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Committee on Appropriations

Senator Lisa Carlton, Chairman

REVIEW OF CONTRACTING PROCEDURES IN THE DEPARTMENT OF JUVENILE JUSTICE

SUMMARY

This project was initiated as a result of concerns expressed relating to departmental contracting policies and procedures. Several key activities relating to the procurement process were examined including review of department contract documents, request for proposal and bid evaluation instruments, contract negotiation practices, and timeframes for contract execution. To help assess department performance relating to contract operations, a survey of department contract providers was conducted to assess customer service orientation as well as attempt to assess the business relationship among the department and its vendors.

The department has implemented several major improvements in its contracting and procurement operations. These improvements, designed to speed up and streamline as well as add uniformity to the procurement process, include the development of model contracts and scope of services agreements, standardization of bid instruments and bid evaluation criteria, and delegation of signature authority. Furthermore, efforts are underway to develop detailed market information on industry costs and revenues to enhance the department's ability to conduct meaningful contract/cost negotiations.

The following information provides a detailed description on the recent overhaul of department contracting policies and procedures as well as describes activities that require further improvement and/or clarification of department procurement policies.

\$333.2 million and 4,500 employees. Prior to the creation of a separate state agency to address juvenile justice matters, the Department of Children and Families administered programs and services to juvenile delinquents. In the seven years since its creation, the Department of Juvenile Justice's total resources have grown by more than 100 percent to \$673.8 million and 5,868 employees.

The department is responsible for management and oversight of a continuum of juvenile delinquency programs that promote public safety and rehabilitation of juvenile offenders. The department oversees programs for prevention, diversion, detention, probation, commitment and aftercare.

Department Operations

Organizational Structure: The department completed a major reorganization in 2000. The reorganization established functional areas within the department with separate managers assigned and accountable for each specific functional area. Prior to the reorganization, more than 90% of the department's workforce reported through one individual. The current five functional areas each headed by an Assistant Secretary include: Prevention and Victim Services; Probation and Community Corrections; Detention; Residential and Correctional Facilities; and Administration.

With the reorganization, the department centralized contract administrative activities and decentralized day-to-day contract management responsibilities within each of the department's five functional areas noted above. A more detailed discussion of contract management roles and responsibilities follows under the section titled - - **Contract Administration.**

BACKGROUND

The Department of Juvenile Justice (DJJ) was created by the Legislature in 1994 with an annual budget of

Service Delivery: Approximately 63 percent of the total department budget for program services is

outsourced to over 200 private for-profit and not-for-profit contract vendors through the annual administration of 385 service contracts. The remaining budget for programs and services, approximately \$239 million or 37 percent of the department budget, supports state employees providing direct services in the Juvenile Detention Program, Probation and Community Corrections, and the Residential Corrections Program (state-operated facilities). Table 1. depicts department programs/services for FY 2001-2002 and the funding placed under contract with private vendors each year.

TABLE 1.

Program	FY 2001-02 Appropriation (In Millions)	Amount Placed Under Contract (Amount & %)
Detention	\$114.5	\$ 17.2 (15%)
Probation / Community Corr.	\$145.9	\$ 63.7 (44%)
Residential Corr.	\$305.2	\$252.7 (82%)
Prevention	\$ 73.1	\$ 66.2 (91%)
Totals:	\$638.7	\$399.8 (63%)

Contract Administration

Resources & Responsibilities: Department headquarters operates a Bureau of Contracting and Purchasing with 17 FTE. The Bureau has the following responsibilities:

- Provides administrative and technical support to the five functional program areas;
- Prepares Requests for Proposal and advertises all competitive procurement on the department’s Website;
- Conducts bidder’s conferences, responds to questions as appropriate;
- Opens, evaluates and tabulates all bids;
- Ensures compliance with agency minority business enterprise utilization goals;
- Tabulates Dun & Bradstreet supplier evaluation ratings;
- Provides cost/price analyses;
- Assists with contract negotiations;
- Prepares final contract for execution/signature.

The Department of Juvenile Justice operates twenty Circuit Offices which geographically coincide with Florida’s twenty judicial circuits. Contract managers, those responsible for the day-to-day management and oversight of service contracts, are housed in one of

eight regional offices. Seventy-four FTE are assigned contract management responsibilities which include:

- Day-to-day monitoring/oversight of service provider contract operations;
- Compliance with contract terms/conditions;
- Providing technical assistance to contractors;
- Initiating procurement actions, developing contract ‘scope of services’;
- Contract procurement negotiations;

Management Philosophy & Contract Provider Relationship: Department managers describe their relationship with contract providers as a partnership between private enterprise and the public sector each sharing a common goal - - the reform of juvenile delinquents to ensure the public’s safety and well-being. While department managers work to foster a partnership, they also indicated the need to maintain an “arms-length” relationship with contract providers. The department defines “arms-length” relationship as that being a relationship between public and private entities working together to achieve the mutual goal of positive service outcomes. While the department supports a partnership with providers, they indicated the department would take corrective action, including the termination of a contract, if service delivery fails to meet performance standards.

Contract Manager/Contract Provider Training:

- Contract managers are now select-exempt status positions, meaning they serve at the pleasure of the department Secretary.
- Contract managers are required to have a college degree and three years of professional experience in systems analysis, management analysis, program planning, program research, program evaluation, engineering or administrative work.
- Contract managers receive 32 hours of training each year at the semi-annual contract managers and providers meeting held in the spring and fall.
- Contract orientation/training is also provided each year during the semi-annual contract managers and providers meeting noted above.
- The department’s contract manager’s manual is posted on the department website and contract providers may review and comment on all current and pending department contract policies and procedures.

Recent Department Initiatives to Improve Contract Administration: Up until March 2001, department contract operations largely reflected many of the old Department of Children and Family Services policies and procedures governing contract administration. Many of these processes reflected a decentralized contract administration model often producing inconsistent application of policies and procedures.

The department established a goal to simplify, streamline, and standardize its contracting processes and procedures. As a result, in August 2000, under the leadership of the Secretary and the Assistant Secretary for Administration, the department began a top-to-bottom review of the existing contracting system and business procedures in order to determine how to best improve efficiency and effectiveness. The department identified the following problems with the “old” contracting process/system:

- The contracting process was slow and cumbersome taking up to 180 days to process a contract;
- The old system lacked uniformity - - each circuit office had its own contract model and contract requirements;
- The old system had too many “hands” in the process and oftentimes suffered from poor communication;
- The old system lacked an adequate database which was the result of decentralization;
- Finally, the old system lacked any “real business analysis” and had no outside professional input regarding cost analysis and price.

Based upon the top-to-bottom review, the department significantly revised its contracting policies and procedures to achieve several goals including:

- Reducing contract processing time from 180 days to 120 days or less;
- Enhancing responsibility and accountability during the contracting process by centralizing key contract management activities. For example, the legal review of all contracts was centralized to ensure that all required clauses are included and uniformly applied;
- Implementing contract standardization and developing model contracts to expedite the execution of contract documents;
- Reducing the size and complexity of contract documents and procurement procedures to

reflect what is minimally required by Chapter 287, Florida Statutes and to those terms and conditions that make good business sense and ensure that the state is getting what it pays for.

METHODOLOGY

The process for carrying out this project included the following steps:

- Review existing department contracting policies and procedures manual.
- Review Chapter 287, Florida Statutes on the Procurement of Personal Property and Services.
- Review department business processes and recent events and initiatives related to department contracting operations.
- Survey a 100 percent sample of department vendors to assess customer/vendor perception related to department contract management performance and service.
- Conduct individual interviews and meetings with department senior managers involved in the day-to-day management and oversight of department contract operations.

FINDINGS

During this review, the department’s new contracting policies and procedures were reviewed by staff familiar with state contracting requirements. The following information highlights the major activities examined relating to contract administration and summarizes key information related to each major activity:

1. **Model Contracts:** The department now utilizes statewide model contracts for most of its operations. These model contracts contain all statutorily required terms and conditions according to Chapter 287, Florida Statutes, which governs the procurement of personal property and contractual services. The department’s General Counsel has performed a legal review of all department model contracts to ensure that core requirements are present as well as to ensure that excessive or unnecessary contract clauses, terms and conditions are discarded. The statewide standard model contract should result in uniformity across all twenty circuit offices, leveling the playing field statewide with regard to contract terms and conditions. Contract providers should be treated equally by having to adhere to the same

standard contract terms and conditions regardless of where in the state they conduct business.

Survey findings conducted in conjunction with this project indicated that 90% of providers responding to the survey believe the department utilizes easy to understand contract documents. While some survey respondents indicated they had been dissatisfied with the previously used contract documents and with the former contracting process, several of these same respondents noted improvements to the process due to the recently implemented contracting changes.

2. **Scope of Services:** In addition to model contracts, the department has developed standardized “scope of services” descriptions for each of its major service categories. These scope of services descriptions (which vary by type of service being procured) are standard contract attachments that clearly lay out minimum service requirements and performance expectations.

For example, the scope of services description for the High Risk Residential Program – Intensive Mental Health Treatment Program includes a general services description but also includes the contractor to adhere to standards for:

- Intake and classification
- Supervision, Care and Custody
- Healthcare Services
- Mental Health and Substance Abuse Services
- Screening and Assessment Services
- Case Management
- Behavior Management
- Restorative Justice Principles and Programming
- Transportation
- Life and Social Skills Training
- Educational and Vocational Services and
- Physical Fitness and Recreation

Every contract executed for Intensive Mental Health Treatment throughout the state must address and adhere to service standards for these activities as well as work to achieve standard performance outcomes and produce similar outputs. Standardizing the scope of services for each contract type will enhance service quality and ensure a level playing field for all vendors throughout the state who have contracts with the Department of Juvenile Justice. Furthermore, by

implementing a standardized scope of services for each type of service provided, contract vendors statewide will have a very clear expectation of how services are to be delivered.

Survey responses related to this issue indicated that:

- 86% of contract providers believe that contracts contain clear expectations of how services are to be delivered;
- 79% of contract providers believe there is a consistent application of DJJ’s contract rules using new standardized model contracts and scope of services agreements.

3. **Requests for Proposal and Bid Evaluation Criteria:** In addition to the development of model contracts and standardized scope of service descriptions, the department has also established model Request for Proposal (RFP) documents and standardized bid evaluation criteria. The new RFP documents have incorporated new business practices including the assessment of supplier risk and financial capability through the use of Dun & Bradstreet (D&B) ratings. The department utilizes D&B reports for third party evaluation to summarize the financial strength and past performance of all bidders.

The business processes associated with the development, issuance, evaluation and award of an RFP have each been overhauled to achieve uniformity and improve the process. A specific timetable with required milestones has been established to ensure the timely execution of agency procurement actions. The department indicated that these changes, when fully implemented, should reduce the time it takes to complete procurement processing times by as much as 60 days or more as well as should make the “system” simpler and easier to understand.

While the department has made improvements to standardizing RFP instruments and bid evaluation criteria, several contractors expressed concerns that contracting requirements are not being accurately or adequately reflected in the RFPs. For example, several survey respondents indicated that the recent issue related to the payment of “liquidated damages” totaling \$2,500 to be paid by providers as a “penalty” for each escape from a commitment facility, was not reflected as an RFP requirement. Because of the potential cost implications to provider operations that substantial additional

requirements like this issue may have, the department should ensure that such changes are either kept to a minimum, or are included as a negotiation issue at the next contract renewal cycle.

4. **Contract Review & Approval Process - - Tracking the Review & Execution of Contract Documents:** The survey conducted in conjunction with this project indicated that 29% of providers responding rated the department's performance in timely executing contract documents as "poor" or "very poor." This response rating is consistent with the responses received for a similarly worded survey question which found 31% of respondents disagreeing or strongly disagreeing with the statement: "The contract execution process takes place within acceptable time frames." While nearly one-third of all survey respondents rated the department's performance in this area unfavorably, the remaining 70% of survey respondents rated the department's performance as favorable.

The department manually tracks the contract review process whereby contracts are internally routed for review and signature to multiple entities within the department. The review process, designed to ensure accountability and compliance with department contracting policies and state procurement laws, involves a multi-step review and requires sign-off by the following persons:

- Contract Manager/Originator
- Contract Administrator
- Certified Minority Business Coordinator
- Facilities Services Representative (if applic.)
- Budget Representative
- Chief of Finance & Accounting
- General Counsel
- Chief of Contracts
- Assistant Secretary for Administration
- Department Deputy Secretary

In all, there are ten different entities involved in the review and approval process for executing new contract documents and/or contract amendments. The contract review process is an important step in contract execution that ensures/protects the mutual interests of both the state and the contract provider.

Delays during the contract review and approval process can lead to untimely and costly delays in contract execution if not continually monitored for results. While the department indicated that it

conducts a weekly reconciliation/status check of all contracts under review and pending final approval, there is no automated tracking system in place to perform this function although the department indicated that such a system is being developed. Furthermore, the department's new Contract Review Form does not reflect timeframe standards/requirements for each reviewer to adhere to when completing his or her portion of the contract review/approval process.

Interviews with department managers also indicated that signature authority at the deputy secretary level had not been delegated to any other management level creating a bottle neck in the contract execution process. Because of the operational demands and frequent travel required of this department position, the final stage in the contract execution process, i.e., the final required signature, frequently delayed the timely execution of contracts. Department representatives indicated that final signature authority for contracts would soon be delegated to the assistant secretary for administration in the deputy secretary's absence thereby alleviating this potential bottleneck in the contract execution process.

5. **Service Costs and Contract Price Negotiations - - the Annual Independent Audit Form**

The department's reengineered contracting policies and procedures also include a new management tool called the "Annual Independent Audit Form". This form, which must be filled out annually by the contract provider's independent auditor, is intended to track contract provider program costs as well as revenues. The annual audit report captures information on:

- direct care/subsistence/supervision costs
- subcontracted treatment services
- education service costs
- medical costs
- client transportation and
- administrative costs as well as corporate office overhead allocation costs.

The audit form also requires contract providers to report the value of donated goods and services.

The department indicates that the annual submission of this information will be used to create a cumulative, statewide database providing invaluable information on a like to like basis across the board on contract

provider costs. The department maintains that this database will add a “real business analysis” aspect to department contract operations and will be used as a management tool to enhance the department’s position when conducting contract negotiations (executing new contracts as well as negotiating contract renewals). Armed with such detailed market information on provider costs and revenues, the department should be in a better position to more competitively negotiate the prices to be paid for goods and services.

While improvements are being made to enhance agency knowledge of market information and service costs, the department should also clarify its position on contract price negotiations. Through interviews conducted with providers, provider organization representatives, and department personnel, there appears to be confusion regarding competitive procurement and rate negotiations. Specifically, the following issues require clarification:

- Why should providers be required to develop and submit exhaustive cost proposal information when the department refuses to accept the per diem rates proposed during the competitive procurement process?
- Providers have expressed frustration with the current competitive procurement process for commitment services that does not recognize the per diem rates proposed in the bid response. Provider representatives indicate that the department refuses to accept competitively bid per diem rates and instead, insists on negotiating lower rates than those which were submitted by the lowest bidder.
- The department indicates that it is following “legislative intent” in not granting per diem increases during the competitive procurement process that have not been specifically authorized by the legislature. The department maintains that to pay a higher per diem rate, even if it is the lowest rate submitted in a competitive bid, would result in some number of commitment beds being taken off-line.

The department should seek clarification from the Legislature on this issue or modify its procurement process to indicate the maximum possible per diem rate anticipated under the procurement action.

Survey data indicate that 32% of respondents disagreed or strongly disagreed that the department’s contract negotiations are fair and open and involve reasonable demands / requirements. Only 17% of survey respondents, however, rated the level of reasonableness on the part of department staff during contract negotiations as “poor” or “very poor”. These findings might suggest that contract providers are pleased with the performance of their local department contract manager, yet displeased with management demands emanating at a higher level within the department regarding contract terms and conditions and contract negotiations.

Regarding reasonable demands, some concerns were expressed during interviews with persons representing provider organizations relating to contract providers having to respond to department procurement proposals/offers (best and final offers) within 24 hours.

For example, on more than one occasion, provider representatives indicated that they were told by department personnel that they had 24 hours to inform the department whether or not they would accept the terms and conditions of the department’s contract offer, including the contract rates offered by the department. Some providers expressed frustration with being faced with what they considered unreasonable timeframes for responding to the department. While this issue was not a widely voiced concern by contractors responding to the project survey, the department should still reexamine this “24 hour” demand response practice to determine if such a requirement is truly necessary.

Based on survey results, the department should re-examine its contract price negotiations process to determine whether the procurement process should be changed to clarify department intent with regard to a “maximum rate” or “maximum price” that the department is willing to pay for services, if known beforehand. Furthermore, the department should determine the specific reasons why nearly one-third of the department’s service providers (partners) responding to the survey disagree or strongly disagree that the department’s contract negotiations are fair and open and involve reasonable demands/requirements.

6. **Payment to Contract Providers:** During this review of department contracting policies and

procedures, staff reviewed department performance with regard to the timely payment of contractor invoices. Section 215.422, Florida Statutes, requires agencies to comply with strict processing timeframes for submitting contract invoices for payment. Should invoices not be handled within statutorily established timeframes, an agency is assessed interest penalties payable to the vendor for late contract payments. A review of department performance for compliance with prompt payment law found that the department consistently maintained a rate of prompt payment compliance exceeding 99% for Fiscal Year 2000-01.

The contract provider survey conducted in conjunction with this project found that of those providers responding to the survey, 91% rated the department's performance as "adequate" to "excellent" regarding the timely payment of contract invoices.

7. Managing Contracts with "named providers"

The General Appropriations Act often reflects funding provided for a specific project or "named provider". Funding for these projects is provided in response to specific local community problems and/or concerns. For example, each year the Legislature provides funding for specific juvenile delinquency prevention projects. Funding for many of these projects is appropriated directly to a specific community organization or service provider (i.e., funding may be provided to a specific boys and girls club, job training and placement organization or regional truancy program).

Members of the Florida Senate have expressed concerns regarding delays in executing contracts with named providers as well as concerns relating to the terms and conditions established for these contracts. Some of these same concerns, i.e., excessive delays in contract execution, were also expressed by prevention providers in their survey responses. In an effort to respond to these legislative concerns, the department has initiated the following procedures:

- Following final passage each year of the General Appropriations Act, designated staff within the department are assigned the responsibility to identify all funding for specific projects and/or named providers.
- Department staff obtain a list of project contact persons including both project managers as

well as the names of legislators who sponsored the project.

- Meetings are scheduled with project representatives to discuss the services to be provided and any special terms or conditions specified in proviso language.
- The department and provider negotiate the terms of the contract, the contract is executed, and services begin.
- Department staff monitor services provided and contractor performance.

New department policy has been established to timely notify Legislators and legislative staff if problems arise concerning contract execution or provider performance. Department contract managers have been instructed to notify the Bureau of Contracting and Purchasing when such problems arise so that more immediate action can be taken to resolve them. Implementation of these new procedures should:

- ensure the more timely execution of contracts with named providers/projects;
- through the assigned review of proviso language, ensure that all special terms and conditions pertaining to contracts are adhered to;
- result in more expeditious identification and resolution of contract problems;
- keep all stakeholders, including the Legislature, informed on the status of contract operations.

8. Contract Manager and Contract Provider Training:

A review of the August 2001 agenda for the semi-annual meeting of contract managers, purchasing liaisons & service providers did not appear to provide substantial training opportunities for contract managers to improve their contract management skills and expertise. For example, there did not appear to be any sessions offered on "improving personal negotiation skills" or training in "effective communications" or on any other typical professional improvement-type training. Because the department's effectiveness relies so heavily on outsourcing and vendor performance, the department should continually provide opportunities for contract managers to improve their skills and abilities.

Finally with regard to the August 2001, agenda for the semi-annual meeting of contract managers, purchasing liaisons & service providers, there did

not appear to be any agenda time devoted to following up on issues discussed during the February 7th-9th semi-annual meeting of contract managers and service providers. Given the major changes in contracting policies and procedures discussed during the February meeting and now fully implemented, the department could most assuredly have gained valuable feedback on these recently implemented contracting changes.

Training meetings involving contract managers and vendor staff also provide an opportunity to discuss problem issues and recommend solutions as well as present an opportunity to enhance department/vendor relationships. Such meetings should always include sufficient time for joint sessions between vendors and contract managers to discuss problem issues and concerns. Interviews with contract providers and persons representing department contractors voiced strong support of the department's initiatives to seek vendor input on proposed policies and operational plans. Survey data support the department's efforts in this area noting that 73% of survey respondents agreed or strongly agreed that their comments and suggestions for improving the contracting process and procedures are welcomed and encouraged by the department.

Overall, the department has made many significant improvements to its contracting policies and procedures. Department contract managers and policy makers appear committed to addressing any remaining issues that may further enhance contract operations. Based on this review, the following recommendations are made to assist with these efforts:

RECOMMENDATIONS

1. Reduce the timeframes for executing contracts by automating the tracking of the contract review and approval /signature process.
2. Establish benchmarks and timelines for completing procurement activities associated with "named" providers and projects specifically identified in the General Appropriations Act. Department policies and procedures for contracting with "named providers"/specific projects should be incorporated into the department's contract procedures manual.
3. Assess/identify the costs associated with the new Annual Independent Audit Form requirement. Contracting procedures should be amended to require that a cost analysis /financial assessment be performed prior to implementation of any major

- new administrative policy to determine the fiscal impact/costs to contract provider operations.
4. Establish and track performance standards for headquarters and circuit contract management staff to measure both response time and customer satisfaction when responding to contract issues.
5. Requests for Proposal should reflect all contract terms and conditions as well as all service requirements and standards upon which contract providers should build their cost proposals. In this way, vendors should be able to adequately determine their price/cost recovery requirements and appropriately submit bid responses.
6. Regarding Requests for Proposals (RFPs) issued by the department, consideration should be given to including the maximum rate or price the department is willing to pay under a specific procurement action, if already known. In this way, prospective contract bidders could decide early on whether or not to submit a bid proposal and thus avoid the costly and time-consuming process associated with developing an RFP.
7. The department should seek clarification from the Legislature on the payment of higher per diem rates for commitment beds when the lowest bid received via an RFP is higher than the rate currently paid and when the payment of a higher rate would result in a reduced number of total beds on-line. Based on receiving legislative clarification, the department should modify its RFP /contract price negotiations process accordingly.
8. The department should determine the prevalence of issues requiring contractors to respond to contract issues (including department best and final offer proposals) within 24 hours and then determine whether this practice of requiring a response in 24 hours is necessary.
9. To eliminate the current bottle neck in the contract execution process that occurs whenever the deputy secretary is absent, final contract signature authority should be delegated to the assistant secretary for administration.
10. Ensure that all future training meetings of contract managers, purchasing liaisons and contract providers include professional development training designed to enhance the skills required of professional contract managers. Meeting agendas should also reflect time allotted for contract manager/contract provider roundtable discussions to address pending issues, concerns, and solutions.