

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

Privatization of State Services

Volume II: Corrections

December, 1992

by

John B. Knox, Legislative Analyst

**Office of Policy and Legal Analysis
Room 101, State House Station 13
Augusta, Maine 04333
(207) 287-1670**

TABLE OF CONTENTS

	<u>Page</u>
PREFACE	i
EXECUTIVE SUMMARY	ii
BACKGROUND	iv
DETAILED FINDINGS	1
I. History & Current Status	1
II. Issues in Privatization	3
III. Attitude of Governmental Agencies, Academic Authorities and Special Interest Groups	7
A. Governmental Agencies	8
1. National Institute of Corrections	8
2. National Institute of Justice	9
3. President's Commission on Privatization	9
4. Federal Bureau of Prisons	10
5. General Accounting Office	11
B. The American Correctional Association	12
C. Academic Authorities	13
1. Charles H. Logan	13
2. Charles L. Thomas	13
3. John J. DiIulio	15
D. Special Interest Groups	17
1. The American Civil Liberties Union	17
2. The American Federation of State, County and Municipal Employees	18
3. The Maine Council of Churches	19
IV. Recent Evaluations	19
A. Juvenile Services - Massachusetts	20
B. Prisons in New Jersey, Pennsylvania and Tennessee	21
C. Hamilton County, Tennessee	21
D. Corrections Facilities in Kentucky & Massachusetts	22
E. Women's Prisons in New Mexico	23
F. Minimum Security Pre-release Facilities in Texas	24

	<u>Page</u>
V. How to Privatize	24
A. First Steps	24
B. Request for Proposal	25
C. Proposal Review	28
D. The Contract	29
E. Monitoring	31
F. Evaluation	34
G. Evaluation Designs	35
H. Oversight	36

BIBLIOGRAPHY	37
--------------	----

APPENDICES

- A. Arguments For and Against Contracting, from Private Prisons: Cons and Pros, Charles H. Logan, 1990
- B. Contractor and Department Responsibilities from Handbook on Private Sector Options for Juvenile Corrections, American Correctional Association, 1992
- C. Sample Contract Provider Monthly & Quarterly Reports from Handbook on Private Sector Options for Juvenile Corrections
- D. Some Hidden Costs of Corrections from Comparing Costs of Public & Private Prisons: A Case Study, C. H. Logan & B. W. McGriff, 1989
- E. Members of President's Commission on Privatization, 1988

PREFACE

In April of 1992, the Legislative Council of the 115th Maine Legislature authorized the Office of Policy and Legal Analysis to conduct research and issue a report on privatization. Generally, privatization entails transferring to private companies the production of services previously performed by government.

This staff study is presented in two volumes. **Volume I** reports on privatization in several service areas. **Volume II** focuses on privatization of correctional facilities. While **Volume I** discusses the general literature on privatization, the primary research tool employed for this portion of the study was a survey of privatization practices in twelve states. The survey was designed and distributed, and its results compiled and analyzed, by the Office of Policy and Legal Analysis.

The primary research tool employed for the portion of the study presented in **Volume II** was an extensive search of the literature on privatization of corrections. The results of that review are detailed in Volume II. Both **Volume I** and **Volume II** of this study describe frameworks for making privatization decisions.

EXECUTIVE SUMMARY

The incidence of privatization of corrections facilities has increased markedly in the United States since the early 1980's. Still only some 2% of federal and state prisoners are housed in private facilities.

This country's experience with the privatization of corrections in the 1980's is not its first. Previous experiences generally ended because of criticism about the quality of care and inmate abuse, although philosophical considerations also played some part.

The increase in the private provision of incarceration services in the 1980's was part of a philosophical move toward privatization of all government services. In the case of corrections, prison overcrowding, in part occasioned by a stricter societal attitude toward crime, furthered the privatization movement.

Generally, federal agencies and most academic authorities maintain the position that the privatization of corrections facilities has enough merit to warrant further study and exploration. There are, unfortunately, few actual evaluations of privatization available because of the difficulty of setting up the necessary controlled design tests and the difficulty of ascertaining and comparing costs. The studies that are available report favorably on privatization. The studies focus on the practical issues of cost and quality of services. These studies do not address the philosophical issues involved in making decisions about privatizing corrections, the most important of which is whether social control functions should be delegated to the private sector.

Many experts are optimistic that certain recent national trends may assist in resolving some issues of concern in the privatization debate. First, a trend in the country, in general, and in corrections, in particular, to seek information and data analysis in policy discussions may result in the privatization issue being more removed from the political arena. Second, the increase in public activism concerning issues such as corrections and the advent of judicial intervention may serve to prevent or identify and eliminate the incidences of substandard care that have been associated with privatization in the past.

For policy makers and implementors planning to privatize corrections, the American Correctional Association offers the following guidelines for decision-making:

I. Request for Proposal

A well-formulated request for proposals to privatize is essential and should include:

1. The levels of performance expected, financial incentives for accomplishing them and the penalties that will apply for inadequate performance. There should be a provision for partial non-compliance without cancellation of the whole contract.

2. The funding available and, if possible, the cost if the state were to perform the function for itself.
3. Clear communication of the factors giving rise to the proposed request, what the agency seeks to achieve, and the nature of the required services, while giving the respondents the opportunity to be creative in their descriptions of how the agency's needs can be met.
4. A requirement that the respondent provide precise staffing patterns, including qualifications, salary level, and work hours for each individual.

II. Proposal Review

No proposal reviewer should have a predisposition regarding privatization. There should be a predetermined set of selection criteria with appropriate weights assigned to each criterion.

III. The Contract

1. For legal and policy reasons, the state needs to refrain from exercising so much control over the contractor that the contractor ceases to be an independent contractor.
2. A traditional measure of the success of a corrections program has been the recidivism rate. Better outcome indicators to establish include: measures of the severity and chronicity of unlawful behavior by program participants; and the educational progress of program participants.

IV. Monitoring

Contract monitoring should not be a process of fault finding but should represent a cooperative, positive, supportive relationship in which both parties work to achieve the requirements of the contract. State run facilities should be monitored in the same fashion as private facilities.

V. Evaluation

A privatization decision should be accompanied by a plan for a systematic, comprehensive evaluation of the costs and effectiveness of privatization, and for comparison to these elements of an actual state-run facility or to the estimated costs for a theoretical state-run facility.

BACKGROUND

Within the last six months the Department of Corrections has privatized the medical services at the Correctional Center and investigated the possibility of privatizing the Maine Youth Center or some of the services at the Center. The purpose of this report is to provide national background on privatization of corrections facilities and services in order to assist legislators in understanding and evaluating the activity that has taken place to date and any further proposals.

This report is divided into the following parts:

- I. A historical perspective on, and the current status of, the privatization of corrections.
- II. Issues in privatization.
- III. Attitude of various governmental agencies, academic authorities and special interest groups.
- IV. Recent evaluations of privatized facilities.
- V. Some guidelines on how to privatize.

DETAILED FINDINGS

I. History and Current Status

Privatization, as essentially a policy issue, shows the same cycles of popularity and unpopularity as do many policy issues.

State, federal, and local governments in this country have long contracted for a wide range of goods and services, from solid waste disposal and movie-making to weapons research and transportation. Indeed, for much of the 19th century and well into the 1960's, numerous states and localities contracted for penal services. In Texas, Michigan, California, Arkansas, and many other jurisdictions, all or part of the prison system has at one time or another been privately owned and operated.

However, according to one writer writing about the country's pre-1960 experience with privatization, "the history of private-sector involvement in corrections is unrelievedly bleak, a well-documented tale of inmate abuse and political corruption. In many instances, private contractors worked inmates to death, beat or killed them for minor rule infractions, or failed to provide them with the quantity and quality of life's necessities specified in often meticulously drafted contracts."¹

Private sector involvement began to grow again, but only slowly in the 1970s. According to Professors Charles Thomas and Linda Hanson, four reasons for the slowness of this growth predominated:

1. The hypothesis that the private sector could be a part of the response to the correctional overcrowding crisis was novel. In addition, innovation has never been a defining virtue of the field of corrections.
2. Government agencies were hardly enthusiastic about the prospect of private competition. The prospect of tens of billions of dollars for corrections agencies to construct and operate new facilities was a strong deterrent to those in control.
3. Existing laws either failed to authorize private management of correction facilities or were construed to prohibit private management.
4. There was no private corrections industry, thus no private sector force pushing for contracts in those places where existing law would permit.²

In the opinion of Professors Thomas and Hanson, in contemporary terms, the birth of the private corrections industry came in 1983

¹John J. DiIulio, Private Prisons, 1988, p. 33

²Charles Thomas & Linda C. Hanson, The Emergence of the Private Corrections Industry in Partnership Focus, March, 1991, p. 20

when Tom Beasley and a small group of associates formed the Corrections Corporation of America (CCA) in Nashville, Tennessee. Beasley's tireless lobbying for correctional privatization, and CCA's ability to integrate experienced correctional as well as business talent into its senior management ranks, has made CCA the cutting edge of the correctional privatization movement.³ As of 1991, CCA had 6,090 beds in 17 facilities compared to its nearest competitors, Precor with 4,110 beds in 9 facilities and Wackenhut with 3,690 beds in 12 facilities.⁴

It is generally felt that the growth in the 1980's stemmed largely from the burgeoning prison population brought on by the "get tough on crime" movement.

Currently, there are 52 secure adult detention facilities in 12 states housing 19,500 inmates in total that are being privately run. Virtually all this privatization has taken place in the last 10 years.⁵ Approximately 1.5% of the 750,000 state and federal prisoners are housed in private facilities.⁶ This total of 11,000 is expected to increase 50% a year by the year 2,000 to about 100,000, 5 to 10 percent of the total prison population.⁷

The question that remains is whether "privatization's time has come", as the data in the preceding paragraph would tend to indicate, or whether it is a practice that will go in and out of fashion, as in the past. The question is unanswerable but the decided trend for society in general, and corrections in particular, to become more data and information oriented would tend to suggest that the objective considerations rather than political ones may become increasingly important in determining the fate of privatization. To date, privatization has stood up well under the limited evaluations to which it has been subjected.⁸ While there is, of course, the possibility that privatization may again see instances of the abuses associated with its pre-1960 popularity, the advent of judicial intervention since that time may provide the previously absent means of preventing and dealing with these problems.

³Thomas & Hanson, p. 21

⁴Thomas & Hanson, p. 24

⁵Julie Bennett, Private Prison Industry Booms in the South, in City & State, Sept. 7-20, 1992, p. Gm4

⁶Hanson & Thomas, p. 23

⁷Linda S.C. Hanson, The Privatization of Corrections Movement, in Journal of Contemporary Criminal Justice, March 1991, p. 2

⁸See section IV of this report.

II. Issues in Privatization⁹

A. Philosophical Concerns

The many issues involved in the decision to privatize corrections can broadly be divided in 2 parts: the philosophical concerns and the administrative and technical issues.

Since the philosophical questions are really unanswerable through research, the majority of this report will deal with the administrative and technical issues. However, in the interests of a full understanding of the complex problem of privatizing corrections, this section will review the philosophical concerns and arguments.

1. Delegating Social Control Functions to the Private Sector

The most fundamental issue in the philosophical debate touches on a core question of political philosophy. Correctional facilities represent a powerful exercise of state power, as they are the means used to deprive persons in custody of liberties otherwise granted to all citizens. The delegation of this authority to private providers raises issues not encountered in contracting for more mundane services. In a facility entirely operated by the private sector, a range of management functions involving the classification and control of inmates might be delegated to the private contractor. Some observers have questioned the fundamental propriety of such a shift.

2. The Political Power of the Private Sector

According to the author, there is consensus in the general literature on the privatization of public services that contracting increases the political power of the private sector. Private organizations with large interests in public sources of support have often developed considerable lobbying skills. Those who fear this new political influence point to the ease with which it might be used to continue unneeded or excessively costly programs. Others see advantages in expanding the political power of the private sector - particularly in the corrections

⁹This section is derived largely from J. Mullen, et al, The Privatization of Corrections, 1986, pp. 70-76, which the author of this paper, after studying much of the extensive writing on this subject, felt to be the most definitive and even analysis of the many available. This report was prepared by Apt Associates under contract to the National Institute of Justice (see footnote 15). The reader is also referred to Charles H. Logan, Arguments For and Against Contracting, in Private Prisons: Cons & Pros, 1990, pp. 41-48, Appendix A; J. Hackett, et al, Issues in Contracting for the Private Operation of Prisons & Jails, 1987, pp. 17-19; and John J. DiIulio, Private Prisons, 1988, pp. 2-3.

field. Private organizations, it is felt, could bring political influence to bear in a field generally devoid of political advantage in appropriations, program improvement and resources.

3. Private Sector Influence on Public Policy

- (a) "Skimming" the Market. Some analysts have pointed to the tendency of correctional agencies to become dependent on a limited number of contractors who are simply more effective in responding to requests for proposals or able to deliver high quality services due to experience or economies of scale. In this context, the ability of government to cancel a contract or even to shift its emphasis may be severely constrained, and contractors may virtually dictate policies such as intake and termination criteria. According to these analysts, the resulting tendency to skim off the "cream of the crop" has been seen in many community corrections endeavors where private providers are able to restrict eligibility standards and to terminate or violate any cases that may subsequently pose performance problems.
- (b) High Occupancy. Since privately operated institutions may be reimbursed by means of per diem fees, their financial interest lies in maintaining maximum population levels. This may, however, conflict with the state's interest in maximizing parole or pre-release opportunities.
- (c) Overcapacity. While private contractors may have an incentive to keep their institutions at maximum capacity, there are visible disincentives for them to allow population levels to rise substantially in excess of capacity. In this respect, the influence of privatization on public policy may be quite positive in the long term. The problem in the short run is, of course, that the conditions of confinement among facilities that remain in the public sector may deteriorate as long as they have no comparable rules governing capacity and conditions.
- (d) Political Corruption. The problem is raised in the privatization debate that officials have used the revolving door to the private sector and profited from their government service, sometimes apparently exploiting the public trust.
- (e) Public Participation. The effects of privatization on the visibility of corrections is another issue of concern. Some have argued that privatization will decrease public input into the delivery of correctional services and will shift accountability to faceless private providers. Others

suggest that the system will become more accountable to the public.

4. Attitudes of Public Employee Unions

Another potentially volatile political issue that may accompany efforts to convert facilities to private sector management involves the reduced power of public employee unions. The American Federation of State, County and Municipal Employees (AFSCME), which represents a large number of corrections employees, argues that contracting "means fewer and poorer quality services for the sake of profits." To avoid these union problems some respondents suggest that private management only be considered for new facilities. At the very least, if a takeover is planned, experts recommend that it have careful planning for the transition and thorough calculation and communication of the anticipated benefits to the state.

5. Attitudes of Corrections Management

Corrections management may not be uniformly supportive of private operations that may threaten a loss of agency control. The author references a recent survey by the National Institute of Corrections as noting that "loss of turf" may, in fact, be more of an inhibitor to expanding the role of the private sector than the actual loss of employment for state workers. Careful planning and communication are felt, by the author, to be the keys to overcoming the objections of public corrections manager to private facility operation.

6. Public Attitudes

Finally, general public attitudes may also constrain the development of private facilities. Fear about their security may combine with traditional public reluctance to host a corrections facility in the community, whether public or privately operated. Without the override powers of a government agency, private contractors must face the delays, costs, and possibly unsuccessful results of efforts to secure local zoning approval. Providers often emphasize the critical need to counter public resistance with systematic attention to public relations activities.

B. The Administrative & Technical Issues in Privatization

1. Pro

a. Cost¹⁰

Proponents of privatization claim that it can save anywhere from 10 to 25 percent of the nation's correctional budget. Unlike government bureaucracies, advocates argue, private firms are freed to a degree from politics,

¹⁰Dilulio, pp. 2-3

bureaucracy, and costly union contracts. Private companies must answer their investors and satisfy the terms of their contract with the government or risk losing it. As in any open market, the firms must compete with each other to maximize services while minimizing costs or go out of business. While government agencies enjoy a virtual monopoly and need not strive to improve the quantity and quality of services, it is argued, private firms will have every incentive to economize and will be held accountable at every turn.

b. Quality of Service¹¹

For a number of reasons, many contend that the quality of privately provided services is likely to be superior, at least in the short term. The elimination of civil service restrictions allows the private provider to control performance and to tailor staff to changing program needs. Independence from the bureaucracy also gives the private provider greater freedom to innovate and to deal more rapidly with problems in the management or delivery of services. Finally, unlike government providers, the private sector is under competitive pressure to perform--pressure that can provide a significant incentive to deliver high quality services.

2. Con

a. Quality of Service¹²

Opponents of privatization claim that major cost cutting can be achieved only at the expense of humane treatment. Private firms, it is reasoned, have no incentive to reduce crowding (since they may be paid on a per-prisoner basis), to foster less restrictive (and to the private firm, less lucrative) alternatives to incarceration and to hire well-trained, well-educated, well-paid, and professional staff.

Others, while agreeing that in the short-term privatization will enhance quality, feel that the long-term prospects for improvement are more uncertain. If the ability to respond to corrections needs becomes concentrated in a small number of corporate providers, the danger exists that reduced competitive pressures may erode any short-term gains in quality.

While, in theory, concerns about staffing, compliance with correctional standards, use of force (lethal and

¹¹Mullen, p. 74

¹²DiIulio, pp. 2-3

nonlethal), strikes, fiscal accountability, and bankruptcy can be addressed through tightly drawn contracts, opponents worry that, in practice, government regulation of privatization will prove inadequate and that the costs of regulation will more than consume any savings from privatization.

b. Monitoring Issues¹³

In contracting for facility operations, the government relinquishes the burden of providing direct services and assumes the responsibility for monitoring private providers. The importance and the difficulties of the monitoring function cannot be overestimated. Quality control is inherently more difficult when the government is dealing with an independent provider and can only exert indirect control. Efforts to strengthen public control can, in turn, lead to the development of two parallel bureaucracies.

c. Short-Term Flexibility vs. Longer-Term Constraints¹⁴

Facility contracting may provide the government with an ability to move quickly in the short term at the possible cost of constraints on the ability to change course over the long term. If the government wishes only to change contractors and not to shut down the facility, it may be significantly constrained. Transferring the operations of an entire facility can be a costly, disruptive break in the continuity of service. The state's own capacity to operate facilities will shrink, making it more difficult to revert to public management. Private firms may take advantage of these situations to low-ball a bid to get their first contract and then greatly increase costs in future years.

III. Attitude of Governmental Agencies, Academic Authorities and Special Interest Groups

There has been a great deal written about the privatization of corrections. In the interest of brevity and of aiding the reader to judge the bias of the material presented, this report will confine itself to the positions of federal agencies, the leading professional membership organization, the three major lobbying or special interest groups, the two academicians given as referrals by the National Institute of Justice,¹⁵ and since both those academicians favor privatization, the academician who in the opinion

¹³Mullen, pp. 75-76

¹⁴Mullen, pp. 75-76

¹⁵The National Criminal Justice Reference. *Private Sector Involvement in Corrections*. The National Criminal Justice Reference Service is the clearinghouse of the National Institute of Justice, which in turn is the research bureau of the U.S. Department of Justice. The Director is appointed by the President and is guided by the priorities of the Attorney General in establishing the Institute's agenda.

of this writer is the leading academician opposed to privatization.

With one exception those agencies or individuals who would appear to be least biased, i.e. the governmental agencies, the academicians referenced by the leading governmental agency and the leading professional membership organization, are favorable toward privatization to the extent of recommending limited use or further study. The one exception is one academician who strongly favors privatization.

A. Government Agencies

1. Criminal Justice Institute, 1984,¹⁶ under contract to the National Institute of Corrections. The Criminal Justice Institute is a private consulting firm. The National Institute of Corrections is an agency of the federal Bureau of Prisons, which acts as an information agency on state and local corrections programs.

The major part of this report consisted of the results of a survey of state correctional agencies. A summary of the findings of this report follows:

- a. Contracting with the private sector has proven to be cost-effective most of the time.
- b. Cost is a major, but not primary, consideration in contracting. Quality of service is the most important consideration.
- c. How the service is delivered is just as important as the quality of service. That is not to say that quality of service should be overlooked, because failure to deliver was the most frequently cited reason for contract termination.
- d. Administrators are open to expanded use of the private sector, but desire to proceed slowly and place a high value on thorough planning and justification.
- e. Contracting is already widespread.
- f. Most of the problems cited in contracting are not insurmountable. They are potentially avoidable by the administrator's use of appropriate planning strategies.

¹⁶C.G. and G.M. Camp, Private Sector Involvement in Prison Services and Operations, 1984, pp. 19-20

2. The Council of State Governments under a grant from the National Institute of Justice, 1987.¹⁷

This report concludes that states that have decided to use private contractors would avoid a series of problems if they were to limit contracting to additional minimum-security beds. "Special needs" prisons, e.g. prisons for the aged, ill, women, or those requiring protective custody, also seem relatively well-suited to the contracting option.

Based on limited information, the report observes that initial contract operations have been reasonably successful - at least in the opinion of the government officials. It is not, however, clear that they have been successful from the perspective of profitability for the private firms. Vendor organizations appear to have made major efforts to do the job correctly.

The report further states that a government's goal in contracting is to obtain new beds quickly; the private sector offers an attractive alternative. However, if the government seeks a more economical operation, the minimal evidence available to date suggests that contracting does not necessarily save a significant amount of money.

3. President's Commission on Privatization, 1988¹⁸

The Commission made the following recommendations:

- a. Contracting should be regarded as an effective and appropriate form for the administration of prisons and jails at the federal, state, and local levels.
- b. Proposals to contract for the administration of entire facilities at the federal, state, or local level ought to be seriously considered.
- c. Problems of liability and accountability should not be seen as posing insurmountable obstacles to contracting for the operation of confinement facilities. Constitutional and legal requirements apply, and contracted facilities may also be required to meet American Correctional Association standards.
- d. The Bureau of Prisons should be asked to prepare an analysis of total government costs for an existing federal correctional institution.

¹⁷J. Hackett et al, Issues in Contracting for the Private Operation of Prisons and Jails, 1987, pp. vii-viii

¹⁸The President's Commission on Privatization, Privatization: Toward More Effective Government, 1988, pp. 149-155. For a list of commission members see Appendix E.

The Bureau plans to take no action on this recommendation.

- e. The Bureau of Prisons, in cooperation with the National Institute of Corrections and Justice, should commission a study of the feasibility of contracting for the private operation of a federal correctional institution or U.S. penitentiary. As part of this study, the Bureau, as an experiment, should contract for the private operation of one new facility comparable to at least one government-run facility, and cooperate with outside researchers in an evaluation of the results.

The BOP completed the recommended study in cooperation with Institutes of Corrections but not Justice. They are in the process of contracting for the operation of a low security, i.e. between minimum and medium security, facility for the detention of aliens. The contracting procedure has proven long, difficult and cumbersome. It has involved law suits by the unsuccessful bidders, cancellation of the original contract, a suit by the winner of the original contract and an investigation by the General Accounting Office. The National Institutes of Corrections and Justice have not been part of the development of this project. The projected facility is comparable to several government-run facilities but there is currently no evaluation plan and, therefore, no plan for any comparison.

- f. The Department of Justice should continue to give high priority to research on private sector involvement in corrections.

4. Bureau of Prisons, 1989.¹⁹ The Bureau of Prisons is a bureau within the Department of Justice and is responsible for supervising federal prisons.

This report indicates that the main reason the BOP has initiated contracts with the private sector and, in particular, with private correctional facilities is the flexibility offered by such arrangements and the reasonable costs of contracting. The need for contract educational and health services varies by institution and location. The use of contract services allows for the supplementing of government staff to meet inmates' needs. The use of private community correctional centers supplements all Community Corrections Center contracting and allows for the placement of many

¹⁹ M.J. Bronick, The Federal Bureau of Prisons Experience with Privatization, 1989, pp. 24-27.

pre-release inmates near their eventual release residence and many short-term offenders in community-based facilities.

Recently, the private operation of BOP correctional facilities has been limited to certain subpopulations of offenders. This report concludes that it is possible that the cost savings potential that makes a private prison profitable and the inmate and public welfare issues that are of concern to correctional agencies restrict private prison management to certain subpopulations of offenders.

More specifically, the report states that it is arguable whether the flexibility gain and cost benefits identified in the report would extend also to contractual management of more "mainstream" facilities, particularly when considering the emphasis the BOP places on having a variety of services, programs, and staff available for inmates. Whether or not private companies can provide these same services for less cost or better services for the same cost is questionable. With these factors in mind, synthesized with the analysis of the "marginal" benefits of flexibility at reasonable costs for the facilities analyzed, the report concludes that it is not likely that BOP contracting for single facilities will extend beyond certain subpopulations of inmates. It is those subpopulations that do not require stringent security or elaborate programs, such as geriatric and nonambulatory inmates, short-term deportable aliens, and some short-term minimum security sentenced offenders, that are appropriate for housing in contract correctional facilities.

The report finally concludes that, at present, the Bureau of Prisons views the benefit of private facilities with regard to the flexibility afforded in controlling a rapidly increasing inmate population by contracting out for the care and custody of appropriate subpopulations of offenders.

5. General Accounting Office, 1991.²⁰ The GAO is an independent non-partisan investigatory agency of the U.S. Congress.

The General Accounting Office report finds that prison privatization is a public policy issue under debate. Opponents contend that operating prisons is a governmental responsibility that should not be delegated. Proponents contend that private contractors can be used responsibly to help carry out this function as long as the government maintains effective control and oversight.

²⁰United States General Accounting Office, Private Prisons, 1991, pp. 4-5.

The report contends that available research on the cost benefits of privatization has been inconclusive. Depending upon the factors that were considered, private prisons were found to be from 10 percent more expensive to 8 percent less expensive than public prisons. Moreover, this research was felt generally to suffer from methodological limitations.

This GAO report finds that BOP lacks the authority to contract for an adult, general population prison and recommends that Congress grant the explicit authority for purposes of running demonstration programs and projects that fully test and evaluate the benefits and limitations of privatization. Should Congress grant the Bureau privatization authority, GAO believes that such legislation should, among other concerns, specifically address the need for adequate controls in contracts to preserve the rights of federal offenders in private facilities, ensure contractor accountability, and provide for effective government oversight.

Should Congress give the Bureau authority to operate private prisons, GAO also recommends that the Attorney General direct the National Institute of Justice to assist the Bureau in testing and evaluating the benefits and limitations of privatization.

The report notes that BOP feels that it currently has the authority to contract for adult, general population prisons but does not feel that to do so is appropriate.

As to what has become of those recommendations, Congress is waiting for the Bureau to request authority to contract and, since the Bureau already feels it has this authority, no action has been taken. In terms of participation by the National Institute of Justice, the Bureau doesn't feel it is far enough along to consider evaluation and, therefore, the issue of Institute participation has not yet come up, although there are indications that the Bureau feels that its internal evaluation mechanism is satisfactory for this project.

B. Professional Membership Organization

American Correctional Association, 1992.²¹ The ACA is the oldest and largest private membership organization for the corrections profession.

The position of the American Correctional Association is that privatization is not a new concept in American life, nor is it in justice. The government has given private contracting increasingly more attention over the years and

²¹American Corrections Association, Handbook on Private Sector Options for Juvenile Corrections, 1992, p. 23.

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. The report concludes that privatization is an important issue to examine and understand.

C. Academicians

1. Charles H. Logan, University of Connecticut, 1990²²

Professor Logan concludes that a very safe generalization from the broader literature on contracting for public services is that often it saves money, but sometimes it does not. It is too soon to say much more than that for prisons, but there are many theoretical reasons, and the beginning of some empirical evidence, to support the proposition that private prisons can offer to government at least the potential for gains in efficiency. However, their greatest economic benefit may be that they make more visible the true costs of correctional facilities.

Relative to quality, Professor Logan's research has led him to conclude that private prisons will fall variously within the same range of quality as do those run by government employees. He feels that as long as there are at least some jurisdictions where prisons and jails might be improved by competition from the private sector, that option ought not to be categorically ruled out.

2. Charles W. Thomas, Center for Studies in Criminology & Law, University of Florida, 1991²³

Professor Thomas feels that the basic kinds of questions being addressed by those who have joined the debate have changed. Today's debate often focuses on whether there are any services the private sector could not or should not

²²Charles H. Logan, Private Prisons: Cons and Pros, 1990, pp. 117, 148. Charles H. Logan is associate professor of sociology at the University of Connecticut. His research was funded by the National Institute of Justice and he is one of only 2 academicians that the Institute provides as referrals.

²³Charles W. Thomas and L.S.C. Hanson, The Emergence of the Private Corrections Industry, 1991. Professor Thomas is director of the Private Corrections Project at the University of Florida, the major source of statistics on the privatization of corrections. He is one of 2 academicians to whom the National Institute of Justice makes referrals.

be permitted to provide rather than whether any services should be privatized.

To Professor Thomas, the prospects of the private corrections industry seem bright. He feels that the industry is likely to experience explosive growth during the 1990's, but it will have to surmount major obstacles that have been placed in its developmental path; for example:

- a. The need for legislative reform. Many states have ignored the need for legislative reform, and thus made the possibility of local and state-level contracting decisions awkward if not entirely impossible.
- b. Opposition within the public corrections establishment. Much fear and hostility persists in the ranks of senior local, state, and federal corrections executives.
- c. Public employee union opposition. According to Professor Thomas, the most vocal and perhaps the most powerful opposition to correctional privatization comes from public employee labor unions. He feels that private sector salaries, benefits, career opportunities, and working conditions are equal to if not better than those of public sector correctional employees, but that these facts are routinely ignored by public employee union representatives.
- d. Anti-competitive statutory provisions and bid requirements. Some laws dictate that private firms can only manage low-security facilities or facilities that house special categories of offenders. Other provisions which Professor Thomas calls anti-privatization tactics are the requirement that contractors accept indemnification clauses in contracts which go beyond indemnifying government for injuries caused by private employees, and include harms directly produced by governmental decisions and policies; being required to maintain costly insurance coverage in amounts far in excess of any reasonable risk associated with their business activities; and being required to design, construct, and operate facilities to meet standards more demanding than required of public sector counterparts.

Professor Thomas also feels that the private sector obstacles even reach into the area of cost comparisons. Often it is not sufficient that private firms commit to providing equal or better services at a lower cost than government

could provide them. Instead, they are obliged to provide equal or better services at substantially lower cost. In short, he feels that there are many problems for the industry to face.

He is, however, optimistic. The hurdles the industry had to overcome during its early years included the initial belief of many that statutory and constitutional provisions would result in correctional privatization being declared unlawful in most correctional contexts, that the private sector lacked the experience and ability to manage facilities housing anything other than small numbers of minimum-security inmates, and that the private sector could not provide appropriate correctional services at lower cost than government.

He feels that recent history undermines each of these negatives. Constitutional and legal challenges to privatization either proved to be impotent, or could be overcome by new legislation. A growing amount of experience revealed that the private sector was entirely able to manage relatively large correctional facilities which housed diverse types of inmates. According to Professor Thomas, dozens of private facilities provided concrete evidence that privatization could yield significant cost savings without an adverse effect on the quality of correctional services they provided.

3. John J. DiIulio, Woodrow Wilson School of Public and International Affairs, Princeton University²⁴

Professor DiIulio feels that privatization efforts have been motivated by the belief that public correctional institutions are too crowded, but the crowding problem is less acute than is commonly supposed. Privatization initiatives have been offered as ways of tightening the reins on corrections budgets, yet spending on corrections remains a pittance compared with most other public expenditures, and the public sector has made innovations that promise to reduce the taxpayers' burden. Privatization ventures are driven by the perception that public corrections managers have failed, but the public record is by no means consistently bleak and in some respects it is quite outstanding. The problems of crowding, rising costs, and failed management are most real in the area of higher-custody prisons and jails,

²⁴John J. DiIulio, The Duty to Govern: A Critical Perspective on the Private Management of Prisons and Jails in Private Prisons and the Public Interest, 1990, pp. 177-178. Mr. DiIulio is Professor of Politics and Public Affairs at Princeton University, a fellow of the Brookings Institution and the author of the National Institute of Justice study guide on private prisons.

but at present the privatizers offer no help for these institutions.

Professor DiIulio states that "When the privatizers boast that they will do better because they, unlike their public sector counterparts, will be immune from the administrative and financial woes caused by governmental red tape, they should be reminded that 'one person's red tape may be another's treasured safeguard'."²⁵ He feels that even a cursory review of the historical, political, and administrative issues surrounding private prison and jail management raises grave doubts, and not a few fears, about the prospects of privatization in this area.

He feels that there are things for which public management is uniquely suited. In the public sector, the relationship between valued inputs (people, money) and desired outputs (less crime, better public health) is often unclear and may even be impossible to specify with any degree of precision; hence "efficiency"--i.e., maximizing output for a given set of inputs or minimizing the inputs needed to achieve a given level of output--is harder to measure. The political and legal constraints on what work gets done, how, and by whom tend to be far greater in the public arena. "Sophisticated" management theories and techniques he feels may or may not help in the private sector, but they are almost always more likely to come away limping when applied to public tasks.

Professor DiIulio also believes it is impossible to devise performance goals for the evaluation of prisons because of a disagreement as to goals and because of all the variables that affect a goal. Instead, he recommends the practice goals of order, amenity and service.

In conclusion, Professor DiIulio feels that even if all his other objections were removed he would still have a concern with the morality of the privatization of corrections facilities. This he finds to have little to do with the profit motive of the privatizers and much to do with the propriety, in a constitutional democracy, of delegating the authority to administer criminal justice to nonpublic individuals and groups.

In his judgment, to remain legitimate and morally significant, the authority to govern behind bars, to deprive citizens of their liberty, to coerce (and even kill) them, must remain in the hands of government authorities. Regardless of which penological theory is in vogue, the message that "those who abuse liberty shall live without it" is the philosophical brick and mortar of every correctional facility. That message

²⁵DiIulio, p. 25

ought to be conveyed by the offended community of law-abiding citizens, through its public agents, to the incarcerated individual.

D. Special Interest Groups

In the experience of this writer there have been three large special interest organizations that have taken a strong position on the subject of privatization of corrections. All three of these groups are opposed to privatization. Their specific opinions are detailed in the following subsections.

1. American Civil Liberties Union²⁶

It is the opinion of the American Civil Liberties Union that the delegation of control and custody of prisoners to private entities, in and of itself, raises serious constitutional concerns. Because the deprivation of physical freedom is one of the most severe interferences with liberty that the State can impose, and because of civil liberties concerns created by private management, some of which are listed below, the Union feels that the power to deprive another of his or her freedom cannot be delegated to private entities.

The civil liberties concerns of the ACLU stem from what it considers to be a history of abuse under private operation and include the following:

- a. Prisoners are likely to suffer deprivation because of placement in a private prison.
- b. Private prisons are likely to have an adverse impact on various aspects of a prisoner's life or on the factors that affect the duration of a prisoner's confinement.
- c. Private prisons are likely to have an adverse impact on substantive and procedural legal rights and remedies of prisoners.
- d. It is likely that a private prison will not comply with all relevant health and safety standards.
- e. Private prisons are likely to result in inappropriate confinement or an inappropriate increase in the use of incarceration as a sanction.
- f. While meaningful work opportunities are both necessary and appropriate, private management is likely to cause exploitation of prisoners under poor working conditions without remuneration for the financial benefit of the private entity.

²⁶ACLU, Delegation of Prison Operations to Private Bodies, Policy Paper #243. No date

2. American Federation of State, County & Municipal Employees²⁷

AFSCME does not believe that the private ownership and operation of correctional facilities is the answer to the present crowding problem in the prisons. The reasons given are as follows:

- a. Although a state or local government may attempt to contract out its correctional facilities, it cannot relinquish the legal responsibility or liability for the incarceration of inmates.
- b. Contracting out correctional facilities to private corporations creates an inherent conflict of interest between a corporation's desire to maximize profits by maintaining maximum capacities and state or local government efforts to develop possible alternatives to incarceration for specific classifications of inmates.
- c. Staff salary and benefit levels make up approximately two-thirds of the cost of operating correctional facilities. Several major corporations involved in the privatization of corrections have clearly indicated that cutting salary and benefit levels is one way they plan to realize profits.
- d. Current salary and benefit levels for corrections staff are extremely low in relation to the responsibilities, complexities, and the unusually high levels of stress and danger that are characteristic of the occupation. Further reductions in salary and benefit levels will severely hinder the recruitment of competent and qualified professionals into the occupation.
- e. Current staff-to-inmate ratios in many state and local correctional facilities are too high to maintain adequate levels of security. While further reductions in staffing levels may create profits for private corporations, the security of the institution may be compromised.
- f. Traditionally, the deprivation of an individual's freedom has been a sanction imposed only by government. Ethical consideration must be given to the legitimacy of delegating such an awesome responsibility to a private, profit-motivated corporation.
- g. Although private corporations argue that they can operate correctional facilities less expensively,

²⁷ AFSCME, Position on Contracting out Correctional Facilities. No date.

governments will assume costs such as the development and monitoring of contracts, the intake and classification of inmates, the risk of potential bankruptcy of the private corporation, and other hidden risks and costs that may not be immediately apparent.

3. The Maine Council of Churches²⁸

The National Council of Churches does not take positions. Each individual state organization is left to take its own position. The Maine Council of Churches appeared at a public hearing on the subject of the privatization of the Maine Youth Center. The Council opposed this privatization on the basis of the fact that it placed too much emphasis on incarcerating juveniles and not enough on community corrections. They felt that there should be substantially more private community corrections facilities that would then result in a significant downsizing of the Youth Center, with cost savings being achieved in this manner.

IV. Recent Evaluations

Charles Thomas, whose enthusiastic comments regarding privatization are contained in the previous section, cites the following main categories of advantages for privatization:

1. Ability to construct new facilities substantially more swiftly than government.
2. Creation of construction cost savings over and above those directly linked to speed of project completion.
3. Operation of both new and existing correctional facilities at per inmate per day costs routinely 10 percent or more below government costs for similar facilities.
4. Provision of a higher quality of correctional services to prisoners.

However, as indicated by the U.S. General Accounting Office cited earlier in this report, there are few scientific evaluations of the effects of privatization to bolster claims of either advantages or disadvantages. This is due to the difficulty of obtaining the side-by-side research design that is the only truly valid way to conduct such evaluations,²⁹ the difficulty of identifying all costs and the difficulty of comparing public and private

²⁸Statement on Juvenile Corrections, Thomas C. Ewell, Executive Director, Maine Council of Churches. Presented to the Joint Select Committee on Corrections, June 30, 1992.

²⁹Hackett et al, pp. 57-59

facilities and programs.³⁰ For example, it has been estimated that 35% should be added to the costs reports of public agencies to get an idea of their real costs.³¹ On the other hand it is estimated that 4% should be added to contract costs for contract administration.³² (For details on hidden cost of corrections see Appendix D.) The problem is further aided and abetted by the fact that even the results of a properly done evaluation are of questionable use in deciding whether to privatize another facility, particularly one in another state. What is required is the result of many such evaluations and those are slow in coming. And yet, even when they are available a paramount issue in judging whether to privatize an individual facility will continue to be what kind of a job could be done by government with this particular facility, and, at that point, how much room is there for improvement.

This paper will cite all the recent evaluations of correctional privatization that have come to this writer's attention. The reader will find an overwhelming portion of them to be favorable toward privatization, which has undoubtedly influenced the recent growth of privatization that was described earlier in this report.

A. Juvenile Services in Massachusetts, 1988
Edward J. Loughran, Commissioner, Dept. of Youth Services³³

According to Commissioner Loughran, privatization of juvenile corrections in Massachusetts has produced 4 major findings:

1. Opening the rehabilitative process to competitive market forces has yielded an abundance of approaches to treating juveniles. Unlike the state bureaucracy, the private provider is better positioned to involve the community as full partners in youth rehabilitation.
2. Tenured staff, complex organizational subsystems, and sheer size make modifying or replacing large institutions a difficult effort. If a provider is not performing up to acceptable standards, the state can serve notice and rebid the contract. Purchase of service accounts permit the state to redirect funding to new programs rather than trying to alter already existing programs in the state bureaucracy.
3. The programs that have replaced the institutions in Massachusetts are not necessarily less costly than their counterparts elsewhere. The author feels that it is dangerous to view deinstitutionalization and privatization solely in terms of money spent. Quality programs will be expensive. However, the move away from

³⁰Logan, pp. 96-117

³¹Logan, p. 100.

³²Logan, p. 103

³³Edward J. Loughran, Privatization of Juvenile Services, in Corrections Today, Oct. 1988, p. 82 & 83

large, state-operated institutions to small, privately managed programs has produced efficiencies.

4. By regularly rebidding contracts, a competitive spirit is maintained that ensures the development of new and varied approaches to combating juvenile crime. The state-run training schools took a low-risk approach and received equally low returns on their investment.

B. Pennsylvania, Tennessee, New Jersey Prisons, 1989
Martin P. Sellers, Campbell University³⁴

This study compared two private prisons in Pennsylvania and one in Tennessee with two public prisons in New Jersey and one in Pennsylvania. Two of the three evaluative pairs were county facilities. No large prisons were included because at the time of this study no large state or regional prisons had been privatized. The conclusion of this study was that the three private facilities were operated at lower costs per inmate than the public facilities. In addition each private facility had more programs available. Two of the three private facilities had notably better overall conditions. In addition to concluding that private prisons operate more efficiently, the author concluded that the option of privatizing some prisons allows the corrections system to evaluate itself through comparative analyses and ongoing monitoring and allows the transfer to public facilities of new techniques developed by private operators.

C. Hamilton County, Tennessee, penal farm, 1989
Charles H. Logan, University of Connecticut
Bill W. McGriff, County Auditor, Hamilton County, Tenn.
Research supported by the National Institute of Justice³⁵

This study concluded that privatizing the Hamilton County, Tennessee penal farm, a 350-bed minimum-to-medium-security facility, generated annual savings of at least 4 to 8 percent and more likely in the 5 to 15 percent range.

³⁴Martin P. Sellers, Private and Public Prisons: A Comparison of Costs, Programs and Facilities in International Journal of Offender Therapy and Comparative Criminology, pp. 241-255. The IJOTCC is a refereed journal, with a circulation of 1,000, founded in 1957.

³⁵Charles H. Logan and Bill W. McGriff, Comparing Costs of Public and Private Prisons: A Case Study, in National Institute of Justice Reports, Sept.-Oct., 1989, p. 2

D. Corrections Facilities in Kentucky and Massachusetts, 1989

The Urban Institute under a grant from the National Institute of Justice³⁶ The Urban Institute is an independent, broadly based research organization which conducts research on social and economic problems.

This study compared a private and public minimum-security facility in Kentucky and 2 private and 2 public juvenile secure treatment facilities in Massachusetts. At the time of the study the Kentucky private facility was the sole adult secure facility under state contract in the country.

In Kentucky, the private facility unit-cost was 10% higher than the public facility. According to the report, this difference is likely to have occurred in part because of: (a) the inclusion of capital cost in the private organization price, (b) economies of scale achievable by the public facility with its inmate population being about 50% larger than the private facility. In Massachusetts, the publicly-operated facility cost was approximately 1% lower than that of the privately-operated facilities.

The report attributes this similarity in cost between the public and private facilities in both states to the fact that competition for these contracts, at least thus far, has not been sufficiently large to drive the cost significantly lower, if indeed lower costs are feasible.

For a substantial majority of the service performance indicators, the privately operated facilities had at least a small advantage. By and large, both staff and inmates gave better ratings to the services and programs at the privately-operated facilities; escape rates were lower; there were fewer disturbances by inmates; and in general, staff and offenders felt more comfortable at the privately-operated facilities.

Data in the report indicates that the privately operated facilities had younger and less experienced personnel, and staff who were compensated less than their counterparts in publicly-operated facilities. The report conjectures that youthful enthusiasm may combat "job burnout" of longer tenured members. By and large, the report found that staff in the privately-operated facilities appeared to be more enthusiastic about their work, more involved in their work, and more interested in working with the inmates. Regarding management, the privately-operated facilities appeared to be more flexible and less regimented, with staff subject to less stringent controls.

The report speculates that at least some of the advantage of the privately-operated facilities could be regained by the public sector in these corrections environments if management and organizational hindrances, such as rigid procedures, could be alleviated.

³⁶The Urban Institute, Comparison of Privately and Publicly Operated Corrections Facilities in Kentucky and Massachusetts, 1989, pp. ES-5-8.

Based on this evidence, the report concludes that use of privately-operated correctional facilities for minimum security adult males and for difficult youth offenders is an appropriate option for state governments. It seems to be an important option, particularly if additional capacity is needed by the state. While the report concludes that these findings do not indicate that private operation should be substituted for existing public facilities, it does indicate that the use of the private sector, in appropriate situations, can be good for both inmates and the public.

E. Women's Prisons in New Mexico, 1991

Charles H. Logan, University of Connecticut under grants from the National Institute of Justice, the Bureau of Prisons and the National Institute of Corrections³⁷

This study compared the quality of confinement in two New Mexico state prisons for women, one public and one private, and a public federal prison for women.

The study found that the private prison outperformed the state and federal prisons, often by quite substantial margins, across nearly all dimensions. The two exceptions were the dimension of care, where the state prison outscored the private prison by a modest amount, and the dimension of justice, where the federal and private prisons achieved equal scores. The results did vary, however, across the different sources of data. The private prison compared most favorably to the state prison when using data from the staff surveys, and consistently but more moderately so when using data from official records. However, when looking only at the inmate surveys, the state prison moderately outscored the private on all dimensions except activity. In absolute terms, quality was high at all three prisons.

By privately contracting for the operation of its women's prison, it appears that the State of New Mexico raised the quality of operation of that prison. The report indicates that all research, regardless of source, reviewed by the state on this subject to date suggested that it is reasonable and realistic to expect high quality from commercially contracted prisons. Factors most likely to promote that quality, judging from the current research, include: (1) a well-designed facility; (2) greater operational and administrative flexibility; (3) more decentralized authority; (4) higher morale, enthusiasm, and sense of ownership among line staff; (5) greater experience and leadership among the top administrators; and (6) stricter, "by the book" governance of inmates.

³⁷ Charles H. Logan, Well Kept: Comparing Quality of Confinement in a Public and Private Prison, 1991, pp. 183-185

Much of the inmates' displeasure with the private prison appeared to be related to its more prison-like atmosphere and tighter administrative regimen.

F. Minimum Security Pre-release Facilities in Texas, 1991
Sunset Advisory Commission, Texas Legislature³⁸

This study compared the actual operation of two privately operated 500-bed pre-release centers with the hypothetical cost of the State of Texas operating the centers. Texas has a statutory requirement that the state can not enter into a privatization contract unless the result would be a saving of at least 10 percent.

The study concluded that the state was saving 14 percent by privatizing these facilities. In addition the private facilities were found to be paying the state \$400,000 per prison in taxes.

V. How to Privatize

Most of the material in this section is taken from the American Corrections Association: Handbook on Private Sector Options for Juvenile Corrections, 1992, and the Council of State Government's Issues in Contracting for the Private Operation of Prisons and Jails, 1987. A few items, perhaps half a dozen, have been developed from this writer's general reading in the field and do not refer to any one specific source.

A. First Steps

1. Before contracting, a corrections department should undertake a systematic, detailed analysis to determine if, and under what conditions, contracting is likely to be helpful to the corrections system. This analysis should include an examination of whether statutory authority for privatization exists, and of current state prison costs, crowding, performance, legal issues involved, availability of suppliers, ways to reduce the likelihood and consequences of contractor defaults, and the attitudes of various interest groups.³⁹
2. In approaching privatization, the department should determine what services it currently provides and at what cost, what services it would like to provide, whether it can provide the desired services itself, and the cost of providing those services itself (even though it may be unable to do so) and through a private contractor.

³⁸Sunset Advisory Commission, State of Texas, Contracts for Correctional Facilities and Services, 1991, p. 9

³⁹J. Hackett et al, 1987, p. viii

3. The department should write a performance work statement defining the activity to be privatized, analyze the current method of carrying out that activity and determine the changes necessary to make it as efficient as possible.⁴⁰
4. The Legislature should determine whether it wishes to establish the priorities for contractor selection; e.g. cost, experience, financial stability, innovative programs, or to leave these items up to the contracting agency.

B. The Request for Proposal

According to most experts, the request for proposal (RFP) is the most important aspect of contracting. Reviewing the responses submitted is the most time consuming aspect.

1. The request for proposals and subsequent contracts should explicitly state: (a) who is responsible for what expenditures, and (b) what levels of performance are expected (including: compliance with minimum standards as to policies, procedures, and practices; results on such performance indicators as maximum numbers of various "extraordinary occurrences"; and compliance with fire, safety, medical, health, and sanitation standards). The RFP's and contracts should also identify sanctions or penalties that will apply for inadequate performance.
2. The contract should identify any operational standards the agency endorses and offer financial incentives for complying with them, and identify specific goals for prisoners and include a structure of incentives for the accomplishment of these goals.
3. Contract proposals should be compared on a cost-benefit basis, not just cost alone.⁴¹
4. The costs of privatization should include proposal request, contract development, monitoring and evaluation costs.⁴²
5. The RFP should be candid and tell potential providers the maximum amount of funding that is available for a given project. If possible, it should provide them with an estimate of the cost the agency is paying or believes it would pay were it to provide the service with state staff. It should indicate that proposals will not be defined as qualified unless their price proposals are equal to or below existing or projected agency costs, but should not impose any further cost savings requirement. It has been found that market forces will usually produce a proposal that assures the best possible services at the most competitive price. The

⁴⁰Logan, 1990, p. 89

⁴¹Logan, 1990, p. 120

⁴²Logan, 1990, pp. 102, 103

contract should not be given to a contractor whose bid is less than what the agency feels is required to do the job.⁴³

6. 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.⁴⁴
7. It is generally useful to provide a brief description of the factors that give rise to the need for contracting.⁴⁵
8. The RFP should concisely describe what the agency seeks to achieve via the efforts of an independent contractor.⁴⁶
9. On one hand, it is vital that the nature of the required services be clearly communicated to all potential providers. On the other hand, it is important that those who prepare responses to RFP's be given the opportunity to be creative in their descriptions of how an agency's needs can be met most effectively and efficiently.⁴⁷
10. One portion of the work responsibility an independent contractor must accept involves the preparation and submission of reports, and the preservation of records.⁴⁸
11. 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, including qualifications, salary level and work hours of each individual.⁴⁹
12. 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

⁴³American Correctional Association, 1992, p. 41

⁴⁴American Correctional Association, 1992, p. 42

⁴⁵American Correctional Association, 1992, p. 46

⁴⁶American Correctional Association, 1992, p. 46

⁴⁷American Correctional Association, 1992, p. 46

⁴⁸American Correctional Association, 1992, p. 47

⁴⁹American Correctional Association, 1992, p. 48

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.⁵⁰

13. The proposal should include a statement of the project time schedule.⁵¹
14. It is 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.)⁵²
15. It should be required that potential providers provide information about their corporate experience and staff qualifications.⁵³
16. If it is desired 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.⁵⁴
17. An RFP should not preclude potential providers from submitting proposals purely because they have no proven record of experience.⁵⁵

For one proposed listing of contractor and departmental responsibilities see Appendix B.

⁵⁰American Correctional Association, 1992, p. 48

⁵¹American Correctional Association, 1992, p. 49

⁵²American Correctional Association, 1992, p. 49

⁵³American Correctional Association, 1992, p. 49

⁵⁴American Correctional Association, 1992, p. 49

⁵⁵American Correctional Association, 1992, p. 49

C. Proposal Review⁵⁶

1. No member of the proposal review committee should be opposed to contracting for the service or services detailed in the RFP.
2. No member of the proposal review committee should be predisposed to favor any particular strategy or method of service delivery.
3. 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.

Without a contrary statute, regulation, or agency policy, the following weights are suggested as reasonable:

- Potential provider's understanding of the background of, need for, and scope of 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 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.

4. The committee should meet and discuss the selection criteria before committee members receive proposals so that they can reach a consensus before the review process begins

⁵⁶American Correctional Association, 1992, pp. 42-53

that will provide greater consistency in the assessments of individual proposals.

The scoring system should 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).

The cited report recommends that ratings should 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.

D. The Contract

1. The government should specify that it be indemnified against any damage award and for the cost of litigation.⁵⁷
2. Selection of inmates for placement in a private facility, and decisions about their movement, is the government's responsibility. The bases for these selections should be written into the contract. Criteria should be mutually agreed upon to avoid future misunderstandings.⁵⁸
3. The state agency should divide the contract into sections so a provider can be in partial non-compliance without canceling the entire contract.⁵⁹
4. The contractor must understand the state's administrative requirements in such areas as the maintenance of files, the preparation of administrative reports, and the submission and processing of invoices.⁶⁰
5. There is a legal and 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.

The cited ACA report recommends that an agency that desires to exert significant control over everyday aspects associated with the delivery of correctional services would be prudent to

⁵⁷Hackett et al, 1987, p. viii

⁵⁸Hackett et al, 1987, p. ix

⁵⁹American Correctional Association, 1992, p. 45

⁶⁰American Correctional Association, 1992, pp. 75-76

refrain from contracting and, instead, to arrange for the delivery of those services via the efforts of its own employees.⁶¹

6. The state agency, should appoint someone through whom the parties to a contract can work in their efforts to achieve the necessary contract compliance. If a breach persists or is so serious that informal efforts would be inappropriate, there should 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.⁶²
7. 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.⁶³
8. 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. The ACA study reports that, 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.

One good outcome indicator is the objective progress the participant achieves in the program. Some significant measures of change are achievement tests that measure the juveniles skill level in math, English, social studies, vocational skills, etc.⁶⁴

⁶¹American Correctional Association, 1992, p. 77

⁶²American Correctional Association, 1992, p. 78

⁶³American Correctional Association, 1992, p. 95

⁶⁴American Correctional Association, 1992, p. 95

9. 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.⁶⁵
 10. The development of written policies and procedures should be required by the contract and be approved prior to program implementation.⁶⁶
 11. The starting date of the contract should allow substantial time for orderly transition and pre-transition training.
 12. The contract should provide for specific penalties for failure to provide specific services and staffing called for by the contract.
 13. States should contractually obligate the private vendor to accept all prisoners in certain specifically designed categories up to the agreed maximum number of inmates.⁶⁷
- E. Monitoring - "Did the contractor fulfill the requirements of the contract?"
1. The most important thing to insure good monitoring is to have a contract that provides measurable objectives in as many areas of operation as possible.
 2. The state should plan (before the RFP is issued) and implement (after contract award) an effective system for continuous contract monitoring. This should include:
 - (a) regular timely reports (showing tabulations and analyses of extraordinary occurrences and other significant performance indicators and the results of onsite inspections);
 - (b) regular onsite inspections (at least monthly and preferably weekly), using prespecified checklists, rating categories, and guidelines on how to complete the ratings;
 - (c) periodic documented fire, safety, health and medical, and sanitation inspections;
 - (d) provision for regular interviews with samples of inmates to obtain feedback on such performance elements as treatment of prisoners, amount of internal security, drug use, and helpfulness and adequacy of educational, work, and recreation programs;

⁶⁵American Correctional Association, 1992, p. 100

⁶⁶American Correctional Association, 1992, p. 101

⁶⁷Hackett et al, 1987, p. ix

- (e) annual indepth, onsite inspections by a team of experts, covering the various procedures used and the results of periodic reports on the facility's quality of services based on precontract specified outcomes and results indicators;
- (f) explicit provision for prompt review by government officials of the written findings from each of the above procedures with prompt written feedback to the contractor, and identification of what needs to be corrected and by when (and subsequent followup to determine the level of compliance); and
- (g) provision for supplying information obtained from the monitoring process by the time contract renewals and rebidding are scheduled - so this material can be use effectively.

The same monitoring procedures should be applied to publicly operated and contractor-operated facilities. Governments with comparable facilities can then use the resulting information as a basis for comparisons - and thus obtain a better perspective on the relative performance of the contractor.⁶⁸

3. 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.⁶⁹
4. Differences in contract 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!"⁷⁰
5. 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

⁶⁸Hackett, 1987, pp. ix-x

⁶⁹American Correctional Association, 1992, p. 96

⁷⁰American Correctional Association, 1992, p. 97

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.⁷¹

6. Effective contract monitors understand the operational and philosophical principles of corrections in their jurisdictions. Contract monitors should be experienced people with respect and status in the contracting agency. Ideally, they should have experience working in correctional programs. Monitors must also be skilled in developing a monitoring plan, negotiating, conflict resolution, and interviewing techniques.⁷²
7. 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 corrections since being on the staff can constitute a conflict of interest.⁷³
8. Contract monitors sometimes inject themselves too forcefully into the everyday management of contract facilities. This can create legal liability problems.⁷⁴
9. A mutually agreed upon visit calendar should be developed. 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.⁷⁵
10. Adherence to this basic principle of announced visits 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.⁷⁶

⁷¹American Correctional Association, 1992, p. 97

⁷²American Correctional Association, 1992, p. 98

⁷³American Correctional Association, 1992, p. 98

⁷⁴American Correctional Association, 1992, p. 98

⁷⁵American Correctional Association, 1992, p. 99

⁷⁶American Correctional Association, 1992, p. 99

11. 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 inmates in the program.⁷⁷
12. 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.⁷⁸
13. When interviewing program staff, it is essential that the monitor is positive and supportive.⁷⁹
14. The objective for the contract monitor is to utilize a presentation style that 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.⁸⁰

For one example of contract providers periodic reports see Appendix C.

F. Evaluation - "Was this particular privatization activity successful?"⁸¹

1. From a state, local and national perspective, it is highly desirable to obtain systematic, comprehensive evaluations of the costs and effectiveness of contracting correctional activities. A government should require that a comprehensive evaluation be made, within 3 years of contract award, of the degree of success of its contracting effort. Where possible the contracted facility should be compared to publicly operated facilities. Other than the philosophical issues, most of the debate over prison contracting can be greatly enlightened by empirical field evidence concerning its elements. It is a great waste of resources if innovative trials of prison

⁷⁷American Correctional Association, 1992, p. 100

⁷⁸American Correctional Association, 1992, p. 100

⁷⁹American Correctional Association, 1992, p. 103

⁸⁰American Correctional Association, 1992, p. 103

⁸¹Hackett et al, 1987, pp. x, 54-59

contracting are undertaken without including appropriate evaluations from which states and local governments, and society, can learn if contracting works, and under what conditions.

2. The evaluation should cover information obtained after the contracting approach has had a chance to get past the shakedown period. A 1-year period is likely to be needed to iron out bugs. The assessment should extend for a minimum of 1 (preferably 2 or more) years beyond the initial startup period.
3. The evaluation activity should begin before the first contract is initiated in order to collect baseline data.
4. For those states that do not have staff available to plan and monitor the evaluation, they should seek outside help such as a university or consulting firm. An evaluation aimed at assessing prison contracting is a complex task and some special expertise is likely to be needed.
5. The performance indicators chosen as evaluation criteria also need to be collected on noncontracted facilities so as to permit comparison.
6. Even the best evaluation will represent the results of only 1 trial. One trial can not give a complete picture.

G. Evaluation Designs⁸²

1. There are three basic evaluation design types: (1) before versus after (time series) evaluations, (2) comparison group evaluations without special assignments of inmates, and (3) experimental evaluations with random assignment of inmates to contract and noncontract facilities.
2. In performing a cost analysis, time-series cost data should be adjusted by a price-level index to reflect changes over time.
3. Used alone the time-series design is quite weak.
4. Inevitably the state will want, and need, to compare the contract facility to similar state-operated institutions. There are numerous characteristics that tend to make two correctional facilities dissimilar. The most troublesome issue is that of the characteristics of inmates. There are numerous procedures for classifying prisoners, using various scales. However, no matter what procedures are followed, it is likely that any evaluation will produce somewhat ambiguous results.
5. Experimental design is the most powerful and preferred form of evaluation. However, it is also the most complex to undertake. In this design the state correction agency would assign inmates

⁸²Hackett et al, 1987, pp. 54-59

of similar security levels randomly to the contract facility.

H. Some Oversight Alternatives⁸³

1. Have the Attorney General select, authorize and approve the projects permitted.
2. Require contract approval by the Department of Finance and Administration.
3. Have the appropriate legislative committees periodically compare the costs and quality of service at public and private facilities in the state.
4. Have the Legislature specify the conditions under which privatization may be an option and the objectives of the privatization.
5. Have the State Auditor conduct a performance audit at the privatized facility annually. This report would cover the reasonableness of the cost analysis procedures used by the Department for comparing the contracted services with similar service provided by the Department.

#187STUDY

⁸³Charles R. Ring, Contracting for the Operation of Private Prisons, 1987, pp. 42, 43, 45.

BIBLIOGRAPHY

1. Comparing Costs of Public and Private Prisons: A Case Study, Charles H. Logan of the University of Connecticut and Bill W. McGriff, in the National Institute of Justice Reports, Sept.-Oct., 1989
2. Comparison of Privately and Publicly Operated Corrections Facilities in Kentucky and Massachusetts, The Urban Institute, 1989
3. Contracting For the Operation of Private Prisons, Charles R. Ring, American Correctional Association, 1987
4. Contracts for Correctional Facilities and Services, Sunset Advisory Commission, State of Texas, 1991
5. Delegation of Prison Operations to Private Bodies, Policy Paper #243, American Civil Liberties Union, no date
6. The Duty to Govern: A Critical Perspective on the Private Management of Prisons and Jails, John J. DiIulio, in Private Prisons and the Public Interest, Rutgers University Press, 1990
7. The Emergence of the Private Corrections Industry, C. L. Thomas and Linda Calvert Hanson, in Partnership Focus, March 1991
8. The Federal Bureau of Prisons Experience with Privatization, M. J. Bronick, Federal Bureau of Prisons, 1989
9. Handbook on Private Sector Options for Juvenile Corrections, American Correctional Association, 1992
10. Position on Contracting out Correctional Facilities, American Federation of State, County & Municipal Employees, no date
11. Issues in Contracting for the Private Operation of Prisons and Jails, J. Hackett, et al of the Council of State Governments, National Institute of Justice, 1987
12. Private Prisons, John J. DiIulio, Princeton University, Crime File Study Guide, National Institute of Justice, 1988
13. Private Prisons: Cons & Pros, Charles H. Logan, Oxford University Press, 1990
14. Private Prisons, United States General Accounting Office, 1991
15. Private Prisons Industry Booms in the South, Julie Bennett, in City & State, Sept. 7-20, 1992
16. Private and Public Prisons: A Comparison of Costs, Programs & Facilities, Martin P. Sellers, Campbell University, in International Journal of Offender Therapy and Comparative Criminology, 1989

17. Private Sector Involvement in Prison Services and Operations, C. & G. Camp, of the Criminal Justice Institute, National Institute of Justice, 1984
18. The Privatization of Corrections, J. Mullen, et al from Apt Associates, National Institute of Justice, 1985
19. Privatization in Juvenile Services, E.J. Loughran, Commissioner, Massachusetts Department of Youth Services, in Corrections Today, Oct. 1988
20. The Privatization of Corrections Movement: A Decade of Change, Linda S. Calvert Hanson, in Journal of Contemporary Criminal Justice, March, 1991
21. Privatization: Toward More Effective Government, The President's Commission on Privatization, 1988
22. Statement on Juvenile Corrections, Thomas C. Ewell, Executive Director, Maine Council of Churches, June 30, 1992
23. Well Kept: Comparing Quality of Confinement in a Public and Private Prison, Charles H. Logan, University of Connecticut, 1991

PRIVATE PRISONS

CONS AND PROS

CHARLES H. LOGAN

New York Oxford
OXFORD UNIVERSITY PRESS
1990

separate set of arguments in opposition. The arguments have been abstracted and adapted from general literature on privatization as well as from discussions specific to prisons.²

Arguments for Contracting

1. *Propriety*

- a. Contracting enhances justice by making prison supply more responsive to changes in demand, both upward and downward.
- b. Contractual wardens have an incentive to govern inmates fairly in order to enhance their legitimation, induce co-operation, lower costs, and ensure renewal of contracts.
- c. Contracting does not jeopardize due process: private and public wardens are equally subject to the rule of law and accountable to the same constitutional standards.
- d. Contracting, in conjunction with governmental monitoring, adds a new layer of independent review of correctional decisions and actions, thus improving due process.
- e. Contracting can help clarify the purposes of imprisonment and the rules and procedures that define due process.
- f. Contracting for operating prisons is compatible with federal law and the laws of many states; specific enabling legislation has been passed in some states.

2. *Cost*

- a. Contracting allows prisons to be financed, sited, and constructed more quickly and cheaply than government prisons; also, private firms are more apt to design for efficient operation.
- b. Contracting across jurisdictions permits economies of scale.
- c. Contracting may reduce overly generous public employee pensions and benefits.
- d. Contracting typically indexes fee increases to the Consumer Price Index, while government costs have been shown to rise faster than the general level of inflation.
- e. Contracting discourages waste because prodigality cuts into profits.

- f. Contracting counteracts the motivation of budget-based government agencies to continually grow in size and to maximize their budgets.
- g. Contracting makes true costs highly visible, allowing them to be analyzed, compared, and adjusted.
- h. Contracting avoids cumbersome and rigid government procurement procedures; vendors can purchase more quickly, maintain lower inventories, and negotiate better prices and values.
- i. Contracting, through more effective personnel management, better working conditions, and less overcrowding, may increase employee morale and productivity while lowering absenteeism and turnover.

3. *Quality*

- a. Contracting provides an alternative yardstick against which to measure government service; it allows for comparisons.
- b. Contracting motivates both governmental and private prisons to compete on quality as well as cost.
- c. Contracting, by creating an alternative, raises standards for the government as well as for private vendors.
- d. Contracting adds new expertise and specialized skills.
- e. Contracting promotes creativity and enthusiasm by bringing in "new blood" and new ideas more often than is possible under civil service.
- f. Contracting promotes quality and high standards by forcing officials and the public to evaluate expenditures carefully, rather than masking costs through overcrowding and substandard conditions.
- g. Contracting will expand the political constituency concerned about legislative reforms of the correctional system.
- h. Contracting could hardly do worse than some current (public) prisons, in terms of quality.

4. *Quantity*

- a. Contractors can help alleviate today's capacity crisis by building new prisons faster than the government can.

- b. Contracting will allow quicker response in the future to meet changing needs or to correct mistakes resulting from inaccurate predictions or faulty policies.
- c. Contracting facilitates the distribution of inmates across agencies or jurisdictions, thereby maintaining occupancy rates at an efficient level (i.e., near capacity but not overcrowded).
- d. Contracting helps limit the size of government.

5. Flexibility

- a. Contracting allows greater flexibility, which promotes innovation, experimentation, and other changes in programs, including expansion, contraction, and termination.
- b. Contracting can avoid capital budget limits through leasing, or spread capital costs over time through lease-purchasing.
- c. Contracting reduces the levels of bureaucracy (red tape) involved in management decisions.
- d. Contracting reduces some of the political pressures that interfere with good management.
- e. Contracting avoids civil service and other government (and sometimes union) restrictions that interfere with efficient personnel management (i.e., hiring, firing, promotion, and salary setting; assignment of duties, work schedules, vacations, and leaves; adequate staffing to avoid excessive overtime).
- f. Contracting reduces the tendency toward bureaucratic self-perpetuation.
- g. Contracting promotes specialization to deal with special-needs prisoners (protective custody, AIDS patients, and so forth).
- h. Contracting relieves public administrators of daily hassles, allowing them to plan, set policy, and supervise.

6. Security

- a. Contracting may enhance public and inmate safety through increased staff training and professionalism.
- b. Contracted corrections officers are less likely to go on strike because they are more vulnerable to termination.

7. *Liability*

- a. Contracting may decrease the risks for which government remains liable, through higher quality performance and through indemnification and insurance.

8. *Accountability*

- a. Contracting increases accountability because market mechanisms of control are added to those of the political process.
- b. Contracting increases accountability because it is easier for the government to monitor and control a contractor than to monitor and control itself.
- c. Contracting promotes the development and use of objective performance measures.
- d. Contracting can help enforce adherence to procedures and limit or control discretion in the discipline of inmates.
- e. Contracted prisons will be highly visible and accountable, in contrast to state prisons which, at least historically, have been ignored by the public and given (until recently) "hands-off" treatment by the courts.
- f. Contractors are forced to be more responsive to the attitudes and needs of local communities when siting a prison.
- g. Contracting can require prisons to be certified as meeting the standards of the American Correctional Association.
- h. Contracting motivates vendors to serve as watchdogs over their competitors.
- i. Contracting will encourage much broader interest, involvement, and participation in corrections by people outside of government.
- j. Contracting provides a surgical solution when bad management has become entrenched and resistant to reform.

9. *Corruption*

- a. Contracting gives managers more of a vested interest in the reputation of their institution.
- b. Contracting pits the profit motive against other, less benign motives that can operate among those whose job it is to punish criminals.

10. *Dependence*

- a. Contracting can increase the number of suppliers, thus reducing dependence and vulnerability to strikes, slowdowns, or bad management.

Arguments against Contracting



1. *Propriety*

- a. Contracting for imprisonment involves an improper delegation to private hands of coercive power and authority.
- b. Contracting may put profit motives ahead of the public interest, inmate interests, or the purposes of imprisonment.
- c. Contracting prisons raises legal questions about the potential use of deadly force.
- d. Contracting creates conflicts of interest that can interfere with due process for inmates.
- e. Contracting may face legal obstacles in some jurisdictions.
- f. Contracting threatens the jobs and benefits of public employees; it is antilabor.
- g. Contracting may threaten corrections officers' sense of authority and status, both inside and outside the prison.

2. *Cost*

- a. Contracting is more expensive because it adds a profit margin to all other costs.
- b. Contracting creates the special costs of contracting: initiating, negotiating, and managing contracts, and monitoring contractor performance.
- c. Contracting may cost more in the long run as a result of "lowballing"—initial low bids followed by unjustifiable price raises in subsequent contracts.
- d. Contracting may cost more in the long run if high capital costs inhibit market entry and restrict competition.
- e. Contracting lacks effective competition in "follow-on" contracts, which are commonplace.
- f. Contracting costs the government extra for the termination, unemployment, and retraining of displaced government workers.

- g. Contracts with cost-plus-fixed-fee provisions provide no incentive for efficiency.
- h. Contracting may have a higher initial marginal cost than would expanding government services.

3. *Quality*

- a. Contracting may reduce quality through the pressure to cut corners economically.
- b. Contracting may "skim the cream" by removing the "best" prisoners and leaving the government prisons with the "worst," which will spuriously make the private prisons look better by comparison.
- c. Contracting will decrease the professionalism of rank and file prison employees because they will be underpaid and insecure and thus not able to develop a career orientation.

4. *Quantity*

- a. Contracting creates incentives to lobby for laws and public policies that serve special interests rather than the public interest; in particular, private prison companies may lobby for more imprisonment.
- b. Contracting, simply by expanding capacity and making imprisonment more feasible and efficient, may unduly expand the use of imprisonment and weaken the search for alternatives.
- c. Contracting on a per prisoner, per diem basis gives private wardens an incentive to hold prisoners as long as possible.
- d. Contracting creates a kind of underground government, thus adding to total government size.

5. *Flexibility*

- a. Contracting may limit flexibility by refusal to go beyond the terms of contract without renegotiation.
- b. Contracting may be stopped in advance, or suddenly reversed in midstream, by adverse public reaction, legal challenges, partisan politics, or organized opposition by interest groups, including public employee unions.

- c. Contracting reduces ability to coordinate with other public agencies (police, sheriff, probation, parole, transportation, maintenance, and the like).

6. *Security*

- a. Contracting may jeopardize public and inmate safety through inadequate staff levels or training.
- b. Contracting may limit the ability of the government to respond to emergencies, such as strikes, riots, fires, or escapes.
- c. Contracting increases the risk of strikes, which may not be illegal for contractor personnel.
- d. Contracting may cause high employee turnover at transition.

7. *Liability*

- a. Contracting will not allow the government to escape liability.
- b. Contracting may cost the government more by increasing its liability exposure.
- c. Contracting shifts risk away from the government, which is the party best able to bear it.

8. *Accountability*

- a. Contracting reduces accountability because private actors are insulated from the public and not subject to the same political controls as are government actors.
- b. Contracting diffuses responsibility; government and private actors can each blame the other.
- c. Contracting may encourage the government to neglect or avoid its ultimate responsibility for prisons; supervision may slacken.
- d. Contracting reduces accountability because contracts are difficult to write and enforce.

9. *Corruption*

- a. Contracting brings new opportunities for corruption (i.e., political spoils, conflict of interest, bribes, kickbacks).

10. *Dependence*

- a. Contracting lowers the government's own capacity to provide services, which makes it dependent on contractors.
- b. Contracting carries the risk of bankruptcy by the vendor.
- c. Contracting may involve exclusive franchises that simply replace public monopolies with private monopolies.

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.

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 comments 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.

Some Hidden Costs of Corrections

- **Capital costs:** land purchases, construction, major equipment, depreciation or amortization.
- **Finance costs:** service and interest on bonds.
- **Opportunity costs:** taxes or rent forgone from alternative uses of land or buildings.
- **Employment (fringe) benefits:** insurance, longevity bonuses, retirement contributions, unfunded pension payouts.
- **Unemployment and workers' compensation costs.**
- **External administrative overhead:** prorated share of the expenses of centralized executive offices (governor, mayor, etc.) or administrative offices (e.g., personnel services, central purchasing, data processing, general services administration).
- **External oversight costs:** inspections, program monitoring, administrative or judicial reviews and appeals of decisions, auditing and other comptroller services.
- **Legal service costs,** including public funds for inmate plaintiffs and defendants as well as for defense of the government.
- **General liability costs:** successful legal claims, punitive damages, fines, court costs, premiums for general liability insurance or costs of administering a self-insurance plan.
- **Property insurance costs:** premiums or self-insurance costs for fire, theft, and casualty protection (or risk cost of uninsured losses).
- **Staff training costs** (when provided or subsidized by another agency).
- **Transportation costs:** transportation services, vehicles, vehicle maintenance, fuel, parts, related costs (when provided by other departments).
- **Food costs** (when other government agencies provide surplus food or subsidies).
- **Interagency personnel costs** (when personnel are borrowed from other agencies for routine purposes or emergencies).
- **Treatment or program costs** (when other agencies provide hospitalization, medical and mental health care, education, job training, recreation, counseling, or other treatment programs and services).

COMMISSIONERS*

David F. Linowes is Chairman of the Commission. He is Professor of Political Economy and Public Policy, and Boeschstein Professor Emeritus at the University of Illinois.

Annelise Graebner Anderson is Senior Fellow at the Hoover Institution at Stanford University in California and former Associate Director of the Office of Management and Budget.

Michael D. Antonovich is a member and former Chairman of the Board of Supervisors for Los Angeles County, the largest local government in the country.

Walter F. Bish is President of the Independent Steelworkers Union at Weirton Steel Corporation, the largest industrial employee-owned company in America.

Sandra Mitchell Brock is an independent government relations advisor, specializing in the areas of transportation and financial services.

Garrey E. Carruthers is Governor of New Mexico since January of 1987.

Richard H. Fink is Founder, President, and Chief Executive Officer of Citizens for a Sound Economy.

Melvin R. Laird has served as a member of Congress for 16 years, Secretary of Defense from 1969 to 1973 and Counselor to the President from 1973 to 1974. Currently he is Senior Counselor for Reader's Digest Association, Inc.

James T. McIntyre, Jr., is a partner in the Washington, D.C. office of the law firm of Hansell & Post, and served as Director of the Office of Management and Budget from 1978 to 1981.

George L. Priest is the John M. Olin Professor of Law and Economics, Director of the Program in Civil Liability, and Director of the Center for Studies in Law, Economics, and Public Policy at Yale Law School.

Ralph L. Stanley is Vice Chairman of Municipal Development Corporation, and former Administrator of the Urban Mass Transportation Administration.

Walter B. Wriston is former Chairman of the Board and Chief Executive Officer of Citicorp.

***President's Commission on Privatization, 1988**