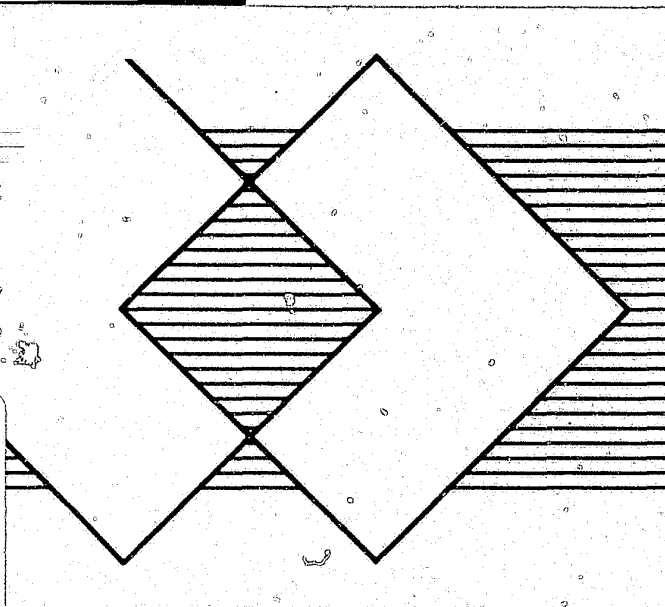




# *Handbook on Private Sector Options for Juvenile Corrections*



137388



# Foreword

The *Handbook on Private Sector Options for Juvenile Corrections* is produced by the American Correctional Association, supported by Grant No. 90-JS-CX-K003 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—Robert Sweet, Emily Martin, and James Gould—were especially supportive in completing this Handbook. Requests for additional information should be directed to: William J. Taylor, Project Director, American Correctional Association, 8025 Laurel Lakes Court, Laurel, Maryland 20707-5075.

James A. Gondles, Jr.  
Executive Director  
American Correctional Association

137388

U.S. Department of Justice  
National Institute of Justice

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this ~~copyrighted~~ material has been granted by

Public Domain/CJP/OTJDP

U.S. Department of Justice

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the ~~copyright~~ owner.



## AMERICAN CORRECTIONAL ASSOCIATION

### *Executive Committee*

Helen G. Corrothers, President  
Perry M. Johnson, President-Elect  
Samuel Sublett, Jr., Past President  
Bobbie L. Huskey, Vice President  
M. Tamara Holden, Treasurer  
James A. Gondles, Jr., Executive Director

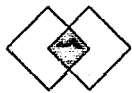
### *Board of Governors*

Betty K. Adams, Tennessee  
Judy Culpepper Briscoe, Texas  
James W. Brown, Illinois  
Gwendolyn C. Chunn, North Carolina

Bennett J. Cooper, Ohio  
Gail D. Hughes, Missouri  
Sharon L. Johnson, New Mexico  
Donald M. Page, Canada  
T.A. Ryan, South Carolina  
Denis Shumate, Kansas  
Chiquita A. Sipos, California  
Ronald L. Stepanik, Florida  
Henry L. Templeton, Maryland  
Mary Treadwell, Washington, D.C.  
Edward F. Tripp, Missouri  
Celedonio Vigil, New Mexico  
Rose W. Washington, New York  
William E. Weddington, Virginia

### *Administrative Staff*

John J. Greene, Director  
*Training and Contracts Division*



## JUVENILE PROGRAMS AND PROJECTS

Lloyd W. Mixdorf, Director

William J. Taylor, Project Director, Private  
Sector Options for Juvenile Corrections

Kimberly A. Konitzer, Editor

Judith R. Campbell, Special Projects  
Coordinator

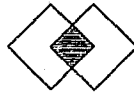
Kelly A. Massey, Project Staff Assistant

We wish to express our appreciation for the  
significant contributions provided by:

Charles W. Thomas  
Director  
Private Corrections Project  
Center for Studies in Criminology and Law  
University of Florida

John Morgenthau  
Consultant  
Morgenthau & Plant Associates

Peter Plant  
Consultant  
Morgenthau & Plant Associates



## OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION

633 Indiana Avenue, N.W.  
Washington, D.C. 20531

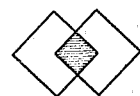
Robert W. Sweet, Jr., Administrator

Emily C. Martin, Director  
Training, Dissemination & Technical Assistance

James Gould, Project Monitor

Points of view or opinions in this document  
are those of the author and do not necessarily  
represent the official position or policies of  
the U.S. Department of Justice.





PRIVATE SECTOR  
OPTIONS FOR  
JUVENILE CORRECTIONS  
ADVISORY BOARD

Ms. Betty K. Adams  
Commissioner  
Department of Youth Development  
Suite 117, First Floor Cordell Hull Bldg.  
Nashville, TN 37219

Mr. Kurt Friedenauer, President  
National Association of Juvenile Correctional  
Agencies  
P.O. Box 40  
St. Anthony, ID 83445

Mr. T. Don Hutto, President  
Don Hutto Associates  
Route 6, Box 687  
Dickson, TN 37055

Mr. Geno Natalucci-Persichetti, Director  
Ohio Department of Youth Services  
51 North High Street  
Eighth Floor, Room 881  
Columbus, OH 44115

Mr. Denis Shumate, Superintendent  
Youth Center at Beloit  
1720 North Hersey, Box 427  
Beloit, KS 67420-0427

Mr. Ronald Stepanik, Director  
Juvenile Justice Services  
Eckerd Family Youth Alternatives, Inc.  
100 North Starcrest Drive  
P.O. Box 7450  
Clearwater, FL 34618-7450

Ms. Marjorie Young, Director  
Georgia Division of Youth Services  
878 Peachtree Street, N.E.  
Atlanta, GA 30309

NCJRS

JUL 10 1992

## ACQUISITIONS

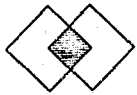
## Table of Contents

<b>1 Introduction</b>	<b>1</b>	<i>Feasibility Assessment</i>	<b>24</b>
<b>2 Community Advisory Boards and Public/Private Partnerships</b>	<b>4</b>	<i>Legal Authority</i>	<b>24</b>
<i>Introduction</i>	<b>4</b>	<i>Public Policy Goals</i>	<b>26</b>
<i>Making A Decision</i>	<b>4</b>	<i>Quality of Service</i>	<b>27</b>
<i>Advisory Boards</i>	<b>4</b>	<i>Economic Efficiency</i>	<b>29</b>
<i>Selecting An Advisory Board</i>	<b>5</b>	<i>Liability</i>	<b>30</b>
<i>Organizing the Board</i>	<b>6</b>	<i>Rights and Due Process</i>	<b>31</b>
<i>Training the Board</i>	<b>6</b>	<i>Security and Safety</i>	<b>31</b>
<i>Public/Private Partnerships</i>	<b>7</b>	<i>Control and Accountability</i>	<b>32</b>
<i>Selecting A Core Group</i>	<b>8</b>	<i>Political Environment</i>	<b>32</b>
<i>Organizing the Core Group</i>	<b>8</b>	<i>Community Attitudes</i>	<b>33</b>
<i>Selecting Potential Partnership Members</i>	<b>9</b>	<i>Conclusion</i>	<b>34</b>
<i>Draft Partnership's Statement of Purpose</i>	<b>9</b>	<b>5 Developing A Request for Proposals and A Proposal Review Process</b>	<b>35</b>
<i>Partnership Activities</i>	<b>10</b>	<i>Introduction</i>	<b>35</b>
<i>Sample Statement of Purpose: Advisory Group</i>	<b>11</b>	<i>The Basic Logic and Philosophy of Contracting</i>	<b>35</b>
<i>Sample Inventory Questionnaire of Private Sector In-Kind Resources</i>	<b>12</b>	<i>What is a Request for Proposals?</i>	<b>35</b>
<b>3 The Private Sector As Contractor</b>	<b>14</b>	<i>The General Structure of a Request for Proposals</i>	<b>36</b>
<i>Introduction</i>	<b>14</b>	<i>The Scope of Contracting Initiatives</i>	<b>36</b>
<i>History of Privatization</i>	<b>14</b>	<i>The Effect of Contracting on the Proper Role of Government</i>	<b>37</b>
<i>Privatization Debate</i>	<b>15</b>	<i>Preparing A Sound Request for Proposals</i>	<b>38</b>
<i>Privatization Facts</i>	<b>16</b>	<i>Preparing to Draft the RFP</i>	<b>38</b>
<i>Privatization Inquiry</i>	<b>17</b>	<i>General Drafting Considerations</i>	<b>39</b>
<i>Questions Most Often Asked About Privatization</i>	<b>17</b>	<i>Typical Elements of a Well-Prepared Request for Proposals</i>	<b>39</b>
<i>Privatization: A Challenge to the Public Sector</i>	<b>23</b>	<i>The Executive Summary</i>	<b>40</b>
<i>Conclusion</i>	<b>23</b>	<i>Background Information</i>	<b>40</b>
<b>4 The Feasibility of Conversion</b>	<b>24</b>	<i>Terms and Conditions</i>	<b>44</b>
<i>Introduction</i>	<b>24</b>	<i>Statement of Work</i>	<b>46</b>
		<i>Proposal Requirements</i>	<b>48</b>
		THE TECHNICAL PROPOSAL	<b>49</b>
		THE BUSINESS PROPOSAL	<b>50</b>

<p><i>Proposal Review and Selection Criteria</i> 51</p> <p><i>Proposal Attachments</i> 53</p> <p><i>Releasing the RFP</i> 54</p> <p><i>A Sample Request for Proposals</i> 55</p> <p><b>6 Developing A Contract for the Private Delivery of Correctional Services</b> 70</p> <p><i>Introduction</i> 70</p> <p><i>Preliminary Considerations</i> 71</p> <p><i>Key Concerns in Drafting and Negotiating Contracts for Services</i> 73</p> <p><i>Negotiable vs. Non-Negotiable Issues</i> 73</p> <p><i>Simplification by Incorporation</i> 74</p> <p><i>Preservation of Flexibility</i> 75</p> <p><i>Specificity Regarding Administrative Requirements</i> 75</p> <p><i>Specificity Regarding Service Delivery Requirements</i> 76</p> <p><i>Preservation of Independent Contractor Status</i> 76</p> <p><i>Termination Conditions</i> 77</p> <p><i>A Sample Contract for Correctional Services</i> 79</p> <p><b>7 Contract Monitoring</b> 95</p> <p><i>Introduction</i> 95</p> <p><i>Initiating Contract Monitoring</i> 95</p> <p><i>Approaches to Effective Contract Monitoring</i> 97</p> <p><i>Characteristics of the Effective Contract Monitor</i> 98</p> <p><i>Developing A Monitoring Plan</i> 98</p> <p><i>Conducting A Program Monitoring Visit</i> 100</p> <p><i>Other Monitoring Activities</i> 104</p> <p><i>Corrective Action Plans</i> 106</p> <p><i>Conclusion</i> 107</p>	<p><i>Sample Contract Provider Monthly Report</i> 108</p> <p><i>Sample Contract Provider Quarterly Report</i> 110</p> <p><i>Sample State Monitor Checklist</i> 115</p> <p><b>8 Developing An Operational Plan</b> 123</p> <p><i>Introduction</i> 123</p> <p><i>Stakeholders</i> 123</p> <p><i>The Organization</i> 124</p> <p><i>Boundary People and Agencies</i> 124</p> <p><i>External Environment</i> 125</p> <p><i>Overview of Stakeholder Mapping</i> 126</p> <p><i>Decision Making/Problem Solving</i> 129</p> <p><i>Identifying and Defining the Problem</i> 129</p> <p><i>Generating Solution Ideas</i> 131</p> <p><i>Analyzing Solutions for Workability</i> 131</p> <p><i>Reaching Tentative Decisions</i> 132</p> <p><i>Deciding How to Evaluate a Solution</i> 132</p> <p><i>Implementing the Solution</i> 134</p> <p><i>The Importance of Developing An Operational Plan</i> 134</p> <p><i>Some Practical Considerations</i> 135</p> <p><b>Appendix: Public Correctional Policy on Private Sector Involvement in Corrections</b> 140</p> <p><b>A Selected Bibliography: The Privatization of American Corrections</b> 144</p> <p><b>Glossary</b> 153</p>
--	---

# Introduction

Private sector contracting is a complex and at times controversial decision. It is not a panacea, but another option for state directors of juvenile corrections to consider. Before one decides to initiate or expand private sector contracting, there are many issues to examine. This chapter provides an overview of those issues.



## ANALYSIS OF NEED

In the 1990's the idea to contract with the private sector is generally in response to budget problems or necessary service improvements in the juvenile justice system. Prior to deciding that private sector contracting is the most appropriate option, it is necessary to analyze the problem. One must define the real need before choosing the best answer.

Ideally, private sector contracting should be considered because under existing conditions it is the best option available. The decision should be the result of a comprehensive analysis of the system's needs and services or in response to a particular problem.

Some needs will be obvious. For example: The Board of Health is demanding that the state improve the food service in a state juvenile facility because it does not meet state codes. The need is to raise the standard of service. Here's another example: The state juvenile training schools are over their rated capacities. The state is under court order to provide additional institutions, beds and a reduction in population. The need is for institutions to stay within their rated capacities.

Other problems are not so straightforward. Suicide rates in the state juvenile facilities

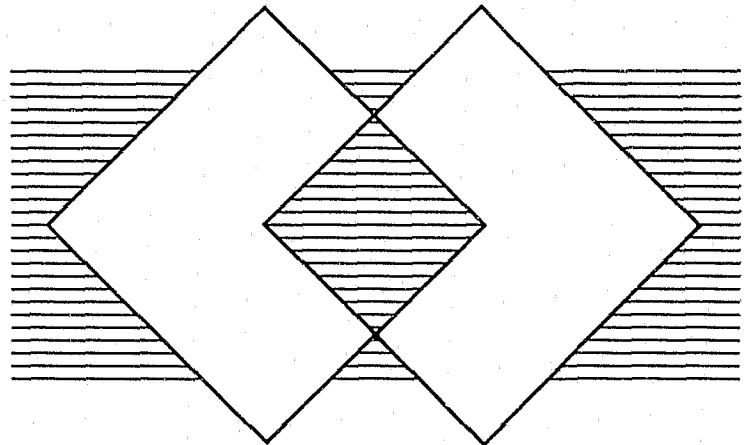
have tripled in the last two years. This could be the result of many different causes. Someone must decide why this is happening so that a solution can be found. The state cannot, and should not, spend money on a solution before it finds the actual cause of the problem.



## MOTIVATIONS FOR CONTRACTING

When the agency examines its options, it must ask why each option is considered. Why is private sector contracting a viable option (if it is)? What motivates people to privatize? It is crucial that state directors look carefully at the motivation behind any move to contract with the private sector. The motivation must be that the private sector can offer the best, most appropriate and cost-effective services for the juvenile population under state care.

Perhaps one of the most important factors in any decision is OBJECTIVITY. One should not select contracting with the private sector

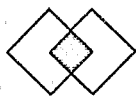


---

---

---

simply because no other option seems feasible. It should not be done because it is the latest fad or because everyone else is doing it. Contracting should only be used when it is clear that the private sector can do a more effective or efficient job than the state 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 juvenile services. These issues affect the state, the juveniles, and the community-at-large. All should be of concern to a state director of juvenile corrections. The issues could be legal, emotional, practical, economic, or a number of others. Each issue must be explored to see the implications for each specific jurisdiction.

A comprehensive look at the issues is vital to expose problems that could occur throughout the process of conversion. These difficulties are much easier to deal with if they have already been considered ahead of time. In addition, an examination of the issues 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 serves to assist state directors in the process of converting state operated juvenile residential facilities or services to

private sector operation. The manual covers all aspects of the process from choosing private sector contracting, to choosing a private provider, from implementing the contract, to monitoring and evaluating the institution or program.

The manual discusses the role of Community Advisory Boards and Public/Private Partnerships as sources of information and support. These groups can be valuable resources to state agencies in providing improved services. This manual will help staff gather and organize necessary decision-making information.

Private sector contracting is receiving increasing attention at all levels of government. This manual provides a history of privatization in America and its effects on the juvenile justice system. The privatization debate in juvenile corrections is also presented from both perspectives. The manual responds to some important questions about privatization in juvenile corrections and addresses the possible implications.

The American Correctional Association conducted an inquiry on privatization trends in state juvenile justice systems. The study cites the results and their significance for jurisdictions around the country considering private sector contracting.

The actual decision to contract out publicly managed juvenile residential facilities and services to private providers is complex. The feasibility of conversion must be determined by more than mere economic efficiency. Many times one automatically assumes that a private provider can deliver the necessary services more cost-effectively than public agencies. This is not always the case. Factors including

---

---

---

---

legal authority, agency goals, juvenile rights, security, politics, community attitudes, etc. are all important parts of assessing the practicality of contracting.

Once a state director decides to contract with the private sector, staff must develop a request for proposals (RFP). Although RFPs are different for each individual project, there are certain elements that remain constant. This manual explains these elements and describes what makes a sound RFP.

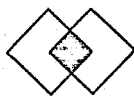
When the contract is finally negotiated and the service begins, the public agency is responsible for monitoring and evaluating the progress of the private agency. Since the government still has to answer to the public and the courts for the services provided to

juveniles in state care, monitoring is vital to the success of the program.

In closing, this manual discusses operational planning for all the tasks and issues necessary for private sector contracting. Operational planning involves the decision-making process, problem solving and organizational skills.

State 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 can be confusing at times. This manual will help clear up some of the confusion and guide state directors on the way to beginning or expanding a successful conversion to private sector contracting.

# Community Advisory Boards and Public/Private Partnerships



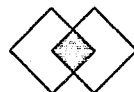
## INTRODUCTION

A state director of juvenile corrections faces an awesome task in the 1990's. With shrinking budgets and expanding populations, an administrator needs all the ideas, assistance, support and resources he or she can get.

The director must address a myriad of issues to include all aspects of juvenile corrections and contracting. Directors of state juvenile services must provide answers to questions including:

- Are the available services meeting the needs of current and future juvenile populations?
- How can services be improved?
- Are there better services supplied by the private sector?
- If the private sector is to be involved, how should RFPs be structured and proposals reviewed?
- Should contracts be tightly structured or flexible?
- How can we monitor and evaluate contracts to insure quality service delivery?

Many of these topics will be addressed in greater detail throughout this manual. In this chapter 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 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 to enable a state juvenile agency to provide the best services possible for the juveniles it serves.



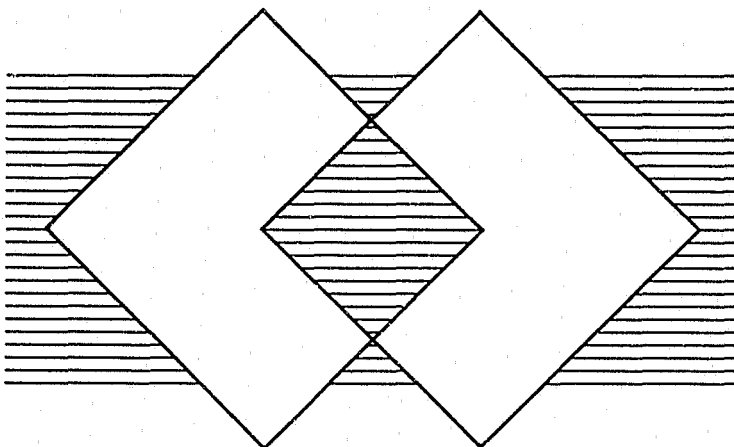
## MAKING A DECISION

State directors face crucial decisions, media attention, and public opinion on a daily basis. State agencies often 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.



## ADVISORY BOARDS

What is a Community Advisory Board? 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. An Advisory Board can often assist a busy administrator in terms of long term planning and a wider community perspective.
- ***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. An Advisory Board also has a great ability to minimize the damage from a serious incident such as an escape or a suicide. When a serious incident occurs, statements from the administration or staff could seem self-serving. An objective report from a member of the community can go a long way in public relations.
- ***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 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.



## 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 are discussed in the next chapter entitled, *The Private Sector As Contractor*. Unlike the business representatives in Advisory Boards, Partnerships tend to involve the CEO's 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 chapter 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 RFP's 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 Public/Private 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 juvenile corrections;
- A representative of the state director;
- The state financial officer; and
- 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. Commitments to participate in the core group should be obtained 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*

The goals and objectives of the partnership should be discussed. The state directors of

---

---

---

juvenile corrections should speak for the agency and its needs. Private sector participants may have their own views and should be invited to state them. 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 level of commitment is being asked (i.e., time, resources, expertise)?
- What are the benefits of participating in such a partnership?

### **Selecting Potential Partnership Members**

The core group members should identify and list potential Private/Public Partnership members. The list should contain the names of key executives of local businesses 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 (at

---

---

---

most, two typewritten pages), and should address the following:

- The rationale for establishing the partnership;
- The purpose of the partnership; and
- The partnership's specific goals and objectives.

### **Partnership Activities**

The Partnership should direct its efforts and resources toward achieving its objectives. The chairperson should coordinate tasks and activities toward preparing and conducting subsequent partnership meetings. Responsibilities must be clearly set, subcommittees created and members assigned. Partnership members should be permitted to join the subcommittee of their choice, and have flexibility in choosing

meeting locations. However, the chairperson must ensure that each subcommittee is representative of the public and private sector, and that the levels of familiarity and interests of subcommittee members are considered.

The development of products to achieve the partnership's objectives should be considered 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.

---

---

---

## *Sample Statement of Purpose: Advisory Group*

Juvenile crime, a phenomenon that affects the lives of many individuals in states across the country, 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, along with contracting incentives that promote a system for attracting private sector vendors to provide private juvenile justice services.
3. To formulate education and communication programs to obtain pro-bono technical assistance from the private sector in such areas of expertise as strategic planning, contract review, information management systems, quality control, accounting, and public relations.

---

---

---

## *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:

AREAS OF EXPERTISE	CONSULTATION/WRITTEN MATERIAL/OTHER (please specify)
Management Skills	
Personnel Management	
Fiscal Analysis	
Needs Assessment	
Accounting	
Communications	
Management Information Systems	
Systems Analysis	
Public Relations	
Legal	

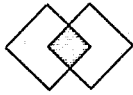
AREAS OF EXPERTISE	CONSULTATION/WRITTEN MATERIAL/OTHER (please specify)
Procurement	
RFP Preparation	
Proposal Review	
Contract Preparation	
Contract Negotiation	
Data Collection	
Marketing Skills	
Conversion Techniques	
Program Analysis	

4. Identify other areas in which your corporation would be able to provide technical assistance.

AREAS OF EXPERTISE	CONSULTATION/WRITTEN MATERIAL/OTHER (please specify)



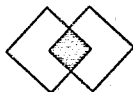
# *The Private Sector as Contractor*



## INTRODUCTION

This chapter explores involving the private sector as a provider of services traditionally administered by the public sector. Contracting public services to the private sector is receiving increasing attention at all levels of government. Popularly known as **privatization**, the intent is to shift some current or new services from the public sector to private sector management and operation.

This chapter begins with a brief history of privatization in American government. The chapter includes an informational section and the results of an inquiry conducted by ACA on privatization trends in the United States. The most often asked questions about privatization are explored and explained.



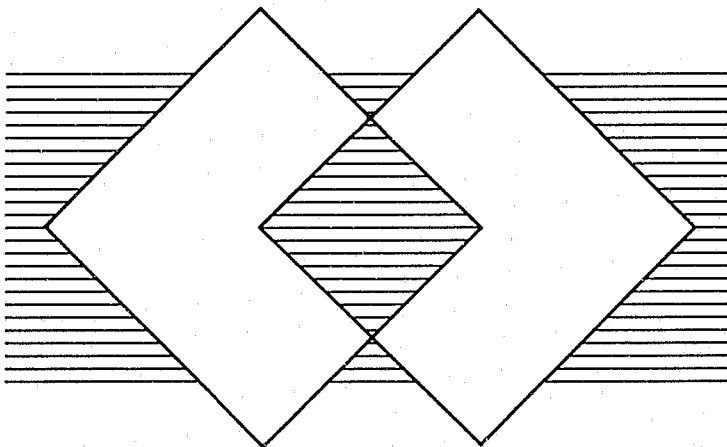
## HISTORY OF PRIVATIZATION

Contracting to the private sector for juvenile services and facilities is not new. The private sector has operated private juvenile facilities

in the United States since the 19th century. Historically there has been minimal controversy about these facilities. At the present time, private contracting for juvenile services and residential facilities is a common and apparently acceptable way of doing business.

Citing the need to reduce government spending and streamline operations, recent national administrations have advocated a greater role for the private sector in providing social services traditionally offered by state and local governments. Federal policy, stated in OMB Circular A-76 is to:

- **Achieve Economy and Enhance 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.
- **Retain Governmental Function 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.
- **Rely 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.



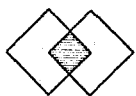
---

---

---

Early jails, which also housed juveniles, were operated by citizens who ran them for profit. Private jailers charged their inmates for food and clothing and were often abusive toward them. Bribery and graft were common place. Government's entry into direct operation of correctional facilities was, in part, in response to those abuses. The lessons of history should be heeded. Is there a risk of returning to the possibility of such abuses? Today, the private sector has different skills and resources to offer in a cooperative relationship with the state than during the days when inmate labor was exploited. Government has the capability to establish standards and closely monitor performance to insure adequate and humane treatment of offenders.

Private providers are again being considered for an increased role in corrections, but this time the motivation is different. Today they often bring with them management skills, advanced technologies, and information management systems that have the potential to improve correctional functions and reduce government costs. For some time private enterprise has focused on criminal and juvenile justice agencies as markets for high technology. The private sector has 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.



## 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, meaning that 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 regarding 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 cost efficiently. 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 services. 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 agencies. Opponents conclude the private sector involvement in juvenile corrections will lead to a lack of coordinated services and ultimately a decrease in financial and political support.

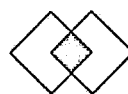
Privatization is discussed at almost every major corrections conference. Newspapers, magazines and television programs have brought the privatization of corrections to the attention of the public. Most discussions of the privatization of corrections in recent years focused on correctional institutions 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 for change, including an investigation into the merit of privatization of juvenile residential facilities and community services. One change has already occurred with the tendency toward firmer sanctions.



## 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 do not exercise that right, they encourage public officials to make policy and carry out programs according to what they 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 than 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 it measures its success against other potential providers of the same service.



## PRIVATIZATION INQUIRY

The American Correctional Association recently conducted an inquiry of juvenile corrections agencies in 50 states and the District of Columbia to obtain information on their use of private sector contracts. With a 98 percent return rate, all respondents said that they had at least one private sector contract. This inquiry yielded many insights into the role of privatization for juvenile corrections on a national level.

Respondents, who were mainly correctional managers, estimated the attitudes in their jurisdiction toward private sector contracting in juvenile corrections. Four groups—management, staff, elected officials, and citizens—were rated on a scale from zero to 10; 10 being the most favorable toward privatization. Management was most favorable with an average rating of 7.11; elected officials received an average rating of 7.07; citizens had an average rating of 6.7; and staff had a rating of 6.3.

Experience with privatization among the jurisdictions varied. The average number of years' experience with privatization was 13.7. Wisconsin and Oregon reported the longest experience at 30 years with private sector contracts.

The respondents were asked three reasons for signing private sector contracts. Of these reasons, 22 percent dealt with cost efficiency. Another 17 percent concerned the unavailability of certain services within the agency. There were other reasons, including a need to increase diversity of services and for expertise for special programming.

Sixty percent of the jurisdictions said that they expect more private sector contracts in the future. Another 35 percent predict that they will maintain an equal number of contracts in the future. In six states—Colorado, Idaho, Maine, New Jersey, Texas and Wisconsin—there is legislation pending that would encourage private sector contracting.

---

*Some say that privatization is progress; others regard it as a fad or an attempt to do away with government jobs.*

*What should one avoid when dealing with private sector contracts? Respondents most frequently listed lack of clarity or specifics in contract provisions, and failure to include provisions for evaluation and on-site monitoring.*

---



## QUESTIONS MOST OFTEN ASKED ABOUT PRIVATIZATION

It is essential that a jurisdiction contemplating contracting to the private sector ponder the critical and 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 the delivery of 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 does not and cannot 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 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 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 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 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 is a reality that correctional services, as currently practiced, are labor intensive functions. Obviously, there is a savings if four or five workers can accomplish what six workers are currently doing through the introduction of more efficient management and 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 gives 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.

Corporate leaders are keenly aware of the value of experience and expertise available to them from affected employees. For example, when Computer Science Corporation (CSC) won a seven year contract to take over the entire data processing operation of California's Orange County, it offered jobs to all of the former county data processing employees, even though it was committed by the contract to cut costs by nearly one-third over a several year period. More than 98 percent of the employees accepted jobs with CSC, yet after two years, the staffing on the Orange County account was just 72 percent of the initial level. CSC had not laid anybody off. It had reduced staff redundancies by (a) not replacing those who retired or

resigned, and (b) transferring some employees laterally or upward to other career paths in the company. In fact, the opening of new career paths—encouraged by company training programs and career guidance—was a key factor in keeping employee morale high.

3. *Won't the cost of private sector services be higher than the cost of public agency performance?*

One could ask why any public service could be performed at less cost by the private sector. 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, does not have 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 governmental 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 can often be to increase its budget and to add new employees.

An administrator in a private sector company should 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 should 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 is

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 in order 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. There are safeguards that 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 is raised on the basis of the "propriety" of such action rather than with respect to "legality." It is an ideological question that evokes emotion for many people. Labor unions which represent staff may argue this issue against privatization. The issue is grounds for lively ideological 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 in order 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 in order 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, to accept bribes and kickbacks, and to subvert the bidding process seem 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?" The 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 basic.



7. *Are profit making and public services compatible concepts?*

Some 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 objections 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 is critical to note 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. 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 often feel threatened by a loss of control when privatization is considered. If these managers retain a strong voice in policy development, setting standards, and contract monitoring, they will often 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. Such standards, and others that 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 tragic for a community to endure the difficulties of preparing 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.



## 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, 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. It represents a responsible search for a more professional organization.



## CONCLUSION

Privatization is not a new concept in American life, nor is it in 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, and the questions in the chapter cover many of the misconceptions.

# *The Feasibility of Conversion*



## INTRODUCTION

The purpose of this chapter is to assist state directors of juvenile corrections in determining the feasibility of contracting some of their residential facilities or services to the private sector. There are instances when public agencies should consider the possibility of contracting publicly operated juvenile residential and community services to the private sector. These instances include, but are not limited to the following:

- 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 quickly expand capacity to relieve crowding;
- The need for specialized treatment services not presently available in the public sector;
- 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;

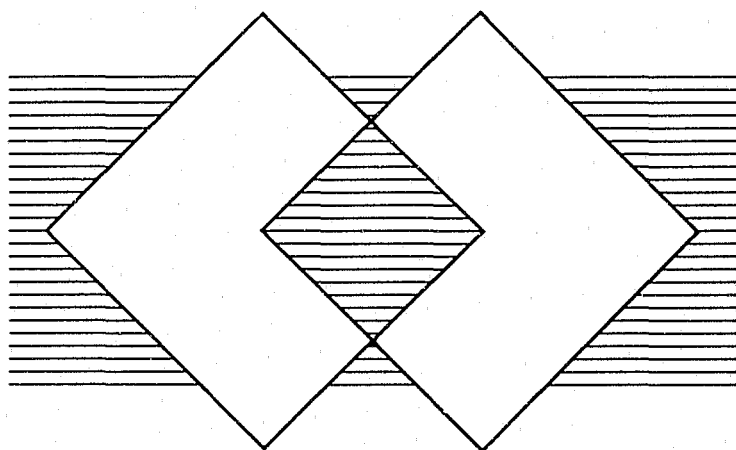
- A need for capital construction funds and a cap on bonding authority;
- Reductions in appropriations require reductions in the workforce; and
- Budget freezes or other prohibitions against creating new public sector positions or filling vacant positions.

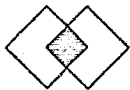
The decision to convert publicly operated juvenile residential facilities and/or community services to the private sector must be reasoned and deliberate. It is important that government's decision is not driven by a narrow consideration of economic efficiency. The state's responsibility regarding juvenile corrections requires that a decision be based on a balanced, comprehensive feasibility assessment.

This assessment should include consideration of the following issues and concerns:

- 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

Unique issues and concerns may also emerge during the assessment process.





## FEASIBILITY ASSESSMENT

### Legal Authority

The expenditure of public funds is properly controlled by law and rule. Generally, public agencies may purchase or contract out for goods and services, provided established procedures are followed. This is quite common. It is 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 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 correctional institutions, continue to be publicly operated.

One of the reasons that the move toward more privatization has been slow is a question regarding the government's legal authority to contract out certain services. This concern focuses on the constitutional issues of 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. Suffice it to say in this context that the public agency administrator charged with making the decision whether to contract out a particular juvenile corrections function should know if the applicable legislative body has specifically

authorized or prohibited such contracting. The attorney for the public agency should be asked to research this issue.

Issues surrounding the legal authority to contract out can be subtle. 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 cannot use a juvenile correctional facility until it has been approved by the state agency, but the state agency does not 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.

Other states have strict prohibitions on the assumption of long-term debt or financial obligation unless it is assumed through an authorized procedure such as general purpose bonding. Thus, private providers may be reluctant to bid on a multi-year contract for juvenile residential services because there is no guarantee 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 may reduce 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. Some of the techniques discussed in Chapter Eight may be useful in developing the scenario.

If a legal obstacle to private sector contracting is identified, a list of possible remedies should be developed. These might include statutory revisions, promulgation of new regulations, or a request for a legal opinion. A significant question to answer is the 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 obviate the need to convert?

### **Public Policy Goals**

It is properly government's responsibility to define the public policy goals for juvenile corrections. This is most frequently done through statutes and budget provisions enacted by the legislative branch and approved by the executive branch of government.

These goals usually focus on serving the public good which is the primary motivation of government at all levels. A critical question is whether the private provision of juvenile correctional services will produce the public good for which government is and continues to be responsible. An approach to this analysis is to identify the goals of the publicly

provided service and determine whether there is any reason these goals could not be achieved more effectively by a private provider.

Some states have approached this analysis by first 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.

The reality of juvenile correctional budgets which have decreased in the face of increased referrals, however, has acted to prevent 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 training school.

One method of determining whether a jurisdiction's continuum is adequate is to assess how the system's most secure resource (in most instances, a secure juvenile correctional facility) is utilized. According to U.S. Department of Justice data, more than 53,000 juveniles were admitted to publicly operated training schools in 1989 at a cost of

---

---

---

approximately \$1.9 billion. Only about half of these admissions were for serious crimes against persons or property. Various studies in several states suggest that one reason for the relatively large number of admissions for less serious offenses is the absence of a full continuum of programs and services.

The population in secure facilities should be classified based on service needs and public safety risk factors. A survey of juvenile court judges and staff responsible for dispositional recommendations should determine whether the decision to commit to the secure program was based on the non-availability of more appropriate resources. An analysis of these data will identify gaps and shortfalls in the jurisdiction's continuum of services.

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 a number of states. Using fiscal incentives and disincentives, administrative reorganization approaches, and program capacity limits, state 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 workforce.

A common immediate goal for many jurisdictions is to effectively respond 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 the provision of juvenile correctional services. Existing laws and regulations controlling such areas as capital

expenditures and personnel often present obstacles to establishing an immediate, publicly operated response. A number of states and local jurisdictions have turned to the private sector to successfully respond to litigation.

Experience has demonstrated that programs can at times be more quickly established through contracting with the private sector. In some instances the private sector is less burdened with rules and regulations and is able to act more quickly than government. This is especially true with respect to accessing capital funds. Government must await budgetary authority, but a private entity can often enter the financial marketplace and obtain available resources in a much shorter period of time.

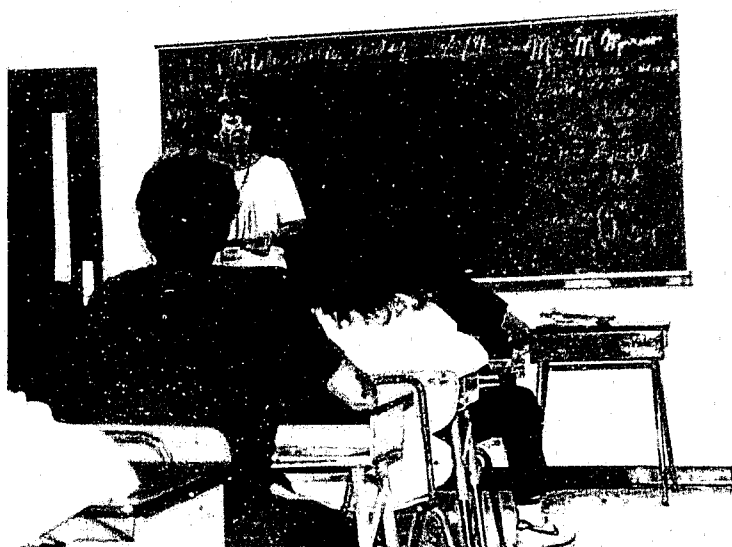
### **Quality of Service**

The desire to improve the quality of a service that is currently publicly provided is often a significant reason for making a decision to contract that service to the private sector. At times, the private sector has a greater potential for innovation and efficiency primarily due to its ability to be more flexible than government regarding personnel and resources. The private sector is also often less burdened with bureaucracy and "red tape."

A significant problem that needs to be considered 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 the establishment of 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;
- The normalization of 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; and
- A reporting system that measures progress and outcomes.

Using these characteristics, or any others that are relevant to the program or service under review, the existing level of quality can be measured.

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. There is nothing uniquely inherent in the private sector that assures it will always do the job better than government.

Another issue to consider is whether it is possible to improve the present quality of service. What are the obstacles to improving the public operation, and will those obstacles be either obviated or overcome if the service is privately provided? Does it make sense to continue the publicly provided service or to contract out to the private sector?

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 staff and 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. Government's ability to improve staff and the physical plant, as opposed to privatizing the service, must be decided.

Another area to consider is the message a decision to privatize sends to staff who will continue to publicly provide other related services. Poorly handled, a precipitous decision to privatize could result in lowered morale and productivity among remaining public employees. On the other hand, a reasoned decision that is understood and shared by other employees could actually increase morale and productivity.

### **Economic Efficiency**

With the recent expansion in private contracting of juvenile residential facilities, 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 learned that 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 a number of successful examples of cost savings as the result of contracting out governmental services. These 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 does not accurately determine the actual cost of operating the service to be contracted out. Experience demonstrates that, more often than not, government underestimates the actual cost. Since private providers tend to include all costs, their estimates are often higher.

The determination of direct costs is usually accurate. It is in the area of indirect and administrative costs that 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 and thus arbitrarily set an amount. More commonly, governmental 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 affect the desired cost savings.

The determination of cost must also include the costs of government's continuing involvement with the service. These costs include such areas as bid development, contract monitoring and accounting, and program oversight.

A practice that interferes with the costs savings equation is "low balling." This is the private



---

---

---

sector equivalent of underestimating cost. Private providers occasionally submit a low bid for a program or service. This may be done 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 additional future business. The danger this practice presents is that the private provider may find it necessary to cut corners in order to balance the bottom line.

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 cannot operate the program effectively at a low, preset budget. Unfortunately, there may be a provider who decides to bid and is awarded the contract. This can lead to the gradual reduction in the quality of service as the provider is 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.

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 correctional facility construction. Privatization can mean that government will not need to provide funds in advance to construct its facilities. This is especially important in situations where bond issues have been rejected or where serious revenue shortfalls have been encountered.

Private financing for public corrections has been growing for the past several years. Some

providers will build a facility and incorporate those costs in its annual budgets. Most commonly this is accomplished by adding to the contracted per diem all or part of the amortized cost of the facility. Another version of this is for a private builder to contract with the private provider under a lease structure which is charged to the state as part of the contract. In either event private financing can free up limited tax dollars for other purposes.

Government agencies need to have realistic expectations regarding the cost savings which may be realized through contracting out to the private sector. Some state agencies estimate that they save the taxpayer approximately six percent by contracting with private firms for juvenile corrections services. Virtually all of these savings result from the lower wages and personnel benefits paid to its staff by the private providers.

### **Liability**

At one time government believed that it could shed 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 in this regard is the quality and experience of potential providers. If, for example, it is believed that these providers will provide the same or better quality services than those

---

---

---

currently provided by government, the government's exposure to liability will 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 it will be responsible for costs and awards which resulted 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. Consideration should be given to requiring in the contract that the provider attain accreditation from the applicable national organization such as the American Medical Association or the American Correctional Association.

This area of litigation is relatively new. As a result, the body of law and opinion regarding 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 does not 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 through contracting out a correctional program or service.

### **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. Since private firms

are not generally subject to constitutional restraints, 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 operates two secure training schools, one state operated and the other privately operated (since 1982). There has not been one judicial decision that resulted in the juveniles in either training school being treated differently. 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 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**

Experience has demonstrated that effectively operated private correctional programs are as secure and safe as their publicly operated counterparts. 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, regarding the authority of private providers as compared to government. It is important to determine whether the employees of a private provider are authorized by state law to take and hold juveniles in their care. Some state statutes never envisioned private correctional providers and specifically limit arrest authority to sworn public law enforcement personnel and other public officials.

State officials should request the appropriate attorney in the state agency or the Attorney General's Office for an opinion in this regard. If the state statute is not clear, legal counsel should be asked whether a provision in the contract authorizing the provider to take and hold custody would be lawful.

Another area to investigate is whether state law regarding escape includes leaving 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 may not have been clear that any state 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 governmental agency did loose 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, the modified Golden Rule must apply—the entity that has the gold makes the rules. These rules must assure that government effectively maintains its interest in the provision of 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 closely monitor 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 panacea. 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 whether to privatize.

Privatization can also be very 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, and change affects people. Contracting out a service which has traditionally been provided by government means that public employees will be impacted in some, usually threatening, way. Resistance to privatization, not surprisingly, generally comes from public employees and their representatives.

These fears and resistance by public employees are 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 practices regarding 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 privatization.

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 accommodations 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 is 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 governmental officials or lobbying legislators,

---

---

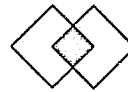
---

to promote public policy decisions that favor the provider's interests. Recent history in this regard should be reviewed.

### **Community Attitudes**

Whenever or wherever the juvenile correctional program or service to be contracted out involves a community or neighborhood, it is important to assess how key members of the community view the issue. This is especially important whenever 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 assure safety in the community. The program administration may be very responsive to community involvement. Contracting out such a program to a private provider unknown to the community may cause anxiety and opposition.

Civic and business organizations, neighborhood groups, and influential citizens in the affected community should be contacted. They should be told of the government agency's plans and asked for their opinions regarding 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.



## **CONCLUSION**

In this chapter we discussed 10 issues and concerns that government decision makers should consider in determining whether it is feasible to contract out juvenile correctional programs to the private sector. We demonstrated the view 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. This is especially true with respect to those juveniles with special needs.

It is a decision which should not be made lightly. It is government's responsibility to 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.

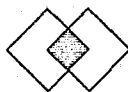
# *Developing a Request for Proposals and a Proposal Review Process*



## 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 a particular point in time. Each one is shaped by state 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 turn to 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.



## THE BASIC LOGIC AND PHILOSOPHY OF CONTRACTING

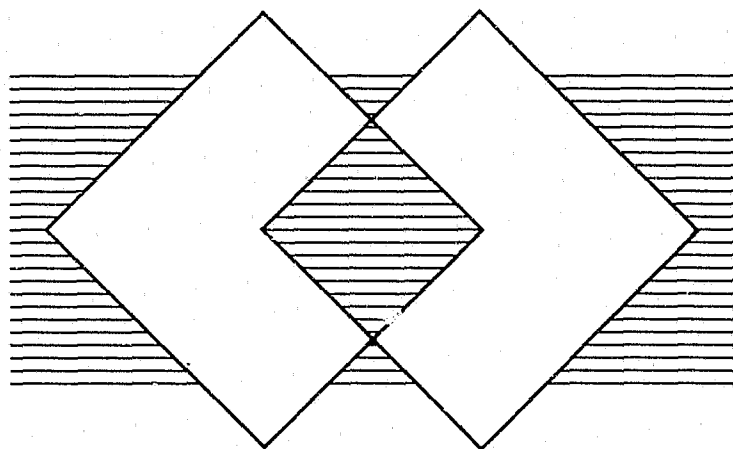
When preparing a request for proposals for the first time, there are two temptations that one must avoid. The first is to imagine that the task is too complex and technical. Authors of requests for proposals who understand the needs of their agencies and have taken the time to gather the necessary background information will find that they can handle the task easily. The second 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 agency:

- Is legally obliged to use a competitive procurement process; *or*



- Has concluded that a competitive process will best serve its interests; *and*
- Is unable to specifically define 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 specifically define the scope of work" portion of this typical definition of a request for proposals distinguishes an RFP from an invitation to bid (ITB). An ITB is used when the state has a narrow, specific need that is clearly defined. RFPs are used when the state 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 regulations; and
- Work closely with their legal and procurement staff at each step of the procurement process.

In an RFP the state department of juvenile services:

- Identifies the statutory authority that permits it to contract;
- Describes the need it wishes 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; and
- Describes the manner in which responses will be reviewed.

### **The Scope of Contracting Initiatives**

When government contracts with the private sector for services that government traditionally provides, it is referred to as **privatization**. Contracting with the private sector for juvenile correctional services can result in either of two general forms of privatization: **Partial privatization** and **complete privatization**.

- Partial privatization involves government contracting with the private sector 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 with a private provider 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.

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 request for proposals, brief attention must be given to how contracting for a juvenile residential facility or juvenile correctional services fundamentally alters but does not diminish the role of a government agency.

### **The Effect of Contracting on 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 quite specific regarding 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 state'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 the role of government when it contracts with the private sector for the same services.

Traditional approaches to juvenile correctional services typically find a single state agency

responsible for identifying needs, devising general policies regarding 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 served the purposes for which they were designed, and providing an appropriate means by which the results of evaluations can 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. Privatization 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 as a matter of sound social policy should not be delegated to the private sector, or as a matter of law cannot be delegated to the private sector. For instance, the identification of the basic needs and the development of general policies regarding the means by which those needs can be met are core responsibilities of government. Similarly, because committing juveniles to a residential treatment program has implications for their liberty interests, the state alone must control the critical "in and out" decisions that determine who will be committed and when those committed will be released. Evaluations of correctional initiatives cannot be delegated to the independent contractors whose efforts are the core concern of the evaluations. However, other features of privatized juvenile correctional initiatives—often 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.

The proper role of government changes radically when it moves away from its traditional role and into its new role via 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 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.

It is essential that this redefinition of roles be understood and appreciated by agency personnel well before the preparation of a request for proposals begins. 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—most particularly the recipients of the juvenile correctional services—is a loser. It is equally true, of course, that providers must not enter the contracting arena with such an attitude 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 law and regulations regarding both the authority of the agency to contract for services and the manner in which procurement processes must be structured;
- A clear understanding of the agency's needs from a contract for services including: information regarding 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 agency can compare to the cost components of submitted proposals;
- An understanding of possible opposition to the contracting initiative either from sources within 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, there really is no formula that guarantees a sound final product.

Juvenile justice agencies across the country have dealt with requests for proposals in the past. Experience often creates a routine that suggests a preferred format for an RFP. Many agencies that regularly contract for services develop specific guidelines for proposal preparation. Given the preference for standardizing legal documents, this is especially common regarding the “boiler plate” of an RFP and a contract. It is good procedure to critically examine past practices and existing habits.

Using a “model” for each RFP will not serve the legitimate interests of an agency charged with preparing an RFP. There are some general and technical features of an RFP that can be repeated each time. One need not keep reinventing the wheel, but in many ways each procurement effort calls for a unique document. Even when an agency plans to issue a series of proposals targeted at procuring a similar service or set of services, the experience and expertise gained from each proposal in the series should yield opportunities for the improvement and refinement of each subsequent proposal.

Authors of requests for proposals 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 possibly can. Authors of RFPs should never rely on ambiguous or general language when precision is called for. It is 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” does not provide potential providers with enough information about the needs and expectations of the issuing agency. A better option might be that “the operation of the facility shall at all times be in full compliance with applicable state statutes, agency regulations, the standards established by the American Correctional Association, and any additional requirements that may be mutually agreed to in the contract.” On the other hand, it might be counterproductive if an RFP aimed at procuring educational services included a multi-page specification of the precise nature of the desired services. It is likely that 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**

The author of an RFP generally has broad latitude in organizing the RFP. There is no legal or technical reason why any particular element must appear at any point in the document. Instead, the RFP must clearly inform potential providers about the needs of an agency and the specific actions potential providers must take. It should also state the manner in which proposals will be evaluated

---

---

---

and how the contracts will be monitored and evaluated.

It is a good idea to prepare a checklist of the areas that should be covered in an RFP. Following is a checklist of the elements one might include in the final RFP:

- The executive summary;
- Background information;
- The terms and conditions;
- The statement of work;
- The proposal requirements;
- The evaluation criteria; and
- The proposal attachments.

This list offers some basic guidance for the organization and format of a sound request for proposals.

#### 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 goals the state agency hopes to achieve through contracting and the features of the proposal with substantial importance in the evaluation process should be stated. Important features of the future contract (e.g., the type of contract, the duration of the contract, and the renewability of the contract) should be included. Critical dates that will be of special relevance to providers (e.g., dates on which proposals must be submitted, review results will be announced, contract negotiations will commence, and service delivery will begin) should all be part of the executive summary.

#### BACKGROUND INFORMATION

There are numerous details in an RFP that can and should be handled in this section. These features generally include the following:

- ***The Proposal Title:*** The RFP will ordinarily have both a descriptive title and an identifying number.
- ***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 as clear as possible. The agency may prefer or require that questions regarding technical features of the RFP be addressed by one person and questions regarding non-technical issues be addressed by a different person. 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.
- ***Legal Authority for Contracting:*** This section should contain a precise statement of the legal basis for the contracting authority of the agency. This often will require identifying 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 statutes(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.

---

---

---

---

---

---

- **Agency Commitment to Potential**

**Providers:** At a minimum, the RFP should expressly indicate that the issuance of a request for proposals does not (a) make the agency responsible for any costs potential providers may incur in the preparation or submission of their proposals or (b) 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.

- **Limitations on Potential Providers:** It is often necessary to impose reasonable constraints on potential providers. An example of this would be a requirement that any procedural or substantive question(s) be submitted in writing to the appropriate contact person(s). This will enable the staff to have a formal record of any questions and responses. All questions and responses should be available to all potential providers in fairness to all bidders.

- **Amendments to or Withdrawal of the Request for Proposal:** Despite the best efforts of the author of an RFP, it is possible 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. This can be accomplished by language that obliges the issuing agency to provide all potential providers with any amendments to its RFP with sufficient time to respond. Although it is important that an agency expressly reserve the right to terminate a contracting initiative, this step should be taken only if required by unavoidable circumstances.

---

*An RFP is a formal legal document of vital interest to the agency. Since the financial interests of potential providers are at stake, what might appear to be minor, technical issues can easily undermine contracting efforts. Contracts have been invalidated because of technical or procedural defects in a request for proposals or the proposal review process.*

---

- **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. Some agencies believe that doing so will result in all proposals calling for an amount equal to or nearly equal to the maximum available number of dollars. 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 were it to provide the service with state staff. Also indicate that proposals will not be defined as qualified unless their price proposals are equal to or below agency existing or projected agency costs. Market forces will usually produce a proposal that assures the best possible services at the most competitive price.

- **Proposal Disclosure Policies:** Jurisdictions vary regarding 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 is obliged to submit in response to an RFP may include information the provider is willing to put before agency personnel, but is unwilling to share with the competition. Whatever the applicable disclosure standard may be, it should be made clear in the RFP.



- **Pre-Submission Conference:** No amount of care will be sufficient to answer each and every legitimate question 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. The presence of potential providers at the conference should be encouraged but not required. 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 be made available to all potential providers whether they were or were not present at the conference.

- **Deadline(s) for Proposal Submissions:** The RFP must clearly indicate the deadline for proposal submissions and by what person or agency they must be received, e.g., 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, 1994. 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:** The state department of juvenile services may or may not see a need to schedule formal presentations by potential providers following the submission and evaluation of proposals. Very often, however, evaluation teams will encounter one or more aspects of the proposals they review that need additional information or clarification. This is especially true when the scope of services is broad or complex. Presentations should only be required when necessary. When presentations are required the agency should (a) inform potential providers of the nature of any specific questions and assure that they have a full and fair opportunity for presentations and (b) state the role oral presentations will have in the overall proposal evaluation scheme.

- **Selection Deadline:** The issuing agency should provide an approximate date on which it anticipates announcing the successful provider(s). The agency should complete the proposal evaluation process by the announced date. Many factors can cause unavoidable delays despite the good faith efforts of all involved parties. For

---

---

---

example, the RFP might stimulate a larger number of proposals or a more complex set of proposals than anyone anticipated. The language in the RFP should make it clear that the selection deadline is one the agency will make every reasonable effort to meet. However, a failure to do so will not constitute 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.

- **Potential Providers Commitment:** It is in the interest of all concerned parties that proposals be submitted in good faith and that they reflect a firm commitment to provide the proposed services at the proposed cost. On the other hand, should unforeseeable circumstances delay contract awards, it would be unfair to expect that potential providers continue to be able to honor each and every commitment in their proposals. The RFP should expressly state the period of time during which potential providers must honor commitments in their proposals.
- **Date for Commencement of Services:** It is useful to include a brief statement regarding the date on or before which the delivery of services will commence. If a precise date cannot 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, 1994 or later than September 1, 1994"). 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 regarding 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.
- **Notice of Intent to Respond:** It is 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 fairly formal in nature (e.g., 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.

The submission of 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 transcript that might be made of the pre-submission conference.

- **Definition of Terms:** A useful section of a request for proposals is one that clarifies and defines the terms that will be used later in the RFP. Such a section can serve several purposes. One purpose is to eliminate the need to use the same title or phrase repeatedly (e.g., "Department" shall mean

---

---

---

the Alabama 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 is to clarify the meaning of any unusual terms, or terms that have a special meaning in the context of the proposal.

#### TERMS AND CONDITIONS

To protect the legitimate interests of the issuing agency as well as to inform potential providers, a request for proposals should be as explicit as possible regarding the key terms and conditions of the procurement. A typical request for proposals would contain but not necessarily be limited to the following:

- **Identification of Contract Type:** There are many types of contracts (e.g., a cost plus contract, a fixed price contract, and so on). The type of contract appropriate for the task at hand should be specified in the RFP.
- **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).

- **Method and Basis of Payment:** Potential providers have concerns regarding how they will receive payment and how they must document that payments are due. The specific language will vary between RFPs and types of contract. 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 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 anticipate and clearly resolve any possible ambiguities. The rules for payment should clearly establish circumstances under which a juvenile is a resident for payment purposes (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.

- **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.

- **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.
- **Contract Termination:** This term often implies contract termination for reasons related to unsatisfactory performance by the contractor. This is a proper reason for termination, but 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 agency should divide the contract into sections so a provider can be in partial non-compliance without canceling the entire contract.
- **Subcontracts:** The state agency may or may not wish 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 agency is unlikely to welcome subcontractors. On the other hand, subcontracts might be appropriate when, for example, the state agency intended to obtain full-scale management services for a large juvenile facility and the selected independent provider wishes 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 for which subcontracts are intended, and the identity of any subcontractors with whom they intend to contract. It is appropriate to require that copies of any agreements that have been entered into 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 agency.

- **Insurance and Indemnification:** Potential providers must be told that it is their responsibility to 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 agency. The insurance and indemnification language should be drafted with care since it imposes a cost on potential providers that will be passed along to the contracting agency.



- 
- 
- 
- 
- **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. 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 provisions of service contracts that describe remedies for a breach of contract.

#### 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 agency to all potential providers. The statement of work should include, but not necessarily be limited to, the following elements:

- **Background Information:** It is 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 via the efforts of an independent contractor.
- **Client Characteristics and Eligibility Criteria:** It is 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 is not sufficient to say 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.

- **Service Requirements:** The service requirements section of an RFP is the most important and the most difficult writing task. On one hand, it is vital that the nature of the services be clearly communicated to all potential providers. On the other hand, it is important that those who prepare responses to RFPs 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 when specificity is clearly necessary and then to encourage creativity on the part of potential providers. Often, it is 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 desired. 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.

- **Special Requirements:** Depending on the nature and scope of the RFP, the contracting agency is likely to have some requirements regarding which assurances must be made in potential providers' proposals. The special requirements are concerned with, for example, where the services will be provided, the context in which the services will be provided, and by whom the services will be provided. The service requirements section of the RFP alerts potential providers to the needs of the contracting agency. The special requirements section imposes obligations on potential providers regarding the means by which the desired services will be delivered.

Considerable care should be taken in the preparation of this portion of the RFP. 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 acceptance of the responsibility to provide for the maintenance of a facility acceptance of a responsibility, within clear and reasonable limits, to provide for the repair of some or all equipment in a facility, and 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 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 effect of overall program efforts on the post-release behavior of participants for some period of time. When this is the case, it is 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 the preparation and submission of reports, and the preservation of records. Contractors must understand these requirements to

---

---

---

accurately anticipate their resource needs. It is important that these responsibilities be as clear as possible in the RFP. Special attention should be given to any reporting requirement that has obvious financial implications.

### PROPOSAL REQUIREMENTS

Potential providers need reasonable guidelines for preparing proposals. The task of those called upon to evaluate proposals is easier when all proposals follow the same basic format.

The proposal requirements should call for a budget that breaks down the overall budget so that cost projections in various areas can be compared with the corresponding components of the proposal. The issuing agency should require a line item budget for each important program area (e.g., administration, security, education/vocational programs, food services, and medical services, etc.)

Beyond these basic notions, there are no hard and fast rules regarding this element of an RFP—although applicable legal requirements or agency regulations may mandate the submission of one or more types of information. A few general guidelines, however, certainly deserve consideration.

- It is essential that the potential providers' commitments are clear. For example, proposal requirements should not permit a potential provider to make a vague commitment that "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 information that potential providers would prefer not shared with persons outside the issuing agency. However, jurisdictions vary in their legal ability to provide for the confidentiality of proposals. When confidentiality is possible and appropriate, assuring confidentiality may dictate that proposals be submitted in such a way as to segregate protected from unprotected information.
- The evaluation process may dictate some format elements. For example, some feel that it is prudent to have one evaluation subcommittee review and evaluate the technical aspects of proposals and an entirely separate evaluation subcommittee review and evaluate the cost proposals. Such a two-part evaluation process can lessen the likelihood that improper weight will be assigned to the quality of the proposed services and the cost of the proposed services. This evaluation strategy calls for the submission of two documents from each potential provider and that no information from one be duplicated in whole or in part by the other.
- Those who submit proposals should be encouraged to be thorough but also to be concise.
- Potential providers should be informed that information not directly relevant to the specific requirements of the RFP should not be submitted.
- The purpose of an RFP is to encourage competition and creativity between qualified providers of services. It is important that the competition be as fair and as impartial as it can be. Where possible, this objective can be advanced with proposal submission standards.

- 
- 
- 
- 
- The state agency should specify the number of copies that must be submitted.

### *Technical Proposal*

For present purposes, the assumption is that the proposal requirements call for the technical information to be separate from the business or cost information by appearing in different volumes or in distinctively different sections of the same volume. The primary elements of the technical proposal include the following:

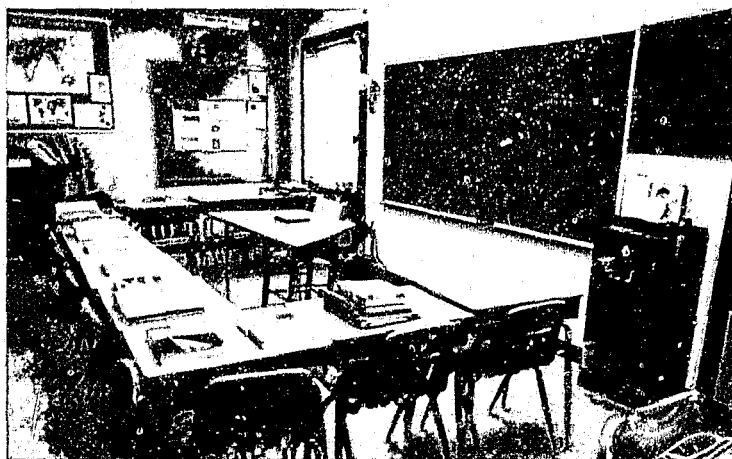
- **Statement of the Scope of Work Required:** The initial section of the technical proposal requires potential providers to demonstrate their understanding of the needs and objectives of the agency.
- **The Proposed Approach:** This section of the technical proposal is where potential providers explain in detail how they would handle the responsibilities set forth in statement of work section of the RFP, especially in the service requirements portion of the section.
- **The Management Plan:** The management plan provides a detailed explanation of how the proposed approach would be translated into actual efforts by the potential providers. This portion of the proposal should include but not necessarily be limited to the number, type, and minimum qualifications of project personnel and a statement of the project time schedule. It is also appropriate to require the inclusion of the manner in which potential providers propose to handle problems such as construction delays, escapes, disturbances, or various types of emergencies (e.g., employee strikes, natural disasters, and so on.)

- **Potential Provider Qualifications:** State agencies clearly want to have as sound a means of judging the qualifications of potential providers. A common means of assisting them to make this judgment comes through a requirement that potential providers provide information about their corporate experience and staff qualifications.

The requirement should be exhaustive rather than selective. If the desire is to require information about the potential providers' experience with similar or related projects during the recent past, the language should not permit a provider to identify only positive experiences during a certain time period. Instead, the requirement might oblige potential providers to identify all contracts or subcontracts it has entered into during the past five years that involved the delivery of one or more of the services called for by the present procurement. Potential providers should be obliged to identify the name, title, agency, address, and current telephone number of the official to whom they were most directly responsible. The potential providers should not be allowed to choose particular persons who are familiar with their prior contracts or to include what amount to "canned" endorsement letters in their proposals.

Regarding evaluations of potential provider qualification experience, care must be taken to avoid what amounts to non-competitive language. An RFP should not preclude potential providers from submitting proposals purely because they have no proven record of experience. A requirement of proof of successful performance on a similar or an identical contract is inappropriate. Although it is entirely fair and reasonable that experience

plays a role in proposal 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 one or more members of the evaluation team have directly



verified it via personal contacts with one or more of the agencies who can comment about contract performance.

### *Business Proposal*

The purpose of the business proposal is to establish the cost for the requested services given the approach, the management plan, and various costs that may be associated with other RFP requirements (e.g., insurance costs, travel and per diem costs, and so on). Equally important, however, the RFP must require the presentation of the business proposal in a format that allows the reasonableness of 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 would be important to mandate that business proposals include subsections with detailed information

regarding costs associated with administration, educational programs, facility security, treatment programs, and so on. Additionally, similar detail should be called for regarding any contract services that potential providers might intend to obtain via 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 associated with facility construction or renovation (including details regarding site acquisition costs, land preparation costs, design costs, and construction costs);
- 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 on how the costs were computed); and
- Total cost of the proposed services.

---

---

---

When this aspect of an RFP is reviewed for completeness, and when proposals are being reviewed, a few additional guidelines are worth considering.

- Potential providers should be reminded that only allowable costs may be included in their business proposals. Thus, for example, it would be inappropriate to include any item in a business proposal that addresses 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 is not advisable to impose any minimum or maximum allowable cost for any item in a 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 a contracting agency. It is instead whether proposals provide persuasive evidence of the ability to meet the obligations of the anticipated contract.
- Absent a clear legislative mandate that precludes contract awards unless a specific cost saving target is met or exceeded, it may not be reasonable to impose a cost saving requirement in an RFP. It is not uncommon

to see requirements that qualified potential providers submit cost proposals that assure an agency 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 is 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, consultation with any competitor. The penalty for any breach of this guarantee should be clear.

### **Proposal Review and Selection Criteria**

It is critically important to give careful consideration to the method of reviewing proposals from potential providers and that the RFP alert potential providers to the weights issuing agencies will assign to the various elements of the proposals. Further, provisions of law, regulations, and agency policy may shape the review process to a substantial degree. Finally, it is imperative that the fairness and integrity of the evaluation be carefully protected.

At a minimum, issuing agencies should assure that:

- Each provider is eligible to submit a proposal (i.e., that the potential provider has not been placed on a possible list of

---

---

---

ineligible vendors or determined to be ineligible for some other reason);

- The minimum standards that potential provider's proposals must meet are clear;
- They 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 any 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 evaluation committee is predisposed to favor any particular strategy or method of service delivery; and
- No member of the proposal evaluation 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).

Beyond general guidelines for the review process, there should be a clearly defined set of selection criteria. There are many ways a contracting agency might state and establish appropriate weights for the selection criteria. The crucial aspect of this part of the process is that the criteria and weights be appropriate to the specific objectives of the procurement

effort, that they be as objective as possible, and that they be relied upon in a similar fashion by all members of the proposal evaluation committee.

Naturally, the experience of a given jurisdiction or agency may have resulted in the adoption of a standardized set of selection criteria with standardized weights 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*); and
- 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 assessments of a provider's ability to handle the obligations of a contract in an effective and efficient manner. Further, the model places only modest emphasis on the potential provider's past history and thus fosters competition from providers who have

---

---

---

little past experience but who submit sophisticated proposals and whose key personnel have a proven ability to "get the job done." Finally, the low weight assigned to costs per se is intended to protect contracting agencies against the possibility of a "low-ball bid" allowing a potential provider whose proposal is weak on other critically important dimensions to prevail.

Without regard to whether this or an alternative model is used, the specifics of the process must be clearly understood by the members of the proposal 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 to meet and discuss the selection criteria before committee members receive proposals so that they can reach a consensus before the review process begins that will provide greater consistency in the assessments of individual proposals;
- 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 a technical proposal subcommittee and a business proposal subcommittee with each subcommittee reviewing only particular components of proposals, and so on);
- 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 committee members might exert improper control over the outcome of the review process; and
- A formal means for preserving review results and their accompanying rationales.

Contracting agencies have either a formal or an ethical obligation to move through the process in a fair and objective fashion as possible. The process should conclude in such a way as to provide objective feedback to potential providers. Responding to RFPs is more difficult than drafting them. Major RFPs can impose an immense time burden on providers.

Contracting agencies should accept the responsibility for meeting with unsuccessful providers and providing constructive criticisms of their proposals. Every responsible agency desires to create and to maintain a positive reputation among providers. Most providers have submitted both successful and unsuccessful proposals. Losing at the end of a demanding contracting process can be frustrating, but dealing with loss is an essential aspect of working in the private sector.

### **Proposal Attachments**

There may be various types of information a contracting agency feels would assist potential providers in understanding the nature of the RFP and its requirements. Applicable statutes, regulations, or agencies policies may mandate



---

---

---

the attachment of one or more types of information to RFPs.

---

*A sound proposal requirements section needs to guarantee that:*

- *The substantive required information is complete enough that the quality of proposals can be fairly evaluated;*
  - *The cost information that is required is complete; and*
  - *The format required for cost information is such that the reasonableness of projected cost for each major service component can be fairly evaluated.*
- 

The information one might attach to an RFP 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 easily be obtained.

## **Releasing the RFP**

Whether expressed in state statutes or agency regulations, procurement requirements generally impose obligations on agencies issuing RFPs to assure (a) that information on the release of RFPs is available to a broad range of potential providers and (b) that potential providers have a reasonable amount of time to draft their proposals. This means 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. It is essential that these requirements 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 agencies are at stake when they issue RFPs. Those vital interests are best served when all aspects of a procurement process invite and encourage competition. The minimum requirements of state statutes or regulations may not be enough to serve those interests. For example, the appearance of a notice regarding an RFP in an official state publication may satisfy minimum legal requirements but not reach a wide enough range of potential providers. Agencies may need to go beyond minimum requirements for forwarding the RFP to all firms on the background work for an RFP should be identifying all firms with the ability to deliver the type or range of services in the RFP. 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 period of time for potential providers to respond.

---

---

---

## *A Sample Request for Proposals*

A request for proposals flows from a particular agency need. The structure and content of an RFP often is shaped by applicable provisions of law, regulations, and agency policies. No sample could provide detailed step-by-step guidance for those called upon to draft an RFP. At the same time, it is probable that seeing a reasonably prepared RFP aimed at a fairly ordinary agency need will be of value.

The sample RFP presented in this appendix 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 may be in the interests of the agency to contract for the complete privatization of a 50-bed juvenile residential facility presently 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, 1993

Date of Response Required

July 1, 1993

---

---

## Executive Summary

Funds appropriated for Fiscal Year 1990-91 by the Legislature of the State of Columbia to the Department of Youth Services ("Department") provided for the cost of design and construction the South Washington Juvenile Residential Facility ("Facility"). This 50-bed facility received its first residents on January 2, 1992 and is presently 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 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 presently being provided by the Department and (b) the cost of the proposed services is less than the cost of the presently 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 presently being provided by the Department. All proposals must commit to the achievement of accreditation by the American Correctional Association 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 March 1, 1993. 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 February 20, 1993. A formal transcript of the meeting, which will include an edited version of all written questions received on or before February 20, 1993, 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, 1993;
- Pre-submission conference: 9:00 a.m. Eastern Standard Time on March 1, 1993;
- Receipt by Contracting Officer of official written notice of intent to submit a proposal: 5:00 p.m. Eastern Standard Time on March 15, 1993;
- 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, 1993;
- Deadline for receipt by potential providers who comply with notice of intent requirement of any amendments to the request for proposals: June 1, 1993;
- 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, 1993;
- 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, 1993; and
- Anticipated date for commencement of all management and operational services: October 1, 1993.

#### 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 responses to such questions shall be in writing. All 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, 1993.
  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 responsive 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, 1993.
  10. The deadline for receipt of proposals shall be no later than 5:00 p.m. Eastern Standard Time on July 1, 1993. 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, 1993.
  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, 1993 and no later than November 1, 1993.
  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, 1993. 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 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, 1992, CL Statute 39.1, and which went into effect on July 1, 1992, 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 presently being provided by the Department and (b) the cost of the proposed services is less than the cost of the presently 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 presently provided at the Facility or for a range of services capable of achieving the objectives that prompted the delivery of the present services.

- 
- 
- 
- 
3. 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 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 assessments 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;
  - (g) full and complete records are maintained as a means of documenting the progress of residents in all areas of program involvement; and
  - (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 presently serving in 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 a complete and concise 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 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 the "a" component, 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 the "b" component, 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 sufficiently complete manner that the basis for this cost component 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 this 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, 1993 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 of a type reasonably related to the request for proposals: 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, 1993. 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



## 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.

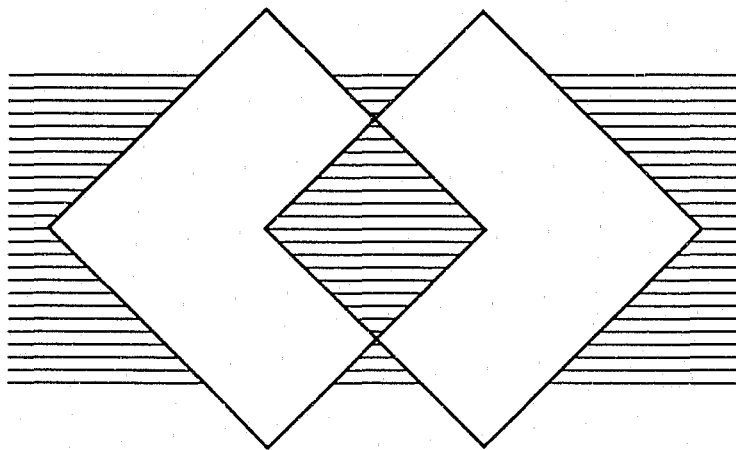
Any contracting discussion raises questions about contract law. Those questions are clearly important, but it is not the purpose of this manual to provide an overview of contract law. The legal aspects of contracting for residential facilities or correctional services are most properly handled by the 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 to a contract 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 proposal 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



---

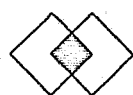
---

---

---

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.



## 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 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 merely 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. 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 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 is also important to understand that the contract drafting and negotiating process is often more cumbersome than it might first appear. The process may seem to involve nothing more or less than the staff of a state agency who wish to obtain services and representatives of a provider who would like to deliver those 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 is essential that one fully appreciate one's role and the scope of one's expertise at the negotiating table.

It is 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 are crucial to any successful contract relationship. All involved parties must negotiate and agree on specific indicators by which a monitor can evaluate the provider's delivery of the required services. Outcome indicators determine how contractual obligations can be determined to be successfully or unsuccessfully fulfilled.



## 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 really can be no such thing as a model contract.

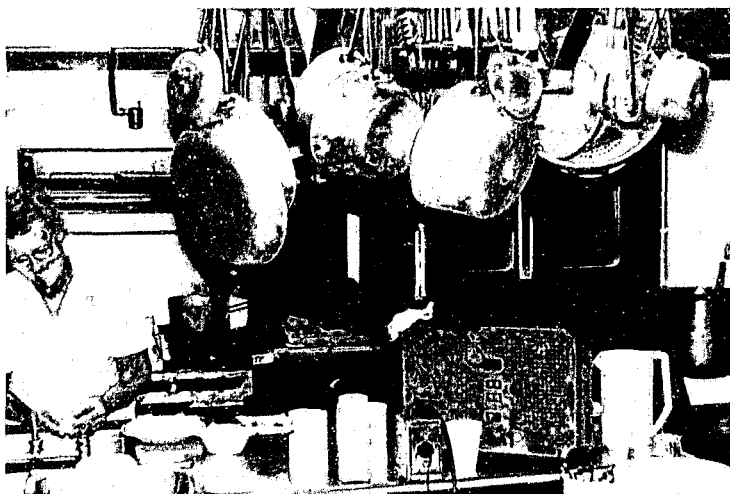
Even though the development of a model contract for correctional services will not and cannot be provided here, there are a number of specific concerns that must be addressed by those responsible for drafting and negotiating contracts. They are common denominators one should find in all contracts for 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 a 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.

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 economies 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 a 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 does not 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 to the contract. 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 effect the manner in which services are delivered under the terms of a contract in force before the mandate. A sound contract, will foresee such unforeseeable circumstances.

Although perhaps so obvious a point that it does not require being made, preserving flexibility is a goal that cannot 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 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 is prudent to not become overly 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. 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.

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 or 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.

### **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 is 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 independent contractors have an obligation to satisfy that expectation. Similarly, independent contractors have the right to expect that state agencies will fully discharge their contractual responsibilities and state agencies have an obligation to satisfy that expectation. However, it is 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.

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*

It is impossible for us to present a complete sample contract for correctional services. We lack several detailed information items readily available to those to whom "real world" drafting responsibilities are assigned. For example, each state agency staff would have immediate access to the relevant state legislation, regulations, the RFPs, and the winning proposal. We have only the sample RFP from Chapter Five. 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 from Chapter Five;
- 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 of Youth Services for the delivery of correctional services, are

contained in Chapter 39 of the Code of Columbia; and that

- Title 39 of the Code of State Regulations of the State of Columbia contains 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 the sample RFP in Chapter Five will be assumed rather than relied on directly. This 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 to simply 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.



---

---

---

# 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, 1993, 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 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 follows:

### 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. Definition 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 of 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 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.
  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 professionals 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

1. The Contract will be in effect for the period of October 1, 1993 to September 30, 1996, 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, 1993 to September 30, 1994 may not exceed \$1,500,000.
2. Compensation to the Contractor for the period of October 1, 1994 to September 30, 1996 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 #93-101 (Appendix A);
2. Contractor's Proposal dated July 1, 1993 (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).

---

---

---

Should anything in the Department's Request for Proposals #93-1-1 or the Contractor's Proposal dated July 1, 1993 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 terminate 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, 1994, 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. Should a termination for convenience occur, the Contractor shall be entitled to receive just and equitable compensation for management and operational expenses under the terms of the Contract for any authorized work completed as of the termination date.

---

---

---

#### M. Waiver of Terms and Provisions

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, agent, 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 Arbitration 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 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, psychiatrist, 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 contract 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 #93-101 (Appendix A) and the Contractor's Proposal (Appendix B), those services including but not being 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 all residents 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 each resident;
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 the 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 presently 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 presently 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.

CONTRACTOR

COLUMBIA DEPARTMENT OF CORRECTIONS

Signature of Authorized Individual

Signature of Authorized Individual

Typed Name

Typed Name

Typed Title

Typed Title

Address

Date

Additional Signatures as Applicable

Signature

Signature

Typed Name

Typed Name

Typed Title

Typed Title

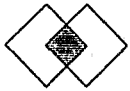
Approved as to form this \_\_\_\_\_ day of \_\_\_\_\_, 1993

John Q. Smith, The Attorney General

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

Assistant Attorney General

# Contract Monitoring



## 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.



## INITIATING CONTRACT MONITORING

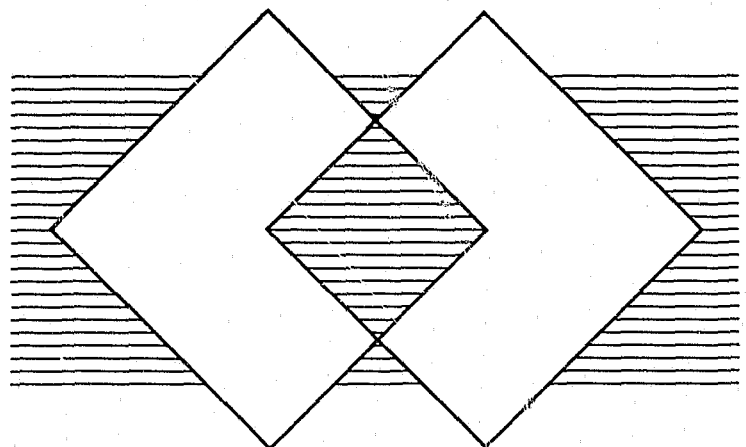
The public and private sectors must collaborate in order to make privatization work. Successful contract management and monitoring requires a mutual commitment to achieving the goals of the contract. Where the contract provider is expected to impact behavioral change in clients, the development of an Individualized Program Plan is an essential goal of the contract and provides a

basis for contract monitoring and outcome measurement.

It is 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; and
- 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 is 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 is 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!"



## 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 benefits 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 critical 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.



## 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 the staff of a state department of juvenile corrections since being on the staff can constitute a conflict of interest. This is most obviously the case when a private and a public facility are compared with one another as they are in, for example, Tennessee. 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.



## 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, trouble-shooting 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.

---

---

---

---

It is 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 is 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.

In order 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 monitorings) 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.

Documents constitute a major part of contract monitoring. It is 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 recordkeeping, 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.



## 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 preventative maintenance activities and schedule
- 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.

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. During individual interviews with staff, juveniles or others, it is 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 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 staff's 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 utilize a presentation style which reinforces the cooperative 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

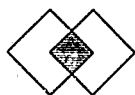
---

---

---

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.



## 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 necessary 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 utilize 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.)

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 does not 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 regarding 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 compiled 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 service units were delivered or they were not. A particular number of juveniles received services or they did not. A percentage of juveniles received their GED or they did not.

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.



## 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 timeframes 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.

---

---

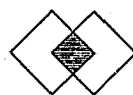
---

An effective corrective action plan is one that is perceived as achievable. Actions should be sub-divided 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.



## 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 corrective 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.

---

---

---

## SAMPLE CONTRACT PROVIDER MONTHLY REPORT\* JUVENILE RESIDENTIAL FACILITIES

### Instructions

The monthly report is to be completed at the end of each month. This report is to be submitted to the state contract monitor by the 10th day of the new month.

#### I. Client Population Data

- A. *Total possible resident days this month:* This is the number of days in the month times the bed capacity. (Example, for the month of June a 24-bed facility would have 720 possible resident days ( $30 \times 24 = 720$ )).
- B. *Total actual resident days this month:* The sum of each day's client population.
- C. *Average daily population:* The total actual resident days of the month (B) divided by the number of days in the month. (June  $741/30 = 24.70$ )
- D. *Utilization percentage:* The average daily population (E) divided by the bed capacity times 100. ( $24.70/24 \times 100 = 103\%$  utilization)
- E. *Resident Specific Information:*
  - 1. *Number of Admissions:* The total number of juveniles entering the program. If a juvenile is released and later returns to the program during the same month, he or she should be counted as a new admission. (This is a duplicated count.)
  - 2. *Total number of runaways:* A runaway is a juvenile who leaves without permission from an outside activity under the supervision of the contracted employee.
  - 3. *Total number of AWOLS/Absconders:* An "AWOL" is a juvenile who has received an unsupervised pass for a certain period of time and who did not return at that specified time. This may apply to a juvenile who is on home or non-secure detention status who is not residing in his home or specified residence.
  - 4. *Total number of escapes:* An escape is any juvenile who leaves the building or fenced area without permission. This also applies when a juvenile is being transported to and from court.
  - 5. *Total number of releases:* Self-explanatory.
  - 6. *Total number or transfers:* Self-explanatory.

\*This is a sample monthly report. An individual report must be developed for each contract. Its length and content should vary depending on the size of goals and objectives of each contract.

- 
- 
- 
- 
- II. *Regulatory Inspections and Certifications:* This section is designed to record the regulatory inspections which may be completed during the course of the month. This report should include fire safety inspections (including inspections by maintenance staff of the facility), fire drills, health and sanitation, and any other regulatory agency.
- III. *Programming:* This section provides an opportunity for the contract provider to describe any new program initiatives or services which have begun during this month. Program changes or planned changes should also be documented in this section.
- IV. *Staffing:* This section should report on resignations or hirings occurring during the month. Any positions not filled should be reported and a reason provided for this situation.
- V. *Budgetary:* This section provides the opportunity for the contract provider to present issues to the contract managers which may impact the delivery of services. Issues to be discussed may be shortages, invoicing problems, difficulties in purchasing, etc.
- VI. *Director's Comments:* The director's comments should include any particular overall program issues or concerns involving staff, population, goals achievements or other areas needing attention. Any unusual incidents should be discussed in this section.

---

---

---

## SAMPLE CONTRACT PROVIDER QUARTERLY REPORT\*

### JUVENILE RESIDENTIAL FACILITIES

#### Instructions

The monthly report is to be completed within the first ten (10) days of a new month. This report is to be submitted to the respective contract manager by the 15th day of that new month. The report may be typed or handwritten.

#### I. Client Population Data

- A. *Total possible resident days this month:* This is the number of days in the month times the bed capacity. (Example, for the month of June a 24-bed facility would have 720 possible resident days ( $30 \times 24 = 720$ )).
- B. *Total actual resident days this month:* The sum of the day's clients.
- C. *Number of days over capacity:* Self-explanatory.
- D. *Number of days under capacity:* Self-explanatory.
- E. *Average daily population:* The total actual resident days of the month (B) divided by the number of days in the month. (June  $741/30 = 24.70$ )
- F. *Utilization percentage:* The average daily population (E) divided by the bed capacity times 100. ( $24.70/24 \times 100 = 103\%$  utilization)
- G. *Average Length of Stay:* Average the individual length of stay for all juveniles released during the month.

For the next section use the race codes W—Caucasian, B—Black, H—Hispanic, and O—Other. In the offense category use P for person offenses and N-P for non-person offenses. In the case of multiple charges use the highest offense.

- H. *Number of Juveniles Served:* Sum of juveniles who participated in the program at any time during the month. If a juvenile is released and later returns to the program during the same month, he or she should only be counted once. (This is an unduplicated count.)

#### II. Resident Specific Information:

- 1. *Number of Admissions:* Sum of juveniles entering the program. If a juvenile is released and later returns to the program during the same month, he or she should be counted as a new admission. (This is a duplicated count.)

\*This is a sample quarterly report. Quarterly reports must be individualized for each contract. The length and content of each report should vary depending on the size of goals and objectives of each contract.

- 
- 
- 
- 
2. *Total number of runaways:* Duplicated number of runaway juveniles. A run is from an outside activity under the supervision of the contracted employee. This only applies to shelter or non-secure programs.
- a. *Number of juveniles:* Unduplicated number of juvenile runaways.
  - b. *Number of incidents:* Number of incidents when juveniles ran away. (More than one juvenile may be involved in the same incident.)
  - c. *Number of juveniles returned:* Number of juveniles who were returned to the facility. (This is a duplicated count if a juvenile ran more than once during the month and was returned more than once.)
3. *Total number of AWOLs/Absconders:* Duplicated number of AWOL or absconding juveniles. An "AWOL" is a juvenile who has received an unsupervised pass for a certain period of time and who did not return at that specified time. This may apply to a juvenile who is on home or non-secure detention status who is not residing in his home or specified residence.
- a. *Number of juveniles:* Unduplicated number of juveniles who are AWOLs/Absconders.
  - b. *Number of incidents:* Number of incidents when juveniles escaped. (More than one juvenile may be involved in one incident.)
  - c. *Number of juveniles returned:* Number of juveniles who were returned to the facility. (This is a duplicated count if a juvenile escapes more than once in a month and is returned more than once.)
4. *Total number of escapes:* Duplicated number of juveniles who escaped. An escape is any juvenile who leaves the building or fenced area without permission. This also applies when a juvenile is being transported to and from court.
- a. *Number of juveniles:* Unduplicated number of juveniles who escaped.
  - b. *Number of incidents:* Number of incidents when juveniles escaped. (More than one juvenile may be involved in one incident.)
5. *Number of juveniles returned:* Number of juveniles who were returned to the facility. (This is a duplicated count if a juvenile escapes more than once in a month and is returned more than once.)
6. *Total number of discharges:* Total number of juveniles who were discharged from the program.
- a. *Graduate/completion:* Number of juveniles who successfully graduated or completed the program.
  - b. *To day treatment:* Number of juveniles who were released to day treatment program such as a mental health day treatment or alcohol/drug day treatment program.

- 
- 
- 
- c. *To in-patient:* Number of juveniles who were released to an in-patient psychiatric facility.
  - d. *To shelter care:* Number of juveniles who were released to shelter care.
  - e. *To secure detention:* Number of juveniles who were released to a secure detention facility and are not returning to the facility.
  - f. *To adult system:* Number of juveniles who were released to the adult system and not returning to the facility.
  - g. *Other:* All other discharges.
7. *Total number of transfers:* Total number of juveniles who were transferred from the program.
- a. *To secure treatment:* Number of juveniles who were transferred to a secure treatment program.
  - b. *To non-secure treatment:* Number of juveniles who were transferred to a non-secure treatment program.
  - c. *To aftercare:* Number of juveniles who were transferred to an aftercare component for continuing services. This is for aftercare services provided by the contract provider.

### III. Personnel

- A. *Personnel Chart:* When completing this chart, be sure to include all part time staff as well as full-time staff. Part-time staff should be designated in decimal FTE equivalents based on the number of hours worked per week. For example, an employee who works 20 hours a week would be listed as .5 FTE, or an employee who works 10 hours a week would be listed as .25 FTE.

*Administrative:* Number of key managers or administrative personnel.

*Clinical:* Number of clinical workers, clinicians, caseworkers or social workers in the program. The clinical director or coordinator may be included here or under administration. If the clinical director is carrying a caseload, then they should be included here.

*Educational:* Number of teachers, include all positions including aides or specialized teachers.

*Supervisory:* Self-explanatory.

*Direct Care:* Number of staff responsible for direct care and supervision of juveniles.

*Medical:* Self-explanatory.



---

---

---

*Maintenance:* Self-explanatory.

*Clerical:* Self-explanatory.

*Food Services:* Self-explanatory.

*Recreational:* Self-explanatory.

*Other:* Any other staff that do not fit in the categories listed above. Specify the type of positions in the comments section.

Designate race using the following codes, W—Caucasian, B—Black, H—Hispanic, and O—Other.

The addition of filled and vacant positions should equal the total number of budgeted positions.

- B. *Personnel Actions:* Self-explanatory. Make comments to any discrepancies or areas of concerns in the comments section. If there are specific reasons for extremely low or high numbers, describe reasons in the comments section.
- C. *Staff Training:* Document the date of training, the number of hours of each training event which was provided that month and the number of staff involved in the training. List the specific types of in-services training.
- D. *Staff and Resident Meetings:* This section is to approximate the types, length, participation and frequency of meetings being held with staff and residents.
1. *Staff Meeting:* The name/purpose of meeting is listed first, the number of staff attending, the frequency of the meeting, the number of meetings which were actually held, and the average length of time of each meeting. For example, program staff meetings may be scheduled weekly for one hour, requesting the presence of all direct care staff, clinical staff, and educational staff. The entry would be as follows:

Program staff      12 Weekly      3      1 hour

This would document the weekly program staff meeting was held 3 times this month, that 12 staff members attended and the average length of the meeting was 1 hour.

2. *Resident Meetings:* The name or purpose of the meeting is listed first, the number of juveniles attending, the frequency of the meetings, the number of meetings that were actually held, and the average length of time of each meeting. For example, a house meeting which is scheduled weekly for 1/2 hour, where all juveniles must be present. The entry would be as follows:

House meeting      20 Weekly      4      1/2 hour

This would document a weekly house meeting that was held 4 times this month, that 20 juveniles attended and the average length of the meeting was 1/2 hour.

- 
- 
- 
- IV. **Regulatory Inspections and Certifications:** This section is designed to record the regulatory inspections that may be completed during the course of the month. This report should include fire safety inspections (including inspections by maintenance staff of the facility), fire drills, health and sanitation, and any other regulatory agency.
- V. **Programming:** This section provides an opportunity for the contract provider to describe any new program initiatives or services which have begun during this month. Program changes or planned changes should also be documented in this section. The breakdown for counseling services is merely the number of juveniles involved in each type of counseling, the frequency with which the counseling is held, and the number of hours of the specific counseling service being provided.
- VI. **Budgetary:** This section provides the opportunity for the contract provider to present issues to the contract manager which may impact the delivery of services. Issues to be discussed may be shortages, invoicing problems, difficulties in purchasing, etc.
- VII. **Director's Comments:** The director's comment should include any particular overall program issues or concerns involving staff, population, goals, achievements or other areas needing attention.
- VIII. **Incident Reports:** All individual incident reports that were filed during the month should be included in the chart. The following information should be listed for each incident:

*Date:* Date of the incident (The report date should be the same date as the incident).

*Time:* Self-explanatory.

*Type:* Specify the type of incident, e.g. client on client assault, client on staff assault, staff on client assault, escape, law violation, etc.

*Juvenile:* Name of the juvenile involved in the incident, if there was more than one juvenile involved include names of all juveniles.

*Race:* Utilize the race codes, W—Caucasian, B—Black, H—Hispanic, and O—Other.

*Staff:* Name of staff member involved in the incident.

*Med. Att.:* Answer Y (yes) or N (no), was medical attention needed.

*Phys. Restr.:* Answer Y (yes) or N (no), was physical restraint used.

*Mech. Restr.:* Answer Y (yes) or N (no), were mechanical restraints used.

*Action Taken:* State what action was taken.

Use the comments section for clarification of any particular incident or pattern of the reports.

---

---

---

## 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 \_\_\_\_\_

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 size of 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:

---



---



---



---

REVIEW OF MEDICAL RECORDS/DOCUMENTATION	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:

---



---



---



---

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:

---



---



---



---



---

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 receive adequate pre-service training prior to directly supervising youth?			
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:

---



---



---



---



---

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 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 policy and procedure?				
Are staff consistent in administering the behavior management system?				
Does the program director regularly review the behavior management system?				

Comments:

---



---



---



---

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 juvenile work displayed?			
Do juveniles have the opportunity to personalize there individual living area/room?			
Is there a preventative maintenance schedule?			
Does the preventative maintenance schedule meet the needs of the facility?			
Are there dangerous physical hazards that may affect juveniles or staff?			

Comments:

---



---



---



---



---



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 offense 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 juvenile's responsibilities clearly defined?			
Are the program's responsibilities clearly defined?			
Does the plan establish a planned release date which may be renegotiated when possible?			
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?			

CASE MANAGEMENT CHECKLIST	Yes	No	N/A
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?			
Is the juvenile's family involved in the development and review of the placement/treatment plan?			
If the juvenile has 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 juveniles?			
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:

---



---

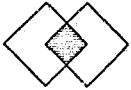


---



---

# Developing an Operational Plan



## INTRODUCTION

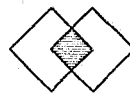
The preceding chapters have detailed the information necessary to make a decision concerning private sector contracting. This chapter discusses the actual decision making and planning process. The final result should be a plan for implementing your decision.

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 chapter. 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 one identifies 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.

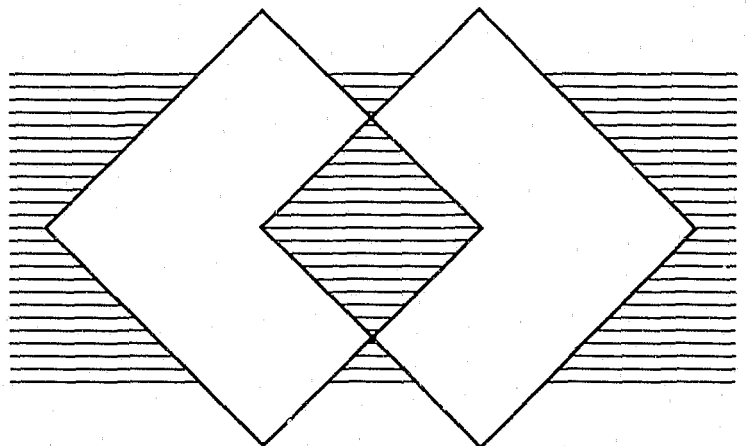


## STAKEHOLDERS

Before you consider private sector contracting, it is 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



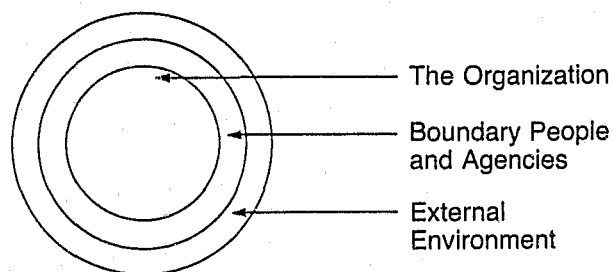
individuals or groups comprise only a partial list of possible stakeholders:

- Juveniles committed to state care;
- Budget committee;
- Staff;
- Private vendors;
- Special interest groups;
- Unions;
- Neighborhood or civic associations;
- Special employee groups; and
- 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:

- The governor;
- Legislator;
- The parent agency; and
- 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, as an “outsider,” telephones, 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.

---

*The strategy developed to deal with stakeholders should be based on the organizational perceptions of the role, the importance and the level of influence of the stakeholder—as well as the importance of the activity, plan or program.*

---

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 arise if a cause or issue affects them—at least in terms of their perceptions. 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 not significant stakeholders. If, however, the Department of Juvenile Corrections decides to limit religious services or makes a decision which is seen as curtailing juveniles' legal

---

---

---

rights, these groups will become involved at some level.

If top management decides to implement a new program, which will impact working conditions, no doubt the union, employee groups and those affected by the program, as "insiders", will attempt to influence or change the program. This is certainly a possibility when contracting with the private sector.



Stakeholders are not active only when something "negative" is proposed; in fact, the contrary is often true. They often act as supporters of the organization, willing to enhance programs and/or activities. For example, if religious or legal services are to be improved for juveniles, you might find considerable active support from the local Council of Churches and the ACLU.

These examples do suggest, however, that 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.

In dealing with stakeholders, therefore, state juvenile agencies should:

- Identify all possible stakeholders;
- Analyze the reason for the stake;
- Assess the strengths and weaknesses of each stakeholder;
- Evaluate the potential impact of each stakeholder; and
- Develop and implement a strategy for dealing with each stakeholder.



## OVERVIEW OF STAKEHOLDER MAPPING

When we talk about developing a strategy, we are talking about using Stakeholder Mapping. This process has been developed and refined over the years by many management experts. Stakeholder Mapping is an organizational method which helps decision makers assess the possible impact (both positive and negative) of all identified stakeholders when they are presented with:

- An organizational goal or objective;
- A program or activity; and
- A plan of action.

Before processing a specific organizational problem, examine the Stakeholder Mapping form to get a sense of how mapping occurs.

## STAKEHOLDER MAPPING FORM

I	II	III	IV	V	VI
Stakeholder	Assessment	Stakeholder Motivation	Who Influences Them?	Whom Do They Influence?	Aspects of the Program

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 question: “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 and then be influenced by their advice. This situation, however, is not always true; for example, a judge may influence probation officers—but not be influenced by them.

Finally, in Column VI, indicate specific aspects or sections of the program or activity—and how each stakeholder might respond. Would they support each aspect or 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's Y and Z take? Will coalitions develop that were not there before? Will these coalitions help or hinder the proposed 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.).

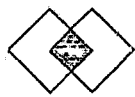
Finally, in mapping, a balancing scale must be developed. Realize that given any projected program or plan, you will not be able to please everyone.

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 does not 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?"



## DECISION MAKING/ PROBLEM SOLVING

Some problems are simple and suggest their own solutions. Most decision makers know how to handle those. But other more challenging problems, e.g., contracting with the private sector, must be researched, defined, analyzed and solved—in a systematic and objective way.

This chapter 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 chapter 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 chapter 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; and
7. Evaluating 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 I need more budget."
  - "The problem is I need more staff."
  - "The problem is I need more equipment."

These 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.

One thought bears repetition: We must be sure to define the right problem. Consider Jonah's situation when he was swallowed by the whale. Once he recognized that he had a problem, he could have stated it in several ways. He might have said:

"In what ways can I get out of this whale?"

or

"How can I survive while I'm in here?"

Jonah also might have stated his problem this way:

"How can I get this whale to let me out of here?"

or

"How can I write a last will and testament and get it to my relatives?"

or

"How can I kill this whale?"

or

"How can I die gracefully?"

Jonah could have settled on one of these questions/definitions without considering all of them. If he had, he would have concentrated all his energy on one solution.

---

---

---

---

In Jonah's dilemma, a great solution to the problem of how to die gracefully in the belly of a whale would be much less valuable than a poor solution to the problem of how to get out of the whale.

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 has five basic rules:

1. Go for Quantity
2. Withhold All Judgment
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 Judgment*

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*

Do not think in old terms. Do not 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 one.

#### *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 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. Because 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 about the problem
- 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—or to add new information to it—or 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 cannot 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 did not 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, then, 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.

---

---

---

## 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 we implement this idea without requiring people to change the way they work?
- \_\_\_\_\_ 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 you need to complete—to make you 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 including a decision-making phase. Everyone will know which steps come in

what 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.

- **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 know exactly where the project is (or ought to be) at any time. At the same, 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.

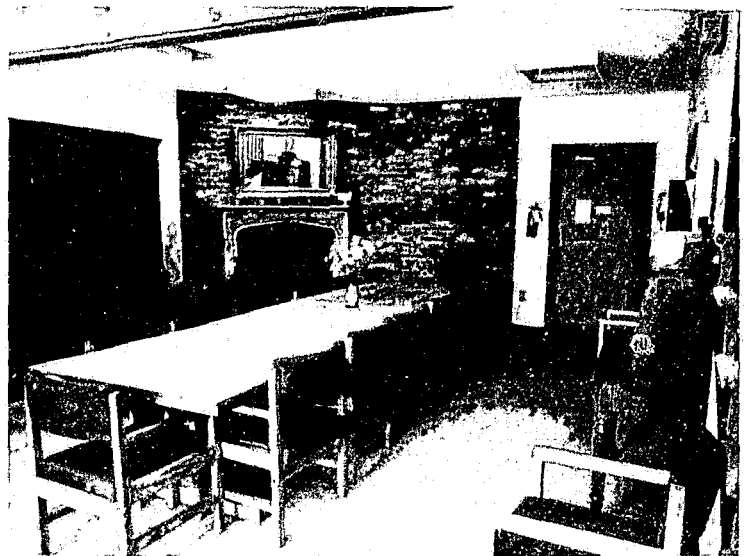
- ***Institutionalize A Project:*** If a project is a manager's "pet," it becomes dependent on the presence and leadership of the manager to succeed. Should the manager leave the agency, or take on new responsibilities, a project can easily bog down and die.

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, 1993." 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 the 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 (3) criteria for knowing whether that outcome has been
- Achieved; and
- 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

1. PROBLEM DESCRIPTION (1–3 sentences): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. DESIRED OUTCOME (1–3 sentences): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. THREE MEASURABLE SUCCESS CRITERIA: \_\_\_\_\_
  - A. \_\_\_\_\_  
\_\_\_\_\_
  - B. \_\_\_\_\_  
\_\_\_\_\_
  - C. \_\_\_\_\_  
\_\_\_\_\_
4. BRIEF DESCRIPTION OF SOLUTION (1–3 sentences): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

BRIEF SPECIFICATION OF ACTIONS (What you will do):

Action 1: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Time to Complete: \_\_\_\_\_ weeks

Name of Do-er(s): \_\_\_\_\_

Completion Indicator: \_\_\_\_\_

Action 2: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ Time to Complete: \_\_\_\_\_ weeks

Name of Do-er(s): \_\_\_\_\_

Completion Indicator: \_\_\_\_\_

Action 3: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ Time to Complete: \_\_\_\_\_ weeks

Name of Do-er(s): \_\_\_\_\_

Completion Indicator: \_\_\_\_\_

Action 4: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ Time to Complete: \_\_\_\_\_ weeks

Name of Do-er(s): \_\_\_\_\_

Completion Indicator: \_\_\_\_\_

Action 5: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ Time to Complete: \_\_\_\_\_ weeks

Name of Do-er(s): \_\_\_\_\_

Completion Indicator: \_\_\_\_\_

---

---

---

6. TIMEFRAME:

Action 1:

Action 2:

Action 3:

Action 4:

Action 5:

7. Evaluating the Results

After you complete your action plan, review and refine it. Ask yourself the following critical questions:

- Does the plan clearly state what will be different once the action plan has been put in place?
- What is going to change?
- How will things be different?
- How would somebody else know that these changes occurred?

Very carefully, examine the desired outcome, the three success criteria and the completion indicator for each of the actions. If you had to depend on these results to evaluate this plan's success, would you feel comfortable?

- Does Action 1 appear to be the first action needed?

This question is most important. If the first action is not the real one or if something else needs to be done before the plan can begin, then the overall plan is in danger of not "getting off the ground."

Ask yourself: What, if anything, needs to be done before the first action? If you answer "nothing," you are on target. Think of it this way: If you start your action plan when you begin work next Monday morning, what will be the very first thing you will do? The answer to this question is Action 1.

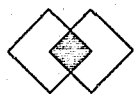
- Does Action 2 naturally follow Action 1? How about Action 2 and the other actions?

Subsequent steps must:

- Provide a clear, specific description of what will be done;
- Leave nothing out (do not assume that some unspecified action will mysteriously happen); and
- Build on the previous action.

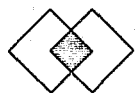
Make any changes you need to make on your action plan now.

# *Public Correctional Policy on Private Sector Involvement in Corrections*



## 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.



## 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.



## 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.

## *A Selected Bibliography\**

- Anderson, Patrick, Charles R. Davoli, and Laura J. Moriarty  
1985 "Private Corrections: Feast or Fiasco." *The Prison Journal* 65: 32-41.
- Barnett, Randy  
1979 "Justice Entrepreneurship in a Free Market." *Journal of Libertarian Studies* 3: 439-451.
- Barnett, Randy  
1985 "Pursuing Justice in a Free Society: Part One—Power versus Liberty." *Criminal Justice Ethics* 4: 50-72
- Barnett, Randy  
1986 "Pursuing Justice in a Free Society: Part Two—Crime Prevention and the Legal Order." 5: 30-53.
- Becker, Craig  
1988 "Privatization, Public Employment, and Democracy." *Yale Law and Policy Review* 6: 88-108.
- Bennett, James T. and Thomas J. DiLorenzo  
1983 "Public Employees Unions and the Privatization of Public Services." *Journal of Labor Research* 4: 33-45.
- Benson, Bruce L.  
1986 "Guns for Protection and Other Private Sector Responses to the Government's Failure to Control Crime." *Journal of Libertarian Studies* 8: 75-109.
- Borna, Shaneen  
1986 "Free Enterprise Goes to Prison." *British Journal of Criminology* 26: 321-334.
- Bowditch, Christine and Ronald S. Everett  
1987 "Private Prisons: Problems within the Solution." *Justice Quarterly* 4: 441-453
- Brakel, Samuel J.  
1988 "'Privatization' in Corrections: Radical Prison Chic or Mainstream Americana?" *The New England Journal on Criminal and Civil Confinement* 14: 1-39.
- Brakel, Samuel J.  
1989 "Prison Management, Private Enterprise Style: The Inmates' Evaluation." *The New England Journal on Criminal and Civil Confinement* 14: 175-244.
- Bronick, Matthew J.  
1989 "Relieving Subpopulation Pressures." *Federal Prisons Journal* 2: 17-21.
- Brown, George  
1983 "Whither Thiboutot? Section 1983, Private Enforcement, and the Damages Dilemma." *DePaul Law Review* 33: 31-47.
- Brown, Lynn  
1989 "Private Corrections—Meeting New Challenges Through Innovation." *Corrections Today* 51(6): 114-116.
- Butler, Stuart M. (editor)  
1985 *The Privatization Option: A Strategy to Shrink the Size of Government*. Washington, D.C.: Heritage Foundation.
- Calvert Hanson, Linda S.  
1991 "The Privatization of Corrections Movement: A Decade of Change." *Journal of Contemporary Criminal Justice* 7: 1-28.
- Camp, Camille G. and George M. Camp  
1984 *Private Sector Involvement in Prison Services and Operations*. Washington, D.C.: National Institute of Corrections.
- Camp, George M. and Camille G. Camp  
1985 *The Real Cost of Corrections*. South

\*Special thanks to Charles W. Thomas, Professor of Criminology and Director, Private Corrections Project, Center for Studies in Criminology and Law, University of Florida and Charles H. Logan, Professor of Sociology, Department of Sociology, University of Connecticut for their considerable contribution to this bibliography.



- 
- 
- 
- 
- Salem, New York: Criminal Justice Institute.
- Camp, Camille G. and George M. Camp  
1985 "Correctional Privatization in Perspective." *The Prison Journal* 65: 14-31.
- Cass, Ronald A.  
1988 "Privatization: Politics, Law, and Theory." *Marquette Law Review* 71: 449-523.
- Cikins, Warren I.  
1986 "Privatization of the American Prison System: An Idea Whose Time Has Come?" *Notre Dame Journal of Law, Ethics and Public Policy* 2: 445-464.
- Cody, W.J. Michael, and Andy D. Bennett  
1987 "The Privatization of Correctional Institutions: The Tennessee Experience." *Vanderbilt Law Review* 40: 829-849.
- Collins, Williams C.  
1985 *Contracting for Correctional Services: Some Legal Considerations*. Washington, D.C.: National Institute of Corrections.
- Cullen, Francis T., Jr.  
1986 "The Privatization of Treatment: Prison Reform in the 1980's." *Federal Probation* 50: 8-16.
- Crants, Doctor R. III  
1991 "Private Prison Management: A Study in Economic Efficiency." *Journal of Contemporary Criminal Justice* 7: 49-59.
- Day, Susan L.  
1987 "The Implications of Prison Privatization on the Conduct of Prisoner Litigation under 42 U.S.C. Section 1983." *Vanderbilt Law Review* 40: 867-888.
- DeHoog, Ruth Hoogland  
1984 *Contracting Out for Human Services: Economic, Political and Organizational Perspectives*. Albany, New York: State University of New York Press.
- Demone, Harold W. Jr. and Gibelman, Margaret  
1990 "'Privatizing' the Treatment of Criminal Offenders." *Journal of Offender Counseling Services and Rehabilitation* 15: 7-26.
- Dilulio, John J., Jr.  
1986 "Prisons, Profits and the Public Good: The Privatization of Corrections." *Research Bulletin No. 1* Huntsville, Texas: Sam Houston State University Criminal Justice Center.
- Dilulio, John J., Jr.  
1988 "What's Wrong with Private Prisons?" *The Public Interest* 92: 66-83.
- Dilulio, John J., Jr.  
1990 "The Duty to Govern: A Critical Perspective on the Private Management of Prisons and Jails." Pp. 155-178 in Douglas C. McDonald, editor, *Private Prisons and the Public Interest*. New Brunswick, New Jersey: Rutgers University Press.
- Donahue, John D.  
1988 *Prisons for Profit: Public Justice, Private Interests*. Washington, D.C.: Economic Policy Institute.
- Dudek and Company  
1988 *Privatization and Public Employees: The Impact of City and County Contracting Out on Government Workers*. Washington, D.C.: National Commission for Employment Policy.

- 
- 
- 
- Dunham, Douglas W.  
1986 "Inmates' Rights and the Privatization of Prisons." *Columbia Law Review* 86: 1475-1504.
- Durham, Alexis M. III  
1988 "Evaluating Privatized Correctional Institutions: Obstacles to Effective Assessment." *Federal Probation* 52: 65-71.
- Durham, Alexis M. III  
1989 "Managing the Costs of Modern Corrections: Implications of 19th Century Privatized Prison Labor Programs." *Journal of Criminal Justice* 17: 441-455.
- Durham, Alexis M. III  
1989 "Origins of Interest in the Privatization of Punishment: The 19th and 20th Century American Experience." *Criminology* 27: 107-139.
- Durham, Alexis M. III  
1989 "The Privatization of Punishment: Justification, Expectations and Experience." *Criminal Justice Policy Review* 3: 48-73.
- Durham, Alexis M. III  
1989 "Rehabilitation and Correctional Privatization: Observations on the 19th Century Experience and Implications for Modern Corrections." *Federal Probation* 53: 43-52.
- Eld, Allison H.  
1990 "Private Party Immunities to Section 1983 Suits." *University of Chicago Law Review* 57: 1323-1351.
- Ellison, W. James  
1987 "Privatization of Corrections: A Critique and Analysis of Contemporary Views." *Cumberland Law Review* 17: 683-730.
- Elvin, Jan  
1985 "A Civil Liberties View of Private Prisons." *The Prison Journal* 65: 48-52.
- Endell, Roger  
1991 "The Public and Private Sectors Must Work Together." *Corrections Today* 53(2): 104-107.
- Ericson, Richard V., Maeve W. McMahon and Donald G. Evans  
1987 "Punishing for Profit: Reflections on the Revival of Privatization in Corrections." *Canadian Journal of Criminology* 29: 355-387.
- Evans, Brian B.  
1987 "Private Prisons." *Emory Law Journal* 36: 253-283.
- Fenton, Joseph  
1985 "A Private Alternative to Public Prisons." *The Prison Journal* 65: 42-47.
- Fenton, Joseph  
1985 "Pro: No Moratorium for Private Prisons." *Privatization Review* 1: 21-24.
- Field, Joseph E.  
1987 "Making Prisons Private: An Improper Delegation of a Governmental Power." *Hofstra Law Review* 15: 649-675.
- Fine, Michael E.  
1982 "Rethinking the Nondelegation Doctrine." *Boston University Law Review* 62: 257-278.
- Folz, David H. and John M. Scheb III  
1989 "Prisons, Profits and Politics: The Tennessee Privatization Experiment." *Judicature* 73: 98-102.
- Gentry, James T.  
1986 "The Panopticon Revisited: The Problem of Monitoring Private Prisons." *The Yale Law Journal* 96: 353-375.

- Geis, Gilbert  
1987 "The Privatization of Prisons: Panacea or Placebo?" Pp. 76-97 in Barry J. Carroll, Ralph W. Conant, and Thomas A. Easton, editors, *Private Means—Public Ends: Private Business in Social Service Delivery*. New York: Praeger.
- Glover, Catherine D. and Elizabeth W. Fox  
1980 "Qualified Immunity for Private Party Defendants in Section 1983 Civil Rights Cases." *Journal of Legal Commentary* 4: 267-287.
- Grant, Judy S.  
1986 "Prisons for Profit." *Hamline Journal of Public Law and Policy*: 123-141.
- Grant, Judy S. and Diane Carol Bast  
1986 *Corrections and the Private Sector: A Guide for Public Officials*, Chicago: The Heartland Institute.
- Hackett, Judith C., Harry P. Hatry, Robert B. Levinson, Joan Allen, Keon Chi, and Edward D. Feigenbaum  
1987 *Issues in Contracting for the Private Operation of Prisons and Jails*. Washington, D.C.: National Institute of Justice.
- Haller, Diane M.  
1986 "Prison Industries: A Case for Partial Privatization." *Notre Dame Journal of Law, Ethics and Public Policy* 2: 479-501.
- Hamilton, Kevin J.  
1986 "Section 1983 and the Independent Contractor." *Georgetown Law Journal* 74: 457-480.
- Henderson, James D.  
1988 "Private Sector Management—Promoting Efficiency and Cost-Effectiveness." *Corrections Today* 50(6): 98-102.
- Holley, Cathy E.  
1988 "Privatization of Corrections: Is the State Out on a Limb When the Company Goes Bankrupt?" *Vanderbilt Law Review* 41: 317-41.
- Hornblum, Allen  
1985 "Are We Ready for the Privatization of America's Prisons?" *The Privatization Review* 1: 25-29.
- Hutto, T. Don  
1988 "Corrections Partnership—The Public and Private Sectors Work Together." *Corrections Today* 50(6): 20-22.
- Hutto, T. Don  
1990 "Privatization of Prisons." Pp. 111-127 in John W. Murphy and Jack E. Dison, editors, *Are Prisons any Better? Twenty Years of Correctional Reform*. Newbury Park, California: Sage Publications.
- Immarigeon, Russ  
1985 "Private Prisons, Private Programs, and their Implications for Reducing Reliance on Imprisonment in the United States." *The Prison Journal* 65: 60-74.
- Jayewardene, C.H.S., and C.K. Talbot  
1982 "Entrusting Corrections to the Private Sector." *International Journal of Offender Therapy Comparative Criminology* 26: 177-187.
- Johnson, Byron R. and Paul P. Ross  
1990 "The Privatization of Correctional Management: A Review." *Journal of Criminal Justice* 18: 351-358.
- Kay, Susan L.  
1987 "The Implications of Prison Privatization on the Conduct of Prisoner Litigation Under 42 U.S.C. Section 1983." *Vanderbilt Law Review* 40: 867-888.

**Keating, J. Michael, Jr.**

1990 "Monitoring the Performance of Privately Operated Prisons and Jails." Pp. 130-154 in Douglas C. McDonald, editor, *Private Prisons and the Public Interest*. New Brunswick, New Jersey: Rutgers University Press.

**Krajick, Kevin**

1984 "Prisons for Profit: The Private Alternative." *State Legislatures* 10: 9-14.

**Kushner, Karen**

1990 "Private Facilities: Meeting the High Standards of Accreditation." *Corrections Today* 52(7): 36.

**Lampkin, Linda M.**

1991 "Does Crime Pay: AFSCME Reviews the Record on the Privatization of Prisons." *Journal of Contemporary Criminal Justice* 7: 41-48.

**Lawrence, David M.**

1986 "Private Exercise of Governmental Power." *Indiana Law Journal* 61: 647-695.

**Leonard, Herman B.**

1990 "Private Time: The Political Economy of Private Prison Finance." Pp. 66-85 in Douglas C. McDonald, editor, *Private Prisons and the Public Interest*. New Brunswick, New Jersey: Rutgers University Press.

**Levinson, Robert B.**

1985 "Okeechobee: An Evaluation of Privatization in Corrections." *Prison Journal* 65: 75-93.

**Levinson, Robert and William Taylor**

1991 "ACA Studies Privatization in Juvenile Corrections." *Corrections Today* 53(5): 242-248.

**Liebmann, George**

1975 "Delegation to Private Parties in

American Constitutional Law." *Indiana Law Journal* 50: 650-719.

**Little, Joseph W., John K. McPherson and William P. Healy**

1985 "Section 1983 Liability of Municipalities and Private Entities Operating Under Color of Municipal Law." *Stetson Law Review* 14: 565-609.

**Locke, Keltner W.**

1987 "'Privatization' and Labor Relations: Some Welcome Guidance from the NLRB." *Labor Law Journal* 38: 166-172.

**Logan, Charles H.**

1987 "The Propriety of Proprietary Prisons." *Federal Probation* 51: 35-40.

**Logan, Charles H.**

1988 "Proprietary Prisons." Pp. 45-62 in Lynne Goodstein and Doris L. MacKenzie, editors, *The American Prison: Issues in Research and Policy*. New York: Plenum.

**Logan, Charles H.**

1990 "Private Prisons: Cons and Pros." New York: Oxford University Press.

**Logan, Charles H.**

1991 *Well Kept: Comparing Quality of Confinement in a Public and a Private Prison*. Washington, D.C.: National Institute of Justice.

**Logan, Charles H. and Sharla P. Rausch**

1985 "Punish and Profit: The Emergence of Private Enterprise Prisons." *Justice Quarterly* 2: 303-318.

**Logan, Charles H. and Bill McGriff**

1989 *Comparing Costs of Public and Private Prisons. A Research in Brief*. Washington, D.C.: National Institute of Justice.

- 
- 
- 
- Loughran, Edward J.  
1988 "Privatization in Juvenile Services—  
Competition Promotes Quality." *Corrections Today* 50(6): 78–83.
- Mahoney, Michael J.  
1988 "Prisons for Profit—Should  
Corrections Make a Buck?" *Corrections Today* 50(6): 104–107.
- McAfee, Ward M.  
1987 "Tennessee's Private Prison Act of  
1986: An Historical Perspective with  
Special Attention to California's  
Experience." *Vanderbilt Law Review* 40:  
851–865.
- McConville, Sean  
1987 "Aid from Industry? Private  
Corrections and Prison Crowding." Pp.  
221–242 in Stephen D. Gottfredson and  
Sean McConville, editors, *America's  
Correctional Crisis: Prison Populations  
and Public Policy*. New York: Greenwood  
Press.
- McDonald, Douglas C.  
1989 "The Cost of Corrections: In Search  
of the Bottom Line. Research in  
*Corrections* 2: 1–26.
- McDonald, Douglas C. (editor)  
1990 *Private Prisons and the Public  
Interest*. New Brunswick, New Jersey:  
Rutgers University Press.
- McDonald, Douglas C.  
1990 "The Cost of Operating Public and  
Private Correctional Facilities." Pp. 86–106  
in Douglas C. McDonald, editor, *Private  
Prisons and the Public Interest*. New  
Brunswick, New Jersey: Rutgers University  
Press.
- McDonald, Douglas C.  
1990 "When Government Falls: Going  
Private as a Last Resort." Pp. 179–200 in  
Douglas C. McDonald, editor, *Private  
Prisons and the Public Interest*. New  
Brunswick, New Jersey: Rutgers University  
Press.
- McEntee, Gerald W.  
1985 "The Case Against Privatization." *The  
Privatization Review* 1: 6–9.
- Maghan, J.  
1991 "Privatization of Corrections:  
Anticipating the Unanticipated." Pp. 135–  
151 in Robert J. Kelly and Donal E. J.  
MacNamara, editors, *Perspectives on  
Deviance: Dominance, Degradation and  
Denigration*. Cincinnati, Ohio: Anderson  
Publishing.
- Matthews, Roger (editor)  
1989 *Privatizing Criminal Justice*. London:  
Sage Publications.
- Mayer, Connie  
1986 "Legal Issues Surrounding Private  
Operation of Prisons." *Criminal Law  
Bulletin* 22: 309–325.
- Mullen, Joan  
1985 *Corrections and The Private Sector*.  
Research in Brief. Washington, D.C.:  
National Institute of Justice.
- Mullen, Joan, Kent J. Chabotar and Deborah  
M. Carrow  
1985 *The Privatization of Corrections*.  
Washington, D.C.: National Institute of  
Justice.
- O'Hare, Michael, Robert Leone and  
Marc Zegans  
1990 "The Privatization of Imprisonment:  
A Managerial Perspective." Pp. 107–129 in  
Douglas C. McDonald, editor, *Private  
Prisons and the Public Interest*. New  
Brunswick, New Jersey: Rutgers University  
Press.

- Palumbo, Dennis J.  
1986 "Privatization and Corrections Policy." *Policy Studies Review* 5: 598-605.
- Pelton, Eric J.  
1986 "Privatization of the Public Sector: A Look at Which Labor Laws Should Apply to Private Firms Contracted to Perform Public Services." *Detroit College of Law Review* 3: 805-823.
- Poole, Robert W., Jr.  
1983 "Objections to Privatization." *Policy Review* 24: 105-19.
- President's Commission on Privatization  
1988 *Privatization: Toward More Effective Government*. Washington, D.C.: President's Commission on Privatization.
- President's Drug Advisory Council  
1991 *Private Prisons Study*. Washington, D.C.: President's Drug Advisory Council.
- Press, Eric  
1990 "The Good, the Bad, and the Ugly: Private Prisons in the 1980's." Pp. 19-41 in Douglas C. McDonald, editor, *Private Prisons and the Public Interest*. New Brunswick, New Jersey: Rutgers University Press.
- Ring, Charles  
1987 *Contracting for the Operation of Private Prisons: Pros and Cons*. College Park, Maryland: American Correctional Association.
- Robbins, Ira P.  
1986 "Privatization of Corrections: Defining the Issues." *Judicature* 69: 324-331.
- Robbins, Ira P.  
1986 "Privatization of Corrections: Defining the Issues." *Federal Probation* 50: 24-30.
- Robbins, Ira P.  
1987 "Privatization of Corrections: Defining the Issues." *Vanderbilt Law Review* 40: 813-28.
- Robbins, Ira P.  
1988 "The Impact of the Delegation Doctrine on Prison Privatization." *UCLA Law Review* 35: 911-952.
- Robbins, Ira P.  
1988 "Privatization of Prisons: An Analysis of the State Action Requirement of the 14th Amendment and 42 U.S.C. 1983." *Connecticut Law Review* 20: 835-864.
- Robbins, Ira P.  
1988 *The Legal Dimensions of Private Incarceration*. Washington, D.C.: American Bar Association.
- Roberts, Albert R. and Gerald T. Powers  
1985 "The Privatization of Corrections: Methodological Issues and Dilemmas Involved in Evaluative Research." *The Prison Journal* 65: 95-107.
- Roper, Brian A.  
1986 "Market Forces, Privatization and Prisons: A Polar Case for Government Policy." *International Journal of Social Economics* 13: 77-92.
- Rutherford, Andrew  
1990 "British Penal Policy and the Idea of Prison Privatization." Pp. 42-65 in Douglas C. McDonald, editor, *Private Prisons and the Public Interest*. New Brunswick, New Jersey: Rutgers University Press.
- Ryan, Mick and Tony Ward  
1989 "Privatization and Penal Politics." Pp. 24-51 in Roger Matthews, editor, *Privatizing Criminal Justice*. London: Sage Publications.

- 
- 
- 
- 
- Savas, E.S.  
1974 "Municipal Monopolies vs. Competition in Delivering Urban Services." *Urban Affairs Annual Reviews* 8: 473-500.
- Savas, E.S. (editor)  
1977 *Alternatives for Delivering Public Services: Toward Improved Performance*. Boulder, Colorado: Westview Press.
- Savas, E.S.  
1982 *Privatizing the Public Sector: How to Shrink Government*. Chatham, New Jersey: Chatham House.
- Savas, E.S.  
1987 "Privatization and Prisons." *Vanderbilt Law Review* 40: 889-899.
- Saxton, Samuel F.  
1988 "Contracting for Services—Different Facilities, Different Needs." *Corrections Today* 50(6): 16-18.
- Sellers, M.P.  
1989 "Private and Public Prisons: A Comparison of Costs, Programs and Facilities." *International Journal of Offender Therapy and Comparative Criminology* 33: 241-256.
- Sigler, Robert T. and Mark G. Stough  
1991 "Using Inmate Labor to Produce Products for the Open Market." *Journal of Contemporary Criminal Justice* 7: 29-40.
- Smith, Bruce B.L.R.  
1975 *The New Political Economy: The Public Use of the Private Sector*. New York: John Wiley.
- Springer, Merle E.  
1988 "Youth Service Privatization—The Experience of a Provider." *Corrections Today* 50(6): 88-93.
- Spurlock, Donna S.  
1987 "Liability of State Officials and Prison Corporations for Excessive Use of Force Against Inmates of Private Prisons." *Vanderbilt Law Review* 40: 983-1021.
- Starr, Paul  
1988 "The Limits of Privatization." *Yale Law and Policy Review* 6: 6-41.
- Sullivan, Harold J.  
1989 "Privatization of Corrections and the Constitutional Rights of Prisoners." *Federal Probation* 53: 36-42.
- Taylor, Max and Ken Pease  
1989 "Private Prisons and Penal Purpose." Pp. 178-194 in Roger Matthews, editor, *Privatizing Criminal Justice*. London: Sage Publications.
- Texas Sunset Advisory Commission  
1991 "Information Report on Contracts for Correctional Facilities and Services." Chapter 4 in *Recommendations to the Governor of Texas and Members of the Seventy-Second Legislature*. Austin, Texas: Texas Sunset Advisory Commission.
- Thomas, Charles W., Lonn Lanza-Kaduce, Linda S. Calvert Hanson and Kathleen A. Duffy  
1988 *The Privatization of American Corrections*. Gainesville, Florida: Center for Studies in Criminology and Law, University of Florida.
- Thomas, Charles W. and Linda S. Calvert Hanson  
1989 "The Implications of 42 U.S.C. 1983 for the Privatization of Prisons." *Florida State University Law Review* 16: 933-961.
- Thomas, Charles W.  
1991 "Correctional Facility Privatization: How It Redefines Legal Rights of

- 
- 
- 
- Prisoners." *The Privatization Review* 6: 38-58.
- Thomas, Charles W.**  
1991 "Prisoner's Rights and Correctional Privatization." *Business and Professional Ethics Journal* 10: 3-45.
- Thomas, Charles W. and Suzanna L. Foard**  
1991 *Private Correctional Facility Census, 1991*. Gainesville, Florida: Private Corrections Project, University of Florida.
- Thomas, Charles W. and Charles H. Logan**  
1992 "The Development, Present Status and Future Potential of Correctional Privatization in America." In Paul Seldenstat, *Privatizing Correctional Institutions*. New Brunswick, New Jersey: Transaction Publishers.
- Travis, Lawrence F. III, Edward J. Latessa Jr. and Gennaro F. Vito**  
1985 "Private Enterprise in Institutional Corrections: A Call for Caution." *Federal Probation* 49: 11-16.
- Turner, Bob**  
1988 "Privatization—Cutting the Red Tape." *Corrections Today* 50(6): 74-76.
- Touche Ross**  
1987 *Privatization in America: An Opinion Survey of City and County Governments on Their Use of Privatization and Their Infrastructure Needs*. Washington, D.C.: Touche Ross.
- Urban Institute**  
1989 *Comparison of Privately and Publicly Operated Correctional Facilities in Kentucky and Massachusetts*. Washington, D.C.: National Institute of Justice.
- Wayson, Billy L. and Gail S. Funke**  
1989 *What Price Justice? A Handbook for the Analysis of Criminal Justice Costs*. Washington, D.C.: National Institute of Justice.
- Wecht, David**  
1987 "Breaking the Code of Deference: Judicial Review of Private Prisons." *The Yale Law Journal* 96: 815-837.
- Weiss, Robert P.**  
1989 "Private Prisons and the State." Pp. 24-51 in Roger Matthews, editor, *Privatizing Criminal Justice*. London: Sage Publications.
- Wooley, Mary R.**  
1985 "Prisons for Profit: Policy Considerations for Government Officials." *Dickinson Law Review* 90: 307-331.



---

---

---

# 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.



**The American Correctional Association  
8025 Laurel Lakes Court  
Laurel, Maryland 20707-5075**