

**ASSESSMENT OF KENTUCKY'S  
PRIVATIZATION EFFORTS**

**October 2006- PERFORMANCE AUDIT**

The Auditor Of Public Accounts Ensures That Public Resources Are Protected, Accurately Valued, Properly Accounted For, And Effectively Employed To Raise The Quality Of Life Of Kentuckians.



CRIT LUALLEN  
AUDITOR OF PUBLIC ACCOUNTS

October 19, 2006

Mr. John Farris, Secretary  
Finance and Administration Cabinet  
702 Capitol Annex  
Capitol Annex  
Frankfort, Kentucky 40601

**Re: Performance Audit of Privatization Contracts**

Dear Secretary Farris:

The enclosed report, *Assessment of Kentucky's Privatization Efforts*, is the third and last in a series of reports that examines state contracting. Our first report in the series focused on contracts for commodities, while the second addressed contracts for services. In this report, we review the effectiveness of the Commonwealth's oversight of privatization contracts, analyze the impact of privatization laws, and offer specific recommendations to strengthen the process by which state government decides to contract for a service as opposed to providing the service with new or existing state personnel.

We are required to remind you, pursuant to KRS 43.090(1), that the agency to which the audit pertains must notify the Legislative Research Commission and the Auditor of the audit recommendations it has implemented and of the recommendations it has not implemented, and any reasons therefore, within sixty (60) days of the completion of the final audit. The audit report will be distributed pursuant to KRS 43.090.

Our Division of Performance Audit evaluates the effectiveness and efficiency of government programs as well as completing risk assessments and benchmarking of state operations. We will be glad to discuss this audit or the services offered by our office at any time. If you or your staff have any questions, please call Ellen Hesem, Acting Director of the Division of Performance Audit, or me.

Sincerely,

A handwritten signature in black ink that reads "Crit Luallen".

Crit Luallen  
Auditor of Public Accounts



c: Governor Ernie Fletcher  
House Speaker, Jody Richards  
Senate President, David Williams  
Representative Harry Moberly, Chair, House Appropriations and Revenue Committee  
Senator Charlie Borders, Chair, Senate Appropriations and Revenue Committee  
Senator Ernie Harris, Co-Chair, Program Review and Investigations Committee  
Representative Tommy Thompson, Co-Chair, Co-Chair, Program Review and Investigations Committee  
Stan Cave, Chief of Staff  
Brad Cowgill, State Budget Director  
James Nelson, State Librarian and Commissioner, Department for Libraries and Archives  
Robert Sherman, Director, Legislative Research Commission  
Michael Meeks, CSA, Government Contract Review Committee  
Greg Hager, CSA, Program Review and Investigation Committee  
Dan Abner, Director of Office of Material and Procurement Services, Finance and Administration  
Cabinet  
Ed Ross, Office of the Controller, Finance and Administration Cabinet  
Secretary Mark D. Birdwhistell  
Commissioner John D. Rees



## **Assessment of Kentucky's Privatization Efforts**

### **Background**

This is the third and last report in a series of reports that have examined state contracting. The purpose of this performance audit is to determine the effectiveness of the Commonwealth's oversight of privatization contracts, to analyze the impact of privatization laws, and to better understand the use of privatization contracts as a strategy to save money on the delivery of government services.

The privatization of government services is an increasing trend at the federal, state, and local levels. Examples in Kentucky in recent years include contracts with private vendors to provide:

- Administrative services in the Medicaid program;
- Private prisons;
- Food services in state health and correctional facilities; and
- Management and staffing services in state mental health facilities.

Although Kentucky state government is increasing its reliance on private contractors, the question remains as to whether privatization reduces the cost of public services or shifts work to the private sector. Overall, the measures intended to provide oversight of privatization contracts in Kentucky are simply inadequate to guarantee to the public that the use of private contractors will ensure the best value.

The general privatization law passed in 1998 is completely ineffective due to numerous exemptions and definitions in the law. This law was intended to provide accountability by requiring detailed cost-benefit analyses of privatization contracts before entering into them. Only one contract has actually been implemented under the guidelines of the general privatization law in the eight years it has been in effect.

Another privatization law specifies requirements for the operations and contracting of prisons. Our report focused on the requirement that contracts for private prisons result in 10% cost savings when compared with similar public prisons. The savings were not adequately documented, nor do specific guidelines and reporting requirements exist.

This audit also provides a case study of privatization efforts at the Communities at Oakwood – a facility that provides residential care to developmentally disabled adults.

### **Findings**

#### **The 1998 Privatization Law Is Ineffective**

The statutes intended to govern the privatization of services other than prisons were enacted in 1998 (KRS 45A.550 to 45A.554) and are ineffective for the following reasons:

- The law exempts almost all forms of contracts used by state agencies.
- Only one contract has been implemented under the process outlined in the privatization statutes.

#### **Attrition Is Used to Avoid Privatization Law**

The privatization statutes have been interpreted as applying only to contracts that lead to the immediate displacement of state employees and replacing them with contract workers. This makes it possible for agencies to use attrition – not filling vacant positions – to avoid closer oversight of privatization contracts.

#### **There Is Minimal Justification for Private Services**

There is minimal, if any, justification for contracts awarded outside the statutory privatization process. State agencies only conducted cost-benefit analyses on their own initiative for contracts with a total value of over \$14 million out of a sample worth over \$1 billion.

### **Cost Calculations to Determine 10% Savings for Private Prisons Are Inconsistently Applied and Lack Independent Review**

While there are no specific guidelines or reporting requirements, the Kentucky Department of Correction's (DOC) cost calculations to determine the 10% savings were not consistently applied or documented and should have an independent review.

## **Recommendations**

### **Privatization Law Needs To Be Strengthened**

KRS 45A.550(2), a law defining privatization terms, should be amended to improve its effectiveness, including:

- Delete exemptions limiting types of contracts and instead specify types of services to be subject to the statute;
- Create a provision to establish a threshold for large dollar contracts; and
- Change the requirements so that the statute applies to situations where multiple contracts are used.

### **Subcontracting of Sole Source Contracts Should Be Prohibited**

Sole source contracts should contain a provision that prohibits subcontracting the primary service to be provided under the contract.

### **State Contracting Staff Are Not Familiar With Privatization Laws and Need Additional Training**

63% of state agency contracting staff interviewed are not familiar with privatization laws. Additional training should be provided to agency contracting personnel on the intent and provisions of Kentucky's privatization law.

### **Accountability of Private Prison Savings Needs Improvement**

The General Assembly should review KRS 197.510 (13) to specify a consistent methodology for determining cost savings and consider whether an outside entity should review the methods and ensure they are implemented properly.

The Department of Corrections should:

- Standardize cost allocations for public and private prisons and document methodology in administrative regulation;
- Consider any increased cost to the Commonwealth when contracting with a private prison;
- Maintain cost allocation and computation records in accordance with Kentucky records retention law;
- Routinely perform analysis pursuant to KRS 45A.550 to 45A.554 for every private prison contract, and;
- Have an outside entity, familiar with public and private prison cost allocation methods, review current processes and develop consistent methods and procedures.

## Oakwood: A Case Study

Various aspects of Oakwood's operations have been contracted out over time resulting in "piecemeal privatization." Costs have gone up, the number of residents has gone down and citations for life threatening situations multiplied. A large percentage of Oakwood's workforce has been hired under contracts with multiple vendors. There has not been long term planning or a stable environment for residents or workers. In November 2006 a new vendor, The Bluegrass Regional Mental Health and Mental Retardation Board, will take over management.

Actions to improve supervision of contractors and promote accountability at Oakwood should include:

- Specific performance criteria in the contract provisions, such as a reduction in the number of citations from the prior year or keeping the cost per resident within a specified range.
- Use of cabinet employees with expertise to monitor contract compliance and act as a liaison with responsible cabinet officials to ensure timely communications.
- Limiting the total number of contracts to lessen confusion and ensure clear lines of authority.
- Ensuring that policy-related functions such as long-range planning remain with the state agency and not be delegated to the private contractor as part of the contract.

## Best Practices

The APA reviewed best practices in privatization and developments in other states and offers recommendations to provide more accountability and transparency when state government privatizes public services:

- Identify candidates for privatization of state functions and services based on consistent and clearly defined criteria.
- Require a cost-benefit analysis of all large dollar contracts (\$500,000+) prior to approval.
- Require a periodic evaluation of large dollar contracts for privatized services to ensure the anticipated savings or benefits of using a private contractor are being realized.
- Require all data, software and similar products developed by a contractor using state funds become the property of the Commonwealth.
- Consider provisions similar to a new law in Florida, a pioneer in privatization, to leverage state resources to allow private sector vendors to deliver services effectively and efficiently at reduced costs, such as:
  - Limit contractors to three-year renewals;
  - Require specially trained and certified contract negotiators for contracts over \$1 million;
  - Require annual reports to the Legislature documenting outsourcing, cost benefit analysis, and contract performance for each agency;
  - Require access to contractor's records and periodic audits; and
  - Prohibit contractors from selection, hiring, firing, demotion, and dismissal of state employee.
- Require the Finance and Administration Cabinet to develop a more user-friendly website that would allow for greater public access to and scrutiny of all state contracts. It should be searchable by vendor, agency, service/commodity type, and dollar value.





---

# Table of Contents

---

	<b>Transmittal Letter</b>	
	<b>Executive Summary</b> .....	i
	<b>Introduction</b> .....	1
<b>Chapter 1</b>	<b>What Is Privatization?</b> .....	4
<b>Chapter 2</b>	<b>Review of Privatization Statute Oversight and Effectiveness</b> .....	11
<b>Chapter 3</b>	<b>Oakwood: A Privatization Case Study</b> .....	23
<b>Chapter 4</b>	<b>Review of Kentucky’s Prison Privatization</b> .....	32
<b>Chapter 5</b>	<b>Privatization in Other States</b> .....	41
	<b>Conclusions and Additional Recommendations</b> .....	55
<b>Appendices</b>	<b>I. Scope and Methodology</b> .....	57
	<b>II. Kentucky Privatization Laws</b> .....	61
	<b>III. Contract Sample Attribute List</b> .....	71
	<b>IV. Southern and Eastern Kentucky Tourism Development Association (SEKTDA) Contract Letters</b> .....	79
	<b>V. Oakwood Contract List May 2006</b> .....	84
	<b>VI. Prison Facility Statistics</b> .....	85
	<b>VII. Private Prisons’ FY 2005 Contract Language Related to KRS 197.510(13)</b> .....	87
	<b>VIII. Agency Comments</b> .....	88
	<b>IX. Auditor of Public Accounts Information</b> .....	100

---

# Introduction

---

## Audit Objectives

The Kentucky Auditor of Public Accounts conducted this performance audit to determine the effectiveness of the Commonwealth's oversight of privatization contracts, to analyze the impact of privatization laws, and to better understand the use of privatization contracts as a strategy to save money on the delivery of government services. We focused the scope of the audit to satisfy the following objectives:

- Determine whether the Commonwealth's privatization statutes, regulations, and policies are effective in providing oversight of private contractors that provide government services and of state agencies that monitor those contracts.
- Determine whether agencies are complying with Kentucky's privatization laws (KRS 45A.550 to 45A.554).
- Determine whether the Department of Corrections is realizing the 10% savings required for private prisons under KRS 197.510.
- Determine whether there are contracts exempt under the Commonwealth's privatization laws that deserve additional oversight as privatized services.
- Determine whether large-dollar contracts with private vendors are justified by cost benefit analyses.
- Identify other states' privatization laws and proposals that offer positive examples for Kentucky to consider.

This audit, our third and final in a series of reviews of state contracting, builds on our first two reports that addressed the importance of contract oversight, performing cost-benefit analyses and tracking full-time equivalent workers when evaluating privatization contract decisions.

In 1986 Kentucky was recognized as the first state in the nation to privatize prisons for adult males when a contract was issued for the management and operation of the Marion Adjustment Center. Since then, privatization contracting has expanded in the Commonwealth. As reported in our September 2005 audit, the Commonwealth had entered into over 2600 contracts for services with total expenditures of over \$600 million.

The impact of the expanding privatization of government services, in Kentucky and other states, is uncertain. A 1997 survey by the Council of State Governments (CSG) found that most states surveyed expanded privatization from 1993 through 1997. A summary of more recent CSG findings reported in *Spectrum: The Journal of State Government* reveals the existence of additional large privatization contracts in many states, but there is a lack of consensus about privatization's effectiveness.

Although states enter privatization contracts primarily to save money, the majority of state officials responding to recent CSG surveys estimated that savings from privatization were less than 5%.

---

# Introduction

---

In many cases, the officials could not account for any savings and, as a result, none were reported.

States are motivated to expand privatization by static budgets and declining revenues. The 2006 Kentucky General Assembly included a requirement in the 2006-2008 budget that state agencies reduce expenditures by \$58 million over the biennium by “continuing to reduce waste, fraud, and abuse, and by creating additional savings through increased efficiencies.” Privatization of state services will likely be one method that state agencies use to reduce costs and meet budget goals.

## Background and Overview of Audit

Although privatization of government services has been favorably received at the federal, state, and local levels, the question remains as to whether it actually reduces the cost of services or simply shifts work to the private sector.

States have widely varying approaches to privatization. Virginia and Texas employ models that allow state agencies to compete on more or less equal ground with private contractors, while other states, such as Massachusetts and Florida, require gubernatorial, legislative, or administrative board approval following specific reviews. Controls also vary among states, ranging from aggressive oversight to few controls. At its best, privatization promotes competition and value based on quality and cost of service delivery – whether delivered by public or private means.

We examined a group of 57 large dollar contracts (each with a value of more than \$500,000), from 12 Kentucky state agencies representing various types of professional and nonprofessional services, executed as Personal Service Contracts and Master Agreements – two options agencies use. The selected contracts are examples of services that might be undertaken by state workers or contracted to private vendors. Among the thousands of contracts executed by the Commonwealth, only one contract was determined by agency officials to be a privatization contract under Kentucky’s privatization laws, KRS 45A.550 through KRS 45A.554.

Kentucky is among at least 15 states with privatization statutes on the books; we chose six other states to compare to Kentucky in the areas of laws, oversight, and types of services privatized. Our selection criteria included those states identified by the Government Accountability Office and other reporters as being either aggressive in their privatization efforts or progressive in their oversight and states with recent proposals to strengthen privatization laws.

---

# Introduction

---

This performance audit is the first to be conducted since Kentucky adopted specific privatization laws under its Model Procurement Code in 1998. The audit expands on the earlier work undertaken by the Legislative Research Commission (LRC) by addressing the impact of privatization laws passed in 1998. Two earlier reports on statewide privatization issues were:

- Kentucky Legislative Research Commission Research Memorandum No. 432, *Government Competition with Private Enterprise*, July 1986
- Kentucky Legislative Research Commission Research Memorandum No. 481, *Privatization Processes in Other States*, November 19, 1997

A related research report by LRC addresses general contract administration:

- Kentucky Legislative Research Commission Research Report No. 285, *State Agency Service Contract Administration*, July 9, 1999

# What Is Privatization?

What is privatization? This sometimes ambiguous concept often causes debate between its promoters and critics. States may privatize in many ways – through delegation, divestment, or displacement of capital or services. But delegation through contracting is the most common form of privatization in the United States. Our work concentrated on privatization efforts specifically related to contracting in Kentucky. But determining the state’s exact number of privatization contracts depends on how privatization and privatization contracts are defined.

Decades ago, the terms “privatization” and “privatize” gained attention as a conceptual ideology suggested in management and economics disciplines and public policy debate. Proponents of privatization claim it stimulates competition and productivity while opponents contend that it lessens government’s control over the provision of taxpayer-financed services.

Definitions vary, but the Government Accountability Office offered a fairly straightforward definition of privatization in its 1997 publication, *Terms Related to Privatization Activities and Processes*:

*The term privatization has generally been defined as any process aimed at shifting functions and responsibilities, in whole or in part, from the government to the private sector. (GAO/GGD-97-121 July 1997)*

Privatization may be broken down into three types: delegation, divestiture, and displacement. All types ultimately result in turning over government services or assets to private providers.

At Table 1.1, borrowing from lists of privatization terms compiled by the National Council of State Legislatures and management professor E.S. Savas, we describe the types, forms, and examples of privatization that Kentucky state government is likely to practice.

**Table 1.1: Forms of Privatization Related to States**

Type	Form
<b>Delegation</b>	Contracting out
	Public-private partnerships
	Franchise
	Grants & subsidies
<b>Divestiture</b>	Asset sale or lease
	Private donation
<b>Displacement</b>	Service shedding
	Volunteerism
	Vouchers

Source: Adapted from E.S. Savas, *Privatization and Public-Private Partnerships* (New York: Chatham House Publishers, 2000) by the Auditor of Public Accounts. For a discussion of additional privatization terms, we recommend the GAO report, *Terms Related to Privatization Activities and Processes* (GAO/GGD-97-121, July 1997).

## What Is Privatization?

---

### Controls on Privatization under Kentucky Law, Policies, and Procedures

A 2004 report by the Council of State Governments noted that, in a 2002 survey of state budget directors, Kentucky officials identified contracting out as the only form of privatization used in the state. Nearly 87% of all states reported engaging in privatization contracting, followed by public-private partnerships at 45%, and grants and subsidies at 32%.

Kentucky has two laws that set forth requirements for privatizing state services and prisons. The primary privatization law, KRS 45A.550 to 45A.554, regulates state contracts in general; and the prison privatization law, KRS 197.500 to 197.525, contains additional requirements for private prisons. Appendix 2 contains the complete text of these state laws.

KRS 45A.550 contains the following definitions for privatization terms:

- (1) "Privatize" means to contract out in order to procure the services of a private vendor to provide a service that is similar to, and in lieu of, a service provided by state employees of the privatizing agency;*
- (2) "Privatization contract" means an agreement or combination of a series of agreements by which a private vendor agrees to provide services that are substantially similar to, and in lieu of, services previously provided, in whole or in part, by at least ten (10) permanent, full-time budgeted employees of the state agency. This term includes but is not limited to concession contracts. This term does not include personal service contracts as defined in KRS 45A.690, contracts entered into pursuant to KRS Chapter 176, 177, 178, 179, 180 or 181, Medicaid provider contracts, architect and engineering contracts, or memoranda of understanding or memoranda of agreements or program administration contracts with the Cabinet for Human Resources, including contracts for child support collections and enforcement with contracting officials as authorized by KRS 205.712; and*
- (3) "Services" shall not include administration and support functions of government. "Administration and support functions" shall include, but not be limited to, construction contracts, bond counsel and bond underwriting services, architect and engineering services, price contracts, personal service contracts, and memoranda of understanding and memoranda of agreement.*

The primary privatization law, KRS 45A.550 to 45A.554, requires state contracts for services that "are substantially similar to, and in lieu of, services previously provided, in whole or in part, by at least ten (10) permanent, full-time budgeted employees of the state agency," to be subject to a specific approval process that is more comprehensive than the normal procurement process. Agencies are required to document in

# What Is Privatization?

---

writing why the service is needed, “problems and inefficiencies existing with the current governmental operation of the service,” and whether the service can efficiently be provided by the agency. A detailed cost-benefit analysis is required under some circumstances, and an annual performance evaluation of privatization contracts for more than \$500,000 in annual expenditures is required. The statute also lists the contract types that are exempt.

A second set of laws, KRS 197.500 to 197.525, relates to contracts for private prisons and contains a number of specific provisions relating to prison operations. One of the most significant requirements is that the private facility house state inmates “at a cost that provides the state with a savings of not less than ten percent (10%) of the cost of housing inmates in similar facilities and providing similar programs to those types of inmates in state-operated facilities.” KRS 197.510(13).

## A Brief History of Kentucky’s Privatization Efforts and Legislative Actions

Although specific privatization laws were not enacted in the state until 1998, Kentucky is no stranger to privatization. Kentucky’s contracts with private vendors include Medicaid billing and processing, state psychiatric hospital administration and staffing, private prisons, food services, and various contracts for other nonprofessional and professional services. The following timeline illustrates some of the more significant developments in Kentucky’s privatization efforts and related matters:

### Timeline of Kentucky Privatization Efforts and Events 1986 – Present

- **1986:** Kentucky led the nation by being the first state to have its correctional system contract with a private vendor to run a correctional facility, Marion Adjustment Center. (*Kentucky Business Online*, September 1999)
- **November 1993:** Governor Brereton Jones issued Executive Order 93-1143, establishing a Privatization Commission to review current state services and make recommendations to the Governor. The Commission identified dozens of candidates for privatization and possible savings.
- **June 1994:** Kentucky Auditor of Public Accounts A.B. Chandler III issued a report, *Privatization Review of ICF/MR Institutions and Minimum Security Correctional Facilities*, which concluded that these two areas of privatization achieved cost savings or expedited program implementation, and/or administrative efficiency.
- **September 1995:** Bluegrass Regional Mental Health Mental Retardation Board took over operations at Kentucky’s Eastern State Hospital and transitioned 320 staff from the state workforce to a nonprofit corporate entity. The Board currently operates under contract with the Commonwealth and represents one of the largest community mental health centers in the United States. (WebPages, Bluegrass Regional Mental Health-Mental Retardation Board, Inc.)

**What Is Privatization?**

---

- **July 15, 1998:** Kentucky's privatization statutes, 45A.550 to 45A.554, and a related regulation concerning the privatization process, 200 KAR 5:340, take effect.
- **January 1999:** Governor Paul Patton's EMPOWER Kentucky program reported progress and savings from closing more than 30 supplies warehouses and consolidating purchases through private vendor resources and just-in-time goods delivery. State workers were reassigned without layoffs. (*Kentucky Business Online*, January 1999)
- **October 2000:** The first management contract at the Oakwood facility for mentally retarded adults in Somerset was established with Columbus Medical for \$2.9 million to provide technical assistance and professional personnel necessary to meet licensure requirements. (Commonwealth of Kentucky Master Agreement)
- **November 2004:** Kentucky's Cabinet for Health and Family Services began its search for a contractor to assume administrative and management responsibilities in Kentucky's Medicaid program. (*The Kentucky Post*, November 13, 2004)
- **November 2004:** The Kentucky Department of Corrections privatized food services under a contract with Aramark, and projected over \$5 million per year in savings by switching from state employees and suppliers to the private vendor. (*Cincinnati Enquirer*, November 12, 2004)
- **February 2005:** The Bluegrass Institute for Public Policy Solutions, a non-partisan think tank, issued *Mousetraps and Stale Coffee: Making the Case for Privatizing Kentucky State Parks* promoting privatization as a way to cut waste and improve Kentucky's parks system. (*Bluegrass Institute* February 8, 2005)
- **February 14, 2005:** HCR 139 was introduced in the Kentucky Legislature to establish a task force on privatization to study, analyze, and assess privatization in Kentucky state government and report findings and recommendations to the Governor and Legislature. The measure did not pass. (LRC WebPages)
- **March 2005:** Governor Ernie Fletcher announces state workforces are a better option than private workforces for running the medium-security prison in Elliot County and that more than 200 full-time employees will be hired. (*Kentucky Newsroom*, March 10, 2005)
- **May 2005:** Kentucky's use of private contractors to review and draft air pollution permits drew criticism from legislators and the Kentucky Resources Council. Risks and questions concerning secrecy behind the plan are debated. (*Courier-Journal*, May 11, 2005)



---

## Chapter 1

# What Is Privatization?

---

- **September 2005:** In an effort to control costs, the Fletcher administration launched the self-funded Kentucky Employees Health Plan. Instead of benefits being provided totally under contract with private insurers, private contractors provide only administrative services under the new plan, with the state assuming the financial risk associated with health insurance. (Press release, Kentucky Cabinet for Health and Family Services, September 6, 2005)
- **January 2006:** House Bill 400 is introduced to the Kentucky Legislature. Building on existing privatization laws, this proposal required far-reaching reform and much greater control of the privatization process, eliminating most exemptions found in existing law. The bill did not pass. (LRC WebPages)
- **February 2006:** CHFS established a \$9.1 million contract with Liberty Healthcare to take over complete management responsibilities for the Oakwood facility in Somerset. (Associated Press report, WHAS Louisville, February 1, 2006, and *Louisville Courier Journal*, December 13, 2005.)
- **March 2006:** The University of Kentucky, operating under a \$5 million federal grant, opened a national center to study privatization of child welfare cases and successes and failures in other states that have fully privatized these services. (*Lexington-Herald Leader* March 6, 2006)

### Surveys of States' Privatization Efforts

Surveys conducted by the Council of State Governments (CSG) reveal significant privatization efforts within state governments. In July 1997 CSG surveyed state governments and ranked Kentucky 14<sup>th</sup> among states in its privatization activities. Table 1.2 lists the CSG survey results for Kentucky and other states.

**Table 1.2: 1997 State Survey Results for Services and Programs Privatized**

State	Number of Programs and Services Privatized	Number of State Agencies Respondents
Florida	151	16
Colorado	125	10
California	124	9
Michigan	119	11
Iowa	118	10
Maryland	118	10
New Jersey	112	9
Connecticut	90	14
Illinois	88	6
Tennessee	86	10
Texas	82	8
Louisiana	78	11
Virginia	76	8
<b>Kentucky</b>	<b>73</b>	<b>7</b>

---

## Chapter 1

# What Is Privatization?

---

State	Number of Programs and Services Privatized	Number of State Agencies Respondents
Nebraska	68	10
Arkansas	61	10
New York	60	7
Hawaii	59	13
Utah	58	7
Georgia	56	7
New Hampshire	54	8
Nevada	52	8
Kansas	50	6
Alabama	49	10
North Carolina	49	10
Washington	49	9
Arizona	48	7
South Carolina	48	8
Wisconsin	48	6
Pennsylvania	47	7
Minnesota	46	6
Oregon	45	7
West Virginia	45	8
Maine	42	9
Oklahoma	42	6
Alaska	41	8
Missouri	41	8
Montana	41	4
Indiana	39	6
Idaho	37	8
North Dakota	35	9
Delaware	31	4
Mississippi	31	4
Massachusetts	30	3
Wyoming	29	7
Vermont	28	6
Ohio	26	4
Rhode Island	26	4
New Mexico	6	3

Source: Council of State Governments *Private Practices: A Review of Privatization in State Government*, 1998. Results are based on a 1997 survey.

A more recent accounting was included in the CSG's 2004 edition of *The Book of The States*. This survey of state agency directors found the two most popular program areas for privatization in Kentucky were transportation and correctional services.

---

## Chapter 1

# What Is Privatization?

---

Kentucky's privatization activity statistics associated with the 2004 CSG report are presented in Table 1.3. The responses indicate that some services have been privatized beyond those included in Kentucky's statutory definitions of privatization contracts. At the time of the survey, the privatization law had been in effect for four years.

**Table 1.3: 2002 Kentucky Agency Privatization Statistics**

<b>Department</b>	<b>Privatization Activity</b>
Corrections	1-5 percent of services are currently privatized
Education	Less than 1 percent of services are currently privatized
Department of Health & Human Services	Office of Inspector General: less than 1 percent Department for Public Health and Department for Mental Retardation: 1-5 percent Medicaid Benefits program: More than 15 percent (Medicaid Benefits utilizes a fiscal agent under a contractual agreement to administer the volume of data produced by the program.)
Department of Personnel	Agency does not engage in privatization
Department of Transportation	On a dollar basis, approximately 55 percent of the department's budget is devoted to hiring outside consulting and contracting firms for design, engineering, and construction

Source: Council of State Governments, *The Book of The States*, 2004 Edition. Question: "How many services and programs in your agency are currently privatized?"

---

## Chapter 2

# Review Of Privatization Statute Oversight And Effectiveness

---

### Review of Privatization Statute Oversight and Effectiveness

In Kentucky, eight years after the enactment of the privatization statutes, KRS 45A.550 to 45A.554, there is still loose oversight and informal monitoring of state contracts. The following points summarize Kentucky's current privatization contracting environment and results.

- Kentucky's privatization contracts are regulated by privatization statutes and a related regulation.
- Kentucky currently has no commissions, councils, or independent bodies that identify, initiate, or oversee privatization activities.
- The initial decision to implement a contract under the privatization statutes rests with individual state agencies, which have varying levels of familiarity with the privatization law.
- Contracts are not reported in a user-friendly manner or archived to chart trends including numbers of sole source contracts, newly privatized areas, frequency of contract awards to the same vendor, and other measures important to taxpayers and decision makers.
- The two independent oversight bodies mentioned in the privatization laws, LRC and the APA, have only after-the-fact oversight functions.
- Only one contract has been implemented under the guidelines of Kentucky's privatization statutes since the law took effect in 1998.

### **Finding 2.1 The statutes intended to govern the privatization of services (KRS 45A.550 to 45A.534) are ineffective.**

The definitions of "privatization contract" included in KRS 45A.550(2) and "services" in KRS 45A.550(3) contain so many exemptions that oversight is impossible to achieve. This contradicts the objectives of the statutes to assure that:

- Services are privatized only when the action is fully justified;
- Protections are put in place for affected state employees;
- Contracts are properly monitored once they are put in place.

KRS 45A.550(1) offers a general definition of privatize: "to contract out in order to procure the services of a private vendor to provide a service that is similar to, and in lieu of, a service provided by state employees of the privatizing agency." Based on this criteria alone, the statute could apply to a large number of contracts. But additional definitions – of privatization contracts and services – limit the types of contracts the privatization statutes cover.

**Review Of Privatization Statute Oversight And Effectiveness**

---

According to the statutes, a “privatization contract” is “an agreement or combination of a series of agreements by which a private vendor agrees to provide services that are substantially similar to, and in lieu of, services previously provided, in whole or in part, by at least ten (10) permanent, full-time, budgeted employees of the state agency.” This definition imposes the requirement that the work done under a contract must replace that done by 10 or more state employees. Although using an actual number of state employees is not a problem by itself, the definition excludes the possibility that a contract may privatize a state service by replacing vacant, but budgeted, state employee positions. These vacancies may be caused by an agency’s inability or unwillingness to fill the positions.

The definition of “privatization contract” exempts at least 15 different types of contracts from the statute’s provisions. These include personal service contracts, price contracts, architecture and engineering contracts, construction contracts, bridge and highway contracts, Medicaid provider contracts, program administration contracts with the Cabinet for Human Resources, and several other categories. Personal service and price contracts account for a large number of state government contracts.

The statutes also define the types of services that may be covered under a “privatization contract”. KRS 45A.550(3) defines “services” as not including contracts for “administration and support functions of government.” This broad and ambiguous definition exempts the same types of contracts as those excluded under the “privatization contract” definition, but it does not limit exclusions to that list. By failing to specifically define “administrative and support function of government” the statute effectively leaves the matter open-ended. This leaves the final determination of what contracts are included and excluded up to individual interpretation of the statute.

**Finding 2.2  
Only one contract has been implemented under the process outlined in the privatization statutes.**

According to Finance and Administration Cabinet personnel, only one contract has been implemented under the process outlined in the privatization statutes, KRS 45A.550 – 45A.554. This contract was awarded by the Department of Corrections to Aramark Correctional Services to provide prison food services, replacing 85 state employees at Kentucky’s correctional institutions. The contract took effect January 5, 2005.

After identifying the contract as meeting the criteria for privatization, Finance and Administration Cabinet staff initiated a process described in KRS 45A.552 and 200 KAR 5:340. This process establishes an ad hoc committee of staff from the Finance and Administration and Personnel Cabinets. The Department of Corrections was then required to produce a cost analysis to demonstrate the savings that would result from the contract (versus the cost of using state employees).

**Review Of Privatization Statute Oversight And Effectiveness**

---

The analysis predicted savings by reducing the meal cost per prisoner from \$3.28/day as provided by state employees. The Department of Corrections estimated a savings of \$5.2 million annually based on the final contract price of \$2.34/day.

The statutory process also requires that a plan be developed to ensure that state employees being adversely affected are given employment assistance. Corrections' plan involved allowing employees with 16 or more years of state service to continue in their current capacity. Those with less than 16 years of service were to be placed in other state positions for which they qualified or could continue their current jobs in Aramark's employ.

Through the requests for information and analysis by the ad hoc committee, our review indicates the process outlined in the privatization statutes for initiating and creating a privatization contract was followed. However, while the contract appears to have saved the state money, the evaluation prepared by Corrections simply asserted a savings of \$5.2 million without providing the actual documentation for this amount. What stands out most about this case is that only one contract has been implemented under the privatization process. This is curiously low considering the statutes have been in effect since 1998.

From fiscal year 2000 through 2004, nearly 11,000 personal service contracts and almost 2,000 non-professional service contracts were executed. But exemptions in the statutes have resulted in none of these contracts being considered for the privatization process. Even the Department of Corrections' food service contract could technically have been exempt as a price contract (payments are based on a unit price and vary depending on how many prisoners are served). Price contracts are specifically excluded from the privatization statutory process. However, concession contracts are specifically required to be considered under the process, and the food services contract falls under that category as well. This demonstrates the conflicting and contradictory nature of the statutory definitions.

**Finding 2.3**  
**All contracts can be exempt from oversight of the privatization statutes.**

Because of the defined criteria and exemptions found in the statutes, all contracts involved in privatizing state services would be excluded from the very statutory process that is supposed to provide oversight. A sample of 57 service contracts was selected for review. The contracts, with effective dates during fiscal years 2005 or 2006, were chosen based on one or more of the following criteria:

- A value exceeding \$500,000
- Contract with a private vendor
- Provides a service that is, has been, or could be performed by state employees
- Overall importance to the function of state services

## Chapter 2

# Review Of Privatization Statute Oversight And Effectiveness

The resulting list contained contracts from 12 state agencies for a variety of services. The value of the contracts ranged from slightly above \$500,000 to nearly \$496 million, with a total value of more than \$1.2 billion.

Each of the 57 contracts was evaluated against the criteria found in the definitions of “privatization contract” and “services” to determine at what point they would be exempt from the privatization statute process and oversight. The results are shown in Appendix 3 and summarized in Table 2.1

**Table 2.1: Summary of Statutory Exemptions Found in Contracts Sampled**

Services Previously Provided by State	Replaces 10 or More State Employees	Personal Service Contracts	Price Contracts	Administrative and Support Functions of Government	Program Administration Contracts for CHR (Now CHFS)
23	1	28*	34*	31*	17*

Source: Auditor of Public Accounts based on agency responses and contract information.

\* Contracts may be classified as one or more contract types or providing one or more types of services.

Information obtained through research and interviews determined that at least 23 of the services provided under the sample contracts had been performed by state employees since the statutes’ enactment in 1998. If the general definition of privatization were all that applied, 40% of the sample contracts could have been subject to the review process.

The statute further defines “privatization contract” with the requirement that the contracted service be in lieu of services previously provided by 10 or more state employees. Considering this requirement, the number of sample contracts that would be subject to review drops to one – the prison food service contract detailed above. This applies even to those contracts that were clearly established to privatize a service because the statutes only apply to new contracts during their initial creation period. For example, a contract for the private operation of the Outwood Intermediate Care Facility for the Mentally Retarded and Developmentally Disabled was effective before the privatization statutes were created. This contract was consistently renewed and therefore was never considered to be a new contract. For this reason it can never be subject to the provisions of the current privatization process and the more stringent requirements of cost justification, because ten or more state employees have not performed this particular service since the inception of the privatization statutes.

The results of the sample further demonstrate how exempting personal service contracts and price contracts affects the applicability of the review process to the sample contracts. Of the 57 contracts in the sample, 53 were either personal service or price contracts. The remaining four could easily be considered contracts for administrative and support functions of state government, a classification that also exempts them from the process.

## Review Of Privatization Statute Oversight And Effectiveness

---

Therefore, all contracts in the sample were exempt from the privatization statute oversight.

**Finding 2.4**  
**Attrition may be used to justify the privatization of state services while avoiding the statutory privatization process.**

The privatization statutes have been interpreted as applying only to contracts that lead to the immediate displacement of state employees and replacing them with contract workers. This interpretation makes it possible for agencies to use attrition to avoid closer oversight of privatization contracts.

Attrition is a method of achieving a personnel reduction by not filling positions that are vacated through resignation, reassignment, transfer, retirement, or some means other than layoffs. It may be achieved as part of a planned reduction in personnel, or it may occur due to an agency's inability to fill vacant positions as a result of budget constraints or difficulty in recruiting qualified candidates. If positions are unfilled, a privatization contract would have an impact on fewer state employees and would therefore be subject to less scrutiny and oversight.

The APA contract sample includes examples of these methods of privatization for two types of services: Mental health facility food services and nursing services.

**Example: Mental Health Facility Food Services**

The Department for Mental Health and Mental Retardation (MHMR) uses private vendors to provide food services at various facilities. Unlike Corrections, however, MHMR did not immediately replace the state employees that were providing food services. Instead, the vendor was not permitted to hire contract workers for the services at Central and Western State Hospitals until state employees voluntarily left their positions. As a result, none of these food service contracts was subject to the statutory privatization process and thereby avoided the requirements for a cost-benefit analysis and a detailed plan for oversight of the contractor's performance.

The contracts do provide protection to some state employees through the use of attrition, but this protection was only guaranteed for six months for the most recent contract at Central State Hospital. It was unclear in the contract what would happen to employees at the end of this period. There is a provision for the vendor to provide certain fringe benefits to its employees, but there is no requirement for the vendor to hire the state employees at the end of the six months. Once again, the requirements of the privatization statutes and the oversight of an ad hoc committee would have provided a more comprehensive and detailed assistance plan.

It is important to note that, even if agency personnel had interpreted the contracts as being subject to the review process, the contracts still could have been exempt by being classified as price contracts. These examples illustrate how the uncertainties contained in the statutory language make it possible to subject one contract to the review process while excluding two



**Chapter 2**

**Review Of Privatization Statute Oversight And Effectiveness**

very similar contracts from that process.

**Example: Nursing Services**

Nursing services are used in different state agencies, most commonly in Corrections and MHMR. Of the 57 APA sample contracts, seven were for nursing services – five in MHMR and two in Corrections. According to agency personnel, the contracts were needed to fill nursing vacancies caused by the low pay that the state offers these health care providers. Each agency reported having numerous staff openings for nurses and that contracting was the only way to meet needs.

In these cases, contract workers purposefully replaced none of the state employees. In fact, personnel at both agencies said that they would prefer to hire staff nurses as state employees to save money.

Because of the absence of a required timeframe, these contracts could be interpreted as replacing ten or more state employees, just as the food service contracts did. It is questionable, however, whether a cost-benefit analysis would be effective in this case. Most likely the results would show that state employees can provide the service at a lower cost, but since state agency personnel maintain the state cannot hire nurses at its current salary levels, those results would be somewhat irrelevant.

What these contracts do demonstrate is yet another way in which state services can be privatized outside the oversight provisions of the privatization statutes. Even if the results of a cost-benefit analysis are a foregone conclusion, the need for the contract should still be documented.

**Finding 2.5  
Auditor sample demonstrates minimal, if any, justification for contracts awarded outside the statutory privatization process.**

A review of the 57 sample contracts and interviews with agency personnel found that a documented cost-benefit analysis had been conducted for only seven of the contracts. Of the seven cost comparisons that were performed, three were required by the prison privatization statutes, and one (Aramark) was performed under the general privatization statutes. Only two agencies conducted cost-benefit analyses on their own initiative for contracts valued at \$14.4 million out of a total sample of \$1.2 billion.

**Table 2.2: Number and Value of Sample Contracts With a Documented Cost Benefit Analysis**

Total Contracts in Sample	Contracts with Documented Cost-Benefit Analysis	Cost-Benefit Required by Privatization Statutes †	Cost-Benefit Documented Outside of Privatization Statutes	Total Sample Contracts With No Statute Applied
57	7	4	3	53
\$1,220,555,085**	\$38,687,889	\$24,257,911	\$14,429,978	\$1,181,867,196

Source: Auditor of Public Accounts based on data from MARS and contract documents.

† Includes both general privatization statutes and prison privatization statutes.

\* Includes contracts for Region 3 Medicaid Managed Care (Passport) and Medicaid Pharmacy Benefits Management with combined expenditures of \$913,944,355.

---

**Review Of Privatization Statute Oversight And Effectiveness**

---

If a contract is chosen to undergo the statutory privatization process, an agency must justify the decision to turn over a state service to a private provider. The process requires that the agency:

- Demonstrate “tangible benefits of privatizing the service;”
- Ensure that no state or federal restraints precludes the privatization;
- Show “multiple qualified and competitive private vendors;”
- Complete a cost-benefit analysis showing savings over current government operations.

All of this required information must then be presented to the ad hoc committee for final approval. Personnel at the Finance and Administration Cabinet called this process “cumbersome,” and the Department of Corrections believes going through this process cost the state money by delaying the Aramark contract for several months. Absent this process, however, the only statutory requirement for documenting the justification of a contract is found in KRS 45A.695(2). This justification is known as the Proof of Necessity (PON) form, which requires an agency to answer a number of questions concerning a contract, such as the need for the service and the reason state personnel cannot be used. (The APA report, “*State Contracts: Kentucky’s Administration and Management of Contracting for Service Workers*,” found that this form was not used by agencies to adequately justify the contracts that were being created.)

In addition to the lack of justification found in the PON forms, they are only required for personal service contracts. There is no other statutory or regulatory requirement for a cost-benefit analysis or documented justification to be performed for other types of contracts. For example, had the Aramark contract not been implemented under the privatization process, there would have been no other requirement that the Department of Corrections document any cost savings from replacing 85 state employees with contract workers.

During interviews, some agencies claimed that many contracts do not need cost-benefit analyses and that performing them would only hinder the contracting process. Others stated that they believed a cost-benefit analysis could not accurately be performed on all contracts. Their examples included contracts created to supplement state employee vacancies that could not be filled, or where the state has no employees with a particular expertise. Instead of a cost-benefit analysis, these agencies felt that a more detailed justification should suffice in showing the need for a contract. CHFS, for example, has created a form that requires personnel in that agency to provide more information than that sought in the PON form.

**Review Of Privatization Statute Oversight And Effectiveness**

---

This information is used by the Cabinet's Office of Contract Oversight to better justify the need for personal service contracts, but it does not attempt to estimate any potential cost savings.

Some agency contracting personnel expressed a desire to show the need for a contract and a comparison to state costs even when it may not be expressly required. In an on-going search for a better human resources information system, the Personnel Cabinet has conducted a cost analysis twice in the last five years. Both times the Cabinet hired a private vendor to conduct an extensive review of the costs for the state to use a third party for the system development versus creating the system "in-house" using the Commonwealth Office of Technology. The results of these two reviews determined it would cost the state twice as much to use state personnel in creating a completely proprietary system versus using "off-the-shelf" software of a vendor- potentially saving the state millions of dollars.

Another agency also demonstrated initiative in taking steps to ensure that the use of state funds is justified in contracting for private services. The Division for Air Quality is responsible for drafting and approving air permits for businesses. Due to an average 25% vacancy rate of environmental engineers in the agency, however, the process developed a backlog of around 650 permits. Using the reasoning of other agencies, Air Quality might have simply stated on a PON form that they did not have sufficient personnel to complete the required service. Instead, the Division conducted a cost-benefit analysis comparing the cost of state employees to do the work versus the cost of contracting with a private vendor. The conclusion was that the cost would be about the same. The Division then went back over a five-year period to document the vacancies of environmental engineers that are needed for the air permit process. While the Division was not able to show savings as a result of using private vendors, staff members did make certain that they could justify both the need for the contract and how its costs compared to using state employees.

This cost-benefit analysis was conducted for two air permit contracts with a total combined value of \$700,000. Many of the contracts in the audit sample have a value in the millions or even hundreds of millions; other agencies responsible for these contracts should be just as vigilant in ensuring that the use of state dollars can be fully and accurately justified.

It is also the responsibility of the Finance Cabinet to ensure that contracts created by Kentucky agencies will use taxpayer dollars in the most efficient manner possible. According to staff in the Office of Material and Procurement Services in the Finance Cabinet, they want the "best deal" for the state. However, by not requiring agencies to prove the need for or potential savings from a contract, it is difficult to make such a determination. In an era of tight budgets, it is in the best interest of state government to fully justify all contract spending.

---

## Chapter 2

# Review Of Privatization Statute Oversight And Effectiveness

---

**Finding 2.6**  
**The sample identified a \$2.9 million sole source contract to a private vendor that avoided state procurement laws.**

The justification of a sole source contract for a tourism information call center was not in compliance with state procurement law requirements. The Transportation and Finance Cabinets both relied on a letter from the staff of a member of Congress to dictate how federal funds earmarked for the state should be used and to whom the funds should be given.

In July 2004, the Kentucky Transportation Cabinet entered into a sole source contract for \$2.9 million with the Southern and Eastern Kentucky Tourism Development Association (SEKTDA) to operate a 511-tourist information call center. This contract was not bid out to ensure the best price or value, but was created with the intention of going to one specific vendor. According to a letter from Transportation to Finance (See Appendix 4), the primary reason for this contract being created as a sole source and being awarded to this vendor is due to the “congressional intent” of the earmarked federal funds. This “congressional intent” was communicated in a letter from a congressional staff member (See Appendix 4) who stated that a Congressman had obtained the earmarked funds and that it was intended that they go to SEKTDA. The federal appropriation is not contingent upon a specific vendor in order for Kentucky to receive the funds for a rural highway information system. It was also found that the congressional staff member who wrote the letter is on the board of SEKTDA.

Further reasons provided in the contract documents for awarding this particular vendor the call center contract was that SEKTDA is unique in being a non-profit corporation that is already operating the 511-call center. Contract documentation also stated that another vendor would not be able to open a similar call center without additional start-up costs. Once the funds were awarded to SEKTDA by the state, \$1.2 million was then given by SEKTDA to a private for-profit subcontractor who operated the call center. This subcontractor was never mentioned as another option for the full contract award.

Both Transportation and Finance allowed a letter claiming “congressional intent” to control what vendor received the funds appropriated to the state, even though the letter had no force of federal law. This is not sufficient to meet the requirements of the state’s sole source procurement laws or the responsibility of state agencies to ensure state dollars are used in a fair and justified manner. Likewise, by not ensuring there were no other vendors capable of running a call center, Transportation missed an opportunity to bid out a contract and create competition.

## Chapter 2

# Review Of Privatization Statute Oversight And Effectiveness

**Finding 2.7**  
**The majority of agency contracting staff are not familiar with privatization laws.**

According to Finance personnel, the privatization statutes are interpreted as requiring that agencies be the first to determine whether a potential contract should be subject to the privatization process. This is due to a provision in KRS 45A 551(2), which states, “a state agency recommends to the Finance and Administration Cabinet that it enter into a privatization contract....” In practice, however, Department of Corrections personnel have stated that Finance required them to initiate the privatization process in the development of what subsequently became the only contract to be classified as a privatization contract under state law.

Only one of the twelve agencies interviewed reported that Finance had requested or suggested that their contracts be subject to the privatization process. In fact, more than 63% of the staff involved in the agency interviews were unaware of the existence of the privatization statutes. The Table 2.3 shows the extent of the knowledge of interviewed staff in relation to the privatization statutes.

**Table 2.3: Agency Knowledge of Privatization Statutes**

<b>Agency Interviewed</b>	<b>Familiar</b>	<b>Somewhat Familiar</b>	<b>Unfamiliar</b>	<b>Total</b>
Department of Corrections	2			2
CHFS – Office of Contract Oversight	2			2
Department of Insurance		1	4	5
Council for Postsecondary Education			2	2
Kentucky Department of Education			2	2
Treasury			3	3
Transportation – Division of Purchasing		2		2
Personnel Cabinet	1		6	7
Commerce Cabinet	1			1
EPPC - Division for Air Quality			4	4
Finance and Administration Cabinet: Commonwealth Office of Technology		1		1
Finance and Administration Cabinet: Office of Material and Procurement Services	2			2
<b>Totals</b>	<b>8</b>	<b>4</b>	<b>21</b>	<b>33</b>

Source: Auditor of Public Accounts based on agency interview responses.

The auditors interviewed staff who worked regularly with contracts and the contracting process. Agencies routinely provided staff who were knowledgeable about their own contracts and how they were created. Many of the staff were responsible for an entire agency’s procurement process and were well versed in the Finance and Administration policies that control procurement. Some of the staff members who were responsible for an entire Cabinet’s procurement oversight reported they were never made aware of the privatization statutes, or received training on how to interpret and implement them.

## Review Of Privatization Statute Oversight And Effectiveness

---

In total, there were four agencies that had no staff that were aware of the statutes at all.

Finance does not review contracts as possibly being subject to the privatization process, instead relying on the vigilance of the agencies. Agency personnel, however, have never been made aware of this, nor have been given sufficient training to perform such a task effectively. This lack of oversight and guidance leads to agencies creating their own definitions and interpretations of how to implement the procurement law. For those agencies not even aware of the privatization statutes, staff would never review contracts to determine if they meet the criteria of privatization.

These circumstances create an even greater need for a periodic review of contracts for potential privatization by the Finance and Administration Cabinet. As the central contract and procurement oversight agency, the Finance and Administration Cabinet has the responsibility to ensure the procurement laws are both enforced and understood by state agencies. No other agency or institution in state government has the power to oversee the number of contracts that the Finance Cabinet does. The LRC Contract Review Committee has some review authority, but its power is limited to looking at personal service contracts. This leaves little oversight of privatization contracts.

### Recommendation 2.1

**KRS 45A.550(2), the privatization law, should be amended to improve its effectiveness, including:**

- **Delete the numerous exemptions that limit the types of contracts covered by the privatization law and instead specify the types of services that would be subject to the provisions of the statute;**
- **Require the law to apply only to larger contracts (such as those with a value of \$500,000 or more); and**
- **Change the requirement that ten or more state employees must be affected before the statute applies. These changes should address situations where multiple contracts are used (currently, the law can be avoided by using multiple contracts for the same agency as long as each contract effects less than ten state employees).**

**Correspondence from a Congressional office should not be used to supersede state procurement law and justify the issuance of a sole source contract to a specific vendor when federal funds are involved unless there is federal legislation that appropriates the federal funds to that specific vendor.**

## **Review Of Privatization Statute Oversight And Effectiveness**

---

**KRS 45A.095 should be amended to require sole source contracts to contain a provision that prohibits subcontracting the primary service to be provided under the contract. KRS 45A.095(1) defines sole source as “a situation in which there is only one (1) known capable supplier of a commodity or service, occasioned by the unique nature of the requirement, the supplier, or market conditions.” If a sole source contractor is able to subcontract the service, it is clear evidence that it was not the only supplier available and should not have received a sole source contract that is not subject to competitive bidding.**

**Additional training should be provided to state agencies’ contracting personnel on the intent and provisions of Kentucky’s privatization law.**

**The Finance and Administration Cabinet should conduct periodic reviews to determine if contracts should qualify as privatization contracts under KRS 45A.550.**

## Oakwood: A Privatization Case Study

---

The Communities at Oakwood, classified as an Intermediate Care Facility for the Mentally Retarded/Developmentally Disabled, provides an example of “piecemeal privatization.” Various aspects of the facility’s operations have been contracted out over time until the facility has been essentially privatized. By May 2005, almost half of the employees were under contract, and the responsibility for managing the facility had been with a private contractor for several years. A new vendor, the Bluegrass Regional Mental Health and Mental Retardation Board, will take over management in November 2006. This chapter uses the past contracts and administration decisions at Oakwood as a case study to demonstrate the need for greater oversight of privatization efforts in Kentucky.

### Background

Oakwood Community Center is located in Somerset, Kentucky, and has been in operation since 1972. Originally designed to accommodate up to 420 residents, there were 262 residents as of May 2006. The residents receive 24-hour care from a staff that provides nursing, social work, psychological and vocational services, and various types of therapy.

In the past several years, Oakwood has received media attention as federal and state investigators have found a significant number of cases of abuse or neglect. Some of these incidents have resulted in the injury or death of residents. Due to the large number of problems found at the facility, the state is struggling to ensure that federal Medicaid funding is not lost, as this provides nearly 70% of Oakwood’s budgeted revenue.

The first management contract at Oakwood was with Columbus Medical for \$2.9 million in October 2000, to provide technical assistance and professional personnel necessary to meet licensure requirements. More recently, in an effort to reverse the worsening conditions, CHFS established a contract with Liberty Healthcare to take over complete management responsibilities. The contract was valued at \$9.1 million over a period of eight months: November 2005 to June 2006. In July 2006, a new contract valued at approximately \$8.7 million was established with Liberty for a four-month period to provide continued management, along with professional and non-professional personnel.

### **Finding 3.1 Oakwood’s operating costs continued to increase while the number of residents declined and citations multiplied.**

The costs to provide services at Oakwood have been dramatically increasing. Total operating expenses of the Oakwood facility increased from approximately \$46.6 million in fiscal year 2003 to over \$60 million in fiscal year 2006, an increase of 30%. During that same period of time, the annual cost per resident increased 82%. The annual cost per resident went from \$127,021 in fiscal year 2003 to \$231,308 in fiscal year 2006.

The maximum value of contracts available for Oakwood use for certain professional, consulting, and staffing services increased from approximately \$6.6 million available in 2003 to over \$20 million available in 2006, an increase of over 300%.



## Chapter 3

# Oakwood: A Privatization Case Study

Operating expenses continued to increase as well as the amounts available for certain contracts, although the average number of residents at Oakwood declined over 28% – from an annual average of 367 during fiscal year 2003, to 262 residents as of June 2006. In addition, citations for life threatening situations multiplied. Tables 3.1(a) and (b) illustrate these changes.

**Table 3.1(a): Operating Expenses and Resident Population at Oakwood**

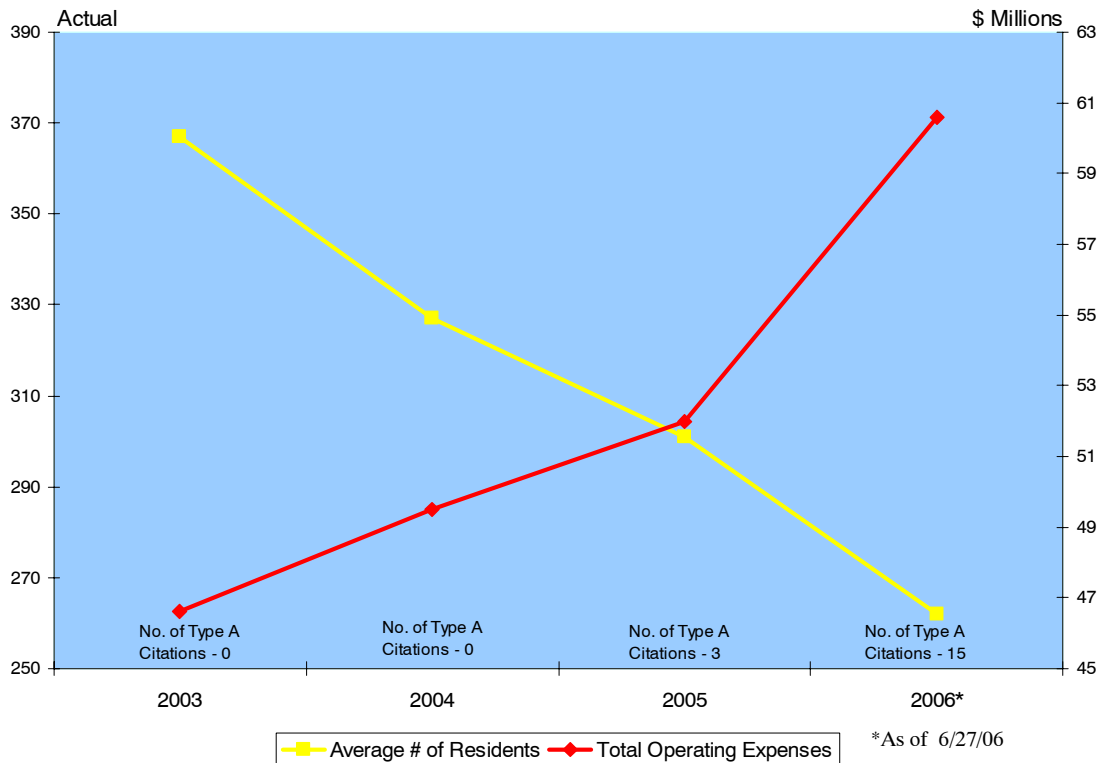
Fiscal Year	Total Year Expenditures	% Increase	Average # Residents	% Change	Cost Per Resident	% Increase
FY 03	\$46,616,967.23		367		\$127,021.71	
FY 04	\$49,484,153.86	6.2%	327	-10.9%	\$151,327.69	19.1%
FY 05	\$52,026,703.63	5.1%	301	-8.0%	\$172,846.19	14.2%
FY 06	\$60,602,892.58*	16.5%	262**	-13.0%	\$231,308.75	33.8%

Source: Auditor of Public Accounts based on data from MARS and information provided by the Cabinet for Health and Family Services.

\*As of June 27, 2006.

\*\* Number of residents is based on a single point in time during the fiscal year.

**Table 3.1(b): Total Operating Expenses and Average Resident Count for Oakwood**



Source: Auditor of Public Accounts based on data from MARS and information provided by the Cabinet for Health and Family Services.

### Finding 3.2 Almost half of Oakwood's workforce has been hired under contracts with multiple private vendors.

It is possible for an agency to privatize a government service through attrition while never coming under the guidelines of the privatization statutes. This is accomplished by filling already vacant state employee positions with contract workers. CHFS personnel have stated that the state has tremendous difficulty filling positions at Oakwood due to the low pay of state positions and the location of the facility in a rural area that cannot

**Oakwood: A Privatization Case Study**

---

produce enough qualified staff to fill the positions. Over time, the result has been an increasing reliance by Oakwood management on contract workers to provide essential services for residents as vacancies went unfilled.

According to a report produced by Liberty Healthcare for the Cabinet, by December 2005, 29 contracts totaling \$17 million were in place at Oakwood. This number had grown to 36 different contracts worth more than \$22 million by May 2006. Services provided under these contracts included nursing, dental, food service, housekeeping, laundry, speech and occupational therapy, and several other professional and non-professional services.

CHFS reported that in October of 2005 multiple vendors were supplying 342 contract workers out of a total of 1,222 employees providing services at Oakwood. After a single management contract with Liberty Healthcare was created, the number of contract workers at Oakwood had risen to 589 in May 2006. This is a net increase of 247 contract workers in an eight month period. During the same time period, the number of state employees dropped to 720, a decrease of 160. With such a large number of contract workers providing a large portion of a state service, it became obvious that this facility exemplified how privatization could occur without the type of oversight ostensibly provided for in the privatization statutes. (See Table 3.2 below.)

**Table 3.2: Changes in Oakwood Workforce**

<b>Date Reported</b>	<b>Contract Workers</b>	<b>State Employees</b>	<b>Total</b>	<b>Total Percentage of Contract Workers</b>
10/6/05	342	880	1222	28%
5/10/06	589*	720	1309	45%
Net Change	+247	-160	+87	

Source: Auditor of Public Accounts based on data from MARS and information provided by the Cabinet for Health and Family Services.

\*302 employees of Liberty Healthcare, 287 of the other 35 vendors

The privatization statutes do not specifically envision a slow transition of a state service to a private vendor through attrition. “Privatization contract” is defined as a contract or group of contracts by which a private vendor agrees to provide services that are “similar to, and in lieu of” services previously provided, in whole or in part, by at least ten (10) permanent, full-time, state employees. This definition places no time limit on when the 10-employee requirement should be met. Some of the Oakwood contracts that did not meet this requirement when first executed may now provide 10 or more workers and could be considered privatization.

Also, contrary to the interpretation of CHFS, the statutes do not specifically state that an employee must actually be laid off before a contract can be considered privatization. Liberty Healthcare injected 302 of its own employees into the Oakwood workforce while at the same time

## Oakwood: A Privatization Case Study

---

the number of state employees dropped by 160. In this case, contract workers are providing a service “similar to, and in lieu of” many greater than ten state employees.

Due to the privatization statutes never envisioning transitioning large parts of a state service in the manner seen at Oakwood, a large portion of a state service has been turned over to private vendors without adequate oversight or accountability. If the statutory language were clearer in this area, the oversight intended under the privatization law would apply to the changes taking place at Oakwood.

**Finding 3.3**  
**Reports by the Cabinet and the Department of Justice indicate a lack of management structure at Oakwood and minimal Cabinet oversight.**

Three separate reports have had findings with recurring themes of failures to provide a stable environment for direct care staff. The problems most often cited in these reports are:

- Poor communication between direct care staff and management due to fear of retaliation.
- Poor communication between all levels of staff due to constant changes in management personnel and the facility’s organizational structure.
- Little oversight or engagement from the Cabinet level.

Between May 2005 and October 2005, there were at least three different visits to Oakwood by three separate reviewers. The Cabinet’s Office of Human Resources Management conducted their review in May 2005, while a consultant for the Cabinet conducted a review in October of 2005. Also in October of 2005, the appointed U. S. Department of Justice (DOJ) Independent Monitor conducted his on site review of the facility to review the progress in implementing a Strategic Action Plan for Oakwood. Each of the reports resulting from these visits provides direct insight into the management practices at Oakwood.

According to the Cabinet’s May 2005 report, the employees at Oakwood were reluctant to “share their thoughts and concerns with management and supervisors because of an absolute fear of retaliation.” This situation was further observed in October of the same year by the Cabinet’s consultant who states, “[p]eople in the management chain become protective of information and do not communicate as a means of protecting their value in a situation that threatens their job positions.”

Between August 2005 and February 2006, there were six different individuals acting as the facility director of Oakwood, some lasting for mere weeks. In October of 2005, the DOJ Independent Monitor noted that, “these rapid changes in the facility director position have not been in the best interests of the individuals or staff at Oakwood. Indeed, it has created a sense of instability and futility on the part of direct care staff.”

## Oakwood: A Privatization Case Study

---

These rapid changes were not just limited to the facility director position. The Cabinet consultant noted that during the six months prior to the release of his report there was a “continuous stream of personnel in and out of Oakwood.” This included those employees at the branch manager level and below. The results of the various management and director changes were that many employees did not know who their supervisors were or what their chain of command was. Two of the reports note this as a major factor in the breakdown of management at Oakwood. Again, the Cabinet’s consultant reports that, “[e]very level of the organization could not determine who was in charge, has authority for decision making that directly affected an individual job or assignment, and was responsible for communicating information to them.”

The DOJ Independent Monitor expressed concern with the “disengagement” of the Commissioner of the Department of Mental Health and Mental Retardation. The Cabinet consultant writes, “it is also clear that communication between Frankfort and Oakwood is very poor. At present most communication is centered on crisis control and resolution of short-term issues. There is no clear path or objectives set to which local management can work.”

The Cabinet consultant’s report also discussed the difficulties of using so many contract employees at the facility and then mixing them with the state employees. He notes that it “complicates disciplinary action, if required, as each of the several contractors and the State all have different systems and documentation. The result is that supervisors have no uniform approach to employee development, nor any way to provide consistent evaluation criteria for performance rewards. As the contract employees do not report functionally to the Oakwood supervisors, some level of control and commitment is lost.”

These different methods of management for both types of workers may result in potentially harmful situations. A Director in the Cabinet stated that contractor workers would routinely go to their employer, a private vendor, with any problems rather than going to the facility director for resolution.

The consultant also reports that the problem of using large numbers of contract workers as the main supervisory body over state employees resulted in disenfranchised employees and reduced morale. The report states, “[t]he lack of local residents in the management group is notable and not popular among the staff. So, the large complement of contractors is contributing to the shortsighted resolution of crisis issues without consideration of long-term and permanent correction of the ingrained problems with Oakwood, its systems and its culture.”

## Oakwood: A Privatization Case Study

---

The reports conclude that this instability, lack of communication, and the associated decline in employee morale inhibits the ability of employees to provide the best care to Oakwood residents. The DOJ Independent Monitor opined that, “[m]any of the problems in the day-to-day operations of the facility can be linked directly to a failure of leadership. There has been very little accountability at the facility and no clear lines of authority.”

**Finding 3.4**  
**During a time of persistent problems, Oakwood’s management responsibilities have been contracted out to a private vendor.**

CHFS entered into a \$9.1 million contract with Liberty Healthcare to take over complete management responsibilities from November 2005 to June 2006. This contract was established after the federal Department of Justice, the Center for Medicare and Medicaid Services and the Kentucky Office of Inspector General identified mounting violations at Oakwood. These violations were jeopardizing both federal funding and the future of the facility. By August 2006, 20 Type A citations were reported at the facility (a Type A citation represents a situation that is potentially life-threatening to a resident).

In describing the projected costs of the contract, CHFS management states: “[t]his contract provides for a management fee for overall administration and management of the facility and all merit and contract employees as well as an administrative support for any additional employees the contractor requires to accomplish this goal.” This is a very clear statement of intent to allow a private vendor to take over complete control of the daily activities of the entire facility, including control of state employees and contract workers who are employees of other vendors.

This contract also gave Liberty the responsibility of consolidating contracts at Oakwood, which have only increased since the contract’s inception. The contract states that Liberty “will review and consolidate to single accountability the over three-hundred contracted positions currently at Oakwood.” Additionally, the contract further states: “[i]t is anticipated that some overall reduction in expenditures may be made for these positions [contract workers].” This means that Liberty was responsible for consolidating the 29 different contracts that were effective as of December 2005; however, by May 2006, there were 36 different contracts worth more than \$22 million, and the number of contract workers at Oakwood had risen to 589.

A work plan produced by Liberty stated they would perform a “cost-to-benefit ratio” for each of the existing state contracts and the personnel provided by them. This analysis is not available according to CHFS personnel. Such an analysis would be useful in determining whether any consolidation had occurred and what savings could be achieved.

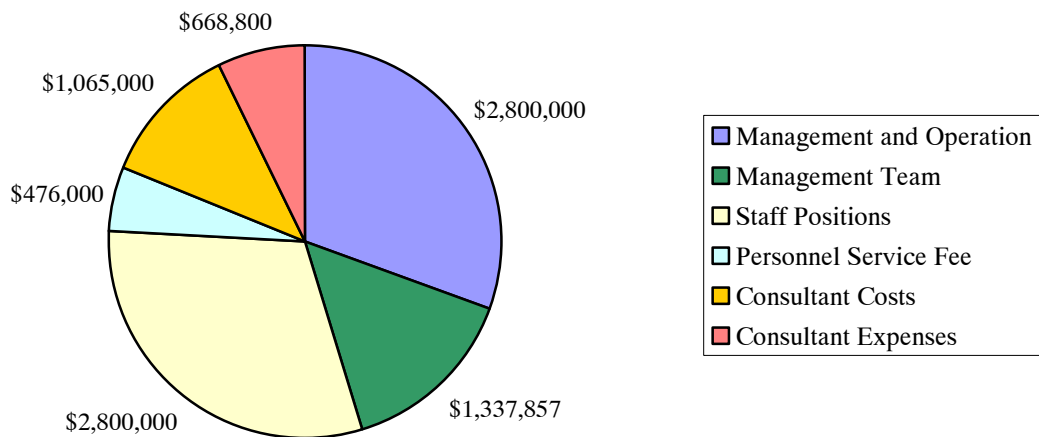
The contract with Liberty Healthcare includes a provision that Liberty receives a fee whenever a position is filled. The fee may be equal to 17% or 11% of the position’s compensation package, depending on whether the

# Oakwood: A Privatization Case Study

person being hired is a new or former Oakwood employee. With more of its own contract workers, Liberty receives more fees. The total budgeted amount for this provision is \$476,000 – about 5% of the contract’s total value.

Even though CHFS’ claims there is a great need for direct care staff, expenditures for professional and non-professional staff positions are only 30% of the contracted expenditures. The rest of the contract payments go toward management fees, a management team of around 15 people, consultant fees, and reimbursement for consultants’ expenses. The breakdown in contract expenditures is illustrated in the Figure 3.1.

**Figure 3.1: Liberty Contract Expenditures**



Source: Auditor of Public Accounts based on each line item contained in the Cabinet for Health and Family Services’ contract with Liberty Healthcare.

The funding for management and the management team is understood, but the large amount of state funds for consultants is not clear. According to the DOJ Independent Monitor, there were 53 consultants brought in by Liberty during the first two and half months of the contract period. The Monitor and other DOJ officials had some concern about these consultants and their knowledge and understanding of the existing Strategic Action Plan (SAP) that was being implemented at Oakwood in accordance with a DOJ and Cabinet agreement. Considering that this SAP was established to resolve issues from a DOJ investigation into violations of civil rights at Oakwood, greater recognition was expected from any professional brought in to help fix problems at the facility.

## Oakwood: A Privatization Case Study

---

This lack of understanding of the SAP is even more problematic when the full scope of the contract with Liberty Healthcare is taken into account. Liberty states they are:

*not only contracted to manage the facility and provide all staffing, but Liberty is responsible for reorganizing systems, future planning and program development, and integrating the goals and interests of multiple stakeholders. In the course of introducing improved systems and adding resources, Liberty will also have the authority to replace methods and practices that have been ineffective, unnecessarily expensive, redundant and/or remain in place as out-dated vestiges of previous efforts to fix problems.*

Such duties and responsibilities would normally belong to the state agency with responsibility for operating the facility; however, with this contract the state has turned over this power and responsibility to a private provider.

With a contract workforce making up 45% of the staff at Oakwood, and with one private vendor placed in charge of managing all staff, it is difficult not to conclude that this service has been greatly privatized. Following this example, any state agency would be allowed to continually avoid hiring through the state personnel system and bring in contract workers to fill vacancies. Eventually, entire services could be provided and managed by private vendors without the oversight intended by the laws governing the privatization of state services.

### Conclusion/ Recommendation 3.1

**While the Cabinet has determined it is in the best interests of the Commonwealth to privatize management functions or other activities at Oakwood, it must retain adequate knowledge and oversight of the functions performed by the private vendors to ensure compliance with contract requirements and ensure that work is properly coordinated to achieve agency objectives. The Cabinet should not contract out to a private vendor the Commonwealth's ultimate responsibility to ensure that adequate care is provided to the residents of Oakwood. The lack of a clear process and structure to monitor a vendor's activity places the Cabinet at unnecessary risk that concerns are not identified and responded to in a timely manner. This risk could result in increased costs, the disruption of care to residents, and the failure to comply with statutory or regulatory requirements.**

## Oakwood: A Privatization Case Study

---

**There is a continuous need to improve supervision and accountability of contractors at Oakwood. This is demonstrated by a number of indicators:**

- **The reports of the Independent Monitor and CHFS consultants;**
- **The increasing number of Type A citations (20 as of August 1, 2006);**
- **The large number of contracts (36) in place at Oakwood;**
- **An increase in total operating costs of over 30% from FY 2003 to FY 2006; and**
- **A 82% increase in the annual cost per resident from FY 2003 to FY 2006 even though the number of residents decreased by over 28% for the same period.**

**Actions to improve supervision of contractors and promote accountability include:**

- **The inclusion of specific performance criteria in the contract provisions, such as a reduction in the number of citations from the prior year or keeping the cost per resident within a specified range.**
- **The use of Cabinet employees with expertise to monitor compliance and act as a liaison with responsible Cabinet officials to ensure timely communications.**
- **Limiting the total number of contracts to lessen confusion and ensure clear lines of authority.**
- **Ensuring that policy-related functions such as long-range planning remain with the state agency and not be given to the private contractor as part of the contract.**



---

## Chapter 4

# Review of Kentucky's Prison Privatization Cost Savings and Contract Process

---

A provision within Kentucky's prison privatization statutes, KRS 197.510, requires private correctional facilities to demonstrate a ten percent cost savings over state correctional facilities; however, specific guidelines detailing the methodology to calculate and report the required cost savings do not exist. Department of Corrections (DOC) has not ensured compliance with the prison privatization statute (KRS 197.510) with respect to the ten percent cost savings requirement for privatized correctional facilities. Calculations to support the ten percent cost savings of private versus public prisons have been inconsistently applied, were not supported by any formal methodologies, and have not had an independent review to determine accuracy or completeness.

### Background

Our examination of private prison laws focused on the statutory requirements that directly relate to the costs of housing inmates in contracted prisons. We requested information from Department of Corrections (DOC) management officials and reviewed available records to determine compliance with the cost savings requirements of KRS 197.510(13).

The Commonwealth's prison privatization statutes, KRS 197.500 to 197.525, are structured around specific program provisions and requirements for contracting with private prison providers. The prison privatization laws in KRS Chapter 197 predate by ten years the general privatization contract provisions in KRS 45A.550 to 45A.554. These prison privatization laws provide for state administration and oversight of private providers in the business of establishing, operating, and managing adult correctional facilities. Supervisory and monitoring requirements are included among over thirty requirements and stipulations that are not found under the Kentucky Model Procurement Code and the general privatization requirements of KRS 45A.550 to KRS 45A.554.

The Kentucky General Assembly enacted KRS 197.500 to 197.525 in 1988. A requirement that a private prison must save the state ten percent of the cost of a comparable state-operated facility was added in 1992. The 1988 enactments followed the privatization of Marion Adjustment Center in 1986. Kentucky was the first state correctional system to contract with a private provider. Many other states followed Kentucky's plan and used private prisons as a strategy to deal with swelling prison populations and control costs.

---

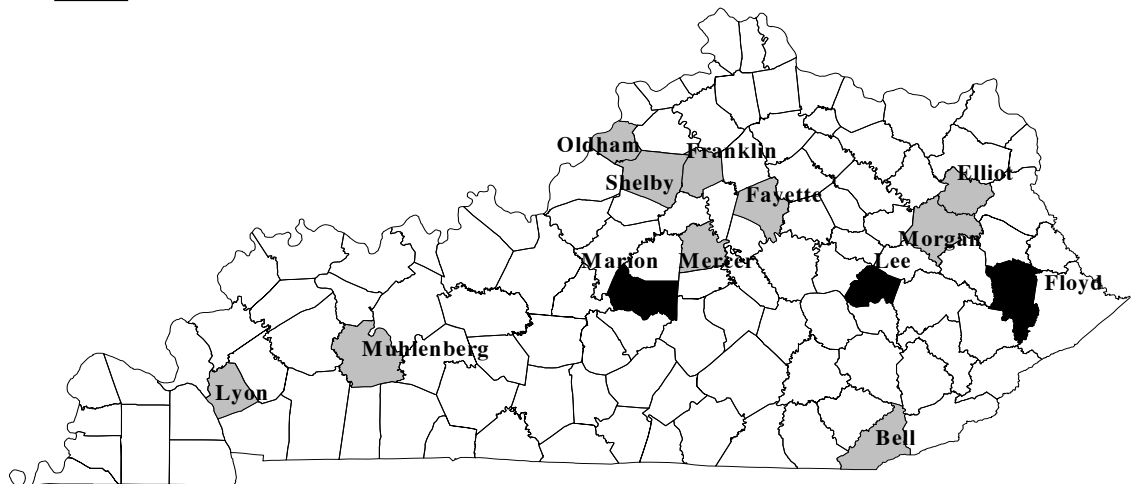
## Chapter 4

# Review of Kentucky's Prison Privatization Cost Savings and Contract Process

---

Today there are three private prisons and thirteen public prisons operating in Kentucky. The private prisons consist of the minimum-security Marion Adjustment Center, the medium-security Lee Adjustment Center, and the Otter Creek Correctional Center for women. These private prisons currently operate under three separate contracts with a single vendor, Corrections Corporation of America (CCA), to house a maximum of 1,520 inmates for an associated annual contract cost – excluding additional direct or indirect costs incurred by the state – of \$21,049,755. The following map provides prison locations of the Commonwealth's public and private prisons. Also see Appendix 6.

Private Institution   
State Institution 



**Finding 4.1**  
**While there are no specific guidelines or reporting requirements, DOC's cost calculations to determine a ten percent savings with private prisons were not consistently applied or documented.**

No cost comparison system is absolute; however, DOC applied various methods to comply with the ten percent costs savings requirement. According to its contracts, DOC used an average of three selected public facilities when comparing costs for Marion Adjustment Center, but used only one facility when calculating potential savings for Lee Adjustment Center.

Any contract entered into between the Commonwealth and a private provider for the operation and management of an adult correctional facility shall include, among others, the following term, as required by KRS 197.510(13):

*The adult correctional facility shall provide a level and quality of programs at least equal to those provided by state-operated facilities that house similar types of inmates and at a cost that provides the state with a savings of not less than ten percent (10%) of the cost of housing inmates in similar facilities and providing similar programs to those types of inmates in state-operated facilities.*

---

## Chapter 4

# Review of Kentucky's Prison Privatization Cost Savings and Contract Process

---

DOC included notice of this required contract term in each of its private prison contracts, however certain terms were stated more clearly than others because the terms' language varied in each of among the three prisons' contracts.

In the case of Marion Adjustment Center, the contract included the specific names of the three public prisons that would be used to calculate the ten percent cost savings. While the Lee Adjustment Center's contract cited the ten percent cost savings requirement, it did not specify which facilities would be used in a comparison. DOC only used Western Kentucky Correctional Complex (WKCC) to compare with Lee Adjustment Center – although DOC stated:

*When we come down to it, we have an apples and oranges comparison, because we don't have any single state-operated institution that compares very well with LAC.*  
(DOC response to APA request April 28, 2006)

Using a single public prison rather than multiple prisons can skew results, especially since the WKCC daily cost of \$50.21 to incarcerate a prisoner was not representative of other similar public prisons. WKCC's costs were significantly higher than the other two similar public facilities costs of \$41 or less for 2005.

Appendix 7 provides the most recent contract language for Lee, Marion, and Otter Creek private prisons.

Examination of historical cost data for Lee Adjustment Center reveals that savings were inconsistently calculated and that there were periods of noncompliance with cost savings requirements. Using the limited data provided by DOC, as well as information from DOC's website, Table 4.1 illustrates how inconsistent cost comparisons affect the determination of whether a private prison meets the ten percent statutory savings requirement.

**Chapter 4**

**Review of Kentucky’s Prison Privatization Cost Savings and Contract Process**

**Table 4.1: Lee Adjustment Center Historical Cost Comparison for 10% Savings Using Two Methods – Single Prison and Weighted Average**

Facility	Period			
	2002	2003	2004	2005
Public –Northpoint Training Center (NTC)	\$ 41.28	\$ 40.30	\$ 42.62	\$ 37.89
Public – Green River Correctional Complex (GRCC)	\$ 39.30	\$ 38.78	\$ 40.40	\$ 40.67
Public – Western KY Correctional Complex (WKCC)	\$ 46.82	\$ 44.57	\$ 50.45	\$ 50.21
Public – Weighted average (NTC, WKCC, GRCC)	\$ 41.84	\$ 40.73	\$ 43.72	\$ 41.67
Private – Lee Adjustment Center (LAC)	\$ 43.54	\$ 44.08	\$ 41.22	\$39.66
Savings at Lee using WKCC for cost comparison	<b>7.01% Savings</b>	<b>1.10% Savings</b>	<b>18.30% Savings</b>	<b>21.01% Savings</b>
Savings at Lee using weighted average of three most similar facilities	<b>4.06% Loss</b>	<b>8.21% Loss</b>	<b>5.72% Savings</b>	<b>4.82% Savings</b>

Source: Auditor of Public Accounts based on publicly available cost to incarcerate data from the Department of Corrections.

Note: This data was only provided for the 4 facilities above, not all 16 facilities as requested.

Looking further at WKCC’s costs, the APA determined that between 2003 and 2004, WKCC’s cost to incarcerate increased 13 percent, while the two other most similar facilities increased only from 4 to 6 percent. The significant increase in cost for WKCC to incarcerate may be due to capital expansion and unique programs available at WKCC undertaken in 2004 and detailed in DOC’s Annual Report for 2004 including:

- A 2,200 acre farming facility
- New 44-unit discipline cell
- Boiler replacement
- New windows
- New closed-circuit monitoring system

Green River and Northpoint did not appear to have such significant program differences or capital improvements as Western. Using a weighted average method for calculating cost savings and negotiating contracts with Lee would have ensured more stability and resulted in lower thresholds for contract negotiations, and would have been consistent with the three-prison comparison method DOC used for Marion Adjustment Center. A comprehensive independent review of DOC’s cost allocation methods, based on complete records and full consideration of all direct and indirect costs of

---

## Chapter 4

# Review of Kentucky's Prison Privatization Cost Savings and Contract Process

---

public and private prisons, is required to arrive at the best method for calculating cost savings.

Undoubtedly, deciding on a method for comparing cost of public and private prisons can be difficult due to variations in prison populations, security levels, and other factors. Two states with savings requirements for private prisons similar to Kentucky's conducted numerous studies on the best approaches for comparing and setting rates. Arizona's Department of Corrections provides detailed reports of its public and private prison costs and compares averages of public and private facilities, rather than using a single public or private prison. Florida passed a law in 2001 creating a prison cost workgroup to develop annual consensus public prison per diem rates for its legislature to set appropriations for privately operated prisons and ensure cost savings.

### **Documentation of Savings Requirement Calculations and Methodologies was Informal and Limited**

DOC provided limited incarceration cost data for one private prison, Lee Adjustment Center, and three public prisons that were considered the most similar: Green River Correctional Complex, Northpoint Training Center, and Western Kentucky Correctional Complex. These records consisted of an Excel spreadsheet and internal notes that were not presented in a formal report sufficient to explain methodologies and procedures used to develop comparisons of public and private procedures. Without further explanation, we were not able to review the accuracy of DOC's methods and allocations. However, certain costs and benefits of public and private facilities are excluded from DOC's calculations. Total allocated costs vary significantly in amount and categories when compared to at least one other state's methods.

Kentucky's Department of Corrections considers its cost reports and the methods used to allocate costs to be internal working papers not available to the public. Kentucky does publish its daily cost to incarcerate, but unlike some other states, has not issued any associated reports or accounts of the methods used.

### **Records Not Available**

DOC could only provide the APA cost allocation data for fiscal years 2004 and 2005. DOC management stated that no documentation of cost to incarcerate or cost allocations could be located for prior years. The available information was based on an allocation and documentation method that was not used or created until at least 2004. These records establish the basis for over \$21 million in annual contract awards to Corrections Corporation of America. Compliance with the 10 percent cost savings requirement was not documented in past years.

DOC incurs direct costs to administer and monitor the contracted prisons. In addition, there are DOC central level program costs that must be allocated to state inmates in all facilities. In order to adequately perform a cost comparison, costs must be added to contract per diem costs to determine the total cost to house a prisoner in a private facility.

**Chapter 4**

**Review of Kentucky’s Prison Privatization Cost Savings and Contract Process**

KRS 197.525 requires DOC to promulgate administrative regulations “governing the standards, operation, and management of adult correctional facilities which may be contracted for pursuant to KRS 197.505.” DOC has not developed administrative regulations to either ensure compliance with KRS 197.510 or to establish a standard method for allocating and documenting direct and indirect prison costs. Independent reviews by legislative bodies and consultants in Florida and Arizona – states with extensive experience in private prison cost allocation – recommended breaking down the cost to incarcerate into direct and indirect components for public and private prisons.

DOC’s records were not sufficient to identify direct and indirect costs, and indicate significantly less cost allocation when compared to the audited Arizona results for a composite of its medium security prisons. Table 4.2 that follows is a representative cost allocation template incorporating readily identifiable costs based on categories used by Arizona and adopted for comparison with DOC’s results. Kentucky’s allocated cost for the sampled private prison, Lee Adjustment Center, are significantly less and not readily identified by cost category when compared with Arizona’s methods.

**Table 4.2: Arizona’s Allocated Cost To Incarcerate (Per Diem) for Private Prisons as Compared to Kentucky’s**

	<b>Arizona (Average)</b>	<b>Kentucky (Lee)</b>
<b>DIRECT COSTS:</b>		
Contract Monitoring	\$1.73	
<b>INDIRECT COSTS:</b>		
Office of the Commissioner	-0-	\$ .25
Office of the Director	.20	
Central Office	.17	
Programs	.18	.12
Security	.15	
Health Services	.24	
Inspection & Investigation	.36	
Other Administration	.41	
<b>INDETERMINATE COSTS (KY Only):</b>		
Direct and Indirect (Such as Allocation, Administrative Services and Division of Operations)		1.27
<b>TOTAL COST ALLOCATION</b>	<b>\$3.44</b>	<b>\$1.64</b>

Source: Auditor of Public Accounts based on FY 2003 average private prison operating costs per capita cost report from Arizona’s Department of Corrections and the FY 2005 operating cost for Lee Adjustment Center provided by Kentucky’s Department of Corrections.

---

## Chapter 4

# Review of Kentucky's Prison Privatization Cost Savings and Contract Process

---

### Cost Allocation Used for Otter Creek Was Lower Than Other Contracted Facilities

DOC's contract cost computations for Otter Creek failed to fully consider allocated costs for monitoring and administration, resulting in a failure to comply with the 10 percent savings requirement when Otter Creek is compared with a similar state-operated facility, Kentucky Correctional Institution for Women (KCIW).

Otter Creek, a 400 bed adult female correctional facility operated by CCA, is DOC's newest private prison. DOC's Purchase Request, submitted to the Finance and Administration Cabinet (FAC) on May 5, 2005, sought proposals from qualified vendors for the turnkey operation of a 400 bed, medium security adult facility to be operational within the Commonwealth by September 1, 2005. The solicitation issued by FAC on May 11, 2006 expanded the scope to remove the requirement that the facility be located in the Commonwealth. The bid closed on June 15, 2005, with only one response. A contract was executed with CCA on July 15, 2005 at the price of \$47.95 per day to incarcerate.

The Request for Proposal (RFP) for Otter Creek had included specific language stating the benchmark cost for comparison was \$54.09, the all-inclusive per diem cost of KCIW based on DOC cost to incarcerate calculations. This disclosure allowed the bidder to estimate the most it could expect to be awarded under a contract. Since \$54.09 was the per diem cost basis, the bidder was allowed up to \$48.68 (\$54.09 less 10 percent), less allocated direct and indirect cost for its per diem contract amount.

The awarded contract of \$47.95 illustrates that DOC applied a cost allocation for overhead and administration of only \$0.73 per prisoner. However, DOC allocated 4.3 percent of additional costs to the contract amount awarded to CCA for the Lee Adjustment Center. Applying an allocation percentage of 4.3 percent to Otter Creek's contracted amount of \$47.95 results in \$2.06 in allocated cost at Otter Creek, which is significantly higher than the \$0.73 used by DOC. The following formula illustrates how the cost allocation relates to the 10 percent savings requirement:

Private Prison Contract Cost + Additional Direct and Indirect Cost Allocated by DOC = Private Prison Cost to Incarcerate.
---

AND

Private prison cost to incarcerate must be at least 10% less than state-operated facilities
---

As the formula above specifies, small variations in cost allocation methods and amounts have significant impact on private prison costs and how much contractors may charge. Since the private prison cost to incarcerate must be 10 percent less than the cost of a public prison, the higher the amount allocated by DOC, the lower the amount paid to a private prison contractor.

---

## Chapter 4

# Review of Kentucky's Prison Privatization Cost Savings and Contract Process

---

Unless unusual circumstances occur, allocated cost percentages should be at least as high as those at Lee Adjustment Center. The allocated costs could be even higher, due to Otter Creek being a prison for female inmates.

The low cost allocation allowed DOC to claim that the Otter Creek contract was within the 10 percent cost savings requirement. If the same percentage of costs allocated to the Lee Adjustment Center were applied to Otter Creek, the savings associated with using a private contract would only have been 7.5 percent instead of the 10 percent required by the statute.

The savings asserted for the Otter Creek contract do not take into account the fact that the per diem rate paid by DOC to county jails for holding female state prisoners was \$30.51. This rate is significantly lower than the \$54.09 rate calculated for the Kentucky Correctional Institute for Women at Pewee Valley that was used to set Otter Creek's contract rate. Therefore, the actual costs for female inmates transferred from county jails to Otter Creek increased \$17.44 per day or 57 percent when compared to the \$47.95 per diem rate paid to Otter Creek.

### Recommendation 4.1

- **The General Assembly should review KRS 197.510 (13) to specify a consistent methodology for determining cost savings and consider whether an outside entity should review the methods and ensure they are implemented properly.**
- **As long as there is a statutory savings requirement for prison privatization contracts, DOC should develop consistent methodology for calculating costs of state operated facilities for the purpose of annual comparisons to ensure that contracted facility per diem rates are in compliance with statutorily required contract terms mandating 10% savings. Methodology should address how capital improvements will be treated, as well as whether a single facility will be used for comparison purposes, an average of multiple facilities or other methods. DOC should document this methodology in administrative regulations**
- **DOC should standardize a comprehensive and objective method to allocate private prison costs based on best practices and learned experiences from other states in order to more accurately reflect actual operating costs of facilities, and should standardize its method for allocation of administrative costs related to oversight of private prisons for purposes of complying with KRS 197.510. In addition, DOC should establish this cost allocation methodology through promulgating administrative regulations.**



---

## Chapter 4

# Review of Kentucky's Prison Privatization Cost Savings and Contract Process

---

- **State operated prison costs should be calculated annually. These costs should be used in the annual negotiation of contract rates with the private vendor.**
- **DOC should consider any increased cost to the Commonwealth when contracting with a private prison provider compared to the cost of continuing to hold prisoners in county jails.**
- **DOC should maintain its cost computations and cost allocation records for public and privatized prisons in accordance with Kentucky records retention law.**
- **DOC should routinely perform analysis pursuant to KRS 45A.550 to 45A.554 for every private prison contract.**

### **Finding 4.2 DOC's cost calculations have not been independently reviewed.**

DOC relies on in-house staff to ensure its costs for private prisons are less than similar public facilities, and uses its own calculations to negotiate contract amounts with the private contractor. DOC is not aware of any audit or review of its incarceration cost calculations by any outside party since the law was enacted over 14 years ago.

Our research of public and private prison costs for Kentucky's prisons revealed only one report fully comparing and reporting private and public costs. The Auditor of Public Accounts reported on private and public costs to incarcerate in a June 1994 report to legislative and executive branch officials (*Auditor of Public Accounts Privatization Review of ICF.MR Institutions and Minimum Security Correctional Facilities*). This report examined and compared prison costs for years 1992 and 1993, and included detailed information on direct and indirect cost allocations. However, this review was conducted before the impact of the 1992 changes to KRS 197.510. Adequate historical data on costs was not yet available to make these cost comparisons.

### **Recommendation 4.2**

**An outside entity, familiar with cost allocation methods for public and privatized prison operations, should review DOC's current processes and develop consistent cost allocation methods and procedures for public and privatized prisons.**

---

## Chapter 5

# Privatization in Other States-Examples, Laws, and Lessons Learned

---

This chapter provides information on current privatization contracting practices in state government. This information can assist Kentucky stakeholders in improving the management and oversight of the Commonwealth's privatized services. Although universally recognized best practices would be helpful, there are none. Thus, we examined noteworthy national reports and include overviews of six states' privatization contracting laws and administration. Our focus is on general privatization laws and oversight rather than program-specific laws and rules that some states have enacted.

### **What Are the States' Privatization Contracting Practices?**

The APA reviewed dozens of reports on privatization contracting, giving particular attention to other states' practices and identifying trends and lessons that could improve Kentucky's process. Important issues in privatization include worker displacement, comprehensive cost-benefit analyses, and the potential loss of state oversight.

Discussions about privatization often result in much debate. Promoters argue that the rigid structure of bureaucracies stymie innovation. On the other hand, recent legislative reports and audits in other states argue that privatization laws are sometimes unable to ensure the best service delivery at the lowest price. Privatization promoters and detractors generally agree on one point – states have devoted too few resources to monitoring contract goals and measuring results.

Recommended privatization contract practices discussed in this chapter illustrate that approaches and structures vary, but that privatization contracting should include steps and oversight sufficient to:

- Identify promising privatization opportunities
- Assess the availability and cost of state workforces and potential displacement
- Undertake careful cost benefit analysis and account for numbers of workers
- Administer and monitor contracts
- Measure and report outcomes of privatization
- Maintain the option to bring the service back if monopolies result

### **Lessons To Be Learned From National Reports and Surveys on Privatization**

Two nationally recognized organizations, the Council of State Governments and the Government Accountability Office (GAO), have surveyed states and offer general privatization contracting guidance and recommendations. While these reports did not contain comprehensive or detailed information on states' privatization laws, their conclusions are noteworthy.

---

## Chapter 5

# Privatization in Other States-Examples, Laws, and Lessons Learned

---

### National Survey of States Recommends Best Practices for States to Follow

The Council of State Governments prepared a list of issues to consider in evaluating privatization in its 1998 report, *Private Practices: A Review of Privatization in State Government*. CSG offers a more comprehensive approach and cautious tenor than the GAO. Rather than just considering bureaucratic obstacles, the CSG includes practical considerations and sufficient checks and balances to assure best value in service delivery. The focus of the CSG's work is on best value; it avoids the preconceived notion that privatization is always better. CSG contends the following checklist should be answered by any state considering privatization contracting:

- Who should initiate a privatization project?
- How should services, functions, or programs be identified as privatization candidates?
- Are there legal and political barriers to privatization?
- Are there measurable goals and criteria for contractors, including thresholds of savings that should be considered (e.g., a minimum of five or ten percent in cost savings) to determine which contract should be privatized or kept in house?
- Are costs savings realized with true decreases in cost to the state and without cost shifting to other agencies, recipients of services?
- Does the privatization contract create a monopoly?
- Is risk of the private contractor failing considered and does the private contractor or the state bear the risk of cost overruns?
- Will affected state employees be hired by the private contractor or transferred to other units?
- Is the pre-privatization analysis thorough and fair and are alternatives using existing state workforces and other agencies considered?
- Does the Request for Proposal (RFP) contain all necessary specifications?
- Will the contract be awarded through competitive sealed bidding or sole source purchase?
- When should a cost analysis be made – before or after obtaining bids – and what should it include?
- Who should monitor implementation of the privatization contract and how will this be carried out?
- How should the privatization contract be evaluated and which indicators should be considered?

---

## Chapter 5

# Privatization in Other States-Examples, Laws, and Lessons Learned

---

### GAO Looks to States for Experiences

Nearly ten years ago the GAO investigated states active in privatization to learn from their experiences and better prepare the federal government for expanded privatization. In its 1997 report, *Privatization: Lessons Learned by State and Local Governments*, the GAO concluded that governments need to consider special legislation to accommodate the increased roles of private providers of government services and that states needed to remove obstacles to replacing state workers. There is little mention or concern about the possible negative outcomes of privatization efforts or advice on cost-benefit analysis and contract monitoring. Legislation, in the form of changes to promote privatization or remove existing laws protecting state employees, was seen as a device to ensure an open door to privatization. The GAO report presents six components for successful privatization:

1. A political commitment is needed to introduce and sustain privatization.
2. An organizational and implementation structure is needed to ensure effective implementation.
3. Legislative and resource changes may be needed to encourage greater use of privatization.
4. Reliable and complete cost data are needed to assess overall performance of privatization activities, to support informed privatization decisions, and to make decisions easier to implement and satisfy critics.
5. Governments need to develop strategies to transition workers to a private sector environment.
6. Performance of privatized activities should be monitored and compliance measured and monitored.

### Privatization Practices in Other States

To provide current and more comprehensive privatization information not included in the GAO and CSG reports, we researched selected states' privatization contracting laws, administrative oversight and recent contracts. Following are profiles of privatization in selected states and lessons for Kentucky.

#### Florida

In July 2004, Florida created a central gateway for privatization within its state Center for Efficient Government. This clearinghouse explored privatization opportunities much like the Commission on Privatization formed by Kentucky Governor Brereton Jones in 1993. *Governing* magazine noted that, by the end of 2004, a total of 138 Florida projects worth \$1.6 billion had been outsourced to private contractors throughout the prior six years.

---

## Chapter 5

# Privatization in Other States-Examples, Laws, and Lessons Learned

---

Although the Florida model of privatization was initially met with support, approval waned after some high profile failures. Early in 2000, there were bipartisan legislative proposals to require greater oversight and less gubernatorial control over privatization.

Following are a few reports of Florida's notable difficulties with privatization:

- In 1998, the Florida legislature privatized the state's foster care program; much trouble followed, including a \$5 million damage award and a 2002 oversight committee report and further investigations.
- In October 2004, the Florida State Auditor General found problems with Florida's \$350 million, nine-year human resources privatization contract with Covergys. The problems noted included delays, poor control of subcontractors, lack of needs assessment and cost-benefit analysis, and other administrative failures. (State of Florida Auditor General Report Number 2005-047, *Department of Management Services, People First Operational Audit*, October 21, 2004)
- In April 2005, Florida privatized its child welfare programs, resulting in scandals and resignations of state officials and significant administrative problems reported by a state legislative oversight agency. (*OPPAGA Report: Child Welfare Transition Nearly Complete; Budget Allocation and Oversight Systems Need Strengthening*, Report No. 05-12, March 2005 and *Governing* December 2004)

Florida's Center for Efficient Government identified lessons learned from Florida's privatization contracting experiences. These are summarized in Table 5.1.

**Chapter 5**

**Privatization in Other States-Examples, Laws, and Lessons Learned**

**Table 5.1: Florida’s 2005 Privatization Challenges and Lessons Learned**

Challenge	Lesson Learned
<p><b>A general lack of understanding or purpose</b> – Either through a failure of communications, lack of transparency, or dissemination of misinformation, employees and the public often fail to understand why initiatives are put in place.</p>	<p>Communicate and document processes to help employees, other stakeholders, and the legislature understand and appreciate the process.</p>
<p><b>A failure to define goals and/or desired results upfront</b> – Without clearly defined goals it is difficult to communicate and conduct comparisons to identify the bid that provides the best value.</p>	<p>Before a competition initiative begins, document goals and desired results</p>
<p><b>A lack of trained or specially skilled workforce to manage contracts</b> – Procurement staff members are often inadequately trained and/or experienced in conducting competition initiatives.</p>	<p>Develop a core group of procurement officials who assist other agencies in developing their procurement and competition documents.</p>
<p><b>A lack of transparency for stakeholders</b> – Too often stakeholders have been left in the dark regarding competition initiatives. Their input has not been sought, the lines of communication have been unclear, and they’ve lacked access to relevant public records.</p>	<p>Seek stakeholder input, establish clear, standard, lines of communications, and make public records readily available.</p>
<p><b>A weak mechanism for setting acceptable performance metrics and measuring the success of an initiative</b> – Similar to the problem of failing to define goals, some initiatives failed to use performance-based contracting or adequately develop monitoring and evaluation mechanisms.</p>	<p>Think about how to monitor the service contract before issuing the request for proposals or signing the contract. The monitoring plan defines precisely what a government must do to guarantee that the contractor’s performance complies with the contract. The better the performance standards, the easier it will be to monitor the contract effectively.</p>
<p><b>A lack of consistency and a centralized enterprise-wide approach to competition</b> – Over the years, several different standards and processes have been used in identifying competition initiatives and carrying out the competitions themselves, preventing agencies from sharing best practices or applying lessons learned. Finally, a lack of a comprehensive approach limited the possibility of enterprise-wide solutions.</p>	<p>Establish a coordinated, standard process to guide future competition initiatives and identify deficiencies in existing contracts. In addition, create a central point of accountability and responsibility for overseeing initiatives to manage the process and build up a critical mass of knowledge to identify best practices and adopt lessons learned.</p>

Source: Florida Center for Efficient Government as presented in the Reason Foundation’s *2005 Annual Privatization Report*.

Florida’s Office of Program Policy Analysis and Government Accountability (OPPAGA) provides evaluative research and objective analyses for the Florida Legislature to promote government accountability and the efficient and effective use of public resources. OPPAGA has reported extensively on Florida’s privatization efforts and its recommendations for improving privatization processes include the following:

# **Privatization in Other States-Examples, Laws, and Lessons Learned**

---

- Complete cost accounting for private and public prisons
- Presentations of privatization business cases to the Legislature for approval and review
- Stronger requirements for performance-based contracts
- Stronger oversight of agency privatization initiatives
- Regular reporting of progress in achieving objectives and outcomes
- Improved central direction and oversight of private contract providers

A new Florida law based on Senate Bill 2518 also draws on lessons learned in private contracting and provides an important new tool to ensure public accountability in contracting. The new law establishes a gatekeeper for outsourced contracts – A Council on Efficient Government will review major contracts and recommend possible changes. Agencies are required to develop complete business plans for projects with expenditures over \$1 million and fully document costs and benefits. Additional safeguards include:

- Contracts for commodities or contractual services are limited to three-year renewals of original contract duration;
- Contracts over \$1 million require specially trained and certified contract negotiators;
- Standards and best practices will be established;
- Increased accountability is ensured through annual reports to the Legislature documenting outsourcing, cost benefit analysis, and contract performance for each agency;
- Access to contractor’s records and a requirement for audits in accordance with professional auditing standards, if appropriate, is provided;
- Contractors are prohibited from selection, hiring, firing, demotion, and dismissal of state employees;
- Protections are included to ensure contractors guard social security numbers and other personal information.

Kentucky has much to learn from Florida’s privatization contracting experiences, particularly the need to measure outcomes and monitor high-dollar contracts of services previously undertaken by state workers. Independent legislative and audit authorities in Florida offer real world examples and recommendations for avoiding pitfalls Florida has faced, should Kentucky undertake aggressive and new privatization efforts.

# **Privatization in Other States-Examples, Laws, and Lessons Learned**

---

## **Virginia**

Virginia stands out for its structured and competitive system for identifying privatization candidates and best value of services. Its approach involves a programmed format to ensure transparency, standardization, and performance measurement of contracts. The type of competitive sourcing Virginia employs was recently expanded in Indiana and promoted by Kentucky's Bluegrass Institute as an example for Kentucky to follow.

Virginia's General Assembly created its Commonwealth Competition Council (CCC) as part of the Virginia Government Competition Act of 1995. Today CCC is a leading privatization clearinghouse, toolkit, and best practices repository for public-private partnerships. This group has promoted many successful projects. Unlike some of the early trailblazers, Virginia realized state agencies should have the ability to compete along with outside sources, and that identifying objectively measured savings is necessary to ensure best value.

In early 1999, the Virginia Auditor of Public Accounts issued a report critical of Virginia's lack of careful contract cost analysis, savings identification, and methods for identifying candidates for private sector contracting. The Auditor's findings were based on a survey of state agencies similar to the APA's fieldwork and findings reported elsewhere in this report. Virginia concluded all agencies should complete a standardized and comprehensive analysis before making decisions to contract services, regardless of the reasons for privatization.

In January 2002, Virginia established its Governor's Commission on Effectiveness and Efficiency. Subsequently, Virginia passed important legislation in 2005, House Bill 2844, creating the Competitive Government Act and requiring the Governor to conduct a biennial enterprise-wide examination of commercial activities performed by state employees to assure cost efficiency and effectiveness.

Today, Virginia's privatization best practices are built around a straightforward strategy for success that Kentucky should consider:

- A cogent support network consisting of the Governor and General Assembly
- An implementation structure formed by the Virginia Government Competition Act of 1995
- Monitoring and oversight with a cost allocation of associated costs in the analysis
- A reliable and standard cost comparison program, COMPETE and public/private performance analysis



# **Privatization in Other States-Examples, Laws, and Lessons Learned**

---

- Strategies for workforce transition with a competitive sourcing option for state workers

Standouts in Virginia's competitive privatization evaluation process are the cost benefit analysis and Public/Private Performance Analysis Submittal form. These devices provide standardized and more detailed methods of privatization contract proposals. The form would strengthen Kentucky's process by expanding the following components:

- Detailed justification for contracting
- Analysis of service needs and agency ability to compete with private sector vendors
- A plan for cost identification and calculation
- Consideration of public policy issues and safety and welfare

## **Texas**

Texas, like Florida, was a groundbreaking state in privatization of public services. Texas' Competitive Cost Review Program (CCRP) was established in 1987 in an attempt to identify candidates for privatization. The program contains a systematic cost analysis to provide management information on quality, quantity, and cost of a product or service. Following this program, Texas completed a performance review in the early 1990s and recommended privatization opportunities.

In 1993 the environment for privatization was extended with the legislative development of the Texas State Council on Competitive Government (CCG). In Texas, the focus is not so much on defining and controlling privatization contracts through structured privatization laws as it is on identifying privatization candidates and pursuing action through CCG.

According to its website, CCG reviews state services to identify the most cost-effective and efficient providers. This review may result in reengineering, reorganization, or outsourcing to another agency or private provider. CCG has specific duties under Texas law and operates as a somewhat autonomous body, with the Governor as the presiding officer, scouting for privatization opportunities. CCG's website currently reports savings of \$84 million through fiscal 2002. Kentucky currently has no central authority that scouts for competitive contracting opportunities and tallies potential costs and savings.

The Texas Comptroller plays an ancillary role to the privatization process by promoting and reporting state government performance and privatization efforts. It promotes privatization as a principle for modernization of government.

# Privatization in Other States-Examples, Laws, and Lessons Learned

As the following table reveals, the privatization attitude is optimistic, and privatization is included as a principle to improve government through increased competition.

**Table 5.2: Texas Comptroller’s Privatization Competition Principles**

<b>Principle</b>	<b>Planned Outcome</b>
Introduce competition into Texas government.	Whenever possible, government services should be opened up to competition from the private sector. Competition in government spurs savings, greater efficiency, and innovation.
<b>Privatization Initiative</b>	<b>Action</b>
Increase the use of competitive bidding throughout state government.	The Legislature should establish a performance measure calling for each agency to target an additional 5% of its services for competitive bidding in 2000 and 7% in 2001.
Introduce more competition into Medicaid-related health services.	Competitive bidding should be extended to a number of specialized state health services currently purchased via a state-established fee schedule. Furthermore, Texas should introduce competition into the processing of Medicaid prescription drug claims, currently performed by in-house staff at the Texas Department of Health.
Consider outsourcing part or all of the management of the state’s vehicle fleet.	The General Services Commission should be required to submit a fleet management plan to the 2001 Legislature that explores the possibility of opening this function to competition.
Improve benefits overpayment collections.	The Texas Workforce Commission, which provides monetary assistance to eligible workers in times of unemployment, should contract for the collection of overpayments now deemed uncollectible.

Source: Texas Comptroller Performance Review, *Challenging the Status Quo, Toward Smaller, Smarter Government*.

Despite the decisively pro-privatization stance of the Texas Comptroller and some notable successes with private contractors, the current climate for privatization in Texas has been tempered by some high profile, large-dollar setbacks, including a report critical of privatization from the Texas State Auditor’s Office.

In January 2006, the Texas State Auditor found serious problems with an \$85 million contract to provide human resources and payroll services for the state’s 46,000 employees. The audit was described as the “first

## Privatization in Other States-Examples, Laws, and Lessons Learned

---

comprehensive look at a major privatization effort in Texas government,” according to a Texas news source, and found failures in oversight and delegation of monitoring to the contractor itself. Expected savings were called into doubt. This report stresses an important point common to recent audits and legislative reviews – that privatization contracts do not relieve or lessen the importance of oversight by state agencies. Instead of dedicating state resources, the Texas agency chose to delegate the planning and monitoring activities to the contractor itself.

In the past few months, the Texas Health and Human Services contract to privatize the state’s eligibility screening of social services for children, the disabled, the poor, and elderly has come under fire. The \$899 million, five-year privatization plan for a privately run call center network resulted in poor performance. Negative outcomes include thousands of children cut off from health insurance and bipartisan political fallout. According to April and May 2006 *Houston Chronicle* news reports, the state has yet to save any money. In fact, state workers destined for layoffs were promised \$85.9 million by state leaders on a legislative budget board to stay on board.

### Michigan

Like several other states we studied, Michigan’s privatization movement started with the identification of potential privatization candidates through a central body or commission. Although Michigan caught the attention of early reporters of states’ privatization efforts, we found few current developments or changes that offer lessons for other states to consider.

Low productivity and poor accountability were alleged in public services, according to a June 1992 House Republican Committee Policy Task Force report. The following month an Executive Order was issued by the Governor to establish a seven-member Public-Private Partnership Commission. The Commission made recommendations to the Governor concerning the elimination, modification, retention, or privatization of government services. This action created the PERM process of service delivery options, which is framed around the following:

- Privatization
- Elimination
- Retention
- Modification

The PERM process was devised to identify and describe the history of a government service and its proposed outcome, justify results and possible impediments, and undertake a detailed cost-benefit analysis comparing existing cost (actual, not just budgeted) with alternatives.

---

## Chapter 5

# Privatization in Other States-Examples, Laws, and Lessons Learned

---

In 1995 a “privatization division” was developed to choose activities to analyze for privatization, particularly those crossing agency lines. However, in 1997, this division was abolished with few recommendations and only 24 activities completed.

As it now stands, the Michigan General Government Appropriation Act, an annual budget bill, requires departments to submit project plans to the legislature before “beginning any effort to privatize, and to evaluate the privatization effort and report to the legislature within 30 months.” Agencies are responsible for meeting general budget guidelines, including project plans with a cost analysis and, if applicable, criteria that will be used to compare contract results with service levels prior to privatization. A central budget office enforces the Act.

The Michigan Department of Civil Service is yet another gatekeeper of the privatization process. In certain cases, in order for an agency to privatize its services it must demonstrate “substantial savings” for the state when compared with the cost of state workers. The Department of Civil Service does not review or approve the contracts themselves or monitor vendor performance. Substantial savings is based on average annual expenditures, as follows in Table 5.3:

**Table 5.3: Michigan Savings Requirements for Privatization**

Projected Average Annual Expenditures		Minimum Required Average Annual Savings
From:	To:	Must Equal:
\$ 1	\$ 25,000	25% of average annual cost
\$25,001	\$50,000	20% (minimum \$6,250)
\$50,001	\$ 100,000	15% (minimum \$10,000)
\$100,001	\$200,000	12.5% (minimum \$15,000)
\$200,001	\$500,000	10% (minimum \$25,000)
\$500,001	\$1,000,000	Minimum \$50,000
\$ 1,000,001	And above	5% of average cost

Source: Michigan Civil Service Rules, Chapter 7 Disbursements for Personal Services Outside the Civil Service, 7-3 Standards for Disbursements for Personal Services.

Projected savings must be estimated to achieve 5% to 25% over state workforces, yet no standard cost benefit analysis system, similar to Virginia’s, is made available to agencies making assessments.

### Georgia

Georgia’s civil service “reform” made it easier to hire and fire state employees and thus was portrayed by the GAO as having successfully tackled an obstacle to privatization – state workers. During the 1990s, the Georgia Governor’s Commission on the Privatization of Government Services focused on privatization opportunities and obstacles. Its most

# **Privatization in Other States-Examples, Laws, and Lessons Learned**

---

notable outcome was Senate Bill 635, passed in 1996, that removed Georgia's merit employment system for new hires and replaced it with at-will employment. This way, private contracts could be let with far less resistance – as long as the employee was covered by the new system. The Georgia Merit System continued to cover all employees hired prior to July 1, 1996.

Any state considering privatizing services will have to examine its civil service or merit laws. Should Kentucky decide to enter more privatization contracts, it will need to know how many merit employees it has and how many contract workers will be required to perform a service. Protective measures for Kentucky's merit employees include agency layoff plans and special provisions for workers with more than 16 years of tenure and reversion rights. The Commonwealth does not currently track full-time equivalents, so assessing the full impact of contracting decisions and measuring associated costs and benefits is difficult.

According to the Georgia Department of Audits and Accounts, Georgia has no laws defining or relating to privatization or privatization contracts. An earlier commission focusing on privatization is no longer in existence; however, the Commission for A New Georgia, a non-profit corporation led by private sector executives and CEOs, considers privatization as a way to improve state government. Over the past ten years the push for privatization has slowed, and a review finds that the Commission for A New Georgia has issued no reports or recommendations focusing on privatization contracts.

## **Massachusetts**

More than any other state, comprehensive laws and specific guidelines control privatization in Massachusetts, where the subject has had a somewhat troubled history. Like other states, Massachusetts looked to privatization as an ideological solution to budget woes. The private contracts promoted by Governor William Weld in the early 1990s failed to live up to optimistic estimates of cost savings and were met with the enactment of a comprehensive privatization law in 1993 that remains in force today.

The Massachusetts privatization law is touted by some as a sensible solution to contracting and criticized by others as a roadblock to free market enterprise. Although privatization in Massachusetts has been the subject of much scrutiny, there has been little convergence of opinion, and debate continues over the value of the law. It includes comprehensive requirements that:

---

## Chapter 5

# Privatization in Other States-Examples, Laws, and Lessons Learned

---

- Agencies prepare a detailed statement of services to be used in soliciting competitive bids
- Provide estimates for the most cost-efficient method of providing those services
- Compare in-house with contract costs

The Massachusetts State Auditor has 30 business days after receiving all requirement documentation to approve or reject the contract. The law also authorizes the Auditor to adopt regulations and prescribe forms to carry out the statute's provisions. These guidelines outline the privatization process and prescribing forms agencies must use in preparing and submitting certification data.

Massachusetts's privatization guidelines establish seven requirements that must be met before an agency may privatize a service. A service may be privatized only after it is certified to the State Auditor that the total cost to perform the service by contract will be less than the in-house cost and that the quality of the service will at least equal that provided by state workers. These requirements are summarized in Table 5.4.

---

## Chapter 5

# Privatization in Other States-Examples, Laws, and Lessons Learned

---

**Table 5.4: Summary of Massachusetts Privatization Requirements**

<b>Requirement</b>	<b>Explanation</b>
Agency's written statement of services	A specific written statement of the services proposed to be subject of the privatization contract, including specific quantity and standard of quality is required. Performance indicators are included for various cost and quality measures.
Bid and contract requirements	Bidding contractors must pay employee wages at least equal to entry-level wages for state employees, including apportion for similar health care coverage.
Cost of contract performance	A comprehensive estimate of direct and indirect costs, using specific requirements, staffing formulas and forms is required.
Cost of in-house performance	In a similar manner to contractor cost, cost is calculated and includes pension, insurance, and other benefits.
Cost comparison	Potential cost savings is evaluated and agencies must certify cost to contract will be less than in-house performance with no reduction.
Other requirements	Agencies are required to provide resources for agency employees to submit a bid for services. Bidder and supervisory employees must have no adjudicated record of substantial or repeated willful noncompliance with state or federal laws. Quality of services must equal or exceed regular agency employees. Certification of compliance and associated documentation must be submitted to the State Auditor. State Auditor must be notified of intent of agency to contract out at the time the agency issues a request for bids.

Source: Massachusetts *Guidelines for Implementing the Commonwealth's Privatization Law*, March 1994 publication, Massachusetts Office of the State Auditor A. Joseph DeNucci, Auditor. See Guidelines for complete requirements and associated reporting forms.

---

# Conclusion/Additional Recommendations

---

## Recommendations 5.1

As this audit has demonstrated, Kentucky does not provide adequate oversight of over \$1 billion in privatization contracts. The privatization law, which was intended to provide accountability by requiring detailed cost-benefit analyses of privatization contracts, is completely ineffective due to numerous exemptions in the law and a lack of interest on the part of state agencies to subject contracts to the kind of cost-benefit analysis the law would require. With no review on the front end that documents whether a private contractor will actually save money, any attempt to make this determination must be performed after the money has already been spent and comes too late to best serve the interest of the public.

In addition to changes in the privatization law and other recommended actions in this audit, consideration should be given to the following additional steps based on the best practices of other states – to promote accountability in contracting and ensure that privatizing any state function truly serves the public:

- **Conduct an on-going formal review, in conjunction with state agencies, to identify state functions that would best lend themselves to privatization based on consistent and clearly defined criteria. This would avoid the piecemeal approach of having each agency deciding to privatize based on whatever criteria they choose. Some states (such as Florida and Virginia) have permanent commissions or groups that perform this function.**
- **Require a thorough cost-benefit analysis of all large dollar contracts (\$500,000+) prior to approval to document potential savings. This would ensure that those contracts that might escape the review of an improved privatization statute would be adequately justified on the front end.**
- **Require a periodic evaluation of large dollar contracts (or a sample of contracts) once they are in place to ensure the anticipated savings or benefits of using a private contractor are actually being realized. Such evaluations would be available to the public, and could discourage agencies from routinely renewing contracts unless the benefits were clearly documented. Formal evaluations could also encourage competition by identifying contractors that were not achieving desired results – which could lead to cancellation of the contract and opening it up to other contractors if performance was not improved.**
- **Require that all data, software and similar products developed by a contractor using state funds become the property of the Commonwealth. This would assist in addressing the loss of expertise at the state agency level that comes with privatizing a program or service.**



---

## Conclusion/Additional Recommendations

---

- **Kentucky's contract provisions and privatization requirements under KRS Chapter 45A lack measures included in the new Florida law that are worthy of consideration. Florida is a pioneer in privatization and these changes do not discourage privatization but encourage leveraging state resources to allow private sector vendors to deliver services effectively and efficiently at reduced costs.**
- **The Finance and Administration Cabinet should develop a more user-friendly website that would allow for greater public access to and scrutiny of state contracts. A simple list of contracts posted on the Finance website that could be sorted by vendor, agency, service/commodity type, dollar value, and time period would:**
  - **Give citizens the ability to review how their tax dollars are being spent;**
  - **Allow citizens with knowledge of certain vendors or service areas to scrutinize the contracting process; and**
  - **Increase competition from potential vendors.**

---

## Scope

The APA conducted this performance audit in accordance with *Government Auditing Standards* promulgated by the Comptroller General of the United States. This audit is third in a series of three performance audits on contracting in state government. The audit's purpose is to address the following objective:

**Determine if the Commonwealth is providing adequate and effective oversight of contracts for privatization.**

In order to meet this primary objective we undertook steps to satisfy three sub objectives:

- Determine the criteria related to privatization contracts and monitoring activities.
- Determine whether existing privatization statutes and regulations provide adequate and effective oversight of contracts that allow private entities to take over governmental functions in whole or in part.
- Identify other's privatization efforts, oversight policies, and best practices for comparison and possible improvement of Kentucky's privatization oversight.

Scope was focused on administration and implementation of requirements the general privatization laws in KRS 45A.500 to 45A.554, and the prison privatization laws in KRS 197.500 to 197.540. This report encompasses the duties of both the Finance and Administration Cabinet, the state's fiscal oversight body, and all other agencies creating contracts for state services. Scope included review of application of the general privatization laws and two key components of prison privatization laws concerning cost savings and audit requirements. We include specific case studies to supplement our general findings and illustrate compliance and application of privatization laws and oversight.

The timeframe of the data presented in the report and used in our analyses concern a variety of time periods depending upon the subject matter and availability of records. Specific dates and time periods are noted in the report.

## Methodology

We identified KRS 45A.550 to 45A.554 and 200 KAR 5:340 as the general procurement law governing the creation of privatization contracts. We reviewed the laws in order to determine the general definition of privatization according to the intent of the legislature and the contracts intended to be considered under the law. The requirements for the process of creating a privatization contract were reviewed to determine government entities responsibility for administration and oversight.

We selected a sample of contracts to compare to the criteria found in the privatization statutes. The sample was derived by first creating a MARS

report containing all service contracts with third party vendors effective during fiscal year 2005 and with total expenditures greater than \$500,000. Using a combination of ACL software and Excel spreadsheets, we removed all contracts from this population that did not appear to meet the general idea of a privatized government service. The result was a population of 49 contracts with the following information:

- Vendor
- Administrative agency
- Contract document type
- Contract service descriptions
- Expenditures during FY 2005

Actual contract documents for all 49 sampled contracts were obtained using Procurement Desktop.

Eight (8) other contracts were added with effective dates during fiscal year 2006. These were contracts of interest that appeared to meet the general idea of privatization of government services. Actual contract documents were obtained from Procurement Desktop and used to obtain general information including:

- Vendor
- Administrative Agency
- Contract document type
- Full description of contract
- Maximum value of contract

An attribute checklist was created to test the resulting 57 contracts for each significant criteria based on the privatization statute. This was used to determine whether each contract in the sample would meet the requirements for inclusion or exclusion under the privatization statutes.

We interviewed the twelve (12) administrative agencies related to each of the contracts in the sample to gather the information needed to complete the attribute checklist. Some information was not available from the agencies due to the age of some contracts and inexperience of agency personnel with certain contracts. We used contract documents, research, and general knowledge of state programs to provide information when it was not available from the agencies.

During the agency interviews we also asked questions concerning general knowledge and understanding of the statutory privatization process, the agency implementation of the general contracting process, and future plans for contracting.

Expenditure data for Oakwood Community Center was obtained by creating a MARS report with total expenditures for fiscal years 2003 through 2006. Since the report was run as of June 27, 2006, some of the final expenditures of fiscal year 2006 may not be included.

We received Oakwood resident count sheets from the Cabinet for Health and Family Services for fiscal years 2003 through 2005 and were able to determine the average number of residents for each year. Complete resident counts for fiscal year 2006 were not available, but CHFS provided the actual resident count for the month of May 2006.

The Request for Proposal for the management of Oakwood was reviewed to determine the intent of the contract and the number of contract workers and state employees as of the RFP date of October 6, 2005. CHFS provided updated numbers of contract workers and state employees as of May 10, 2006. This update included the number of contract workers provided by Liberty Healthcare, which had been awarded the Oakwood management contract.

We reviewed a document created by Liberty Healthcare called the “Project Work Plan for Oakwood”. This provided background information and details of the intentions of the management contract. The number of contracts used at Oakwood as of December 2005 and the contract values was included in this information. We received an updated list of Oakwood contracts as of May 10, 2006 from CHFS.

Three reports concerning Oakwood’s management issues were obtained and reviewed:

- CHFS Office of Human Resource Management report on the Communities at Oakwood
- H & W Independent Solutions, Inc report on the Communities at Oakwood
- US Department of Justice Independent Monitor’s Report: October 2005

We examined two requirements of privatization laws for private prisons under KRS 197.510 – 10% savings and annual independent audits. In order to determine the efficacy of the savings requirements, we reviewed the agency’s cost calculations and methods for a sampled private prison. We reviewed compliance with annual independent audit requirements for all private prisons for the most recent fiscal year.

We examined Kentucky’s past privatization efforts and practices, including past and recent attempts to change laws. To evaluate other states’ practices in privatization contracting we reviewed developments in other states and selected Florida, Georgia, Massachusetts, Michigan,

---

Texas, and Virginia. We also reviewed recommended best practices from the Council of State Governments, the Government Accountability Office and other notable reporters. Our recommendations include lessons learned from other states privatization efforts.

Source: [www.lrc.ky.gov](http://www.lrc.ky.gov)

---

## **45A.550 Definitions for KRS 45A.550 to 45A.554 and KRS 11A.130.**

As used in KRS 45A.550 to 45A.554 and KRS 11A.130, unless the context requires otherwise:

- (1) "Privatize" means to contract out in order to procure the services of a private vendor to provide a service that is similar to, and in lieu of, a service provided by state employees of the privatizing agency;
- (2) "Privatization contract" means an agreement or combination of a series of agreements by which a private vendor agrees to provide services that are substantially similar to, and in lieu of, services previously provided, in whole or in part, by at least ten (10) permanent, full-time, budgeted employees of the state agency. This term includes but is not limited to concession contracts. This term does not include personal service contracts as defined in KRS 45A.690, contracts entered into pursuant to KRS Chapter 176, 177, 178, 179, 180, or 181, Medicaid provider contracts, architect and engineering contracts entered into pursuant to KRS 45A.800 to 45A.835, price contracts, construction contracts, or memoranda of understanding or memoranda of agreements or program administration contracts with the Cabinet for Human Resources, including contracts for child support collections and enforcement with contracting officials as authorized by KRS 205.712; and
- (3) "Services" shall not include administration and support functions of government. "Administration and support functions" shall include, but not be limited to, construction contracts, bond counsel and bond underwriting services, architect and engineering services, price contracts, personal service contracts, and memoranda of understanding and memoranda of agreement.

**Effective:** July 15, 1998

**History:** Created 1998 Ky. Acts ch. 492, sec. 1, effective July 15, 1998.

Page 1 of 1

## **45A.551 Procedures for state agency privatization contracts.**

- (1) Upon approval of the Finance and Administration Cabinet, a state agency may enter into a privatization contract.
- (2) Before a state agency recommends to the Finance and Administration Cabinet that it enter into a privatization contract, the state agency shall determine and set forth in writing:
  - (a) The necessity for the service and the intended goals of the service;
  - (b) Problems and inefficiencies existing with the current governmental operation of the service; and
  - (c) Whether the service can efficiently be provided by the agency.
- (3) If the state agency determines that the service cannot efficiently be provided by the agency, the state agency shall be permitted to continue the normal contracting process for the service. However, if the state agency determines that the service can efficiently be provided by the agency and the state agency chooses to proceed with privatization, it shall set forth in writing to the Finance and Administration Cabinet:
  - (a) The tangible benefits of privatizing the service;
  - (b) Any state or federal legal restraints that may limit or prevent privatization of the government service;
  - (c) The availability of multiple qualified and competitive private vendors;
  - (d) 1. A cost-benefit analysis comparison that shall include, but not be limited

Source: [www.lrc.ky.gov](http://www.lrc.ky.gov)

---

to, collection and analysis of the total assessible fixed and variable, direct and indirect, costs of:

- a. The current governmental operation; and
  - b. The private vendor contract.
2. The costs shall include, but not be limited to:
- a. Facility and equipment maintenance;
  - b. Inflation-adjusted costs, where comparison to past years is being conducted;
  - c. Transition costs associated with shifting the service delivery from the government agency to a private vendor;
  - d. Costs of monitoring, evaluating, and enforcing the contract;
  - e. Personnel costs such as those providing for benefits, early retirements, retraining, and relocation in another position; and
  - f. A plan for resuming government operation of the service if the privatization effort fails.

(e) A plan of assistance for all state employees who will be adversely affected by privatizing the service. The plan shall include at least:

1. Efforts to place affected employees in vacant positions in another state agency and to retrain employees for another position in state government;

Page 1 of 2

2. Provisions in the contract, if feasible, for the hiring by the contractor of displaced employees at wages and benefits comparable to the wages and benefits paid to the state employees, subject to the provisions of KRS 11A.130; and

3. Prior notification to affected state employees the day the contract is signed, or three (3) months before the day the adverse effect will occur, whichever is earlier.

(f) A process for monitoring, evaluating, and enforcing a contract with a private vendor which shall include, but not be limited to:

1. Development of a method for ongoing, comprehensive performance evaluation of the private vendor; and
2. Establishment of performance criteria and standards to evaluate the private vendor.

(4) All information required by subsections (2) and (3) of this section shall be submitted to the Finance and Administration Cabinet for its review and approval prior to proceeding with the contracting provisions of KRS Chapter 45A.

(5) The state agency shall retain responsibility for ensuring the quality and reliability of the services.

(6) All records in the possession of a state agency in conjunction with the approval, evaluation, or enforcement of a privatization contract unless exempt under another statute shall be public records, access to which shall be governed by KRS 61.870 to 61.884.

(7) Any other statute to the contrary notwithstanding, all records prepared, owned, used, in the possession of, or retained by a state agency in conjunction with the

Source: [www.lrc.ky.gov](http://www.lrc.ky.gov)

---

approval, evaluation, or enforcement of a privatization contract shall be public records, access to which shall be governed by KRS 61.870 to 61.884.

**Effective:** July 15, 1998

**History:** Created 1998 Ky. Acts ch. 492, sec. 2, effective July 15, 1998.

Page 2 of 2

## **45A.552 Cabinet to develop process for evaluating information when determining whether to approve privatization contract -- Administrative regulations.**

(1) The Finance and Administration Cabinet shall develop an objective and systematic process for evaluating the information in KRS 45A.551(2) and (3) for use in determining whether to approve privatization of a government service.

(2) The process shall be adopted by administrative regulation promulgated by the Finance and Administration Cabinet in accordance with KRS Chapter 13A.

**Effective:** July 15, 1998

**History:** Created 1998 Ky. Acts ch. 492, sec. 3, effective July 15, 1998.

Page 1 of 1

## **45A.553 Contracting agency evaluation and report.**

(1) After approval of a privatization contract by the Finance and Administration Cabinet and issuance and execution of the privatization contract, the contracting agency shall annually evaluate the performance of the contract and report its findings to the Governor, the Auditor of Public Accounts, and the Legislative Research Commission.

(2) The state agency entering into the contract shall provide for an evaluation of the performance of any privatization contract awarded in excess of five hundred thousand dollars (\$500,000) annually. The review shall include but not be limited to determining whether the contractor is complying with all applicable statutory requirements and the provisions of the contract. The performance evaluation shall be forwarded to the Auditor of Public Accounts and the Legislative Research Commission. The evaluation shall be subject to review by the Auditor of Public Accounts, who shall report any findings to the Legislative Research Commission.

**Effective:** July 15, 1998

**History:** Created 1998 Ky. Acts ch. 492, sec. 4, effective July 15, 1998.

Page 1 of 1

## **45A.554 Construction of KRS 45A.550 to 45A.554 and KRS 11A.130.**

The provision of KRS 45A.550 to 45A.554 and KRS 11A.130 shall not apply to privatization contracts awarded prior to July 15, 1998, or any renewals thereof.

**Effective:** July 15, 1998

**History:** Created 1998 Ky. Acts ch. 492, sec. 5, effective July 15, 1998.

Page 1 of 1



Source: [www.lrc.ky.gov](http://www.lrc.ky.gov)

---

## **200 KAR 5:340. Privatization evaluation process.**

RELATES TO: KRS 45A.550-45A.554

STATUTORY AUTHORITY: KRS 45A.552

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.552 requires the Finance and Administration Cabinet to develop an objective and systematic process for evaluating the information required to be submitted by state agencies for use in determining whether to approve privatization of a government service. This administrative regulation establishes the process for evaluating information when determining whether to approve a request for privatization.

Section 1. Request to Privatize. (1) An agency desiring to enter into a privatization contract, as defined in KRS 45A.550, shall submit a Request to Privatize, signed by the agency head, and accompanied by the written documentation described in KRS 45A.551(2) and (3), to the Secretary of the Finance and Administration Cabinet.

(2) The secretary shall:

(a) Appoint an ad hoc committee to review the request;

1. The committee shall consist of:

a. Two (2) employees from the Personnel Cabinet; and

b. Four (4) employees from the Finance and Administration Cabinet.

2. The committee:

a. Shall verify the accuracy and completeness of the information submitted by the agency;

b. Shall develop a method and benchmarks for evaluating a request, document the method and benchmarks in writing, and attach the document to the committee's recommendation to the secretary;

c. May request a meeting with the agency to discuss or clarify the information submitted;

d. Shall score the request based on the information submitted pursuant to KRS 45A.551(2) and (3) and the method and benchmarks established by the committee; and

e. Shall issue a written recommendation to the secretary, including data compiled by the committee, within thirty (30) days of submission of the request to the secretary.

(b) Issue a written determination approving or rejecting the Request to Privatize, within ten (10) days from receipt of the committee's recommendation, and forward a copy of the secretary's determination and the committee's recommendation to the Government Contract Review Committee.

Section 2. Basis of Determination. (1) The secretary shall base the determination to approve or reject a Request to Privatize on the following factors:

(a) The agency analysis provided pursuant to KRS 45A.551(2) and (3);

(b) The committee's recommendation; and

(c) The effect of privatization upon:

1. Continuation of funds currently available;

2. Other programs and responsibilities;

3. The exercise of discretion in applying governmental authority;

4. The making of value judgments in decisions affecting the government;

5. Quality of services; and

6. Overall cost.

(2) If the information submitted by the agency is insufficient, the committee or the secretary shall request additional information or clarification from the requesting agency.

(3) If the information demonstrates that it would be in the best interest of the Commonwealth to privatize the service, the secretary shall approve the Request to Privatize.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

Source: [www.lrc.ky.gov](http://www.lrc.ky.gov)

---

- (a) "Request to Privatize" 9/1999; and
- (b) "Cost Benefit Analysis" 9/1999.
- (2) This material may be inspected, copied, or obtained at the Finance and Administration Cabinet, Office of the Secretary, Room 383 Capitol Annex, Frankfort, Kentucky, 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (25 Ky.R. 2709; Am. 26 Ky.R. 717; 1403; eff. 11-16-99.)

## Private Prison Law

### **197.510 Terms of contract -- Budget -- Annual audit -- Space requirements -- Staffing requirements -- Failure to provide required services, products, or facilities.**

Any contract entered on or after July 15, 1988, between the state and a private provider for the operation and management of an adult correctional facility shall include terms which comply with at least the following:

- (1) Unless otherwise provided by KRS 197.505 to 197.525, any adult correctional facility contracted for pursuant to KRS 197.505 shall submit a plan to the department for achieving American Correctional Association standards within five (5) years, which is appropriate for the specific type of adult correctional facility.
- (2) The provisions of KRS Chapter 45A shall apply to any contract or any proposal for a contract authorized by KRS 197.505 to 197.525 for an adult correctional facility.
- (3) The adult correctional facility shall prepare an annual written budget of anticipated revenues and expenditures which is approved by the appropriate governing authority. The facility shall have written policies which govern revisions in the budget. The facility shall have a fiscal system which accounts for all income and expenditures on an on-going basis.
- (4) The adult correctional facility shall prepare and distribute to its governing authority and appropriate agencies including the department, at a minimum, the following documents: annual budget income and expenditure statements; funding source financial reports; and annual independent audit report.
- (5) The adult correctional facility shall have written fiscal policies and procedures adopted by the governing authority which include at a minimum: internal controls; petty cash; bonding; signature control on checks; resident funds; and employee expense reimbursement.
- (6) There shall be an annual independent audit of the adult correctional facility. The facility shall have a written policy for inventory control of all property and assets and for purchasing and requisitioning supplies and equipment. The facility shall use a method which documents and authorizes wage payment to employees and consultants.
- (7) The private provider shall develop and implement a plan for the dissemination of information about the adult correctional facility to the public, government agencies, and the media. The plan shall be made available to all persons. All documents and records, except financial records, maintained by the private provider shall be deemed public records as defined by KRS 61.870 and be subject to the provisions of KRS 61.872 to 61.884.
- (8) The adult correctional facility shall conform to all applicable zoning ordinances and all applicable state and local building codes, including the Kentucky Building Code, 1983 edition and subsequent modifications or replacements thereto.
- (9) The adult correctional facility shall comply with all applicable laws and regulations

---

# Kentucky Privatization Laws

Source: [www.lrc.ky.gov](http://www.lrc.ky.gov)

---

of the local and state government regarding sanitation, food service, safety, and health. Copies of inspections completed by the appropriate authorities shall be sent to the department.

(10) The adult correctional facility shall comply with the provisions of the Life Safety Code, 1983 edition, National Fire Protection Association 101 and the regulations of the state or the local fire safety authority, whichever has primary jurisdiction over the adult correctional facility. Copies of the inspections completed by the appropriate authorities shall be sent to the department.

(11) A minimum of sixty (60) square feet of floor space per resident shall be provided in the sleeping area of the adult correctional facility. Other areas to be provided shall include space and furnishings to accommodate group meetings of the residents, private counseling space with adequate furniture, and a visiting area.

(12) The adult correctional facility shall provide a variety of indoor and outdoor recreational and leisure time activities to include but not be limited to: television, radio, library materials, and recreational facilities. Telephone facilities shall be available on the premises, which are accessible to residents.

(13) The adult correctional facility shall provide a level and quality of programs at least equal to those provided by state-operated facilities that house similar types of inmates and at a cost that provides the state with a savings of not less than ten percent (10%) of the cost of housing inmates in similar facilities and providing similar programs to those types of inmates in state-operated facilities.

(14) The adult correctional facility shall be staffed twenty-four (24) hours per day seven (7) days per week. The staffing pattern shall be adequate to insure close inmate surveillance and maintenance of security within the facility. The staffing pattern shall address the program, transportation, and security needs of the facility. In determining security need, the proximity of the facility to neighborhood and schools shall be considered.

(15) The adult correctional facility shall have a written personnel policy and employees shall be given a copy. The personnel policies shall include, at a minimum:

- (a) Organization chart;
- (b) Employment practices and procedures including in-service training and staff developing;
- (c) Promotions;
- (d) Job qualifications and job descriptions;
- (e) Grievance and appeal procedures;
- (f) Employee evaluation;
- (g) Personnel records;
- (h) Benefits;
- (i) Holidays;
- (j) Leave;
- (k) Hours of work;
- (l) Salaries (or the base for determining salaries);
- (m) Disciplinary procedures;
- (n) Termination; and
- (o) Resignation.

(16) The adult correctional facility shall maintain written job descriptions and job qualifications for all positions in the facility including: job title, responsibilities of the positions, and required minimum experience and education. An affirmative

Source: [www.lrc.ky.gov](http://www.lrc.ky.gov)

action program shall be adopted by the governing authority. The correctional facility shall maintain a current, accurate, and confidential personnel record on each employee. The facility shall have written policy and procedures requiring an annual performance evaluation of all employees. This evaluation shall be reviewed and discussed with the employee.

(17) Prior to employment, all employees of the adult correctional facility shall be subject to thorough background investigation to include criminal, medical, and employment history. All security employees of the facility shall be at least twenty-one (21) years of age. The facility shall provide initial orientation for all new employees during the first week of employment. The facility shall comply with all governmental regulatory requirements related to employment and personnel practices. Personnel selection and assignments shall be based on merit.

(18) The administrator of the adult correctional facility shall have a minimum of five (5) years experience in corrections or law enforcement and five (5) years experience in administration. The remaining staff of the facility shall have the same qualifications and training as the staff employed in similar positions in adult correctional facilities operated by the department.

(19) The adult correctional facility shall provide the following services and programs, the extent to which shall be set forth in the contract between the state and the private provider but shall be consistent with the standards of the American Correctional Association:

- (a) Health and medical services;
- (b) Food services;
- (c) Mail, telephone use, and visitation;
- (d) Access to legal services and legal materials;
- (e) Vocational training;
- (f) Educational programs;
- (g) Counseling services including personal counseling;
- (h) Drug and alcohol counseling; and
- (i) Sanitation services.

(20) The adult correctional facility shall have a written fire and emergency plan for the facility which shall be communicated to all employees and inmates and updated, if needed. The facility's written emergency plan shall be conspicuously posted in the facility. The facility staff shall document the conduct of quarterly emergency drills.

(21) The adult correctional facility shall have a written policy restricting the use of physical force to instances of justifiable self-protection, prevention of property damage, and prevention of escapes, and only to the degree necessary. In compliance with applicable laws, the facility shall maintain and make public, written policies and procedures for conducting searches of residents and all areas of the facility, to control contraband and locate missing or stolen property. The facility shall have a written plan to control movement in and out of the facility. The facility shall have written procedures to account for the whereabouts of the residents at all times.

(22) The adult correctional facility shall establish a procedure for inspecting all facility areas accessible to inmates for contraband and physical security at least weekly. Isolated security spot checks shall be conducted daily. Items considered as contraband or items permitted in the facility shall be clearly defined in the facility's rules.

(23) The adult correctional facility shall report all suspected felonies to the Kentucky

---

# Kentucky Privatization Laws

Source: [www.lrc.ky.gov](http://www.lrc.ky.gov)

---

State Police for investigation. A written report shall be made of all extraordinary or unusual occurrences within twenty-four (24) hours of the occurrence. This report shall be placed in the inmate's folder and a copy forwarded to the department. All these occurrences shall be promptly reported to the department verbally prior to submission of the written report. Extraordinary or unusual occurrences shall include, but not be limited to:

- (a) Death of a resident;
- (b) Attempted suicide or suicide;
- (c) Serious injury, whether accidental or self-inflicted;
- (d) Attempted escape or escape from confinement;
- (e) Fire;
- (f) Riot;
- (g) Battery, whether by a staff member or resident;
- (h) Sexual assaults; and
- (i) Occurrence of contagious or infectious disease, or illness within the facility.

(24) Each adult correctional facility shall have written policy and procedures for emergency situations including but not limited to:

- (a) Escapes;
- (b) Taking of hostages;
- (c) Riots;
- (d) Food poisoning;
- (e) Civil disturbances in the community;
- (f) Natural disaster;
- (g) Suicides; and
- (h) Other deaths and disorder.

(25) The adult correctional facility shall adopt a written policy and procedures which shall insure that the constitutional rights of inmates to voluntarily practice their own religious activities are protected, subject only to those limitations necessary to maintain order and security of the facility.

(26) The adult correctional facility shall adopt a written policy which shall be implemented to insure that no inmate or group of inmates is in a position of control or authority over other inmates.

(27) The adult correctional facility shall have a policy and procedure for recommending awarding of meritorious good time for inmates in accordance with policies and procedures of the department. The procedures shall include formation of a committee to include an administrator to screen all recommendations. The recommendations shall be sent to the department. Recommendations for restoration of good time shall be screened by the same committee and forwarded to the department.

(28) If the adult correctional facility operates a canteen, all profits shall be spent for recreational programs for inmates. Prices shall be in accordance with those established by the Department of Corrections Inmate Canteen Board.

(29) The department shall have the authority to conduct periodic, scheduled, and unannounced inspections of the adult correctional facility during the term of the contract. The department shall generally observe and monitor the operations of the adult correctional facility at least once per week.

(30) The contract shall provide a hold harmless clause by which the private provider

---

# Kentucky Privatization Laws

Source: [www.lrc.ky.gov](http://www.lrc.ky.gov)

---

agrees to indemnify, defend, and hold harmless the Commonwealth, its officers, agents, and employees from:

- (a) Any claims or losses for service rendered by the private provider, person, or firm performing or supplying services in connection with performance of the contract;
- (b) Any claims or losses to any person or firm injured or damaged by the erroneous or negligent acts of the private provider, its officers, or employees in the performance of the contract;
- (c) Any claims or losses resulting to any person or firm injured or damaged by the private provider, its officers, or employees by the publication, translation, reproduction, delivery, performance, use, or disposition of any data processed under the contract in a manner not authorized by the contract, or by federal or Commonwealth regulations or statutes; and
- (d) Any failure of the private provider, its officers, or employees to observe Kentucky laws, including, but not limited to, labor laws and minimum wage laws.

(31) The contract shall require that the private provider give a performance bond to the Commonwealth as obligee, in form satisfactory to the Commonwealth, executed by a surety company authorized to do business in Kentucky and in the penal sum equal to: twenty percent (20%) multiplied by the maximum number of inmates to be housed in the adult correctional facility multiplied by three hundred sixty-five (365) and further multiplied by the rate to be paid the private provider per inmate per day.

(32) The private provider shall provide public liability, property damage, and workers' compensation insurance, insuring, as they may appear, the interest of all parties of agreement against any and all claims which may arise out of the private provider's operations under the terms of this contract. If any carrier of the insurance exercises cancellation, notice shall be made immediately to the Commonwealth of the cancellation.

(33) As set forth within the contract between the Department of Corrections and the private provider:

(a) Failure of the private provider to provide the required services, products, or facilities shall entitle the department to withhold from the contract an amount up to two (2) times the estimated value per day per inmate for the service, product, or facility during the entire length of time which the failure to provide exists.

(b) The department shall in writing notify the provider of any failure to provide services, products, or facilities as required. A copy of the written notice shall be sent to the Finance and Administration Cabinet. The private provider shall have fourteen (14) calendar days from its receipt of the notice to abate the failure to provide and to notify the department of the corrective action taken by the private provider.

(c) In the event the department determines that the failure to provide has not been abated within fourteen (14) calendar days after the initial notice, the commissioner of the Department of Corrections shall hold, or assign the matter to a hearing officer for, a hearing and issue findings of fact, conclusions of law, and a recommended order.

(d) Failure to provide services, products, or facilities as required in this agreement shall result in an order to withhold from the contract an amount up to two (2)

Source: [www.lrc.ky.gov](http://www.lrc.ky.gov)

---

times the estimated value, as determined after a hearing, per day per inmate for the service, product, or facility during the entire length of time which the failure to provide exists.

(e) The withholding shall continue until such time as the failure to provide is corrected in the manner stated in the order.

(f) The department and private provider shall in good faith negotiate the actual fair value of the omitted service, product, or facility which shall be subtracted from the amount withheld. The balance of the withholding, if any, shall be promptly returned to the private provider upon final agreement of the department and private provider. Additional withholding from the contract shall be made by the department if an additional amount is due.

(g) The provider may appeal, within thirty (30) days, any order of the department to the Franklin Circuit Court.

**Effective:** July 15, 1994

**History:** Amended 1994 Ky. Acts ch. 418, sec. 5, effective July 15, 1994. – Amended 1992 Ky. Acts ch. 211, sec. 69, effective July 14, 1992; and ch. 445, sec. 10, effective July 14, 1992. -- Created 1988 Ky. Acts ch. 234, sec. 3, effective July 15, 1988.

**Legislative Research Commission Note (7/14/92).** This section was amended by two 1992 Acts. Where those Acts are not in conflict, they have been compiled together. Where a conflict exists, the Act which was last enacted by the General Assembly prevails, pursuant to KRS 446.250.

# Contract Sample Attribute List

## Appendix III

Source: Auditor of Public Accounts based on state agency responses and contract information.

Contract Number	Vendor	Administered By	Contract Description	Contract Total	Service previously provided by the state?*	Service replaces 10 or more state employees in whole or in part?	Is Contract an administrative and support function of government?	Contract Type Based on Language of Statute?	Exempt contract type?	Did the Agency do a Cost-Benefit Analysis?
C-03271284	COOK SYSTEMS INTERNATIONAL INC	GOT GOV OFF FOR TECHNOLOGY	Support Services, Computer	\$707,436.00	N	N	N	Price Contract	Y	N
C-01363744	AMERICAN MANAGEMENT SYSTEMS	FAC OFC OF MAT & PROC SERVICES	Software Maintenance/Support	\$1,214,110.00	N	N	N	Price Contract	Y	N
C-03125523	POMEROY IT SOLUTIONS	GOT GOV OFF FOR TECHNOLOGY	Support Services, Computer	\$1,441,925.00	N	N	N	Price Contract	Y	N
C-03271295	ADECCO TECHNICAL	GOT GOV OFF FOR TECHNOLOGY	Support Services, Computer	\$1,776,334.00	N	N	N	Price Contract	Y	N
C-03271298	COMMUNICATIONS GOVERNMENT	GOT GOV OFF FOR TECHNOLOGY	Support Services, Computer	\$6,408,499.00	N	N	N	Price Contract	Y	N
C-03271297	KEANE	GOT GOV OFF FOR TECHNOLOGY	Support Services, Computer	\$7,603,197.00	N	N	N	Price Contract	Y	N
C-03271289	AJILON LLC DBA AJILON	GOT GOV OFF FOR TECHNOLOGY	Support Services, Computer	\$8,139,552.00	N	N	N	Price Contract	Y	N
C-03097467	ADECCO USA INC	FAC OFC OF MAT & PROC SERVICES	Employment Agency and Search Firm Services (Including Background Investigations and Drug Testing for Employment)	\$9,334,844.00	Y	N	N	Price Contract	Y	N



# Contract Sample Attribute List

## Appendix III

Source: Auditor of Public Accounts based on state agency responses and contract information.

Contract Number	Vendor	Administered By	Contract Description	Contract Total	Service previously provided by the state?*	Service replaces 10 or more state employees in whole or in part?	Is Contract an administrative and support function of government	Contract Type Based on Language of Statute?	Exempt contract type?	Did the Agency do a Cost-Benefit Analysis?
C-03320142	MAXIMUS INC	KDE FINANCIAL MGT	MISCELLANEOUS PROFESSIONAL SERVICES	\$675,000.00	N	N	Y	Personal Service Contract; program administration contract with Cabinet for Human Resources; administrative and support function of government	Y	N
C-04222895	EASTERN KY CHILD CARE	CFC OPS CONTRACTS MGMT	FY05 Child Care Broker Services	\$1,224,959.00	N	N	Y	Personal Service Contract; program administration contract with Cabinet for Human Resources; administrative and support function of government	Y	N
C-04234829	CHILD CARE COUNCIL OF KY	CFC OPS CONTRACTS MGMT	FY05 Child Care Broker Services	\$1,272,779.00	N	N	Y	Personal Service Contract; program administration contract with Cabinet for Human Resources; administrative and support function of government	Y	N
C-04234993	COMMUNITY COORDINATED	CFC OPS CONTRACTS MGMT	FY05 Child Care Broker Services	\$2,312,332.00	N	N	Y	Personal Service Contract; program administration contract with Cabinet for Human Resources; administrative and support function of government	Y	N

# Contract Sample Attribute List

## Appendix III

Source: Auditor of Public Accounts based on state agency responses and contract information.

Contract Number	Vendor	Administered By	Contract Description	Contract Total	Service previously provided by the state?*	Service replaces 10 or more state employees in whole or in part?	Is Contract an administrative and support function of government?	Contract Type Based on Language of Statute?	Exempt contract type?	Did the Agency do a Cost-Benefit Analysis?
C-04221824	KENTUCKY CHILD CARE NETWORK	CFC OPS CONTRACTS MGMT	Family and Social Services	\$5,121,501.00	N	N	Y	Personal Service Contract; program administration contract with Cabinet for Human Resources; administrative and support function of government	Y	N
C-04166775	SOUTHERN AND EASTERN KENTUCKY	KYTC DIV OF TRAFFIC OPERATIONS	Telecommunication Services (Not Otherwise Classified)	\$1,678,955.00	N	N	N	Personal Service Contract; administration and support function of government	Y	N
C-04526053	KENTUCKY SCIENCE AND TECHNOLOGY CORP	COUNCIL ON POSTSECONDARY ED	CONSULTING SERVICES	\$9,294,000.00	N	N	Y	Personal Service Contract; administration and support function of government	Y	N
C-04157361	ANTHEM	695 DEPARTMENT OF INSURANCE	MISCELLANEOUS PROFESSIONAL SERVICES	\$60,112,481.00	N	N	Y	Personal Service Contract; administration and support function of government	Y	N
M-99032907	KEETON CORRECTIONS INC	527 DIV OF ADULT INSTITUTIONS	Halfway Housing	\$943,801.00	N	N	N	Price Contract	Y	N
M-99034199	TRANSITIONS INC	527 DIV OF ADULT INSTITUTIONS	Halfway Housing	\$2,014,746.00	N	N	N	Price Contract	Y	N
M-03301543	SODEXHO OPERATIONS LLC	CHS MHMR OAKWOOD	Food Management Services	\$2,853,700.00	N	N	Y	Concession Contract; Price Contract; administrative and support function of government	Y	N
M-99034015	DISMAS CHARITIES INC	527 DIV OF ADULT INSTITUTIONS	Halfway Housing	\$4,051,462.00	N	N	N	Price Contract	Y	N

# Contract Sample Attribute List

## Appendix III

Source: Auditor of Public Accounts based on state agency responses and contract information.

Contract Number	Vendor	Administered By	Contract Description	Contract Total	Service previously provided by the state?*	Service replaces 10 or more state employees in whole or in part?	Is Contract an administrative and support function of government?	Contract Type Based on Language of Statute?	Exempt contract type?	Did the Agency do a Cost-Benefit Analysis?
M-00005312	CORRECTIONS CORPORATION OF AME	527 DIVISION OF ADMIN SERVICES	Lee Adjustment Center--Monthly Per Diem	\$4,941,913.00	N	N	Y	Price Contract; administration and support function of government	Y	Y
M-02094655	CORRECTIONS CORPORATION OF AME	42 CORRECTIONS-VARIOUS FAC	Corrections Management Services	\$8,414,600.00	N	N	Y	Price Contract; administration and support function of government	Y	Y
M-02052539	RISK MANAGEMENT SERVICES CORP	PERS ADMIN SVCS	Worker's Compensation	\$14,631,049.00	N	N	Y	Price Contract (partial?); administration and support function of government	Y	N
M-00187714	UNISYS CORP	CHS DMS ADMIN & FINANCIAL MGT	MMIS--Kentucky Medicaid Management Information System	\$18,170,599.00	N	N	Y	Program administration contract with Cabinet for Human Resources; administration and support function of government	Y	N
M-04157390	FIRST HEALTH SVCS CORP	CHS OPS CONTRT & PROCURMNT BR	Pharmacy Benefits Management	\$418,354,446.00	Y	N	Y	Price Contract; administration and support function of government	Y	N
M-04111124	RISK MANAGEMENT SERVICES CORP	KYTC OFC OF PERSONNEL SERVICES	Worker's Compensation	\$2,574,815.00	N	N	Y	Personal Service Contract; administration and support function of government	Y	N
M-04240091	NATIONAL HEALTH SVCS INC	CHS DMS OFC OF COMMISSIONER	Utilization & Quality Reviews	\$10,499,382.00	N	N	Y	Personal Service Contract; program administration contract with Cabinet for Human Resources; administrative and support function of government	Y	N

# Contract Sample Attribute List

## Appendix III

Source: Auditor of Public Accounts based on state agency responses and contract information.

Contract Number	Vendor	Administered By	Contract Description	Contract Total	Service previously provided by the state?*	Service replaces 10 or more state employees in whole or in part?	Is Contract an administrative and support function of government?	Contract Type Based on Language of Statute?	Exempt contract type	Did the Agency do a Cost-Benefit Analysis?
M-041119820	UNIVERSITY HEALTH CARE INC	CHS DMS ADMIN & FINANCIAL MGT	MISCELLANEOUS PROFESSIONAL SERVICES	\$495,589,909.00	N	N	Y	Personal Service Contract; program administration contract with Cabinet for Human Resources; administrative and support function of government	Y	N
M-04245454	CROWN SERVICES	CHS MHMR WESTERN ST HOSPITAL	Nursing Services	\$711,929.00	Y	N	N	Personal Service Contract; Price Contract	Y	N
M-04044832	PHARMACY SYSTEMS INC	CHS MHMR CENTRAL ST HOSPITAL	Pharmaceutical Services	\$764,820.00	N	N	Y	Personal Service Contract; Price Contract; program administration contract with Cabinet for Human Resources; administrative and support function of government	Y	N
M-04159145	COLUMBUS MEDICAL	CHS MHMR DIV ADMIN & FIN MGMT	MISCELLANEOUS PROFESSIONAL SERVICES	\$1,398,267.00	Y	N	Y	Personal Service Contract; program administration contract with Cabinet for Human Resources; administrative and support function of government	Y	N
M-04076557	GUARDIAN HEALTHCARE PROVIDERS	CHS MHMR HAZEL WOOD CENTER	MISCELLANEOUS PROFESSIONAL SERVICES	\$3,216,047.00	Y	N	N	Personal Service Contract; Price Contract	Y	N
M-03343914	ECKMAN FREEMAN AND ASSOCS	CHS MHMR DIV OF MENTAL HEALTH	Benefits Mgmt Program FY05	\$3,347,107.00	Y	N	Y	Personal Service Contract; program administration contract with Cabinet for Human Resources; administrative and support function of government	Y	N
M-04182018	CARE PROFESSIONALS INC	CHS MHMR HAZEL WOOD CENTER	Nursing Services	\$3,604,021.00	Y	N	N	Personal Service Contract; Price Contract	Y	N

# Contract Sample Attribute List

Source: Auditor of Public Accounts based on state agency responses and contract information.

Contract Number	Vendor	Administered By	Contract Description	Contract Total	Service previously provided by the state?*	Service replaces 10 or more state employees in whole or in part?	Is Contract an administrative and support function of government?	Contract Type Based on Language of Statute?	Exempt contract type?	Did the Agency do a Cost-Benefit Analysis?
M-03467082	RES CARE INC	CHFS MHMR ADMIN & FIN MGMT	FY05 - Mgmt of Outwood	\$6,104,738.00	N	N	Y	Personal Service Contract; program administration contract with Cabinet for Human Resources; administrative and support function of government	Y	N
M-03057384	CROWN SERVICES INC	CHS OPS CONTRT & PROCURMNT BR	Employment Agency and Search Firm Services (Including Background Investigations and Drug Testing for Employment)	\$835,012.00	Y	N	N	Price Contract	Y	N
M-02244014	MORRISON MANAGEMENT	CHS MHMR WESTERN ST HOSPITAL	Food Management Services	\$1,129,930.00	Y	N	Y	Concession Contract; Price Contract; administrative and support function of government	Y	N
M-03057738	CROWN SERVICES INC	CHS OPS CONTRT & PROCURMNT BR	Employment Agency and Search Firm Services (Including Background Investigations and Drug Testing for Employment)	\$1,511,125.00	Y	N	N	Price Contract	Y	N
M-02281653	CBS PERSONNEL SERVICES LLC	CHS OPS CONTRT & PROCURMNT BR	Employment Agency and Search Firm Services (Including Background Investigations and Drug Testing for Employment)	\$1,603,201.00	Y	N	N	Price Contract	Y	N
M-99133121	MORRISON SENIOR DINING	DMHMR CENTRAL STATE HOSPITAL	Food Management Services	\$1,738,039.00	Y	N	Y	Concession Contract; Price Contract; administrative and support function of government	Y	N

# Contract Sample Attribute List

## Appendix III

Source: Auditor of Public Accounts based on state agency responses and contract information.

Contract Number	Vendor	Administered By	Contract Description	Contract Total	Service previously provided by the state?*	Service replaces 10 or more state employees in whole or in part?	Is Contract an administrative and support function of government?	Contract Type Based on Language of Statute?	Exempt contract type?	Did the Agency do a Cost-Benefit Analysis?
M-011245366	TIER TECHNOLOGIES INC	CFC CBS CHILD SUPPORT	Collection Services	\$2,188,029.00	Y	N	Y	Program administration contract with Cabinet for Human Resources; Child Support Collections; Price contract; administration and support function of government	Y	N
M-04645026	ARAMARK CORRECTIONAL SERVICES	527 DIV OF ADULT INSTITUTIONS	Delivered Meals (Including Shelf Stable Meals)	\$3,900,698.00	Y	Y	Y	Concession Contract; Price Contract; administrative and support function of government	Y	Y
M-04226276	ACS UNCLAIMED PROPERTY CLEARIN	KENTUCKY TREASURY DEPARTMENT	Auditing	\$1,879,064.00	N	N	Y	Personal Service Contract; administrative and support function of government	Y	N
M-04521929	CROWN SERVICES	527 DIV OF ADULT INSTITUTIONS	Nursing Services	\$930,709.00	Y	N	N	Personal Service Contract; Price Contract	Y	N
M-04112757	AMS TEMPORARIES INC	CHS MHMR CENTRAL ST HOSPITAL	Nursing Services	\$986,183.00	Y	N	N	Personal Service Contract; Price Contract	Y	N
M-04055199	CROWN SERVICES	CHS MHMR OAKWOOD	Nursing Services	\$990,428.00	Y	N	N	Personal Service Contract; Price Contract	Y	N
M-04033200	MYERS AND STAUFFER LC MAXIM	CHS DMS DIV OF LONG TERM CARE	NF ICF/MR/DD Facilities, Hosp., Cost Rep. Rate/Appeals	\$1,222,900.00	N	N	Y	Personal Service Contract; program administration contract with Cabinet for Human Resources; administrative and support function of government	Y	N
M-04042196	HEALTHCARE SERVICES	527 DIVISION OF ADMIN SERVICES CHS MHMR	Nursing Services	\$1,510,386.00	Y	N	N	Personal Service Contract; Price Contract	Y	N
M-04044390	CROWN SERVICES	HAZELWOOD CENTER	Nursing Services	\$3,463,866.00	Y	N	N	Personal Service Contract; Price Contract	Y	N

# Contract Sample Attribute List

Source: Auditor of Public Accounts based on state agency responses and contract information.

Contract Number	Vendor	Administered By	Contract Description	Contract Total	Service previously provided by the state?*	Service replaces 10 or more state employees in whole or in part?	Is Contract an administrative and support function of government?	Contract Type Based on Language of Statute?	Exempt contract type?	Did the Agency do a Cost-Benefit Analysis?	
M-04186689	First Health Services Corp.	CHFS DMS Div Hosp and Prov Oper	Medicaid Administrative Agent	\$26,606,803.00	Y	N	Y	Program administration contract with Cabinet for Human Resources; administration and support function of government;	Y	N	
M-05272497	Cannon Cochran Management Services	Personnel Admin Services	Workers' Comp Third Party Administrator	\$19,053,925.00	N	N	Y	Price Contract (partial?); administration and support function of government	Y	N	
M-04085896	New West LLC	Commerce Secretary's Office	Statewide Marketing/Advertising Campaign	\$13,729,978.00	N	N	N	Personal Service Contract	Y	Y	
M-05383787	Liberty Healthcare Corp	CHFS MHMR Commissioner	Oakwood Management	\$9,147,657.00	Y	N	Y	Program administration contract with Cabinet for Human Resources; Personal Service Contract	Y	N	
C-05254931	Prevent Child Abuse Kentucky	CHFS OCO Contracts	Fiscal Agent-Community Partnerships for Protecting Children	\$528,000.00	N	N	Y	Program administration contract with Cabinet for Human Resources; administration and support function of government;	Y	N	
M-05107254	Kenvirons Inc.	EPPC - Division of Air Quality	Air Permit Outsource	\$350,000.00	Y	N	Y	Personal Service Contract	Y	Y	
M-04596012	Enviroplan Consulting	EPPC - Division of Air Quality	Air Permit Outsource	\$350,000.00	Y	N	Y	Personal Service Contract	Y	Y	
M-05176998	Corrections Corp of America	Dept. of Corrections	400 Bed Female Prison Facility - Otter Creek	\$7,000,700.00	N	N	Y	Price Contract; administration and support function of government	Y	Y	
				<b>1,221,161,888.00</b>							

\*Applies only to current contract. State employees may have provided services prior to earlier contracts for the same service

# SEKTDA Contract Letters

Source: Kentucky's Transportation Cabinet

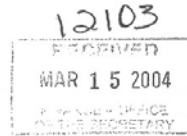
Appendix IV



KENTUCKY TRANSPORTATION CABINET  
FRANKFORT, KENTUCKY 40622  
WWW.KENTUCKY.GOV

ERNIE FLETCHER  
GOVERNOR

MAXWELL C. BAILEY  
SECRETARY



## MEMORANDUM

To: Robbie Rudolph  
Secretary  
Cabinet for Finance and Administration

From: Maxwell C. Bailey *Maxwell C. Bailey*  
Secretary  
Transportation Cabinet

Subject: Contract Approval Request  
Federal Project ID Number VII.H.15a  
MARS Project Number MARS 73555 01 N  
Contract with the Southern and Eastern Kentucky Tourism Development  
Association ("SEKTDA")  
Current Contract Number C-03138207

Date: March 10, 2004

2004 MAR 16 A 10:43  
DIVISION OF MATERIAL  
& PROCUREMENT SERVICE

We are requesting your approval of a Personal Service Contract ("PSC") with SEKTDA for the subject Project. SEKTDA has established and is responsible for the operation of a 511 Tourism Information Call Center that allows callers to Kentucky's 511 system to obtain tourism and related information within the 45 County (plus the City of Berea) region of Southern and Eastern Kentucky covered by SEKTDA. This service is unique within the United States in that callers seeking Tourism information are connected to a live operator who has access to a large database of information. A Web Site is available that provides access to the data base information. Additionally, work has begun to integrate GIS capability into the database, thereby further expanding the capabilities and potential of the service.

This Project was originated when Congressman Harold "Hal" Rogers, as Chairman of the House Appropriations Subcommittee on Transportation, secured a Federal Transportation FY 02 "Earmark" to establish an Eastern Kentucky Rural Highway Information Project. On August 22, 2002, Mr. Bob Mitchell, District Administrator for Congressman Rogers, issued a letter to Mr. John Carr, Deputy State Highway Engineer. That letter stated the "Congressional Intent" of the legislation. The Congressional Intent was to have SEKTDA receive and administer the funds for the

An Equal Opportunity Employer M/F/D



# SEKTDA Contract Letters

Source: Kentucky's Transportation Cabinet

Secretary Rudolph  
Request for Approval to proceed with Contract  
511 Tourism Information Call Center with SEKTDA

purpose of establishing the first 511 Premium Tourism Service as an adjunct to Kentucky's 511 Basic Service. The Project would serve both tourists and tourism agencies in Southern and Eastern Kentucky. The letter further stated the Congressional Intent that the Cabinet would be the Project applicant and receive a portion of the funds to assist with the Project. SEKTDA and the Cabinet would then partner in performing all required Project tasks.

Based upon the Congressional Intent, the Cabinet made application to the Federal Highway Administration for Project approval and for obligation of the funds available for the Project. The Cabinet utilized Toll Road Credits for the required matching funds. Therefore, no State funds were utilized for this Project. The original contract with SEKTDA was approved by the Cabinet for Finance and Administration in April 2003, and provided for expenditure reimbursement to SEKTDA through April 30, 2004. The Transportation Cabinet is supporting the project with a portion of the available Federal Project funds.


Congressman Rogers subsequently secured a Federal Transportation FY 03 "Earmark" to continue this Project. On June 30, 2003, Mr. Mitchell issued a letter indicating the "Congressional Intent" of the legislation. I have attached a copy of that letter for your information. Based upon "Congressional Intent", this Cabinet made application to the Federal Highway Administration for Project approval and for obligation of the funds available for the Project, and has utilized a portion of these funds to extend the Contract with SEKTDA through June 30, 2004. However, we have been advised that we must enter into a new Contract with SEKTDA for the Biennium period July 1, 2004 through June 30, 2006. Further we must obtain the approval of the Cabinet for Finance and Administration prior to entering into such new Contract and submitting it to the Governmental Contract Review Committee of the General assembly.

There are no alternatives to the subject PSC. Again, the Cabinet utilized Toll Road Credits for the required matching funds. Therefore, no State funds were utilized for this Project. Given the "Congressional Intent", we can either proceed with the contract and expend the Federal funds, or else we will forego the Project funding. These funds are not available for any other purpose, and thus are not available to lapse as savings to State resources. In addition to the "Congressional Intent", it is also noted that SEKTDA is unique within the Commonwealth. SEKTDA is a non-profit 501(c)(3) Corporation, and to our knowledge, is the only organization of its type within Kentucky that is dedicated to promoting Tourism, as well as economic development, and is uniquely suited to provide the service. Further, the 511 Tourism Information Call Center is already operational and could not be duplicated by another Vendor without additional start-up costs.

We appreciate your attention to this request. Should you have any questions or wish to discuss this matter further, please feel free to contact Chuck Knowles, Director of the Division of Traffic Operations, at 564-3020.

Attachment: Copy of Letter dated June 30, 2004 indicating "Congressional Intent"

2

APPROVED:  
  
SECRETARY OF  
FINANCE & ADMIN.  
3-23-04

HAROLD ROGERS  
5TH DISTRICT, KENTUCKY  
SELECT COMMITTEE ON  
HOMELAND SECURITY  
COMMITTEE ON APPROPRIATIONS  
CHAIRMAN  
SUBCOMMITTEE ON THE DEPARTMENT OF  
HOMELAND SECURITY  
SUBCOMMITTEE ON THE DEPARTMENTS OF  
COMMERCE, JUSTICE, STATE AND JUDICIARY  
SUBCOMMITTEE ON THE DEPARTMENTS OF  
TRANSPORTATION AND TREASURY, AND  
INDEPENDENT AGENCIES



Congress of the United States  
House of Representatives  
Washington, DC 20515-1705  
June 30, 2003

PLEASE RESPOND TO:  
WASHINGTON OFFICE:  
 2206 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-1705  
(202) 225-4601  
DISTRICT OFFICES:  
 551 CLIFTY STREET  
SOMERSET, KY 42501  
(606) 673-0346 OR  
1-800-532-8588  
 401 MAIN STREET  
HAZARD, KY 41701  
(606) 439-0794  
 119 COLLEGE STREET  
SUITE 2, ROOM 212  
PREVILLE, KY 41501  
(606) 432-4388

Mr. Charles A. Knowles  
Director, Division of Operations (7-2)  
Kentucky Transportation Cabinet  
501 High Street  
Frankfort, Kentucky 40622

JUL 07 2003  
DIVISION OF OPERATIONS  
FRANKFORT, KENTUCKY

Dear Mr. Knowles:

As Chairman of the House Appropriations Subcommittee on Transportation, Congressman Harold "Hal" Rogers obtained two Intelligent Transportation System earmarks for Kentucky. Their titles and Federal I. D. numbers are:

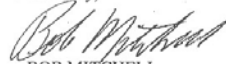
- > Rural Highway Information System - VII.H.15a
- > Statewide Transportation Operations Center - VII.H.15b

It is my understanding that the following guidance will be followed in the implementation of the two earmarks:

1. That the Transportation Cabinet's Transportation Operations Center (TOC), currently under construction in the new Transportation Cabinet Office Building, be completed.
2. That a 511 Call Center be implemented to serve the needs of the Cabinet's Statewide 511 Traffic Information System and the Southern and Eastern Kentucky Tourism Development Association's (SEKTDA) 511 Tourist Information System.
3. That the Cabinet and SEKTDA coordinate the technical issues associated with the 511 Call Center.
4. That the Cabinet explore measures to reduce the amount of funds needed for the 511 Call Center. One such method is the sharing of developmental costs with other States through a pooled fund agreement.
5. That the funds remaining after completion of the TOC and implementation of the 511 Call Center be utilized by SEKTDA for operational purposes.
6. That the Cabinet relieves SEKTDA of meeting Federal matching requirements through the use of Toll Road Credits.

I understand that the Cabinet and SEKTDA are already working together to carry out the earmark mandates. Please feel free to contact me should you have questions or require additional assistance to honor the Congressional Intent.

Sincerely,

  
BOB MITCHELL  
DISTRICT ADMINISTRATOR

# SEKTDA Contract Letters

Source: Kentucky's Transportation Cabinet

Appendix IV

HAROLD ROGERS  
DISTRICT, KENTUCKY  
COMMITTEE ON  
APPROPRIATIONS  
CHAIRMAN  
SUBCOMMITTEE ON TRANSPORTATION  
COMMITTEE ON COMMERCE, JUSTICE,  
STATE, AND THE FOREIGN  
AFFAIRS  
SUBCOMMITTEE ON ENERGY AND  
POWER DEVELOPMENT



Congress of the United States  
House of Representatives  
Washington, DC 20515-1705  
August 22, 2002

APPENDIX I

PLEASE REPLY TO:  
HAROLD ROGERS  
2405 ANNE ARUNDEL  
WASHINGTON, DC 20515-1705  
(202) 225-2801  
DISTRICT OFFICE  
201 CLAY STREET  
BOONVILLE, KY 40309  
(606) 576-6300  
(3-800-822-8848)  
201 MAIN STREET  
MADISON, KY 40131  
(606) 254-0700  
1115 BIRCHMOUNT AVENUE  
SUITE 13000A110  
FRANKFORT, KY 40601  
(606) 221-4200

Mr. John Carr  
Deputy State Highway Engineer  
Kentucky Transportation Cabinet  
Office of Intermodal Programs  
501 High Street, Room 1005  
Frankfort, Kentucky 40622

Dear John:

As Chairman of the House Appropriations Subcommittee on Transportation, Congressman Harold "Hal" Rogers, has secured \$2 million to establish an Eastern Kentucky Rural Highway Information Project. The proposed project will be the first activity in the Nation to be specifically designed to integrate a tourism project with a 511 telephone information project. This project will serve both tourists and tourism agencies in a 42-county area in Eastern and Southern Kentucky.

The congressional intent of the legislation is to have the Southern and Eastern Kentucky Tourism Development Association (SEKTDA) receive and administer a major portion of the funds. Further, it is the intent for the Kentucky Transportation Cabinet to be the project applicant and receive a portion of the funds. SEKTDA and the Cabinet are then to partner in performing all project tasks.

SEKTDA is a 501C non-profit organization whose primary mission is to promote tourism activities in its 42-county service area. SEKTDA is presently administering a U.S. Small Business Administration grant, which will provide support for this project.

APPENDIX 1

Ms. Sheila Kucsko, Executive Director of SEKTDA, will be the local contact for this project. She may be reached at 606/677-6098. Her office will work with the Cabinet to develop a scope of work, estimated budget and project application.

Please feel free to contact me should you have questions or require additional assistance to honor this request.

Sincerely,



BOB MITCHELL  
DISTRICT ADMINISTRATOR

BM:jb

# Oakwood Contract List May 2006

Appendix V

Source: Cabinet for Health and Family Services

CONTRACT #	VENDOR	SERVICE
M-04159145	Columbus Medical	Leadership Enhancement
M-04544108	Columbus Medical	Psychiatrist
M-05139531	River Valley MH/MR	Professional/Administrative Staff
M-05126544	Adanta/Lake Cumberland MH/MR	Professional/Administrative Staff
M-04119239	UK Medical Center	Psychiatrist & Resident for Psychiatric Program
M-04135330	UK Department of Neurology	Neurology Services
M-04055199	Crown Medical	Nursing Service-Patient Aides
M-04076557	Guardian Healthcare	Professional Staff
M-04125563	Guardian Healthcare	Occupational Therapist
M-04151180	Clear Choice Hearing Aids & Audiology	Audiologist
M-04049616	Cumberland Foot and Ankle	Podiatrist
M-04117137	Family Allergy and Asthma	Allergy/Asthma Services
M-04047374	Huffman & Huffman	Ophthalmology Services
M-04125479	Emma Lorae Atwell	Occupational Therapist
M-04045145	Vivian Girdler	Occupational Therapist
M-04149055	Jeannie Burton	Speech
M-04045190	Ronda Cain-Bradshaw	Speech
M-04148794	Holly Miniard	Speech
M-04148970	Sarah Foley	Speech
M-04148887	Angela Hornsby	Speech
M-04089581	Dr. M.Y. Medroso	Physician
M-04044550	Tim Poynter	Nurse Practitioner
M-04130026	Jewell Meade	Dental (On/Off Grounds)
M-04129613	Eric Kelley	Dental (On/Off Grounds)
M-04047712	James Saindon	Dental (On/Off Grounds)
M-05383159	Cumberland Valley District Health Dept.	Physician/RN's
M-05383787	Liberty Health Care	Management of Oakwood Community Center
M-04060720	First Lab LLC	Pathologist, Lab Services, Phlebotomist
M-04052148	Pharmacy Systems Inc.	Pharmacy Management Services
M-04157389	Human Potential	Strategic Action Plan/Dr. El-Sabaawi
M-04623457	Woodlake Inst. For Human Services	Dr. Singh - DOJ Monitoring
M-03057738-2	Crown	Clerical/Administrative
M-02281653-4	CBS	Laundry/Maintenance
M-03301543-3	Sodexo Operations LLC	Food Service
M-05079921-2	Logan Security Inc.	Security Guard Service
M-02288259-5	Crothall Service Group	Housekeeping Service

# Kentucky's Prison Facilities and Statistics

Appendix VI

Source: Contract data and reports from Kentucky's Department of Corrections and Finance and Administration Cabinet. Private facility maximum contract value is based on contract per diem rates and allowable populations. Otter Creek's cost excludes any direct or indirect allocated costs.

<b>Private Facilities</b>					
<b>Facility</b>	<b>Location</b>	<b>Security Level</b>	<b>Average Daily Population FY2005</b>	<b>Cost Per Diem FY2005</b>	<b>Maximum Contract Value</b>
Lee Adjustment Center	Lee County	Medium	344	\$39.66	\$4,979,710
Marion Adjustment Center	Marion County	Minimum	776	\$32.02	\$9,069,345
Otter Creek Correctional Facility (Female)	Floyd County	Various	400 (Contract Amount)	\$47.95 (Contract Amount)	\$7,000,700
<b>Total Maximum Contract Value for Private Facilities</b>					<b>\$21,049,755</b>

<b>Public Facilities</b>				
<b>Facility</b>	<b>Location</b>	<b>Security Level</b>	<b>Average Daily Population FY2005</b>	<b>Cost Per Diem FY2005</b>
Bell County Forestry Camp	Bell County	Minimum	240	\$39.04
Blackburn Correctional Complex	Fayette County	Minimum	585	\$42.23
Eastern Kentucky Correctional Complex	Morgan County	Medium	1,681	\$36.20
Frankfort Career Development Center	Franklin County	Minimum	198	\$41.16
Green River Correctional Complex	Muhlenberg County	Medium	953	\$40.67
KY Correctional Institute for Women (Female)	Shelby County	Medium	724	\$58.17
KY State Penitentiary	Lyon County	Maximum	834	\$64.18
KY State Reformatory	Oldham County	Medium	1,887	\$69.34
Luther Luckett Correctional Complex	Oldham County	Medium	1,077	\$39.06
Little Sandy Correctional Complex	Elliott County	Medium	68 (new facility, 961 capacity)	\$61.45

# Kentucky's Prison Facilities and Statistics

Appendix VI

Source: Contract data and reports from Kentucky's Department of Corrections and Finance and Administration Cabinet. Private facility maximum contract value is based on contract per diem rates and allowable populations. Otter Creek's cost excludes any direct or indirect allocated costs.

<b>Public Facilities (continued)</b>				
<b>Facility</b>	<b>Location</b>	<b>Security Level</b>	<b>Average Daily Population FY2005</b>	<b>Cost Per Diem FY2005</b>
Northpoint Training Center	Mercer County	Medium	1,201	\$37.89
Roederer Correctional Complex	Oldham County	Medium	991	\$42.80
Western Kentucky Correctional Complex	Lyon County	Medium	651	\$50.21

<b>Average Cost of Private and Public Facilities Cost to Incarcerate FY 2004 – FY2005 Per Kentucky Department of Corrections</b>	
All	\$46.99
Maximum Security	\$64.18
Medium Security – State Only	\$47.60
Medium Security State and Private	\$47.20
Minimum Security – State Only	\$41.28
Minimum Security State and Private	\$37.28
Private Institutions	\$34.36

# Private Prisons' FY 2005 Contract Language Related to KRS 197.510 (13)

Source: Applicable contracts, as cited.

<b>Private Facility</b>	<b>Language</b>
<p><b><u>Lee Adjustment Center</u></b> (Master Agreement M-00005312 Modification No. 14) Effective Date March 1990 expiration date May 11, 2007</p>	<p>The objective of the contract amendment is to provide private medium and minimum security beds fully operational at an operating cost of at least 10% below that of similar state-operated medium security facilities.</p>
<p><b><u>Marion Adjustment Center</u></b> (Master Agreement M-02094655 Modification 3) Effective date December 8, 2003 expiration date December 7, 2007</p>	<p>Pursuant to KRS 197.510(13), this contracted Facility shall provide quality programs at least equal to those provided by state-operated facilities that house similar types of inmates. And, this shall be provided to the Commonwealth of not less than ten percent (10%) of the cost of having inmates in similar state facilities.</p> <p>The per diem of Blackburn Correctional Complex, Frankfort Career Development Center and Bell County Forestry Camp were noted as similar and comparable and used as the basis for calculating the successful vendor's 10% cost savings to the Commonwealth</p>
<p><b><u>Otter Creek Correctional Center</u></b> (Master Agreement M-05176998 Modification No.2) Effective date July, 15 2005, expiration date July 14, 2007</p>	<p>No specific requirements are listed; however DOC states the cost of the comparable facility "\$54.09 is the per diem cost at KCIW"</p> <p>The inmate per diem rate may be adjusted annually based on the annual average of the Consumer Price Index (CPI) for all urban consumers for the most recent calendar year as published by the Federal Bureau of Labor Statistics, subject to General Assembly appropriations or funds availability. Adjustments to the per diem shall be effective on July 1<sup>st</sup> of each year. Requests for per diem adjustments shall be forwarded in writing to the Commonwealth 120 days prior to the anniversary of the effective date of the contract. Further rate adjustments are limited pursuant to KRS 197.510(13).</p>





## FINANCE AND ADMINISTRATION CABINET OFFICE OF THE SECRETARY

Ernie Fletcher  
Governor

Room 383, New Capitol Annex  
Frankfort, Kentucky 40601  
Phone: (502) 564-4240  
Fax: (502) 564-6785

John R. Farris  
Secretary

October 10, 2006

The Honorable Crit Luallen  
Auditor of Public Accounts  
105 Sea Hero Road, Suite 2  
Frankfort, KY 40601

Subject: Finance and Administration Cabinet Revised Response  
RE: APA Draft: Assessment of Kentucky's Privatization Efforts

Dear Ms. Luallen:

We appreciate the opportunity to respond to the APA Draft Report: Assessment of Kentucky's Privatization Efforts. The Finance and Administration Cabinet is committed to ensuring that our procurement process and reporting is operating in an accountable, effective and efficient manner.

Your review includes findings and recommendations. We are providing our response to each of your recommendations herein.

Please note that this response is identical our prior response, as provided in September, except for the fact that Chapter 4 includes the APA revised Findings provided on October 2, 2006 with the joint Finance/DOC revised response provided on October 6, 2006.

- Recommendation 2.1 KRS 45A.550 (2), the privatization law, should be amended to improve its effectiveness, including:
- Delete the numerous exemptions that limit the types of contracts covered by the privatization law and instead specify the types of services that would be subject to the provisions of the statute;
  - Require the law to apply only to larger contracts (such as those with a value of \$500,000 or more); and
  - Change the requirement that 10 or more state employees must be affected before the statute applies to address situations where multiple contracts are used (currently, the law can be avoided by using multiple contracts for the same agency as long as each contract affects less than 10 state employees).

Correspondence from a Congressional office should not be used to

## Finance and Administration Cabinet Response

RE: APA Draft: Assessment of Kentucky's Privatization Efforts

10/10/06

Page 2

**supersede state procurement law and justify the issuance of a sole source contract to a specific vendor when federal funds are involved unless there is federal legislation that appropriates the federal funds to that specific vendor.**

**KRS 45A.095 should be amended to require sole source contracts to contain a provision that prohibits subcontracting the primary service to be provided under the contract. KRS 45A.095 (1) defines sole source as "a situation in which there is only one (1) known capable supplier of a commodity or service, occasioned by the unique nature of the requirement, the supplier, or market conditions." If a sole source contractor is able to subcontract the service, it is clear evidence that they were not the only supplier available and should not have received a sole source contract that is not subject to competitive bidding.**

**Additional training should be provided to agency contracting personnel on the intent and provisions of Kentucky's privatization law.**

**The Finance and Administration Cabinet should conduct periodic reviews to determine if contracts should qualify as privatization contracts under KRS 45A.550.**

### Cabinet response:

This response was jointly prepared by the Finance and Administration Cabinet ("FAC") and the Transportation Cabinet.

FAC is committed to ensuring that the requirements of KRS 45A.550 are followed. FAC will continue to enforce these requirements in a fair and reasonable manner in accordance with the law. If any legislative changes are proposed to the current statute(s), FAC will review and respond to these at the appropriate time.

FAC strongly disagrees with the assertion that state procurement law was not followed and/or superseded. KRS 45A.095 gives FAC reasonable discretion in awarding contracts on a sole-source or a not feasible to bid basis. The Transportation Cabinet considered several factors, including the Congressional intent behind the source of funds for this project. This was a significant factor, because it could affect the future viability of the project through continued appropriations. FAC reviewed and approved this project, starting with the original request in 2003 to the present. FAC will continue to ensure that the requirements of KRS Chapter 45A are followed.

FAC does not support the contention that KRS 45A.095 should be amended to prohibit subcontracting in sole-source or not feasible to bid situations. These types of situations

### **Finance and Administration Cabinet Response**

**RE: APA Draft: Assessment of Kentucky's Privatization Efforts**

**10/10/06**

**Page 3**

are unique and should be considered on a case-by-case basis. For example, there may be legitimate legal or business relationships which dictate subcontracting for particular projects. For example, a particular vendor may hold the intellectual property rights, or licensing rights (such as distributorship) and designates that certain partners and/or subcontractors perform particular aspects of the work. The solution proposed establishes a bright-line test, which would be impractical.

FAC provides guidance to all agencies on KRS Chapter 45A as needed. FAC will continue to conduct the necessary reviews and provide oversight to contracts as needed on privatization and other issues as appropriate.

### **Conclusion/ Recommendation 3.1**

**Though CHFS may determine it is in the best interests of the Commonwealth to privatize management functions or other activities, it must retain adequate knowledge and oversight of the functions performed by the private vendors to ensure compliance with contract requirements and ensure that work is properly coordinated to achieve agency objectives. The cabinet should not contract out to a private vendor the Commonwealth's ultimate responsibility to ensure that adequate care is provided to the residents of Oakwood. The lack of a clear process and structure to monitor a vendor's activity places the cabinet at unnecessary risk that concerns are not identified and responded to in a timely manner. This risk could result in increased costs, the disruption of care to residents, and the failure to comply with statutory or regulatory requirements, or other issues.**

**The need to improve supervision and accountability of contractors at Oakwood is demonstrated by a number of indicators:**

- **The reports of the Independent Monitor and CHFS consultants;**
- **The increasing number (19) of Type A citations**
- **The large number of contracts (36) in place at Oakwood;**
- **An increase in total operating costs of over 28% from FY 2003 to FY2006;**
- **A 74% increase in the annual cost per resident from FY 2003 to FY 2006 even though the number of residents decreased by over 25% for the same period.**

**Actions that could be taken to improve supervision of contractors and promote accountability include:**

- **The inclusion of specific performance criteria in the contract provisions, such as a reduction**

### Finance and Administration Cabinet Response

RE: APA Draft: Assessment of Kentucky's Privatization Efforts

10/10/06

Page 4

- in the number of citations from the prior year or keeping the cost per resident within a specified range.**
- **The use of cabinet employees with expertise (or a team of employees) as independent on-site monitors to promote contract compliance and act as a liaison with responsible cabinet officials to ensure timely communications.**
- **Limiting the total number of contracts to lessen confusion and ensure clear lines of authority.**
- **Ensuring that policy-related functions such as long-range planning remain with the state agency and not be given to the private contractor as part of the contract.**

#### Cabinet response:

This response was jointly prepared by FAC and the Cabinet for Health and Family Services ("CHFS").

CHFS refutes that it has contracted out the ultimate responsibility for ensuring that adequate care is provided at Oakwood. CHFS entered into a contract with Liberty Healthcare Corporation ("Liberty") in October of 2005 to "assume management and administrative functions" for Oakwood. CHFS engaged Liberty in an attempt to address long-standing issues at Oakwood that threatened the health and well-being of the more than 200 residents (almost 300 at the time) of Oakwood. CHFS was threatened by the imminent loss of over \$37 million dollars in Federal funding currently used to support services to clients at Oakwood. However, at no point in time had CHFS abdicated its ultimate responsibility for Oakwood and, as CHFS's actions have shown throughout, it remains strongly committed to protecting and providing care for the residents at the facility.

For example, there are currently two (2) full time staff from the Department of Mental Health and Mental Retardation Services ("MHMR") who are stationed at Oakwood to provide monitoring and oversight. In addition three (3) professional staff, an MD, a PhD and a RN spend approximately two to three days a week at Oakwood, providing operational assistance as well as feedback to CHFS. These staff meet with Liberty Management on an ongoing basis, to share monitoring reports and to provide feedback, as part of our ongoing effort to improve the quality of care being provided.

Furthermore, from the inception of this contract, CHFS has actively managed contract compliance under the Liberty contract by using central office and on-sight staff. CHFS has provided Liberty with liaison staff for all major departments within the CHFS

**Finance and Administration Cabinet Response**

**RE: APA Draft: Assessment of Kentucky's Privatization Efforts**

**10/10/06**

**Page 5**

including MHMR, the Office of Human Resource Management and the Office of Contract Oversight. created and staffed a position at Oakwood responsible for overall contract management and oversight; and made numerous visits to Oakwood to provide technical assistance and contract oversight. Throughout the duration of the contract CHFS has retained final approval authority for all plans submitted by Liberty.

In addition, the contract with Liberty also included several specific performance criteria appropriate for the eight (8) month implementation period of the contract, including the facility becoming fully compliant.

CHFS recognizes that there are concerns with reducing the number of contracts in place to provide patient care at Oakwood. CHFS will continue to explore options to improve efficiency, without compromising the quality of care provided to our residents at Oakwood.

As previously stated, it was never the intent of CHFS to give Liberty or any other contractor ultimate control over policy related functions such as long-range planning. However, it is not inappropriate to engage the help of an experienced contractor in order to develop recommendations or plans for long-range development of a program or project. Contractors frequently have access to subject matter experts and resources not available to a state agency. Throughout the duration of the contract CHFS has retained final approval authority for all plans submitted by Liberty.

### **Finance and Administration Cabinet Response**

**RE: APA Draft: Assessment of Kentucky's Privatization Efforts**

**10/10/06**

**Page 6**

#### **Chapter 4 (Revised APA Findings**

**10-2-06) (Revised Agency**

**Response 10-6-06)**

The Department of Corrections ("DOC") has reviewed the Revised Chapter 4 of the "Privatization Audit Report", as prepared by the Auditor of Public Accounts ("APA") and provided on Monday, October 2, 2006, and the Finance and Administration Cabinet ("FAC") concur with this response. DOC and FAC appreciate the efforts of the APA in this matter and look forward to continuing to work together in a mutually productive and collaborative manner, to ensure that our correctional facilities continue to function in the best interest of the Commonwealth.

This Revised Chapter 4 deals with the administration of the contracts of the three private prisons with which the DOC contracts, specifically the Lee Adjustment Center (LAC), the Marion Adjustment Center (MAC), and the Otter Creek Correctional Center (OCCC). Chapter 4 offers two specific revised recommendations regarding privatization cost computation and oversight of these contracts.

**Recommendation 4.1** is actually a multi-faceted recommendation, broken down as follows (with accompanying agency responses).

**The General Assembly should review KRS 197.510 (13) to specify a consistent methodology for determining cost savings and should consider whether and (sic) outside entity should review.**

#### DOC response:

DOC would support specificity in this statute to frame a consistent methodology for determining cost savings vis-à-vis private prison operations. However, such specificity must not be structured in such a way that would require cost comparisons with dissimilar state-operated institutions. Not all medium-security prisons are the same. For example, the APA report seems to advocate that the cost at LAC should be compared to Green River Correctional Complex (GRCC) and Northpoint Training Center (NTC). Both institutions are considerably larger than LAC – GRCC's population is approximately 960 and NTC's population is approximately 1,230. In contrast, LAC's population is 390. Population is one of the key determinants in regard to an institution's cost per day – generally, the larger populated institutions have more inmates over which to spread fixed costs, thereby tending to drive down average per inmate costs. The other important consideration is the similarity of mission. To wit, Kentucky State Reformatory (KSR) is our largest institution in terms of population, but it serves as the primary medical facility for DOC. This factor drives up costs significantly, making KSR our most expensive institution to operate. Therefore, KSR would not offer an appropriate benchmark with

### Finance and Administration Cabinet Response

RE: APA Draft: Assessment of Kentucky's Privatization Efforts

10/10/06

Page 7

which to compare LAC's operating costs, no more than would GRCC or NTC. Our point is that while we can support some degree of specificity being added to KRS 197.510, such specificity should not be to the level that it would render a meaningless analysis. In regard to an outside entity reviewing our comparative cost savings, such an entity would need to have significant familiarity with correctional protocols, so as to not adulterate our analysis. Had an outside entity, unfamiliar with corrections, advocated that our comparison to LAC incorporate GRCC and NTC as the APA report advocates, the end result would have been flawed.

**As long as there is a statutory savings requirement for prison privatization contracts, DOC should develop consistent methodology for calculating costs of state operated facilities for the purpose of annual comparisons to ensure that contracted facility per diem rates are in compliance with statutorily required contract terms mandating 10% savings. Methodology should address how capital improvements will be treated, as well as whether either a single facility will be used for comparison purposes, or an average of multiple facilities. DOC should document this methodology in administrative regulations.**

DOC Response:

DOC already has a consistent methodology for calculating costs of state operated facilities for the purpose of annual comparisons to ensure that contracted facility per diem rates are in compliance with statutorily required contract terms mandating 10% savings. Our methodology for calculating the annual cost to incarcerate (CTI) (which is used to determine whether the Commonwealth is realizing the statutorily required 10% savings) has been consistent since FY04. Prior to FY04, the methodologies used by previous administrations for calculating CTI were very poorly documented, and essentially hidden. Our documentation is such that future DOC administrations will have a very clear picture of how our calculations are developed. Our methodologies clearly address the issue of capital expenditures. If DOC were hypothetically going to contract for a 1,500- bed private facility, the appropriate institutions to use in the comparison would be NTC and Eastern Kentucky Correctional Complex. On the other hand, if DOC were going to contract for another female institution, comparison to multiple institutions would not make sense, because a female institution has its own unique challenges and DOC has only one female state- operated institution, namely Kentucky Correctional Institution for Women (KCIW). However, DOC would be receptive to documenting our CTI methodologies in CPP's (Corrections Policies and Procedures).

**DOC should standardize a comprehensive and objective method to allocate private prison costs based on best practices and learned experiences from other states in order to more accurately reflect actual operating costs of facilities, and should standardize its method for allocation of administrative costs related to oversight of private prisons for purposes of complying with KRS 197.510. In addition, DOC**

---

### Finance and Administration Cabinet Response

**RE: APA Draft: Assessment of Kentucky's Privatization Efforts**

**10/10/06**

**Page 8**

**should establish this cost allocation methodology through promulgating administrative regulations.**

DOC Response:

One of the states cited by the APA report as utilizing in depth methodologies to allocate private prison costs is Arizona. Quite frankly, we are persuaded that this is an appropriate and best practice to follow. In looking at the table depicting Arizona's cost allocation methodology, it is clear to us that this does not fit Kentucky's needs. For example, Arizona allocates 24 cents per day for health services. Kentucky's contracts with our three private institutions specify that healthcare costs (sick call, medication administration, emergency care) are included in the per diem rate that we pay them (except at OCCC where we pay 25 cents per day for pharmaceuticals over and above the regular per diem). The same can be said for security and programming – Arizona's allocation seems to suggest that they pay for these basic correctional services over and above the base per diem rate. The administrative overhead costs that we allocate to our private institutional operations include only those Central Office costs that interface with these operations, e.g. Contract Management Branch, Commissioner's Office, Administrative Services, etc. Program and security review are ongoing activities, and these are performed by the Contract Management Branch. Costs of this branch have been appropriately allocated to the private prisons.

**State operated prison costs should be calculated annually. These costs should be used in the annual negotiation of contract rates with the private vendor.**

DOC Response:

State operated prison costs are calculated annually, as part of our annual CTI calculation. However, we strongly disagree with the recommendation that these costs should be utilized in annual contract negotiations, in that we believe this would have the long term ramification of driving contract rates significantly higher. For example, the per diem rate awarded to OCCC in FY06 was \$47.95. Our calculated CTI for FY05 (released shortly after the award of the contract) for our only comparable institution, KCIW, was \$58.17, 21.3% higher than the contracted private rate. The FY06 CTI for KCIW is \$65.74, 37.1% higher than the contracted rate. Based on this, it seems obvious that annual negotiations could significantly drive up private prison per diems, versus a multi-year contract. Moreover, private prison operators prefer longer term contracts, given the sizeable capital investment they must make, and closely calculate their needed return on investment over the length of the contract. Any requirement to annually renegotiate a private prison operator's contract could potentially serve to drive up per diem costs just



**Finance and Administration Cabinet Response**

**RE: APA Draft: Assessment of Kentucky's Privatization Efforts**

**10/10/06**

**Page 9**

**DOC should consider any increased cost to the Commonwealth when contracting with a private prison provider compared to the cost of continuing to hold prisoners in county jails.**

DOC Response:

The cost comparison between institutional beds and jail beds is not germane to this discussion. This recommendation seems to have an underlying assertion that the housing of inmates at Otter Creek or other private prisons is unnecessary because these inmates could have alternatively been housed in county jails at a cheaper cost to taxpayers. Unfortunately, this logic is erroneous. The fact is that certain classifications of felons require different custody and programming considerations, thereby making jails an inappropriate setting for certain offenders. Moreover, state law and orders from various courts require that these types of inmates be admitted to a correctional institution as expediently as possible. Therefore, housing all inmates in jails is not a practical or viable alternative — not from a legal standpoint, nor from a public safety standpoint.

**DOC should maintain its cost computations and cost allocation records for public and privatized prisons in accordance with Kentucky records retention law.**

DOC Response:

DOC fully concurs and is doing so now. Unfortunately, the data from years prior to FY04 (prepared by previous administrations) has been difficult to locate, based upon historical record retention practices.

**DOC should routinely perform an analysis pursuant to KRS 45A.550 to 45A.554 for every private prison contract.**

DOC Response:

DOC concurs with this recommendation.

**Recommendation 4.2**

**An outside entity, familiar with cost allocation methods for public and privatized prison operations, should review DOC's current processes and develop consistent cost allocation methods and procedures for public and privatized prisons.**

DOC Response:

As previously noted in our response to Recommendation 4.1 above, we are receptive to an outside entity reviewing our cost allocation methods, so long as such an entity has the necessary familiarity with correctional protocols, so as to not adulterate our analysis.

Finance and Administration

Cabinet Response

RE: APA Draft: Assessment of Kentucky's Privatization Efforts

10/10/06

Page 10

## Recommendations 5.1

As this audit has demonstrated, Kentucky does not provide adequate oversight of over \$1 billion in privatization contracts. The privatization law, which was intended to provide accountability by requiring detailed cost-benefit analyses of privatization contracts, is completely ineffective due to numerous exemptions in the law and a lack of interest on the part of state agencies to subject contracts to the kind of cost-benefit analysis the law would require. With no review on the front end that documents whether a private contractor will actually save money, any attempt to make this determination must be performed after the money has already been spent and comes too late to best serve the interest of the public.

In addition to changes in the privatization law and other recommended actions in this audit, consideration should be given to additional steps

based on the best practices of other states--to promote accountability in contracting and ensure that privatizing any state function truly serves the public:

- Conduct an on-going formal review, in conjunction with state agencies, to identify state functions that would best lend themselves to privatization based on consistent and clearly defined criteria. This would avoid the piecemeal approach of having each agency deciding to privatize based on whatever criteria they choose. Some states (such as Florida and Virginia) have permanent commissions or groups that perform this function.
- Require a thorough cost-benefit analysis of all large dollar contracts (\$500,000+) prior to approval to document potential savings. This would ensure that those contracts that might escape the review of an improved privatization statute would be adequately justified on the front end.
- Require a periodic evaluation of large dollar contracts (or a sample of contracts) once they are in place to ensure the anticipated savings or benefits of using a private contractor are actually being realized. Such evaluations would be available to the public, and could discourage agencies from routinely renewing contracts unless the benefits were clearly documented. Formal evaluations could also encourage competition by identifying contractors that were not achieving desired results--which could lead to cancellation of the contract

---

## Finance and Administration Cabinet Response

RE: APA Draft: Assessment of Kentucky's Privatization Efforts

10/10/06

Page 11

and opening it up to other contractors if performance was not improved.

- Require that all data, software and similar products developed by a contractor using state funds become the property of the Commonwealth. This would assist in addressing the loss of expertise at the state agency level that comes with privatizing a program or service.
- Kentucky's contract provisions and privatization requirements under KRS 45A lack measures included in the new Florida law that are worthy of consideration. Florida is a pioneer in privatization and these changes do not discourage privatization but encourage leveraging state resources to allow private sector vendors to deliver services effectively and efficiently at reduced costs. (See page 52-53 for details of the new Florida law.)
- The Finance and Administration Cabinet should develop a more user friendly website that would allow for greater public access to and scrutiny of state contracts. A simple list of contracts posted on the Finance website that could be sorted by vendor, agency, service/commodity type, dollar value, and
- time period would:
  - Give citizens the ability to review how their tax dollars are being spent;
  - Allow citizens with knowledge of certain vendors or service areas to scrutinize the contracting process; and - Increase competition from potential vendors.

Cabinet response:

FAC refutes the assertion that Kentucky does not provide adequate oversight over privatization contracts.

FAC disagrees with the mischaracterization of the current process as "piecemeal." Executive Branch agencies do not have the independent authority to enter into privatization contracts, without the final approval of FAC under KRS 45A.550. FAC is committed to ensuring that the requirements of KRS 45A.550 are followed. FAC will continue to enforce these requirements in a fair and reasonable manner in accordance with the law. If any legislative changes are proposed to the state procurement process, FAC will review and respond to these at the appropriate time

**Finance and Administration Cabinet Response**  
**RE: APA Draft: Assessment of Kentucky's Privatization Efforts**  
10/10/06  
Page 12

FAC makes every effort to assist agencies with ownership issues relating to data, software and other products. The Commonwealth Office of Technology ("COT") reviews all potential acquisitions and, in conjunction the FAC purchasing and legal staff, makes suggestions on how to protect the best interests of the Commonwealth with regard to such issues.

Furthermore, FAC communicates with other states on procurement and related issues and will consider best practices or accomplishments by peer states.

Finally, the eProcurement website allows for the public to have access to active solicitation and awards, as well information on purchasing policies and process across the Executive Branch. FAC is consistently exploring ways in which to improve the process and remains committed to improving the eProcurement website as appropriate, and to the extent permitted by available resources and funding.

We appreciate the opportunity to respond and clarify this draft report.

Sincerely,



John R. Farris, Secretary  
Finance and Administration Cabinet

## **Auditor's Reply to the Responses by the Department of Corrections (DOC) to the Findings and Recommendations contained in Chapter 4:**

DOC asserts that it used a consistent methodology for calculating costs of state operated prison facilities. When cost records were initially requested, the APA was advised that DOC's annual cost-to-incarcerate reports were not accounting documents, but were statistical compilations for its management. Although complete records were requested, the APA was provided only incarceration cost data for one private prison, Lee Adjustment Center, and three public prisons that were considered by DOC to be the most similar to Lee: Green River Correctional Complex, Northpoint Training Center, and Western Kentucky Correctional Complex.

Furthermore, the APA takes issue with DOC's assertion that Arizona's cost allocation methodology does not fit Kentucky's needs. Arizona's CTI calculations were provided as an example of direct and indirect cost classification category types not disclosed by Kentucky DOC. The APA was unable to comment on any direct comparisons of actual cost with Arizona, including health services, security, programming, and other categories, because of lack of information from DOC.

---

## Contributors To This Report

Crit Luallen, Auditor of Public Accounts

Bob Gray, Former Director, Division of Performance Audit  
Ellen Hesen, Acting Director, Division of Performance Audit  
Jettie Sparks, CPA, Performance Audit Manager  
Mike Helton, Performance Auditor  
Jim Bondurant, Performance Auditor  
Brian Lykins, CISA, Director, Division of Examination and IT Audit  
Tiffany Welch, CFE, Examination Auditor V

---

## Obtaining Audit Reports

Copies of this report or other previously issued reports can be obtained for a nominal fee by faxing the APA office at 502-564-0067. Alternatively, you may order by mail:

Report Request  
Auditor of Public Accounts  
105 Sea Hero Rd. Ste. 2  
Frankfort, Kentucky 40601

visit : 8 AM to 4:30 PM weekdays

email: [crit.luallen@auditor.ky.gov](mailto:crit.luallen@auditor.ky.gov)

browse our web site: <http://www.auditor.ky.gov>

---

## Services Offered By Our Office

The staff of the APA office performs a host of services for governmental entities across the commonwealth. Our primary concern is the protection of taxpayer funds and furtherance of good government by elected officials and their staffs. Our services include:

**Financial Audits:** The Division of Financial Audit conducts financial statement and other financial-related engagements for both state and local government entities. Annually the division releases its opinion on the Commonwealth of Kentucky's financial statements and use of federal funds.

**Examination and Information Technology:** The Division supplies computer system control expertise and investigates citizen complaints. The Division audits computer system security and other controls and performs system data analysis. Our fraud hotline, 1-800-KY-ALERT (592-5378), and referrals from various agencies and citizens produce numerous cases of suspected fraud and misuse of public funds referred to prosecutorial offices when warranted.

**Performance Audits:** The Division of Performance Audit conducts performance audits, performance measurement reviews, benchmarking studies, and risk assessments of government entities and programs at the state and local level in order to identify opportunities for increased efficiency and effectiveness.

**Training and Consultation:** We annually conduct training sessions and offer consultation for government officials across the state. These events are designed to assist officials in the accounting and compliance aspects of their positions.

---

## General Questions

General questions should be directed to Jeff Derouen, Director of Communication, at (502) 573-0050 or the address above.