

No. 15 -- May 4, 1987

**CORRECTIONS AND THE PRIVATE SECTOR:
A GUIDE FOR PUBLIC OFFICIALS**

by Judy S. Grant
and Diane Carol Bast

I. Introduction

Faced with rising prison populations, court-mandated reforms, and voter rejection of bond issues, many government agencies are investigating the potential of private sector corrections services. Private organizations, both nonprofit and for-profit, currently manage the majority of community corrections facilities and a number of juvenile institutions nationwide; the private sector also provides special services, including food delivery, medical care, and transportation, to medium and maximum security adult institutions. More recently, proposals advanced by private organizations for ownership and operation of entire adult facilities have focused national attention on corrections and the role privatization may play in providing corrections services.

"Privatization" refers to the process whereby functions performed by government are transferred to the private sector. For many government services, this transfer can be accomplished in several ways, including user fees, voucher funding, and outright sale of a service. Corrections, however, presents certain economic, legal, and political issues that, in the near future, will likely limit privatization attempts to a single method: contracting out.

"Contracting out a service means the government continues to fund the service and retains control over the quality and type of service to be provided. But instead of hiring its own employees and purchasing the necessary equipment, the government describes the services it desires...and solicits bids from private firms." <1> As the examples presented in this study indicate, privatization properly carried out can not only reduce the cost of providing corrections services, but can--by tapping the creativity and skill of private entrepreneurs--improve the quality of the services as well.

II. Background

Private involvement in corrections is not new; private ownership and operation of corrections facilities in America dates back to the 1600s, when Quakers ran prisons in Pennsylvania. <2> At that time, and through the late 1800s, a belief in the "reformatory potential of hard labor" formed the theoretical basis for corrections. <3> Prisoners were often hired out to private companies, and prisons were frequently financed solely by the fees paid for contracted labor.

During the late 1800s, prisoners' rights groups and labor unions formed an alliance to oppose prison industries. The former advocated a "medical model" of corrections practice, putting forward the theory that rehabilitation (education, vocational training, and counseling) produced results superior to those produced by punishment (work). <4> Concurrently, labor interests lobbied against the competition posed by cheap prison labor. To appease the prisoners' rights advocates, the state restricted the types of work prisoners could be required to perform. To appease labor and some business interests, the states restricted the ability of private corrections providers to finance their operations through the sale of products.

By 1899, thirty-five states had enacted laws banning the sale of prisoner-made goods to anyone but state government agencies. Such laws became progressively more restrictive during the Great Depression, as economic hardship led many business and labor groups to press for still further limitations on prison industries. Attempts to regulate private corrections culminated in 1940 with the passage of the Sumner-Ashurst Act, which forbade all interstate shipments of prisoner-made goods.

Today, the private sector's involvement in corrections generally takes two forms: the nonprofit providers, who concentrate their efforts in adult community treatment centers and some juvenile facilities <5>; and their for-profit counterparts, who are generally restricted to providing food, transportation, and other special services <6>. The public sector dominates the management of adult corrections facilities, in large part because of the laws restricting the establishment of prison industries.

There is evidence, however, that the private sector's involvement in corrections is growing. A principal reason for this return to private providers is the convergence of three historic trends: increasing public demand for imprisonment of criminals, increasingly stringent court-imposed standards requiring significant new investments in manpower and facilities, and growing fiscal strain on local and state governments. Simply put, the public demand for quality corrections is outstripping the ability of the public sector to provide them.

Prisons and jails today house approximately 700,000 inmates at an annual cost of \$10 billion <7>; the states alone project a need for 104,688 additional beds in the next ten years at an estimated cost of \$5 billion. <8> The New York Times has reported that 1,000 new inmates are being added to the nation's prisons every week. <9> In the Midwest, Illinois Governor James Thompson, who has added ten prisons (9,000 beds) to the state's corrections

system since 1976, is expected to begin site selection for an additional 750-bed facility in late 1987. Illinois' prison population has nearly doubled (from 9,182 to 17,649 inmates), and the Department of Corrections' budget quadrupled (from \$92.4 million to \$413.1 million), since 1976.

The need for prison construction is made more critical by the continuing close examination by state and federal courts of corrections facility conditions. <10> Approximately forty state prisons <11> and 423 local jail facilities nationwide came under state or federal court orders in the late 1970s to improve conditions <12>. In Illinois, litigation is pending against jails in Cook, Alexander, Rock Island, and Winnebago Counties, and the state prisons at Menard and Pontiac have both been placed under court order to remedy unconstitutional conditions. The American Civil Liberties Union reports that corrections facilities in all fifty states remain under threat of closure if standards are not met.

The increasing demand for quality corrections services has led public officials to re-examine the legal and traditional barriers to private sector participation in corrections. Privatization has generated good results in the provision of other government services, and there has been considerable movement toward private sector solutions in corrections as well.

III. Growth of Privatization

The number of special services contracted to private organizations has grown simultaneously with rapidly expanding prison populations. Corrections agencies currently spend \$200 million annually on contracts with the private sector; of this amount, \$130 million is spent on juvenile contracts. In California, contracts with the private sector account for up to 34% of the state corrections budget. <13>

A survey of corrections officials released in early 1984 by the National Institute of Corrections (NIC) found that service contracts are most frequently made in the following areas: health (including mental health and drug treatment), community medical treatment, education (including vocational and college level classes), facility construction, staff training, food service, transportation, and facility maintenance. <14> Administrators cited improvements in systems and operations, cost savings, and more efficient and improved services and conditions as primary reasons for contracting with the private sector. Corrections administrators and private sector contractors surveyed agreed that contractual relationships are likely to increase in both number and scope.

While private industry has indicated an interest in overall facility management <15>, proposals for private ownership of facilities housing long-term inmates with high security requirements have been rare. <16> The NIC survey found twenty-eight states with privately operated facilities for secondary housing, such as halfway houses, but no state had plans to contract for prison operations.

Several months after the NIC survey was released, however, considerable interest in private management of secure facilities was evident at both the state and federal levels. Illinois state representative Tom Homer (D-Canton) submitted in early 1985 a proposal for private financing of a 750-bed maximum security facility. While the proposal was ultimately rejected, Homer's constituents were awarded the prison, expected to cost Illinois taxpayers \$41 million. Corrections Corporation of America (CCA) took over the operation of a minimum security facility near Chattanooga, Tennessee, and opened a juvenile detention home in Memphis. The Kentucky Corrections Cabinet issued a request for proposals for minimum security housing for 200 sentenced felons, and in January 1986 awarded that contract to U.S. Corrections Corporation. Pennsylvania-based Buckingham Security, Ltd., announced plans for two regional maximum security prisons that would accept protective custody inmates. Although a Pennsylvania site had already been acquired for the eastern regional facility in late 1984, both projects have been indefinitely delayed by legislators' concerns about liability. The NIC survey predicted that by 1990 there will be about a dozen state or federal contracts for management of an entire prison. <17>

As might be expected, the housing of minimum security inmates by private organizations has been much more readily accepted. Minimum security cases, including 800,000 illegal aliens incarcerated every year, represent a huge market. The federal Immigration and Naturalization Service (INS) and the U.S. Marshal's Service have contracted with private corporations to provide alien detention centers in the Southwest; the Federal Bureau of Prisons plans to contract for a sentenced alien facility. <18>

IV. Economic Issues

A. Cost

Accurate information on facility construction and operating costs is not readily available. Public sector construction cost estimates vary according to a number of factors, including geographic region, type of prison and program needs, use of prison labor, and inflation adjustments; such estimates generally ignore completely land purchase, site preparation, and financing costs. Similarly, per-capita operating cost estimates generally do not reflect such "off-budget" items as employee fringe benefits and interagency services. <19>

Determination of costs in the private sector is also difficult. The entry of the private sector into corrections construction and management has been relatively recent, and thus data are limited. Additionally, private sector estimates generally do not reflect the cost of contract administration by the public sector agency; in the case of federal contracts, the American Federation of State, County, and Municipal Employees has estimated administration at four percent of total contract cost.

Despite these difficulties, some comparison of public and private sector costs can be made. The U.S. Department of Justice cites average public sector construction costs per bed of \$26,000, \$46,000, and \$58,000 respectively for minimum, medium, and maximum security facilities. By comparison, CCA's construction of a 350-bed minimum security facility in Houston cost just \$14,000 per bed; the maximum security regional facilities proposed by Buckingham Security were projected at \$21,000 per bed. In these cases, the private sector offers savings of 46% for minimum security housing, and 64% for maximum security.

Estimates of operating costs also favor the private sector. Annual costs in the public sector, including INS facilities, are approximately \$14,000 per inmate. CCA charges Hamilton County, Tennessee, just \$7,665 per inmate at its minimum security facility there--despite a \$1 million facility renovation undertaken in 1984. Behavioral Systems Southwest charges the INS just \$5,110 to detain illegal aliens, while CCA charges \$8,670. This latter figure again takes into account new facility construction at \$5 million.

B. Quality

Contrary to fears expressed by those who oppose corrections privatization, cost cutting by the private sector does not result in poor quality services. It is simply not profitable to house inmates in crowded and substandard conditions. The cost of prisoner unrest is too high, as past experiences at Attica and other government-run institutions have demonstrated.

Fifty-eight percent of corrections administrators responding to the NIC survey identified "improved efficiency of operations" as a significant benefit of contracting with the private sector for special services; sixty-two percent cited "delivery of a better quality service" and twenty-four percent cited "delivery of a unique service" otherwise unavailable to the government agency. <20>

Private sector representatives point to a number of factors that allow cost cutting without service cutting:

- o Substantial savings in the construction and renovation of corrections facilities are realized when site acquisition and subcontracting can be accomplished outside the government bureaucracy; improved architectural design and innovative financing methods contribute to these savings.
- o Staffing efficiencies may be realized in the absence of civil service regulations, lower private sector pension and benefits costs, and greater market incentives to increase productivity.
- o Employee training costs are tax deductible for private companies, providing an incentive for private vendors to train corrections personnel. <21> In addition, some private companies are offering profit sharing to their employees in order

to attract better qualified personnel and to increase productivity. <22>

Although to date the private sector's track record in corrections supports claims of high quality service at low cost, the private sector's limited experience and the potential for contracting beyond the means to deliver are recognized concerns. Respondents to the NIC survey identified a contractor's inability to deliver on time and a corrections agency's difficulty in supervising the contractor's employees as two reasons for the failure of some private sector service contracts. <23> It is important to note, however, that analyses of the performance of the private sector are generally framed as comparisons against the expectations, not actual experience, of the public sector.

Adequate monitoring systems, frequent onsite inspections, and judicious contract rebidding and renewal procedures are the key tools available to ensure expected performance. These quality control devices create incentives for higher quality service delivery and responsible management--incentives that are often absent in government bureaucracies. The contracting process offers the possibility of performance measured by recidivism rates, the ultimate measure of a corrections system's success or failure. <24>

C. Flexibility

Most observers agree that contracting with private firms allows public agencies to respond to immediate needs with greater flexibility and speed than is possible for government operations. The private sector's advantage is well documented and significant:

- When in 1975 the Attorney General of Pennsylvania ruled that youths could not be incarcerated with adult offenders, a private firm was called upon to provide a high security facility for hard-core delinquents. In just ten days, RCA Corporation put its Weaversville Intensive Treatment Unit into operation, having converted buildings already owned by the state. <25>
- Volunteers of America, a private nonprofit social service organization, provides correctional services tailored to the needs of Ramsey County, Minnesota's, female inmate population. The private sector's ability to "specialize" made possible a regional women's facility that offers counseling, employment, and educational services to inmates previously isolated in a county jail with no services for women. <26>
- While the federal Immigration and Naturalization Service requires an average of two and one-half years to build an alien detention facility, CCA was able to put a similar facility into service in just five and one-half months. <27>

In times of severe crowding, the private sector's ability to respond quickly and creatively is particularly compelling. Contracting may, however, constrain government's ability to change course over the long term, and may also result in a reduction of the government personnel pool available in the event of a return to public management. Thought must be given to such possibilities during contract negotiations. Unlike public sector employees in many states, employees of private institutions cannot legally be prevented from organizing and bargaining with management, although in practice few private contractors are unionized. The state's role in running an institution during a strike or work stoppage must be clearly delineated and expressed in the contract. <28>

V. Legal Issues

A. Legislative authority

Before private management of a prison facility can be proposed, it must be determined that the government agency has the authority to contract with private firms, and that no restrictions exist specific to the operation of medium or maximum security facilities. Even where service contracting is authorized, legislative amendments may be required to permit contracts for facility management, and specific language may be needed to open contracting to for-profit organizations. It is likely that a contract for a maximum security corrections facility would require that the contracting authority be confirmed by the governor or state legislature.

Enabling legislation in Minnesota, for example, provides that

"The commissioner of corrections may enter into agreement with the commissioner of human services, with local probation officers or other public officials and with public or private agencies, schools or institutions, for custody, separate care, special treatment, training, or diagnostic services of persons committed to his care or subject to the control of the commissioner of corrections. (Minn. Stat. § 242.21 <1984>)

"The commissioner of corrections may establish and operate community correctional programs or contract with existing public and private agencies for separate custody or specialized care and treatment of persons under his custody and control or under the custody and control of the commissioner of human services or on conditional release under section 241.26. (Minn. Stat. § 241.32 <1984>)

"The commissioner of corrections shall inspect and license all correctional facilities throughout the state, whether public or private, established and operated for the detention and confinement of persons detained or confined therein according to law except to the extent that they are inspected or licensed by other state reg-

ulating agencies. He shall promulgate pursuant to Chapter 14 rules establishing minimum standards for these facilities with respect to their management, operation, physical condition, and the security, safety, health, treatment and discipline of persons detained or confined therein." (Minn. Stat. § 241.28 <1984>. See also Fla. Stat. § 944.026 <1985>)

Similar legislation exists in the state of Illinois where, pursuant to Public Act 83-964 (effective January 1, 1984), the Department of Central Management Services is authorized

"To enter into an agreement with a private individual, partnership or corporation, when authorized to do so by the Department of Corrections, whereby such individual, partnership or corporation will construct, remodel or convert a structure for the purposes of its serving as a correctional institution or facility and then lease such structure to the Department for the use of the Department of Corrections. A lease entered into pursuant to an agreement of the type described in this subsection shall be for a term not to exceed 40 years, but may grant to the State the option to purchase the structure outright." (Civil Administrative Code of Illinois, Ch. 127, par. 63b13.2, Sec. 67.021(d)).

Attorneys General in several states have issued opinions on the legality of contracting with private organizations for corrections facilities; such an opinion may facilitate attempts to draft legislation enabling private prison management. <29>

The authority to contract with private corporations frequently requires legislative action, and the corrections field has typically operated without a strong political lobby. <30> Lobbying efforts by private corrections contractors and watchdog and prisoners' rights groups, however, could enhance the priority status of corrections at all levels of government. The impact of enabling legislation and the speed with which it is passed may be improved by the addition of private interests, though such efforts may also be viewed as self-serving intrusions by private businesses serving a quasi-governmental function.

B. Liability

Liability issues affect the private contractor, the state agency, and the public officials involved in the supervision of the contract. <31> Because the development of private corrections facilities is still in its infancy, courts have not yet been required to provide guidance as to the legal issues involved. In the only case to date, the court addressed other issues and only mentioned in dicta the delegation of authority to private agents. <32>

Private prison operators are apparently subject to statutes fashioned to render state agencies liable for their misconduct, yet are ineligible for the benefits derived from statutes and common law doctrines that preclude or limit the liability of public bodies (as do certain state tort liability statutes and the doctrine of sovereign immunity). <33> In providing services that traditionally have been exclusive government functions, a private entity may become liable under Section 1983 of the Civil Rights Act for damages due to actions that violate the constitutional rights of individuals under its guardianship. <34>

Recognizing liability concerns, private organizations currently contracting with government agencies for the operation of corrections facilities are heavily insured. <35> As the practice of private sector contracting for prison management develops, compliance with existing corrections standards may decrease the costs of liability insurance. <36> Further, insuring the private contractor under government fire and property insurance, even at the contractor's expense, may reduce the contractor's burden to a rate more consistent with that of the contracting agency. The following clause indemnifying the contracting agency typically appears in CCA contracts:

"The County agrees to exercise its best efforts to allow CCA to obtain insurance for the Workcamp/Jail Annex under the County's fire and property insurance at CCA's expense.

"CCA shall save and hold harmless and indemnify the County for any lawsuits brought relative to the operation of the Jail or Workcamp/Jail Annex under the Management Contract.

"CCA shall maintain and pay for such insurance as will protect the County from claims for damages, including but not limited to, physical and personal injury, including death and constitutional rights violations. CCA shall also continuously maintain and pay for workman's compensation insurance.

"The losses, liabilities, and expenses which are indemnified by CCA shall include, but shall not be limited to, judgments, court costs, legal fees, the cost of expert testimony and amounts paid in settlement, whether or not litigation is commenced." <37>

Similar clauses and methods of indemnification have been used in contracts between hospitals and private organizations, such as emergency room physicians groups.

Liability of the contracting government agency is based on the premise that corrections is an essential aspect of the police powers of a state, county, or municipality. Presumably, no government entity can fully delegate its corrections responsibilities, since it is prohibited from alienating entirely the exercise of its police powers. <38> In practice, however, government agencies are already able to "sidestep" responsibility. Individuals acting in their capacities as government employees are granted a qualified immunity

against claims arising out of their "official" actions. The scope of the immunity depends on the discretion allowed to, and the responsibility of, the official. <39> The immunity is "qualified," as an official is not immune from liability if she knew or reasonably should have known that her action would violate clearly established constitutional rights. <40>.

No such immunity appears available to private companies acting in the service of government corrections agencies. Several states that have enacted legislation allowing private operation of corrections facilities have incorporated specific, and more stringent, provisions concerning liability.

C. Contract Specificity

The NIC survey found that corrections officials currently involved in private sector contracting emphasized most strongly the need to define clearly what is expected from the contractor, particularly with respect to roles, goals, obligations, and terminology. The contract document should specifically provide for: need identification, agency cost-benefit analysis, a thorough background check of the private vendor, a contract monitoring and evaluation system, frequent review and inspections by contracting agencies, written client complaint procedures, client access to mechanisms for monitoring abuse, and periodic client surveys. <41> Post-contract issues focus on maintaining lines of communication with the contractor, ensuring quality of service, maintaining appropriate security, and monitoring difficulties that may arise between public and private sector staff. <42>

The American Correctional Association's Policy Committee is preparing guidelines for contract drafting and effective monitoring <43>, and the standards of the Commission on Accreditation for Corrections are also available as a reference in drafting a solicitation and subsequent contract. <44> As in all contracts, advance planning, careful consideration of the roles and responsibilities assigned to the parties, and clear, explicit language are critical if contract disputes are to be avoided.

According to a "checklist" prepared by CCA, "a management contract between a government agency and a private contractor for the latter to manage the operations of a correctional facility will include:

- 1) a cost schedule;
- 2) a minimum and maximum number of inmates to be housed;
- 3) a statement of contract exclusions;
- 4) standard EEOC language regarding nondiscrimination;
- 5) staff arrangements if the contract entails management takeover of an existing and staffed facility;
- 6) provisions for background checks of new personnel recruited by the private contractor;
- 7) adequate fire and property insurance;
- 8) provisions for the private contractor to carry liability insurance with adequate indemnification coverage for the government agency;

- 9) a statement protecting the private contractor from responsibility for pre-existing litigation against the government agency;
- 10) provisions for contract default by the government agency or the private contractor;
- 11) procedure(s) for amending the contract;
- 12) designation of the placement of responsibility for record keeping related to the status of inmates (normally by the government agency);
- 13) terms of contract, including renewal options;
- 14) provision that inmates may work at such jobs as are approved by the government agency;
- 15) written personnel, security, visitation, emergency policies (including use of force, inmate disciplinary actions, searches, inmate grievances, and access to medical care);
- 16) procedure(s) for access by government to the private contractor's records;
- 17) definitions of situations to be reported and the time frame for reporting; and
- 18) monitoring duties and responsibilities."

VI. Political Issues

A. Delegation of social control

The question of a state's legal right to delegate its authority to protect and punish has already been decided to some degree, as noted in Section V. Analogous delegation of such authority to private security guards has already taken place, and authority is widely delegated to halfway houses and other community corrections programs. <45> Delegation of the authority to determine sentences, however, appears unlikely; it remains the state's responsibility to protect an individual's right to due process. CCA, for example, typically includes in its management contract language to the effect that "the County will be responsible for the computation of inmate sentences, including but not limited to computation of good time awards, discharge dates, and parole eligibility dates." <46>

Some argue that a state's right to punish stems from its citizens' acceptance of laws and of the proposition that breaking laws results in punishment. <47> It is essential, they contend, that the agents of punishment be agents of the laws and of the people who make them. In response to such claims, others argue that the level of private decision making entailed by facility management does not abrogate government's role in setting policy. <48> They stress that public officials will retain ultimate control and that contractors will be held to standards in most cases higher than those of a publicly managed facility. <49> According to CCA vice president Travis Snellings, the private sector sees itself "as a sister to government in this field, not a replacement." <50>

The use of deadly force by private sector employees poses a concern easily resolved if government remains responsible for perimeter security control. <51> James K. Stewart, Director of the National Institute of Justice, suggests that "concerns over the delegation of social control can, in the final analysis, be resolved only by carefully defining what limits, if any, are to be placed on contracted functions." <52>

B. Accountability

The importance of installing evaluation and monitoring mechanisms to ensure accountability in contracting cannot be over-emphasized. The National Sheriffs' Association, which opposes privatization, has expressed its belief that, where privatization is attempted, performance should be monitored by trained inspectors possessing a thorough knowledge of jail operations. <53> Thus, it is essential to define clearly roles and responsibilities in the contract document and to review performance expectations.

While some allege quality control is inherently more difficult when government contracts with an independent provider and therefore exerts only indirect control, it can also be argued that protection from competition has led to poor quality services in public enterprises (for example, postal service, mass transit, and education). Frequent and competitive re-bidding of contracts creates an opportunity for accountability unavailable from government agencies currently insulated from competition; whether that opportunity is realized will depend on how well contracts are written and monitored. <54>

C. Attitudes of Interest Groups

Some prison reform advocates support the idea of private sector involvement in corrections, but express concern that private operation of prisons will provide an incentive to keep prisons at peak population and inmates imprisoned as long as possible. <55> Spokespersons for the private sector counter that they are able to provide a less expensive and more humane facility; that they are far more free than bureaucracies to experiment with innovative programs; and that the profit motive actually provides an incentive to improve prison conditions and treatment of prisoners. <56>

Prisoners' rights groups may be concerned that government officials will use the cost savings produced by privatization to increase the number of persons imprisoned or the length of sentences, rather than reduce their budgets. Certainly what we know of the behavior of government bureaucracies suggests that public officials have few incentives to support reductions in their budgets. <57> If the object of privatization is to reduce costs and maintain or improve the quality of corrections services, then elected officials must establish these ends as public policy objectives, and resist attempts by the bureaucracy to maintain current spending levels or increase the number of persons incarcerated. Public interest groups such as the ACLU and local taxpayer organizations may help elected officials in this regard by focusing attention on the problem and creating a constituency for a humane and cost-effective corrections program.

Not surprisingly, unions representing public employees and civil servants oppose the privatization of prisons. <58> Their representatives contend that the public is currently protected against private angers and resentments, at least to some degree, by the professional ethic and internal safeguards of the civil service. <59>

The NIC survey identified loss of control over operations of the agency as a primary concern expressed by jail administrators. This feared loss of control and influence may slow the entry of the private sector more than will any actual loss of employment for state workers. Even administrators who support some degree of privatization must reallocate supervisory personnel in public positions to supervise the new contractual relationships. The need for reallocation must be anticipated during contract negotiations, allowing personnel to be trained in their new roles and thereby reducing management displacement problems. <60>

Attitudes held by the general public may also constrain the development of private facilities. Fear for the security of private facilities may join traditional public reluctance to host a corrections facility in the community. It is important to note that this latter concern has lessened considerably during recent years, as prisons have come to be seen as "economic development" tools: a large corrections facility can bring hundreds of jobs to a depressed area and pump millions of dollars into a community's economy.

Unable to call upon traditional government powers to overcome community resistance, private sector organizations must rely on voluntary means to allay community fears and demonstrate the potential benefits of a new corrections facility. Arbor, Inc., a nonprofit organization proposing to build and operate a private work release facility in a Chicago neighborhood, called together a community board of advisors to review its plans, and hired local residents to help renovate a previously abandoned building to house the facility. When the state proposed a similar facility nearby, the community was not consulted, and the ensuing hue and cry quickly aborted the project. <61>

Successful contracting with private organizations to create new work release centers or prisons requires carefully planned pre-contract and start-up activities. Community concerns and interests can be addressed, not merely suppressed, by thorough calculation of the anticipated benefits to the contracting agency and neighborhood, a carefully tailored educational program to present the facility proposal to the agency and the community, and constant dialogue to defuse opposition. <62> In most instances the private contractor itself will conduct these activities, once again reducing the costs to the contracting government agency.

VII. Conclusion

Private firms in the United States are being called upon increasingly to operate and/or own corrections facilities. This trend is particularly compelling because it represents the return to the private sector of a task for which it once took primary responsibility. Experience to date suggests that privatization, if carefully and professionally implemented, offers a way to reduce the cost of corrections while maintaining and quite likely improving the level of service quality.

Contracting with private sector providers has significant economic, legal, and political implications. It is important that the contract document identify the statutory authority under which such contracts can be made, include exacting details as to the functions to be performed, and carefully outline responsibility and liability for those functions. The actual delegation of authority has already been undertaken, to a limited degree, in the area of community corrections. Extension of private sector involvement into the management of secure corrections facilities may be based on the same rationales. Careful attention must be paid to the competence of the service provider; provision must be made for adequate monitoring devices and for mechanisms for inmate feedback concerning the quality of the services provided.

It is particularly important that the goals of the corrections system are met in a way that respects the constitutional rights of the individuals within that system. If the quality of service can be maintained and needed facilities provided at a cost savings, then the private sector clearly has a role in corrections. The re-entry of private enterprise into the corrections system has stimulated discussion, evaluation, and a broad-based interest in addressing problems that prison officials have faced for years. Such discussion, evaluation, and interest should promote improvements that will ultimately benefit the entire corrections system.

Judy S. Grant is a candidate for a Juris Doctor and Masters of Arts in Public Administration at Hamline University School of Law, St. Paul, Minnesota. An earlier version of this study appeared in the Hamline Journal of Public Law and Policy, Vol. 7, No. 1 (1986). Diane Carol Bast is publications director of The Heartland Institute.

Published by The Heartland Institute as the fifteenth in a series of in-depth studies concerning important issues in the Midwest. Nothing in a Heartland Policy Study should be construed as necessarily reflecting the views of The Heartland Institute or as an attempt to aid or hinder the passage of any legislation.

We gratefully acknowledge the contribution made by Buckingham Security, Ltd. to assist distribution of this study. Copyright 1987 by The Heartland Institute. For additional copies or reprint permission, contact The Heartland Institute, 59 E. Van Buren #810, Chicago, IL 60605. 312/855-1440.