

... reserves the Contractor shall not be responsible for any damages or losses that may be incurred by the Contractor as a result of the termination of the contract. The Contractor shall be responsible for the costs of the U.S.M. Prisoners and Proceedings.

13. **Non-Discrimination in Employment**
The Contractor agrees not to discriminate in any manner on the grounds of race, color, religion, sex, age, sex, marital status or physical or mental handicap.

14. **Relief and Estimation of Time**
The Contractor agrees to prosecute the work continuously and claims for damages shall be made by it for any delay or hindrance whatsoever during the progress of any portion of the work specified in the contract.

15. **Entire Agreement**
This Agreement, including all attachments, and the Contractor's policies and procedures, which are incorporated by reference into the entire agreement of the Contractor, shall be effective and binding on the Contractor.

NEED TO BY: (Date)
John Smith
2-05

NEED TO BY: (Date)



Contracting Prison Operations: A Plan to Improve Performance

Contracting Prison Operations: A Plan to Improve Performance

ACKNOWLEDGEMENTS

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Contracting Prison Operations: A Plan to Improve Performance

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Contracting Prison Operations: A Plan to Improve Performance

EXECUTIVE SUMMARY

As public demand grows for increased performance, contractually managed prisons and related operations around the world are efficiently and effectively addressing the needs of government for professional correctional services. This summary provides an overview of the factors described in the full report that should be weighed when a governmental entity considers privatizing a prison or major prison function. In the U.S., some 34 states and the federal government are contracting for correctional services with private companies.¹ In addition, the United Kingdom has an official policy which states that all new prisons will be commissioned from the private sector. Australia, Canada (Province of Ontario), New Zealand, South Africa, Germany, France, Japan, Israel, Brazil, and Netherlands are among the other countries that have, in recent years, chosen to open or have made plans to open new private prisons in the not too distant future.²

Public Policy Issues

Performance Oriented Government

The goal of performance oriented government is to spend ever scarce resources on the products and services that will provide the best quality in the most cost effective manner.³ Whether the product or service is providing health care or food service in various institutional settings, or prison construction and management in general, some elected officials are attempting to balance government budgets without cutting services or raising taxes through the use of the techniques described in this report.

Contracting for Prisons—A Viable Strategy

Contractually managed prisons across the country have saved government time and costs between 5-20 percent per year for a project over the life of 4-10 year contracts through their construction and operation.⁴ Such savings are obtained through careful contracting, consistent monitoring, and a willingness of government to work with private corporations as a true partner. Working with a private partner:

- Enables the government to contract for specific services and outcomes. Government pays the private corporation when the outcomes are met and can assess penalties for not operating in a manner consistent with the contract.
- Creates an atmosphere of healthy competition

between the private and public sector. Public employees are now competing not only based on skill and ability, but also based on how cost effective they can become. The private sector is also challenged to demonstrate “best value.”

Initial Issues to Consider

The most important issues include the implementation of systems that increase in accountability and a focus on quality, cost savings, and outcomes. Other issues include the following:

Legal Issues

There are rules in all jurisdictions which determine whether a governmental agency can contract with a private company for government services. The first step in working toward a formal partnership with a private company is to ensure the country, province, state, or local government has the legal right to incarcerate prisoners in a contractually managed prison. In addition, labor contracts may need to be addressed.

Develop Enabling Legislation

Many states and provinces have developed specific enabling legislation in order to guide development and use of private prisons built and managed within their sphere of control. In most cases, the legislation is designed in partnership with those who have a stake in the development of the correctional facility (e.g., state and local governmental leaders, as well as community and business leaders). In some cases, such as in Ohio, legislation was written after the contractually managed prison was constructed to improve understanding of the how state and local governments should function with the prison managers (i.e., state or local governmental partners would have oversight and monitoring responsibilities.)⁵

Transfer of Risk

Something that is very important to the success of a Public-Private Partnership (PPP) is limiting exposure to the government agency through a transfer of risk. This can probably best be accomplished by consulting an insurance broker from the province, state, or local area. The broker needs knowledge of insurance availability for the project and location. It is important to learn, based on actual experience, what liability limits in the geographic region exist and are possible to procure.

Contracting Prison Operations: A Plan to Improve Performance

Risk Control

Inherent risks that cannot be transferred must be understood and evaluated. These risks include political risk (i.e., stability), and economic risk such as high inflation. Another way to improve performance and limit problem potential is the use of established and recognized performance standards and outcome based measures. (See the MTC Institute publication *Measuring Success: Improving the Effectiveness of Correctional Facilities* at <http://www.mtcinstitute.com/publications/MeasuringSuccess.pdf>.)

Financial Considerations

Cost control demands tend to be the issue that likely prompts elected officials to consider a PPP. In the United States (U.S.), elected bodies have generally imposed some threshold of savings that must be attained in order to justify the solicitation and contracting for service. In some cases, such as Michigan and Ohio, the cost savings have been set at a minimum of five percent. It should be noted that when dealing with multi-million dollar contracts, even one percent represents huge potential savings.

The common approach to PPP in the United Kingdom (UK) is the willingness to let the private sector finance the capital debt and for the contract to be between 25-30 years. The process for addressing the demand for beds follows more of a design, finance, build, and operate (DFBO) process whereby funding is provided by the government. These operational contracts are generally 10 years in length.

Cheaper Is Not Always Better

Correctional Contracting for services need to adopt “best-value” selection criteria. “Best-value” is rooted in the simple concept of value—selecting firms to provide services or projects based on qualifications and technical merits, not just on lowest cost—as long as the price is the true value of what is promised. Contracts must include performance measures and build in the level of quality, cost savings, and outcomes expected. Governments are becoming better shoppers, and realize that the best value is not always the cheapest. The more complex the privatization process is, the more important it is to have a best-value selection criterion.

The Bottom Line

A comprehensive review of the research literature regarding contractually managed prisons by the Reason Foundation examined 28 research reports that

compared cost data for private prisons to government-operated facilities. Of those studies, 22 (79 percent) found significant budget savings, conservatively estimated to be between 5 and 15 percent, due to privatization.⁶

Road Blocks Which Impede Progress

Political Considerations

In general, public officials have a genuine commitment to public service. They have a desire to serve the public interest by providing solutions to problems faced by government. Oftentimes, changing the status quo can be an uphill challenge, with some elected officials and government managers invested in how things have always been done. As is the case in choosing any service or product, it is important to obtain information from companies operating prisons to become an informed consumer.

Organized Groups

There are ad hoc and organized groups in every state or province who will lobby diligently and consistently against contracting any government service or function, and prison construction and operation is certainly not exempt from such objections.

Practitioner Considerations

Communication Is Critical to Successful Public-Private Partnership

PPP's communication is generally driven by public policy and politics. In developing a strategy, “everyone” should be involved, including experts in policy, finance, process, construction, and operations; and most importantly, both public and private partners.⁷ In addition, stakeholders from all sides of the issue should have the opportunity to discuss their fundamental beliefs (i.e., opinions and emotions of the voters).

Standards for Incarceration

Guiding principles, goals, and standards have been written by correctional leaders in the U.S. as well as in other countries. Managers subscribe to these guidelines in order to run safe, secure, and professional institutions.

The Contractual Partnership

Once the decision to engage in a PPP has been made, a solicitation for services is the best way to determine

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whether this type of PPP will be beneficial for the state or province. The solicitation must be specific and must tell all prospective bidders the entire ramification of work desired, the length of the contract, and what part the government will play in this partnership.

Statement of Work

The most important part of a Request for Proposal (RFP) is the statement of work. The state or province must ask for the services it needs in as detailed a manner as possible. This includes having the state or province specify the outcomes expected from the prospective bidders, as well as defining how outcomes will be measured and how managers would be incented to ensure there are no failures or omissions.

The Contract

In some instances, a contract is already included in the RFP, and the bidders must accept it as part of their bid. In other cases, the RFP is incorporated by reference and becomes the essential part contract. Both approaches, described in further detail later in the report

have issues, which must be addressed by all parties before and after a contract is signed.

Monitoring

Monitoring is the backbone of a PPP contract. Instances where contracts don't meet performance expectations can often be attributed to little or ineffective monitoring.

Conclusion

One of the best ways to improve efficiency, save money, and increase the value of services purchased is through competition within government. Savings attributed to this competition have been documented and are worth consideration by governmental officials who are interested in maximizing the use of scarce resources, improving the quality of service, and establishing a competitive environment which is accountable and dedicated to continuous improvement.

Contracting Prison Operations: A Plan to Improve Performance

INTRODUCTION

Around the world, contractually managed prisons and related operations are efficiently and effectively addressing the needs of government for professional correctional services. In the U.S., some 34 states and the federal government are contracting for correctional services with private companies.¹ Furthermore, the United Kingdom has an official policy that all new prisons would be commissioned from the private sector. In addition, Australia, Canada (Province of Ontario), New Zealand, South Africa, Germany, France, Japan, Israel, Brazil, and Netherlands, to name a few, have all opened in recent years or will open new private prisons in the not too distant future.²

This publication provides information about the factors that should be weighed when a governmental agency considers privatizing a prison or major prison function. Instituting a competitive government program elevates certain impediments that must be addressed, but delivers the ability to spend ever scarce resources on products and services which provide the best value in the most cost effective manner.

Successful outcomes have resulted in more and more government leaders raising expectations for corrections and using new approaches. Whether the product or service is providing health care, substance abuse treatment, or food service in various institutional settings, or prison construction and management, many government leaders are headed in the competitive direction for the reasons set forth in this policy study.

money. PPPs enable government to contract for specific services (e.g., prison operations, health care, education, substance abuse treatment, food service, and maintenance) and specific outcomes. In these partnerships, government typically derives higher levels of performance, by requiring established outcomes be met.

Terminology such as “public-private partnerships” “outsourcing”, “privatization” or “competitive sourcing” are occasionally used to describe private company involvement in the provision of services for government. A competitive environment is the best option to ensure perpetual performance improvements as well as efficiency, programming, and outcome oriented operation of correctional facilities. This approach will likely provide even greater transparency and accountability, bringing about holistic change to the culture of corrections management.

In every state or province there are groups, both ad hoc and organized, which are typically supported by unions, who will lobby diligently and consistently against contracting facility management or operations, service or function to anyone other than a government employee. They may even promote the notion that profits are not allowable on government contracts. Changes in the direction of government to establish a cost competitive and performance-based approach take strong and purposeful leaders with a willingness to communicate this to the public.

Finally, this report provides a contract oriented checklist and information on successful cost models to help

In the absence of competition, the corrections systems feel only limited pressure to make changes.

Some elected officials are looking for alternatives to ‘business as usual’ and understand that PPPs can be a tool to help address the complex issues. They seek out information, the kind provided in this report, when they find that services provided by government workers are so costly and ineffective that other ways of doing business must be explored in order to stretch the budget or to complete the projects they have promised their constituents.

PPPs create competition between the private and public sector, resulting in a performance oriented atmosphere. In a competitive environment, all staff understand they need to find ways to improve performance and save

elected officials and governments with the strategies, research, and details of how to implement a successful PPP to arrive at a more efficient and effective prison or prison function.

PUBLIC POLICY ISSUES

Performance Oriented Government

Performance oriented government is the concerted effort on the part of responsible government managers to spend their ever scarce resources on products and services which provide the best quality in the most cost effective manner.³ Whether the product or

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service is providing health care or food service in various institutional settings, or prison construction and management, some elected officials are attempting to balance government budgets without cutting services or raising taxes through the use of the techniques described in this report.

Medicaid, education, welfare and prisons continually vie for the lion's share of budgets in many states. In most instances, costs of government services are increasing faster than the revenues. The budgets for most state correctional agencies either rival or surpass all other human service agencies. As an example, in the Michigan 2004-5 budget, the Department of Corrections spent more than \$1.7 billion from the state's general fund, or more than 20 percent of the state's general fund revenues, to incarcerate 49,000 prisoners and pay 19,000 employees.⁸ Each dollar spent on prison management is one dollar less for K-12 education, higher education, medical treatment, or child welfare.

Kevin Flynn, in the *Rocky Mountain News* on October 19, 2005, reported that, "Colorado's prison population has more than doubled in 10 years....Twenty years ago, running the state prison system took 2.8 percent of the state general fund. This year, it's taking 8.6 percent of that pie."⁹

The dilemma of how to spend tax dollars most effectively was the impetus in Arizona several years ago behind the establishment of the Governor's Office of Excellence in Government. A competitive government environment is a management tool which enables the state agencies to better meet the needs of their customers by lowering costs, improving service, and ultimately re-focusing the state on those few services that only the government can provide.¹⁰

Competition in government has been cited by Geoffrey Segal, Director of Government Reform, Reason Foundation,¹¹ and David Osborne as one of the ways to save money and increase value of the product or service purchased.¹² James Blumstein and Mark Cohen also posit that competition in government caused by the mere presence of private prisons in a state will eventually generate cost savings in the public prisons as public managers emulate the conservative fiscal processes adopted by the private corporation.¹³

In a February 2005 report entitled *Priority Colorado*, the Reason Foundation and the Independence Institute

think tank urged the state of Colorado to increase contracting with private companies as a cost saving measure. "As a rule of thumb, competition can typically lower costs 15-30 percent while maintaining or improving service levels—and that is key to the challenges Colorado faces," the report said.¹⁴

Decisions need to be made based on the facts and the value of competition on all aspects of government. When the government competes, efficiencies are found and programs and costs improve. While many have done so already, why then haven't more government leaders jumped on the performance driven PPP bandwagon? What are some of the pitfalls a state will face when the decision to privatize has been placed on the legislative agenda, and what can a state do to find the most cost effective path in building and operating prisons? These questions and others are addressed in this policy study.

Contracting for Prisons—A Viable Strategy

Contractually managed prisons save money—both the building and the operation of prisons across the country have saved government time and between 5-20 percent per year for the project over the life of 4-10 year contracts.⁴ A report from the Allegheny Institute found that Delaware County in Pennsylvania had a total savings from private construction, private management, and debt service of \$64 million over seven years.¹⁵ Such savings require careful contracting, consistent monitoring, and a willingness of government to work with private corporations as a true partner. Working with a private partner:

- Enables the government to contract for specific services and outcomes. Government pays the private corporation when the outcomes are met and can assess penalties for not operating in a manner consistent with the contract.
- Creates an atmosphere of healthy competition between the private and public sector. Public employees are now competing not only based on skill and ability, but also based on how cost effective they can become. The private sector is also challenged to demonstrate "best value."

Initial Issues to Consider

Legal Issues

Whether you call PPP "outsourcing", "privatization" or "competitive sourcing", there are rules in all jurisdictions which determine whether a governmental

Contracting Prison Operations: A Plan to Improve Performance

agency can contract with a private company. The first step in working toward a formal partnership with a private company is to ensure the country, province, state, or local government has the legal right to incarcerate prisoners in a contractually managed prison. In addition, labor contracts may need to be addressed.

The government has the sole responsibility to determine whether an individual has violated a law, and if so what the penalty should be. However, there has been no intrinsic legal requirement, at least in the American Constitution, which states that penalties such as prison terms must be served in a public jail or prison, and not in a contractually operated prison.

A review of U.S. state statutes reveals that some states have permissive language concerning PPPs, some states have explicit reservations concerning such partnerships, and in many states there is no legislation either enabling or prohibiting such action. In some instances, the chief legal authority in the governmental entity (e.g., Attorney General) can be called upon to issue a legal opinion regarding PPPs.

A study completed by the Fraternal Order of Police showed no legislation either enabling privatization or forbidding it in Australia, Netherlands Antilles, New Zealand, Scotland, and South Africa.¹⁶ England, where public-private prison projects exist, and Israel, who just recently awarded a contractually operated prison project, have legislation which permits such contracts.¹⁷

While governmental entities have enacted some restrictions on PPPs for incarceration, such as forbidding the private corporation from releasing or pardoning an inmate, only some heavily unionized states even entertain legislation that would prohibit PPP altogether. Most elected officials are open to PPPs as an opportunity to improve the efficiency of government and more effectively direct the flow of tax revenues.

Development of Enabling Legislation

Many states and provinces have developed specific enabling legislation in order to guide development and use of contract prisons built and managed within their sphere of control. In most cases, the legislation is designed in partnership with those who have a stake in the development of the correctional facility (e.g., state and local governmental leaders, as well as community and business leaders). In some cases, such as in Ohio, legislation was written after the contrac-

tually managed prison was constructed to improve understanding of the how state and local governments should function with the prison managers (i.e., state or local governmental partners would have oversight and monitoring responsibilities).⁵

Legislation can clarify a number of important elements of prison operations and guide the effective implementation of contracting for success. The most critical elements would include but not be limited to such components as:

- Establish agency responsibilities;
- provide solicitation guidance (i.e., best value) and methods for the selection of contract partners, including the prioritization of selection factors;
- direct the use of professional standards and outcomes with reporting and accreditation requirements;
- determine an evaluation process and the factors that determine success;
- determine, in partnership with stakeholders, a cost savings model and thresholds;
- provide direction on the monitoring of all prisons;
- provide liability protection thresholds;
- guide facility acquisition guidelines; and
- set parameters of the financial terms and length of contract.

The State of Oklahoma has a thorough enabling statute which not only includes requirements for the state contracting with private corporations, but also requirements for private corporations who build prisons in Oklahoma for non-Oklahoma inmates. The Oklahoma Department of Corrections (DOC) Web site has extensive information not only on legislation but also on cost comparisons which show that the prisons operated by private corporations operate more economically than do public facilities.¹⁸ The Oklahoma cost model is also cited as providing an "...exemplary analysis of overhead costs..."¹⁹

Transfer of Risk

Something that is very important to the success of a PPP is limiting exposure to the government agency through a transfer of risk. This can probably best be accomplished by consulting an insurance broker from

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the province, state, or local area. The broker needs a knowledge of insurance availability for the project and location. It is important to learn, based on actual experience, what liability limits exist in the geographic region and are possible to procure.

Another critical element of a successful initiative is a method to assure performance of one or more of the partners and their subcontractors. This usually takes the form of a Performance Bond. In some international communities, governments may wish to allow an irrevocable letter of credit from a bank for such protection. However, a letter of credit “typically does not guarantee sufficient funds to complete the project; administer contract completion; or assure that rightful claims by subcontractors, suppliers and laborers will be paid.”²⁰ Often a Performance Bond of up to 25 percent of the annual contract value will provide adequate protection without the extra costs of a greater percentage, excluding construction contracts where a 100 percent bond is typically desired.

Risk Control

Inherent risks that cannot be transferred must be understood and evaluated. These risks include political risk (i.e., stability), and economic risk such as high inflation. In some locations (e.g., Arizona), departments of corrections have contractually insulated themselves from liability exposure for most issues excluding those

are also sharing medical costs above a set threshold or accepting costs above a preset threshold. This effectively addresses the risk associated with catastrophic health problems. An entity can also mitigate medical risk through the use of professional standards such as those employed by the National Commission on Correctional Healthcare (NCCHC at <http://www.ncchc.org/>) or the Joint Commission on Accreditation of Health Care Organizations (JCAHO at <http://www.jcaho.org/>). It is important to review for inclusion the standards of care and medical protocols and the development of a specific formulary for physicians to use when writing prescriptions for pharmaceuticals.

In the final analysis, it is inevitable that there will be those items that can not be completely controlled. Partners must be aware and evaluate these, planning accordingly to address them.

Financial Considerations

Cost control demands tend to be the issue that likely prompts elected officials to consider a PPP. In a recent book entitled *Measuring Prison Performance: Privatization and Accountability*, discusses fundamental issues related to cost comparisons asking, “How many taxpayer dollars are currently spent?” and “How many taxpayer dollars would be devoted when the services are provided through a contract?” “If an alternative scenario appears to be less expensive than the status

“Best Value” means a value determined by objective criteria that may include, but is not limited to, experience, functions, features, life cycle costs, price, and other criteria deemed appropriate by the agency.²³

where a court finds fault with agency policy. Another way to improve performance and limit problem potential is the use of performance standards. The MTC Institute published a report²¹ that provides a roadmap for establishing a formal structure of accountability through firmly recognized outcomes. The American Correctional Association (ACA) and the Association of State Correctional Administrators (ASCA) have also been developing performance/outcome standards. All should be reviewed for applicability and inclusion.

Several other risk control strategies are dependent on the jurisdiction and legal requirements. Properly developed contracts generally include indemnity and hold-harmless clauses. Some government agencies

quo (and of acceptable quality), the money saved could be returned to citizens for other uses.”²²

The common approach to PPP in the United Kingdom (UK) is the willingness to let the private sector finance the capital debt and for the contract to be between 25-30 years. Their process for addressing the demand for beds typically have followed a design, finance, build, and operate (DFBO) process whereby funding is provided by the state. These operational contracts are generally 10 years in length.

A benefit of a private finance initiative in the UK is the due diligence on the contract by a second or third

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party (e.g., the banks and the construction partner). This allows for greater protection of the funding stream which will always protect the debt payment from performance failures. The initiative can then be backed up by parent company guarantees that are often based on 150 to 250 percent of the annual operating revenues.

What is also common in the UK market is that each member of the consortium is likely to be an equal equity partner with the combined partnership assuming 10 percent of the debt. This provides a return on the project to all partners and also allows the debt potentially to be sold for up to 3-4 times its original value. However, this approach may escalate the costs associated with these arrangements.

Given the savings that are required, studies of PFI projects in the UK would suggest that the private sector can deliver savings to government in the region of 50 percent of over the life of the DFBO project. This includes construction, operations, and an improved delivery time of projects.

In the U.S., elected bodies have generally imposed some threshold of savings that must be attained in order to justify the solicitation and contracting for service. In some cases, such as Michigan and Ohio, the cost savings is set at a minimum of 5 percent. It should be noted that when dealing with multi-million dollar contracts, even one percent represents huge potential savings. In the U.S. federal system, "A contract award is made to the responsible bidder whose bid, conforming to the Invitation For Bids, represents the best value to the Bureau of Prisons, considering only price and price-related factors specified in the Invitation for Bids."²⁴

The decision to enter into a public-private venture to build and manage or just manage a prison should be based on the "best value."

Cheaper Is Not Always Better

Correctional contracting for services needs to catch up with best practices of privatization of other services nationwide by adopting "best-value" selection criteria. "Best-value" is rooted in the simple concept of value—selecting firms to provide services or projects based on qualifications and technical merits, not just on lowest cost—as long as the price is the true value of what is promised. Governments are becoming better shoppers, and realize that the best value is not always

the cheapest. Simply selecting the cheapest alternative assumes all other things are equal, which they rarely are. The more complex the contracting process is, the more important it is to have a best-value selection criterion.

When the goal of contracting is a mix of cost savings and other objectives, best-value procurements still allow all factors to be weighed appropriately when making the decision. Policy-makers now recognize that with contracting they are often buying something different from the services traditionally provided in-house. Best-value selection allows these differences to be properly weighed in context of desired outcomes.²⁵

The simple computation of taking the per diem per prisoner cost of running a public prison; subtracting 5-7 percent (whatever is required by state or provincial law) and telling the contractor, "This is the per diem we will pay", underestimates the indirect or unavoidable costs. These costs include such items as administrative costs, salaries of governmental employees who monitor the contract, those who determine classification and time computations, and those who hear prisoner disciplinary cases as well as costs associated with debt service, land, buildings, and construction.

Examples of costs analyses from the Federal Bureau of Prisons (e.g., Taft Correctional Institution) and others organizations can be found in Appendix A. It can be observed that the governmental entities have calculated cost comparisons using both direct and indirect costs to truly compare private and public prison costs. It has been recommended that "...Both agency and commercial source cost analysis shall be based on the same scope of work and the same level of performance. A precise work statement with standards that can be monitored shall be required."²⁶

Except in a few specific instances where identical prisons were designated as publicly run and contracted for comparison sake, it is a rare case where public prison facilities and systems don't undergo changes in operations, classification of prisoners incarcerated, and program offerings, many in the same fiscal year. Any change in the aforementioned façade of the prison will change the per diem cost per prisoner in the public prison and this is rarely calculated even at the end of the fiscal year. Meanwhile, contractually managed prisons are required to provide cell space at a fixed price for the term of the contract for customer specified classification of prisoners and also to provide

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programming even if the cost of such programming increases, unless there are mechanisms for cost adjustments.

In some instances, such as in Hawaii, the state has determined that it would be in the state's best interest to provide the land where the new facility would be built. In an August 16, 2006 article in *The Garden Isle*, Lt. Governor James "Duke" Aiona called for PPPs to provide traditional facilities to drug and alcohol offenders. Included in the Lt. Governor's message regarding the importance of treatment and rehabilitation was the idea that the state could provide land for such facilities to be developed by private providers. The Association of Private Correctional and Treatment Organizations (APCTO) responded acknowledging the fact that high land cost in the island state does limit private development and suggesting to the Lt. Governor that APCTO members would be willing to explore a program such as the one he described.

Finally, detractors from PPPs rarely discuss indirect benefits to the community and additional revenue that a PPP brings to a state or province (e.g. property and corporate taxes). The indirect benefits include the economic spin off from the purchasing policies to buy locally; contribute to the local charities, schools, and sports associations; and general goodwill. In states where private businesses are taxed on the value of their property, this is a benefit that a public prison will never give back to the state. In Michigan, the GEO Corporation operating the Michigan Youth Correctional Facility paid more than \$1 million in total property taxes each year of their contract to state and local governments.⁸ These benefits to the state are typically never acknowledged by the anti-privatization lobbies.

The Bottom Line

A comprehensive review of the privatization literature by the Reason Foundation examined 28 research reports that compared cost data for contractually managed prisons to government-operated facilities. Of those studies, 22 (79 percent) found significant budget savings, conservatively estimated to be between 5 and 15 percent, due to privatization.²⁷

Governmental agencies often maintain prison programs because the public is used to seeing and funding what has been and opposed to "what could be." It is typically through the private sector that governments can try innovative programs and can assess the outcomes. Research and design that come from the

private sector can be implemented quickly in a PPP and evaluated as delivered. The best of programs can be assimilated into the public sector by emulating what the private sector has developed.

ROAD BLOCKS WHICH IMPEDE PROGRESS

Political Considerations

In general, people who run for and are elected to public office are those who have a sincere commitment to public service. They seek to serve the public interest by providing solutions to problems faced by government. Often, changing the status quo is an uphill challenge, with some elected officials and government managers invested in how things have always been done.

Public-Private Partnerships has tended to be a controversial method of doing business. However, over the years the operation of hospitals and schools, as well as with other services (e.g., janitorial services in public buildings, courier services, garbage pickup and Just in Time ordering and delivery of office supplies as opposed to state warehousing), officials have come to understand that only a few services have to be performed by government, enabling the redirection of millions of dollars of taxpayer provided resources. What began as a controversial move in state government is now accepted as good fiscal practice.

It is important to obtain information from companies operating prisons to become an informed consumer. The good news is that there are experts from the business community and successful operators of contract prisons who are willing to provide testimony and to assist elected officials in making informed decisions. This information is usually sought out after officials find that services provided by government workers are so costly and ineffective that other ways of doing business must be explored in order to stretch the budget or to complete the projects they have promised their constituents.

Legislators must also be aware that some government employees, who are fearful of change, may openly seek to dissuade legislators of this option or may work to undermine efforts to seek cost effective PPPs.

With performance standards and outcomes as the guide, elected officials who want a performance-oriented government will listen objectively and seek

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creative ways in which to accomplish the greatest good for the greatest number of constituents in the most economical manner. In the past 20 years, many PPPs have resulted in the construction and operation of contractually managed prisons, saving millions in tax dollars.

Organized Groups

In every state or province there are groups, both ad hoc and organized, who will lobby diligently and consistently against the contracting of any government service or function. This is particularly true when the government function is the construction or operation of prisons.

Whether their agenda is protection of benefits and jobs, a long held belief that a private company can not constitutionally perform certain government functions, or the fear that shareholder interests will trump the interest of the state, these groups will rally against contracting services and will publicize any fault or failure of the private corporation, but not those occurring in the publicly operated prisons.

In an opinion published March 12, 2006 in the Inland Valley Daily Bulletin (Ontario, CA), Renford Reese, Ph.D., associate professor in the Political Science Department at Cal Poly Pomona University, related "The California Correctional Peace Officers Association is self-interested. The CCPOA is the primary engineer behind California's hyper-punitive corrections policies. No other entity is responsible for constructing so many tough-on-crime policies. In fairness to the CCPOA, it is in their interest to advocate incarceration over drug treatment programs and punishment over rehabilitation. From their perspective, it makes sense to advocate for policies that maintain high recidivism rates rather than reducing them. They preserve their jobs and maintain an important function in society by incarcerating individuals. From a big-picture perspective, however, society is not benefiting from their selfish motives."²⁸

In Arizona for instance, the median wage for Corrections Officers is \$34,000 per year.²⁹ Arizona is a non-unionized state. Median wages for Corrections Officers in Michigan and Minnesota, both unionized states, are \$37,200 and \$37,800 respectively.³⁰ However, the biggest jump in union supported wage increases for corrections officers can be found in California. In 2006, a top-scale rank-and-file correctional officer in California currently is paid an annual base salary of

\$71,496, which includes pension coverage, according to the DPA. Health benefits and physical fitness, education and seniority incentives can add \$16,000 to the overall officer compensation package.³¹

In dollars and cents, the spread between unionized wages and non-unionized wages may begin to explain some of the fiscal problems of California and Michigan.

Union contracts, with their tight delineation of job specifications and requirements of "bid positions" and "bid days off," have circumscribed prison managers from utilizing the workforce in the most cost effective ways. Finally, defined benefit pensions along with accelerating health care costs are sending state governments further into debt.

Other groups who typically bring pressure on state governments to refrain from any contracting efforts include anti-privatization organizations, community justice initiatives, and victim rights groups and citizens advisory committees.

PRACTITIONER CONSIDERATIONS

Communication Is Critical to Successful PPP

The communications strategy for a PPP tends to be driven by public policy and politics. In developing the strategy, "everyone" should be involved, including experts in policy, finance, process, construction, and operations; and most importantly, both public and private partners.⁷ Stakeholders from all sides of the issue should have the opportunity to discuss their fundamental beliefs (i.e., opinions and emotions of the voters).

It is also clear that a communications plan should take into account several vital components. The time horizon on good public policy is generally longer than the time horizon of the politician promoting it. As a consequence, incremental steps should be developed that lead to the outcome desired. The benefits of such public policy also need to be laid out so as to counter the more vocal stakeholder groups who may oppose the project. Finally, the plan should identify the risks of the public policy and lay the groundwork of risk transfer to the entity best able to manage it.

In addition, it is vital that third party support and validation be located. This requires many meetings

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and vetting of the public policy initiative. Ultimately, securing supportive quotes from the local Mayor, Commissioner, Chief of Police or other official is very important in the early stages and with long-term relationships that will sustain the project through the tough times.

The strategy then should address the benefits to the taxpayer of government partnering with the private sector. It is important that the strategy take into account the need to be working with members of the media to present the positives of the good public policy plan before the opponents get their negative messaging out.

Overall, constant communication with stakeholders and media representatives keeps all involved abreast of developments and diffuses efforts at negative portrayals of the policy initiative. Using notable public figures to speak up for the policy gives it credibility and substance, as well as local commitment which is critical to short and long-term success.

Standards for Incarceration

Correctional leaders in the U.S., as well as in other countries, have written guiding principles, goals, and standards to which managers have subscribed in order to run safe, secure, and professional institutions. The American Correctional Association has published written standards and has accredited institutions which have fulfilled these standards.

In 2004, new standards were formulated for Australian correctional facilities and community corrections. Unlike public prisons, where adhering to professional standards is not a requirement for remaining open and functioning, private contracts for institutional management usually contain requirements that the contractually operated prison receive accreditation from either the International Organization of Standards (ISO) or the relevant standard bearer (e.g., ACA, NCCHC, JCAHO, and Correctional Education Association) within two to three years of the initiation of the contract.

All correctional facilities and assigned staff, public or private, should be accountable to a standard set of performance measures. This policy will enable the identification of successful facilities and systems. If the entity uses performance-based budgets, they can provide incentives for positive results and fiscal sanctions for poor performance, including replacement of

the warden and organizational entity who fail to meet specified outcomes. Unfortunately, unions do not desire and usually lobby against performance-based operations.

The Contractual Partnership

Once the governmental entity has determined to engage in a PPP, a solicitation for contracted services is the best way to determine whether this type of arrangement will be beneficial for the state or province. The solicitation must be specific and must tell all prospective bidders the entire ramification of work desired, the length of the contract, and what part the government will play in this partnership.

INDICATORS OF A SUCCESSFUL CORRECTIONAL FACILITY

The MTC Institute published a report entitled *Measuring Success: Improving the Effectiveness of Correctional Facilities*.²¹ The report provides a roadmap for establishing a formal structure of accountability through firmly recognized outcomes. The foundation of a successful prison is described through four dimensions:

FOREMOST, a successful prison will keep each staff and offender out of danger, while ensuring that risk of escape is eliminated. Staff must install and maintain safeguard measures to eliminate contraband that would detract from the safety and security objectives.

SECOND, the environment must provide a quality of life which meets the medical, dental, mental health, shelter, nutritional, and clothing needs of the inmates.

THIRD, in support of the purpose of the prison, the facility and staff must provide programs that work and move the inmates to a point where they can successfully reenter society upon release and stay employed.

FINALLY, management must provide a stable, trained staff. Prison management oversight must ensure that facilities, based on a set of rules, are operated fairly. Prison administrators must also be accountable for monitoring the efficiency and effectiveness of operations to ensure that tax dollars are spent wisely.

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Solicitations, or forms of solicitations, are called by different names and require different responses.

The Expression of Interest (EOI) has been used by such entities as the government of Australia as an advertisement for possible services needed or to create a short-list for an Invitation to Bid. Firms who respond to an EOI typically must submit company information and previous experience (service description, size and type of contracts previously completed with governmental agencies) to a procurement officer. The EOI does not constitute a solicitation, but rather a method of finding out the available companies who provide such a service if and when the service is needed.

The Invitation to Tender (IT) identifies a particular project to be completed, generally by a private firm, and the government calls for tenders, or sealed bids which name the price to do the job.³⁰ After the deadline, the government opens all the tenders. In the U.S., this process is often called an *Invitation to Bid (ITB)*. In some cases, the IT or ITB processes have been used for a very specific service which cannot be changed or altered; and because the selection is based on who provides the lowest cost, this method is also not recommended for prison management selection.

The Request for Proposal (RFP) asks for bids on a specific project. The RFP not only asks for a price to do the work, but usually asks for: basic corporate information, financial information, and corporate history. Requests for Proposals can include design, build, operation, and financing for a new prison. An RFP which includes prison management, generally includes an extensive Statement of Work which requires the company to provide an overall rationale for the company's submission, name, and how the requested work (i.e., staffing, operational policies, performance guarantees, details on all departments, food, medicine, education, outcomes, insurance benefits, etc.) would be performed as well as comparable work in other states or provinces.

As PPPs have evolved in corrections, Statements of Work have become more complex, especially as governmental agencies understand that they need to articulate the services desired, which in some cases includes process standards and performance-based measures. This type of offering allows the manage-

ment company to put forth their operational management style and to tell the government agency, in some cases through oral presentations, exactly how they would accomplish the project in the most cost effective manner.

In many cases, the RFP for prison management also incorporates a Design/Build component in the solicitation. Innovative designs for prisons use of the latest technology to provide for staff and offender safety and security, as well as reduce required staffing and attendant long-term costs. Some government entities have taken advantage of the financing developed by private firms for prison projects, by acquiring an equity interest in the prison through a portion of the daily per diem payments. This leads to government ownership at a specified point in time and avoids the huge one-time, multi-million dollar impacts on the budget, typically required to build a publicly funded correctional facility.

Statement of Work

The statement of work is the most important part of the RFP. The state or province must ask for the services it needs in the most explicit manner. If it is essential that this prison follow all agency regulations and policies, this must be clear from the beginning. The state or province must specify the outcomes expected from the private company and the RFP must define how outcomes will be measured and what will be the penalty for failures or omissions. The U.S. Federal Bureau of Prisons successfully uses financial incentives to encourage the contractor operating the Taft prison to perform at levels which exceeded desired outcomes.⁴ The prospective bidders must be made aware of the type of monitoring the government will be providing and whether the bid must include the cost of such monitoring.

All correctional facilities within an agency should use a standard set of criteria to spell out performance expectations which should allow measurement across the system. Through such an approach a governmental entity can determine which facilities perform well in safety, security, offender quality of life issues, reentry preparation, and management. It would then be possible to identify those facilities or programs that provide the best value and successful correctional programs.

If there are laws which impact staffing a prison, such as the prohibition of hiring ex-offenders, these should

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be noted in the RFP. Additionally, the fact that the private corporation may not administer the prisoner disciplinary process or compute release dates, should be clearly stated so that the corporation can prepare its submission with these items in mind. In short, all information that is relevant to the operation of this prison must be given to prospective bidders.

Over the years, states and provinces have also found it important to clearly outline what the government will consider successes, how outcomes will be measured, and what deliverables are expected. It should be no secret what success must look like in this PPP. Agreements can provide incentives for exceptional work, but should specify accomplishments such as certain numbers of inmates obtaining an educational certificate (e.g., GED or similar educationally-based program, vocational training certificate, or completion of a substance abuse program). In future cases, one of the measurements of success should be the reduction of recidivism among the inmates who are released.

Additionally, there will always be a public concern for insulating the state or province. Indemnification of the entity by the successful bidder reduces the potential financial exposure to liability. There can also be set forth in the contract a response to mistakes that are made, in the form of penalties or table of liquidated damages. These items should be included in the RFP so that the prospective bidders are put on notice of the costs for mistakes up to and including the cancellation of the contract, which should also be used in publicly operated prisons.³²

The Contract

In some RFPs, a contract is already included which the bidders must accept as part of their bid. In other situations, the RFP is merely attached to the submission and this becomes the contract. The problem with including a contract in the RFP is that this is a document which has not been negotiated between two parties but is unilaterally thrust upon the bidder. A concern with attaching the RFP to the submission is that there can often be differing opinions on how a particular situation is to be administered throughout the life of the contract with no definitive answer.

It is strongly suggested that once the governmental entity selects a bidder, the RFP and the best and final bid proposal be combined into one comprehensive document which will become the contract between

the parties. This document contains the requirements of the government as well how the private contractor will provide for these requirements, and is then signed by each partner as understood and agreed upon by both parties.

This is particularly true if the contract is going to specify performance objectives and required outcomes. There can be no room for misinterpretation if the governmental entity desires particular outcomes and objectives.

Monitoring

If the contract is the heart of the PPP, then monitoring is what gives life to the contract. One of the most important reasons why contracts don't perform as well as expected is that there was little or ineffective monitoring. Ineffective monitoring can lead to disagreement on quality of performance between the partners and ongoing issues requiring resolution which can damage relationships and detract from contract performance. In addition, acting as if the monitor is running the institution or "over monitoring" can also lead to problems within the partnership.

David Bachman gives a succinct definition of contract monitoring:

A comprehensive concept of monitoring as is envisioned in this presentation is much more complex than simply "inspecting" the facility for deficiencies. A great deal of emphasis must be devoted to determining the monitoring standards; developing the monitoring documents; selecting and training monitors; and developing a plan for carrying out the monitoring function. All of these activities must be coordinated with and included as a part of the overall management of the privatization process.³³

The monitoring process cannot be an afterthought. The process, and hopefully the monitor, will be included in the preparation of the RFP, the bid, submission, and the selection process. If this cannot be arranged, the monitor should be an integral part of the construction of the contract so that he/she fully understands what the government expects and what the contractor is willing to deliver. This is the reason why the Statement of Work must be as specific as possible so that all parties are aware of the standards by which the contractor will be measured.

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Performance standards and outcomes must be realistic and attainable. What can reasonably be expected from the vendor based upon the nature, scope, and financial constraints of the contract? If expectations are established which cannot realistically be attained, then the monitor is faced with the question of which parts of the contract the vendor is really expected to accomplish.³³

Depending on the mission and goals established by the governmental entity, standards and monitoring activity should be included in procurement documents and evolve from these guiding documents. They should follow a regular observation protocol and be reported to agency management.³³

If the goal of the governmental agency is to seek innovative ways of managing, programming or lessening recidivism rates, then the vendor should be incentivized to be innovative and may even be measured by different expectations than exist for public prisons. The governmental agency can prescribe certain performance outcome measures which are spelled out in the agreement and the monitor will then validate whether these outcomes and process standards have been achieved.

It is recommended that a monitor(s) be based on site full-time. This way, the monitor can inspect the facility at all times, talk with staff and prisoners and be ready to intercept problems before they become contract violations. A trained corrections veteran (i.e., monitor) can interact with prison managers to make certain everyone understands the standards and how they are to be accomplished. The monitor becomes an essential part of the management team and attends key staff meetings.

Most contract prisons have full-time daily state monitors on site. Of the 91 contracts studied by Abt Associates for the U.S. Department of Justice, all contracts had monitors assigned with 52 percent mandating daily monitoring and 23 percent mandating regular monthly visits. The remaining 25 percent of contracts specified quarterly visits or other forms of monitoring.³⁴ Monitors are in a great place to observe innovative approaches and business techniques which can greatly benefit other state or federally operated prisons.

The monitor should evaluate every section of the contract by doing periodic reviews on a routine basis and reporting his/her findings to the agency head. The contractor should understand that the monitor will verbally and immediately report any deficiencies affecting the health, life, or safety of staff or inmates.³³ This is particularly important so as to shield the government from vicarious liability in any civil suit brought against the contractor by prisoners or their own staff.

It is important to anticipate that challenges will arise in administering a prison management contract which cannot be easily remedied through a discussion between monitor and contract manager. Although all contracts contain cancellation clauses, such drastic measures are not advised for day-to-day mishaps. For this reason, it is advised that intermediate sanctions such as withholding some of the monthly payment or use of a table of liquidated damages be included in the RFP and in the contract. Withholding monies for failures on the part of the operator is an effective way of managing the contract without constant threats of cancellation. Those states which have used this method report it to be successful in getting the vendor's attention and resolving problems early.

CONCLUSION

The Arizona Competitive Government Handbook summarizes the benefits of considering PPPs.

The focus of the program is NOT solely the outsourcing of services; rather, the emphasis is on more efficient operations, whether provided by the state or by a private vendor.¹⁰

This handbook notes six benefits of competitive government which any governmental entity should consider when determining how best to allocate scarce resources:

- A competitive environment,
- Increased flexibility,
- Cost savings,
- Improved service quality,
- Increased efficiency and innovation, and
- Optimization of government.

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Studies cited in this monograph have demonstrated that the existence of PPPs in prison building and management have stimulated public prison managers to find more economical ways in which to do business. The presence of contractually operated prisons in a state with a performance-based contract and monitor supported arrangement is thus a win-win situation.

PPPs can provide the state or province with new methods of programming heretofore untested or unapproved by strict union contracts. In the cases of construction, PPPs have proven to be successful in building faster and more economical than the usual methods employed by public entities.

Well monitored contracts which have specific outcomes can produce high quality results. Contracting a governmental service out doesn't mean that the state can stand back and let the contractor operate without monitoring. The partnership means that both the op-

erator and the state are working together to put forth the best result. It is in the best interest of the operator to continually strive to please the contracting agency. Both parties should share innovations that improve performance or reduce costs.

Competent private sector firms will seek to increase their business by pleasing their customers. Contracts which fail generally show an underlying disinterest on the part of the government agency as well as mishaps on the part of the contractor.

It is competition in government which is one of the best ways to improve efficiency, save money, and increase the value of the services purchased. These savings have been documented and are worth consideration by governmental officials who are interested in maximizing the use of scarce resources, improving the quality of service, and establishing a competitive environment dedicated to continuous improvement.

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APPENDIX A Examples of Private Prison Cost Analyses

U. S. Department of Justice (USDOJ)

The Cost of Contracting for Prison Operations at the Taft Facility⁴

“In July, 1997, the Bureau of Prisons signed a ten-year contract with the Wackenhut [Geo] Corrections Corporation to operate the Taft facility. Although the government and the firm agreed to a fixed price for each of the ten years, there were provisions for incremental payments if the inmate population rose beyond a predetermined level, and other provisions existed for bonuses (“award fees”) that could be paid by the government to reward performance that went beyond mere contract compliance.”

“The total cost of contracting for prison operations at the Taft facility includes these and other costs born by the government. Specifically, the total cost is the sum of the following:

- The price charged by the contractor and paid by the government to perform the required work,
- Adjustments for deductions against fee, if any,
- Payments of incentive or award fees, if any,
- The costs to government of administering the contract, and
- Any additional costs by the government that would be avoided if the operation of the facility had not been contracted.”

“Offsetting these costs to the government are federal income tax revenues, if any, paid by the contractor. Thus, the net cost to the federal government equals total payments by the federal government minus total federal tax revenues. Revenues paid to state or local governments (sales taxes, for example) are ignored in A-76 analyses because OMB is focused on costs/revenues to the federal government, even though they might reasonably be included in a broader accounting of costs and benefits of contracting.”

Abt Associates Inc. conducted the study for USDOJ of the contract awarded to the Geo Group Inc. in 1997. The contractor was to manage and operate a new government-owned, low-security, 2,084-bed correctional facility in Taft, CA. The findings listed in the study indicated that the contract saved the taxpayers between \$9.6 and \$16.5 million, or between 6 and 10 percent, compared to estimated government costs to operate the same facility.⁴

Ohio Department of Rehabilitation and Correction (ODRC)³⁵

The ODRC uses a sophisticated model that includes program specific costs. Staffing is based on ODRC requirements to staff the unit, which are mandated in the solicitation. Assumptions, based on agency history, are that 30 percent of ODRC staff who would work at the [contracted] facility would be transfers or promotions. Costs by job classification are computed at the State pay ranges and benefit cost.

Utilities were computed based on estimated usage and applicable local rates. Electricity and natural gas usage were estimated per square foot of the building based on selected similar institutions, adjusted based on local climate conditions. Water and sewer were estimated per inmate based on ODRC experience.

Supply, equipment and service expenditures at ODRC institutions were averaged to obtain a per inmate cost by cost center at similar ODRC facilities. Statewide ODRC indirect administrative costs are adopted from the most recent departmental cost reports. Inflation is added as per direction from the Ohio Office of Budget Management. Meal costs and food purchases are adjusted based on the Federal School Lunch Program and farm products supplied to similar institutions. Medical and mental health service costs are based on an average per inmate adjusted based on the nature of the inmate population. Program costs are estimated based on costs for services, supplies, equipment and indirect costs equivalent to similar ODRC facilities.

Prison performance is observed and evaluated through on-site monitoring. All cost data are regularly reviewed by a select committee of Legislators, to ensure mandated savings of a least 5 percent are obtained.

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Oklahoma Department of Corrections (ODOC)

The accounting processes used by the ODOC are cited in *Measuring Prison Performance: Government Privatization and Accountability*, as a template on how to calculate overhead costs.³⁶ The publication points out that savings should be derived from the avoidable costs and that overall common dimensions are needed. Anticipated agency budget expenditures should be separated by avoidable and unavoidable costs. The objective is to create an equitable allocation of costs between the public and private providers. Noting facility differences, it is necessary to adjust for size of inmate population, local cost of living, amount and type of inmate programming, unique operations performed, any income earned, and taxes paid by the private contractor which are not paid by the public facility. Finally, there must be a mechanism to address the cost for land, buildings, and improvements.

Regarding overhead costs, the template calls for costs for central functions (e.g., director's office, transportation, etc.) to be allocated to both the public and contractually managed prisons. A calculation derives a private sector share of overhead costs (i.e., factor). To determine the public facility overhead costs, total agency overhead is divided equitably to each prison to obtain a public prison overhead cost factor (i.e., percentage).

Fully allocated public sector overhead cost = (public facility uniform overhead factor) × (operating costs).

Private sector facility overhead cost is determined by multiplying the overhead cost factor assigned to a public facility times the unavoidable overhead.

Private sector overhead cost = (private sector overhead factor) × (public facility uniform overhead factor) × (operating costs).

Canada

Ontario Ministry of Community Safety and Correctional Services

The Ontario Ministry of Community Safety and Correctional Services completed a cost analysis in March 2006 to compare costs of two identical facilities, the

contractually operated Central North Correctional Centre (CNCC) and the publicly operated Central East Correctional Centre (CECC). The analysis examined the following:

- Pre-operating costs (i.e., start-up which includes furniture, equipment, staff training and commissioning, transition and procurement)
- Total operating (direct and indirect) costs and available inmate places (i.e., capacity utilization) which provided an operating per diem cost of housing inmates at both facilities.

The costs of the 2004/05 comparison year were assumed to represent a steady-state (i.e., fully operational) normalized year for both facilities. To illustrate the savings the Ministry would have experienced over the five-year period, CECC's costs were adjusted by a 3 percent inflation factor. CNCC costs were held constant over the same period due to the nature of the fixed price services agreement.

The Ministry analysis in the Pricewaterhouse Coopers (PWC) report (not yet released) pointed out that a savings of approximately \$22.5 to \$23.0 million over a five year period occurred through the use of contracted management. The PWC report also projected that an additional \$11 million will be required of the Ontario taxpayers for the government to assume control and operate the prison over the next five years.

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APPENDIX B

Suggested Checklist for Elected Officials, Corrections Officials, and Practitioners

Legal

- The Constitution of county, state, or province should be silent or permissive.
- The legislation of country, state, or province should preferably articulate how a competitive government program should work and require the department of corrections to articulate how they will implement the law.
- The legislation is either permissive or does not specifically preclude the building, owning, or operating a prison by a private corporation.
- Legal support/approval is needed to initiate and/or complete the project.
- There is legal support for the action desired or contemplated regarding financing.
- All other financial considerations have been made.

Stakeholder/Political Issues

- The current government is favorable to PPP's.
- The next election is _____.
- The government in power is likely to change.
- The new government likely would favor PPP's.
- The community is favorable to a PPP.
- The union position is _____.
- The union contract(s) are due for reconsideration in _____.

Physical Plant Issues

- All earth, water, sewer plant, animal, or other environmental impacts have been completed or time frames established to do so.
- The infrastructure will support the prison.

- Do the local entities approve of the project and they are willing to fund water, sewer, new roads, etc.

Communication Strategy/Planning

- Reviews have been conducted of stakeholders to determine the political landscape (i.e., this is key issue for communications).
- Data has been compiled on who may be a supporter of PPPs and who may be an adversary.
- The processes for announcing the award process, preferred bidder, award, and complaints/award appeals have been established.
- The process of who and how will respond to criticisms from adversarial groups has been established.

Procurement Planning

- The resources exist to develop a solicitation.
- Timing of the procurement action is a critical element. Ensure adequate time is provided to do the job.
- The type of model of competitive contracting has been decided. (i.e., use of a PPP for building the prison or for both building and operation).
- The decision for a method of solicitation has been made.
 - EOI
 - IT/ITB
 - RFP
- The time frame that a PPP must be in place has been set.
- The critical outcomes that are being searched for have been established.
- The performance standards you intend to use to evaluate the building or operation or both have been set and are in writing.
- The concepts of cost savings and best value have been established and are written.

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- Input on a draft solicitation document to improve the process and outcomes has been completed or a time frame established to do so.
- Who is going to evaluate responses provided by private vendors has been decided.
- The decision to segment the proposal pricing section to get the costs broken out has been made.
- The decision to use a 'Best and Final' approach has been made.
- The decision to permit or require the final vendors to make a face-to-face oral presentation has been decided
- The type of cost model to implement has been chosen.
- The decision to hold tours of certain facilities and when during the process has been decided.

Contracting for Service

- The physical plant standards and accommodations required if you seek a design, build, and operate initiative have been established.
- Training on how to monitor a contractually managed correctional facility and would perform such training has been established.
- The criteria, priority, and weight for the factors to be used in the selection of the vendor has been decided.
- The quantity of inventory you require to be available has been set.
- The equipment needed and in what type of condition has been established.

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