington, Department Contracting Officer, by or before 5:00 p.m. Eastern Standard Time on September 20, 1999. A formal transcript of the meeting, which will include an edited version of all written questions received on or before September 20, 1999, will be available to all interested parties as soon as is practical following the meeting.

Potential providers also should note the following important deadlines and requirements

Official date of RFP issuance: February 1, 2000;

Pre-submission conference: 9:00 a.m. Eastern Standard Time on March 1, 2000;

Receipt by Contracting Officer of official written notice of intent to submit a proposal:  
5:00 p.m. Eastern Standard Time on March 15, 2000;

Receipt by potential providers who comply with notice of intent requirement of transcript  
of bidders' conference and other relevant information by or before 5:00 p.m. Eastern Standard  
Time on March 25, 2000;

Deadline for receipt by potential providers who comply with notice of intent requirement  
of any amendments to the request for proposals: June 1, 2000;

Deadline for receipt by Contracting Officer of one original and six copies of a full and  
complete proposal: 5:00 p.m. Eastern Standard Time on July 1, 2000;

Anticipated announcement by Contracting Officer of results of proposal evaluation  
process with contract negotiations to commence as soon as practical thereafter: 9:00 a.m. Eastern  
Standard Time on August 1, 2000; and

Anticipated date for commencement of all management and operational services: October 1,  
2000.

## SECTION I: GENERAL INFORMATION AND REQUIREMENTS

1. The title and identifying number for this procurement shall be Request for Proposals to Manage and Operate the South Washington Juvenile Residential Facility, DYS RFP #93-101.
2. The Contracting Officer for this RFP shall be Mr. George Washington, Room 711, Department of Youth Services Building, 1401 Capitol Street, River City, Columbia 87711-0711 (704-392-1025; FAX 704-392-1026).
3. The legal authority for this procurement is CL Statutes 39.1 and the general statutory requirements as they pertain to procurement of contracts for professional services by request for proposals and as expressed in CL Statutes 401(1)-404(32).
4. Nothing in this request for proposals establishes an obligation on the Department to enter into a contract for services with any contractor. In the event no qualified proposals are received, the Department may terminate the procurement effort, amend the request for proposals in whole or in part, or extend the deadline for submission of proposals by a period of not more than 30 days. In the event that only a single qualified proposal is received, the Department, at its sole discretion, shall either (a) proceed with contract negotiations or (b) terminate the procurement effort, amend the request for proposals in whole or in part, or extend the deadline for submission of proposals by a period of not more than 30 days.

5. All questions regarding this request for proposals shall be submitted to the designated Contracting Officer in writing. All questions shall be in writing. All responses to such questions shall be in writing. All questions submitted and all responses provided shall be made available to all offerors who have complied with the notice of intent provision of this request for proposals. No responses to questions about this request for proposals shall be binding on the Department unless they are provided in written form and are signed by the Contracting Officer.

6. The Department reserves the right to amend any portion(s) of this request for proposals so long as written notification of any such amendment(s) reaches offerors who comply with the notice of intent provision of the request for proposals on or before 5:00 p.m. Eastern Standard Time on June 1, 2000.

7. The maximum funding for the first year of Contractor activities has been set at \$1,689,037.50. No proposal shall be construed to be responsible unless its total cost component is less than \$1,689,037.50.

8. Pursuant to the Public Records Act of 1975 CL Statute 948, all materials submitted in response to a request for proposals become public documents that are available for inspection immediately following the announcement of the identity of the most highly evaluated proposal. The Public Records Act of 1975 requires the public availability of all materials submitted by the providers in response to a request for proposals.

9. A pre-submission conference will be held in Conference Room "A" of the Department of Youth Services Building, 1401 Capitol Street, River City, Columbia at 9:00 a.m. Eastern Standard Time on March 1, 2000.

10. The deadline for receipt of proposals shall be no later than 5:00 p.m. Eastern Standard Time on July 1, 2000. One original and six copies of each proposal must be submitted to Mr. George Washington, Room 711, Department of Youth Service Building, 1401 Capitol Street, River City, Columbia 87711-0711.

11. Following the submission of proposals, the Department reserves the right to require oral presentations by some or by all potential providers whose proposals are deemed to be responsive to the requirements established by this request for proposals.

12. It is the intent of the Department to announce the results of the proposal evaluation process at 9:00 a.m. Eastern Standard Time on August 1, 2000.

13. Potential providers shall be bound by each commitment made by them in their proposal for a period that shall be no less than 90 days following such submission. This commitment shall be guaranteed by a proposal bond equal to 5 percent of the proposed fixed price contract cost for the first year of facility operations. The proposal bond, in the form of either a bond from an acceptable surety authorized to conduct business in the State of Columbia, or a certified check payable to the State of Columbia, shall accompany each proposal.

14. The date for the commencement of all services described in this request for proposals shall be no earlier than September 1, 2000 and no later than November 1, 2000.

15. All proposals must contain a suitable affirmative action policy to be adopted by potential providers. The policy must comply with all applicable Columbia and federal legal requirements.

16. Potential providers must submit a written notice of their intent to submit responses to this request for proposals. The written notice, which must clearly identify the request for proposals by name and number, must be received by the Contracting Officer no later than 5:00 p.m. Eastern Standard Time on March 15, 2000. Failure to comply with this notice requirement shall disallow the consideration of any proposals subsequently submitted by potential providers.

17. The costs of proposal preparation and submission are solely the responsibility of potential providers and the State of Columbia shall not provide reimbursement for any such costs.

18. Any contract resulting from this procurement shall be construed in accordance with the laws of the State of Columbia. Any legal proceedings against the state of Columbia or the Department regarding this request for proposals or any resulting contract shall be brought in the appropriate administrative or legal forum in the State of Columbia. Venue shall be in Potomac County, Columbia.

19. For the purposes of this request for proposals, the following definitions shall apply:

- (a) **ACA:** the American Correctional Association
- (b) **ACA Accreditation:** the successful completion of all requirements imposed by the American Correctional Association for the accreditation of juvenile facilities.
- (c) **ACA Standards:** the standards for juvenile residential facilities in existence at the time of a contract being entered into between the Department and the Contractor or as they may be amended subsequent to the execution of such a contract.
- (d) **Affirmative Action Policy:** a policy adopted by a contractor that is in full compliance with applicable provisions of federal law and the law of the State of Columbia and that ensures equal opportunity in the areas of employee selection, retention, rate of pay, demotion, transfer, layoff, termination, and promotion regardless of race, religion, age, sex or ethnic origin.
- (e) **Facility:** the South Washington Secure Residential Facility located in South Washington, Columbia.
- (f) **Juvenile Delinquent:** a person below the age of 18 who has been adjudicated delinquent by a court of competent jurisdiction on the basis of proof of an act or omission to act that would have constituted a crime had the person been 18 years of age or older at the time of the act or omission to act.
- (g) **Non-routine Maintenance and Repairs:** any act of maintenance of the Facility or repair to equipment within the Facility costing more than \$500 and which shall be the responsibility of the Department.
- (h) **Resident:** a juvenile delinquent who has been committed to a facility for which the Department is responsible.



- (i) **Routine Maintenance and Repairs:** any act of maintenance of the Facility or repair to equipment within the Facility costing less than \$500 and shall be the responsibility of the Contractor.
- (j) **Juvenile Residential Facility:** a rehabilitative facility for juvenile delinquents that is designed and operated to ensure that all entrances and exits are under the exclusive control of the facility staff and that disallows unsupervised or unauthorized departures from the facility.
- (k) **Unforeseen Circumstances:** those acts or occurrences beyond the reasonable contemplation of the Department and the Contractor at the time of the execution of a contract between them that materially alter the financial conditions upon which the contract is based.

## **SECTION II: TERMS AND CONDITIONS**

1. The type of contract to be awarded shall be a fixed price contract.
2. The contract period shall be for three years with the possibility of one renewal for an additional two years. Contract renewal shall be contingent on satisfactory contract performance and annual legislative appropriations.
3. Payment to the Contractor shall be made by the Department of the first day of each month and the amount of the payment due shall be equal to 1/12 of the fixed price that is provided for in the contract between the Department and the Contractor.

4. The fixed price component of the contract shall be adjusted on an annual basis with the fixed price being increased or decreased, if appropriate, by a percentage equal to the percentage change in the Columbia Consumer Price Index as published by the Columbia Department of Economic Affairs on June 30 of each year. Other adjustments to the fixed price shall be possible should unforeseen circumstances so require.

5. During the term or any renewal of the contract, any provision of the contract shall be subject to adjustment should such an adjustment be proposed in writing by either the Department or the Contractor and should the adjustment be mutually agreed on by both the Department and the Contractor.

6. Any contract entered into between the Department and the Contractor shall be subject to termination if (a) funding for the contract is not appropriated by the Legislature of the State of Columbia, (b) there is a filing of a petition of bankruptcy by or against the Contractor under any provision of federal or state law, (c) it is deemed by the Department, on the basis that reasonable cause has been demonstrated, that the contractor has failed substantially to fulfill its obligations (i.e., a material breach), or (d) circumstances should arise such that the health, welfare, or safety of the facility residents, facility staff, or public at large are placed in jeopardy. However, no material breach exists when the conduct of the Contractor is excused by the Department, when the failure to fulfill one or more obligations is caused by unforeseen circumstances, or when the failure to fulfill one or more obligations is caused by the conduct of the Department. Further, no breach of any contract entered into between the Department and the Contractor shall constitute

grounds for the termination of the contract unless a written notice of breach is provided to the Contractor and he or she fails to cure the breach within 30 days following written notice of breach.

7. Any proposal that anticipates reliance on a subcontractor for one or more of the services required in this request for proposals must contain a clear notice of intent to subcontract, a description of the service for which a subcontract is deemed to be appropriate, a written commitment from the proposed subcontractor that the service described will be provided at a cost equal to the cost established in the proposal and proof of the qualifications and credentials of the subcontractor.

8. All proposals shall provide for suitable liability, property damage, and workmen's compensation insurance. Further, all proposals shall agree to indemnify, defend and hold harmless the State of Columbia, the Department of Youth Services, and the officers, agents and employees of the Department of Youth Services from any suit, action, claim or demand of any description whatsoever for losses or damages arising directly or indirectly from, or in connection with, the operation and maintenance of the Facility. This agreement to indemnify, defend and hold harmless shall not apply to any suit, action, claim or demand of any description whatsoever for losses or damages arising from any independent action or omission of any person or entity other than the Contractor.

### SECTION III. STATEMENT OF WORK

1. Pursuant to the Cost Containment Act enacted by the Legislature of Columbia on February 15, 1999, CL Statute 39.1, and which went into effect on July 1, 1999, the Department is obliged to solicit proposals for the private management and operation of the Facility and all other secure and non-secure detention or residential facilities now managed and operated by the Department from interested corporations, partnerships, or other legal entities and to contract with the most highly evaluated provider if (a) the overall quality of the services proposed is equal to or better than those currently being provided by the Department and (b) the cost of the proposed services is less than the cost of the currently provided services. (In accordance with CL Statute 39.1(2)(e), the full cost of the contract monitoring as provided for in this request for proposals shall be defined as a cost of contractor services).

2. The Department anticipates contracting for the same services currently provided at the Facility or for a range of services capable of achieving the objectives that prompted the delivery of the current services.

3. A profile of the current residents reveals them to have been drawn disproportionately from major metropolitan areas of Columbia, minority groups and dysfunctional families. Related data reveal that residents often have histories of substance abuse, prior commitments to juvenile residential facilities, educational achievement scores on accepted standardized tests which on average place them three to five years below those of typical males of similar age, and minimal

work experience or vocational skills. Commitment offenses commonly involve both offenses against property and offenses against persons that could have resulted in the filing of serious felony charges had the cases been prosecuted in a criminal rather than a juvenile court. The average length of stay for residents is approximately five months.

4. The necessary services shall include but not necessarily be limited to the maintenance of a secure and sanitary environment on a 24-hour-a-day basis within which:

- (a) individualized needs assessment and treatment plans are prepared for each resident within no more than 15 days after the arrival of a new resident.;
- (b) appropriate individual and/or group therapy is provided on a regular basis by properly qualified professional staff;
- (c) all residents are actively involved in intensive educational and vocational training programs, including basic life skills training, drug education and sex education appropriate for their measured levels of attainment and skill;
- (d) appropriate programs providing for a combination of incentives and disincentives are consistently relied on to improve the attitudes, values, self esteem and behavior of residents;
- (e) appropriate recreational programs for the residents are provided;
- (f) the basic needs of all residents for a balanced diet, routine medical and dental services and other essentials (e.g., clothing, personal hygiene items and laundry services) are met;
- (h) full and complete records are maintained regarding all features of facility administration, expenditures, management, maintenance and staff training.

5. The special requirements for all proposals shall include the following:
- (a) that all features of facility management and operation shall meet or exceed the minimum requirements for ACA Accreditation;
  - (b) that all proposals shall contain a commitment that ACA accreditation will be achieved within one year following the commencement of the delivery of services;
  - (c) that the experience and training requirements established by The Juvenile Corrections Training and Certification Act of 1990, CL Statutes 39.20, shall be met by all employees to whom they would apply were those employees to be employees of the Department;
  - (d) that all proposals shall contain an employee selection plan that affords existing employees of the Facility, excepting only those employees currently serving the positions of Facility Administrator, Assistant Facility Administrator, and Facility Program Administrator, a right of first employment and shall describe in suitable detail any special conditions of employment those employees would enjoy regarding but not necessarily limited to their accumulated annual leave, accumulated sick leave and seniority; and
  - (e) that all proposals anticipate the selection, prior to the commencement of services, of an independent evaluator acceptable to both the Department and the Contractor whose fee, which shall not exceed 5 percent of the funding available pursuant to the terms of the fixed price contract, shall be the responsibility of the Contractor and whose obligation will be to evaluate all aspects of service delivery and whose evaluation report shall be submitted to the Department and to the Contractor within 30 days prior to the completion of each year of service delivery.

6. All proposals shall provide a time schedule that will be followed regarding movement toward ACA accreditation.

7. The Contractor shall meet with the Contracting Officer at the Facility on a quarterly basis to review contract performance and shall provide written reports to the Contracting Officer on a monthly basis that include documentation on all admissions, releases and employment decisions (including decisions to hire, promote or terminate). Additionally, the Contractor shall provide immediate notification to the Contracting Officer of any unusual incidents that include, but are not necessarily limited to physical assaults, escapes, accidents causing injury to staff or residents or any significant damage to the Facility caused by accidents, intentional acts or any other cause.

#### SECTION IV. PROPOSAL REQUIREMENTS

##### General Requirements:

Proposals should be prepared in as complete and concise a manner as possible.

Proposals must include a title page which identifies the request for proposals by title and by number and which provides the name, business address, and telephone number of the provider.

Proposals shall be printed on ordinary 20 pound, 8 1/2 by 11 inch white paper.

Proposals shall contain only materials that are directly relevant to the request for proposals.

Proposals shall be divided into two basic parts that are clearly designated as "The Technical Proposal" and "The Business Proposal."

#### Requirements for The Technical Proposal (85 Points of 100 Possible Points)

##### 1. Statement of Work Required (5 Points of 100 Possible Points)

The statement of work portion of the technical proposal should demonstrate a clear understanding and grasp of the objectives the Department must pursue in its efforts to provide for the delivery of services to the residents of the Facility and the role of the potential provider would play in the achievement of those objectives. The statement of work portion of the technical proposal also should demonstrate the potential provider's specific awareness of the needs of the juveniles who are most likely to be facility residents.

##### 2. The Proposed Approach (25 Points of 100 Possible Points)

The proposed approach portion of the technical proposal is of vital importance and provides potential providers with an opportunity to propose creative means of addressing the problem at hand. Separate attention must be given to each major area of facility operation and management. Attention also must be given to the approach proposed to assure the Contractor efforts will be subject to reliable and valid evaluation.



### 3. The Proposed Management Plan (25 Points of 100 Possible Points)

The proposed management plan portion of the technical proposal is also of vital importance.

Potential providers must explain how the proposed approach will be translated into an actual service delivery model. The management plan must include:

- a. a complete organization chart;
- b. an identification of each employee category;
- c. the minimum qualifications for, and job descriptions of each employee category;
- d. the number of employees who fall within each employee category, and
- e. a contingency plan which describes how foreseeable emergencies would be handled (including, but not necessarily limited to natural disasters, fires, employee strikes and escapes).

### 4. Provider Experience and Qualification (30 Points of Possible 100 Points)

The provider experience and qualifications portion of the technical proposal has two fairly separate component parts: (a) the potential provider's relevant past experience (10 of the 30 points allowable for this portion of the technical proposal) and (b) the qualifications and experience of key project personnel (20 of the 30 points allowable for this portion of the technical proposal).

Regarding part "a", potential providers shall include a complete list of all contracts and subcontracts the potential provider has received during the past five calendar years that imposed an obligation on the potential provider to provide services of any kind to juvenile delinquents in either a secure or a non-secure facility. The information provided shall include the effective dates of performance, the contracting entity, the name, address and telephone number of the responsible

contracting officer or contract monitor and a brief description of the service(s) provided.

Regarding part "b", potential providers shall provide a complete list of key project personnel, a resume for each person identified, and a narrative description of the role each person would have were the offeror to be selected.

#### Requirements for the Business Proposal (15 Points of 100 Possible Points)

The purpose served by the business proposal is two-fold: (a) to establish that total proposed costs fall below the benchmark amount of \$1,689,037.50 and (b) to establish that all features of the technical proposal and other requirements of this request for proposals can be handled effectively given the proposed use of financial resources provided in the business proposal. Thus, potential providers should be careful to establish the linkage between the business proposal and other features of both the basic requirements of this request for proposals and the material they provide in their technical proposals. Further, the basis for any computations that might be unclear to those who review the proposal should be established in a suitable manner.

##### 1. Employee Labor and Fringe Benefit Cost

Labor and fringe benefits costs must be presented in a complete manner that forms the basis for this cost component and can be evaluated in terms relevant to the proposed approach and proposed management plan (e.g., labor and fringe benefits costs associated with facility administration and support personnel, with security personnel, with educational/vocational personnel, etc.)

2. **Consultant Costs**

Proposals calling for consultants, including the required independent evaluators, must provide a description of the anticipated consulting services and the anticipated cost of those services and the means of establishing the cost of those services (e.g., "X" number of dollars per consulting day for "Y" days plus "Z" dollars in related travel and per diem costs).

3. **Subcontracting Costs**

Proposals may anticipate subcontracting for one or more necessary service (e.g., dental, food, janitorial or medical services). In addition to requirements regarding subcontracting established elsewhere in the request for proposals, the cost component of any such subcontract shall be clearly identified and explained in the business proposal.

4. **Food Service Costs Other Than Labor and Fringe Costs**

5. **Utilities Costs Other Than Telecommunications Costs (itemize)**

6. **Telecommunications (itemize)**

7. **Equipment Costs (itemize)**

8. **Insurance Costs (itemize)**

9. Supplies and Materials (itemize)
10. Travel and Per Diem Costs (itemize and provide explanation)
11. Staff Training, including In-Service Training (itemize)
12. Other Direct Costs (itemize)
13. Overhead and Administrative (itemize and provide explanation)
14. Total Proposed Cost

## SECTION V. PROPOSAL EVALUATION CRITERIA

All proposals received by the Contracting Officer by or before 5:00 p.m. Eastern Standard Time on July 1, 2000 shall be considered. No proposal submitted after that deadline will be accepted for review and evaluation. All timely submissions will be screened to verify that all essential information required in this request for proposals has been provided and that the total cost component of proposals falls below the mandated total cost ceiling.

All qualified proposals will be submitted to the Proposal Review Committee for review.

Each member of the Committee shall independently rely on the following proposal review method.

Potential provider's understanding of the background of, need for, and scope of the services being solicited (5 points)

Evidence of potential provider's past experience with and performance of duties (10 points)

Reasonableness and competitiveness of cost proposal (15 points)

Qualifications and experience of key personnel (20 points)

Adequacy of the proposed approach (25 points), and

Adequacy of the proposed management approach (25 points)

An average of evaluator ratings for each of these six evaluation criteria will be computed. The six averages will then be added together to obtain a total proposal "score." Subject to the qualifications established elsewhere in this request for proposals receives the highest total proposal score as soon as is practical after the announcement of the evaluation results, which is anticipated to be 9:00 a.m. Eastern Standard Time on August 1, 2000. Should successful contract negotiations not be completed, the Department reserves the right to begin negotiations with other qualified providers in an order established by the total proposal score attributed to their proposals.

# Module VI

## Monitoring

# **MODULE SUMMARY**

## **MODULE 6** **Monitoring**

### **TARGET POPULATION:**

Juvenile Administrators and Technical staff

### **TIME ALLOCATION:**

2½ Hours

### **SPACE REQUIREMENTS:**

Accommodations for 20 - 30 participants

### **PERFORMANCE OBJECTIVES:**

At the conclusion of this module, participants will be able to:

1. List ten poor monitoring practices.
2. Prepare a monitoring plan with outcome indicators.
3. Explain the nature and purpose of a corrective action plan.
4. Develop a corrective action plan for a program area.

### **EVALUATION PROCEDURES:**

1. Large group discussion
2. Small group discussion
3. Activities and exercises



## **Module VI—Monitoring**

### **A. INTRODUCTION**

#### **Lecturette**

Both the public and private sectors must work together in order to make privatization work. Successful contract management and monitoring requires a mutual commitment to achieving the goals of the contract.

The primary purpose of contract monitoring is to ensure that both the contracting agency and the provider are complying with the terms and conditions of the contract. This purpose is best served by a process of determining what is being done right, identifying what falls short, and working together to improve performance. In the end analysis, contract monitoring is a means for determining whether the benefits provided through private sector contracting outweigh the disadvantages. One of the first issues that must be addressed in monitoring is—who is going to do what.

## Show Overhead 6-1

### 6-1

#### Who is Responsible for Monitoring

- Agency who signed contract
- Licensing agency
- Separate monitoring agency
- State standards monitor
- Local monitor of codes
- National standards monitor
- Court consent decree monitor
- Child abuse investigator

In addition to these varied types of monitors, there are varied types of frequencies of monitoring activities.

## Show Overhead 6-2

### 6-2

#### Types of Monitoring Activity

- Permanently on-site
- Weekly and monthly visits
- Yearly visits
- Single or team monitors
- Announced or unannounced visits

Ideally, contract monitoring is *not* a process of finding fault or blame and threatening the provider with penalties. This approach is counterproductive because it focuses only on the negative, creates anxiety and distrust, and causes the provider to be secretive or to

withhold information for fear of losing the contract or appearing to be deficient. It also prevents the contract monitor from acting as an agent of constructive change.

By the same token, a cooperative relationship should not blur the reality that the primary responsibility of the contract monitor is to assure that the provider is in compliance with all provisions of the contract. There should not be any compromise regarding this important function. The contract monitor must establish a balance between two roles—helping and enforcing.

#### B. CHARACTERISTICS OF THE EFFECTIVE CONTRACT MONITOR

#### **Lecturette**

Effective contract monitors understand the operational and philosophical principles of juvenile corrections in their jurisdictions. Contract monitors should be experienced people with respect and status in the contracting agency. Ideally, they have experience working in juvenile correctional programs. Monitors must also be skilled in developing a monitoring plan, negotiating, conflict resolution, and interviewing techniques.

The contract monitor has an extremely visible role. Therefore, he or she must set an example with regard to professional

behavior.

**Ask Question.**

Who can tell me some characteristics of an effective monitor?

Effective contract monitors are proactive. They not only attend to current events; they also look to the future, anticipate potential problems, and work with the provider in developing strategies to prevent or overcome those problems.

**C. DEVELOPING A MONITORING PLAN**

**Lecturette**

A specific monitoring schedule should be mutually determined by the agency and the contractor prior to contract implementation. Critical to developing this plan is the understanding that monitoring involves more than on-site visits. It is a process of reviewing documentation, analyzing data, writing reports, analyzing specific issues, trouble-shooting and conducting interviews, as well as visiting the site.

## **Show Overhead 6-3**

### **6-3 Monitoring Plan**

- Time as an issue
- Scheduled activities
- Surprise visits
- Use of documents
- Outcome indicators

**Write on board of flip-chart:  
The Plan must be Reasonable**

The monitoring plan must be reasonable. If a contract warrants, a specific topic may be monitored during one visit and another topic during another visit. One monitoring visit may be specifically to review case management, as opposed to looking at every aspect of a program. This is an alternative to a "shotgun" approach where in one visit a monitor tries to look at everything on the surface and not look at anything in depth.

**Write on board or flip-chart:  
Monitors should not Manage**

Contract monitors sometimes inject themselves too forcefully into the everyday management of contract facilities. This is a fatal mistake on legal liability grounds. It converts private providers into agents of the contracting agency. Thus, one should urge contract monitors to exercise prudent restraint to avoid unintentionally increasing the legal liability exposure of the contracting agency.

**Write on board or flip-chart:  
Time is an Issue**

It's important that the monitor have sufficient time to devote to a contract. Complex or large contracts will result in a greater workload for the monitor. It's not fair to the public or the juveniles in the program to arbitrarily limit the amount of time the monitor spends on the contract. The monitoring plan should detail the anticipated amount of time that will be needed to conduct thorough and thoughtful monitoring. This plan should be reviewed by both parties prior to the beginning of the contract. This is done to assure mutual commitment to the monitoring plan.

**Write on board or flip-chart:  
Activities should be Scheduled**

The monitoring plan should be designed to assure that monitoring activities are scheduled in a way that results in the least disruption of daily operations. It must be understood that monitoring, by its nature, is an intrusive process.

To minimize disruption, the contract monitor should establish, in co-operation with the provider's representative, a program visit calendar. A change in the schedule should be made by mutual agreement.

This raises the issue of surprise or unannounced monitoring visits. Although there is some public agency support this approach, it may be counterproductive. It may communicate a sense of distrust that the provider is doing something that the contracting agency does not approve of, and that the practice is covered up whenever the

monitor is on site. It may communicate a message that the public agency does not consider its provider to be professional, honest or even competent.

One approach to increasing both the effectiveness of monitoring and enhancing the monitor's understanding of the provider's performance is to increase the frequency of planned visits. A schedule of several comprehensive site visits for example, quarterly monitoring, could be complemented by a number of shorter visits. These shorter visits could be irregular to assure that patterns of monitoring are not established.

Program disruption can also be limited by briefing the provider's representative on the information that will be requested and reviewed. A proposed agenda for a monitoring visit could be discussed. This agenda or schedule can then be shared with administrators, staff and juveniles in the program. Time can be reserved for meetings and interviews.

**Write on board or flip-chart:**  
**Documents are Important**

Documents constitute a major part of contract monitoring. It's counterproductive to request everything produced by the provider. Gathering, copying and shipping records and other program documents on an on-going basis is costly and time consuming. It should also be noted that it is a costly and time consuming effort for the public agency monitor who must review the material.

Confidentiality of records is one of the traditional hallmarks of the juvenile justice system and is strictly controlled by statute in most jurisdictions. The strictest guidelines with regard to confidentiality must be maintained. The contract should clearly define the guidelines for confidentiality of records , monitoring reports and other information, in compliance with law, policy and professional standards.

#### D. OUTCOME INDICATORS

One part of the monitoring plan is a listing of the expectations the agency has.

One traditional outcome indicator is recidivism. It is common to include a minimum target for reducing the recidivism of program participants in contracts for correctional services. Unfortunately, experience demonstrates that this approach is not very effective. Many otherwise excellent programs have failed to meet the required recidivism threshold. The problems are that the indicator is often not realistic and that statistics can be manipulated. Further, recidivism is not consistent with the most recent understanding of delinquent behavior.

#### **Discuss objective progress and achievement tests**

One good outcome indicator is the objective progress the juvenile achieves in the program. Some significant measures of change are achievement tests that measure the juvenile's skill level in math, English,



social studies, vocational skills, etc. Skill levels are usually measured upon entering the program and at pre-determined intervals during the juvenile's stay in the program.

**Refer participants to page 167 of their manuals**

**★★★ GROUP ACTIVITY #1 ★★★**

Your group has been assigned the task of establishing a monitoring plan with outcome indicators for the major program areas at Twin Oaks. The program areas that require monitoring activities are:

1. Education
2. Anger Management Program
3. Security
4. Medical
5. Staffing
6. Overall Program Success

**Review and critique  
Activity #1  
Outcome Indicators**

**E. CORRECTIVE PLANS**

**Show Overhead 6-4**

**6-4**

**Corrective Plans**

The most effective approach to addressing problems with contract performance is to give the provider the responsibility of

recommending a corrective action plan. While your agency must approve the final corrective action plan and can offer assistance in its development, this approach assures that the provider will be committed to its implementation. It also allows the provider to recommend creative and efficient ways to address problem areas. This step also becomes a process for defining problem areas and developing a consensus as to what the problems are. Disagreements should be referred to the respective supervisors for resolution.

The next step in the process is to determine what action or actions must occur to properly address the problem. One approach is to use a corrective action format that identifies the problem to be addressed, individual sub-components of the problem, the necessary corrective action at each step, the individual or individuals responsible for completion of the actions, and the realistic time frames for completing the corrective actions. This is easier if the contract was written with subdivisions or parts, with expected outcomes and penalties for non-compliance for each part clearly stated. There should also be a methodology to determine whether the problem has been, in fact, properly addressed.

**Refer participants to Activity #2 on page 169 of their manuals.**

### **★★★ GROUP ACTIVITY #2 ★★★**

Your agency's contract monitor has just returned for visiting Twin Oaks. While the

facility was doing well overall, the educational program was below the minimum standards set forth in the monitoring plan. The monitor, after inspecting records from standardized tests and interviewing juveniles at the facility, feels that educational program can be improved by drafting a corrective action plan.

Your group has been assigned the task of developing a corrective action plan along to address the problems in the educational program.

Use the following information to aid your in your task:

\* Your agency uses the following format for corrective action plans:

1. Identify the problem to be addressed
2. Identify the individual sub-components of the problem
3. List the necessary corrective action at each step
4. Set realistic time frames for completing the corrective actions.

\* The following information is found in the contract monitoring plan:

#### Educational Programming

All youth are required by state law to receive educational programming.

Youth will be tested every 3 months to ascertain reading and math skills.

The outcome indicators for educational program performance are:

50% of all students will be able to read at the grade level corresponding to their age as determined by diagnostic testing.

50% of all students will demonstrate math skills at the grade level corresponding to their age as determined by diagnostic testing.

\* Results from the last standardized tests given two weeks ago reveal that:

32% of juveniles tested read at the grade level which corresponds to their age.

28% of juveniles tested performed math skills at the grade level which corresponds to their age.

\* The monitor reported the following additional information:

“After interviewing several students there appears to be a problem with the educational materials. Reading books were back-ordered and many students had to share both textbooks and workbooks.”

“Discipline in class appears to be a problem. Teachers spend much of their time addressing these issues rather than focusing on academic concerns.”

“One of the math teachers left Twin Oaks over two months ago and has not yet been

replaced leaving the math program understaffed.”

# Module VII

## Summary

# **MODULE SUMMARY**

## **MODULE 7** **Summary**

### **TARGET POPULATION:**

Juvenile Administrators and Technical staff

### **TIME ALLOCATION:**

2 Hours

### **SPACE REQUIREMENTS:**

Accommodations for 20 - 30 participants

### **PERFORMANCE OBJECTIVES:**

At the conclusion of this module, participants will be able to:

1. Review the course goals and the participants expectations.
2. Relate local agency needs/problems to elements of the course.
3. List and explain the pertinent legal, cost and financing issues involved in juvenile privatization.
4. Explain the role of the RFP, Contract, and Monitoring Plan in privatization.

### **EVALUATION PROCEDURES:**

1. Large group discussion
2. Small group discussion
3. Activities and exercises

## Module VII—Summary

### A. INTRODUCTION

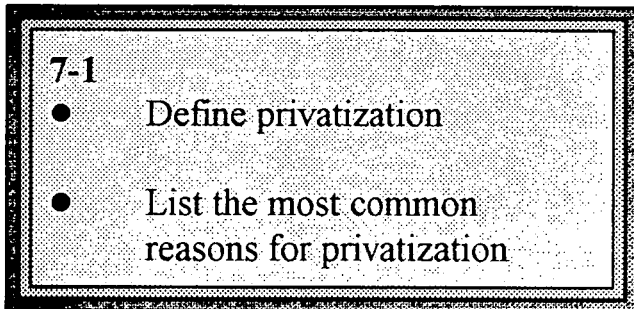
#### Lecturette

In the first session, you gave your expectations for the course. I would like to go back to that list now and see if there are other areas we need to cover.

**Display flip-charts from  
Module 1  
Read and discuss expectations**

Now, I would like to go over our objectives for each Module to see if we met our expectations.

#### Show Overhead 7-1



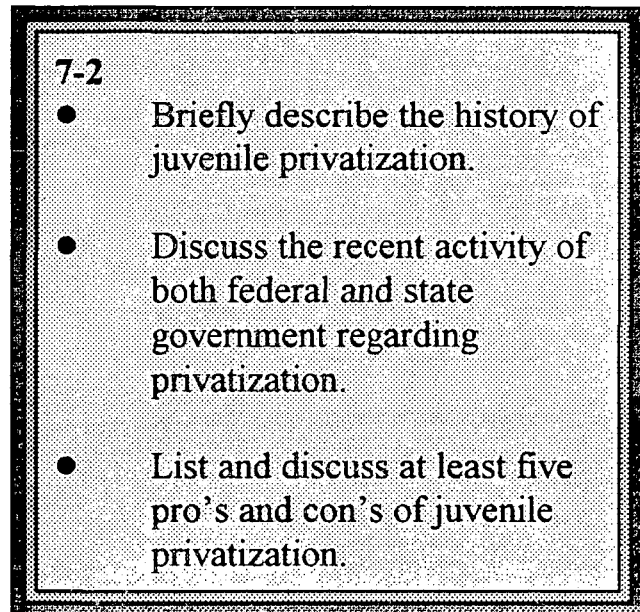
#### Ask Question.

Who would like to take on one or both of these questions?



**Show Overhead 7-2**

In Module 2, our objectives were to have you:



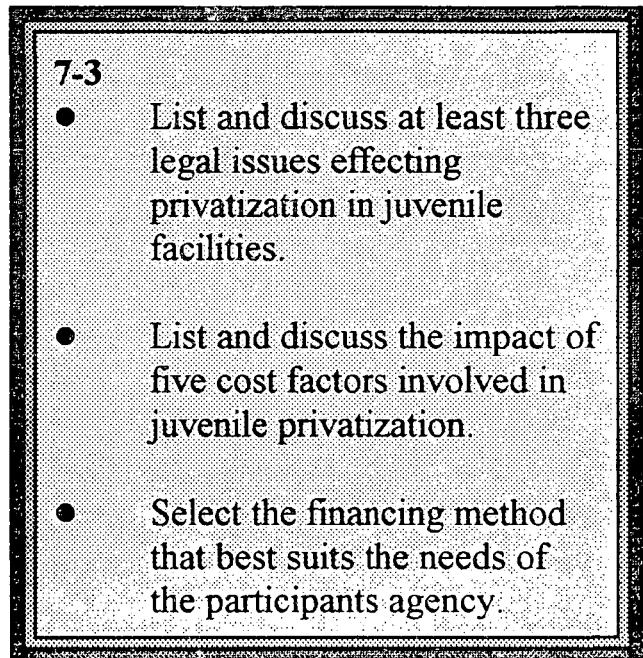
**7-2**

- Briefly describe the history of juvenile privatization.
- Discuss the recent activity of both federal and state government regarding privatization.
- List and discuss at least five pro's and con's of juvenile privatization.

**Ask Question.**

Again, volunteers are requested to help answer these questions.

### Show Overhead 7-3



**7-3**

- List and discuss at least three legal issues effecting privatization in juvenile facilities.
- List and discuss the impact of five cost factors involved in juvenile privatization.
- Select the financing method that best suits the needs of the participants agency.

The most technical session we had dealt with the legal, cost and financing issues involving privatization.

### Ask Question.

Who would like to tackle:

the legal objective?

the cost objective?

the financing issue?

Our next three sessions dealt with your work on the RFP, the Contract, and Monitoring System.

I would like to hear from you about whether these sessions were beneficial to your expectations.

**Open the floor to discussion**

Finally, there is an evaluation form that we would appreciate your completing.

# HANDBOOK

## ON PRIVATE SECTOR OPTIONS FOR JUVENILE CORRECTIONS

**OJJDP**

**ACA**  
FOUNDED 1870

181642

# **HANDBOOK ON PRIVATE SECTOR OPTIONS FOR JUVENILE CORRECTIONS**

U.S. DEPARTMENT OF JUSTICE  
BUREAU OF PRISONS  
JUVENILE CORRECTIONS SERVICE  
WASHINGTON, D.C. 20535

Copyright page: information to come



American Correctional Association  
4380 Forbes Boulevard  
Lanham, MD 20706-4300  
Phone: (301) 918-1800; Fax: (301) 918-1900

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# Foreword

The *Handbook on Private Sector Options for Juvenile Corrections* is produced by the American Correctional Association, supported by Grant No. 99-JI-VX-0001 from the Office of Juvenile Justice and Delinquency Prevention.

This Handbook is intended to assist directors of state juvenile corrections and their staff considering contracting with the private sector for juvenile residential facilities and for juvenile correctional services. In accordance with ACA's "Public Policy on Private Sector Involvement in Corrections," we neither advocate nor oppose contracting with the private sector. ACA believes that for juvenile corrections to operate most effectively, they should use all appropriate resources, both public and private. When government considers the use of for-profit and non-profit private sector correctional services, such programs must meet professional standards, provide necessary public safety, provide services equal to or better than government, and be cost-effective compared to well-managed governmental operations.

This Handbook contains the information necessary for a state director and his/her staff to make a decision to contract with the private sector. In the event that a decision is made to contract a juvenile facility or a juvenile correctional service, this Handbook contains the issues, questions, forms, checklists, and samples for every step from developing a Request for Proposals (RFP) to monitoring and evaluating a contract.

Administrators of the Office of Juvenile Justice and Delinquency Prevention—Shay Bilchik, Emily Martin, and Dennis Barron—were especially supportive in completing this Handbook. Requests for additional information should be directed to: Raymond E. Chase, Jr., Juvenile Grand Administrator, American Correctional Association, 4380 Forbes Boulevard, Lanham, Maryland 20706-4322.

James A. Gondles, Jr.  
Executive Director  
American Correctional Association



## Introduction

This Handbook was first written in 1990. Since then, we have gathered more information and gained more experience in dealing with private contractors. Also, since 1990, the view of the juvenile provider has changed. We will deal with these aspects in this Handbook.

Private sector contracting is not a cureall to problems within state juvenile facilities; it is a complex and, at times, controversial choice. Before a government director of juvenile corrections decides to initiate or expand private sector contracting, there are many basic issues he or she must examine. In this chapter, we will provide an overview of those basic issues.

---

### ANALYSIS OF NEED

During the latter part of the 1990's, the idea to contract with the private sector has been generally a response to budget problems or necessary service improvements in the juvenile justice system. Some agencies have jumped into contracting with the private sector hastily and have regretted their choice. Before making any decisions as comprehensive as trusting state and/or local juveniles to private vendors, responsible agency staff need to analyze their systems to define their real needs.

Some needs will be obvious. If, for example, the Board of Health is demanding that a state or local juvenile facility improve its food service because that food service doesn't meet state or local codes, then the obvious need is to raise the standard of food service. Here's another example: if the state or local juvenile training schools are over their rated capacities and the agency is under court order to provide additional facilities, beds, and a reduction in population, then the obvious need is for facilities to stay within their rated capacities.

Other problems, however, are not so straightforward. For example, suicide rates in state and local juvenile facilities have tripled in the last two years. This crisis could have been caused by many different factors. Responsible staff at the agency must decide why the rates have increased before they can find an appropriate solution. State or local directors cannot, and should not, spend money on a solution before they find the actual cause of the problem.

---

### MOTIVATIONS FOR CONTRACTING

When agency staff examine all their options, they must ask why they are considering each one. Following a detailed, sometimes time-consuming, problem-solving approach to problems is the only way to determine how to

solve a problem. It's crucial that state or local directors look carefully at their motivation to contract with the private sector. Perhaps one of the most important factors in any decision is objectivity. The final choice must be based on the fact that the private sector can offer the best, most appropriate and cost-effective services for the state or local agency's juvenile population. In other words, contract only when it's clear that the private sector can do a more effective or efficient job than the state or local agency.



---

## THE ISSUES

Once motives are examined and private sector contracting seems appropriate, the next step is to consider the issues involved in contracting out state or local juvenile services. The issues or concerns could be legal, emotional, practical, economic or of another nature. All these issues, in some way, affect the state, the local community, and the juveniles. State and local directors must explore each issue to determine its impli-

cations for their specific jurisdiction. Issues are much easier to deal with if they've been considered ahead of time.

Additionally, examining each issue, when explored, might show that privatization is *not* the right answer and may save a director from going through an entire conversion process only to find that another option would have been simpler and more effective.

---

## ASPECTS OF CONVERSION

This manual will assist you in converting juvenile residential facilities or services to private sector operation. It covers all aspects of the process from choosing private sector contracting to choosing a private provider and from implementing the contract to monitoring and evaluating the facility or program.

We provide a short history of privatization in America as it relates to the juvenile justice system. We present the privatization debate in juvenile corrections from the perspectives of both opponents and proponents. We also respond to some important questions about privatization in juvenile corrections and address their possible implications.

The American Correctional Association recently conducted an updated inquiry on privatization trends in state and local juvenile justice systems. The study cites the results and their significance for jurisdictions around the country that are considering contracting with the private sector. We will examine these issues in Chapter 2.

Once a state or local director decides to contract with the private sector, staff must develop a request for proposals (RFP). Although RFPs are different for each project, there are certain elements that remain constant. In this manual, we explain these elements and how to use them to write a clear RFP.

When the contract, which must be based directly on the RFP, is finally negotiated and the service begins, the public agency then becomes responsible for monitoring and evaluating the progress of the private agency. Because the government retains the duty to answer to the public and the courts for the services provided to juveniles in state and/or local care, monitoring is vital to the success of the program.

In closing, we discuss operational planning for all the tasks and issues necessary for private sector contracting.

State and/or local agencies that consider private sector contracting have an enormous job in terms of decision-making, examining agency needs and motives, and analyzing the issues. The steps toward implementing private sector contracting are many and may be confusing at times. In this manual, we hope to clear up some of the confusion and guide state and/or local directors to begin or to expand a successful conversion to private sector contracting.

# The Private Sector as Contractor

---

### INTRODUCTION

In this chapter, we will explore privatization, the concept of involving the private sector as a provider of services which were traditionally managed by the public sector.

We will begin with a brief history of privatization in American government; we will also report the results of a recent survey conducted by ACA on privatization trends in the United States. Finally, we will answer some of the most often asked questions about privatization.

---

### HISTORY OF PRIVATIZATION

Contracting to the private sector for juvenile services and facilities is not new. In fact, the private sector has operated private juvenile facilities in the United States since the 19th century.

Early jails, which also housed juveniles, were operated by citizens who ran them for profit. These private jailers charged their inmates for food and clothing and were often abusive toward them. Bribery and graft were commonplace.

It was partly in response to these abuses that the government began to operate correctional

facilities directly. The lessons of history, however, should be heeded. We need to ask ourselves whether there is a risk of returning to such abuses. Two facts give us some answers about the risk involved. First, the private sector has different skills and resources to offer in cooperative relationships with state or local governments than they did during the days when they exploited inmate labor. Secondly, government has the capability of establishing standards and closely monitoring private sector performance to ensure the adequate and humane treatment of offenders.

Today, private sector companies often bring with them management skills, advanced technologies, and information management systems that have the potential to *improve* correctional functions and to reduce government costs. For some time, private enterprise has focused on criminal and juvenile justice agencies as markets for high technology. For example, they have made available advanced word processing equipment, computers, and more recently, innovative electronic monitoring devices. Private entrepreneurs are now successfully providing for the administration and management of entire secure juvenile institutions.

Citing the need to reduce government spending and streamline operations, recent national administrators have advocated a greater role for

the private sector in providing social services. Additionally, federal policy, as stated in OMB Circular A-76, specifically advises the government about which areas belong in the government's domain and which areas belong in the private sector. Three major mandates include:

- *Achieving economy and enhancing productivity.* Competition enhances quality, economy, and productivity. According to this Circular and its Supplement, whenever privatization is permissible, there will be a comparison of the cost of contracting and the cost of in-house performance to decide who will do the work.
- *Retaining government functions in house.* Certain responsibilities are so intimately related to the public interest that they mandate federal operation. These functions are not commercial in nature; therefore, they shall be handled by government employees only.
- *Relying on the commercial sector.* The Federal Government shall rely on commercially available sources to provide commercial products and services. According to the provisions of this Circular, the government shall not provide a commercial product or service if the product or service can be procured *more economically* from a commercial source.

Based on the projection that private facilities are expected to grow in the next five years by up to 200%, juvenile justice decision-makers need to study the pros and cons of using privatization with a focus on maximizing the benefits and mitigating the drawbacks (C. Thomas).

---

## PRIVATIZATION DEBATE

The debate over privatization has heated up in recent years because of citizen demands that the juvenile justice system confront the problem of serious offenders more aggressively than ever

before. Consequently, the system has to do more with less. Juvenile justice agencies are trying to find answers to several important questions:

- How can the juvenile justice system deal more effectively with the chronic, serious juvenile offender?
- What approaches are best for responding to this population and reducing recidivism?
- What type of correctional/rehabilitative setting is most appropriate for chronic, serious offenders and how should services be delivered?

The controversy about privatization in juvenile corrections has little to do with purchasing supportive services from the private sector. The debate mainly centers on private sector management and operation of juvenile residential facilities that traditionally were managed and staffed by public agencies. This is a critical point prompting major debate over ideology and practice. Some see it as a threat of a "private takeover."

Those who favor privatization argue that the private sector has more freedom and flexibility to start programs quickly and operate them more cost effectively. Private sector agencies often have greater control over the hiring and firing of staff than agencies in the public sector and they can be more accountable for their actions because of scrutiny by boards of directors, stockholders and consumers of their goods and services. Based on these factors, proponents conclude that privatization of juvenile residential facilities and community services can produce more effective services that better meet the needs of young clients.

Opponents of privatization argue that the private sector cannot ensure or provide a consistent level of service. Private sector agencies, they argue, typically accept only those clients or cases that are most likely to succeed and, therefore, are unable to manage the most difficult cases handled by public sector agen-

cies. Opponents conclude that private sector involvement in juvenile corrections will lead to a lack of coordinated services and ultimately a decrease in financial and political support.

In 1999, at a conference called Public Strategies for Private Prisons, Dennis Cunningham offered the following summary of the pros and cons of privatization.

Reasons to Privatize	Reasons Not to Privatize
<ol style="list-style-type: none"> <li>1. Private operators can provide construction financing options that allow the government client to pay only for capacity as needed in place of encumbering long term debt.</li> <li>2. Private companies offer modern state-of-the-art correctional facility designs that are staff efficient to operate and built based on value engineering specifications.</li> <li>3. Private operators typically design and construct a new correctional facility in half the time that a comparable government construction project would take.</li> <li>4. Private vendors provide government clients with the convenience and accountability of one entity for all compliance issues.</li> <li>5. Private corrections management companies are able to mobilize rapidly and to specialize in unique facility missions.</li> <li>6. Private corrections management companies provide economic development opportunities by hiring locally and to the extent possible, purchasing locally.</li> <li>7. Government can reduce or share its liability exposure by contracting with private corrections companies.</li> <li>8. The government can retain flexibility by limiting the contract duration and by specifying the facility mission.</li> <li>9. Adding other service providers injects competition among the parties, both public and private organizations alike.</li> </ol>	<ol style="list-style-type: none"> <li>1. There are certain responsibilities that only the government should provide, such as public safety and environmental protection. There is a legal, political and moral obligation of the government to provide adjudicated youth. Major constitutional issues revolve around discipline, deprivation of liberty, and preserving the constitutional rights of juveniles.</li> <li>2. There are few companies available from which to choose.</li> <li>3. Private operator inexperience with the key corrections issues.</li> <li>4. The operator may become a monopoly because of political ingratiation, favoritism, etc.</li> <li>5. Government may lose the capability to perform the privatized function over time.</li> <li>6. The profit motive will inhibit the proper performance of duties. Private facilities have financial incentives to cut corners.</li> <li>7. The procurement process is slow, inefficient and open to risks.</li> <li>8. Creating a good, clear contract is a daunting task.</li> <li>9. The lack of enforcement remedies in contracts leaves only termination or lawsuits as recourse.</li> </ol>

Privatization is discussed at almost every major corrections conference. Newspapers, magazines, and television programs have brought the privatization of corrections to the attention of the public. Most discussions of the privatization of corrections in recent years focused on correctional institutions and new for-profit corporations that have emerged to develop a perceived market need.

Several factors have brought about an in-depth examination of juvenile correctional practices and alternatives:

- Unacceptable crime and delinquency rates;
- Increased attention toward serious offenders;
- Crowding in juvenile residential facilities that seriously strains state and community resources;
- Increasing costs;
- A growing "get-tough" attitude; and
- Disillusionment with the success of juvenile correctional services.

Public frustration with delinquent behavior and our justice system are part of a larger dissatisfaction with government and public services as a whole. The critical public mood has been a desire for change, including investigation into the merit of privatizing juvenile residential facilities and community services. One change has already occurred—the tendency toward firmer sanctions.

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## PRIVATIZATION FACTS

For anyone who is considering privatization, there are certain basic principles that are important to understand. The public sector does what it does because the private citizens of that jurisdiction mandate it to. Private citizens and businesses have the duty to involve themselves in public policy planning and program implementation. To the extent that they don't exercise that right, they encourage public officials to

make policy and carry out programs according to what the officials believe best for the community.

The private sector has resources of talent and technology not always available or affordable in government service. In addition to its resources, the private sector operates under a competitive system that is different from the operations of most government agencies. If a government agency operates in a monopolistic atmosphere, there can be too little competitive pressure to increase its efficiency or effectiveness. Public sector agencies tend to be more attentive to matters of cost and effectiveness when they measure their success against other potential providers of the same services.

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## PRIVATIZATION INQUIRY

The American Correctional Association (ACA), under a grant from the Office of Juvenile and Delinquency Prevention (OJJDP) conducted a survey regarding Private Sector Involvement in Juvenile Justice Systems. Results of this Survey are presented below, and compared with a similar study done in 1991 (Levinson and Taylor).

### Survey Findings

Fifty-seven replies were received from 41 different jurisdictions—including Puerto Rico and the Federal Bureau of Prisons. Of the total number of jurisdictions, 46 (81%) indicated that they had at least one currently active Private Sector (PS) contract; the remainder of this report deal with the replies received from those individuals/jurisdictions. This group has been contracting with the Private Sector for an average of 14.2 years—maximum 40—minimum 2-years. California reported the longest experience with private service contracting—40+ years. The number of contracts *per jurisdiction* (see Table below) ranged from 1 to 373, averaging 58.1 PS contracts; Oregon reported having the most.

### Type/Number of Private Sector Contracts

Type Agency (n):	Number	Mean	Minimum	Maximum
(35) private NOT-FOR-PROFIT <sup>1</sup>	1197	34.2	1	123
(31) solely owned FOR-PROFIT	732	23.6	1	240
(20) NOT-FOR-PROFIT public	208	10.4	1	164
(11) FOR-PROFIT public	107	9.7	1	55
(8) Other	138	17.3	1	100
<b>(41) Overall</b>	<b>2382</b>	<b>58.1</b>	<b>1</b>	<b>373</b>

(n) = Number of jurisdictions

1. Contracts fall into the following groupings:

#### FOR-PROFIT

Private—A corporation or business whose objective is to gain a return of funds greater than those expended to deliver a specified service.

Public—A government entity whose objective is to gain a return of funds in excess of those expended to deliver a specified service.

#### NOT-FOR-PROFIT

Private—A privately owned business whose objective is to deliver a service.

Public—A charity whose objective is to deliver a specified service.

The largest percent of the respondents (85%) had contracts with *private, not-for-profit* agencies, followed by *solely owned, for-profit* (76%), *public, not-for-profit* (49%), and *public, for-profit* (20%). Nine jurisdictions indicated that they had contracts with other type agencies/entities—the largest proportion of which were with professional individuals.

The following table displays both the types of services these jurisdictions contracted for, and the percent of their budgets they spent on these activities. (Because of the widely differing sizes of the responding jurisdictions, the survey results are reported in percentages. It should be noted that some jurisdictions did not break-down their expenditures into the different sub-categories—those are included in "Operations & Programs.")

Overall, the largest proportion of jurisdictions that responded (66%), expended an average of 24.4% of their contract funds for Operations and Programs. This was followed by 56% of the respondents who spent an average of 20.9% of

their contract funds for Community-based programs. The area for which the fewest respondents expended contract funds was Facility Maintenance, while the smallest proportion of funds were spent on PS contracts for Food—1.2%.

### Types of Services Contracted For— % of Budget Spent

Types of Contract Services	Average % of Budget
Operations & Programs	24.4%
Community-based	20.9%
Specialized	10.3%
Maintenance	2.6%
Medical	2.4%
Clinical/Mental Health	2.2%
Education	1.6%
Food Services	1.2%



Forty-one percent of these jurisdictions spent an average of 10.3% of their PS funds for Specialized interventions. For the 41 jurisdictions that responded to this survey item, the average proportion of budget funds expended for private sector contracts was 10.7%.

### Attitudes Toward PS Contracting

The main reason the survey respondents gave for contracting was that the private sector vendors could provide services and expertise that the jurisdiction lacked—mentioned by 33 (80%) of the respondents. Second most popular reason was that the private sector could offer services that were cheaper and more efficient—22 (54%) of the respondents. Provide flexibility/diversity of services was endorsed by 18 (44%) of those that replied; all together there were 29 different replies.

The following table displays the most frequently mentioned positive outcomes and shortcomings of contracting—from a total of 28 and 21 responses, respectively.

According to the respondents, these shortcomings were due, primarily, to the vendors. Most often the difficulties were with PS contracts with solely-owned, for-profit agencies and with public, for-profits; the fewest difficulties were experienced with public, not-for-profits followed by the private, not-for-profits. In other words, entities which arranged for private sector contracts had the most difficulty with for-profit agencies and the least problems with not-for-profits.

### Positive Outcomes/Shortcomings of Private Sector Contracts (n)\*

Positives	Shortcomings
(15) Responsive to jurisdiction's needs	(19) Monitoring/control problems
(9) Provide specific service	(12) Lack knowledge of DOC's procedures
(8) Increase program variety	(8) High costs
(8) Provide good services	(7) High turnover of vendor's staff
(8) Saves money	(6) Contracting process too cumbersome
(6) Participants show positive changes	(6) Resist assessment/evaluation
(5) Have expertise/specialized staff	(6) Unrealistic view of population
(5) More flexibility	(4) Resist taking difficult juveniles
	(4) Vendors' staff inexperience

(n) = Number of endorsements

### Future Plans

Eight-five percent of the respondents listed service areas where new PS contracts were anticipated. Only one jurisdiction—Missouri—stated that it anticipated fewer such contracts in the future. However, more than half (54%) of those responding stated that their agency was moving toward more PS contracting—about two new contracts per agency; the rest expected to maintain about the same number of contracts. On the list of the 69 anticipated, new contractual services/programs, the most frequently mentioned (number in parenthesis) were:

- (6) health/mental health programs
- (6) programs for special need juveniles
- (6) services for females
- (5) residential (secure) programs
- (4) community-based programs
- (4) substance abuse (in-patient)
- (3) more detention space
- (3) non-residential services

Six states—Kansas, Massachusetts, Nebraska, New Hampshire, Virginia, Wisconsin—indicted that there was existing or pending legislation in their jurisdiction that encouraged PS contracting; for the remaining 85% of the jurisdictions there was no such legislation. Additionally, 87% of those responding mentioned there was no legislation or rules that hampered such contracting. Further, 95% of the survey replies indicated the criteria used to accept/reject a PS contract—high frequency responses were: compliance with agency regulations; cost; selection by a panel; and the vendor's history and/or past performance.

The two most frequently mentioned methods for monitoring private sector contracts were by specifically designated staff and by conducting on-site reviews. Annual reviews of documentation/reports and financial reviews of billing accuracy also received many mentions. Forty-nine percent of the respondents use a formal written monitoring/evaluation plan.

Overall, 78% of those replying expressed a willingness to participate further in this ACA/OJJDP project.

### Comparison With Prior Findings

The proportion of agencies that reported having at least one private sector contract decreased when 1991 figures (Levinson and Taylor) were compared with the present 1999 findings—98% then, 81% now. However, the average length of experience with private sector contracting increased—13.7 and 14.2 years, then and now, respectively. The jurisdiction with the largest number of PS contracts changed, from Georgia to Oregon, as did the number—385 then to 373 now; the average dropped from 81 to 58 per agency. The following table compares the types of private service contracts, then and now.

**The two most frequently mentioned methods for monitoring private sector contracts were by specifically designated staff and by conducting on-site reviews.**

From 1991 to 1999 the proportion of jurisdictions contracting with not-for-profits stayed the same while PS contracts with for-profit agencies increase as did the proportion of jurisdictions contracting with private individuals ("Other").

As displayed in the below table, the reasons given for signing private sector contracts in 1991 and 1999 were, essentially, the same.

#### Type/Percent of Private Sector Contracts

Type Agency:	1991	1999
NOT-FOR-PROFIT	90%	89%
FOR-PROFIT	60%	80%
Other	8%	17%

Despite the slight changes in rank, there was a higher level of consensus in the most recent survey data.

A somewhat smaller proportion of the respondents in 1999 than in 1991 indicated that their

agency anticipated more private sector contracts—54% compared with 60%; while only a slightly greater percentage reported that the number of PS contracts would remain about the same—39% now compared with 35% then.

### Reasons for Private Sector Contracting

Reason:	1991	[rank]	1999	[rank]
Cost efficiency	22%	[1st]	57%	[2nd]
Service unavailable within agency	17%	[2nd]	78%	[1st]
Increase diversity of services	13%	[3rd]	42%	[3rd]

The types of contracts that agencies are seeking are displayed in the following table:

The type of PS contracts that were most frequently mentioned are listed in the left-hand column. In 1999, three areas received the highest (identical) number of endorsements; all

three were assigned a rank of "2." As can be seen, *Residential treatment*, which ranked first in 1991, eight years later received a rank of "4"; and, two of the areas (*Programs for special need juveniles*, and *Services for females*) were not among the top five listed in 1991.

### Type of Anticipated Private Sector Contracts

Type:	1991 [rank]	1999 [rank]
Residential treatment	[1st]	[4th]
Day treatment	[2nd]	[5th]
Mental Health services	[3.5]	[2nd]
Programs for special need juveniles		[2nd]
Services for females		[2nd]

The types of PS contracting that will be sought in the future have changed; and, the anticipated programs are more targeted now than in 1991.

## Conclusion

Findings from the recent ACA/OJJDP survey reflects a strong continuing interest in contracting with the private sector for correctional programs and services for juveniles. Overall, in the eight years since the previous assessment, there has been an increase in the use of For-Profit Contractors—from 60% in 1991 to 80% in 1999. Further, it appears as if this trend will continue into the future.

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## QUESTIONS MOST OFTEN ASKED ABOUT PRIVATIZATION

It's essential that a jurisdiction contemplating contracting to the private sector ponder the complex issues posed in the following questions:

### 1. Will public agencies avoid or diminish their liability by contracting out corrections functions?

The ultimate responsibility for delivering correctional services lies with the state. As the Supreme Court made clear in the case of *West v. Atkins*, 487 U.S. 42 (1988), contracting doesn't and can't completely absolve government of this responsibility. The legal rights of confined juveniles do not diminish simply because they are confined in a privately rather than a publicly managed facility. Properly drafted contracts, however, oblige private providers of juvenile correctional services to indemnify state or local agencies against the broad range of liability exposure they confront when they deliver juvenile correctional services themselves. These indemnification clauses include, but are not limited to, guarantees that the private firms will be responsible for all costs—including legal defense costs, settlement costs,

and damage awards—associated with both tort suits and actions brought under 42 U.S.C. Section 1983.

Privatization's ability to lessen the state's liability exposure is one of the important reasons privatization has proven to be attractive in both juvenile and adult corrections. This is perhaps especially true for local levels of government. Following the decision of the Supreme Court in the case of *Monell v. Department of Social Services*, 436 U.S. 658 (1978), it became possible for local units of government to be held liable for monetary damages in Section 1983 suits. State or local officials who are sued in their individual capacities can be held liable for monetary damages. However, a combination of the Eleventh Amendment and interpretations of the scope of Section 1983 precludes state or local agencies from the same liability (e.g., *Will v. Michigan Department of State Police*, 109 S. Ct. 2304 (1989), and *Howlett v. Rose*, 110 S. Ct. 2430 (1990)). Despite this limitation, privatization can significantly reduce the liability exposure of state or local agencies by, for example, covering the significant legal defense costs associated with Section 1983 suits and the liability that is related to tort law.

### 2. What about the concerns of public employee labor unions and other public employee groups about job security?

It's a reality that correctional services, as currently practiced, are labor intensive functions. Obviously, savings are realized if four or five workers can accomplish what six workers are currently doing through the introduction of more efficient management technology. The principal decision for policy makers and guardians of the public purse is whether more efficient and cost-effective correctional services can be achieved through privatization, thereby serving the public good.

There are practical ways of mitigating the threat felt by public employees. Experience has shown that where private corporations have replaced

services that were previously performed by the federal government, their executives have been well versed in the "right of first refusal," which gives employees of a current operation the right to first choice—or refusal—of employment with the new provider. This "right" was proclaimed for federal conversions as a requirement of OMB Circular A-76. It gave the "right of first refusal" to federal employees displaced as a result of conversion. Similar administrative provisions are also frequently employed at the state and local level. Experience from the field indicates that corporations do, in fact, routinely draw the majority of their project employees from displaced civil service workers. Regardless of what is done to help safeguard the jobs of current public employees, this issue is a difficult one to resolve, and organized labor can be expected to take a strong position on it.

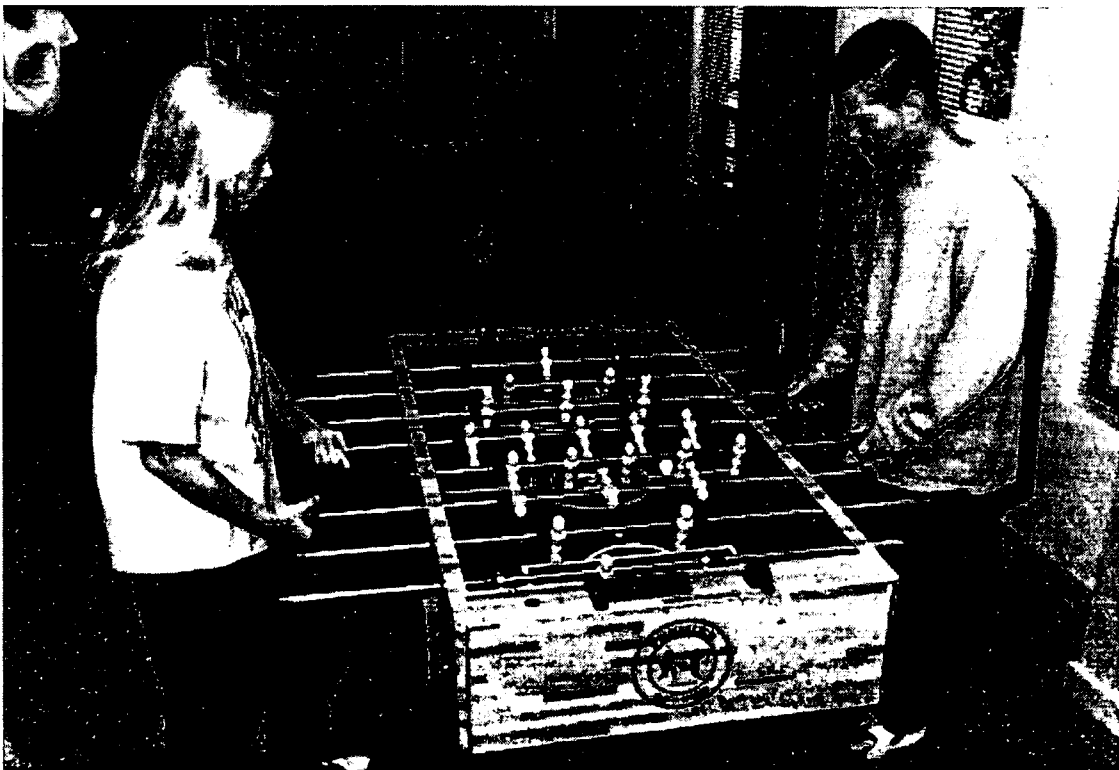
A number of approaches regarding these public employees have been taken both by private corporations and government agencies. Agencies are often placing staffing considerations as a criteria for selection of a contractor. Others require private firms to hire all current public

employees, lay off no one, recognize and bargain in good faith with the union, and provide comparable pay and benefits. Contractors often propose to handle any staff redundancies by:

- Not replacing those who retired or resigned, and
- Transferring some employees laterally or upward to other career paths.

This approach, encouraging staff to take company training programs and to receive career guidance, was a key factor in keeping employee morale high.

It should be noted, however, that the reverse might also be true. If a company needs to draw on the neighborhood applicants, they may find themselves training staff who have no background in juvenile development and who need constant on-the-job training. Also, in an effort to keep costs down, some companies may downsize executive positions or take away incentive bonuses or leave days, thereby decreasing morale.



### 3. Won't the cost of private sector services be higher than the cost of public agency performance?

This question is realistic. After all, aren't there two new costs (profits and contract monitoring) being added to the existing costs? These new costs exist—no question about it. But offsetting them could be other major elements, such as:

- *Economies of scale:* A single provider can serve several counties (or states), thus spreading its overhead among all of them, resulting in significant cost reductions. Overall costs of management and administration, data processing, fiscal activities, and a host of other bureaucratic functions can be centralized and costed out proportionately.
- *Different incentive structures:* An obvious difference between the public and private sectors is their different incentive structures. The delivery of a service by a public agency is essentially a monopolistic activity. A public sector department of juvenile services, for instance, doesn't need to worry that another agency will come in and take away its "business." A private sector department, on the other hand, has no guaranteed revenues, and lives with the very real possibility that another business will come in and outbid it.
- *Different managerial styles:* Another difference between the public and the private sectors is the managerial style of its executives. An administrator in a public agency will perceive his or her priorities as performing a particular range of services within a pre-set budget, while avoiding negative political fallout. The administrator will often spend money just because it's there, knowing that if the department shows unspent money at the close of the fiscal year, cost-cutting legislatures or boards of supervisors will likely reduce the department's succeeding budget by at least that amount. In addition, a government executive will often measure professional

status by the size of the agency, measured both in size of budget and numbers of employees. The unspoken driving force of a public sector agency might often be to increase its budget and to add new employees.

An administrator in a private sector company might perceive his or her priorities to be the efficient performance of a particular range of services with as few employees as possible and to generate as large a profit as possible for the company. He or she might relentlessly seek innovative ways to cut costs and increase employee productivity while delivering the highest quality of services. The more unspent money (profits) the department can accrue at the end of a fiscal year, the more valuable the administrator will be to the company. Professional status is more likely to be measured by the size of the profits, not the size of the corporation. It's up to the public sector monitoring and evaluation to make certain the profit motive does not diminish services to the juveniles.

### 4. Once the private vendor gets established, is there a danger that private sector costs will escalate unduly in ensuing years?

Critics of privatization argue that a private firm could offer a lower price the first time around to win a contract, then raise costs during the ensuing years, particularly if the community has created a point of no return by dismantling its own service delivery capability. This is a reasonable concern and certain safeguards should be established. For example, the jurisdiction must ensure truly competitive bidding conditions in subsequent years so that other firms have a fair and reasonable chance to seek the contract.

### 5. Is it proper to shift the provision of social control to private providers?

This question is closely linked to the issue of statutory authority. It's raised on the basis of the "propriety" of such action rather than with respect to its "legality." It's an ideological

question that evokes emotion for many people and is grounds for lively debate. There are those who argue that some functions are the "raison d'être" of government and cannot or should not be delegated; among these functions are all legislative and judicial activities involved in all stages of the juvenile and criminal justice process. With equal vigor, others argue that there is a legitimate and necessary role for private enterprise in the management of juvenile corrections, which in no way constitutes an abrogation of the essential role of government in formulating policy.

It seems, according to existing research, that the majority of corrections functions are contractible. Those which may not qualify are interrogation, decisions to detain or not to detain, in-chamber judicial activities and the development of public policy. In the final analysis, the debate can be resolved only by carefully defining both private and public sector roles and by determining the limits, if any, which are to be placed on contracted functions.

**6. Are there adequate, reasonable controls which will safeguard against possible abuses, such as cost overruns and political manipulations?**

Corrections professionals are worried that some companies will try to manipulate state and local politics to secure contracts. Proponents of this view fear that the private sector will politicize corrections. They argue that, unlike government officials, private managers have available to them skilled lobbyists who will do all they can to influence social legislation, appropriation and procurement policies to expand the profit goals of business at the expense of sound corrections practices. Privatization, notes a representative of the American Federation of State, County and Municipal Employees, leads to rip-offs, corruption, bribery and kickbacks.

This is a difficult issue. It speaks to the fear that privatization leads down the road to a corrupt system of government. The trap is to engage in

an endless, "yes, it does—no it doesn't" dialogue which leads nowhere. The temptation to corrupt, accept bribes and kickbacks and subvert the bidding process seems to go with the territory of human nature, regardless of whether the perpetrator is a private contractor or government employee. The question is, "How can we guard against it?" One answer is to insist on well planned and open bidding procedures. Objective selection standards for all government contracts must be assured. Insisting that all such rules, procedures and criteria be matters of public record, and holding bid openings and other important decision-making sessions in public is fundamental to the process.

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**7. Are profit making and public services compatible concepts?**

Some people sincerely find it distasteful that anyone should profit by supplying the vital needs of others. The question is often asked, "How can rehabilitation of offenders and the protection of society from juvenile offender behavior be left in the hands of greedy businessmen?" This attitude often comes from the idea that for-profit companies are not "dedicated" or "idealistic" enough for this type of work, while non-profit agencies are.

Ultimately, these objectives can be countered by pointing out that even government and non-profit agencies have expenses, budgets to balance, and payrolls to meet. Dedicated, principled professionals exist everywhere, not just in government service. Often, employees of for-profit companies formerly worked for a governmental or non-profit agency.

The competitive provider, working free of governmental, bureaucratic restrictions often finds it easier to alter staffing patterns and change problems in management systems and service delivery. There is significant monetary incentive to deliver high quality juvenile services in a competitive market.

**8. Does contracting out juvenile corrections functions weaken accountability to the public?**



It should be noted that, while a governmental unit relinquishes responsibility for performing a service by contracting it out, it in no way relinquishes responsibility for monitoring the private providers. A clear definition of public/private roles and responsibilities must be documented in the contract. Government remains accountable, through detailed monitoring procedures, for all contracted services. And experience shows that government can be an effective monitor of contracted services.

The shift from operating public services to monitoring the provision of public services requires a clear analysis of the public sector's ability to oversee and evaluate performance. The public entity responsible for monitoring the contract must be in a position to require and enforce high standards of quality from its contractors. The incorporation of high, but achievable, performance standards into the contract is basic to proper public accountability and clarifies the roles of public and private managers in the contract arrangement.

Public sector managers sometimes feel threatened by a loss of control when privatization is considered. However, if these managers retain a

strong voice in policy development, setting standards, and contract monitoring, they will feel less threatened. Performance standards for juvenile correctional services have already been developed by the American Correctional Association, the American Bar Association, and the National Advisory Committee of Juvenile Justice and Delinquency Prevention. These standards and others, which state or county governments see as important, are adaptable tools whose use can assure continued public accountability for these services through proper monitoring.

**9. Are there private sector suppliers who are experienced and able to perform corrections services?**

This is an important question. It would be unfortunate to contract out corrections services only to discover that there were insufficient or inadequate bidders. There are firms, some of them new and some of them old and well established, with the interest and the capability to manage and operate juvenile justice services. Experience also shows that within public correctional agencies, there are now practitioners who have the initiative and creativity to



move into the private corporate community where they can provide their skills as opportunities arise. This, too, is a part of the American tradition. Caution should be exercised, however, because although many responsible for-profit firms may be interested, a move to contracting corrections services must be meticulously thought out and organized.

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## **PRIVATIZATION: A CHALLENGE TO THE PUBLIC SECTOR**

Some people in corrections believe that juvenile justice systems are doing very well and do not welcome change. Others in the field oppose change regardless of the system's performance, as if change could threaten their job security. There are others who say that while juvenile justice programs provide a valuable service, they often fall short as complete systems due to inefficiency and high cost.

For jurisdictions with a strong desire to improve through carefully considered and planned change, privatization is an option worthy of trial.

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## **CONCLUSION**

Privatization is not a new concept juvenile justice. The government has given private contracting more attention over the years and it remains an important option in the delivery of public services. The ACA inquiry shows that every state in the union has at least one contracted service and that 60 percent expect more contracts in the future. Privatization is an important issue to examine and understand.

## The Feasibility of Conversion

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### INTRODUCTION

The purpose of this chapter is to assist state and local directors of juvenile corrections in determining the feasibility of contracting some of their residential facilities or services to the private sector. The instances when public agencies should consider this possibility include, but are not limited to:

- A desire to restructure, expand, or improve the continuum of care and services
- A desire for innovative ways to increase program efficiency
- The need to expand capacity quickly to relieve crowding
- A consent decree or court order resulting from litigation against a particular program or the entire juvenile correctional system, or one which mandates the development of a particular program not currently available in the state
- A need for capital construction funds and a cap on bonding authority
- Reductions in appropriations which require reductions in the work force
- Budget freezes or other prohibitions against creating new public sector positions or filling vacant positions

Before contracting with the private sector, however, a state should undertake a systematic, detailed analysis to determine if, and under what conditions, contracting is likely to be feasible.

This process should include an examination of:

- Legal authority
- Public policy goals
- Quality of service
- Economic efficiency
- Liability
- Rights and due process
- Security and safety
- Control and accountability
- Political environment
- Community attitudes

Other issues may also emerge during the analysis process.

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### FEASIBILITY ASSESSMENT

#### Legal Authority

The expenditure of public funds is controlled by law and rule. Generally, provided established procedures are followed, public agencies may purchase or contract out for goods and services.



In fact, this practice is quite common. It's estimated that as much as one-third of all federal, state, and local government goods and services is currently contracted out to the private sector.

Contracting out for juvenile correctional services also is not new. Many states and local jurisdictions have relied on the private sector to provide a variety of residential and non-residential services, including assessment, supervision and treatment. Despite this history, however, most juvenile correctional services, especially secure detention and secure training facilities, continue to be publicly operated.

One of the reasons that the move toward more privatization has been slow is a question about whether the traditionally public correctional function may be lawfully delegated to the private sector. Issues of legal authority and other similar concerns are complex, and their analysis is best left to legal counsel.

Sometimes, the issues can be subtle. For example, in one jurisdiction, there is no direct prohibition against a county government contracting out privately provided correctional services for juveniles. The problem is that this county can't use a juvenile correctional facility until it has been approved by the state or local agency, but the state agency doesn't have authority to inspect private facilities. As a result, there are no privately operated juvenile correctional facilities in the state, despite the fact that the unit of government has the authority to contract for the service.

Unless authorized through a procedure known as general purpose bonding, some states are strictly prohibited due to long-term debt or financial obligation. Thus, private providers may be reluctant to bid on a multi-year contract for juvenile residential services because there is no guarantee that the contract will continue past the current fiscal year.

Another issue which affects legal authority is whether the law permits contracts with for-profit organizations. One state legislature recently passed a new law authorizing the state department to contract for juvenile correctional services but limited eligible providers to non-profit agencies. Such a limitation reduces the number of qualified providers to compete for the contract.

An effective approach to determining whether there are significant problems relating to the legal authority to contract out a particular juvenile correctional service is to develop and enact a scenario. Similar to a role play, enacting a scenario (for example, privatizing aftercare services) provides the public agency the opportunity to test every aspect of the contracting process from developing the request for proposals, to selecting the successful bidder, to signing a contract and monitoring it. At each stage of the scenario, critical legal questions and issues may be raised for further research and analysis.

If a legal obstacle to private sector contracting is identified, a list of possible remedies should be developed. These might include statutory revisions, developing new regulations or requesting a legal opinion. A significant question to answer is whether there is a need for conversion. Is it worth the time, effort and cost involved in overcoming the obstacle? Further, will the delay caused by the obstacle and the time needed to overcome it prevent conversion?

### **Public Policy Goals**

Government has the responsibility of defining public policy goals for juvenile corrections. They perform this duty most often through statutes and budget provisions enacted by the legislative branch and approved by the executive branch.

These goals usually focus on serving the public good which is the primary motivation of government at all levels. A critical question to ask is whether the private provision of juvenile correctional services will serve the public good.

Identify the goals of the publicly provided service to determine whether there is any reason these goals could not be achieved more effectively by a private provider.

Some states begin by examining the nature of their juvenile corrections continuum of services. Ideally, a juvenile justice system should include an array of programs and services—residential and non-residential, secure and non-secure—which adequately address both the juvenile's risk to public safety and his or her treatment needs. This array should include varying forms of supervision in the community, day treatment and alternative education programs, vocational assessment and job training, group homes, treatment programs for mental illness and substance abuse, structured recreational programs, family counseling and services, physical challenge- and wilderness-oriented placements, life skills training, and post-placement community re-entry and aftercare, in addition to traditional probation aftercare and residential facilities.

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**A significant question to answer is whether there is a need for conversion. Is it worth the time, effort and cost involved in overcoming the obstacle?**

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The reality of juvenile correctional budgets which have decreased in the face of increased referrals has often prevented the development of a full continuum in most jurisdictions. Many juvenile courts are faced with the choice of either sending the juvenile home under limited probation or committing him or her to the state or local training school.

Privatization is a possible strategy to establish or restore a comprehensive continuum of care. Although the reallocation of limited resources is a difficult task, it can and has been done in a number of states. Using fiscal incentives and

disincentives, administrative reorganization approaches and program capacity limits, state and local juvenile corrections directors have created the opportunity for private providers to design and implement new programs at the state and local levels. These efforts have often been successful in instances where, due to budget constraints, there were restrictions on expanding the state or local work force.

A common immediate goal for many jurisdictions is to respond quickly to a court order. Virtually every state and a number of local units of government are either involved in litigation or are under court order to improve their provision of juvenile correctional services. Existing laws and regulations controlling areas like capital expenditures and personnel often present obstacles to establishing an immediate, publicly operated response. A number of states and local jurisdictions, therefore, have turned to the private sector to respond to litigation successfully.

Because the private sector is less burdened with rules and regulations and is able to act more quickly than government, they can establish services more quickly, especially with respect to accessing capital funds.

### **Quality of Service**

At times, the private sector has a greater potential for innovation and efficiency primarily due to its ability to be more flexible than government about personnel and resources. The private sector is also often less burdened with bureaucracy and "red tape."

A significant issue that needs to be considered, however, is how quality is measured. What constitutes a "high quality" service? What is the standard used to measure quality? What are the characteristics of quality programs?

Quality in any juvenile correctional program must begin with establishing positive and trusting relationships between juveniles and program staff. Staff in quality programs adhere

to the highest levels of professional excellence and are positive, caring, well-trained, competent and humane in their approach to working with the juveniles in the program. Other elements of quality juvenile justice programs include:

- Services designed to promote the human dignity, self-esteem and self-respect of juveniles in the program
- A group life atmosphere in which juveniles are supportive and helpful with each other
- Juveniles need living and working environments that are safe and clean; all persons in the program, whether residential or non-residential, must be free from fear in the conduct of their activities
- Methods for supervision and control that teach juveniles about the consequences of their behavior, both positive and negative, and help them to identify and learn responsible ways to meet their needs
- Opportunities for juvenile decision-making that foster a sense of participation, significance, and competence
- Individualized approaches to meeting treatment and service needs
- A clear and predictable path of progression for juveniles through the program
- Continuous case management that ensures coordination, service delivery and accountability
- A reporting system that measures progress and outcomes

The level of quality can be measured using these characteristics, or any others that are relevant to the program or service under review.

It would be wrong to assume that the private sector will always provide a higher quality of service than that of the government. Experience demonstrates that the private sector can be as wasteful, inefficient, and corrupt as any government agency.

Another issue to consider is whether it's possible to improve the current quality of service. What are the obstacles to improving the public operation, and will those obstacles be overcome if the service is provided privately?

These are difficult and complex issues. One approach is to assess the quality of the delivery process, as well as the outcome. This approach begins with looking at the potential of staff to improve the quality of services through increased training and program resources. Another component of the process is to look at the physical plant and the ability of staff to improve the quality of services in the particular facility. Another issue to consider is the message that privatizing sends to public employees who will continue to provide other related services. Poorly handled, a precipitous decision to privatize could result in lowered morale and productivity among remaining employees. On the other hand, a reasoned decision that is understood and shared by all involved staff could actually increase morale and productivity.

### Economic Efficiency

From the beginning, cost savings have been one of the primary motivating factors for contracting out traditional public services. Many units of government that previously adopted a "low bidder" mentality have learned that their early expectations of large savings are often not realized. The belief that merely introducing marketplace forces would produce superior services at greatly reduced cost has also not proven universally accurate.

There are, however, numerous examples of cost savings as the result of contracting out governmental services. These successes are most common in service areas in which the private sector is already greatly involved, such as garbage collection, food services and office cleaning. The relatively intense competition between dozens of different companies in a particular area assures a low bid with the quality of services expected.

Part of the problem is that government often underestimates the actual costs. Because private



providers tend to include both direct and indirect costs, their estimates are often higher.

The determination of direct costs is usually accurate; indirect and administrative costs, however, vary so much that the government usually encounters estimating problems. One major city determined that due to its bureaucratic structure, the actual indirect and administrative costs could never be determined so they arbitrarily set an amount. More commonly, government agencies underestimate the costs of accounting, personnel, property, existing buildings, purchasing and maintenance.

Government must look for costs that it could reduce even if the service were not contracted out. For example, poor management may be causing high staff turnover, low productivity, and excessive costs. Deciding against privatizing and simply changing managers might effect the desired cost savings.

The determination of cost must also include the price of government's continuing involvement with the service, including bid development, contract monitoring and accounting and program oversight.

A practice that interferes with the costs savings equation is "low balling" or underestimating cost. Private providers occasionally submit a low bid for a program or service. They may underbid to promote business in general, i.e., a "loss leader," or as an attempt to assure a contractual relationship with a particular government agency in the hope of future business. The danger in this practice is that the private provider may find it necessary to cut corners to balance the bottom line. Unfortunately, if a provider decides to bid and is

awarded the contract, they may find themselves gradually reducing the quality of their service because they are unable to meet the actual costs of the program. The result may either create the need to give the provider additional funds or an agreement to cut back on services. Neither action promotes the intent of the original cost savings.

A government agency could contribute to this problem by establishing unrealistically low contract award amounts. Again, experience demonstrates that most private providers will

decline to bid because they know that they can't operate the program effectively at a low, preset budget.

Government agencies also need to have reasonable expectations about the cost savings that they may realize through contracting out to the private sector. Some state or local agencies estimate that they save the tax-

payer approximately six percent by contracting with private firms for juvenile corrections services. Virtually all of these savings, however, result from the lower wages and personnel benefits paid to its staff by the private providers.

There are other costs to consider as well. One area where financial relief is more certain for government is in the area of capital budgets for facility construction. By privatizing, government will not need to provide advance funds, and this fact is especially important in situations in which government bond issues have been rejected or in which government has encountered serious revenue shortfalls.

Private financing for public corrections has been growing during the last decade. Some providers will build a facility and incorporate building costs in its annual budgets. They may add to the contracted per diem all or part of the

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**One major city determined that due to its bureaucratic structure, the actual indirect and administrative costs could never be determined so they arbitrarily set an amount. More commonly, government agencies underestimate the costs of accounting, personnel, property, existing buildings, purchasing and maintenance.**

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amortized cost of the facility. Or they may contract with a private builder under a lease structure which is charged to the state or local government as part of the contract. Either way, private financing can free up limited tax dollars for other purposes.

### Liability

At one time, government believed that it could drop its liability for operating correctional programs by contracting the service to a private entity that would assume the liability. This issue was settled in 1988 by the U.S. Supreme Court in *West v. Atkins*, 487 U.S. 42, that held that government does not absolve itself from liability by contracting out its constitutional duties.

The decision whether to privatize, therefore, needs to focus on whether the state's exposure to liability would increase as the result of privatization. A key factor to consider is the quality and experience of potential providers. If these providers can give the same or better quality services than those currently provided by the government, the government's exposure to liability would be the same or less than at present.

The most effective safeguard against increased litigation is to require the private provider to insulate the government through reasonable indemnification for costs which may be incurred as the result of litigation. In essence, the provider guarantees that it will be responsible for costs and awards which result from its negligence or misconduct. This requirement should be made part of any contract between the government and a private provider.



An additional safeguard that reduces exposure to litigation is accreditation. In the contract, government agencies need to require that the provider attain accreditation from applicable national organizations such as the American Medical Association or the American Correctional Association.

Because this area of litigation is relatively new, the body of law and opinion about the contracting agency's liability exposure is still evolving. It appears from the existing legal research literature, however, that as long as the public agency doesn't require its contracted provider to engage in misconduct, does not give official approval of a provider's policies, procedures or practices which may be inappropriate or illegal, or intentionally ignore observed misconduct, its liability exposure will be reduced.

In fact, in the last decade, there have been far fewer problems or concerns about litigation issues than agencies originally thought.

### Rights and Due Process

One of the earliest arguments against privatizing juvenile corrections was the threat it posed to the constitutional rights of the juveniles in the program. Because private firms are not generally subject to constitutional restraint, some



feared that juveniles placed in privately operated programs would have no recourse to challenge the conditions of their custody.

The courts have consistently held that the rights of juveniles in correctional programs and the due process to which they are entitled are not diminished in any way by virtue of being placed in a program operated by a private provider. A classic example may be found in the Florida system which has operated private residential and non-residential programs since 1982. Not one judicial decision resulted in the juveniles being treated differently than those in public facilities. Both populations were arrested, adjudicated and committed by the state's constitutional judicial authority, and both receive the same protections regardless of where they are held.

Nevertheless, there are practical issues that could impinge on a juvenile's rights. A provider's efforts to reduce costs in the areas of food services, medical services, utility costs and clothing, for example, can have an unintended

impact on a juvenile's rights. Cost reductions that compromise the safety of juveniles and staff can lead to increased liability exposure. Ultimately, it is the state or local agency's ability to manage, monitor and control these issues that will determine whether privatization is appropriate.

One approach government can take to protect itself and the juveniles in the program is to require the provider to allow a state-appointed staff person to serve on-site as a monitor when the population and the facility would warrant the additional cost to the state.

### **Security and Safety**

There is nothing inherent in a publicly operated program that makes it better in terms of security and safety than one that is privately operated.

Problems have arisen, however, about the authority of private providers as compared to government. It's important to determine whether the employees of a private provider are authorized by state or local law to take and



hold juveniles in their care. Some state or local statutes never envisioned private correctional providers and they specifically limit arrest authority to sworn public law enforcement personnel and other public officials.

Another area to investigate is whether state or local law about escape includes when a juvenile leaves a privately operated correctional program. There have been instances around the country where law enforcement refused to arrest individuals who walked away from private programs because it was not clear that any state or local law had been violated, i.e., the criminal law defined escape as an unauthorized leaving from a "public" correctional facility.

### **Control and Accountability**

One of the most consistent criticisms of privatization is that it results in a loss of control by government over functions for which it is ultimately responsible and accountable. This criticism has been based in large part on actual experiences where the government agency did lose control over its contracted provider.

These same experiences demonstrate, however, that the loss of control is not inherent to privatization. Quite the contrary, the level of control exerted by government over its providers is directly related to how well government structured the RFP and the contract under which the provider operates. If privatization is to be successful, government must protect its interest in the provision of the services for which it is ultimately responsible.

In determining whether to privatize, government must assess whether it will be capable of retaining system-wide control of the delivery of services by a private provider. Key elements of this control include determining program admission and release criteria, the ability to monitor closely and affect on-going operations, and the will to terminate the contract for cause, if warranted.

### **Political Environment**

In an era of decreasing confidence in and increasing suspicion of government institutions at all levels, some believe in privatization as both a solution and a cureall. Managers of government programs have sometimes looked at privatization less for its cost savings than for its impact on reducing the power of public employee unions. Motive plays a major role in the decision about whether to privatize.

Privatization can also be symbolic. The public's disenchantment with government in general and its traditionally high regard for the values of private enterprise may make the decision to privatize, for whatever legitimate reason, a popular one politically.

Privatization causes change that affects people. Contracting out a service which has traditionally been provided by the government means that public employees will be impacted in some way. Resistance to privatization, not surprisingly, generally comes from public employees and their representatives.

This fear and resistance by public employees is compounded by the fact that corrections has become an important career path for minorities in this country. Some states report that the proportion of minorities in their corrections system is twice that of the general business community. In an economy which is offering fewer opportunities for economic security, the potential loss of jobs to a private provider of correctional services is a significant event with equally significant political implications. Although recent studies indicate that the hiring of minorities of public and private agencies are virtually the same, the fact that private providers generally pay lower wages and benefits for comparable public employment causes many to continue to resist them.

Sensitivity to these types of political issues may be more important in the long run than making a factual case in favor of privatization. The

analysis of whether to privatize should include considerations of whether appropriate arrangements can be made to protect affected public employees. For example, a provider could be directed to first consider affected staff in hiring for the new program. This approach has been successful in several instances. Another approach is to provide affected staff sufficient lead time and assistance in seeking other government positions.

Consideration must also be given to how contracting out a particular program or service may affect the influence a potential provider may have over the nature and provision of the contracted service. It's only natural that private providers of correctional services, especially those which are for-profit, have a vested financial interest in continuing and even expanding the need for their services. Having a contract with a public agency often places the provider in a position to engage in various activities, such as meeting with key government officials or lobbying legislators, to promote public policy decisions that favor the provider's interests. Recent history should be reviewed.

### **Community Attitudes**

Whenever or wherever the juvenile correctional program or service to be contracted out involves a community or neighborhood, it's important to assess how key members of the community view the program, especially important when a community based program is being considered for privatization. The neighborhood may have developed considerable confidence over the years in the ability of the publicly operated program to keep them safe. The program administration may be responsive to community involvement. Contracting out such a program to a private provider who is not known to the community may cause anxiety and opposition.

Civic and business organizations, neighborhood groups, and influential citizens in the affected community should be told of the government agency's plans and asked for their opinions about a private provider operating the program in their community. The local and state politicians who represent the affected area should also be contacted for their views.

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## **CONCLUSION**

In this chapter, we discussed ten issues and concerns that government decision-makers should consider in determining whether it's feasible to contract out juvenile correctional programs to the private sector. We demonstrated that contracting out is neither a quick fix for existing problems in publicly operated programs, nor is it a guaranteed approach to cost savings. We have concluded that the decision to privatize is often subjective and dependent on a variety of local factors.

Ultimately, the decision to privatize juvenile correctional programs should be determined by whether it best serves the juveniles and the public interest. Private sector programs may offer many opportunities to maximize the limited resources available and provide quality services to delinquent juveniles, especially to those juveniles with special needs.

It's a decision which should not be made lightly. The government must assure the safety of the public and this important duty should not be compromised by actions which are politically expedient or popular at the time.

## Developing a Request for Proposals and a Proposal Review Process

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### INTRODUCTION

What factors have the greatest influence on the success or failure of contracting with the private sector? Some experienced agency personnel would highlight the qualifications and experience of the independent contractors. Some would emphasize the clarity and sophistication of the contracts by which the partnership was formalized. Some would point to the degree to which government monitored the activities of independent contractors and required compliance with the terms of contracts. However, most would agree that no single aspect of the contracting process plays a more consequential role than does the *Request for Proposals* (RFP).

Each request for proposals is unique. Each one focuses on the particular needs a contracting agency confronts at any particular time. Each one is shaped by state or local statutes and regulations. Despite the differences in RFPs, there are many common denominators in their logic, structure and content. The purpose of this chapter is to identify and explain the key components of a sound RFP. It also provides a sample RFP that might be appropriate for a typical procurement effort. The sample RFP is not intended to serve as a template that agencies can use in hopes of limiting their work to little more than a "fill in the blanks" effort. The

sample should provide a reasonable illustration of the major issues an RFP must address and how those issues might be resolved in a typical jurisdiction.

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### THE BASIC LOGIC AND PHILOSOPHY OF CONTRACTING

When preparing a request for proposals for the first time, there are two temptations that one must avoid. The first is to imagine that the task is too complex and technical. Authors of RFPs who understand the needs of their agencies and have taken the time to gather the necessary background information will find that they can handle the task easily. The second temptation is to move immediately to drafting the request for proposals without the necessary background information.

#### What is a Request for Proposals?

A request for proposals is the document that a contracting agency uses to launch the process of private sector contracting. Procurement by RFP is one of several methods for selecting an independent contractor.

- An RFP is ordinarily used when a state or local agency:
- Is legally obliged to use a competitive procurement process

- Has concluded that a competitive process will best serve its interests
- Is unable to define specifically the scope of work for which the contractual service is required

Unfortunately, even those who have a good deal of experience with contracting for services sometimes confuse a request for proposals with an invitation to bid.

The “unable to define specifically the scope of work” portion of this typical definition distinguishes an RFP from an *invitation to bid* (ITB). An ITB is used when the state or local agency has a narrow, specific need that is *clearly defined*. RFPs are used when the state or local agency has a general need and the agency wants to encourage innovative suggestions for service delivery.

The absolute cost and also the cost savings associated with contracting for correctional services are and should be important considerations in contracting decisions. However, cost is less important in the overall evaluation when using an RFP than with an ITB. An ITB specifically describes what is needed and how the service should be delivered. Cost is important because everyone is bidding on exactly the same thing. With an RFP, potential providers are bidding on different ways of delivering the same basic service.

### The General Structure of a Request for Proposals

The structure and content of a sound request for proposals varies from jurisdiction to jurisdiction. Staff responsible for preparing an RFP should:

- Familiarize themselves with applicable provisions of law as well as with any relevant state or local regulations; and
- Work closely with their legal and procurement staff at each step of the procurement process.

In an RFP, the state or local department of juvenile services:

- Identifies the statutory authority that permits it to contract
- Describes the need it wants to meet
- Solicits competitive responses from qualified for-profit and/or non-profit private organizations
- Specifies the documentation that potential providers must furnish in response
- Sets a deadline for responses
- Describes the manner in which responses will be reviewed

### The Scope of Contracting Initiatives

Contracting with the private sector for juvenile correctional services can result in either of two general forms of privatization: *partial* and *complete*.

- Partial privatization involves government contracting for one or more services. The government retains overall responsibility for the delivery of the primary service, but contracts for food services, education, etc.
- In complete privatization, government contracts for the full-scale management of the same facility and might even authorize it to subcontract with other private firms for specific services subject to prior approval from the state or local agency.

This chapter will focus on the preparation of requests for proposals that call for the privatization of juvenile residential facilities or correctional services for confined juveniles.

Before turning to the key components of a well-prepared RFP, we need to understand that contracting for a juvenile residential facility or correctional services fundamentally alters but doesn't diminish the role of a government agency.

## The Effect of Contracting and the Proper Role of Government

Those who prepare RFPs must pass a balancing test. On one side of the scale is the need to be specific about many of the terms and conditions a successful provider will be required to satisfy. On the other side of the scale is an equally important need to guarantee that potential providers have the greatest possible flexibility in proposing innovative means to satisfy the agency's need. Far too often, issuing agencies devote too little effort to communicating their basic programmatic needs and pay too much attention to the details of the services they require. Such efforts ignore important distinctions between the role of government when it provides correctional services on its own and its role when it contracts with the private sector for the same services.

Traditional approaches to juvenile correctional services typically find a *single* state or local agency responsible for:

- Identifying needs
- Devising general policies about how those needs can best be met
- Designing programs consistent with the general statements of policy
- Implementing the programs
- Evaluating the degree to which the programs serve the designed purposes
- Providing appropriate results that refine the nature of the original policies, program designs and implementation strategies

Traditional approaches, in other words, call for government agencies to do it all.

Privatization radically refines the role of government. It presupposes an effective partnership between the public and private sectors. To work efficiently and effectively, the partnership must include a clear and rational division of labor. Some components of the enterprise are so inherently governmental in nature that sound social policy dictates that they should not be

delegated to the private sector—or as a matter of law cannot be delegated to the private sector. For example, identifying the basic needs of the juveniles and developing general policies about the ways those needs are met are core responsibilities of government. Similarly, because committing juveniles to a residential treatment program has implications for their liberty interests, the state or local agency alone must control the critical “in and out” decisions that determine who will be committed and when those juveniles will be released. However, other features of privatized juvenile correctional initiatives—including facility design, the selection and training of employees, the development of appropriate programs, the implementation of programs and the delivery of ancillary services (e.g., food and many medical services)—become the responsibility of an independent contractor rather than of government.

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**Privatization radically refines the role of government. It presupposes an effective partnership between the public and private sectors.**

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The proper role of government changes radically when it moves away from its traditional role and into its new role through a decision to contract for correctional services. The new and, in many ways, more demanding role, calls for agency personnel to become more sophisticated in their capacities as planners and managers. Agency personnel must focus their energy on ensuring that the agreed-on services are delivered and are producing the desired outcomes. Little, if any, of their time should be devoted to direct involvement in the routine delivery of the services that are now the contractual responsibilities of an independent contractor.

This redefinition of roles must be understood and appreciated by agency personnel well before the preparation of an RFP. It must be

apparent in both the request for proposals and the resulting contract within which the rights and the obligations of the agency and the independent contractor are established. It must be no less apparent in the conduct of agency personnel who deal with an independent contractor following a contract award. Agency personnel must not approach the contracting process and the contract monitoring process with the attitude that an “us good guys versus them bad guys” contest has begun. When that happens, everyone—particularly the recipients of the services—is a loser. Of course, providers must not enter the contracting arena with such an attitude either, and must come to recognize that adversarial or uncooperative behavior on their part is and should be a basis for their contracts to be terminated with cause.

## PREPARING A SOUND REQUEST FOR PROPOSALS

The core components of the RFP are preparation, release and review.

### Preparing to Draft the RFP

A good deal of work including the relevant analysis, planning and preparation must be completed before the first draft of an RFP is written. The preparatory work must include but not necessarily be limited to developing the following:

- A familiarity with applicable provisions of state or local law and regulations about both the authority of the agency to contract for services and the structure of the procurement process.
- A clear understanding of the agency’s needs from a contract for services including information about the location at which services will be provided, the characteristics of the juvenile population, the basics of the desired services and a reasonable assessment of the time period during which the contract service will be required;

- A cost estimate of the desired services that the state or local agency can compare to the cost components of submitted proposals;
- An understanding of possible opposition to the contracting initiative either from sources within the government or in the community where the contract services will be provided; and
- A specification of the outcomes the contracting agency hopes to achieve through contracting.

### General Drafting Considerations

What should an ideal RFP look like? Without statutes, administrative regulations, or agency policies that mandate a specific model for preparing an RFP, no one formula guarantees a sound final product. At the very least, all RFPs must include three sections: the qualifications the agency expects the soliciting company to have, the program they want for the juveniles and the costs of that program.

Juvenile justice agencies across the country have dealt with RFPs in the past and experience often creates a routine preferred format. Many agencies that regularly contract for services develop specific guidelines for proposal preparation. In fact, because there are some general and technical features of an RFP, they develop “boiler plate” sections for each RFP and contract to ensure standardization. It’s always a good procedure, though, to examine and evaluate past practices and existing habits for effectiveness.

Authors of RFPs should understand that their prime responsibility is to communicate the agency’s needs, requirements, and expectations to an external audience as *effectively* and as *clearly* as they can. Authors of RFPs should never rely on ambiguous or general language when precision is called for. It’s equally inappropriate to provide specific language when general guidance is more appropriate.

For example, an RFP aimed at the private management of a juvenile residential facility that requires providers to *"manage the facility in a fashion consistent with reasonable standards"* is too vague. The term *"reasonable"* doesn't give potential providers with enough information about the needs and expectations of the issuing agency. A better option might be *"the operation of the facility shall at all times be in full compliance with applicable state or local statutes, agency regulations, the standards established by the American Correctional Association, and any additional requirements that may be mutually agreed to in the contract."* A general statement of need would do much more to encourage and to permit innovative proposals.

### Typical Elements of a Well-Prepared Request for Proposals

Authors have broad latitude in organizing an RFP. They are not bound by any legal or technical reasons to place one particular element before any other in the document. What is crucial is that the RFP clearly informs potential providers about the needs of an agency, the information they need to develop a proposal,

the way that proposals will be evaluated and how the contracts will be monitored and evaluated.

It's a good idea to prepare a checklist of the areas that should be covered in an RFP. The checklist might include:

- The executive summary
- Background information
- The terms and conditions
- The statement of work
- The proposal requirements
- The evaluation criteria
- The proposal attachments

This list offers some basic guidance for the organization and format of a sound request for proposals. We have included sections of a few of the more organized RFPs that have been used successfully over the last five years.

### THE EXECUTIVE SUMMARY

Although not essential, an RFP often begins with a brief and non-technical overview of the reasons that prompted the solicitation. The overview would also include:





- The goals that the state or local agency hopes to achieve
- The features of the future contract:
  - The type of contract
  - The duration of the contract
  - The renewability of the contract
- Critical dates that would be of special relevance to providers including:
  - When proposals must be submitted
  - When review results will be announced
  - When contract negotiations will commence
  - When service delivery will begin
- The evaluation process

### ■ ■ ■ Example

The purpose of the Division of Youth Corrections (DYC) is to provide a statewide continuum of services and programs to control, assess, and treat youths in order to protect the public's safety and to reduce delinquent behavior. The goal of this RFP is to select a qualified vendor to provide secure residential treatment services for twenty (20) committed adolescent females per day. These clients will have behavioral and emotional problems and will have been assessed as needing secure placement. They are also frequently victims of emotional, sexual, and/or physical abuse and have begun using drugs and alcohol at an early age. The program must be willing to accept pregnant clients and provide prenatal care. DYC will provide a facility (building #71) to house the program on the grounds of Mount View Youth Services Center (MVYSC), 7862 West Mansfield Parkway, Denver CO 80235. MVYSC is a campus that houses State and privately operated detention and treatment facilities. The campus is surrounded by a perimeter security fence. MVYSC will provide the following services to the program: food services, library services, recreation spaces, and maintenance

of the grounds around the facility. The program will be responsible for maintaining the program facilities in good repair and in tenable condition during the term of the contract. All program upkeep shall be in accordance with local fire, health, and safety codes. The State shall have the right to enter the program facility at reasonable times for the purpose of making necessary inspections and repairs or maintenance. The DYC will provide telephone equipment to be installed in the facility but the contractor selected to provide services will be responsible for reimbursing DYC for all costs of utilizing the telephone system. The selected contractor must secure and maintain a license for the program as a Secure Residential Treatment Center through the Department of Human Services, Division of Child Care. It is expected that the program will accept all referred clients.

### TIMELINE (Local Time)

1. RFP PUBLISHED ON BIDS  
WEB PAGE x 3-16-99
2. PROSPECTIVE OFFERORS  
WRITTEN INQUIRY 4:00 P.M. 3-26-99

### DEADLINE (NO QUESTIONS ACCEPTED AFTER THIS DATE)

**See Administrative information section A for inquiry details.**

3. MANDATORY OFFERORS  
CONFERENCE 9:00 A.M. 3-31-99  
Building #71, Mount View Youth Service Center, 7862 West Mansfield Parkway, Denver. Any offeror planning to submit a response to this RFP must attend this meeting.
4. PROPOSAL SUBMISSION  
DEADLINE 3:00 P.M. 4-19-99

**See Administrative information section C for submission details.**

5. PROPOSAL SELECTION  
(ESTIMATED/WEEK OF) 4-26-99
6. CONTRACT FINALIZED  
(ESTIMATED/WEEK OF) 5-3-99
7. CONTRACT PERIOD: From 7-1-99 through 6-30-00

## BACKGROUND, OVERVIEW, AND GOAL BACKGROUND INFORMATION

There are numerous details in an RFP that can and should be handled in this section, including:

- *The proposal title:* The RFP will ordinarily have both a descriptive title and an identifying number.

### ■ ■ ■ Example

#### Contract Number and Name

The identifying number and title for this procurement shall be TYP RFP #99-XX to provide xxx xxxx xxxxx xxx services for male or female offenders.

- *The identity of the issuing agency:* The name, complete address and telephone number of the issuing agency should be included with the identity of the person(s) to whom potential providers should direct their questions or comments. If more than a single contact person is identified, the role of each should be stated clearly. The agency may prefer or require that questions about technical features of the RFP be addressed by one person and questions about non-technical issues be addressed by someone else. Regardless of the question, only procedural questions will be answered verbally. Any questions about the substance of the proposal must be handled at the bidders' conference.

### ■ ■ ■ Example

#### Contract Officer and Address

The Contracting Officer for TYC RFP #99-XX shall be Paula Morelock, Director of Juvenile Corrections and Contract Care, Texas Youth Commission, P.O. Box 4260, Austin, TX 78765 or 4900 North Lamar, Austin, TX 78751; Phone 512-424-6093; FAX 512-424-6300.

- *Legal authority for contracting:* This section should contain a precise statement of the legal basis for the contracting authority of the agency. This statement often will require identification of both the general procurement statute(s) and the specific authority of the agency to contract for the particular service(s) described later in the RFP. The applicable statute(s) may be augmented by agency regulations or formal policies. As a general rule, these and other relevant statutes, regulations and formal policies should become a part of an appendix or attachment to the request for proposals.

### ■ ■ ■ Example

The Texas Youth Commission (TYC), an agency of the state of Texas, is responsible for the care and custody of juveniles with delinquent conduct who have been committed to the agency by the courts. TYC operates training schools, halfway houses, and parole supervision and services. The agency also contracts with private individuals, agencies and organizations throughout the state to provide care and treatment for TYC youth.

Human Resources Code, 61.037 provides the TYC with the authority to contract for services. The TYC is issuing TYC RFP #99-XX to contract for secure residential services for male or female offenders.

- *Agency commitment to potential providers:* At a minimum, the RFP should express that the issuance of a request for proposals does not:
  - Make the agency responsible for any costs that potential providers may incur in preparing or submitting their proposals; or
  - Oblige the agency to award a contract to any potential provider.

Additional information may also be appropriate in this section. For example, applicable procurement requirements might disallow the

award of a contract if only a single qualified provider submits a proposal.

### ■ ■ ■ Example

#### Incurring Costs

The proposal preparation and submission costs are solely the responsibility of the Applicant. The Texas Youth Commission shall not provide reimbursement for any such costs.

### ■ ■ ■ Example

#### Rejection of Proposals

The Texas Youth Commission reserves the right to reject any and all offers received in response to this RFP and to cancel the RFP if it is deemed in the Agency's best interest. Issuance of this RFP in no way constitutes a commitment to award a contract or to pay costs incurred by any Applicant in its preparation. The Agency may terminate the procurement effort, amend the request for proposals in whole or in part, or extend the deadline for submission of proposals by a period of not more than 30 days. In the event that only a single qualified proposal is received, the Agency, at its sole discretion, shall either (a) proceed with contract negotiations, (b) terminate the procurement effort, (c) amend the request for proposals in whole or in part, or (d) extend the deadline for submission of proposals by a period of not more than 30 days.

- *Limitations on potential providers:* It's often necessary to impose reasonable constraints on potential providers such as requiring any procedural or substantive question(s) be submitted in writing to the appropriate contact person(s). This step will enable the staff to have a formal record of all questions and responses. In addition, all questions and responses should be available to all potential providers in fairness to all bidders.

### ■ ■ ■ Example

Any prospective offeror desiring an explanation or interpretation of this RFP must request it in writing and in time to reach the Contracts Division no later than 15 calendar days prior to the closing date and time indicated for this solicitation. Requests should be directed to the Contact Person at the address listed in Section A.5. Any information given to a prospective offeror concerning the solicitation will be furnished promptly to all other prospective offerors as an addendum to the RFP, if that information is necessary in submitting offers, or if the lack of it would be prejudicial to any other prospective offerors. This addendum shall be in writing and shall be signed by the Contracting Officer. Oral explanations or instructions given before the award of the contract will not be binding.

- *Amendments to or withdrawal of the request for proposals:* Despite the best efforts of the author of an RFP, it's impossible to anticipate the need for amendments and possible withdrawal of the RFP. The issuing agency should always be fair and reasonable even if it requires an extension in the submission deadline. Authors need to use language that obliges the agency to provide all potential providers with any amendments to its RFP with sufficient time to respond. Although it's important that an agency expressly reserves the right to terminate a contracting initiative, they should take this step only if required by unavoidable circumstances.

### ■ ■ ■ Example

The agency reserves the right to terminate or amend this procurement. If the RFP is amended, all potential providers will receive sufficient notice and time to respond.

- *Financial parameters for proposals:* Price considerations are of core concern to both contracting agencies and potential providers. Some agencies are inclined not to announce the amount of money allocated for a procurement initiative because doing so might cause all providers to offer an equal or nearly equal bid. However, there usually is a cost above which an agency could not or would not contract. The best solution for “real world” contracting is to be candid and tell potential providers the maximum amount of funding that is available for a given project. If possible, provide them with an estimate of the cost your agency is paying or believes it would pay if it were to provide the service with the state or local staff. Also indicate that proposals will not be defined as qualified unless their price proposals are equal to or below existing or projected agency costs. Market forces will usually produce a proposal that assures the best possible services at the most competitive price.

#### ■ ■ ■ Example

The maximum funding set aside in HR 2123 for RFP 99-012 totals \$725,000. No proposal shall be construed as qualified unless its total cost component is less than \$725,000.

- *Proposal disclosure policies:* Jurisdictions vary about whether responses to an RFP are treated as public documents and are thus subject to disclosure at the close of the contracting process. The documents a potential provider submits in response to an RFP may include information that the provider is unwilling to share with the competition. Whatever the applicable disclosure standard may be, it should be made clear in the RFP.

#### ■ ■ ■ Example

##### **B.18 RESTRICTION ON DISCLOSURE AND USE OF DATA**

Offerors who include in their proposals data that they do not want disclosed to the public or used by the District Government except for use in procurement process shall:

Mark the title page with the following legend:

“This proposal includes data that shall not be disclosed outside the District Government and shall not be duplicated, used, or disclosed whole or in part for any purpose except for use in the procurement process.

If, however, a contract is awarded to this offeror as a result of or in connection with the submission of these data, the District Government shall have the right to duplicate, use, or disclose the data to the extent consistent with the District’s need in the procurement process. This restriction does not limit the District Government’s right to use, without restriction, information contained in these data if it is obtained from another source. The data subject to this restriction are contained in sheets (insert numbers or other identification of sheets).”

Mark each sheet of data it wishes to restrict with the following legend:

“Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.”

- *Pre-submission conference:* No amount of care will be sufficient to answer each and every legitimate question that potential providers will have once they review an RFP. Thus, everyone’s interests are generally best served when a formal conference date is established and included in the RFP. Potential providers should be encouraged but not required to attend this conference. Questions should be submitted in advance and in writing. Formal responses to those questions should be made available to all potential providers. Questions that materialize during the conference must be

handled carefully. Responses to all questions must also be made available to all potential providers whether or not they were present at the conference.

### ■ ■ ■ Example

A pre-submission conference will be held in Room 406 of the Department of Youth Services Building, 1308 H Street, Washington, D.C. at 9:00 a.m. Eastern Standard Time on August 9th, 2000.

Written questions may be submitted until 12:00 (noon) Eastern Standard Time on 8/1/2000. All written questions must be addressed to the Issuing Officer. Written responses to written questions will be distributed no later than 8/7/2000 to potential respondents who have requested the RFP.

Any verbal inquiries must be limited to procedural aspects of the procurement process and no questions regarding the substance of the Request for Proposal will be answered by the Issuing Officer. All substantive questions must be addressed through written inquiry. Answers to verbal questions may be given as a matter of courtesy, and must be evaluated at bidder's risk.

- *Deadline(s) for proposal submissions:* The RFP must clearly indicate the deadline for proposal submissions and the person or agency by whom they must be received. For example, all proposals must be received by J. Jones, Contracting Officer, Department of Youth Services, 100 First Street, Columbus, Ohio, U.S. by 5:00 p.m. Eastern Standard Time on July 1, 2000. All submissions received by this deadline will be considered complete. No additions or deletions will be considered after this date unless the deadline is extended for all potential providers.
- *Oral presentations:* Following the submission and evaluation of proposals, the state or local department of juvenile services may schedule formal presentations by potential providers. Very often, evaluation teams will encounter one or

more aspects of the proposals they review that need additional information or clarification, especially when the scope of services is broad or complex. During oral presentations, therefore, because a number of different questions may be asked, the private providers must be told to prepare each element of their proposal with great care. They may want to have several members of their teams at the presentations to address the many areas they have proposed. Evaluation teams may ask questions about their financial, programmatic, security and legal proposals or even the architectural plans if a building is proposed.

When presentations are required, the agency should:

- Inform all potential providers of the nature of any specific questions and assure them that they have a full and fair opportunity to present; and
- State the role that oral presentations will have in the overall proposal evaluation scheme.

### ■ ■ ■ Example

#### Oral Presentations and Written Responses and On-Site Visits

Following the submission of proposals, the Agency reserves the right to require oral presentations and/or written responses to questions submitted by the evaluation committee for clarification by some or by all Applicants whose written proposals are deemed to be responsive to the requirements established by the request for proposal. If needed, oral presentations will be Day of Week, Month, Day, Year. Applicant(s) may not be notified before Day of Week, Month, Day, Year, if selected to make an oral presentation. At TYC's discretion, on-site visits of the proposed site may be made during Phase III or Phase IV of the evaluation process.

- *Best and final offer:* Often, after the oral interviews, agencies ask private providers to submit a best and final offer. The best and final offer is not necessarily about cost. The agency may want to make a change in its requirements, such as a specific program for the juveniles, and they will allow the private providers time to make changes in their proposals.

#### ■ ■ ■ Example

The agency reserves the right to solicit best and final offers. Should the need arise to solicit best and final offers, adequate notice and time to make necessary changes will be provided.

- *Selection deadline:* The issuing agency should provide an approximate date on which it anticipates announcing the successful provider(s). And it should complete the proposal evaluation process by the announced date. Unfortunately, many factors can cause unavoidable delays despite the good faith efforts of all involved parties. For example, the RFP might stimulate a larger number or a more complex set of proposals than anyone anticipated. The language in the RFP, therefore, should make it clear that the selection deadline is one that the agency will make every reasonable effort to meet. However, a failure to do so will not constitute a basis for an objection to the procurement process by any potential providers. Potential providers should be notified of any date changes as soon as possible.

#### ■ ■ ■ Example

##### Notification

It is the intent of the Agency to notify applicants by mail of the results of the proposal evaluation process on or before Month, Day, Year. The Contracting Officer will notify all applicants by mail.

- *Potential providers commitment:* Submit proposals in good faith and reflect a firm commitment to provide the proposed services at the proposed cost. Should unforeseeable circumstances delay contract awards, it would be unfair to expect that potential providers continue to be able to honor each commitment in their proposals. The RFP should expressly state the period of time during which potential providers must honor commitments in their proposals.

#### ■ ■ ■ Example

Each proposal submitted by an offeror must be accompanied by a written guarantee that the offeror will keep its initial offer open for at least the acceptance period specified in Section B.16 or until negotiations are held, whichever occurs first; that if negotiations are held, it will keep its best and final offer open for a period of at least thirty (30) days; and upon acceptance by the District of its initial proposal or best and final offer, that it will execute the contract and meet other requirements within the times specified in the RFP or District's request.

- *Date for commencement of services:* It's useful to include a brief statement about the date on or before which the delivery of services will begin. If a precise date can't be specified, then a range of dates would be more appropriate (e.g., "the beginning date for the commencement of all services described in this request for proposals shall be not earlier than July 1, 2000 or later than September 1, 2000"). If the need confronting a contracting agency is especially pressing, the RFP should inform

potential providers that the speed with which the delivery of services can begin will be a significant consideration during the proposal review process and will be awarded a specific number of "points."

- *Affirmative action policy:* All potential providers should be placed on notice about the need for the preparation and submission of a suitable affirmative action plan that addresses all relevant features of their personnel selection, promotion, retention and compensation policies.

#### ■ ■ ■ Example

Potential providers must submit a detailed affirmative action plan encompassing the areas of recruitment, hiring, and promotion as part of their proposal. This policy must be in compliance with federal and District of Columbia laws.

- *Notice of intent to respond:* It's advisable to require that all persons or firms that intend to respond to an RFP notify the contracting agency no later than a specific date and time. The method of notification should be formal, for example, by certified mail. The notification deadline should be far enough from the date of the issuance of the RFP that potential providers have an opportunity to review the document. If a pre-submission conference has been scheduled, the deadline should not be set until a reasonable, but brief amount of time has passed following the conference. Submitting a notice of intent does not impose an obligation on the provider. It does serve many purposes of the issuing agency. For example, it identifies those who should receive any amendments and any transcripts that might be made of the pre-submission conference.

#### ■ ■ ■ Example

Potential providers must submit a written notice of their intent to submit responses to this request for proposals. The written notice must be received by the contracting officer no later than 5:00 p.m. Eastern Standard Time on July 3rd, 2000. Failure to comply with this notice requirement shall disallow the consideration of any proposals subsequently submitted by potential providers.

A signed letter of intent to propose is required from any potential Respondent who plans to continue in the procurement process. Letters of intent must be on company letterhead, signed by an authorized company representative, and received by the Issuing Officer no later than (date and time). Only those Respondents submitting letter of intent will be apprised of RFP amendments that occur after (date and time). Proposals will only be accepted by Respondents submitting letters of intent.

- *Definition of terms:* A useful section of an RFP is one that clarifies and defines the terms that will be used. Such a section can serve several purposes. It eliminates the need to use the same title or phrase repeatedly (e.g., "Department" shall mean the District of Columbia Department of Youth Services or "Eligible program participants" shall mean male delinquents between the ages of 16 and 18 committed to a secure residential facility subsequent to being adjudicated as delinquents and whose offenses are believed to be related to their substance use or addiction, including but not limited to the use of or addiction to alcohol." Another purpose of this section is to clarify terms that are unusual or have a special meaning.

#### ■ ■ ■ Example

*Aftercare/Re-Entry*—A type of aftercare/post-placement service where an assigned counselor tracks and intensively supervises a small caseload of youths who have returned to their home communi-

ties from a residential commitment program. Residential commitment programs work closely with aftercare/re-entry services staff to ensure preparation of transition services for these youth.

**Behavior Management Component**—In a residential commitment program, this component provides a framework of rewards, privileges and consequences to assist staff in daily management of the youth. Behavior management components often include point systems, token economy systems, levels or stages of youth advancement, required elements of performance by youth and other strategies that are utilized in managing the youth population. The established behavior management component is typically coupled with other program components in the daily routine of programming in residential settings.

## TERMS AND CONDITIONS

To protect the legitimate interests of the issuing agency as well as to inform potential providers, RFPs should be as explicit as possible about the key terms and conditions of the procurement. A typical RFP would contain, but not necessarily be limited to:

- **Identification of contract type:** There are many types of contracts (e.g., a cost plus contract, a fixed price contract, etc.). The type of contract appropriate for the task at hand should be specified.
- **Contract term and renewability provisions:** The term of the contract must be stated. If one or more renewals of the contract are possible, the number of renewals and the term of each should be made explicit. If funding for any portion of the contract or any possible renewal is contingent on something that is not related to the quality and/or cost of services provided by the selected independent contractor, this, too, should be made clear (e.g., when funding is contingent on annual legislative appropriations).

## Example

The duration of this contract may be for a service period of twenty-four (24) months. The contract may be renewed contingent on satisfactory contract performance and mutual agreement of both parties. The contract may be expanded and/or amended upon mutual agreement of both parties.

- **Method and basis of payment:** Potential providers have concerns about how they will receive payment and how they must document that payments are due. The specific language will vary between RFPs and types of contracts. For example, unequal proportions of an agreed upon fee for services might be payable upon satisfactory completion of particular tasks. An equal portion of an agreed upon fee might be payable on the first day of each month contingent on satisfactory performance during the month for which payment is requested. The independent contractor might receive a fixed fee per day for each juvenile to whom services are provided. A contract for a 150-bed secure juvenile detention facility, for example, might commit a state or local agency to pay a minimum number of dollars so long as the facility's population was at or below 100, a per diem payment of \$150 per day for each juvenile between 101 through 125, and a per diem payment of \$100 per day for each juvenile between 126 through 150. Whatever the payment method is, it should clearly resolve any ambiguities. The rules for payment should clearly establish circumstances under which a juvenile is a resident for payment purpose (e.g., whether a juvenile who leaves or who arrives at the facility at a particular time during the day is or is not a resident for payment purposes) and certainly the payment basis in the event that the population of the facility moves above the residential capacity.



### ■ ■ ■ Example

The District shall make payments on invoiced amounts in accordance with the terms of the contract which results from this RFP and cost principles set forth in the regulations implementing the Procurement Practices Act of 1985.

In the case of fixed price contracts, payments shall be made in accordance with the fixed price or unit price established in the contract, upon delivery of the required services or deliverable. In the case of cost reimbursement contracts, one or more cost ceilings shall be established in the contract, based on the agreed upon estimated costs; the District shall not reimburse the Contractor for any costs in excess of those ceilings except pursuant to a contract modification executed by the Contracting Officer under the terms established in the contract.

- *Method and basis of payment adjustments:* The longer the period of the anticipated contract, the more important it will be to provide periodic adjustments in the payment schedule. If, for instance, the basis for payment is an agreed upon number of dollars per juvenile per day and the term of the contract is three years contingent on annual appropriations and satisfactory performance by the independent contractor, the per diem for the first year may not be appropriate for the second and third years. This can be resolved in various ways (e.g., annual price negotiations or the inclusion of an agreed upon price inflator—as with the Consumer Price Index [CPI]). Whatever the mechanism is, it should be made clear in the RFP.

### ■ ■ ■ Example

The fixed price component of the contract shall be adjusted on an annual basis with the fixed price being increased or decreased by the percentage change in the Consumer Price Index (CPI) as published by the U.S. Department of the Treasury on June 30 of each year.

- *Contract amendments:* The interests of both contracting agencies and independent contractors are best served when the RFPs as well as resulting contracts provide for amendments when they are mutually acceptable.

### ■ ■ ■ Example

During the execution or renewal of the contract, any provision of the contract shall be subject to amendment should such an amendment be mutually agreed to by both the agency and the contractor and formalized in writing.

- *Contract termination:* This term often implies contract termination for reasons related to unsatisfactory performance by the contractor. Although unsatisfactory performance is a proper reason for termination, there are various other reasons that should be anticipated as well. A well-drafted contract contains alternatives that a contracting agency can or must rely on before a contract termination. Termination should be seen as the remedy of last resort. Because of the technical nature of contract termination clauses, drafting them requires close cooperation between agency personnel and their legal advisors. The state or local agency should divide the contract into sections so a provider can be in partial non-compliance without canceling the entire contract.

### ■ ■ ■ Example

#### Termination for Convenience

This contract may be terminated by the Provider upon no less than ninety (90) calendar days notice, without cause, at no additional cost, unless a different notice period is mutually agreed upon by both parties. The Provider must be operating in a state of compliance with the terms and conditions of the contract at the time the notice is issued and must

remain compliant for the duration of the performance period. The contract may be terminated by the Department upon no less than thirty (30) days notice, without cause, at no additional cost, unless a different notice period is mutually agreed upon by both parties.

### ■ ■ ■ Example

#### Termination for Default

The Department may, by written notice to the Provider, terminate this contract in part or whole upon notice. If applicable, the Department may use the default provisions in Chapter 60A-1.006(4), Florida Administrative Code. Waiver of breach of any provisions of this contract shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this contract. The provisions herein do not limit the Department's right to remedies at law or to damages (including, but not limited to, re-procurement cost). All termination notices shall be sent by certified mail, or other delivery service with proof of delivery.

- **Subcontracts:** The state or local agency may or may not want to permit providers to enter into subcontracts with other providers as a means of delivering one or more of the services in the contract. If the procurement effort is targeted at obtaining a single specialized service, the state or local agency is unlikely to welcome subcontractors. On the other hand, subcontractors might be appropriate when, for example, the state or local agency intended to obtain full-scale management services for a large juvenile facility and the selected independent provider wants to subcontract for the delivery of food services. The RFP should clearly indicate that potential providers must indicate any intent they have to subcontract, the services they wish to subcontract and the identity of the intended subcontractors. It's appropriate to require that copies of any agreements

between potential providers and proposed subcontractors be included with proposals. It should be made clear that no agreement entered into between potential providers and proposed subcontractors will be valid until each proposed subcontract has been approved by the state or local agency.

### ■ ■ ■ Example

#### Assignments and Subcontracts

The Provider shall not assign responsibility of this contract to another party nor subcontract for any of the work intended under this contract without written approval of the Department. No approval of any assignment or subcontract shall be deemed in any event to provide for the Department incurring any obligation in addition to the total dollar amount agreed upon in this contract.

- **Insurance and indemnification:** Potential providers must be told that they must provide satisfactory proof of their ability to shield government and its officials from legal liability associated with their performance pursuant to the terms of any contract. The method of meeting this obligation (e.g., insurance) must remain in force for the term of the contract unless any adjustment (e.g., the scope of insurance coverage or the insurance carrier) is approved in writing by the state or local agency. The insurance and indemnification language should be drafted with care because it imposes a cost on potential providers that will be passed along to the contracting agency.

### ■ ■ ■ Example

#### INSURANCE

D.5.1 The Contractor at its expense shall obtain the minimum insurance coverage set forth below prior to award of the contract and keep such insurance in force throughout the contract period.

D.5.2 The Contractor shall carry employer's liability coverage of at least one hundred thousand dollars (\$100,000).

D.5.3 The Contractor shall carry bodily injury liability insurance coverage written on the comprehensive form of policy of at least five hundred thousand dollars (\$500,000) per occurrence.

- *Performance bond:* The purpose of performance or completion bonds is to guarantee that independent providers will meet their contractual obligations. They are regularly used in construction contracts, and they are sometimes used in service contracts. Most of the advantages of performance or completion bonds in service contracts can be achieved far less expensively by providing service contracts that describe remedies for a breach of contract.

### ■ ■ ■ Example

The commitment of potential providers shall be guaranteed by a proposal bond equal to 5 (five) percent of the proposed fixed price contract cost for the first year of the facility operations. The proposed bond, in the form of either a bond from an acceptable surety authorized to conduct business in the District of Columbia, or a certified check, shall accompany each proposal.

#### STATEMENT OF WORK

The statement of work section is the core of the procurement effort. Its objective is to communicate the goals and requirements of the state or local agency to all potential providers. The

statement of work should include, but not be limited to, the following elements:

- *Background information:* It's generally useful to provide a brief description of the factors that gave rise to the need for contracting. The legislature may have enacted a new statute that mandates the delivery of a particular service at one or more locations in a jurisdiction. The agency may have conducted or contracted for a needs assessment that persuaded it to move in a particular direction. Whatever the reason or reasons may be, this background information explains why the agency has decided to contract for a particular service or set of services.
- *Contracting objectives:* This section should concisely describe what the agency seeks to achieve through the efforts of an independent contractor.

### ■ ■ ■ Example

The purpose of the Division of Youth Corrections (DYC) is to provide a statewide continuum of services and programs to control, assess, and treat youths in order to protect the public's safety and to reduce delinquent behavior. The goal of this BVB is to select qualified vendors to provide staff secure residential treatment services for committed adolescent male youth (ages 12-20). Any potential providers responding to this BVB must operate a program that is licensed by the Colorado Department of Human Services, Division of Child Care, as a Residential Child Care Facility (RCCF) and should be certified as a Residential Treatment Center (RTC) by the Department of Health Care Policy and Financing based on a recommendation by the Division of Mental Health. The Colorado Revised Statutes (C.R.S.) 19-1-103 define "staff secure" as "a group facility or home at which each juvenile is continuously under staff supervision and at which all services, including but not limited to education and treatment, are provided on site." This type of facility may have time-lapse door locks and some limited physical barriers, such as fencing, designed to deter escapes.

### ■ *Client characteristics and eligibility criteria:*

It's critical that potential providers understand the client population. The agency should share everything they know about those who are likely to enter the facility or program. What is the probable distribution along racial or ethnic lines? Are the clients likely to come from urban, suburban, or rural backgrounds? Are they likely to have lengthy prior records and, if so, what kinds of records are they most likely to have? Are they likely to have histories of substance abuse, neglect, physical abuse, sexual abuse, and/or psychiatric problems? Are there eligibility requirements for referrals beyond those of age and legal status? How are those requirements defined? For example, it's not sufficient to say that all referrals will be classified as serious and violent delinquents. "Serious" and "violent" are not precise enough. Valid and unambiguous client information is absolutely essential.

27% Anglo  
34% African American  
38% Hispanic  
1% Other

5th grade, 1st month—Reading level at commitment  
5th grade, 1st month—Math level at commitment

- *Service requirements:* The service requirements section of an RFP is the most important and the most difficult writing task. On the one hand, it's vital to communicate the nature of the services clearly to all potential providers. On the other hand, it's important that providers be given the opportunity to be creative in their descriptions of how an agency's needs can be met most effectively and efficiently.

The better strategy is to be specific and to encourage creativity on the elements that are general. Often, it's possible to simplify the drafting task by including a requirement that, at a minimum, all proposals must guarantee a level or quality of the desired service or services that meet or exceed the relevant ACA standard for accreditation. It could be required that a facility be accredited a year from the date of the contract award.

The drafting problems associated with this section of the RFP will vary with both the nature and the scope of the services that are sought. An RFP for the procurement of food services at a juvenile facility which houses 100 juveniles could be approached in a fairly matter-of-fact fashion. An effort to contract for medical services for the facility would present a greater challenge. The complete privatization of a juvenile facility would be even more complex. Thus, as the complexity or diversity of the desired services increases, so, too, would the need to subdivide this portion of the RFP into two or more subsections.

### ■ ■ ■ Example

To better understand the youth to be served the following is a profile of youth committed to TYC:

This information should be revised  
as appropriate

4% high capital offender treatment need  
7% sex offender treatment need  
65% chemical dependency treatment need  
65% emotionally disturbed with a mental health  
treatment need

73% of females are between the ages of 15 and 18

19% committed for violent offenses, up to and  
including murder  
30% have assaulted staff at least once  
30% have assaults on other students  
83% have been committed to security at least one  
time  
25% have been committed to security 10 or more  
times

### ■ ■ ■ Example

All youth must participate in a twelve month education program. The program must provide for regular academic credit classes, career and technology education, special education classes, GED preparatory classes, compensatory education for those with below grade level skills in reading and math and higher education opportunities for those who have completed high school or GED. The program shall be in compliance with all state and federal laws and TYC education policies for instructional time. The TYC education policies are in draft, but will be published by the commencement of services.

- *Special requirements:* Depending on the nature and scope of the RFP, the contracting agency may have some requirements about which assurances must be included in potential providers' proposals. Agencies should give a considerable amount of thought in preparing this portion of the RFP. These special requirements may include where, what, and by whom the services will be provided.

Illustrations of possible special requirements might include proof of the availability of an appropriate site or facility, and proof of suitable insurance coverage. It might require proof of their willingness to provide for the maintenance of a facility within clear and reasonable limits, to provide for the repair of some or all equipment in a facility, and to maintain minimum requirements for one or more categories of employees.

- *Project schedule:* The service requirements section of an RFP often has multiple discrete elements. For example, a state or local agency might require that providers obtain a suitable facility site, prepare the site for construction, construct a facility, move toward full occupancy in two or more phases, deliver various services, and monitor the outcome of participants post-release. When this is the case, it's reasonable to require that potential

providers include a reasonably detailed implementation schedule.

- *Reporting and records:* One portion of the work responsibility an independent contractor must accept involves preparing and submitting reports and preserving records. Contractors must understand these requirements to anticipate their resource needs accurately. Special attention should be given to all reporting requirements that have obvious financial implications.

### PROPOSAL REQUIREMENTS

Potential providers need reasonable guidelines for preparing proposals. Evaluating proposals is easier when they all follow the same basic format.

Budget costs in various areas should be broken down and compared with corresponding components. The issuing agency should require a line item budget for each important program area (e.g., administration, security, education/vocational programs, food services, medical services, etc.).

There are no basic rules for this, but legal requirements and agency regulations may require more information. A few general guidelines, however, certainly deserve consideration.

- The potential providers' commitments should be clearly stated, and not vague. For example, "a suitable number of staff members shall be retained to provide for the maintenance of security." Instead, the precise staffing pattern for this and other features of the management plan must be provided and justified.
- RFPs often call for inside information that potential providers would prefer to keep confidential. Unfortunately, jurisdictions vary in their legal ability to provide for this confidentiality. However, when it's possible and appropriate, agencies may ask potential providers to submit their proposals in clearly marked sections to protect the inside information.

- The evaluation process may dictate some format elements. For example, some agencies use two subcommittees to review and evaluate proposals: one for the technical aspects and one for the cost proposals. Using two subcommittees lessens the likelihood that improper weight will be assigned to either the quality or the cost of the proposed services. This strategy calls for the submission of two documents from each potential provider.
- Potential providers should be informed that information not directly relevant to the specific requirements of the RFP should not be submitted. The proposal needs to be thorough but it also needs to be concise.
- The purpose of an RFP is to encourage competition and creativity among qualified providers of services. It's important that the competition be as fair and as impartial as possible. Agencies can ensure impartiality by writing proposal submission standards.
- The state or local agency should specify the number of copies that must be submitted.

### Technical Proposal

For our purposes in this Handbook, the assumption is that the proposal requirements call for the technical information to be submitted separately from the business or cost information.

The primary elements of the technical proposal include the:

- *Statement of the scope of work required:*  
The initial section of the technical proposal requires potential providers to demonstrate their understanding of the needs and objectives of the agency.

### Example

The Provider shall design, develop, implement, and operate a \_\_\_\_\_ (description of the program) program with a daily capacity of \_\_\_\_\_ (number) (male/female) youths who are \_\_\_\_\_ (committed or non-committed) to the Department after having been assessed and classified as \_\_\_\_\_ (high/medium/low) risk to public safety. The Provider shall provide a \_\_\_\_\_ (program type) utilizing \_\_\_\_\_ (service model), to serve \_\_\_\_\_ (youth age range) that provides \_\_\_\_\_ (number) hours per day, \_\_\_\_\_ (number) days a week secure or non-secure custody, care, treatment and supervision. All contractual requirements to provide service, support, and related performance shall be available and provided when the youth enters the program. The anticipated length of stay for each youth is \_\_\_\_\_ (number) months.

- *Proposed approach:* This section requires potential providers to explain in detail how they would handle the responsibilities set forth in the statement of work section of the RFP, especially in the service requirements.

### Example

The Provider shall provide program components consistent with program requirements, which at a minimum, include the following:

Case Management Services  
Mental Health Services and Counseling Services  
Diagnostic Evaluation Services  
Counseling Services  
Treatment Process Outcome Evaluation  
Educational Services  
Treatment Modalities  
Pre-Vocational and Vocational Services  
Development of Social Skill Enhancement  
Job Training and Placement  
Care and Custody  
Self Sufficiency Planning  
Transportation Services  
Recreational and Leisure Time Activities  
Health Services  
Aftercare/Follow-up

Example:

#### Case Management Services

Case Management services shall include coordination with the Department and other community based agencies. Identification of client needs shall provide information relative to the development of goals, objectives, and individualized performance contracts for the youth. These goals and objectives shall be used to measure required progress during participation in the program. Ongoing review and re-negotiation of objectives and performance contracts shall be an expectation of the case management services so that the services provided to the youth while in the program shall complement and support the youths' re-integration into the community.

- **Management plan:** This section requires potential providers to explain in detail how their proposed approach would translate into actual strategies. This portion of the proposal should include the number, type and minimum qualifications of project personnel and a statement of the project time schedule. Potential providers should also be required to state how they propose to handle problems such as construction delays, escapes, disturbances or various types of emergencies (e.g., employee strikes, natural disasters, etc.).
- **Potential provider qualifications:** State or local agencies clearly want to have a sound method of judging the qualifications of potential providers. One way is by requiring them to provide a detailed history and background of their companies, their mission statement, their corporate experience and staff qualifications.

This requirement should be exhaustive rather than selective. The agency should require information about the potential providers' experience with all similar or related projects during the past five years. They should be obliged to identify the name, title, agency, address and current telephone number of the official to whom they were most directly responsible. They

should not be permitted to choose particular persons who are familiar with their prior contracts or to include what amounts to "canned" endorsement letters in their proposals.

On the other hand, an RFP should not preclude potential providers from submitting proposals only because they have no proven record of experience. A requirement proving successful performance on a similar or an identical contract is inappropriate. Although it's entirely fair and reasonable that experience plays a role in the evaluation processes, it must never be a litmus test that eliminates competition by a new firm. Reported experience should be taken as nothing more or less than a claim until members of the evaluation team have directly verified it through personal contacts with one or more of the agencies who have contracted with the potential provider.

#### Business Proposal

The business proposal should establish the cost for the requested services given the approach, the management plan, and other various costs that may be associated with additional RFP requirements (e.g., insurance costs, travel and per diem costs, etc.). Equally important, however, the agencies must require potential providers to present the business proposal in a format that allows all other elements of the proposal to be reviewed fairly and fully. For example, if the objective of a contracting agency were to procure facility management services, then it should mandate that business proposals include subsections with detailed information about costs associated with administration, educational programs, facility security, treatment programs, etc. The agency should also oblige potential providers to supply similar detail for any contract services that they intend to obtain through subcontracts (e.g., medical services or food services).

The possible categories for each section of the business proposal should include but not necessarily be limited to the following costs:

- Costs associated with facility construction or renovation (including details about the costs of site acquisition, land preparation, design and construction)
- Allowable costs for activities of the independent contractor prior to the beginning of service delivery (including items such as employee training)
- Labor costs (including number of full- and part-time positions, salary or hourly rate of pay, fringe benefits and if appropriate, consulting services)
- Equipment acquisition costs (including an identification of types of equipment and unit costs)
- Insurance costs (including appropriate detail when multiple types of coverage are necessary)
- Supplies and materials costs
- Data processing costs
- Telecommunications costs
- Travel costs
- General and administrative costs (including information about how the costs were computed)
- Total cost of the proposed services

When the agency reviews this aspect of an RFP for completeness and when proposals are being reviewed, they might consider a few additional guidelines:

- Potential providers should be reminded that only allowable costs may be included in their business proposals. For example, it would be inappropriate to include any item addressing costs associated with proposal preparation, travel and per diem costs associated with attending a pre-submission conference, or the efforts of any person or firm who may have assisted the provider (e.g., a firm retained to lobby a legislature for necessary enabling legislation or appropriations for the services being procured).

- A separate category in business proposals should deal with the profit a potential provider can realize.
- As a general rule, it's not advisable to impose any minimum or maximum allowable cost for any item in the business proposal unless required by law (e.g., minimum wage requirements) or is essential for some reason independent of law (e.g., a legislative "cap" on the appropriation for facility construction or renovation costs). The true issue is not whether private sector salary schedules are similar to those of the contracting agency. The true issue is whether proposals provide persuasive evidence of the ability to meet the obligations of the anticipated contract.
- Often, an agency does require that qualified potential providers submit cost proposals that assure it of a cost saving equal to or greater than some announced percentage. There are circumstances under which the quality of services obtained will dominate the contracting decision. However, there are also many circumstances under which the quality of services obtained will dominate the contracting decision once a known benchmark price has been met.
- Finally, it's customary to require that potential providers include a statement that guarantees the contracting agency that all information presented was determined by the provider and did not involve any agreement, collusion, communication and/or consultation with any competitor. The penalty for any breach of this guarantee should be clear.

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**The true issue is whether proposals provide persuasive evidence of the ability to meet the obligations of the anticipated contract.**

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### Proposal Review and Selection Criteria

Before evaluating proposals, issuing agencies should consider each of the following points:

- Each provider is eligible to submit a proposal (i.e., that the potential provider has not been determined to be ineligible).
- The minimum standards have been met and are clear.
- The agencies reserve the right to consider proposals that are incomplete in one or more non-essential elements.
- The "mix" of subject matter and technical expertise of the review committee is properly sophisticated.
- All members of the review committee will be available during the proposal review process.
- No member of the review committee has, or in the recent past has had, any personal or business relationship with an potential provider.
- No member of the review committee is opposed to contracting for the service or services detailed in the RFP.
- No member of the review committee is predisposed to favor any particular strategy or method of service delivery.
- No member of the review committee has a significant financial interest in the success of any potential provider (e.g., ownership of a significant number of shares of stock in a publicly traded private firm).

Although agencies vary dramatically in the weights they assign to each element of the proposal, it's important that they consider the evaluation process carefully and that, in the RFP, they alert potential providers to the weights. Though there is nothing magical about the number of points given to any one element, the agency usually assigns weights to specific objectives. Sometimes, the experience of a given jurisdiction or agency may have resulted in the adoption of a standardized weight for each criterion. Without a contrary statute,

regulation or agency policy, the following model would be reasonable:

- Potential provider's understanding of the background of, need for, and scope of the services being solicited (5 points)
- Evidence of potential provider's past experience with and performance of duties related to the present request for proposals (10 points)



- Adequacy of the proposed approach for service delivery (25 points)
- Adequacy of the proposed management approach (25 points)
- Qualifications and experience of key project personnel (20 points)
- General cost considerations unrelated to the quality of proposals (e.g., cost savings)

provided relative to actual or estimated agency costs for providing substantially the same services) (15 points)

The particulars of this model are not as important as the overall strategy it reflects. Specifically, the model places heavy emphasis on a provider's ability to handle the obligations of a contract in an effective and efficient manner but only modest emphasis on a provider's past history—which fosters competition from providers who have little past experience but who submit sophisticated proposals with key personnel who have a proven ability to “get the job done.” Finally, the low weight assigned to costs per se is intended to protect contracting agencies from the possibility of a “low-ball bid” allowing a potential provider whose proposal is weak on other critically important dimensions to prevail.

Whether this or an alternative model is used, the specifics of the process must be clearly understood by the members of the review committee before proposals are screened. There are many things which deserve to be taken into account as the process is finalized.

For example, it makes sense for:

- The committee members to meet and discuss the selection criteria before receiving proposals so that they can reach an unbiased consensus on the criteria
- The scoring system to be agreed on before the process begins (e.g., will the overall ratings be pooled and averaged as opposed to category-by-category ratings being pooled and averaged; will the committee be subdivided into two subcommittees, one for the technical and one for the business proposal)
- Each committee member to have a written statement of how the selection criteria have been defined
- Each committee member to have a standardized proposal review form

- Opportunities to exist for the committee to convene during the review process to reach a consensus on unanticipated items that may need clarification
- Ratings to be arrived at independently rather than during a committee meeting where one or more influential or persuasive members might exert improper control over the outcome of the review process
- A formal means for preserving review results and their accompanying rationales

Contracting agencies have an ethical obligation to move through the process in a fair and objective fashion.

Contracting agencies should accept the responsibility for meeting with unsuccessful providers and providing constructive criticism of their proposals. Every responsible agency should create and to maintain a positive reputation among providers.

#### **Proposal Attachments**

Information that would assist potential providers in understanding the needs of the agency should be attached to the RFP. For example, the attachments could include: applicable procurement statutes, enabling legislation, state licensing requirements and other program standards, needs assessment reports, plans for a prototype structure and statistical profiles of client characteristics. These and other documents may not be easily accessible to potential providers but might enhance their understanding of the procurement process, the problems a contracting agency is confronting and how it hopes to attack those problems. Those drafting an RFP should be able to imagine what they would need if they were in the provider's position. The greater the imagined need, the greater the wisdom either of providing the information in an appendix to the RFP or, at a minimum, directing potential providers toward sources from which the information can be obtained.



days. These requirements must be satisfied; to violate them can easily result in the invalidation of the entire RFP process and significant delays in the delivery of the necessary services.

The policy dimension of the proposal release process is no less important. Vital interests of state or local agencies are at stake when they issue RFPs and those interests are best served when all aspects of a procurement process invite and encourage competition. The minimum requirements of state or local statutes or regulations may not be enough to serve those interests. For example, the appearance of a notice about an RFP in an official system state or local publication may satisfy minimum legal requirements but not reach a wide enough range of potential providers. Agencies may need to go beyond minimum requirements and forward the RFP to all firms with the ability to deliver the type or range of services needed. Similarly, procurement requirements may mandate that the deadline for proposals be no less than 30 days after the official release of an RFP.

Policy interests often require a longer time for potential providers to respond.

### Releasing the RFP

Whether expressed in state or local statutes or agency regulations, procurement requirements generally impose obligations on agencies issuing RFPs to assure:

- That information on the release of RFPs is available to a broad range of potential providers and
- That potential providers have a reasonable amount of time to draft their proposals.

These requirements mean that a notice of the release of an RFP must appear in one or more publications and that the time between the RFP's release and the deadline for submissions of proposals is no less than a specific number of

### A Sample Request for Proposals

No one sample could provide detailed step-by-step guidance for those called upon to draft an RFP. For that reason, we have included sections of a few of the more organized RFPs that have been used successfully over the last five years.

The sample RFP presented follows the recommendations advanced in the body of this chapter. As it will quickly become apparent, the RFP assumes that a fictitious agency, *The Department of Youth Services*, in a fictitious jurisdiction, *Columbia*, has determined that it needs to contract for the complete privatization of a 50-bed juvenile residential facility currently operated by the agency.

**STATE OF COLUMBIA****DEPARTMENT OF YOUTH SERVICES****REQUEST FOR PROPOSALS TO MANAGE AND OPERATE  
THE SOUTH WASHINGTON JUVENILE  
RESIDENTIAL FACILITY  
IN SOUTH WASHINGTON, COLUMBIA**

DYS RFP #93-101

Date of Issuance—February 1, 2000

Date of Response Required—July 1, 2000

**EXECUTIVE SUMMARY**

Funds appropriated for Fiscal Year 2000-01 by the Legislature of the State of Columbia to the Department of Youth Services ("Department") provided for the cost of design and construction of the South Washington Juvenile Residential Facility ("Facility"). This 50-bed facility received its first residents on January 2, 1999 and is currently being managed and operated by the Department. All aspects of the design and construction of the Facility were in full compliance with applicable standards of the American Correctional Association (ACA), but no effort has yet been made to date to obtain ACA accreditation.

Pursuant to the Cost Containment Act Legislation enacted by the Legislature of Columbia on February 15, 1992, CL Statute 39.1, that went into effect on July 1, 1992, the Department of Youth Services is obliged to solicit proposals for the private management and operation of the Facility and all other juvenile residential facilities now managed and operated by the Department from interested corporations, partnerships, or other legal entities ("Contractors") and to contract with the most highly evaluated potential provider if (a) the overall quality of the services proposed is equal to or better than those currently being provided by the Department and (b) the cost of the proposed services is less than the cost of the currently provided services. (In accordance with CL Statute 39.1 (2)(e), the full cost of the contract monitoring as provided for in this request for proposals shall be defined as a cost of contractor services.)

The Facility provides a broad range of programs, including counseling, drug awareness, educational, recreational, and vocational training programs, that are provided for a maximum of 50 adjudicated male delinquents between the ages of 16 and 18. Support services required at the Facility include food, laundry, and maintenance services as well as limited dental and medical services. A profile of the present residents reveals them to have been drawn disproportionately from major metropolitan areas of Columbia, minority groups and dysfunctional families. Related data reveals that residents often have histories of substance abuse, prior commitments to juvenile residential facilities, educational achievement scores on accepted standardized tests that, on average, place them three to five years below those of typical males of similar age, and minimal work experience or vocational skills. The average length of stay for residents is approximately six months.

All proposals must provide for the delivery of a range of services equal to or more expansive than those currently being provided by the Department. All proposals must commit to the achievement of accreditation by the ACA within one year following the assumption of management and operational responsibilities.

Although the cost components of qualified proposals must be below the projected cost of services, \$92.55 per resident per day when the facility is operating at this maximum capacity of 50 residents, the dominant focus of the proposal evaluation process will be on the quality of services potential providers commit to provide and indicators of their ability to deliver those services.

The Department anticipates the award of a three-year contract for management and operation of the facility. Subject only to annual appropriations and satisfactory contract performance, the contract may be renewed one time for two years subject to the same qualifications. For the first year of operation, the contract will be a fixed price contract the maximum value of which shall be the base per diem rate of \$92.55 times 50 residents times 365 days or \$1,689,037.50. Each year thereafter the maximum value of the fixed price contract shall increase or decrease in accordance with fluctuations, if any, in the Columbia Consumer Price Index (CR-CPI) as published by the Columbia Department of Economic Affairs on June 30 of each year.

Potential providers should note that there will be a pre-submission conference in Conference Room "A" of the Department of Youth Services Building, 1401 Capitol Street, River City, Columbia at 9:00 a.m. Eastern Standard Time on October 1, 1999. Although those attending will have an opportunity to raise questions that were not submitted in advance, staff will respond to all questions submitted in writing and received by Mr. George Washington, Department Contracting Officer, by or before 5:00 p.m. Eastern Standard Time on September 20, 1999. A formal transcript of the meeting, which will include an edited version of all written questions received on or before September 20, 1999, will be available to all interested parties as soon as is practical following the meeting.

Potential providers also should note the following important deadlines and requirements:

Official date of RFP issuance: February 1, 2000;

Pre-submission conference: 9:00 a.m. Eastern Standard Time on March 1, 2000;

Receipt by Contracting Officer of official written notice of intent to submit a proposal: 5:00 p.m. Eastern Standard Time on March 15, 2000;

Receipt by potential providers who comply with notice of intent requirement of transcript of bidders' conference and other relevant information by or before 5:00 p.m. Eastern Standard Time on March 25, 2000;

Deadline for receipt by potential providers who comply with notice of intent requirement of any amendments to the request for proposals: June 1, 2000;

Deadline for receipt by Contracting Officer of one original and six copies of a full and complete proposal: 5:00 p.m. Eastern Standard Time on July 1, 2000;

Anticipated announcement by Contracting Officer of results of proposal evaluation process with contract negotiations to commence as soon as practical thereafter: 9:00 a.m. Eastern Standard Time on August 1, 2000; and

Anticipated date for commencement of all management and operational services: October 1, 2000.

## **SECTION I: GENERAL INFORMATION AND REQUIREMENTS**

1. The title and identifying number for this procurement shall be Request for Proposals to Manage and Operate the South Washington Juvenile Residential Facility, DYS RFP #93-101.
2. The Contracting Officer for this RFP shall be Mr. George Washington, Room 711, Department of Youth Services Building, 1401 Capitol Street, River City, Columbia 87711-0711 (704-392-1025; FAX 704-392-1026).
3. The legal authority for this procurement is CL Statutes 39.1 and the general statutory requirements as they pertain to procurement of contracts for professional services by request for proposals and as expressed in CL Statutes 401(1)-404(32).
4. Nothing in this request for proposals establishes an obligation on the Department to enter into a contract for services with any contractor. In the event no qualified proposals are received, the Department may terminate the procurement effort, amend the request for proposals in whole or in part, or extend the deadline for submission of proposals by a period of not more than 30 days. In the event that only a single qualified proposal is received, the Department, at its sole discretion, shall either (a) proceed with contract negotia-

- tions or (b) terminate the procurement effort, amend the request for proposals in whole or in part, or extend the deadline for submission of proposals by a period of not more than 30 days.
5. All questions regarding this request for proposals shall be submitted to the designated Contracting Officer in writing. All questions shall be in writing. All responses to such questions shall be in writing. All questions submitted and all responses provided shall be made available to all offerors who have complied with the notice of intent provision of this request for proposals. No responses to questions about this request for proposals shall be binding on the Department unless they are provided in written form and are signed by the Contracting Officer.
  6. The Department reserves the right to amend any portion(s) of this request for proposals so long as written notification of any such amendment(s) reaches offerors who comply with the notice of intent provision of the request for proposals on or before 5:00 p.m. Eastern Standard Time on June 1, 2000.
  7. The maximum funding for the first year of Contractor activities has been set at \$1,689,037.50. No proposal shall be construed to be responsible unless its total cost component is less than \$1,689,037.50.
  8. Pursuant to the Public Records Act of 1975 CL Statute 948, all materials submitted in response to a request for proposals become public documents that are available for inspection immediately following the announcement of the identity of the most highly evaluated proposal. The Public Records Act of 1975 requires the public availability of all materials submitted by the providers in response to a request for proposals.
  9. A pre-submission conference will be held in Conference Room "A" of the Department of Youth Services Building, 1401 Capitol Street, River City, Columbia at 9:00 a.m. Eastern Standard Time on March 1, 2000.
  10. The deadline for receipt of proposals shall be no later than 5:00 p.m. Eastern Standard Time on July 1, 2000. One original and six copies of each proposal must be submitted to Mr. George Washington, Room 711, Department of Youth Service Building, 1401 Capitol Street, River City, Columbia 87711-0711.
  11. Following the submission of proposals, the Department reserves the right to require oral presentations by some or by all potential providers whose proposals are deemed to be responsive to the requirements established by this request for proposals.
  12. It is the intent of the Department to announce the results of the proposal evaluation process at 9:00 a.m. Eastern Standard Time on August 1, 2000.
  13. Potential providers shall be bound by each commitment made by them in their proposal for a period that shall be no less than 90 days following such submission. This commitment shall be guaranteed by a proposal bond equal to 5 percent of the proposed fixed price contract cost for the first year of facility operations. The proposal bond, in the form of either a bond from an acceptable surety authorized to conduct business in the State of Columbia, or a certified check payable to the State of Columbia, shall accompany each proposal.
  14. The date for the commencement of all services described in this request for proposals shall be no earlier than September 1, 2000 and no later than November 1, 2000.
  15. All proposals must contain a suitable affirmative action policy to be adopted by potential providers. The policy must comply with all applicable Columbia and federal legal requirements.
  16. Potential providers must submit a written notice of their intent to submit responses to this request for proposals. The written notice, which must clearly identify the request for proposals by name and number, must be received by the Contracting Officer no later than 5:00 p.m. Eastern Standard Time on March 15, 2000. Failure to comply with this notice requirement shall disallow the consideration of any proposals subsequently submitted by potential providers.
  17. The costs of proposal preparation and submission are solely the responsibility of potential providers and the State of Columbia shall not provide reimbursement for any such costs.

18. Any contract resulting from this procurement shall be construed in accordance with the laws of the State of Columbia. Any legal proceedings against the state of Columbia or the Department regarding this request for proposals or any resulting contract shall be brought in the appropriate administrative or legal forum in the State of Columbia. Venue shall be in Potomac County, Columbia.
19. For the purposes of this request for proposals, the following definitions shall apply:
  - (a) ACA: the American Correctional Association
  - (b) ACA Accreditation: the successful completion of all requirements imposed by the American Correctional Association for the accreditation of juvenile facilities.
  - (c) ACA Standards: the standards for juvenile residential facilities in existence at the time of a contract being entered into between the Department and the Contractor or as they may be amended subsequent to the execution of such a contract.
  - (d) Affirmative Action Policy: a policy adopted by a contractor that is in full compliance with applicable provisions of federal law and the law of the State of Columbia and that ensures equal opportunity in the areas of employee selection, retention, rate of pay, demotion, transfer, layoff, termination, and promotion regardless of race, religion, age, sex or ethnic origin.
  - (e) Facility: the South Washington Secure Residential Facility located in South Washington, Columbia.
  - (f) Juvenile Delinquent: a person below the age of 18 who has been adjudicated delinquent by a court of competent jurisdiction on the basis of proof of an act or omission to act that would have constituted a crime had the person been 18 years of age or older at the time of the act or omission to act.
  - (g) Non-routine Maintenance and Repairs: any act of maintenance of the Facility or repair to equipment within the Facility costing more than \$500 and which shall be the responsibility of the Department.
  - (h) Resident: a juvenile delinquent who has been committed to a facility for which the Department is responsible.
  - (i) Routine Maintenance and Repairs: any act of maintenance of the Facility or repair to equipment within the Facility costing less than \$500 and shall be the responsibility of the Contractor.
  - (j) Juvenile Residential Facility: a rehabilitative facility for juvenile delinquents that is designed and operated to ensure that all entrances and exists are under the exclusive control of the facility staff and that disallows unsupervised or unauthorized departures from the facility.
  - (k) Unforeseen Circumstances: those acts or occurrences beyond the reasonable contemplation of the Department and the Contractor at the time of the execution of a contract between them that materially alter the financial conditions upon which the contract is based.

## SECTION II: TERMS AND CONDITIONS

1. The type of contract to be awarded shall be a fixed price contract.
2. The contract period shall be for three years with the possibility of one renewal for an additional two years. Contract renewal shall be contingent on satisfactory contract performance and annual legislative appropriations.
3. Payment to the Contractor shall be made by the Department of the first day of each month and the amount of the payment due shall be equal to 1/12 of the fixed price that is provided for in the contract between the Department and the Contractor.

4. The fixed price component of the contract shall be adjusted on an annual basis with the fixed price being increased or decreased, if appropriate, by a percentage equal to the percentage change in the Columbia Consumer Price Index as published by the Columbia Department of Economic Affairs on June 30 of each year. Other adjustments to the fixed price shall be possible should unforeseen circumstances so require.
5. During the term or any renewal of the contract, any provision of the contract shall be subject to adjustment should such an adjustment be proposed in writing by either the Department or the Contractor and should the adjustment be mutually agreed on by both the Department and the Contractor.
6. Any contract entered into between the Department and the Contractor shall be subject to termination if (a) funding for the contract is not appropriated by the Legislature of the State of Columbia, (b) there is a filing of a petition of bankruptcy by or against the Contractor under any provision of federal or state law, (c) it is deemed by the Department, on the basis that reasonable cause has been demonstrated, that the contractor has failed substantially to fulfill its obligations (i.e., a material breach), or (d) circumstances should arise such that the health, welfare, or safety of the facility residents, facility staff, or public at large are placed in jeopardy. However, no material breach exists when the conduct of the Contractor is excused by the Department, when the failure to fulfill one or more obligations is caused by unforeseen circumstances, or when the failure to fulfill one or more obligations is caused by the conduct of the Department. Further, no breach of any contract entered into between the Department and the Contractor shall constitute grounds for the termination of the contract unless a written notice of breach is provided to the Contractor and he or she fails to cure the breach within 30 days following written notice of breach.
7. Any proposal that anticipates reliance on a subcontractor for one or more of the services required in this request for proposals must contain a clear notice of intent to subcontract, a description of the service for which a subcontract is deemed to be appropriate, a written commitment from the proposed subcontractor that the service described will be provided at a cost equal to the cost established in the proposal and proof of the qualifications and credentials of the subcontractor.
8. All proposals shall provide for suitable liability, property damage, and workmen's compensation insurance. Further, all proposals shall agree to indemnify, defend and hold harmless the State of Columbia, the Department of Youth Services, and the officers, agents and employees of the Department of Youth Services from any suit, action, claim or demand of any description whatsoever for losses or damages arising directly or indirectly from, or in connection with, the operation and maintenance of the Facility. This agreement to indemnify, defend and hold harmless shall not apply to any suit, action, claim or demand of any description whatsoever for losses or damages arising from any independent action or omission of any person or entity other than the Contractor.

### SECTION III. STATEMENT OF WORK

1. Pursuant to the Cost Containment Act enacted by the Legislature of Columbia on February 15, 1999, CL Statute 39.1, and which went into effect on July 1, 1999, the Department is obliged to solicit proposals for the private management and operation of the Facility and all other secure and non-secure detention or residential facilities now managed and operated by the Department from interested corporations, partnerships, or other legal entities and to contract with the most highly evaluated provider if (a) the overall quality of the services proposed is equal to or better than those currently being provided by the Department and (b) the cost of the proposed services is less than the cost of the currently provided services. (In accordance with CL Statute 39.1(2)(e), the full cost of the contract monitoring as provided for in this request for proposals shall be defined as a cost of contractor services).
2. The Department anticipates contracting for the same services currently provided at the Facility or for a range of services capable of achieving the objectives that prompted the delivery of the current services.
3. A profile of the current residents reveals them to have been drawn disproportionately from major metropolitan areas of Columbia, minority groups and dysfunctional families. Related data reveal that residents often



have histories of substance abuse, prior commitments to juvenile residential facilities, educational achievement scores on accepted standardized tests which on average place them three to five years below those of typical males of similar age, and minimal work experience or vocational skills. Commitment offenses commonly involve both offenses against property and offenses against persons that could have resulted in the filing of serious felony charges had the cases been prosecuted in a criminal rather than a juvenile court. The average length of stay for residents is approximately five months.

4. The necessary services shall include but not necessarily be limited to the maintenance of a secure and sanitary environment on a 24-hour-a-day basis within which:
  - (a) individualized needs assessment and treatment plans are prepared for each resident within no more than 15 days after the arrival of a new resident;
  - (b) appropriate individual and/or group therapy is provided on a regular basis by properly qualified professional staff;
  - (c) all residents are actively involved in intensive educational and vocational training programs, including basic life skills training, drug education and sex education appropriate for their measured levels of attainment and skill;
  - (d) appropriate programs providing for a combination of incentives and disincentives are consistently relied on to improve the attitudes, values, self esteem and behavior of residents;
  - (e) appropriate recreational programs for the residents are provided;
  - (f) the basic needs of all residents for a balanced diet, routine medical and dental services and other essentials (e.g., clothing, personal hygiene items and laundry services) are met;
  - (h) full and complete records are maintained regarding all features of facility administration, expenditures, management, maintenance and staff training.
5. The special requirements for all proposals shall include the following:
  - (a) that all features of facility management and operation shall meet or exceed the minimum requirements for ACA Accreditation;
  - (b) that all proposals shall contain a commitment that ACA accreditation will be achieved within one year following the commencement of the delivery of services;
  - (c) that the experience and training requirements established by The Juvenile Corrections Training and Certification Act of 1990, CL Statutes 39.20, shall be met by all employees to whom they would apply were those employees to be employees of the Department;
  - (d) that all proposals shall contain an employee selection plan that affords existing employees of the Facility, excepting only those employees currently serving the positions of Facility Administrator, Assistant Facility Administrator, and Facility Program Administrator, a right of first employment and shall describe in suitable detail any special conditions of employment those employees would enjoy regarding but not necessarily limited to their accumulated annual leave, accumulated sick leave and seniority; and
  - (e) that all proposals anticipate the selection, prior to the commencement of services, of an independent evaluator acceptable to both the Department and the Contractor whose fee, which shall not exceed 5 percent of the funding available pursuant to the terms of the fixed price contract, shall be the responsibility of the Contractor and whose obligation will be to evaluate all aspects of service delivery and whose evaluation report shall be submitted to the Department and to the Contractor within 30 days prior to the completion of each year of service delivery.

6. All proposals shall provide a time schedule that will be followed regarding movement toward ACA accreditation.
7. The Contractor shall meet with the Contracting Officer at the Facility on a quarterly basis to review contract performance and shall provide written reports to the Contracting Officer on a monthly basis that include documentation on all admissions, releases and employment decisions (including decisions to hire, promote or terminate). Additionally, the Contractor shall provide immediate notification to the Contracting Officer of any unusual incidents that include, but are not necessarily limited to physical assaults, escapes, accidents causing injury to staff or residents or any significant damage to the Facility caused by accidents, intentional acts or any other cause.

#### **SECTION IV. PROPOSAL REQUIREMENTS**

##### *General Requirements:*

1. Proposals should be prepared in as complete and concise a manner as possible.
2. Proposals must include a title page which identifies the request for proposals by title and by number and which provides the name, business address, and telephone number of the provider.
3. Proposals shall be printed on ordinary 20 pound, 8 1/2 by 11 inch white paper.
4. Proposals shall contain only materials that are directly relevant to the request for proposals.
5. Proposals shall be divided into two basic parts that are clearly designated as "The Technical Proposal" and "The Business Proposal."

##### *Requirements for The Technical Proposal (85 Points of 100 Possible Points)*

1. **Statement of Work Required (5 Points of 100 Possible Points)**  
The statement of work portion of the technical proposal should demonstrate a clear understanding and grasp of the objectives the Department must pursue in its efforts to provide for the delivery of services to the residents of the Facility and the role of the potential provider would play in the achievement of those objectives. The statement of work portion of the technical proposal also should demonstrate the potential provider's specific awareness of the needs of the juveniles who are most likely to be facility residents.
2. **The Proposed Approach (25 Points of 100 Possible Points)**  
The proposed approach portion of the technical proposal is of vital importance and provides potential providers with an opportunity to propose creative means of addressing the problem at hand. Separate attention must be given to each major area of facility operation and management. Attention also must be given to the approach proposed to assure the Contractor efforts will be subject to reliable and valid evaluation.
3. **The Proposed Management Plan (25 Points of 100 Possible Points)**  
The proposed management plan portion of the technical proposal is also of vital importance. Potential providers must explain how the proposed approach will be translated into an actual service delivery model. The management plan must include:
  - a. a complete organization chart;
  - b. an identification of each employee category;
  - c. the minimum qualifications for, and job descriptions of each employee category;
  - d. the number of employees who fall within each employee category, and

- e. a contingency plan which describes how foreseeable emergencies would be handled (including, but not necessarily limited to natural disasters, fires, employee strikes and escapes).
4. Provider Experience and Qualification (30 Points of Possible 100 Points)  
The provider experience and qualifications portion of the technical proposal has two fairly separate component parts: (a) the potential provider's relevant past experience (10 of the 30 points allowable for this portion of the technical proposal) and (b) the qualifications and experience of key project personnel (20 of the 30 points allowable for this portion of the technical proposal).

Regarding part "a", potential providers shall include a complete list of all contracts and subcontracts the potential provider has received during the past five calendar years that imposed an obligation on the potential provider to provide services of any kind to juvenile delinquents in either a secure or a non-secure facility. The information provided shall include the effective dates of performance, the contracting entity, the name, address and telephone number of the responsible contracting officer or contract monitor and a brief description of the service(s) provided.

Regarding part "b", potential providers shall provide a complete list of key project personnel, a resume for each person identified, and a narrative description of the role each person would have were the offeror to be selected.

*Requirements for the Business Proposal (15 Points of 100 Possible Points)*

The purpose served by the business proposal is two-fold: (a) to establish that total proposed costs fall below the benchmark amount of \$1,689,037.50 and (b) to establish that all features of the technical proposal and other requirements of this request for proposals can be handled effectively given the proposed use of financial resources provided in the business proposal. Thus, potential providers should be careful to establish the linkage between the business proposal and other features of both the basic requirements of this request for proposals and the material they provide in their technical proposals. Further, the basis for any computations that might be unclear to those who review the proposal should be established in a suitable manner.

1. Employee Labor and Fringe Benefit Cost

Labor and fringe benefits costs must be presented in a complete manner that forms the basis for this cost component and can be evaluated in terms relevant to the proposed approach and proposed management plan (e.g., labor and fringe benefits costs associated with facility administration and support personnel, with security personnel, with educational/vocational personnel, etc.)

2. Consultant Costs

Proposals calling for consultants, including the required independent evaluators, must provide a description of the anticipated consulting services and the anticipated cost of those services and the means of establishing the cost of those services (e.g., "X" number of dollars per consulting day for "Y" days plus "Z" dollars in related travel and per diem costs).

3. Subcontracting Costs

Proposals may anticipate subcontracting for one or more necessary service (e.g., dental, food, janitorial or medical services). In addition to requirements regarding subcontracting established elsewhere in the request for proposals, the cost component of any such subcontract shall be clearly identified and explained in the business proposal.

4. Food Service Costs Other Than Labor and Fringe Costs

5. Utilities Costs Other Than Telecommunications Costs (itemize)

6. Telecommunications (itemize)

7. Equipment Costs (itemize)
8. Insurance Costs (itemize)
9. Supplies and Materials (itemize)
10. Travel and Per Diem Costs (itemize and provide explanation)
11. Staff Training, including In-Service Training (itemize)
12. Other Direct Costs (itemize)
13. Overhead and Administrative (itemize and provide explanation)
14. Total Proposed Cost

#### **SECTION V. PROPOSAL EVALUATION CRITERIA**

All proposals received by the Contracting Officer by or before 5:00 p.m. Eastern Standard Time on July 1, 2000 shall be considered. No proposal submitted after that deadline will be accepted for review and evaluation. All timely submissions will be screened to verify that all essential information required in this request for proposals has been provided and that the total cost component of proposals falls below the mandated total cost ceiling.

All qualified proposals will be submitted to the Proposal Review Committee for review. Each member of the Committee shall independently rely on the following proposal review method.

Potential provider's understanding of the background of, need for, and scope of the services being solicited (5 points)

Evidence of potential provider's past experience with and performance of duties (10 points)

Reasonableness and competitiveness of cost proposal (15 points)

Qualifications and experience of key personnel (20 points)

Adequacy of the proposed approach (25 points), and

Adequacy of the proposed management approach (25 points)

An average of evaluator ratings for each of these six evaluation criteria will be computed. The six averages will then be added together to obtain a total proposal "score." Subject to the qualifications established elsewhere in this request for proposals receives the highest total proposal score as soon as is practical after the announcement of the evaluation results, which is anticipated to be 9:00 a.m. Eastern Standard Time on August 1, 2000. Should successful contract negotiations not be completed, the Department reserves the right to begin negotiations with other qualified providers in an order established by the total proposal score attributed to their proposals.

# Developing a Contract for the Private Delivery of Correctional Services

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### INTRODUCTION

The final and most formal step that completes a partnership between the public and private sectors involves the preparation, negotiation and execution of a contract. A contract is a binding agreement between two or more parties that imposes a legal obligation on those parties to act in accordance with the terms and conditions of the agreement.

Any contracting discussion raises questions about contract law. Those questions are clearly important, but it is not the purpose of this manual to provide an overview of contract law. The legal aspects of contracting for residential facilities or correctional services are most properly handled by the state department of juvenile corrections' legal advisors. Most agencies have experience with legal contracting issues and questions. As a result, they have developed sample contracts for services that include recommended language for most of the contract elements agency personnel are likely to encounter.

This chapter discusses how a contract for juvenile residential facilities or correctional services is the culmination of the privatization process. The purpose of the chapter is to illustrate the close relationship between the request

for proposals and the contract that subsequently authorizes the provider to begin delivery of services. There are two major realities in contracting for juvenile correctional services.

First, the terms and conditions of a contract for juvenile correctional services are a logical extension and legal formalization of (a) the requirements an agency expressed in an RFP and (b) the manner in which a provider proposed to meet those requirements in its response to the RFP. A contract will often address issues that did not receive attention in either the RFP or the provider's proposal. However, most differences will be linked either to legal dimensions of contracting whose operational implications are minimal or to a need to define general language from an RFP, the provider's response to the RFP, or the language in both documents more precisely. If the parties confront a major obstacle during contract negotiations, the cause can generally be traced to the previous steps of the contracting process. If the previous portions of the process were handled well, the likelihood of surprises surfacing during contract negotiations should be minimal.

The second key point in this chapter is that the time, effort and attention to detail in a sound RFP pay substantial dividends when contract negotiations begin. Blessed with a comprehensive RFP, quality proposals and a sound pro-

posal review process, the task confronting all parties to a contract negotiation should be relatively simple. Substantially all of the elements the contracting agency and the intended independent contractor view as essential already have been addressed and, in effect, been tentatively agreed to before the contract negotiation process begins.

This chapter will present a sample contract. Its terms and conditions flow from the model RFP that is contained in the previous chapter. The illustrative contract is a sample contract only in the most general sense of the word "sample." Legal requirements and agency regulations vary considerably from jurisdiction to jurisdiction. Thus, no portion of the sample contract should be relied on in any actual contract unless it has been reviewed by a qualified legal advisor. On the other hand, the elements of the sample contract are not unlike those that have appeared in actual contracts for the management of juvenile residential facilities and correctional services. Those involved in contracting efforts may want to compare elements of the sample contract with those of the typical contract their agency has as a model. If elements of our sample contract lack a counterpart in the state contract, legal advisors should verify that those elements are unnecessary given the legal requirements of their jurisdictions.

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## PRELIMINARY CONSIDERATIONS

The drafting and negotiating of a contract is seldom or never a task that can or should be imposed on a single person or even a single office in an agency. Instead, the task presupposes the availability of expertise and information from people. Some of those people may not even be agency personnel and instead may work in various other offices or agencies (e.g., the Office of the Attorney General, the Department of Purchasing and Procurement, the Department of Administration, and various others). Thus, although the primary responsibility for the drafting and negotiating of a contract

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**Those involved in contracting efforts may want to compare elements of the sample contract with those of the typical contract their agency has as a model.**

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for correctional services is likely to fall on the desk of one agency representative, the success of the efforts of that person will depend heavily on that person's ability to focus the skills of a diverse group of people on the task at hand. This group will almost always include an agency administrator being cast, whether formally or informally, as the chairperson of the group, a legal advisor, a procurement officer, a person experienced in the actual management and operation of a facility or the delivery of the more specific service that is the focus of contracting, and a person who is experienced with contract monitoring. If the objective of the contracting process is the transfer from public to private management of an existing facility, the group almost certainly should include one or more administrators from the existing facility.

Those with little experience in contracting sometimes believe that contracting agencies write a contract that is then submitted to an independent contractor for signature. This image of the contracting process seldom matches "real world" experience. Contracts are negotiated between agencies and providers rather than imposed by agencies. Those charged with the responsibility of negotiating contracts for services must approach the negotiation process with a thorough understanding of the objectives their agencies want to achieve. An understanding will encourage flexibility on some issues but inflexibility on others. It is important that the contracting process involve as much candor and flexibility as possible by all parties. Perhaps the greatest enemy of successful contract negotiations involves one or all parties approaching contract negotiations with rigid preconceptions of what the final document will contain.

A related but difficult aspect of the contracting process involves what might be called a willingness to fail. One party to a contract negotiation cannot meaningfully negotiate with another if he or she approaches the process thinking that the only acceptable outcome of the negotiation will be a signed contract. If, despite good faith negotiations, a mutually acceptable contract remains beyond reach, then the state agency must be willing to terminate the negotiations and begin with another provider. A potential provider must also be willing to walk away from the negotiating table. No productive purpose is served by signing a contract when one or both of the parties view the contract as fundamentally flawed.

It's also important to understand that the contract drafting and negotiating process is often more cumbersome than it might first appear. The process may involve staff seeking services and representatives to provide services. Because contracts are formal legal documents of rights and obligations, the process really involves at least four interested groups: agency representatives who are familiar with the needs and objectives of their agency; legal advisors to the agency whose interest they are obliged to represent; legal advisors to the agency who may

not be familiar with the operational and management capabilities of their firm; and the provider's lawyers who may not be familiar with the operational concerns of the firm whose interests they are obliged to represent.

This blend of expertise and obligations can produce a less than desired outcome. The worst case scenario involves those on either side whose experience and expertise is in contract law injecting themselves too heavily into issues pertaining to delivering correctional services. Equally unacceptable are those whose experience and expertise is in corrections dealing with the legal aspects of contracting. It's essential that one fully appreciate one's role and the scope of one's expertise at the negotiating table.

It's important that contracts be easily understood by state personnel and provider employees who will deal with each other on a regular basis. This is especially true of the rights and obligations contracts establish that address routine features of the relationship between the state agency and the provider. Although legal jargon and "boiler plate" can quickly transform contracts into formal and sophisticated documents, they also can undermine the ability of agency personnel and provider employees to

understand who is actually responsible to whom for what. No useful purpose is served when contractual language is so complex that legal advisors are routinely cast in the role of translators.

All contracts define the rights and obligations of two or more parties. Agencies that contract with the private sector are usually aware of their contractual rights but



are sometimes less sensitive to their contractual obligations. Contracting efforts have been undermined by agency personnel with contract monitoring responsibilities who are extra careful in their efforts to assure that providers meet all of their obligations but less attentive to ensure that their agencies are in compliance. Much of this issue is more closely linked to problems of contract monitoring than to contract terms.

However, many monitoring problems are related to contract language that focused largely on the obligations of an independent contractor and did not define the obligations of the contracting agency.

Defining outcome indicators is one area of the contract that has a great effect on contract monitoring. Relevant and measurable outcome indicators make successful contract relationship. Evaluation indicators for services provided must be agreed upon by all involved parties. Outcome indicators determine how contractual obligations can be determined to be successfully or unsuccessfully fulfilled.

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## **KEY CONCERNS IN DRAFTING AND NEGOTIATING CONTRACTS FOR SERVICES**

Like requests for proposals, contracts flow from a complex set of circumstances. Those circumstances include the:

- procurement and statutory requirements of a jurisdiction;
- the state agency's regulations and policies;
- court orders and/or consent decrees;
- the specifics of the needs a state agency hopes to meet through contracting and, sometimes quite importantly;
- the limitations and requirements a contracting agency established in the request for proposals.

Each of these areas must be carefully taken into account if a contracting initiative is to serve its intended purpose. However, since these circumstances are shaped by specific rather than by general considerations, there can be no such thing a model contract.

Even though the development of a model contract for correctional services will not and cannot be provided here, there are a number of specific concerns that must be addressed by those responsible for drafting and negotiating contracts. They are common denominators one should find in all contracts for services. Before introducing a sample contract, a brief discussion of the primary common denominators will be useful to many readers whose experience with contracting is limited. Importantly, the purpose of the discussion is not to recommend specific contract language. Instead, the purpose is to impress readers with the need to consider several issues carefully and then to develop appropriate contract terms by which those issues can be resolved.

### **Negotiable vs. Non-Negotiable Issues**

Mention already has been made in this chapter of the need for agency personnel to distinguish between what issues are and are not subject to the give and take of contract negotiations. The focus of those earlier comments, however, was on the need for agency personnel to have a clear understanding of agency contracting goals. The distinction here is bit more technical.

Specifically, procurement efforts that are driven by an RFP process must have a "backward-looking" as well as a "forward-looking" character. The temptation is to ignore the backward-looking aspect of contracting and to focus too heavily on the terms of contracts and the role a contract will play in the future. To succumb to this temptation can have fatal consequences to the contract negotiations.



A sound RFP is likely to contain a fairly broad array of specifications related to such issues as:

- type of contract;
- duration of the contract;
- renewability of the contract;
- funding availability and so on.

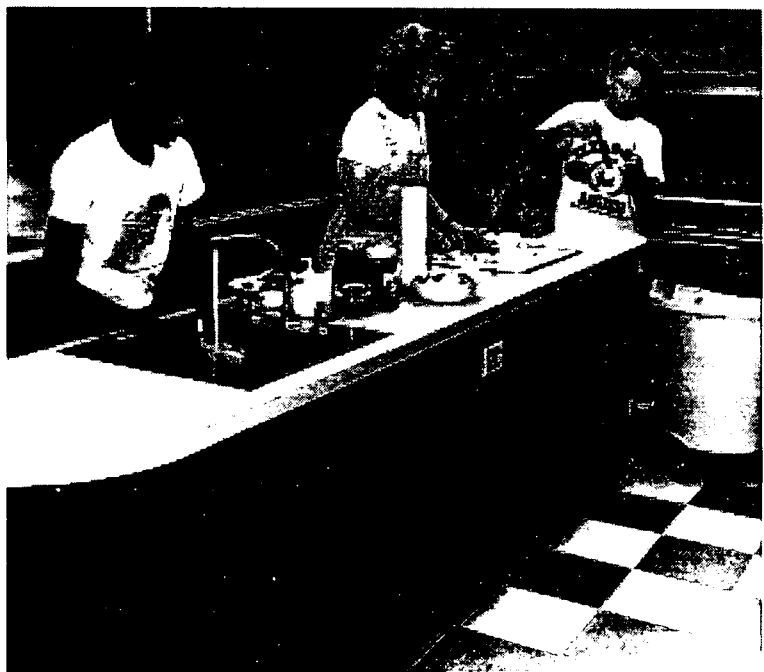
These specifications must be maintained during contract negotiations. If they are negotiated, potential providers who chose not to submit proposals and providers who submitted unsuccessful proposals may be in a position to successfully challenge the resulting contract.

There are countless ways this problem can materialize, but a simple illustration is enough to make the general point. Assume that an RFP established the per diem cost of a facility operated by a state agency at \$75 and required all qualified providers to include cost proposals that committed them to providing the same services for the same number of juveniles at a cost at least 5 percent below the benchmark price of \$75. Thus, no provider submitting a cost proposal calling for a per diem above \$71.25 would meet the minimum requirement of the RFP (i.e.,  $\$75 \times .95 = \$71.25$ ). Also assume that XYZ Inc. was the most highly rated provider, that XYZ, Inc. committed to a per diem cost of \$71.25, and that during contract negotiations, XYZ, Inc. persuasively argued that the overall caliber of the services it could provide would be upgraded either if the per diem could be increased to \$78 or, because of economics of scale savings, it could realize were the facility to be increased in size, by adding another 30 beds to the facility and fixing the per diem at \$71.25. Given the persuasive argument advanced by XYZ, Inc., would it be reasonable for the agency to consider an increase in the per diem?

The probable answer is no. All potential and actual providers were placed on notice that no cost proposal calling for a per diem in excess of \$71.25 would be considered. If the agency either awarded a contract that included a per diem of \$78 for the number of residents described in the RFP or per diem of \$71.25 for a facility of larger size, the decision of the agency would invite a challenge. The better strategy for the agency would be either to terminate the procurement without awarding a contract and then re-issue an amended RFP or to contract with XYZ, Inc. for the delivery of the basic, but not the augmented services it proposed to offer.

### **Simplification by Incorporation**

The parties to a contract are legally bound by the terms and conditions of the contract they enter into. Indeed, this fact is given emphasis in the body of most contracts. For example, in the sample contract, readers will find the following language: "This Contract contains all of the terms and conditions agreed on by the parties. No other understanding, oral or otherwise, regarding the subject matter of this Contract will be deemed to exist or to bind any of the parties to this Contract."



The obvious importance of such contractual terms should alert those who draft contracts to the need to verify that any and all terms and conditions are put forward somewhere in the contracts they prepare. However, serving this important need doesn't require reinventing the wheel time and time again. Although it is not improper and it may even be necessary for a contract to re-state terms and conditions that may exist in other relevant documents (e.g., statutes, regulations, RFPs, proposals, etc.), the goal of simplification can be served by inserting language into a contract that identifies and then incorporates the relevant documents. "Incorporation by reference" makes the incorporated documents a part of the contract just as though the relevant language in those documents had been written into the basic document.

### **Preservation of Flexibility**

A good contract is dynamic rather than static. This is especially true of contracts for services. The longer the term of the contract, the greater the importance of preserving flexibility. Thus, the terms of any sound contract will include the possibility for the initial terms of the contract to be modified.

Importantly, the amendment mechanism generally should not presuppose an agreement between the parties regarding the nature of the contract amendment. To be sure, a typical contract will authorize contract amendments when they are mutually agreed on in writing by all parties. Various circumstances other than mutual agreement, however, may dictate a need for amendment even when one or more parties to the contract would prefer no amendment. For example, a legislative body or court of competent jurisdiction may mandate one or more

changes that affect the manner in which services are delivered under the terms of a contract in force before the mandate. A sound contract will prepare for unforeseeable circumstances.

Perhaps so obvious a point that it doesn't require being made, preserving flexibility is a goal that can't be achieved merely by inserting clauses into a contract that allow for, or mandate adjustments. The component parts of a contract are interrelated too closely for that to be possible. Discretionary or mandatory adjustments, for example, may have consequential "ripple effects." If, for instance, a legislative body adopted significant new education and certification requirements for all persons involved with the delivery of correctional services to confined juveniles, compliance with the new mandate might increase the cost of service delivery. This, in turn, might dictate an adjustment in the compensation element of existing contracts. A sound contract should be drafted in such a way as to permit such an adjustment.

### **Specificity Regarding Administrative Requirements**

There are at least two areas of a contract within which a good faith effort must be made to be as specific as is reasonably possible. One of these involves what might be defined as administrative requirements of the state agency. The problem in this area is often one of agency familiarity and contractor unfamiliarity.

Put differently, agency personnel may be quite comfortable with their agency's standards in such areas as the maintenance of files, the preparation of administrative reports and the submission and processing of invoices. Independent contractors are likely to have their own

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**Very often, agency and corporate standards differ significantly and, equally often, independent contractors are unfamiliar with agency policies, procedures and standards. Thus, an important goal of contract negotiations and of contracts is to assure that independent contractors fully understand and appreciate the administrative requirements with which they will be obliged to comply.**

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corporate standards for these matters. Very often, agency and corporate standards differ significantly and, equally often, independent contractors are unfamiliar with agency policies, procedures and standards. Thus, an important goal of contract negotiations and of contracts is to assure that independent contractors fully understand and appreciate the administrative requirements with which they will be obliged to comply.

### **Specificity Regarding Service Delivery Requirements**

Contract negotiations and contracts must be as specific as is reasonably possible regarding the general nature of the services the independent contractor is obliged to provide. With a sound RFP and a reasonably sophisticated proposal from the top-rated provider, the negotiating and drafting task should be relatively non-demanding. The contract incorporates both the RFP as well as the proposal and augments that with whatever contractual language is necessary.

It's prudent to not become so specific in the contract language that an independent contractor is left with no flexibility. Just as a good agency encourages its employees to be innovative in the discharge of their responsibilities, an agency that contracts for services should encourage independent contractors to be innovative so long as they do so within agreed upon limits. Sometimes this goal can be achieved without any adjustment in the contract terms. If a departure from those terms seems appropriate, the contract terms should be adjusted in advance of any action being authorized by either the independent contractor or the agency.

### **Preservation of Independent Contractor Status**

Most contracts for juvenile correctional services contain a clause aimed at establishing the status of a contractor as an independent contractor. In the sample contract, for example, the language is as follows: "The Contractor will be an independent contractor and neither the Contractor nor its employees, agents or representatives will

be considered employees, agents or representatives of the Department."

There are good legal and policy reasons for including similar language in contracts. One good legal reason is liability. Limited liability relieves responsibility for actions taken by their contractual partners or service providers. Generally speaking, a government agency is legally responsible for the torts of its employees, its agents and those who are its official representatives. A government agency is generally not legally responsible for the torts of its independent contractors. However, the "boiler plate" of a contract is meaningless if a contracting agency says that independent contractors are not "employees, agents or representatives" and then in fact deals with them as though they were subject to the same controls as "employees, agents or representatives." Despite the careful definitions in contracts regarding this issue, the courts are inclined to ignore contractual terms when everyday practice suggests that the nature and scope of the agency's control was so pervasive that the independent contractor was, in effect, transformed into an agent.

This is not the place to review the legal distinctions between independent contractors and agents in great detail. It is the place to emphasize the legal and the policy need to refrain from drafting or interpreting contracts in such a way that contracting agencies unintentionally exercise so much control over the independent contractors that the independent contractor-agent distinction vanishes. If the distinction vanishes, the legal liability exposure of the state agency will be elevated. That is the law. Further, if the conduct of a state agency causes the distinction to vanish, then the contracting agency has fundamentally misunderstood the meaning of contracting. Contracting is a means by which an agency pursues its goals and objectives via the efforts of an independent contractor. The term "independent contractor" defined by Black's Law Dictionary as "one who, in exercise of an independent employment, contracts to do a piece or work according to his

own methods and is subject to his employer's control only as to the end product or final result of his work" and as "one who renders service in course of independent employment of occupation, and who follows employer's desires only as to result of work, and not as to means whereby it is to be accomplished." Thus, an agency that desires to exert significant control over everyday aspects associated with the delivery of correctional services would be prudent to refrain from contracting and, instead, to arrange for the delivery of those services via the efforts of its own employees.

and state contracts are limited by statutes to one to three years duration. Others maintain that most facility operations contracts range from three to five years.

Establishing a term for a contract involves a trade off between stability and the benefits of competition. The longer the term, the greater the program stability. However, in long-term contracts there is reduced opportunity for market competition and the potential for more cost-effective programming.

### **The Benefits of Long-Term Contracts**

There are a number of disadvantages to short-term contracts (i.e., under three years). For example, the contracting agency must go through the time consuming competitive procurement process more frequently (42). It may be difficult to find an available, suitable contractor within the relatively short time period involved in rebidding. Also, if government wants to recontract with the same vendor, the



### **Contract Duration and Termination**

We will now shift the focus of this chapter into two specific areas of contract drafting: contract duration and termination. It is impossible to include in this handbook well-drafted clauses that would fit the specific needs of various agencies. However, it is important to discuss these areas broadly, and so we have provided general examples.

### **Contract Duration**

Contracts for the operation of secure juvenile and adult correctional facilities range in duration from one to 32 years. Normally, county

contract cost could increase as a result of new conditions being introduced by either party.

Further, were the rebidding to occur too frequently, the contractor might increase its costs to compensate for uncertainties, as well as for "added startup and shut-down costs." Short term contracts make it difficult for corporations to plan their revenues and budgets, develop programs and personnel, provide in-service and professional development training to their staff, and remain financially competitive. As a result, these companies may require higher fees to cover their costs. Also, it may be difficult to find

contractors willing to bid. This would reduce the advantages of competition.

Duration becomes a particularly significant issue for contractors who need to make substantial initial capital investments, such as facility construction or major renovation. They need several years of a financial relationship with government to recoup their initial capital expenditures. Further, with long-term contracts the contractor has an increased incentive to make long term commitments to improve the physical aspects of the facility services, and staffing.

While it is correct that longer term contracts make it easier for contractors to recover their initial capital expenditures, contracts often provide that the agency will reimburse the contractor for the unamortized portion of the capital investment, if the contract is terminated earlier.

The greater stability resulting from longer term contracts also has programmatic and operational advantages. Both offenders and employees would less frequently experience anxiety over possible changes in vendors. Also, there would be greater continuity in the nature of programs and services, an important rehabilitation issue. Further, longer term contracts may benefit the surrounding community which provides the facility with labor and services.

### **The Benefits of Short-Term Contracts**

Shorter term contracts have their own advantages. Competition is increased, potentially resulting in decreased or at least not increased contracting costs. For example, the incumbent contractor will see the need to keep costs down and maintain high quality programming to achieve contract renewal. Also, the contracting agency has increased opportunities to select a new contractor who may be able to provide at least the same quality services at less expense.

Competition may be reduced at rebidding longer term contracts, as potential bidders might believe that the incumbent contractor has

a competitive edge—the incumbent already has substantial knowledge of the program and the needs of the agency. Thus, short term contracts help to prevent “market entrenchment,” as well as “cronyism.” In addition, there is a reduced need for government and the contractor to anticipate all of the issues and problems that may arise in the future. And, it is easier to renegotiate contracts to address changing needs.

### **In Search of the Ideal Contract Term**

The contract term should be long enough to allow the contractor to re-coup its front-end capital investments and to become fiscally efficient. It also needs to be long enough to give the program an opportunity to stabilize and show how well it can operate. Further, the contract duration needs to be at least three years to allow for a meaningful program assessment. However, the duration must be short enough to encourage contractors to be innovative, perform well, and keep costs down to enhance its chances to be successful on contract renewal or re-bidding; prevent market entrenchment; encourage other vendors to compete; and provide the contracting agency flexibility in addressing changing program needs.

In establishing the contract duration, it also needs to be kept in mind that contracts often allow for one or more renewals, which provide the contractor a level of stability.

A good rule of thumb for secure facility management contracts is that the initial term range between three and five years. Where facility construction is not involved, the high end of this range becomes less important. For small community residential contracts (not involving construction) and non-residential programs (e.g., probation, diversion), a two or three year term would be appropriate, since major capital and start up expenses would not be an issue.

Whatever its duration, the contract should specify the time and date it begins and termi-

nates. For multi-year contracts it is important to make clear that they are subject to the availability of funds.

### **Termination Conditions**

The hard reality of contracting for services is that even the best procurement process and the best contract do not guarantee success. Circumstances sometimes arise that require the relationship between a contracting agency and an independent contractor to be terminated. It's essential that those circumstances be reflected fairly and precisely in contracts.

Two points regarding termination clauses in contracts for services deserve some degree of emphasis. The first of these requires recognition of the fact that provisions for termination must be broader in scope than may be immediately apparent to some readers. It might become necessary for an agency to terminate a contract because of unsatisfactory performance by an independent contractor. This is certainly the aspect of termination that tends to preoccupy those who draft contracts and those who are contract monitors. Beyond the obvious, however, are several other possibilities. These include the failure of a contracting agency to meet its obligations under a contract, the impossibility of continuing a contractual relationship because of an insufficiency of funding, the impossibility of continuing a contractual relationship because of events beyond the control of both the contracting agency and the independent contractor (e.g., a facility managed and operated by an independent contractor is destroyed by a fire, a flood, a tornado or some other "act of God"), or because the circumstances that prompted the agency to contract change in such a way that there is no longer a need for the services being provided by the independent contractor. Each potential reason for terminating a contract should be addressed in the body of the contract.

Second, some care should be taken to avoid "all or nothing" scenarios in which an independent contractor is either in full compliance with

each and every term and condition of its contract or at imminent risk of termination for cause. To be sure, state agencies have the right to expect that independent contractors will fully discharge their contractual responsibilities and state agencies have an obligation to satisfy that expectation. However, it's almost always true that no useful purpose would be served by an effort by either party taking action to terminate a contract for cause simply because non-compliance was detected.

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**Common sense recommends a relatively informal effort to achieve compliance with a contract before a formal effort unless the non-compliance detected by the complaining party involves an act or a failure to act that threatens the interests of the juveniles or the general public.**

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The better and more reasonable strategy to follow—and to anticipate in the terms of a contract for services—calls for little more than a bit of common sense. Common sense recommends a relatively informal effort to achieve compliance with a contract before a formal effort unless the non-compliance detected by the complaining party involves an act or a failure to act that threatens the interests of the juveniles or the general public. Because typical contracts for services provide for contract monitors to be appointed by the state agency, there generally is someone through whom the parties to a contract can work in their efforts to achieve the necessary contract compliance. If the breach persists or is so serious that informal efforts would be inappropriate, common sense also recommends that there be one or more steps the complaining party can take prior to the actual termination of the contract. At a minimum, the complaining party to the contract should agree to give the offending party a reasonable period of time during which to remedy the problem.

### **For Cause**

This reason for termination is based upon the private vendor not meeting contractual obligations, where such a lack of compliance seriously affects the program's operation. For example, the contractor may be performing unsatisfactorily, may not be meeting contractually specified standards and conditions, or may have replaced key personnel with unqualified employees.

Terminating for cause should be a last resort, due to the problems inherent in the contracting agency having to takeover the operation of the program or to obtain another vendor. In fairness to the contractor and to avoid unnecessary program terminations, the contract should specify that the contractor will be given thirty days prior written notice. During this period, the contractor would be allowed the opportunity to correct the problem to the satisfaction of the contracting agency. If warranted, the contracting agency may opt to extend the time allowed to correct the problem, up to an additional thirty days.

Contracts also should include a clause stipulating if the contract is terminated due to noncompliance with the terms and conditions of the contract, any costs incurred by government for termination shall be deducted from any funds due the contractor.

### **Emergency Situation**

There may be situations beyond the control of the contractor or agency necessitating termination of the contract. For example, a facility might be destroyed by a fire or flood. Or, perhaps the facility is not destroyed but the resulting facility conditions pose a serious threat to the health, safety, or security of the offenders, personnel, or public. Terminating a contract due to an emergency situation should be without penalty to the contracting agency.

### **Filing for Bankruptcy, Reorganization, or Liquidation**

Another valid reason for terminating a contract is the filing of a petition of bankruptcy, reorganization, or liquidation. The contractor should be required to notify the contracting agency of its intent to file a petition for bankruptcy, reorganization, or liquidation pursuant to the U.S. Bankruptcy Code, at least ten days prior to the petition being filed. The agency could then terminate the contract as it would in terminating for cause, and would not have to wait for actual bankruptcy proceedings. Alternatively, the contract could be terminated for convenience. By terminating the contract prior to filing for bankruptcy, the contractor is deprived of protection under the Bankruptcy Code—the contract terms are enforceable and preempt the Code. The termination clause should include a ninety-day phase-out or transition period. This time period permits government to make arrangements for the continued operation of the program.

### **For Convenience**

Contracts should include a termination for convenience clause. This provision serves as an "escape clause" and is left undefined to provide government flexibility in terminating a contract. For example, the contracting agency may no longer need the contracted services.

The contract should make clear that in terminating for conveniences there would be no penalty to the government. Also, the contractor should be given prior written notice, and would have no right to any damages. However, government would pay for supplies and equipment that had been ordered, but not received as of the termination date. The contractor would be reimbursed for authorized work completed by the termination date.

Naturally, the precise manner in which these and other concerns are addressed in a sound contract will vary substantially between jurisdictions. There is no single best way in which they can be handled. The important thing is that

they be handled in a reasonable fashion that is made known to and is agreed to by the parties to a contract before any delivery of services commences. The following sample contract illustrates at least one approach to resolving each of the major issues that has been identified with the exception of problems which can emerge when the terms of a contract move too far away from the basic scope of what was announced in a request for proposals.

### **A Sample Contract for Correctional Services**

In this Handbook, we are not able to present a complete sample contract for correctional services. We lack the detailed information that is readily available to those writing "real world" contracts. For example, each state agency would have immediate access to the relevant state legislation, regulations, the RFPs and the winning proposal. We have only the sample RFP from the previous chapter. Several working assumptions must be made before we proceed:

- The Department of Youth Services of the State of Columbia issued the Request for Proposals to Manage and Operate the South Washington Secure Detention Facility in South Washington, Columbia.
- A quality detailed proposal was submitted by American Juvenile Corrections, Inc. and was the most highly rated proposal.

- The legal duties of the Department of Youth Services of Columbia, including various duties of private providers who contract with the Department for the delivery of correctional services, are contained in Chapter 39 of the Code of Columbia.
- Title 39 of the Code of State Regulations of the State of Columbia contain all of the regulations the Department of Youth Services has developed within which minimum requirements for the operation of juvenile residential facilities can be found.

The existence of information other than from the sample RFP will be assumed rather than relied on directly. This assumption will not undermine the value of the illustrative contract. The purpose of a contract is not to repeat all of the information these documents would contain were we dealing with an actual situation. The better strategy is simply to identify relevant documents and "incorporate them by reference." Such documents as statutes, regulations, RFPs, proposals and the standards of the American Correctional Association are simply identified with acceptable specificity, included in one or more appendices to the contract and treated as though the relevant language in them had actually been quoted in the body of the contract.



**STATE OF COLUMBIA****DEPARTMENT OF YOUTH SERVICES****CONTRACT TO MANAGE AND OPERATE  
THE SOUTH WASHINGTON JUVENILE  
RESIDENTIAL FACILITY  
IN SOUTH WASHINGTON, COLUMBIA****SECTION I: GENERAL PROVISIONS****A. Contracting Parties**

This contract, made and entered into this first day of September, 2000, in River City, Columbia, between the State of Columbia Department of Youth Services ("Department"), whose offices are located at 1401 Capitol Street, River City, Columbia 27981, and the American Juvenile Corrections, Inc. ("Contractor"), a Columbia Corporation whose principal office is located at 101 Azalea Avenue, River City, Columbia 27901.

Witnesseth:

Now, in consideration of the mutual promises and covenants contained herein, the Department and the Contractor hereby agree as follow:

**B. Legal Basis**

The legal basis for contracting by the Department for management and operational services is provided by Chapter 39 of the Code of Columbia, which authorizes the Department to enter into contracts for the management and operation of juvenile residential facilities for juveniles with private non-profit and for-profit entities, and Chapter 401 of the Code of Columbia, which authorizes procurement of contract services by means of requests for proposals.

**C. Definitions of Terms**

1. ACA shall mean the American Correctional Association.
2. ACA Accreditation shall mean the satisfaction of all requirements imposed by the American Correctional Association for the accreditation of juvenile residential facilities.
3. ACA Standards shall mean the standards for juvenile residential facilities in existence at the time of a contract being entered into between the Department and the Contractor or as they may be amended subsequent to the execution of such a contract.
4. Additional Services shall mean any additional management and operation services required to be furnished by the Contractor beyond those otherwise provided for by this Contract which cause an increase in the cost of managing and operating the Facility and which are required by changes in ACA Standards, laws, government regulations, Department policies or court order applicable to the Department.
5. Affirmative Action Policy shall mean a policy adopted by the Contractor which is in full compliance with applicable provisions of federal law and the law of the State of Columbia that ensures equal opportunity in the areas of employee selection, retention, rate of pay, demotion, transfer, layoff, termination and promotion regardless of race, religion, age, sex or ethnic origin.
6. Facility shall mean the South Washington Juvenile Residential Facility located in South Washington, Columbia.

7. For Cause shall mean a failure by either party to meet provisions of the contract when such failure seriously affects the operation of the Facility or the failure of the Contractor to meet minimum standards of performance as specified in the contract.
8. Juvenile Delinquent shall mean a person below the age of 18 who has been adjudicated delinquent by a court or competent jurisdiction on the basis of proof of an act or omission to act that would have constituted a crime had the person been 18 years of age or older at the time of the act or omission to act.
9. Non-routine Maintenance and Repairs shall mean any maintenance of the facility or repair to equipment within the Facility costing more than \$500 and which shall be the responsibility of the Department.
10. Non-routine Medical Services shall mean necessary dental and medical services, including necessary medical tests and prescription drugs, beyond those provided by medical professions working under contract with the Contractor, the costs of which shall be the responsibility of the Department.
11. Resident shall mean a juvenile delinquent who has been committed to the Facility by the Department.
12. Routine Maintenance and Repairs shall mean any act of maintenance of the Facility or repair to equipment within the Facility costing less than \$500 and shall be the responsibility of the Contractor.
13. Routine Medical Services shall mean necessary and routine dental and medical services, including necessary medical tests and prescription drugs, provided by medical professionals working under contract with the Contractor, the costs of which shall be the responsibility of the Contractor so long as the total cost of non-contractual services, including medical tests and prescription drugs, does not exceed \$250 for any one resident with any cost in excess of \$250 for any one resident being the responsibility of the Department.
14. Juvenile Residential Facility shall mean a facility for juvenile delinquents that is designed and operated to deliver services detailed in the RFP, proposal and contract.
15. Unforeseen Circumstances shall mean those acts or occurrences beyond the reasonable contemplation of the Department and the Contractor at the time of the execution of a contract between them that materially alter the financial conditions upon which the Contract is based.

## **SECTION II: GENERAL TERMS AND CONDITIONS**

### **A. Type of Contract**

The Contract is a performance-based, fixed-price contract.

### **B. Term of Contract**

The Contract will be in effect for the period of October 1, 2000 to September 30, 2002, subject to the availability of funds and unless the Contract is modified or sooner terminated as hereinafter provided.

### **C. Contract Renewal**

The contract may be renewed by the Department on a no-bid basis and on like terms and conditions except with respect to compensation paid to the Contractor for two, two-year terms at the sole discretion of the Department.

### **D. Compensation, Compensation Adjustments and Method of Payment**

1. Compensation to the Contractor for the period of October 1, 2000 to September 30, 2002 may not exceed \$1,500,000.
2. Compensation to the Contractor for the period of October 1, 2002 to September 30, 2004 may not exceed \$1,500,000 each year plus a percentage adjustment equal to the percentage increase, if any, in the Columbia Consumer Price Index as published by the Columbia Department of Economic Affairs on June 30, 1994.

3. Compensation to the Contractor for any extension or renewal of this Contract will be determined by negotiations between the Department and the Contractor with any such negotiations to begin at least 90 days prior to the effective date of any such extension or renewal.
4. Subject only to satisfactory performance by the Contractor and the timely receipt of an invoice submitted by the Contractor, compensation to the Contractor will be made on the first day of each month during the term of the contract with the amount of the compensation to be paid being equal to 1/12th of the total annual compensation due to the Contractor.

#### E. Unanticipated Compensation Adjustments

Notwithstanding other provisions of the Contract regarding compensation and compensation adjustments, the Department agrees to increase the total compensation of the Contractor upon submission of proof of either or both of two special circumstances.

1. The Contractor has entered into this Contract based on the requirements of law, court decisions, regulations and ACA Standards in effect as of the contract date. If one or more of these requirements change during the term of the Contract so as to increase the cost of managing and operating the Facility or of delivering the services contemplated in the Contract, the compensation to the Contractor will be increased by a sufficient amount to offset the cost of such increases.
2. Unforeseen circumstances may arise during the term of the Contract or extensions thereto. Therefore, the parties agree that within 60 days after any unforeseen circumstance and upon submission to the Department of supporting documentation or information, the Department will adjust the total compensation in an amount sufficient to offset the increased cost to the Contractor in managing and operating the Facility because of unforeseen circumstances.
3. If the Department and the Contractor cannot agree on compensation increases caused by unanticipated changes in law, court decisions, regulations, ACA Standards, or unforeseen circumstances within 60 days following submission of a request for a compensation adjustment by the Contractor, the Department and the Contractor may initiate the dispute resolution procedures provided herein.

#### F. Contract Amendments

The Contract may be amended at any time if both the Department and the Contractor agree to any proposed amendment(s) in writing.

#### G. Documents Incorporated by Reference

In addition to the provisions of this Contract, the Department and the Contractor will adhere to all provisions contained in the following documents, which are attached to and are made a part of this contract:

1. Department of Youth Services Request for Proposals #00-101 (Appendix A);
2. Contractor's Proposal dated July 1, 2000 (Appendix B);
3. Chapter 39 of the Code of Columbia, which establishes the duties of the Department and of independent contractors who enter into contracts with the Department for the delivery of correctional services to juvenile delinquents (Appendix C);
4. Title 39 of the Administrative Code of Columbia, which establishes the minimum standards adopted by the Department for the management and operation of juvenile residential facilities (Appendix D); and
5. Relevant standards established by the American Correctional Association (Appendix E).
6. Reimbursement/Invoice forms and required periodic programmatic reports (Appendix F).
7. Corporate Board Resolution Authorizing Officers to Enter into Contract (Appendix G).

If anything in the Department's Request for Proposals #00-1-1 or the Contractor's Proposal dated July 1, 2000 be different from the terms and conditions of this Contract, the language of the Contract will control.

#### H. Termination by Department for Cause

If the Contractor has unsatisfactorily performed its obligations under the Contract, the Department will have the right to terminate the Contract for cause upon giving written notice of termination. All obligations under this Contract will remain in full force and effect up to the effective date of termination. The notice of termination will specify the nature of the Contractor's failure(s) to perform. The Contractor will be allowed 30 calendar days to cure such failure(s) unless the Department agrees in writing to a time extension within which the Contractor will cure the failure(s). If the Department, exercising reasonable discretion, determines that the Contractor has cured the failure(s), the notice of termination will be rescinded and the Contract will not be terminated for the cause(s) stated in the notice of termination. If the necessary corrective action is not completed within the allowed 30 calendar days, the Department, if it has not granted an extension of time during which the necessary corrective action is to be completed, may terminate the contract for the cause(s) stated in the notice of termination.

#### I. Termination by Department Due to Emergency Conditions

In the event of an incident or circumstance of any kind, including but not limited to fire or other casualty, the result of which poses a serious threat to the safety, health or security of residents of the Facility or to the general public, the Department, exercising reasonable discretion, may immediately terminated the Contract without penalty and on the same terms and conditions as a termination for cause.

#### J. Termination by Department for Contractor Bankruptcy

In the event of the filing of a petition of bankruptcy by or against the Contractor, the Department will have the right to terminate the Contract on the same terms and conditions as a termination for cause.

#### K. Termination by Department Due to Unavailability of Funds

In the event that sufficient appropriations by the Legislature of Columbia for the management and operation of the Facility are not available after September 30, 2000, the Department may terminate the Contract without penalty.

#### L. Termination for Convenience

This Contract may be terminated without cause or penalty by either the Department or the Contractor by either party giving written notice to the other at least 120 days before the effective date of the termination. If a termination for convenience occurs, the Contractor shall be entitled to receive just and equitable compensation for management and operational expense under the terms of the Contract for any authorized work completed as of the termination date.

#### M. Waiver of Terms and Provision

No term or provision of this Contract will be deemed to be waived and no breach will be excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented.

#### N. Invalidity and Severability

In the event that any provision of this Contract is being held to be invalid, such provision will be null and void and the validity of the remaining provisions of the Contract will not in any way be affected thereby.

#### O. Sovereign Immunity

The sovereign immunity of the State of Columbia will not apply to the Contractor nor to any subcontractor, agent, employee, representative or insurer of the Contractor. Neither the Contractor nor any subcontractor, agency, employee, representative or insurer of the Contractor may plead the defense of sovereign immunity in any action arising out of the performance of, or failure to perform any responsibility or duty under this Contract.

#### P. Arbitration of Disputes

To the extent permitted by the law of the State of Columbia, any controversy arising out of this Contract which the parties are unable to resolve by mutual agreement may be submitted to arbitration in accordance with the rules of the American Arbitration Association. Issues under arbitration will be heard and decided by three arbitrators, one of whom will be designated by the Department, one of whom will be designated by the Contractor, and one of whom shall be designated by the American Correctional Association. The award, if any, of the arbitrators will be specifically enforceable as a judgment in any court of competent jurisdiction. Neither the Department nor the Contractor may designate an employee or agent as an arbitrator.

#### Q. Applicable Law and Venue

This contract will be construed in accordance with the laws of the State of Columbia and the District Court for South Washington, Columbia will be the venue in the event any action is filed by the Department or by the Contractor to enforce or to interpret provisions of this Contract.

#### R. Inclusiveness of the Contract

This contract contains all of the terms and conditions agreed on by the parties. No other understanding, oral or otherwise, regarding the subject matter of this Contract will be deemed to exist or to bind any of the parties to this Contract.

#### S. Independent Contractor Status

The Contractor will be an independent contractor and neither the Contractor nor its employees, agents or representatives will be considered employees, agents or representatives of the Department.

#### T. Third Party Rights

The provisions of the Contract are for the sole benefit of the parties to the contract and will not be construed to confer any rights on any other person.

#### U. Notices

All notices will be sent certified mail, return receipt requested, to, for the Department:

Mr. George Washington  
Department of Youth Services Building, Room 711  
1401 Capitol Street  
River City, Columbia 97711-0711

and to, for the Contractor:

Ms. Linda T. Jefferson  
President, American Juvenile Corrections, Inc.  
101 Azalea Avenue  
River City, Columbia 27901

### **SECTION III: CONTRACTOR RESPONSIBILITIES**

#### A. Acceptance of Referrals

The Contractor agrees to accept all juvenile delinquents assigned to the Facility by the Department.

#### B. General Liability Insurance

The Contractor agrees to obtain and to maintain general liability insurance sufficient to cover any and all claims that may arise out of the Contractor's management and operation of the Facility and to provide proof of such insurance to the Department prior to the commencement of the delivery of services. The Contractor further agrees to ensure that all dentists, nurses, physicians, psychiatrists, psychologists or other persons from whom the Contractor is authorized by the Department to obtain necessary services have suitable liability insurance.

#### C. Worker's Compensation and Unemployment Insurance Compensation

The Contractor agrees to provide unemployment compensation coverage and workers' compensation insurance in accordance with applicable federal and State laws and regulations.

#### D. Indemnification

The Contractor agrees to indemnify, defend and hold harmless the Department and the Department's officers, agents and employees from any suit, action, claim or demand of any description whatsoever for losses or damages arising directly or indirectly from or in connection with the operation and maintenance of the Facility including, but not limited to claims against the Department, the Contractor, or any of their respective officers, agents and employees for alleged violations of civil and constitutional rights. However, nothing in this Contract is intended to deprive the Department, the Contractor or any of their respective officers, agents and employees of the benefits of any law limiting exposure to liability or setting a ceiling on damages or both or of any law establishing any defense to any claim asserted against any of them beyond limitations expressed in this Contract. The obligation of the Contractor to indemnify, defend, and hold harmless will not apply to any suit, action, claim or demand made by any person arising from any action or omission of any person or entity other than the Contractor, its employees or its agents.

#### E. Accreditation

The Contractor agrees to seek, to obtain and to maintain accreditation of the Facility by the American Correctional Association. The Contractor further agrees to obtain ACA Accreditation within 12 months following the commencement of the delivery of services.

#### F. Subcontracts and Assignments

The Contractor agrees not to assign this Contract or to enter into subcontracts to this Contract with additional parties without obtaining the prior written approval of the Department. The Contractor will be responsible for the performance of all assignees or subcontractors.

#### G. Affirmative Action Policy

The Contractor agrees to accept and to abide by the affirmative action policy detailed in the Contractor's Proposal (Appendix B).

#### H. Staffing of the Facility, Personnel Qualifications and Personnel Training

The Contractor agrees to provide the number and types of staff members necessary to meet all of the requirements of this Contract and that the numbers and types of staff members will be in full compliance with the staffing pattern detailed in the Contractor's Proposal (Appendix B). The Contractor further agrees that the qualifications and training, including in-service training, will be in compliance with ACA Standards, relevant requirements of Title 39 of the Administrative Code of Columbia, the personnel qualifications and training standards detailed in the Contractor's Proposal (Appendix B) and, should these sources of minimum personnel qualifications and training be different from one another, that the more demanding standards will control.

#### I. Development of Policies and Procedures Manual

The Contractor agrees, prior to the commencement of the delivery of services, to prepare and to submit to the Department a comprehensive policies and procedures manual and that the policies and procedures set forth

therein will not be inconsistent with the relevant portions of the Contractor's Proposal (Appendix B). The Contractor further agrees that any amendments to the proposed policies and procedures manual required by the Department will be incorporated into the policies and procedures manual and reflected in the management and operation of the Facility within no more than 30 days following receipt by the Contractor of the required amendments.

#### J. General Standards for Management and Operation of the Facility

The Contractor agrees to maintain and operate the facility in a manner that is at all times in full compliance with Chapter 39 of the Code of Columbia (Appendix C), Title 39 of the Administrative Code of Columbia (Appendix D), constitutional standards, all applicable federal laws, all applicable court orders, all local ordinances, all certification or licensing requirements that are effective or that become effective during the term of the Contract, and relevant ACA Standards (Appendix E). If any provision of Chapter 39 of the Code of Columbia, Title 39 of the Administrative Code of Columbia, or this Contract is more stringent than an otherwise similar ACA Standard, the more stringent standard will control. If any ACA Standard is more stringent than an otherwise similar provision of Chapter 39 of the Code of the Columbia, Title 39 of the Administrative Code of Columbia, or this Contract, the ACA Standard will control unless the ACA Standard is contrary to the relevant laws and regulations of the State of Columbia.

#### K. Delivery of Management and Operational Services

The Contractor agrees to provide all management and operational services detailed in the Department's RFP #00-101 (Appendix A) and the Contractor's Proposal (Appendix B), those services including but not limited to:

1. The involvement of all residents in an orientation program immediately following their commitment to the Facility;
2. The preparation of individualized needs assessments and treatment plans on each new resident within no more than 15 days following his commitment to the Facility;
3. The involvement of each resident in a balanced program of education, vocational training, appropriate individualized or group therapy and recreation that is meaningfully related to the needs assessment and treatment plan prepared for him.
4. The delivery of food, hygiene, health, laundry and sanitation services that meet or exceed all relevant standards contained in Chapter 39 of the Administrative Code of Columbia and the ACA Standards;
5. Any and all other services necessary for the maintenance of a sanitary and secure facility within which the interests of the residents, the Department and the general public are protected; and
6. The development and implementation of a data collection system that systematically, reliably and objectively monitors the progress of each resident in all phases of his involvement in the programs being delivered by the Contractor.

#### L. Confidentiality of Resident Information

The Contractor agrees to abide by all State and federal laws and regulations concerning the confidentiality of information regarding residents provided to the Contractor by the Department and information regarding residents compiled by the Contractor during the course of the Contractor's delivery of services to those residents. The Contractor further agrees that all of its employees who work with or who have access to information regarding residents of the Facility will sign a written agreement that requires them to abide by the same confidentiality requirement and that the signed agreement will be available for inspection by the Department.

#### M. Research Involving Facility Records or Residents

The Contractor agrees that it will not authorize access to the Facility, its records or its residents without the prior authorization of the Department.

#### N. Reporting Requirements

The Contractor agrees to prepare and to submit to the Department monthly and quarterly reports containing a summary of Contractor activities that includes, but is not limited to a summary of information regarding admissions, releases, personnel changes, staffing adjustments and other relevant information about the management and operation of the Facility.

#### O. Special Incident Reports

The Contractor agrees to make immediate reports to the Department regarding events that fall within the meaning of special incidents (e.g., escapes, injuries other than minor injuries suffered by either residents or employees caused by accidents, assaults on residents or employees caused or believed to have been caused by either resident or employees, and significant damage to the Facility of whatever origin). The Contractor further agrees that special incident reports will be made within no more than 12 hours following the special incident.

#### P. Access to the Facility by the Department

The Contractor agrees that official representatives of the Department will have immediate access to the Facility for any official purpose at any time.

#### Q. Facility Maintenance

The Contractor agrees to develop and implement a maintenance program which includes the grounds, equipment and buildings of the Facility and which assures that the Facility will be maintained in a good state of repair and maintenance. The Contractor further agrees to assume liability for all routine maintenance costs and to not authorize any non-routine maintenance to be accomplished without a prior written authorization of the Department.

#### R. Medical Costs

The Contractor agrees to assume responsibility for routine medical costs for medical services provided to residents in accordance with the details of the plan for the delivery of medical services contained in the Contractor's Proposal (Appendix B).

#### S. Employment of Existing Department Employees

The Contractor agrees to accord all existing Department employees who are currently assigned on a full-time basis to the Facility equivalent employment by the Contractor in accordance with the employment program as detailed in the Contractor's Proposal (Appendix B).

#### T. Background Investigations of Contractor Personnel

The Contractor agrees that a thorough background investigation will be completed on all employees and agents of the Contractor who are assigned to responsibilities within the Facility on a routine basis prior to any such employees or agents being hired by the Contractor.

#### U. Selection of an Independent Program Evaluator

The Contractor agrees to retain, at no cost to the Department, an independent program evaluator who is fully qualified to conduct a qualitative and a quantitative evaluation of the quality of all services provided by the Contractor pursuant to the terms and conditions of this Contract, whose suitability for retention has the prior written authorization of the Department, and whose evaluation report must be submitted to the Contractor and to the Department no less than 30 days before the end of each 12-month period of service delivery by the Contractor.



#### SECTION IV: DEPARTMENT RESPONSIBILITIES

##### A. Existing Contracts

The Department agrees that there are no currently existing contracts between the Department and others relevant to the maintenance and operation of the Facility or, should any such contracts be in force, that they are not binding on the Contractor.

##### B. Transportation of Committed Juveniles

The Department agrees that all costs associated with the transportation of committed juveniles to and from the Facility will be the responsibility of the Department.

##### C. Facility Population

The Department agrees that the number of residents assigned to the Facility by the Department will not exceed 50 residents.

##### D. Resident Referral and Release Criteria

The Department agrees that all juvenile delinquents who are assigned to the Facility will be males between the ages of 16 and 18 whose backgrounds and needs, including their offense histories, psychological or psychiatric profiles and medical requirements, qualify them for assignment to the Facility. The Department further agrees that the Department, based on a review of case records, Contractor recommendations, and any other information it deems to be relevant, will have the exclusive power to determine release decisions for residents of the Facility.

##### E. Technical Assistance and Transfer of Information

The Department agrees to provide technical assistance to the Contractor on a timely basis when such assistance is requested by the Contractor and is necessary to assure the timely delivery of contractual services. The Department further agrees that all case file information will be transferred to the Contractor on or before the date of the transfer of any juvenile delinquent to the Facility.

##### F. Appointment of a Contract Monitor

The Department agrees to appoint a Contract Monitor who will serve as a liaison between the Department and the Contractor who will monitor contract compliance on the part of both the Contractor and the Department, who will submit a written evaluation of Contractor performance to the Department and to the Contractor on at least an annual basis, and who will be authorized to act on behalf of the Department regarding such issues as the release or transfer of residents.

##### G. Non-routine Maintenance Costs

The Department agrees to assume responsibility for all non-routine maintenance costs associated with the maintenance of the facility, including its paved walkways, parking lots, equipment and buildings if and only if the Department either arranged for the necessary maintenance or granted prior authorization to the Contractor to arrange for the necessary maintenance.

##### H. Medical Costs

The Department agrees to assume responsibility for the cost of non-routine medical services provided to residents.

##### I. Facility Improvements

The Department agrees that the Contractor may, at no cost to the Department, remodel or make improvements to the Facility subject only to the prior approval of the Department. The Department further agrees that Contractor requests to remodel or make improvements to the facility will not unreasonably be withheld.

J. Assistance with Background Investigations of Contractor Personnel

The Department agrees to assist the Contractor with the completion of background investigations of potential Contractor employees or agents at no cost to the Contractor. The Department further agrees that the scope of this assistance will include assisting the Contractor in the completion of criminal history reviews.

K. Assistance to the Independent Program Evaluator

The Department agrees to cooperate with and to provide technical assistance to the independent program evaluator selected by the Contractor and approved by the Department at no cost to the Contractor or to the independent program evaluator. The scope of this assistance will include but not be limited to authorizing access by the independent evaluator to secure detention facilities operated by the Department and the delivery to the independent evaluator of computerized data maintained by the Department on juvenile delinquents committed to the care and custody of the Department.

STATE OF COLUMBIA  
DEPARTMENT OF YOUTH SERVICES  
1401 CAPITOL STREET  
RIVER CITY, COLUMBIA 27981

**RESIDENTIAL SERVICES CONTRACT**

This Contract is entered into between American Juvenile Corrections, Inc., hereinafter referred to as the Contractor and the Director of the Columbia Department of Corrections, hereinafter known as the Department.

This document, including in the General Provisions, Scope of Services, Special Provisions, attachments, including any amendments or modifications approved in accordance with the General Provisions, Shall constitute the entire Contract between the parties and supersedes all other understandings, oral or written.

IN WITNESS WHEREOF, the parties hereto agree to carry out the terms of this Contract.

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Contractor

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Columbia Department of Corrections

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Signature of Authorized Individual

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Signature of Authorized Individual

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Typed Name

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Typed Name

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Typed Title

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Typed Title

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Address

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Date

Additional Signatures as Applicable

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Signature

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Signature

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Typed Name

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Typed Name

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Typed Title

Approved as to form this \_\_\_\_\_ day of \_\_\_\_\_, 2000

John Q. Smith, the Attorney General

By: \_\_\_\_\_  
Assistant Attorney General

## Contract Monitoring

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### INTRODUCTION

Once the contract is finalized and service provision begins, the public agency assumes the responsibility for monitoring the private provider's performance. This responsibility is especially important because the government continues to be held legally accountable for the juvenile correctional function even though the services are privately provided.

Government also has a responsibility to oversee the expenditure of public dollars and to assure that the juveniles are receiving the quality and quantity of services specified in the contract. Experience demonstrates that adequate, effective monitoring of private provider contract performance improves cost effectiveness, ensures full use of resources and services, and, most importantly, enhances the quality of services.

The issues in this chapter include:

- initiating contract monitoring,
- approaches to effective contract monitoring,
- characteristics of an effective contract monitor,
- developing a monitoring plan,

- conducting a program monitoring visit,
- other monitoring activities and corrective action plans.

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### INITIATING CONTRACT MONITORING

The public and private sectors must collaborate in order to make privatization work. Successful contract management and monitoring requires a mutual commitment to achieving the goals of the contract. Where the contract provider is expected to impact behavioral change in clients, the development of an Individualized Program Plan is an essential goal of the contract and provides a basis for contract monitoring and outcome measurement.

It's important to keep in mind that the state is the responsible agency and has the ultimate decision-making responsibility. The contractor works for the state.

Successful contract monitoring requires foresight. The process actually:

- begins during the development of the Request for Proposals (RFP),

- is elaborated on in the successful proposal, and
- is finalized during the contract negotiation phase.

The basic elements of monitoring—who, what, where, when and how—must be detailed in the contract. One approach that is useful in this regard is to establish outcome indicators for each element of the contracted program or service (e.g., Administration, Finance, Education, Counseling, etc.) Specific outcome indicators must be agreed on and commonly understood. These indicators must also be included in the contract.

One traditional outcome indicator is recidivism. It is common to include a minimum target for reducing the recidivism of program participants in contracts for correctional services. Unfortunately, experience demonstrates that this approach is not very effective. Many otherwise excellent programs have failed to meet the required recidivism threshold. The problems are that the indicator is often not realistic and that statistics can be manipulated. Further, recidivism is not consistent with the most recent understanding of delinquent behavior.

More recently, some contracting agencies have been using a suppression measure rather than recidivism. In effect, suppression measures the severity and chronicity of any unlawful activity by the program participant after he or she leaves the program, as compared to the levels at which they entered the program. This is a more realistic and achievable standard because it recognizes the limited impact a short-term correctional intervention can have on changing years of learned behavior. This is especially true with the respect to juveniles with long histories of delinquent behavior.

One good outcome indicator is the objective progress the juvenile achieves in the program. Some significant measures of change are achievement tests that measure the juvenile's skill level in math, English, social studies,

vocational skills, etc. Skill levels are usually measured upon entering the program and at pre-determined intervals during the juvenile's stay in the program. Other measures of progress are:

- Behavior
- Logs
- Incident report reduction
- Progress in a point system
- Participation in group sessions
- Participation in specialized counseling
- Attendance in a 12-step program.

No contract can address every possible complication and circumstance that may arise in the future. To assure that these unforeseen events can be effectively dealt with, the contract should include a generic process and procedure that would apply in any situation not specifically detailed in the contract. Each party might agree, for instance, to arbitration of certain issues not covered in the contract.

An actual incident illuminates the need for such a provision. A city contracted out its meal service to a private company. Early in the contract the freezer broke down and virtually all the food in it spoiled. This event was not included in the contract, so both parties maintained it was the other's responsibility. Although the parties in this instance worked out a solution (the city replaced the food and the provider repaired the freezer), the failure to provide a means to resolve a problem of this nature could have resulted in costly litigation and major disruptions to food service at the jail.

It's important to identify both a contract monitor and a contract manager before the start of the contract. The contractor should also identify a person available to the monitor on a daily basis, as well as a responsible supervisor. Although the contract monitoring and managing functions can be served by one individual, it is usually better not to combine these roles. Having a level of decision-making beyond the contract

monitor provides a de facto appeal whenever the contract monitor and the private provider representative are unable to reconcile a difference.

The contract should also contain a structured grievance procedure to ensure that unresolved issues are fairly addressed. One approach is to use the established procedure from the jurisdiction. If this procedure is too time-consuming, expensive, or could interrupt the delivery of services, a less formal process could be agreed to and included in the contract. As a first step, a less formal procedure may require that the highest administrative levels of both the government agency and the private provider review areas of disagreement and propose a resolution. Another approach would be to refer grievances to a mutually agreed upon panel of impartial experts and citizens. Such a panel could recommend solutions to both parties concerning a resolution of the issues.

All parties who have responsibilities under the contract must have a mutual understanding of its requirements and provisions if contract

monitoring is to be effective and successful. It's crucial to bring together key personnel from both the public and private entities to review and discuss the details of the contract prior to contract implementation. Each person should be provided with a copy of the RFP, the proposal, the contract and any documents included by reference or attachment. These documents may include health codes, manuals, administrative rules, local educational regulations, fire codes and any other applicable documents. All documents should be explained by the state; the staff and fiscal requirements also should be detailed for the contractor.

Differences in interpretations must be resolved prior to implementation. The contract provider must be informed of all agencies that will monitor contract performance and be supplied with all specific regulations that affect the provision of services, including the basis for penalties for non-compliance and possible termination of the contract. A fundamental principle of contract monitoring must be: "No surprises!"



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## APPROACHES TO EFFECTIVE CONTRACT MONITORING

The primary purpose of contract monitoring is to ensure that both the contracting agency and the provider are complying with the terms and conditions of the contract. This purpose is best served by a process of determining what is being done right, identifying what falls short, and working together to improve performance. In the end analysis, contract monitoring is a means for determining whether the advantages provided through private sector contracting outweigh the disadvantages.

Ideally, contract monitoring is not a process of finding fault or blame and threatening the provider with penalties. This approach is counterproductive because it focuses only on the negative, creates anxiety and distrust, and causes the provider to be secretive or to withhold information for fear of losing the contract or appearing to be deficient. It also prevents the contract monitor from acting as an agent of constructive change.

By the same token, a cooperative relationship should not blur the reality that the primary responsibility of the contract monitor is to assure that the provider is in compliance with all provisions of the contract. There should not be any compromise regarding this important function. The contract monitor must establish a balance between two roles—helping and enforcing.

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## CHARACTERISTICS OF THE EFFECTIVE CONTRACT MONITOR

Effective contract monitors understand the operational and philosophical principles of juvenile corrections in their jurisdictions. Contract monitors should be experienced people with respect and status in the contracting agency. Ideally, they have experience working in juvenile correctional programs.

Monitors must also be skilled in developing a monitoring plan, negotiating, conflict resolution, and interviewing techniques.

Reasonable ethical questions can be raised regarding whether a contract monitor should or should not be a member of state department of juvenile corrections staff because it can constitute a conflict of interest. When there is competition between the public and private sectors, a potential conflict of interest exists and the contract monitor should be responsible to the head of a different agency.

The contract monitor has an extremely visible role. Therefore, the contract monitor must set an example with regard to professional behavior. Courtesy, honesty, clarity, understanding, perception, insight and good communication skills, with an emphasis on listening are helpful.

Effective contract monitors are proactive. They not only attend to current events, they also look to the future, anticipate potential problems, and work with the provider in developing strategies to prevent or overcome those problems.

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## DEVELOPING A MONITORING PLAN

A specific monitoring schedule should be mutually determined by the agency and the contractor prior to contract implementation. Critical to developing this plan is the understanding that monitoring involves more than on-site visits. It is a whole process of reviewing documentation, analyzing data, developing reports, considering specific issues, troubleshooting and conducting interviews, as well as visiting a program site. Implementing the plan involves written and verbal communication, as well as site visits.

The monitoring plan must be reasonable in its scope and sequence. If a contract warrants, a specific topic may be monitored during one visit and another topic during another visit. One monitoring visit may be specifically to review

case planning, as opposed to looking at every aspect of a program. This is an alternative to a "shotgun" approach where in one visit a monitor tries to look at everything on the surface and not look at anything in depth.

Contract monitors sometimes inject themselves too forcefully into the everyday management of contract facilities. This is a fatal mistake on legal liability grounds. It converts private providers into agents of the contracting agency. Thus, one should urge contract monitors to exercise prudent restraint to avoid unintentionally increasing the legal liability exposure of the contracting agency.

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**A professional provider of juvenile correctional services who is committed to the goals of the contract and to a partnership with the contracting agency can be expected to act responsibly.**

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It's important that the monitor have sufficient time to devote to a contract. Complex or large contracts will result in a greater workload for the monitor. It's not fair to the public or the juveniles in the program to arbitrarily limit the amount of time the monitor spends on the contract. The monitoring plan should detail the anticipated amount of time that will be needed to conduct thorough and thoughtful monitoring. This plan should be reviewed by both parties prior to the beginning of the contract. This is done to assure mutual commitment to the monitoring plan.

The monitoring plan should be designed to assure that monitoring activities are scheduled in a way that results in the least disruption of daily operations. It must be understood that monitoring, by its nature, is an intrusive process. It often involves an "outsider" who may be perceived by staff and juveniles as a distraction or a threat. Daily schedules may be altered, causing further disruption.

To minimize disruption, the contract monitor should establish, in co-operation with the provider's representative, a program visit calendar. A change in the schedule should be made by mutual agreement.

This raises the issue of surprise or unannounced monitoring visits. Although there is some public agency support for this approach, it may be counterproductive. It may communicate a sense of distrust that the provider is doing something that the contracting agency does not approve of, and that the practice is covered up whenever the monitor is on site. It may communicate a message that the public agency does not consider its provider to be professional, honest or even competent.

Adherence to this basic principle does not, and should not, preclude other types of visits. The director or representative of the contracting agency should view the contracted program or service as any other in the public agency. He or she should feel free to visit any program at any time of day or night. The visitor should be just that—a visitor—and should not attempt to conduct a monitoring visit or otherwise disrupt the program. If during such a visit something peculiar is observed by the visitor, it can be reported to the contract monitor for follow-up.

A professional provider of juvenile correctional services who is committed to the goals of the contract and to a partnership with the contracting agency can be expected to act responsibly. Further, if the provider is engaging in questionable or prohibited activities, a perceptive monitor will realize it even without a visit. Experienced monitors have many sources of information. They also know how to talk with juveniles and staff to understand what is happening on a daily basis.

One approach to increasing both the effectiveness of monitoring and enhancing the monitor's understanding of the provider's performance is to increase the frequency of planned visits. A schedule of several comprehensive site visits (e.g. quarterly monitoring) could be comple-



mented by a number of shorter visits. These shorter visits could be irregular to assure that patterns of monitoring are not established.

Program disruption can also be limited by briefing the provider's representative on the information that will be requested and reviewed. A proposed agenda for a monitoring visit could be discussed. This agenda or schedule can then be shared with administrators, staff and juveniles in the program. Time can be reserved for meetings and interviews.

Documents constitute a major part of contract monitoring. It's counterproductive to request everything produced by the provider. Gathering, copying and shipping records and other program documents on an on-going basis is costly and time consuming. It should also be noted that it is a costly and time consuming effort for the public agency monitor who must review the material.

The most effective and efficient approach to documentation issues is to identify those records that include data needed to assess the contract's performance outcomes and other measurable provisions. Full disclosure of all information required for monitoring purposes should be agreed to during contract negotiations and specified in the contract. The methods of record keeping, as well as reporting formats and schedules, can also be set forth in the contract.

Confidentiality of records is one of the traditional hallmarks of the juvenile justice system and is strictly controlled by statute in most jurisdictions. The strictest guidelines with regard to confidentiality must be maintained. The contract should clearly define the guidelines for confidentiality of records, monitoring reports and other information, in compliance with law, policy and professional standards.

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## CONDUCTING A PROGRAM MONITORING VISIT

Service quality can best be evaluated by interviews and program observations, supplemented by client file reviews and analysis of program data. The program monitoring visit is an effective means of assessing the provider's operations and quality of services.

The key to conducting an effective monitoring visit is preparation. The contract and monitoring plan should detail what is to be monitored. A letter should be sent to the provider confirming the agreed upon date for a visit. An agenda for the visit should be prepared in advance to accompany this letter. This letter should detail what information is being requested in advance, what information should be on hand, who should be available for interviewing (e.g., the superintendent, the medical authority, the maintenance mechanic, etc.) and any details concerning time frames.

An important part of preparing for a program monitoring visit is to review the RFP, the proposal and the contract along with the provider's written program policies and procedures. These policies and procedures establish the program's mission and goals, and control virtually every operational aspect of the program. The development of written policies and procedures should be required by the contract and be approved prior to program implementation.

Policy and procedure review involves a two-fold approach. Initially, the monitor is trying to assess how well the provider's policies and procedures address the operation of a program in the fulfillment of the contract and the accomplishment of goals. Ideally, this should be done prior to contract implementation. Secondly, during the program visit, the monitor must determine whether the policies and procedures are, in fact, being followed.

There are six areas of concern regarding a juvenile correctional program that should be the focus of the contract monitor's preparation and visit. These six areas are:

1. Safety and Health

- Number and frequency of unusual incidents
- Accident rates
- Escapes, AWOLs or walkaways
- Level of violence
- Incidents of serious illnesses
- Number of youth reporting to sick call
- Quality and variety of food
- Quality of medical services
- Sanitation issues
- Fire safety procedures

2. Program Climate

- Perceived levels of fear or safety
- Levels of activity or forced idleness
- Quality of interaction between staff and youth
- Evidence of gang activity
- Evidence of racial conflict
- Evidence of coercion or intimidation
- Level of fair and humane treatment
- Level of mutual respect between staff and youth
- Visitation and access to telephone

3. Staffing

- Staff relationships
- Staffing patterns and ratios
- Adequacy of training
- Disciplinary actions
- Level of staff turnover
- Grievances
- Quality of staff supervision
- Appearance of staff

4. Behavior Management and Control

- Approach to behavior management
- Discipline procedures
- Use of time-out
- Use of disciplinary confinement
- Use of isolation
- Use of physical force
- Use of physical restraints
- Consistency of and among staff
- Quality of administrative oversight
- Adequacy of training

5. Physical Plant

- Cleanliness and orderliness of the facility and grounds
- Timeliness of repairs
- Quality of maintenance and schedule of preventative maintenance activities
- Quality and condition of furnishings and equipment

6. Case Management

- Assessment and testing
- Treatment planning and programs
- Educational planning and programs
- Aftercare planning and expected outcomes
- Relationships with the juvenile justice system and other agencies

This is not an exhaustive list of areas of concern, nor will it be necessary to review each of these areas in every monitoring visit. The contract monitor and the provider's representative should prepare a customized list for each contract being monitored. Sample monitoring checklists are included at the end of this chapter.

It is preferable, whenever possible, for the contract monitor and the provider's representative to jointly conduct the monitoring visit. This greatly facilitates the monitoring process because the provider's representative can answer questions and provide explanations. The team approach also acts to strengthen the professional relationship between the monitors.



During individual interviews with staff, juveniles or others, it's important that the monitor have a standard set of questions designed to elicit specific information. Questions may be added during an interview as needed.

When interviewing juveniles, it is crucial to avoid interviews during their activity time. No juvenile should be interviewed during school or when a

There are instances, however, when it is preferable and necessary for the contract monitor to independently review program or service operations. This balanced approach to monitoring assures that the monitor's perspective is not skewed by the provider's representative.

An entrance interview should always be conducted with the provider's representative, program administrators, and others designated by the provider in agreement with the monitor. The objectives of the monitoring visit and the monitoring schedule should be reviewed and discussed. This meeting also provides both parties the opportunity to raise other contract issues and to share information.

The entrance interview should be followed by a tour of the program. If during the tour, the state agency's monitor is not clear about what is occurring, he or she should request clarification or an explanation. It is vitally important that the monitor address any confusion as soon as it arises. Even the most experienced juvenile correctional expert will occasionally encounter something new.

Interviews with juveniles and staff in the program are a critical part of the monitoring visit.

scheduled outing is in progress. Although experience has demonstrated that most juveniles in juvenile correctional programs enjoy being interviewed, juveniles should always be given the opportunity to refuse to participate.

Hopefully, program staff, having advance notice of the monitor's visit, have prepared juveniles (who should be randomly selected) for individual interviews. It should be made clear to a juvenile that this is not a matter of pass or fail, or that they could somehow get into trouble for their comments. The monitor should be aware of any indications that the juvenile is under pressure, fearful or otherwise concerned about program staffs' response to what is being said. If this appears to be the case, the public agency monitor should discuss the problem with the provider's representative.

Some providers or individual staff are concerned about what the juvenile in the program will say to a contract monitor because they might be afraid the monitor will believe whatever the juvenile says. An effective contract monitor should explain in advance how he or she interviews juveniles and how the information which is provided is processed. For example, if one juvenile complains that the food

is always cold or tasteless, this information can be readily assessed by interviewing other juveniles and kitchen staff.

An effective monitor does not believe everything he or she hears from a juvenile, but also does not discount it. Rather, isolated and apparently unsupported information should be mentally stored or recorded in the monitor's private notes. Serious allegations such as abuse or intimidation, however, should always be followed up no matter how unsupported it may seem.

When interviewing program staff, it is essential that the monitor is positive and supportive. The staff are the individuals who are doing the real work of a contract, and it is hard, often frustrating, work. Sensitivity to their concerns and opinions will be appreciated. Again, during staff interviews, as in the case of the juvenile interviews, the monitor must maintain an open mind regarding what is heard.

The next stage of the monitoring visit is to review the documentation that has been requested and to conduct the remaining interviews. After regular reporting has been established, this period is also used to review backup documentation.

At the conclusion of the data gathering, the monitor should take sufficient time to prepare for the exit interview. The monitor should summarize and organize his or her findings and comments. Any remaining questions or requests for information should be listed. It is good practice to "walk through" the planned exit interview with the provider's representative who may be helpful in framing issues and concerns from the point of view of the provider.

The exit interview should be an honest, frank, and thorough presentation of the program's perceived strengths and weaknesses. Issues and concerns should be clearly expressed. The monitor should always state a conclusion on facts. This discussion should include facts that

may indicate the contract provider to be in non-compliance with part or all of the contract.

The objective for the contract monitor is to use a presentation style which reinforces a relationship. The goal of monitoring is to work together to improve and achieve the requirements of the contract, and this goal needs to be consistently reinforced.

The attitude throughout the process must be one where the responsibility for improvement is shared. In addition to asking the provider how it intends to correct a problem, the contract monitor should suggest how the parties working together might be able to correct the problem.

The exit interview should close with a brief discussion of future goals and activities, including working on the issues raised during the visit. After returning to the office, a written report detailing the results of the visit, as discussed during the exit interview, should be prepared and communicated to the provider for review. The provider should have the opportunity to correct any errors it sees. If the contract monitor does not agree to change the portion of the report in dispute, the provider should be allowed to add an attachment stating its views regarding the issue in dispute.

It is inappropriate to include in the report issues that were not addressed at either the entrance or exit interviews. If an item was inadvertently omitted during the interviews and needs to be included in the report, the contract monitor should contact the provider and discuss it. This subsequent discussion and its outcomes should be included in the report.

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## OTHER MONITORING ACTIVITIES

Written documentation continues to be the best way to confirm that particular actions have taken place. Since this has traditionally been a problematic area in the human services field, the contract should clearly identify the neces-

sary documentation. Documentation need not be lengthy and wordy to provide information. documentation is sufficient if it provides information on the basics: who, what, when, where, how and why.

Routine reporting provides public and private agencies the opportunity to evaluate the progress towards meeting contract goals and requirements. The knowledge obtained from routine periodic reports allows each party to be proactive, rather than reactive. Projections and trends can be determined and appropriate actions can be taken to prevent problems.

The processing and analysis of program data provided by the provider is a critical function of the contract monitor. A contract monitor should develop specific instruments to use during the monitoring process. Each instrument should address a specific program area. For example, an interview sheet could list the questions and have a corresponding response area for documenting comments. A one-page facility tour sheet can have a simple checklist format and an area for comments. A file review form can assist in an individual case file review. A training file review form can check on documentation of training provided.

The types of instruments will vary from contract to contract, although a standardized form may be used for all juvenile correctional programs of the same type. Customized forms and instruments may need to be developed for specialized programs, such as offense-specific treatment (e.g., sex offenders, fire setters, drug and alcohol treatment). The design of these instruments should be as uncomplicated and user friendly as possible.

Sample monitoring instruments are included at the end of this chapter. These samples may be adapted to include specific elements detailed in the contract, (e.g., outcome measures, units of service, etc.)

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### **The processing and analysis of program data provided by the provider is a critical function of the contract monitor.**

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A compilation of the information produced through these instruments will provide the basis of the monitor's findings. The quality of the data is much more important than the quantity; however, a sufficient quantity of data must be obtained to make reasonable statements in the findings. Only interviewing 10 percent of the clients in a program doesn't provide sufficient reliability for generalized findings.

Data is only useful if it is reliable. For example, many states and local units of government spend a great deal of money installing management information systems. These systems are capable of storing, sorting and producing very large amounts of data. If the data entry is poorly or incompletely done, the data base will be compromised. A system which regularly experiences a 25 percent error rate is essentially useless in terms of complex statistical analysis.

In determining reliability of information or sources, a monitor should look for consistency, clarity and adequate documentation. Cross-checking corresponding documentation may provide the necessary information to determine reliability. If a juvenile went to court on a particular date as reported in a case file, the program's transportation log should also document the information. Interviews and observations are also standard approaches to assessing the reliability of data.

Knowing the people who produce the data is one of the best ways to assess its reliability. Understanding their standards and practices about data collection and reporting greatly contributes to assessing overall reliability.

Although methods of analysis may vary, it is important that the contractor clearly describes how the information was gathered and com-

piled and that the monitor clearly describe the method of analysis used to interpret the data. For example, a statement that 25 of the 50 client files were reviewed during the period clearly states the basis of the analysis and suggests the limitations inherent to that particular approach. A further explanation of why the particular approach was used provides additional context in interpreting the data.

Ultimately, the data must be interpreted to determine its meaning. This is not unlike reading a book. Two people can read exactly the same words and then report two different, even conflicting, interpretations. Two highly trained and experienced scientists can observe the exact same phenomena and state two totally divergent interpretations of its cause.

Ideally, data interpretation should be an objective process. The monitor should make every effort to set aside his or her biases, whether favorable or disadvantageous to the provider. This is, of course, easier said than done. One effective approach to achieving this objective is to ask a colleague to review the data and interpret it. Usually, if this second opinion is consistent with the monitor's understanding, it is more likely that the monitor has made an unbiased interpretation of the data.

Another recommended approach is to discuss the data interpretations with the provider's representative. Frequently, that person provides an insight that may have been forgotten or not clearly understood by the contract monitor. This approach is also useful in clarifying what appears to be conflicting information. For example, the population count on the first day of a month does not reconcile with the last day of the previous month. There is nothing in the data which explains this discrepancy. A call to the provider's monitor reveals that program staff changed the time of the daily count from Noon to 2 a.m. on the first day of the month in question. The juveniles released from the program in the interim were not accounted for in the monthly population report.

The measurement of performance outcomes and the provider's compliance with the contract should be straightforward. Just as a student knows his or her final grade in a course because it is based on prior test scores and assignment grades, a provider usually has a good idea as to the quality of its performance based on the contract monitor's periodic progress reports. A particular number of juveniles received services or they didn't. A percentage of juveniles received their GEDs or they didn't.

If a provider is surprised by the monitor's assessment of performance and compliance, it is an indication that there may be a communication problem or breakdown. It may also be an indication that the contract monitor has not been sufficiently communicative or clear in reporting interim findings and making recommendations for improvement.

It also is important for the contract monitor to present the findings with equal emphasis. Most providers will have done some things very well and others not so well. Both should be given equal attention.

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## CORRECTIVE ACTION PLANS

The most effective approach to addressing problems with contract performance is to give the provider the responsibility of recommending a corrective action plan. While the public agency must approve the final corrective action plan and can offer assistance in its development, this approach assures that the provider will be committed to its implementation. It also allows the provider to recommend creative and efficient ways to address problem areas. This step also becomes a process for defining problem areas and developing a consensus as to what the problems are. Disagreements should be referred to the respective supervisors for resolution.

The next step in the process is to determine what action or actions must occur to properly

address the problem. One approach is to use a corrective action format that identifies the problem to be addressed, individual sub-components of the problem, the necessary corrective action at each step, the individual or individuals responsible for completion of the actions, and the realistic time frames for completing the corrective actions. This is easier if the contract was written with sub-divisions or parts, with expected outcomes and penalties for non-compliance for each part clearly stated. There should also be a methodology to determine whether the problem has been, in fact, properly addressed.

An effective corrective action plan is one that is perceived as achievable. Actions should be subdivided into steps with different due dates. This approach gives provider staff a sense of completion and success as each individual step is completed. It also provides the monitor the opportunity to assess incremental progress towards resolving the problem, and making adjustments to the plan, as necessary.

Corrective action plans should not be viewed as consequences for poor performance, but as opportunities to improve the services to be provided. They also present an excellent opportunity for the contract monitor to strengthen the relationship with the provider. Usually, there is more than one approach to remedying a problem. The contract monitor should resist the temptation to micro-manage the corrective action and allow the provider to use the approach it believes will be successful. In this way, the provider will become more invested in and committed to improving its services.

The contract monitor should conduct regular reviews of progress during the course of the corrective action plan. These reviews should be reported in writing and included in the contract file.

Ultimately, it may be necessary to terminate a contract for non-compliance. Given the legal and financial implications of this decision, the contract monitor must be precise in adhering to

the termination provisions of the contract and must have sufficient, relevant documentation to support the decision or recommendation.

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## CONCLUSION

In this chapter, we have discussed the importance of planning the RFP and involving the cooperation of the provider in the development of contract documents to a successful monitoring process. We have presented a framework for the public and private agencies to share the responsibility to monitor the contract and to assure the delivery of quality service to the juvenile clients. We have concluded that good monitoring requires the development of a monitoring plan. We have reviewed methods for conducting contract monitoring, including site visits. We have covered other monitoring activities such as written documentation, routine reporting, the processing and analysis of data, data reliability and the presentation of data and findings. We have also seen the need for the development of effective correction action plans.

Effective contract monitoring in juvenile corrections is often more art than science. It requires the application of specific professional skills and an equal amount of common sense, supported by on-going communication between the parties. It also recognizes that accountability is a mutual process. Working together, the contract monitor and the provider can assure that the requirements of the contract will be met and the interests of the public will be served.

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### ■■■ Example

Program performance measures are used for evaluating all residential contract programs. These measures are the basis for establishing program effectiveness, and play a key role in program monitoring and making recommendations for contract renewal. Performance measures have given us an objective method of evaluating programs and this has had a positive effect on the quality of the programs we

contract with. At the same time, performance measures make clear for the provider the expectations of the agency.

Program performance measures are recalculated every quarter and are based on the most recent 12 months performance. To make quarterly updates of the performance measures practical, the data must be available in an automated form. The program measures reports are available to the service area staff and to program administrators for their individual programs. During monitoring visits, a quality assurance specialist and the program staff discuss program performance and agency expectations.

Performance standards have been established against which program performance is evaluated. There are separate standards for secure and non-secure programs. The performance standards establish cutoff scores for program performance that exceed agency expectations and performance that is below agency expectations. Refer to the attached Performance Standards table for the exact cutoff scores for each performance measure for secure and non-secure programs.

Meetings with private providers have been held across the state to discuss the performance measures, clarify the agency's expectations for program performance, and solicit input for future revisions of the additions to our use of program performance measures.

Currently there are eight performance measures:

- Percent Positive Releases
- Misdemeanor Arrests
- Percent Negative Releases
- Confirmed Mistreatments
- Number of Escapes
- Percent Early Movement
- Percent of Students Escaping
- Felony Arrests

#### Performance Measure Definitions:

1. Percent Positive Releases

Percent positive releases is the percentage of students released from the program to a permanent assignment in a program with a lower restriction level or with a positive discharge from the agency.

2. Percent Negative Releases

Percent negative releases is the percentage of students released from the program to a permanent assignment in a program with a higher restriction level or with a negative discharge from the agency.

3. Escapes Per Year Per 10 Students

The total number of escapes by students assigned to the program per year divided by the Average Daily Population divided by 10. This number is the number of escapes that would have occurred if the program had an Average Daily Population of 10.

4. Percent Escapes

The percentage of students assigned to the program that escapes at least once. Multiple escapes by a student are counted as one escape.

5. Felony Arrests Per Year Per 10 Students

The total number of arrests for felony offenses by youth assigned to the program per year divided by the Average Daily Population divided by 10. This number is the number of felony arrests that would have occurred if the program had an Average Daily Population of 10. A student may be on escape status when the offense occurs.

6. Misdemeanor Arrests Per Year Per 10 Students

The total number of arrests for misdemeanor offenses by youth assigned to the program per year divided by the Average Daily Population divided by 10. This number is the number of misdemeanor arrests that would have occurred if the program had an Average Daily Population of 10. A student may be on escape status when the offense occurs.



7. Confirmed Mistreatments Per Year Per 10 Students

The total number of mistreatments in the program that are confirmed by OYCI investigation during the year divided by the Average Daily Population divided by 10. This number is the number of confirmed mistreatments that would have occurred if the program had an Average Daily Population of 10. A confirmed mistreatment due to action or inaction by an agency employee is not counted in the total.

8. Percent Early Movement

The percentage of students permanently assigned to the program that leaves the program within 30 days of assignment. Students leaving the program are counted even if the next assignment is temporary (for example, a student placed in an emergency shelter).

Several of the performance measures are stated in terms of the number "per year per 10 students." The reason for this is to adjust the total

number of the measure being counted to account for differences in program size. For example, if two programs are serving similar populations of students, it is reasonable to expect that a program with an average of 50 students per day would have a larger total number of escapes than a program with an average of 10 students per day. By converting the total number of escapes to "escapes per 10 students" the performance of the two programs can be compared to a single standard. Otherwise, large programs would be a very distinct disadvantage when looking at the total number of escapes.

When examining performance for the "Percent of Positive Releases" and "Percent of Negative Releases" keep in mind the total of the percentages of positive and negative releases will not necessarily be 100 percent. That is because movement to another program with the same level of restriction is considered a lateral move. The total of positive, negative, and lateral movement will be 100 percent.

## Performance Standards, FY 1999

### SECURE

Performance Measure	Exceed		Below	
	Direction	Cutoff	Direction	Cutoff
% Positive Releases	At/Above	90.0%	Below	60.0%
% Negative Releases	At/Below	2.0%	Above	10.0%
Escapes per 10 ADP	Equal to	0.0	Above	0.1
% Escaping at least once	Equal to	0.0%	Above	0.6%
Felony Arrests per 10 ADP	Equal to	0.0	Above	0.0
Misdemeanor Arrests per 10 ADP	Equal to	0.0	Above	0.0
Confirmed Mistreatments per 10 ADP	At/Below	0.2	Above	0.5
% Early Movement	At/Below	1.0%	Above	2.0%

### NON-SECURE

Performance Measure	Exceed		Below	
	Direction	Cutoff	Direction	Cutoff
% Positive Releases	At/Above	60.0%	Below	50.0%
% Negative Releases	At/Below	20.0%	Above	35.0%
Escapes per 10 ADP	At/Below	6.0	Above	10.1
% Escaping at least once	At/Below	20.0%	Above	30.0%
Felony Arrests per 10 ADP	At/Below	1.0	Above	2.5
Misdemeanor Arrests per 10 ADP	At/Below	0.5	Above	2.0
Confirmed Mistreatments per 10 ADP	Equal to	0.0	Above	0.5
% Early Movement	At/Below	4.0%	Above	10.0%

**■ ■ ■ Example****Sample State Monitor Checklist\*****SAFETY AND HEALTH CHECKLIST**

Review of the incident reports

Total number of unusual incident reports

---

Type of incident:

Client on client assaults

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Client on staff assaults

---

Use of mechanical restraints

---

Use of physical restraint by staff

---

Resident hospitalization

---

Child abuse/neglect reports

---

Riots/major disturbances

---

Resident deaths

---

Escapes

---

Runaways or absconders

---

Resident law violations

---

Accidents

---

\*This is a sample monitor checklist. A monitor checklist should be individualized for each contract based on the goals and objectives of each contract.

	Yes	No	N/A
Are additional follow-up reports included when necessary to indicate follow-up actions?			
Do incident reports follow written policy and procedure?			
Do juveniles express concerns for personal safety or fear of other residents or staff?			
Do patterns exist in the frequency or number of unusual incident reports?			

Comments:

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<b>Review of Medical Records/Documentation</b>	Yes	No	N/A	#
Does a written agreement exist with a physician and/or local medical facility to provide routine and emergency medical services for the facility?				
Are juveniles who are diagnosed with a chronic illness receiving treatment?				
Number of juveniles with chronic illnesses.				
Number of juveniles reporting for sick call.				
Number of juveniles requiring medical attention outside the facility.				

Comments:

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■ ■ ■ Example

PROGRAM CLIMATE CHECKLIST

	Yes	No	N/A
Do juveniles indicate that they are fearful of staff or conditions in the facility?			
Do juveniles indicate that they are treated fairly?			
Does the facility schedule a wide variety of in-house and outside activities?			
Are juveniles encouraged to become involved in the development of activity schedules?			
Are there extended and frequent periods where activities are not taking place (forced idleness)?			
When reviewing the unusual incident reports is there an indication of gang activity?			
When reviewing the unusual incident reports is there evidence of racial conflict?			
When reviewing the unusual incident reports or grievances filed is there evidence of coercion or intimidation?			
Do juveniles and staff appear to interact positively with each other?			
Do juveniles and staff treat each other with mutual respect?			
Are juveniles provided the opportunity for visitation?			
Are juveniles provided access to the telephone?			

Comments:

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■ ■ ■ Example

STAFFING CHECKLIST

	Yes	No	N/A
Do the staffing patterns meet the required staff-to-resident ratios?			
Do staff-to-resident ratios meet the needs of the type of resident, type of facility, or type of security level necessary and program model?			
Is there written documentation that disciplinary actions are taken with staff?			
Do staff interact positively with each other?			
Is there any indication of staff discontent?			
Is the staff turnover rate unusually high?			
Do staff received adequate pre-service training prior to directly supervising juveniles?			
Does the in-service training provide the basic training necessary for the type of facility, type of residents, the level of security and program model?			
Are staff given the opportunity to select topics for in-service training?			
Does it appear that there is positive communication and mutual respect between direct-care staff and supervisory staff?			
Are direct-care staff involved in the decision-making process for issues which directly impact their job responsibilities and duties?			
Do staff positively interact with you?			
Number of grievances filed against staff: By other staff, by residents, by others (parents, judges, etc.)			
Did the grievance procedure follow written policy and procedure?			
Were appropriate actions taken following the investigation of grievances?			

Comments:

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■ ■ ■ Example

### BEHAVIOR MANAGEMENT CHECKLIST

	Yes	No	N/A
Does the facility have a written, well-defined behavior management system?			
Are staff trained in the administration of the behavior management system?			
Is the behavior management system designed to change behavior as opposed to punishment for misbehavior?			
Are disciplinary actions consistent based on particular behaviors?			
Does the policy and procedure define the circumstances when physical or mechanical restraints may be used?			
Does the policy and procedure define the length of time a juvenile may be restrained or restricted in movement?			
Number of incidents of disciplinary confinement			
Number of incidents of time out			
Number of incidents of room isolation			
Number of incidents that involved physical restraint			
Number of incidents that involved mechanical restraints			
Does documentation indicate that the reasons for use of restraint or restriction meets the requirements of the policy and procedure?			
Are staff consistent in administering the behavior management system?			
Does the program director regularly review the behavior management system?			

Comments:

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■ ■ ■ Example

PHYSICAL PLANT CHECKLIST

	Yes	No	N/A
Is each juvenile provided with a clean bed and mattress, linens, a chair and closet/locker space for personal belongings?			
Is the facility clean and orderly without the presence of physical hazards?			
Are the exterior grounds well maintained and attractive?			
Is the environment safe, comfortable and inviting?			
Are furnishings comfortable and adequate to meet the needs of the population levels?			
Does the facility provide adequate personal hygiene areas for juveniles and staff?			
Are areas which have adequate space and privacy provided for individual and group counseling?			
Do all living areas have adequate lighting, fresh air ventilation, and space?			
Does the facility have a suitable visiting area?			
Are samples of juveniles' work displayed?			
Do juveniles have the opportunity to personalize their individual living area/room?			
Is there a preventive maintenance schedule?			
Does the preventive maintenance schedule meet the needs of the facility?			
Are there dangerous physical hazards that may affect juveniles or staff?			

Comments:

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■ ■ ■ Example

**CASE MANAGEMENT CHECKLIST**

	Yes	No	N/A
Do the files contain the required admission documentation?			
Have the appropriate admission notifications been made?			
Does the file contain any client assessments completed prior to admission?			
Does the program perform a variety of assessments to determine the individual needs of juveniles admitted?			
Does the program's client needs assessment include collateral contacts in obtaining information?			
Does the needs assessment incorporate: court orders, family relationships, prior offence history, prior dependency history, prior abuse/neglect history, prior placement history, prior placement adjustment, medical/dental history and assessment, employment background/history, leisure/recreation activities, educational/vocational assessment, special needs?			
Are individual placement/treatment plans developed for juveniles?			
Are juveniles involved in the development of individual placement/treatment plans?			
Are placement/treatment plans completed within 14 days of admission to the program? (This may vary depending on the type of program.)			
Are all placement/treatment plans dated and signed by appropriate staff and the juveniles?			
Do the goals of the placement/treatment plans address the specific needs identified during the needs assessment process?			
Do the placement/treatment plan goals address specific plans based on prior assessments and/or court requirements?			
Are realistic time frames established in the placement/treatment plans?			
Are the juveniles' responsibilities clearly defined?			
Are the program's responsibilities clearly defined?			
Does the plan establish a planned release date that may be renegotiated when possible?			

	Yes	No	N/A
Are the goals of the placement/treatment plan designed to prepare the juveniles for the next level of supervision or reintegration to their home or community?			
Does the placement/treatment plan include the development of goals to meet post-placement needs?			
Are reviews for the placement/treatment plan held on a regular basis?			
Are the juveniles involved in the review of the placement/treatment plan?			
Are all staff responsible for direct care of juveniles involved in the review of the placement/treatment plan?			
Are the juveniles' families involved in the development and review of the placement/treatment plan?			
If the juveniles have a case manager not affiliated with the program is that individual involved in the development and review of the placement/treatment plan?			
Are released dates adjusted based on progress or completion of goals?			
Are separate individual educational/vocational plans developed for juvenile?			
Does the individual educational plan reference prior history and assessments?			
Are additional educational assessments being provided in special needs cases (visual or auditory learning disabilities, emotionally disturbed, physical or mental handicaps, etc.)			
Are special educational services being provided for special needs juveniles?			
Are special mental health or chemical abuse services being provided to juveniles either in-house or by overlay professionals?			
Does the program provide written documentation to appropriate juvenile justice agencies, parents/guardians or other appropriate agencies concerning the placement/treatment plan and the progress of goals?			

Comments:

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## Public Correctional Policy on Private Sector Involvement in Corrections

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### INTRODUCTION

Although most correctional programs are operated by public agencies, there is increasing interest in the use of profit and nonprofit organizations as providers of services, facilities, and programs. Profit and nonprofit organizations have resources for the delivery of services that are often unavailable from the public correctional agency.

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### STATEMENT

Government has the ultimate authority and responsibility for corrections. For its most effective operation, corrections should use all appropriate resources, both public and private. When government considers the use of profit and nonprofit private sector correctional services, such programs must meet professional standards, provide necessary public safety, provide services equal to or better than government, and be cost-effective compared to well-managed governmental operations. While government retains the ultimate responsibility, authority, and accountability for actions of private agencies and individuals under contract, it is consistent with good correctional policy and practice to:

- A. Use in an advisory and voluntary role the expertise and resources available from profit and nonprofit organizations in the development and implementation of correctional programs and policies;
- B. Enhance service delivery systems by considering the concept of contracting with the private sector when justified in terms of cost, quality, and ability to meet program objectives;
- C. Consider use of profit and nonprofit organizations to develop, fund, build, operate, and/or provide services, programs, and facilities when such an approach is cost-effective, safe, and consistent with the public interest and sound correctional practice;
- D. Ensure the appropriate level of service delivery and compliance with recognized standards through professional contract preparation and vendor selection as well as effective evaluation and monitoring by the responsible government agency; and
- E. Indicate clearly in any contract for services, facilities, or programs the responsibilities and obligations of both government and contractor, including but not limited to liability of all parties, performance bonding, and contractual termination.

This Public Correctional Policy was ratified by the American Correctional Association Delegate Assembly at the Winter Conference in Orlando, Florida on January 20, 1985. It was reviewed on August 15, 1990, with no change.

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## **DISCUSSION: PRIVATE SECTOR INVOLVEMENT IN CORRECTIONS**

The following discussion clarifies for the general reader the correctional issues addressed in the policy. The discussion was prepared and approved by members of the Advisory Committee and ACA staff.

Correctional agencies are responsible for a growing number of offenders and for their many specialized needs in such areas as education, vocational training, health care, mental health, and social skills training. There are strong concerns about the need for more resources to bring correctional operations into compliance with constitutional standards, maintain sound correctional practices, and improve the field as a whole. Agencies are under great pressure to explore the widest range of alternatives for increasing the effectiveness and efficiency of their operations. These alternatives include services and programs provided through the private sector.

The involvement of the private sector through volunteers and private profit and nonprofit contractors is not new. In addition to these traditional cooperative relationships, the public correctional policy on private sector involvement addresses the issue of private operation of correctional facilities. The concept of privately operated correctional facilities, particularly secure institutions for adults, is one on which there has been little research and evaluation. This is primarily because there has been little experience with this type of operation. Moreover, there is legitimate controversy about such an approach to correctional operations. Nevertheless, this approach is being explored by an

increasing number of states, counties, and municipalities.

The American Correctional Association believes strongly that leadership and guidance on this issue are needed. Therefore, the policy on private sector involvement emphasizes that all groups and individuals involved in correctional programs and services must operate according to the recognized professional standards of the field. Further, the policy affirms that the ultimate responsibility and authority for any correctional program, service, or facility rests with the governmental body, not the contractor. The role of contracted services and programs is to supplement agency operations where there is a demonstrated need, not to replace them. A clear understanding of this role is necessary by all parties to any contract, including legislators, executive officials, members of the judiciary, and contractors.

This policy establishes a course of direction for government to follow in exploring the concept of private sector involvement in corrections. The policy states that it is consistent with good correctional practice for government to:

**A. "Use in an advisory and voluntary role the expertise and resources available from profit and nonprofit organizations in the development and implementation of correctional programs and policies . . ."**

The expertise and resources of profit and nonprofit industrial, educational, and service agencies can enhance the development and delivery of many programs for offenders. Vocational and academic programs and correctional industry operations can benefit greatly from the advice and experience of outside specialists. Correctional agencies should be open to support and assistance from profit and nonprofit organizations in all areas of correctional programming and services.

**B. "Enhance service delivery systems by considering the concept of contracting with the private sector when justified in terms of cost, quality, and ability to meet program objectives . . ."**

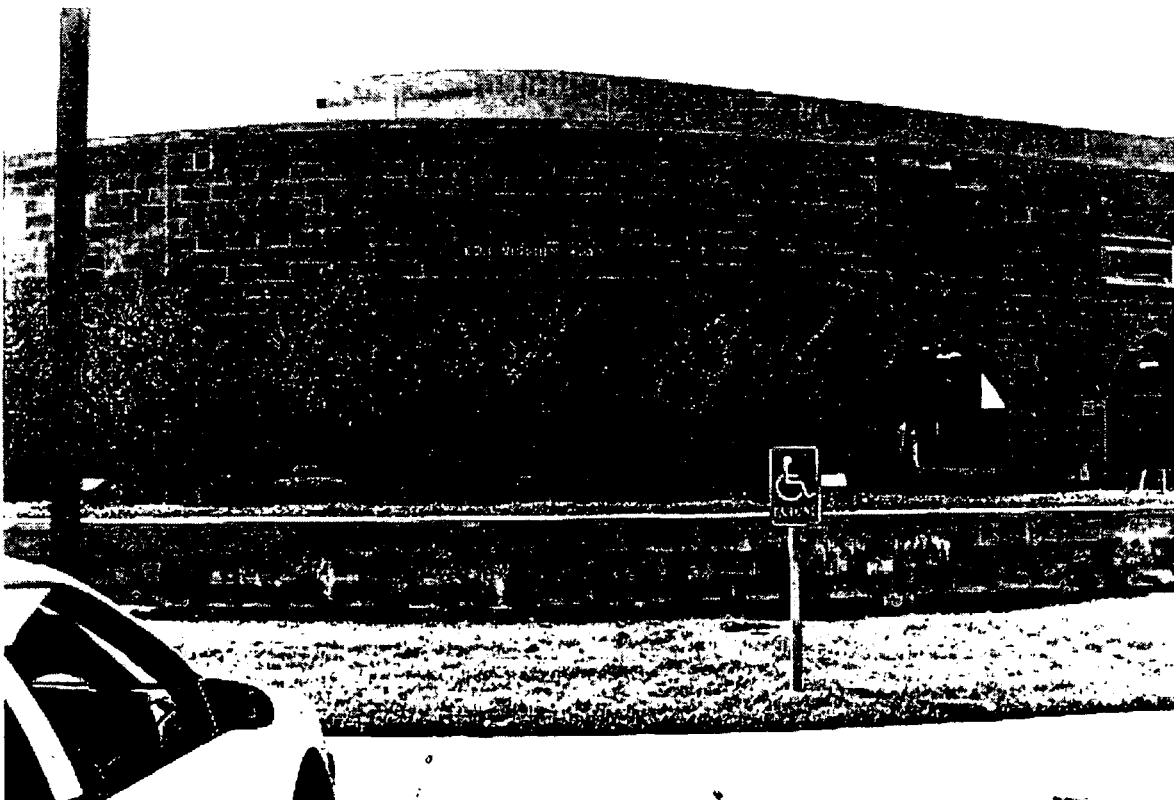
The growth of professional standards and adherence to constitutional requirements have meant that correctional institutions and programs no longer are expected to be self-sufficient "worlds unto themselves," isolated from the outside community.

Correctional agencies have contracted for specialized treatment programs for offenders for many years. Such programs include psychiatric services, drug counseling, and postsecondary education. Correctional agencies are also using the private sector to provide other services such as medical care, laundry, and food service. Use of outside resources can enable agencies to obtain highly trained specialists and outside support on an as-needed basis. This can be cost-effective in terms of both staffing costs and the costs of building and maintaining expensive service components.

**C. "Consider use of profit and nonprofit organizations to develop, fund, build, operate, and/or provide services, programs, and facilities when such an approach is cost-effective, safe, and consistent with the public interest and sound correctional practice. . . ."**

The operation of halfway houses, foster homes, training schools, group homes, and community centers by nonprofit groups has been a valuable resource for corrections for many years. The continued expansion of inmate populations, plus the need for replacing antiquated facilities, has led to discussion and limited implementation of the concept of privately operated secure adult facilities (e.g., prisons and jails) for both short- and long-term confinement.

Some correctional practitioners and public employee organizations have expressed serious concerns about the idea of for-profit operation of secure facilities. One concern is that staff development, training, and benefits for public employees will be jeopardized. Another concern is the fear that it would be in the interest of



profit-making firms to keep every bed occupied, thereby possibly jeopardizing the quality and quantity of correctional services and programs.

At the base of these concerns lie four issues: (1) The possible adverse effect of the profit motive on necessary public safety; (2) fear that the general public and state legislatures may see private operations as a "quick fix" to the problems facing corrections and to the requests for support expressed by correctional agencies; (3) concern that what might initially appear a cost-effective approach could result in escalating costs if a governmental unit became dependent on services provided by the private sector; and (4) governmental liability for the actions of the private contractor.

The American Correctional Association's policy statement acknowledges that private sector interest in correctional programming is a fact of life and urges that all concerns be addressed through open discussion, research, and evaluation. Because decisions regarding correctional policy are made by many groups and interests, any discussion of alternative delivery systems must emphasize and insist upon adherence to professional standards in the operation of all correctional programs, services, and facilities.

**D. "Ensure the appropriate level of service delivery and compliance with recognized standards through professional contract preparation and vendor selection as well as effective evaluation and monitoring by the responsible government agency . . ."**

The selection of private resource organizations and individuals should be conducted in an open and professional manner according to objective criteria. Moreover, the policy affirms that correctional programs and services operated by private contractors must do the following:

- Comply with recognized standards of professionalism
- Protect the public safety

- Provide services equal to or better than those provided by government
- Be cost-effective compared to well-managed governmental operations

Agencies and contractors alike must understand that the ultimate responsibility and authority for correctional operations resides with the government agency. States, counties, and municipalities have the obligation to regulate the activities of contractors and to hold contractors accountable for their actions. Agencies should monitor contracted services and programs to ensure that contractors are complying with all terms of the contract. Agencies should also evaluate all contracted programs and services to ensure they are meeting the goals and objectives stated for them and to make changes or improvements as necessary. Such monitoring and evaluation should be carried out by trained, experienced professionals who can discern the soundness of the correctional operations.

E. "Indicate clearly in any contract for services, facilities, or programs the responsibilities and obligations of both government and contractor, including but not limited to liability of all parties, performance bonding, and contractual termination . . ."

Drawing up an equitable contract is a complex task and one with critical implications for litigation in the event of damages, injury, or mismanagement. Contracts with private agencies and individuals should be professionally prepared and clearly written. They should define the specific responsibilities and obligations of both the government agency and the contractor. Contracts should include clear statements of the responsibilities and obligations of all parties in such areas as liability (of both the government agency and the private individual or organization); bonding; staffing levels and qualifications; program quality and quantity; fiscal auditing; monitoring; performance evaluation of staff and operations; and terms or renewal or termination of contract.

# Community Advisory Boards and Public/Private Partnerships

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### INTRODUCTION

A state director of juvenile corrections faces an awesome task in the 21st century. With shrinking budgets and expanding populations, an administrator needs all the ideas, assistance, support and resources he or she can get. At the state level, governors and legislatures have created various boards, commissions, and councils to promote privatization of government functions and service on a statewide basis. These groups vary in terms of their roles and functions. For example, some identify candidates for privatization; some provide information and technical assistance; and some help determine which services will be privatized. Also, some states have promoted privatization throughout government by governors' executive orders but without setting up such boards or councils.

Regardless of whether there is state-level support for privatization, the director must address myriad issues relating specifically to juvenile corrections. Directors of state juvenile services must provide answers to questions including:

- Who should initiate a privatization project?
- How should candidates for privatization be identified?
- Is privatization legally and politically feasible?
- Which methods should be used in outsourcing targeted services and functions to private providers?
- What are potential benefits from privatization?
- Are able, willing, and reliable private providers available in the marketplace?
- Will employees be affected by privatization? Will they be hired by the private firm or transferred to other units? Is privatization compatible with collective bargaining agreements?
- Does the request for proposals contain all necessary specifications (e.g., information on cost data, safeguards, resolution of complaints, audits, ethical standards, liability, bankruptcy, monitoring and evaluation, conditions for contract renewal)?
- How should a private provider be selected to implement a project?
- Who should monitor implementation of the privatization project?
- How should the privatized project be evaluated?

Many of these topics will be addressed in greater detail throughout this manual. In this appendix we will examine ways to structure organized input from outside sources for the purpose of considering private sector contracting of juvenile services. State directors need assistance from the state, their staff, the business community and interested citizens to adequately examine each of these areas. Community Advisory Boards and Public/Private Partnerships can help bridge the gap between the state and the locality to enable a state juvenile agency to provide the best services possible for the juveniles it serves.

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## MAKING A DECISION

State directors face crucial decisions, media attention, and public opinion on a daily basis. State agencies need help making decisions and dealing with outside interests. Often, an agency will turn to a Community Advisory Board or a Public/Private Partnership for help. These groups may already be in place, or they can be

specially organized for a specific purpose. Either way, advisory groups can be of great assistance in getting the facts and handling the actual work involved in evaluating and monitoring contracts. They also can serve as effective sounding boards for state directors and agency personnel making policy decisions. Advisory Boards and Public/Private Partnerships can be whatever the agency wants them to be; they will do as much or as little as the state director wants or allows.

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## ADVISORY BOARDS

A Community Advisory Board is a group representing a cross section of citizens and interest groups that offers advice and assistance to a state director. These boards do many things for a state agency, including:

- *Establish philosophy and mission:* An Advisory Board can provide assistance in developing or revising an agency's mission statement or philosophy.





- **Act as a communications link with the community:** An Advisory Board can assist the state agency to informally provide relevant information to the public concerning the operation or the status of the juvenile justice system.
- **Provide consultation and advice:** Advisory Boards can offer different views on issues affecting the state and give suggestions or advice. An administrator is not obligated to implement every suggestion from the board, but careful consideration will often expand the administrator's view and improve decisions.
- **Provide support and encouragement:** An Advisory Board can support, encourage and bolster staff, which leads to higher morale and more successful programs and operations.
- **Act as a lobbying and political action arm:** In addition to expressing agency opinions to politicians, an Advisory Board can relate information back to the director. Advisory Board members understand the community's perspective. Issues involving adverse political reaction to agency decisions—such as contracting with the private sector or locating a facility in a particular neighborhood—can be aired and openly addressed.
- **Special Advisory Board projects:** This is where critical decisions on issues such as privatization, budget reductions, or locating new facilities can be discussed by Advisory Boards. Often, a special sub-committee is organized to research specific issues in juvenile justice. The Advisory Board can then report to the state director with a recommendation. This report could include valuable insights into the issues and

**Besides varying the occupations of the members, it is also good practice to balance the board members' philosophies on juvenile justice. Most, however, should be somewhere in the middle of the road.**

possible positive and negative factors that the director might miss otherwise.

If the issue is privatization, for example, a sub-committee could also be organized to work with staff to develop an RFP

that covers all of the necessary elements chosen by the agency. The director might also decide to set up a sub-committee to review and rate the proposals and make recommendations on those worthy of more in-depth scrutiny. There are many tasks, especially in the process of private contracting, that an Advisory Board could handle with efficiency and effectiveness—to the benefit of the state director.

### **Selecting an Advisory Board**

Since an Advisory Board is statewide, the members should represent a cross-section of the state's population. To the extent possible, they should also represent the cultural, ethnic, socioeconomic and religious backgrounds of the juveniles served by the system.

Board members should represent various business interests, with specific emphasis on those statewide businesses with an interest in the community. These businesses usually include banks, utilities, developers, the state Chamber of Commerce, etc. Seeking the advice of juvenile justice practitioners on an as-needed basis is often more valuable than including too many on an Advisory Board. Besides varying the occupations of the members, it is also good practice to balance the board members' philosophies on juvenile justice. Most, however, should be somewhere in the middle of the road.

In general, those individuals with strong personal agendas should be screened out. At times, it may be smart to place an active critic on the board if the person is fair. Often, after becoming involved and witnessing the entire operation of

the program, a critic can become a strong supporter.

### **Organizing the Board**

A Community Advisory Board should be organized with an elected chairperson and a set of by-laws explaining its functions and rules. The by-laws should be clear and distinct, but still allow flexibility for unusual and unforeseen circumstances. An Advisory Board needs the structure of by-laws, but will be more functional if the by-laws are not too complicated or rigid.

The agency should encourage the board to make collective decisions. Individual members should NOT act independently regarding agency policies. The success of Advisory Boards often depends on the cohesiveness of the board and their use of consensus to advise the agency. It is more productive for the board to adopt one recommendation on any particular issue, but it should allow minority opinions to be heard.

### **Training the Board**

Proper training is critical to the success of any Community Advisory Board. More boards have failed because the members were not fully informed than for any other reason. Training should include the daily operations of the agency, the legal issues involved, and the practical limitations of particular issues. Training should also include lessons on how to operate effectively as a board. Specific topics could include:

- The role, rights and responsibilities of board members;
- Parliamentary procedure; and
- The board's by-laws and rules.

The chairperson should receive additional training and information about the program so that he or she may, in effect, train future chairpersons.

Membership on the board must be contingent on completion of the training. With knowledge and understanding of the facility's mission and philosophy, the problems and the dangers of the

offenders, and realistic expectations of what can be done, the board can become a valuable resource to the director.

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## **PUBLIC/PRIVATE PARTNERSHIPS**

A Public/Private Partnership is a specialized advisory board, an alliance of representatives of the business community with a public agency. Business representatives and public administrators are joined in a collaborative effort to assist in examining the courses of action and possible solutions to a critical issue facing an agency. If privatization is the issue, private sector representatives involved in the partnership are usually not interested in, or are disqualified from, contracting with the government for any future business under discussion. Businesses involved in providing juvenile justice services were discussed in Chapter 2, "The Private Sector As Contractor." Unlike the business representatives in Advisory Boards, Partnerships tend to involve the CEOs from larger corporations—at least on the state level, but often on a national business level.

An important characteristic of a Public/Private Partnership is its task-oriented and time-phased nature. The Partnership should disband once an issue is resolved. The temporary nature of a Partnership is a key element of its success, since busy professionals are often more receptive to a temporary rather than indefinite commitment. A dynamic public/private workgroup, addressing a specific concern, has a unique opportunity to make a significant contribution to the effort to privatize juvenile justice services.

Although this appendix looks at involving the business community as a concerned group whose skills, knowledge, and resources can help improve the way we contract out juvenile justice services, partnerships may be organized around any critical issue.

The Public/Private Partnership is especially well suited for a special project. Due to the time



restraints on most business people, ad hoc committee projects would be most successful. The Public/Private Partnership could study and provide guidance on all the tasks associated with privatization. For example, a special assignment to study the feasibility of conversion to private contracting from an economic perspective might be especially suitable for a Public/Private Partnership. With the emphasis on business, this group could discuss many benefits and pitfalls that a state juvenile services director might not consider.

The Public/Private Partnership members could use their resources to project the economic and management implications of privatization before an RFP is even developed. Public/Private Partnership members might be of substantial help in drawing up RFPs and contracts—using the legal departments and contracting divisions in their own organizations. These are resources unavailable to a director without a Public/Private Partnership.

### **Selecting a Core Group**

The difference between an Advisory Board and a Public/Private Partnership is that the partnership has more of an emphasis on the business community than the community at large. It is essential that five or six individuals with acknowledged leadership ability be invited to participate as members of a core group. The core group is the nucleus of the partnership; its members will be instrumental in recruiting other appropriate local leaders to the formal partnership. Members of the core group must be key government and business leaders who can and will create change and are committed to forming a partnership that focuses on the development of a collaborative effort between the public and private sector around juvenile justice issues. Critical is the willingness of these individual members to invest their time and effort to plan, assemble and participate in the partnership. There are two important activities in successfully establishing a core group.

First, identify and recruit key individuals from the public sector. If the partnership will address issues involved in contracting to the private sector, public sector individuals included in the core group might be:

- The state director of juvenile corrections;
- A representative of the state director;
- The state financial officer; and
- The director of human services.

Secondly, identify and recruit key individuals from the private sector. Business involvement can bring the unique resources and abilities of the private sector to bear on the problems traditionally addressed by government alone. Influential corporate executives who are interested in improving juvenile corrections should be recruited. It is important to convey to them the benefits of participating in a juvenile justice partnership.

Forming a Public/Private Partnership to effect the improvement of juvenile justice service delivery is a new idea to most corporate executives. These executives should be reminded that business is directly affected by juvenile crime. It creates a financial burden as tax dollars are spent to control and treat juvenile offenders; it affects the quality of life in communities where businesses operate; it has direct impact on corporate employee productivity; and it contributes to losses from theft and vandalism.

These corporate executives and government representatives comprise the essential components of the core group. Obtain commitments to participate in the core group as soon as possible, since all subsequent partnership activities must wait until the core group is formed.

### **Organizing the Core Group**

Led by the state director of juvenile corrections, the Public/Private Partnership should:

- *Identify the term and the goals and objectives of the partnership.* Discuss the goals and objectives of the partnership. The state director of juvenile corrections should

speak for the agency and its needs. Invite private sector participants to state their views. Also, private sector participants will have questions that need to be answered.

- *As the focus of the Public/Private Partnership becomes clear, members may offer suggestions for sources of community support.* Such support may be in leadership, influence, expertise, or in-kind contributions (staff time, office space), rather than money.
- *Identify potential partnership members.* A primary function of the core group is to identify and assist in the recruitment of potential members. The group should anticipate and discuss critical questions that prospective members will have. Examples of such questions are:
  - What are the parameters under which the partnership will work in terms of time frames, scope of activities, outcomes, etc.?
  - What is the level of commitment in relation to time, resources, expertise?
  - What are the benefits of the partnership?

### **Selecting Potential Partnership Members**

The core group members should identify and list potential Public/Private Partnership members. The list should contain the names of key local business executives and key public administrators who have the ability and desire to contribute to the partnership.

Personal acquaintances and professional associates should be considered first as they will be the easiest to recruit. The list should also include a "referral source" (who suggested the potential members) and a "recruiter" (who will recruit the potential member).

The number of partnership members should be limited. If the partnership is too large it may become difficult to manage. A suggested estimate is 15 to 20 key decision-makers.

Once key public and private sector leaders have agreed to participate, the group will be ready to develop the statement of purpose and to pursue the formal organizational meeting.

### **Draft Partnership's Statement of Purpose**

A draft of the Statement of Purpose will be provided to each member for comment, revision and approval at the formal organizational meeting. The statement of purpose should be clear, concise, brief (two typewritten pages at most) and should address the following:

- Reasons for partnership;
- The purpose; and
- The partnership's specific goals and objectives.

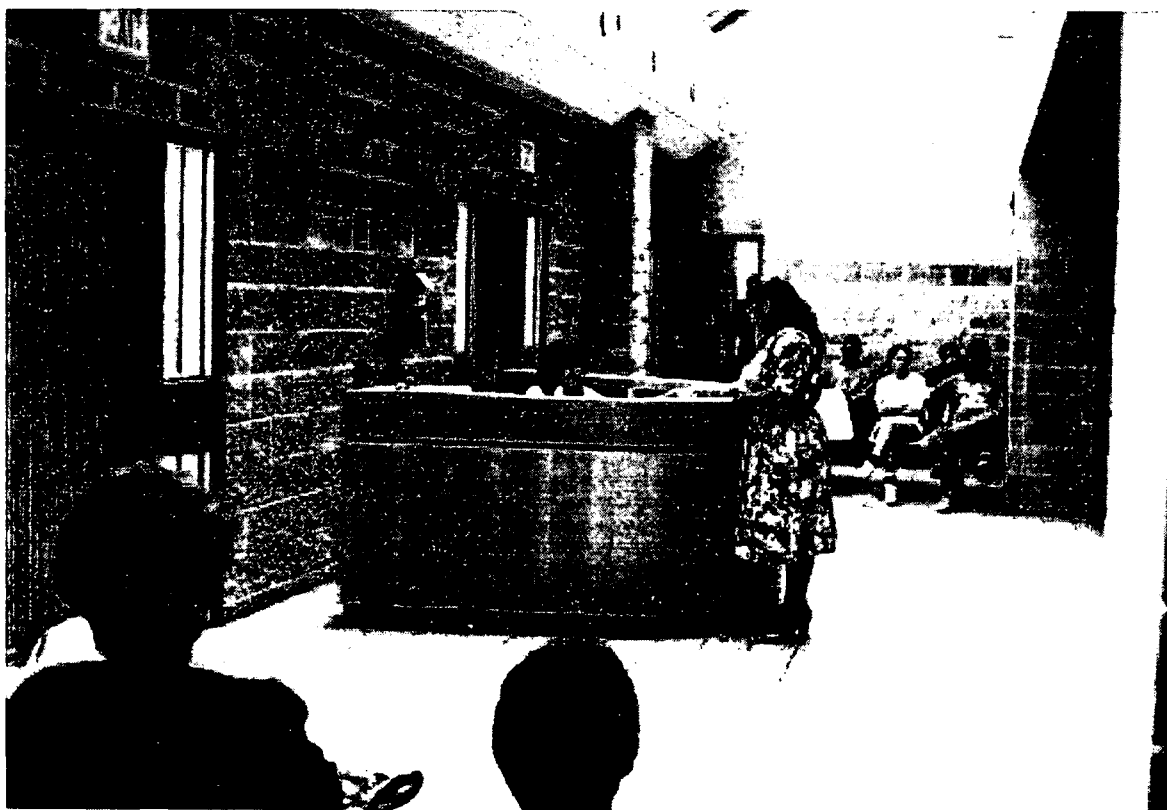
### **Partnership Activities**

The partnership should achieve its objectives. The chairperson should coordinate tasks and activities to prepare and conduct subsequent partnership meetings. Responsibilities must be clearly set, and subcommittees created and members assigned. Partnership members will

join the subcommittee of their choice, and have flexibility to choose meeting locations. However, the chairperson must ensure that each subcommittee is representative of the public and private sector, and consider the levels of familiarity and interests of subcommittee members.

Consider the development of products to achieve the partnership's objectives at the appropriate time. For example, private businesses have information, skills, areas of expertise and technical assistance capabilities that may be available to assist the Partnership. The development of a statewide resource guide will enable local partnerships to target the necessary resources and determine the appropriate individual to approach for assistance.

Finally, the partnership may wish to inform the community-at-large about its activities. The effective use of the media, and the development and distribution of informational materials are approaches to consider.



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**■ ■ ■ Example****SAMPLE STATEMENT OF PURPOSE: ADVISORY GROUP**

Juvenile crime is a phenomenon that affects the lives of many individuals across the country. It has always been a major concern of federal, state and local governments. Citizens and businesses are directly affected by such conditions as the tax dollars spent on controlling and treating juvenile offenders, the quality of life in communities and the direct impact of crime on employee productivity.

Business and citizen involvement with public sector representatives in certain areas of the system is essential for resolving these problems. The business community brings to this partnership such skills as information management methods, administrative tools, state-of-the-art technology, and a broad based perspective.

The Advisory Board or Public/Private Partnership will concentrate its efforts on promoting efficient management and cost-effective juvenile services. The goals and objectives are:

1. To evaluate existing juvenile services and procedures for areas of potential improvement.
  2. To develop alternate methods for delivery of juvenile services. Alternative models for service delivery should be considered with contract incentives to attract private sector vendors.
  3. To get pro bono technical assistance from the private sector for education and communication programs. Areas of expertise would be strategic planning, contract review, information management systems, quality control, accounting and public relations.
-

### ■ ■ ■ Example

#### SAMPLE INVENTORY QUESTIONNAIRE OF PRIVATE SECTOR IN-KIND RESOURCES

1. Name of Corporation: \_\_\_\_\_
2. Name of Contact Person: \_\_\_\_\_  
 Title and Division: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 Phone: \_\_\_\_\_
3. Of the following areas of expertise indicate those in which pro-bono technical assistance can be made available through your corporation, and the method by which it would be provided:

#### ***Consultation/Written Material/Offer***

Areas of Expertise	(please specify)
Management Skills	_____
Personnel Management	_____
Fiscal Analysis	_____
Needs Assessment	_____
Accounting	_____
Communications	_____
Management Information Systems	_____
Systems Analysis	_____
Public Relations	_____
Legal	_____
Procurement	_____
RFP Preparation	_____
Proposal Review	_____
Contract Preparation	_____
Contract Negotiation	_____
Data Collection	_____
Marketing Skills	_____
Conversion Techniques	_____
Program Analysis	_____

- Consultation/Written Material/Offer**

(please specify)

[illegible]



## Developing an Operational Plan

The preceding chapters have detailed the information necessary to make a decision concerning private sector contracting. This appendix discusses the actual decision making and planning process. The final result should be a plan for implementing your decision.

The decision-making process is affected by variables that are important to understand if you want to make the best choice for your agency. An example of an influential variable is a Stakeholder. Stakeholders are the people who exercise a degree of influence in your agency and can influence your decision. They should be recognized for the positive and negative effect they can have on your plans and programs. Stakeholder mapping is an effective way to get a handle on identifying your stakeholders and assessing their impact on a new program or idea.

Problem solving is also addressed in detail in this appendix. Identifying and defining the problem is of major significance to any decision maker. Without a proper understanding of the problem, an effective solution can never be reached. After you identify the problem, brainstorming for possible solutions is one of the best ways to get results—sometimes solutions that otherwise would never be considered surface and are successful. The results of the brainstorming sessions will yield many possibilities

that must be evaluated so that one can be chosen as best.

In the event that privatization is chosen as the best solution for the agency, one needs to develop a detailed comprehensive operational plan to implement the necessary changes. A good plan will organize all the steps in the conversion process into a workable mechanism that is broken down into simple, easily understood stages.

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### STAKEHOLDERS

Before you consider private sector contracting, it's important to think about the people who can influence your decision.

Every organization is influenced by individuals or groups who can function either inside or outside of it. These individuals and groups are stakeholders. They believe they have a legitimate "stake" in the organization, that in some way it affects their lives. Whether the stake is real is unimportant because these people believe their stake is "real."

In a state department of juvenile corrections for example, stakeholders with a vested interest include many people at varying levels of power and influence. The following individuals or

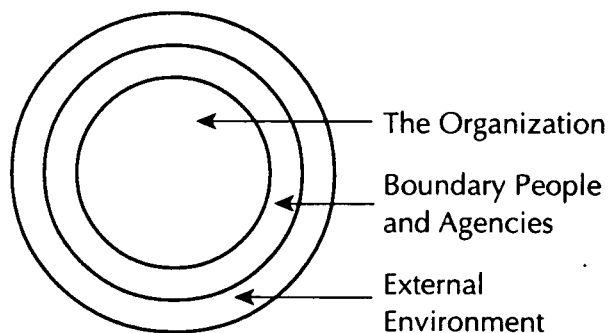
groups comprise only a partial list of possible stakeholders:

- Juveniles committed to state care;
- Budget committee
- Staff
- Private vendors
- Special interest groups
- Citizens

Each of these people or groups “cares” about what happens in the department. Each may “influence” policy or programs the department wants to implement. The degree of influence—either positive or negative—is usually proportional to the degree of vested interest each stakeholder feels. For example:

- Juveniles in state care are directly affected by what happens to their program—they can react poorly or well to policies and programs.
- Neighborhood groups exert influence by boycotting—or encouraging the establishment of a program in their neighborhood.
- Staff can work overtime to help implement the program or they can strike.

If we examine the concept of stakeholders graphically, we see that influence is directly associated with the proximity and/or interaction of the person or groups with the organization itself.



## The Organization

The inner-most circle represents the organization, including its component parts. In the State Department of Juvenile Corrections, for example, the component “parts” include:

- Juvenile institutions
- Juvenile services
- Administrative services
- The unions
- The units or divisions and
- Staff

## Boundary People and Agencies

The second circle represents the boundary people and agencies who have routine interactions with some or all parts of the organization, and whose influence for creating change may be considerable. Members of this group would include:

- Governor
- Legislator
- The parent agency
- Standard-setting or regulating government agencies

The vested interests of these stakeholders are generally well-known and frequently well-defined.

## External Environment

The third and outermost circle represents the general environment and reflects stakeholders whose influence tends to be minimal. These stakeholders are generally less organized—and frequently have less legitimate interest in the organization than those who work for it and/or who are in a “boundary” relationship to it.

Examples of potential stakeholders in the external environment include the mass media, fraternal and civic groups, religious organizations and the community-at-large. The concerns of this group tend to be issue-oriented rather than on-going or continuing.

As a general rule, the capacity to change or influence organizational goals and activities is strongest inside the organization. Usually the least capacity to affect change occurs outside the organization—in the external environment.

The level of influence by those in boundary relationship to the organization depends on:

- The stakeholder
- The stakeholder's relationship to the organization and
- The nature of the issue, program or activity

For instance, an inactive union—although a legitimate stakeholder—may have little or no influence to bring about change. Such a union may have real interest in the organization but, due to its history, may demonstrate little influence. However, an emotional issue like privatization could cause the union to become actively involved.

Just how critically the director views a stakeholder is illustrated by the type of telephone calls that are answered personally. When a

governor, a key legislator or a Chief Justice, is an "outsider," the state director will most likely take the call directly.

When the president of an active union, the chief of security or the counsel calls, as an "insider," the director is again most likely to take the call directly. The persons who "get through" often depend on the director's perception of the stakeholder's influence, strength or importance.

When a citizen calls, an information officer will probably take the call. If a minister calls, a referral will probably be made to the chaplain. Once again, these decisions relate directly to the "perceived" influence of each caller.

Often, other stakeholders will get involved if they think a cause or issue affects them. Strategies for dealing with these stakeholders should be developed before the cause or issue happens.

Under normal circumstances, for example, the local Council of Churches and the ACLU are





## STAKEHOLDER MAPPING FORM

In Column I of this form, identify all existing and potential stakeholders with any vested interest in the organization, its goals, its policies or specific programs and activities. As a decision maker, you can generate this list yourself through researching the history of the organization. You can brainstorm the list with your committee members. The committee must agree on the mission, goals and objectives of the organization.

Before beginning this step, list the goals, objectives or specific program descriptions for everyone to see. Stakeholders should be identified as specifically as possible—by name, title or by groups.

In Column II, assess how “positive” or “negative” you perceive the stakeholder to be about private sector contracting. Examine the program through their eyes. Ask yourself this questions: “How do our organizational objectives affect their objectives?”

When assessing their position, determine:

- 1) their present situation
- 2) their situation after your proposed program change or addition and
- 3) the personal impact on them.

What usually influences stakeholder’s attitudes are personal values such as: security, power, survival, status, achievement.

Use the following rating system beside each name or group:

- |   |   |   |
|---|---|---|
| 5 | = | strongly favorable (to the new situation) |
| 4 | = | favorable                                 |
| 3 | = | neutral                                   |
| 2 | = | negative                                  |
| 1 | = | strongly negative                         |

In Column III, identify each stakeholder’s objectives and the values that motivate them toward taking a particular position. Ask yourself this question: “What do they want and why?”

In Column IV, speculate about who influences them. Stakeholders often increase their influence by forming coalitions.

In Column V, ask, “Who does the stakeholder influence?” That is, who will respond to a position taken by this stakeholder? Sometimes stakeholders influence one another. For example, a governor may influence department heads but still be influenced by their advice. On the other hand, a judge may influence probation officers, but not be influenced by them in turn.

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**While a stakeholder can be a positive force at one time—depending on the issue and how the stakeholder perceives its stake—it could also become an inhibiting or negative force.**

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Finally, in Column VI, indicate specific aspects or sections of the program or activity and how each stakeholder might respond. Would they support certain aspects; would they oppose certain aspects? In developing a strategy, you will find that as you change one aspect of the plan, the stakeholder’s support or opposition might change.

Begin to ask questions like these:

“If I do A, how will stakeholder X respond?”

“If I do B, instead, how will stakeholder X respond?”

“And if I do A or B, what stand will stakeholder Y and Z take? Will coalitions develop that were not there before? Will these coalitions help or hinder the program?”

The stakeholder mapping process is especially important for the most influential stakeholders. The second group of people are stakeholders who favor the change but who are not particularly powerful. Your thrust, in this case, should be on ways to enhance their power (by organizing, sharing information, etc.)

Finally, in mapping, a balancing scale must be developed. Realize that given any projected program or plan, you will not be able to please everyone.

The best strategies are those which elicit the most cooperation from the most powerful stakeholder groups. Opposition from powerful groups may be reduced by modifying or changing certain aspects of the program—as long as the change doesn't compromise organizational values.

Therefore, assess the strengths and weaknesses and the support or restraints that might be imposed on the program. Ask yourself this question: "What might I need to trade away to get more support and less opposition; more help and less hindrance?" And "Can I afford to trade it away?"

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## DECISION MAKING/ PROBLEM SOLVING

Some problems are simple and suggest their own solutions. Most decision makers know how to handle those. But other challenging problems, e.g. contracting with the private sector, must be researched, defined, analyzed, and solved in a systematic and objective way.

This appendix will look at a traditional problem-solving process in a new way. We will discuss the seven steps of a generic problem-solving model. And we will suggest a method for generating solutions to sample management problems. This appendix will emphasize the need for and value of establishing "success

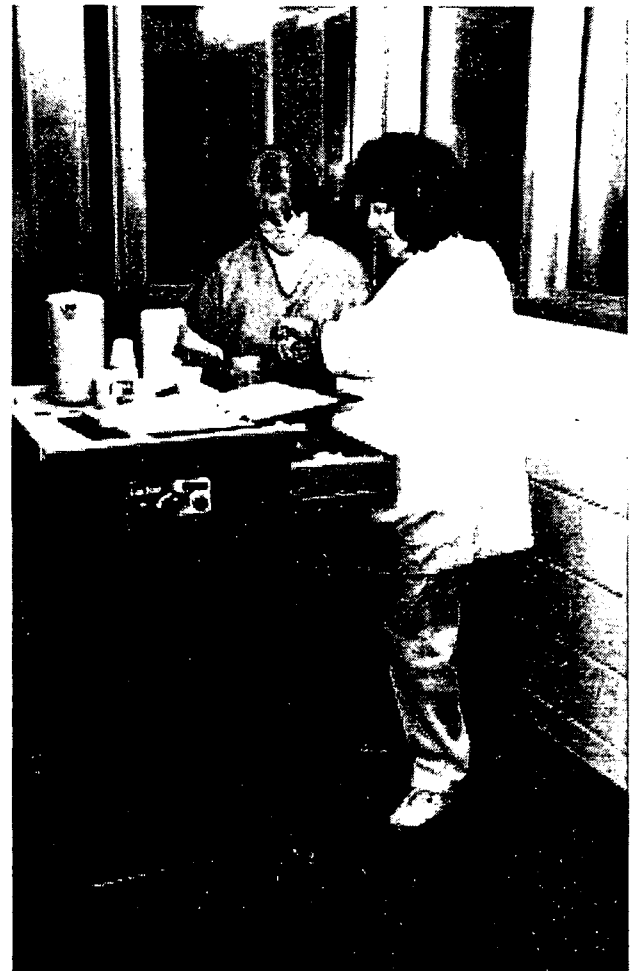
criteria" as a method for generating appropriate solutions to problems.

The problem solving method we describe in this appendix involves seven steps:

1. Identifying the problem, gathering and analyzing information
2. Generating solution ideas.
3. Analyzing solutions for workability
4. Reaching tentative decisions
5. Deciding how to evaluate a solution once it is implemented
6. Implementing the solution
7. Evaluation the results

### Identifying and Defining the Problem

A clear definition is crucial to the problem solving process. We must be sure that we define the right problem. In addressing this step, we



will discuss some common errors in defining problems. These errors were published by the Management and Behavioral Science Center of the Wharton School.

Five common errors in defining problems:

1. When we think we are defining problems, we are often stating solutions:  
 "The problem is that I need more budget."  
 "The problem is that I need more staff."  
 "The problem is that I need more equipment."

These statements are not problems. They are the speaker's belief about a preferred solution to the problem.

2. We frequently state problems while providing an explanation or excuse for our failure to resolve them. In doing this, we paralyze ourselves managerially.  
 "The problem is the economic downturn."  
 "The problem is the judge's sentencing decisions."  
 "The problem is the community's refusal to accept halfway houses."
3. We might state the problem and include unwarranted and untested assumptions:  
 "The problem is I need more authority."

This statement assumes that the speaker already knows that the extent of his or her authority is inadequate. Also, it assumes that more authority will enable the speaker to solve the problem.

An additional note: We are often limited by self-imposed, untested assumptions. One example: "My boss would never let me try that."

If people act and are turned down, at least they learn what the real limits are. Failure to act because of faulty perceptions, however, is self-defeating.

4. Often our concept of a problem is based on inadequate evidence, on guesses, hunches, intuitions, biases, rumors or our personal value system. We tend not to sort out and

weigh our knowledge of a problem or identify areas in which more information might make a difference. Maybe we fail to look at "the problem" through other people's eyes.

5. Frequently, we overstate the consequences of "solving the problem" we have identified. We may forget that organizations are difficult to change and that they may accept new initiatives only if they can minimize the consequences to the system.

How we define a problem is crucial to the solving process. In fact, the value of the problem solving effort is directly related to the way we define the initial problem.

### Generating Solution Ideas

One of the most familiar ways of generating solutions to a problem is "brainstorming." Brainstorming is a familiar technique that is widely used in a variety of ways. For those managers who are not familiar with it or for those who would like to review its rules, we will describe the process briefly.

The objective of brainstorming is to produce the largest number of ideas possible—ranging from the conservative to the absurd—from which workable alternatives may be chosen. Brainstorming had five basic rules:

1. Go for quantity.
2. Withhold all judgement.
3. Encourage all possibilities.
4. Encourage piggybacking.
5. Use the "else" technique.

#### 1. Go for Quantity

Have a small group(s) of four to five people generate the ideas. Small groups are more productive than one individual. The quantity idea is like diving for pearls. The object is to collect as many oysters as possible on a given dive in hopes that one or more oysters might contain a pearl.

## 2. Withhold All Judgement

No criticism is allowed. Premature judgment is the enemy of creative problem solving. To work, the brainstorming process must be free of evaluating (good or bad), promoting, defending or attacking any idea. During brainstorming, "all ideas are created equal."

## 3. Encourage All Possibilities

Don't think in old terms. Don't look for the most "sensible" or acceptable ideas. Most great ideas sound crazy at first. In fact, if the brainstorming process begins to wane, go for the most ridiculous ideas possible.

## 4. Encourage "Piggybacking"

Piggybacking uses one idea to expand or create a new idea.

## 5. Use the "Else" Technique

This technique helps you draw out more ideas by asking the questions: "who else?" "how else?" "what else?" "where else?" When the group reaches an impasse, and you think that you are out of ideas, use these questions.

After brainstorming all of the possible facts contributing to a given problem, we can then analyze those "forces" that seem to create and perpetuate the problem.

## Analyzing Solutions for Workability

Every alternative solution you identify during brainstorming is important. The next major problem solving step involves analyzing, weighing and determining which of your solutions can be implemented. As you review the solutions you have listed, you will discover that they are not all eligible to be solutions to the problem.

Your alternatives will probably fall into four categories. Your ideas might be:

- A. Useful for defining or redefining the problem
- B. Useful for gathering more information

C. A possible solution

D. Useful for evaluating solutions (or possible success indicators)

Go through your list of solutions and assign the letters A, B, C, or D to each one. Some of your solution ideas might fit better into one of the categories other than "possible solutions." Begin exploring each of your ideas; ask yourself, "How does this idea meet the success criteria?"

If an idea is workable, but outside the existing problem description, assign the letters A, B, or D to it. Even though one or two ideas might not be good solutions, they might be used to redefine the problem, to add new information to it, or to be used to evaluate the solution.

## Reaching Tentative Decisions

Choose the ideas you believe are workable solutions to the problem. List them.

The question you need to ask yourself at this point is: "How will I know this solution is workable?" Apply this question to each of your tentative decisions. If you are able to list specific and measurable indicators of success (or ways to know the tentative ideas are working) to each solution, then it is probably worth trying all of them. If some of your ideas can't be measured easily, they must be stated in more specific terms or they should be "shelved."

## Deciding How to Evaluate a Solution

At this point, you have a variety of possible ideas for making your decision or implementing your project. When you brainstormed, you didn't evaluate. Use this stage to evaluate each solution and select the one you want to use to solve your problem.

The following checklist was designed to test each of your possible solutions. Look over your list and choose one or two solutions that interest you. Then, review the SOLUTION EVALUATION WORKSHEET. Apply each question on the worksheet to your possible solutions, one at a time.



Place a check mark in front of each question you can answer with a "yes." If you are able to answer yes to all of the questions for any given solution, that idea is probably worthwhile. A

"no" answer on any one question means that the idea may have some intrinsic difficulty; your chances of succeeding with it might be unlikely.

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## SOLUTION EVALUATION WORKSHEET

Possible Solution: \_\_\_\_\_

- 
- \_\_\_\_\_ Could this idea be implemented in three months or less?
  - \_\_\_\_\_ Do I have the authority to implement this idea?
  - \_\_\_\_\_ Can the idea be implemented without exceeding budget limitations?
  - \_\_\_\_\_ Can we implement the idea without cutting into the budget for other previously planned work?
  - \_\_\_\_\_ Can we implement the idea and still fulfill our other work commitments? Do we have the time?
  - \_\_\_\_\_ Can I delegate important responsibilities that my time commitments might prevent me from fulfilling?
  - \_\_\_\_\_ If the idea requires delegation of responsibility, do we have personnel available who can assume the needed role(s)?
  - \_\_\_\_\_ If delegation is required, can qualified personnel take the responsibility without it interfering with their normal functions.
  - \_\_\_\_\_ Can we implement this idea without adversely affecting the morale in our department?
  - \_\_\_\_\_ Can this idea fail without seriously impacting the positions of those associated with implementing it?
  - \_\_\_\_\_ When this idea succeeds, will it have a positive impact on how our organization's effectiveness is perceived?
  - \_\_\_\_\_ Do we have "allies" in the organization who might support this idea and help overcome any obstacles that might crop up?
  - \_\_\_\_\_ Does the idea have a fair chance for improving some aspect of work either directly or indirectly?

Review and double-check the evaluation. If you missed something, change it now. Pay attention to detail. Have someone play the role of devil's advocate with your committee—that is, have them give all the reasons why this possible solution just might not work. Your goal in this section is to choose one solution you are willing to try. When you feel confident about one solution, you are ready to develop your action plan.

## Implementing the Solution

You now are ready to prepare an operational plan for implementing your solution. The plan will include a description of the separate actions to complete to make your idea work, and a time line for completing those actions. The plan represents your blueprint for accomplishing the solution you have selected.

## The Importance of Developing an Operational Plan

The importance of an operational plan cannot be over-emphasized. ACA has found that public sector agencies that create thorough operational plans report that they are better able to:

- *Provide Direction.* A good plan tells everyone where they are going. A good plan shows what the end product will look like. It defines what a successful outcome will be.
- *Create a Unifying Framework for Decision-Making.* A written, detailed plan lists a series of orderly steps leading up to and
- *Reveal Opportunities for and/or Barriers to Improvement.* A comprehensive operational plan forces one to touch all bases, opening lines of communication with previously ignored sources of opposition or criticism. Without a plan, most management teams will take the easy way out by only using familiar sources. Good planning leads to "reality checks," causing management to redesign programs to fit real conditions, instead of perpetuating tired, old routines.
- *Facilitate Control.* An operational plan gives the public sector manager a ready made tool for control. It specifies who does what by what deadline. It allows the manager to

including a decision-making phase. Everyone will know which steps come in which order, and who will do what. Most importantly, the plan identifies who will participate in the actual decision-making, and what types of data and other information will be used to support the decision.



know exactly where the project is (or ought to be) at any time. At the same time, in the hands of those carrying out the plan, it serves as a prod to get their piece of the puzzle done on time, to contribute to the project, and not impede its progress.

A well-defined plan can take on an authority of its own. It creates a sense of momentum and anticipation that leads staff to intensify their energy toward completing their work. A good plan also quiets criticism and resistance, and demonstrates to subordinates that their agency has a sense of direction and a set of goals.

- **Prevent Piecemeal Decisions:** A strong operational plan connects all its steps and phases. Each small decision is based on an appropriate set of data; each major decision is prepared by all interested persons and groups.

Without a plan, decisions are made without adequate data collection, or by the wrong people. Worse yet, only a partial decision might be made, necessitating additional decision-making steps.

- **Institutionalize a Project:** If a project is a manager's "pet," it becomes dependent on the presence and leadership of the manager to succeed. Should the manager leave the agency or take on new responsibilities, a project can easily bog down and die.

An operational plan, on the other hand, sets up an objective process independent of specific personalities. Instead of assuming that a task will be done by "John Doe" whenever he finds the time in his schedule; a plan will specify that the task will be done by "the facility director, no later than April 27, 2000." It also locks a project into an agency's agenda, even if John Doe should leave.

### **Some Practical Planning Considerations**

Planning is not a separate job from doing; planning and doing are parts of the same job. Mediocre planning will rarely yield quality doing. It stands to reason that you should plan

with the same level of attention and thoroughness that you put into doing.

A good plan is simple, not complex. Any goal, objective, activity or step that appears complex should be broken down until every unit in the plan is simple, containing one task to be completed by a firm date.

Planning involves people. People aren't robots. They need to be involved as much as possible in helping to formulate the plan they will be charged with carrying out. At the same time, people get sick, take vacations, experience crises, work at uneven paces, undergo stress, get confused or distracted and on and on. The point is that a plan must consider human unpredictability in its time-lines; it should not be drawn so tightly that the slightest problem, let down, or absence of a key person throws it off track. Planners should attempt to develop realistic time-lines to set an unhurried pace that will encourage thorough, careful execution.

Operational plans are like living organisms. They not only involve orderly, logical and methodical mental work; but also draw on a manager's intuition. The plan must be capable of constant adjustment. Rigid and uncompromising plans are doomed to failure.

An operational plan is a servant, not a master. Its only reason for existence is to serve the user. It is a map or a blue print, to help one stay on course, to direct all actions toward accomplishing the goal. Anytime the staff find themselves doing irrelevant things merely "because the operational plan calls for it," or find themselves racing frantically to complete a task "on time," they should step back and ask themselves, "Is the plan realistic and relevant? Does it need revision or adjustment?"

The original plan should be adhered to, unless strong reasons exist not to. This may sound like a direct contradiction of the points above, but it is not. Presumably, the original plan involved large amounts of thinking and creativity. This hard-earned wisdom should not be thrown

away at the first hint of difficulty. Resourceful ways should be found to stay on target and on time. This effort will encourage toughness and discipline to emerge, and it will result in increased respect for the operational plan. A good manager will intuitively know when to insist that staff adhere to the original plan despite problems and when to relent and adjust the original plan.

The planning stage is an opportune time to call in technical assistance. Very few do-it-yourself homebuilders or even contractors, draw their own blueprints. They usually hire an architect to draw them with large amounts of input from the builder. Calling in ACA, or some other provider of technical assistance, as the operational plan is developed can prevent one from making major mistakes, or from drawing up an unrealistic plan. Experience can make a big difference, since most of the pitfalls and traps that can befall a public agency involved in privatization have already been encountered.

Review the sample ACTION PLAN WORKSHEET and develop your plan this way, by:

- Describing the problem covered by the plan
- Describing the desired outcomes
- Listing at least three criteria for knowing whether that outcome has been achieved
- Dividing the solution into a number of actions

For each of the actions, decide:

- How long it will take to complete each action,
- The person responsible for completing the action, and
- The measure or indicator for knowing that each action has been completed.

Lastly, develop a succinct time-line chart to show when certain actions begin and when they end.

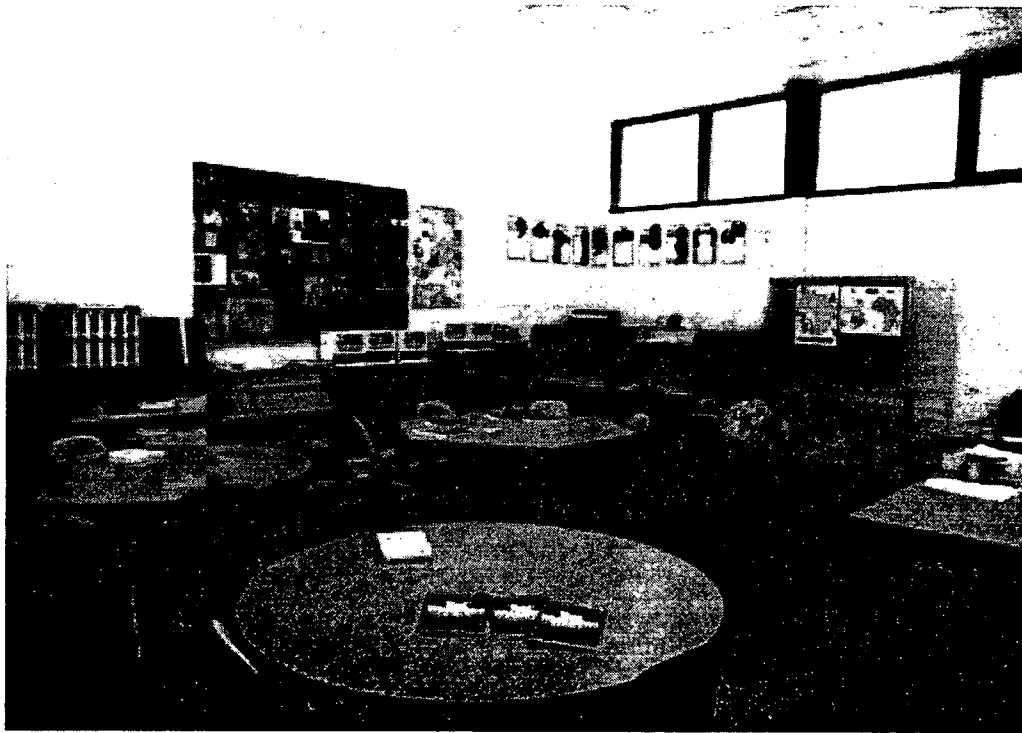
## ACTION PLAN WORKSHEET

Given this focus, a rational, systematic process needs to be implemented to carefully identify the pros and cons of the issue. Based on such an analysis, the decision actor can determine whether privatization makes sense in the particular jurisdiction at a particular time. If privatization is decided to be part of the solution, the appropriate nature and scope of the privatization effort needs to be determined.

In corrections, a variety of decision-making methods have been employed to determine the need for and/or to implement some form of privatization. These have ranged from careful, methodical approaches using committees and/or public agency personnel to collect and analyze information and to make recommendations to decision makers, to more ad hoc decisions based on an emergent need and an opportunity to address the need.

The Decision Making and Planning Process Model (the Process) described in this section provides general guidelines for rationally considering (i.e., studying), and, where appropriate, implementing correctional privatization. The identified steps are not to be taken as a blue print to be followed religiously. Rather, they represent a logical sequence of steps that can be followed to fairly and objectively consider many of the important issues in privatization. The order should be followed where this makes sense. However, in some cases, some steps may need to overlap or occur concurrently. Also, the steps or order to be followed may vary by the type and scope of project (e.g., full facility operation, medical services, etc.).

The Process is from the perspective of a corrections agency conducting the privatization analysis, which is the approach recommended by the Council of State Governments and the Urban Institute. However, this approach may not always be used. For example, studies could be undertaken by task forces created by a jurisdiction's chief executive or by legislative



analytical staff in the case of inquiries initiated by legislative bodies.

The Process is generic and pertains to all types of correctional programs. However, decisions regarding which actors and organizations should participate at what points in the process, and what should be their respective roles, can vary depending on the public entity sponsoring the study. For example, if a corrections agency has initiated the study, an important decision may be at what point to include the legislative body in the process. If the study is conducted under the auspices of the legislative body, this becomes a moot issue. In the following discussion, the terms actor and party are used interchangeably to refer to special interest groups, public decision makers, or others with a vested interest or responsibility in the decision process.

Because the following process relates to the corrections agency sponsoring the analysis, legal issues such as the need to pass enabling legislation, are discussed part way through the process. However, it is possible, especially in a legislatively mandated study, that legislation might be passed first defining the scope and

limits of the privatization effort, and the study is conducted subsequently.

### **Process Steps**

This section preliminarily identifies the specific steps to be undertaken in conducting the study, such as what types of issues will be assessed (e.g., cost, legal); how information will be collected (e.g., surveying other states, reviewing privatization research); who will gather and analyze the information; what parties will be involved in the study or informed its status (e.g., legislators, the chief executive of the jurisdiction, special interest groups); how will these parties be involved and at what points in the Process; who needs to approve the final report recommendations; when will interim and final reports be completed; and the proposed time frame for each action step (e.g., data collection, analysis).

### **Initial Problem Identification and Study Scope**

Most likely, the Process is initiated as a result of someone identifying that a problem or need exists, and that privatization may be a solution.

The first crucial step in the Process is obtaining a clear understanding of the perceived need. Someone must assume responsibility for developing a written statement of the nature and scope of the problem. This sets the stage for much of what comes next. Examples of problems that may spark an interest in privatization include the need to improve a facility's food services because they fail to meet state codes, or a jurisdiction being under court order to reduce its institutional population.

Describe the problem that requires privatization, and identify how privatization may be the solution. Questions such as the following should be answered. What types of programs, services, or goods may be considered for privatization? Will consideration be limited to a pilot demonstration project as opposed to fully implementing a private program or service? Will for-profit companies be considered, or only non-profit entities? What alternatives to privatization should be assessed?

### **Modification and Detailing of the Planning and Decision Making Process Plan**

Once identified, the advisory committee and analysts should be briefed on the nature of the problem and the scope of the study effort. Next, they should be tasked with assessing the adequacy and appropriateness of the Preliminary Plan. They may begin by brainstorming on the Plan and/or conduct preliminary data collection and analysis on the problem. As a result, revisions may need to be made in such areas as the problem description, the study scope, and the Process steps (e.g., strategies for communicating with interest groups; the time frame for the various process steps). Any proposed revisions should be approved by the executive committee.

Regardless whether changes are recommended, the study and advisor groups should establish a more detailed work plan with appropriate time lines. The work plan should be approved by the key decision makers.

## **Substantive Issues to Be Considered**

When conducting the study, as well as implementing decisions to privatize, philosophical, political, legal and cost issues should be considered, as well as the most recent, available research findings, and contracting issues. The following questions identify many of the specific types of questions to be addressed during the Process. The reader is referred to the previous chapters for an in-depth discussion of the underlying issues.

### **Philosophical Considerations**

Typically, the philosophical or moral rightness of privatization receives little concrete consideration in the decision process. Typically, those involved in the decision process focus on such factors as enabling legislation, cost savings, program flexibility, and political realities. Especially where substantial coercive powers are being delegated, the philosophical side should be carefully weighed.

The following are some of the philosophical questions to consider:

1. Appropriateness of Privatization: Is the program more legitimately a governmental function or is it appropriate to be provided by a private entity? That is, based on one's philosophy, is privatizing the program morally wrong?
2. Private for-Profit as Opposed to Non-Profit Organizations: If privatization is philosophically acceptable, should private services be limited to non-profit organizations or may for-profit organizations also be used?

### **Political Considerations**

1. Community Support/Resistance: Is privatization of the particular program consistent with the values of the community? Will the community and their political representatives support or resist the privatization effort? Who will support or oppose privatization?

2. **Organized or Potentially Organized Power:** To what degree are there groups or individuals with strong opinions and political clout that may influence the implementation of the final decision (e.g., legislators, judges, employee unions, individual public corrections employees, private corrections companies, advocacy groups).

### **Cost-Benefit Considerations**

1. **Future Competition Benefits as Opposed to the Risk of Monopoly:** To what degree are there sufficient qualified private companies available to initially bid and to replace a terminated contractor?
2. **Cost Advantages:** Will privatization reduce costs, while maintaining or improving program quality?
3. **Research Findings:** What does available research on privatization show regarding the costs, quality, effectiveness, and other benefits of correctional privatization?

### **Legal Considerations**

1. **Liability Considerations:** Compare the liability exposure and litigation risks in private as opposed to public corrections. How can these risks be reduced?
2. **Constitutions and Enabling Legislation:** What, if any, forms of correctional privatization are permitted by constitutions and statutes? What constitutional, statutory, or regulatory changes would be needed to permit the privatization initiative?
3. **Liberty Interest Issues:** What discretionary liberty interest decisions should be delegated to the private provider? What

oversight and decision authority should be retained by the contracting agency?

4. **Court Orders:** Are there court orders (e.g., requiring a quick reduction in a facility population)? Is the contracting agency unable to address the court orders in a timely fashion with available public corrections resources?

### **Data Collection and Analysis**

Most likely a variety of sources will be tapped to make an informed decision on privatization. Some information will be collected from knowledgeable persons in the jurisdiction to be effected (agency personnel, special interest groups, etc.). In addition, there are various national organizations that are potentially valuable sources of information in the form of studies, reports, and knowledgeable employees. Important examples include the National Criminal Justice Reference Service, the American Correctional Association, the National Conference on State Legislatures, the Reason Foundation, federal agencies, the Private Corrections Project of the Center for Studies in Criminology and Law, University of Florida at Gainesville, Florida, the Privatization Research Center at Temple University, the American Federation of State, County, and Municipal Employees, and the Corrections and Criminal Justice Coalition (a non-profit organization whose major goal is opposing prison privatization).

Contacting other jurisdictions (state, local, and federal) to learn of their privatization experiences is another valuable information source. Many jurisdictions not only can provide opinions and raw data (e.g., budget information), but also have conducted their own studies.

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Searching the Internet for information on privatization is still another means of obtaining information. For example, each of the above national organizations have their own web pages.

Finally, jurisdictions considering privatization may perform their own empirical analysis of data. For example, cost and program quality data might be collected and compared on similar private and public programs operating in the jurisdiction. However, jurisdictions must be careful in interpreting the results of studies they conduct (e.g., public/private cost comparisons), given the methodological difficulties in performing such research. Similarly, given the flawed nature of much of the privatization research, as well as the difficulty in generalizing the results of studies conducted in other jurisdictions, caution must be exercised in interpreting the results of studies conducted elsewhere.

Once all the information is obtained, it should be carefully, objectively, and systematically analyzed.

### **Identification of Potential Solutions**

Once the information has been obtained, analyzed, and absorbed by those involved in the decision process, potential solutions should be identified. One valuable mechanism for identifying solutions is through brainstorming sessions. This allows a group of individuals try to list as many possible solutions as they can, without any immediate concern with their appropriateness. For brainstorming to be effective, it is important that a diverse range of views be represented and that all participants feel comfortable in presenting any ideas. If the climate is that certain possible solutions may not be considered, the session loses much of its value.

Generally, brain storming groups are most productive when rather small, 4 to 5 members for instance. However, the present writer has

found that correctly managed groups as large as 10 to 15 can effectively brainstorm ideas and solutions. The brainstorming group may be a subset of the advisory committee, the entire committee, or perhaps an ad hoc group including committee members, decision makers, and other interested parties.

### **Selecting Two to Three Alternative Solutions**

Once an initial set of brain stormed ideas are listed, the possible solutions should be subjected to more in-depth scrutiny. As a result of this process, two to three feasible problem solutions should be identified. Costs, legality, and other relevant pros and cons of each solution should be listed for each of the two to three options, and a recommendation provided as to the most desirable solution. The alternatives and recommendation should be reviewed by appropriate decision makers for their decision.

In developing possible solutions, privatization should be one among a number of possibilities considered. One alternative might be a publicly operated program with changes in service methods, or business operations (e.g., increased training and resources provided to government; improving the physical plant; improving cost efficiency and productivity through improved management techniques; changing personnel hiring and firing regulations).

If privatization is considered the desired option, it is important to consider the variety of privatization methods that might be employed (e.g., contracting, public/private competition for providing the program or service, the use of vouchers). Also, consideration might be given to privatizing specific services rather than an entire program (e.g., contracting out the education and health care services of an existing public facility).



### Establishing Clear Goals, Objectives, and Scope for Project

Once a decision is made to privatize, the scope of the privatization effort should be clearly established in writing, answering such questions as the following: Is this to be a pilot project requiring further assessment? What type of programs or services are being privatized? What type of offenders are to be served by the program (e.g., first time juvenile offenders, substance abusers, inmates in a maximum security facility)? Where will the program be located and what is its catchment area?

Once these types of question have been answered, clear goals and objectives need to be established for the program, consistent with the agency's overall mission and goals. These questions need to be clearly answered and goals and objectives established to ensure that the privatization effort is appropriately directed. For example, clarification is essential to ensure that RFPs and contracts address the jurisdiction's needs.

## IMPLEMENTATION PLANNING IN GENERAL

### Establishing an Operational Plan

Once goals and objectives have been established, a plan of action needs to be developed to implement the decision. The plan would detail the various steps to achieve the goals and objectives, along with the time frame for each task. Plans should include such components as the types of executive and legislative branch approvals needed (e.g., budget agency approvals for RFPs; regulatory, statutory, or policy changes), communicating with pertinent officials and other actors, and any other relevant steps to undertake. The plan also needs to identify what individuals are responsible to accomplish various tasks and overall project management.

An important component of implementation planning is identifying a site for the privatized program that enhances the likelihood of suc-



cess. For example, wherever possible, a private facility should be located in a geographic area where the community is supportive of the program. In the case of a program to be provided in an existing facility, the host program needs to be receptive to the private initiative.

One final point merits specific mention. Particularly when opening a new, large secure residential facility, it is important to establish a ramp up schedule providing for an orderly flow of new inmates over a reasonable period of time (e.g., several months). This is necessary in order not to overwhelm the facility staff and ensure a smooth admissions process. Also, it is important that all staff be in place and well-trained, and essential policies (e.g., inmate management, security, health care, classification) be firmly established prior to receiving inmates. Recent problems relating to inmate management and disturbances at the Corrections Corporation of America's Northeast Ohio Correctional Center largely resulted from deficiencies in these areas.

### **Preparing the Way**

Once a site has been identified for a program, civic and business organizations, neighborhood groups, local and state political leaders, influential citizens, and others in the affected commu-

nity should be informed of the decision. In addition, they should be given the opportunity to provide input on implementing the decision.

### **When to Communicate**

There is no one best answer to this question. On the one hand, it is important to inform affected or interested parties as early as possible and to include them in implementation planning. This sends the message that the implementing agency understands they have a stake in the effort and a legitimate role to play in its implementation. On the other hand, from a political point of view, the earlier interested parties are aware of the privatization effort, the earlier opponents can exert pressure against the move. There also may be privatization companies who then would be given an early opportunity to lobby in favor of privatization, due to their hope in gaining business.

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## **IMPLEMENTATION PLANNING FOR PRIVATIZING A PUBLICLY OPERATED PROGRAM OR SERVICE**

Privatization becomes most politically sensitive when it involves the jobs of employed public workers. Privatization initiatives that may result in the displacement of public employees need to be considered and addressed prior to implementing privatization. Both public employees (especially those directly affected) and employee union resistance can be expected.

### **Doing Right by Current Employees**

A variety of strategies may be employed to address the concerns of public employees who may lose their job. For example, contractors may be required to provide the first right of consideration to these employees. Also, the contracting agency can provide support counseling to stressed employees, sponsor job fairs, freeze public job vacancies for displaced employees, and allow public positions to remain vacant through normal attribution. Early retirement incentives also could be provided.



Providing such assistance is important for three reasons. First, it is the right thing to do for public employees. Second, fear of losing their jobs coupled with a belief that agency administrators do not care about the employees may negatively affect their job performance during the public-to-private transition. For example, sick leave usage may increase (creating staff coverage problems) and offenders may be mistreated due to the frustration of the employees. Finally, other public programs may be concerned that they may be next on the privatization hit list, which can affect their job performance as well.

### **Preparing the Way**

Timely and honest communication with effected and other agency employees can go a long way toward alleviating anxiety, particularly if employees are aware of proactive efforts on the part of the agency to ensure their employment. During this sensitive process, agencies should carefully plan information they provide to employees (e.g., hot lines, meetings, newsletters). Similarly, how and when to communicate with employee unions needs to be determined.

### **Contingency Planning**

Shortly after a decision has been reached to privatize a publicly operated program, a detailed contingency plan should be developed. The plan would address how to manage the transition from public to private operation, as well as to anticipate the handling of potential staff problems (e.g., sick leave usage, poor job performance). The plan also may include an inventory of agency employees that are available to work at the program, should major public personnel problems occur. The list would include their applicable experience, and what positions they could assume should the need arise. Any training needs for these contingency personnel should be identified as well. In addition, the plan may address strategies for reducing the offender population to make the program more manageable during the public-to-private transition, such as restricting intake,

early releases, or moving some offenders to other programs.

The contingency plan may be in addition to or a component of the Action Plan mentioned above.

### **Establishing a Contractual Relationship**

Next, the agency needs to solicit private sector interest in providing the needed services, selecting an appropriate vendor, and establishing a legal framework for working with the private entity. Typically, this develops as a result of a competitive bidding process. It is important that the contracting agency spends sufficient time and resources to develop well crafted requests for proposals (where this method is employed) and contracts that protect the public's interest. Jurisdictions with limited experience in contracting for the type of correctional program or service being privatized may find it useful to obtain copies of RFPs and contracts from jurisdictions experienced in contracting for these programs or services.

Wherever feasible and practical, vendors should be selected through competitive bidding. A fair, competitive process is essential to obtain cost-efficient, quality services.

See Chapter 4, "Developing a Request for Proposals and a Proposal Review Process" for a discussion of these issues.

### **Contingency Planning**

Prior to implementing the privatization initiative, detailed contingency must address how to manage the program should the contract be prematurely terminated, or upon normal contract termination.

### **Establishing Monitoring System**

Also, prior to implementing the initiative, the agency needs to have in place the necessary personnel and processes to adequately monitor the private program. Monitoring requirements for the vendor should be included in the RFP and contract, as it may affect the bidder's workload and price.

## Evaluation

Well designed and implemented evaluations of correctional privatization are essential to sound decisions on the continuation of a specific contract or the future contracting of similar programs.

The greater the cost of a privatized program, and/or the greater its political sensitivity, the greater the importance of evaluating the program in terms of cost, quality and effectiveness. The contractor's required participation in the evaluation needs to be addressed in the RFP, since it may have an impact on the resource requirements of the contractor. Also, the contract itself should be as explicit as possible in detailing the evaluation requirements of the contractor.

Prior to implementing a private program, the evaluation design, data collection instruments, and analysis strategy should be established so that baseline data may be obtained and data collection may begin.

## Evaluation, Monitoring, and Decisions to Renew or Rebid

Monitoring and evaluation reports should be completed in sufficient time for review prior to any pre-established dates for contract renewal or re-bidding.

## Reassessing the Privatization Decision

The privatization of public services should be regarded as situationally specific, with its value and appropriateness varying according to the time, place, and circumstances. Where privatization exists, the contracting agency should periodically reassess whether it makes sense to continue the privatized effort, or whether another option might be more cost-effective. Other options may include the public sector taking back responsibility for the program or employing a different form of privatization (such as the use of vouchers in lieu of contracting). The results of monitoring and evaluation assessments should assist the reassessment.



# Glossary

**Business Proposal**—the portion of a provider's proposal, often submitted under separate cover, that describes the management plan and explains all costs associated with the proposed approach.

**Community Advisory Board**—an advisory group representing a cross-section of citizens and other interest groups that offers advice and assistance to an agency.

**Complete Privatization**—when a public agency contracts with a private provider for complete management and operation of a juvenile residential facility.

**Contract**—a binding agreement between two or more parties that imposes a legal obligation on all parties to act in accordance with the terms and conditions of the agreement.

**Contract Manager**—a government official who oversees private contracting in his or her agency.

**Contract Monitor**—a government official who directly supervises the progress of a particular private contract for his or her agency to insure compliance with the terms and conditions of the contract through reports and on-site visits.

**Economy of Scale**—the idea that a single provider delivering services to several agencies is more cost effective than a separate provider for each agency. This savings exists because variables such as supplies, equipment and management can be centralized, which results in lower costs for the provider and the consumer.

**Feasibility Assessment**—a comprehensive study of many issues and concerns to determine if private sector contracting would be beneficial to the state juvenile justice agency.

**For-Profit Agency**—an agency that is organized with a profit motive inured to the benefit of owners, partners, stockholders and investors.

**Indemnification**—actions taken by the private provider to shield the state agency and its representatives from legal liability in connection with the contracted services.

**Independent Contractor Status**—a private provider is a separate entity from the state agency with which it holds a contract for services. This status is upheld in a clause in the contract to ensure that no representative of the private provider is considered an agent, representative or employee of the state.

**Invitation to Bid**—a procurement device that is used when the state has the exact specifications of the services they wish to contract to a provider.

**Issuing Agency**—the state agency that has a need for services and develops a request for proposals in response to that need.

**Non-Profit Organization**—usually a non-stock corporation, hence having no owners, partners, stockholders or investors. While the agency can have an excess of revenues or expenses, it cannot inure to the benefit of any individual members.

**Outcome Indicator**—a measure agreed on by all parties to a contract that will be used in subsequent evaluations that will determine if the provider has satisfactorily performed the services detailed in the contract.

**Partial Privatization**—when a public agency contracts with a private provider for one or more services, while retaining the responsibility for delivering the primary service.

**Potential Provider**—a private provider who is considering submitting or has submitted a proposal in response to an RFP.

**Pre-Submission Conference**—a meeting held by the issuing agency for all potential providers after the RFP has been issued but before proposals are due to answer any questions regarding the procurement effort.

**Private Provider**—a private sector organization that enters contracts with the public sector to deliver services for a fee.

**Privatization**—when a public agency contracts with a private provider for new services or services that the public sector traditionally provides.

**Public/Private Partnership**—a specialized advisory group that is an alliance of representatives of the business community with a public agency. The group is joined in a collaborative effort to assist the agency in examining courses of action and possible solutions to critical issues facing an agency.

**Request for Proposals**—a procurement document used by a state agency that is not specific about the delivery of the desired services in order to encourage innovative ideas.

**Stakeholder**—people who have a real or perceived stake in an organization. People whose lives are affected in some way by decisions in an organization.

**Technical Proposal**—the portion of a provider's proposal, often submitted under separate cover, that explains the provider's past experience with similar contracts, its understanding of the agency's need, and its proposed delivery of services.

**Termination Condition**—a circumstance that is anticipated and agreed to in the contract as cause for terminating the service agreement between the applicable parties.

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