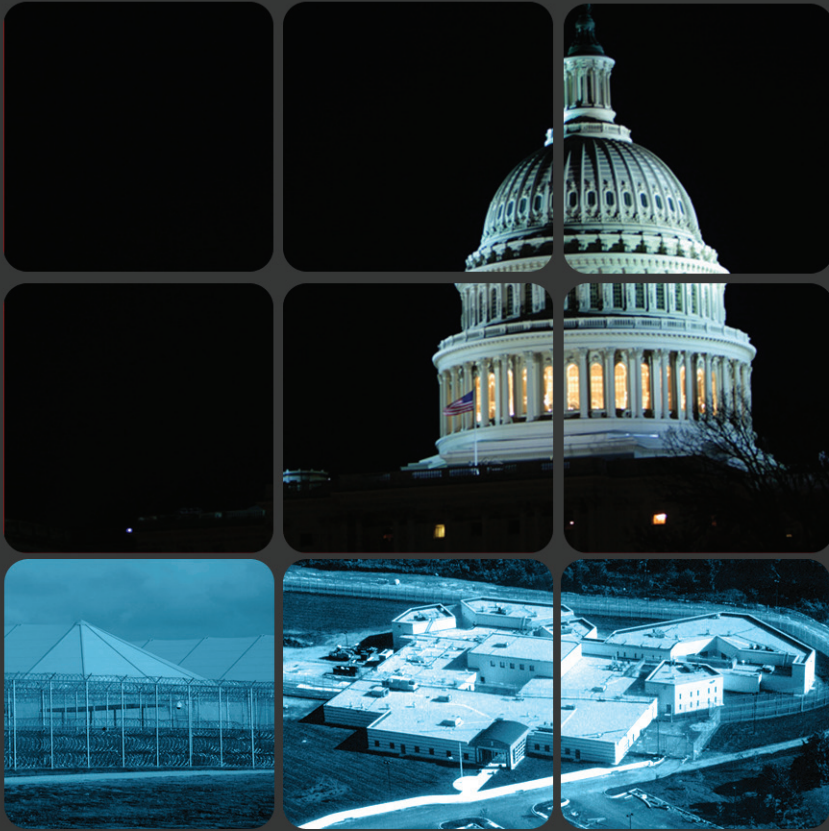


FINANCING DETENTION FACILITIES

OFDFT



Office of the Federal Detention Trustee
U.S. Department of Justice



OFFICE OF THE FEDERAL DETENTION TRUSTEE

FINANCING DETENTION FACILITIES

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1. INTRODUCTION AND PURPOSE OF HANDBOOK

1.1 PURPOSE OF HANDBOOK

The Office of the Federal Detention Trustee (OFDT) has commissioned the preparation of this Handbook to serve as a source of information for state, county, and local governments as well as private investors who are evaluating financing options for providing additional detainee/jail bed-space in their jurisdictions. Specifically, this Handbook provides descriptions of public and private sector options for obtaining the needed capital for building additional bed space capacity, the legislative and regulatory procedures for implementing those options, and the relative advantages and disadvantages of public versus private sector financing. This Handbook also provides essential information about the OFDT and other government programs that are available to help fund these projects. Although the Handbook is directed towards county and local decision makers, such as sheriffs who are grappling with issues of detainee space shortages, it is structured and written in a manner designed to be useful to a much broader audience, ranging from Congressional staff members seeking to gain greater understanding of how the federal detention system is organized and integrated with state, county, and local government facilities, to county and local officials seeking information on financing options for infrastructure development.

While the discussions presented in this Handbook primarily deal with jail facilities, it should be noted that the approaches and concepts presented herein may also be applied equally to prison facilities. Therefore throughout the Handbook, reference to prison facilities will be used intermittently.

1.2 BACKGROUND

The number of individuals being processed by the federal court system has dramatically increased over the past two decades, thus generating a commensurate growth in demand for bed space to hold federal detainees until their cases are adjudicated or before they are sentenced or deported. Although the detainees are processed through the federal judicial system, their housing and other needs are typically provided by the state, county, or local jurisdiction where they are detained. In a significant number of federal court cities, there is generally a shortage of available bed space for federal detainees. The U.S. Marshall Service generally prefers that detainees be held in facilities a short distance from the Federal Courthouse facilities where they are being adjudicated.

State, county, and local governments have typically financed construction of detention facilities by issuing general obligation bonds. Traditionally, jail and prison facilities were exclusively operated by public sector agencies such as a state's correction departments, a county sheriff's department, and larger local government entities. However, in the 1980s, governments began seeking alternative financial instruments to pay for necessary, but sometimes controversial projects such as jails and prisons. In many cases general obligation bonds were rejected by governments that were constrained by overall debt ceilings. Consequently, the delineation between public and private sector activities became less defined and state, county, and local governments began forming partnerships with private sector companies to build and operate

facilities that had been regarded as public sector infrastructure. For example, much of the jail and prison facility capacity built in the last 20 years was achieved through outsourcing all aspects of construction and management to private companies. Such companies finance their construction expenditures by raising funds in private capital markets and receive either flat fees or per-diem payments from government agencies to house detainees or inmates. For public facilities, state and local governments have continued to use a mix of private and public financing to meet the rising demand for bed space. Furthermore, to supplement the financing packages, some state and local governments have been beneficiaries of federal grant monies. While some grant monies have been awarded to states to help them meet federal policy initiatives such as truth-in-sentencing, other grant monies have been awarded to assist with the construction of a state or local facility in return for guaranteed access to the newly constructed bed space by the USMS.

In planning to meet current and future demand for bed space, state, county, and local officials are faced with an increasingly diverse and sophisticated array of financing options. Officials must consider the advantages and disadvantages of each option including the long-term project costs, the debt service carrying costs, risks to the jurisdictions' credit rating, as well as the legal and political implications of each alternative. OFDT is seeking opportunities to work collaboratively with various public officials to find strategies and approaches which help them achieve their bed space needs while also providing bed space for use by the USMS and other federal law enforcement agencies. The appropriateness of any approach will depend on the particular financial and economic conditions of the state, county, or local government contemplating capital investments in detention capacity expansion. There is a large body of literature available that describes the different aspects of how public sector entities raise capital to finance infrastructure, including jails. There are also many case studies describing how various approaches have served or failed the implementing agencies in their objective to increase detainee bed space in a cost-effective manner. There is, however, no central clearinghouse of information a public official can consult to assist with the decision-making process. A major objective of this document is to fill those information gaps and serve as a technical resource to aid in decision-making.

1.3 ORGANIZATION OF HANDBOOK

This OFDT Handbook is organized into six chapters. Chapter 2 introduces readers to the United States federal system and provides background information on federal detainee population trends. Chapter 3 presents the major issues that state, county, and local governments would need to address as part of their decision making process. Chapter 4 describes various financing options and public-private partnership arrangements for state and local governments to consider should they decide to build or expand a facility. Chapter 5 summarizes the primary legislative and regulatory hurdles that officials must overcome to execute these finance alternatives. Chapter 6 focuses on how municipalities and counties can conduct business with OFDT and the Department of Justice (DOJ). This chapter is also designed to facilitate a clear understanding of the role of the Federal Government in the management of detainees, and describes the various grant and loan programs that can be accessed for prison and detention facility capacity expansion.

2. Overview of the Federal Detention System

The federal detention system is complex and involves federal, state, county, and local participants. This chapter serves as a guide to help governments understand and navigate this complex system.

2.1 INTRODUCTION TO THE FEDERAL CRIMINAL JUSTICE SYSTEM

The federal criminal justice system deals with persons charged with or convicted of a federal criminal offense. Federal detention refers to the short-term housing of federal criminal defendants who are awaiting further legal proceedings. When a person is suspected of an offense, the suspect is arrested, charged, and taken before a judicial officer for an initial appearance. At the appearance, the court – in consultation with the United States Attorney, defense counsel, and the pre-trial services office – makes a determination to either release or detain the defendant pending adjudication of the charges.

If a criminal defendant is found guilty following adjudication, he/she may return to detention to await sentencing. The court will make a determination as to whether detention pending commitment to the Federal Bureau of Prisons (BOP) is warranted. In some instances, defendants who had previously been on pre-trial release may be ordered detained. If the criminal defendant is found not guilty, he/she will be released from detention.

2.2 INTRODUCTION TO ADMINISTRATIVE DETENTION

For immigration offenses, Department of Homeland Security (DHS) officers have the authority to administratively detain aliens who illegally remain in the U.S.¹ Following apprehension, the majority of illegal aliens are returned to their country-of-origin. Pending a determination of whether removal is warranted, an alien may be released or detained. Some seek asylum to prevent removal. In the majority of these cases, immigration judges issue deportation orders; however, there are a small number of cases where asylum is granted.

2.3 INTRODUCTION TO THE OFFICE OF THE FEDERAL DETENTION TRUSTEE

The Office of the Federal Detention Trustee (OFDT) was created by directive of the Congress in September 2001 due to increasing concerns regarding federal detention.² Under this law, the OFDT was charged with the responsibility for exercising:

“all power and functions authorized by law relating to the detention of Federal prisoners in non-Federal institutions or otherwise in the custody

¹ Administrative detention of illegal aliens is distinct from criminal detention. For immigration authorities, detention is an administrative tool that is used to ensure that the alien is successfully removed from the U.S. and repatriated to his/her own country. Administrative detention orders may be reviewed by immigration law judges and under certain circumstances, detention of an illegal alien is mandatory.

² Pub. L. 106-553, § 166, 114 Stat. 2762A (2000).

of the United States Marshals Service...for housing related to such detention; the management of funds appropriated to the Department for the exercise of any detention functions; and...the exercise of detention policy setting and operations for the Department of Justice.”³

The Attorney General subsequently established the OFDT as a Department of Justice component in September 2001. In addition to centralizing this detention function, OFDT also was directed by the Congress to manage and regulate the Justice Prisoner and Alien Transportation System (JPATS).

To effectively carry out this responsibility, the OFDT has developed a national detention strategy to meet the increasing needs of key stakeholders in the detention community. These key stakeholders include:

1) The United States Marshals Service (USMS)

The USMS houses criminal detainees involved in Federal court proceedings in secure facilities from the time they are ordered detained until they are ordered released or arrive at a designated BOP facility to serve a sentence. The USMS has the day-to-day responsibility for housing, transportation, security, and processing of Federal detainees. The USMS also has operational responsibility for the JPATS, which provides centralized transportation services to USMS detainees, BOP prisoners and Immigration and Customs Enforcement (ICE) removable aliens. For more information on the USMS, please visit: <http://www.usmarshals.gov/>.

2) Immigration and Customs Enforcement (ICE)

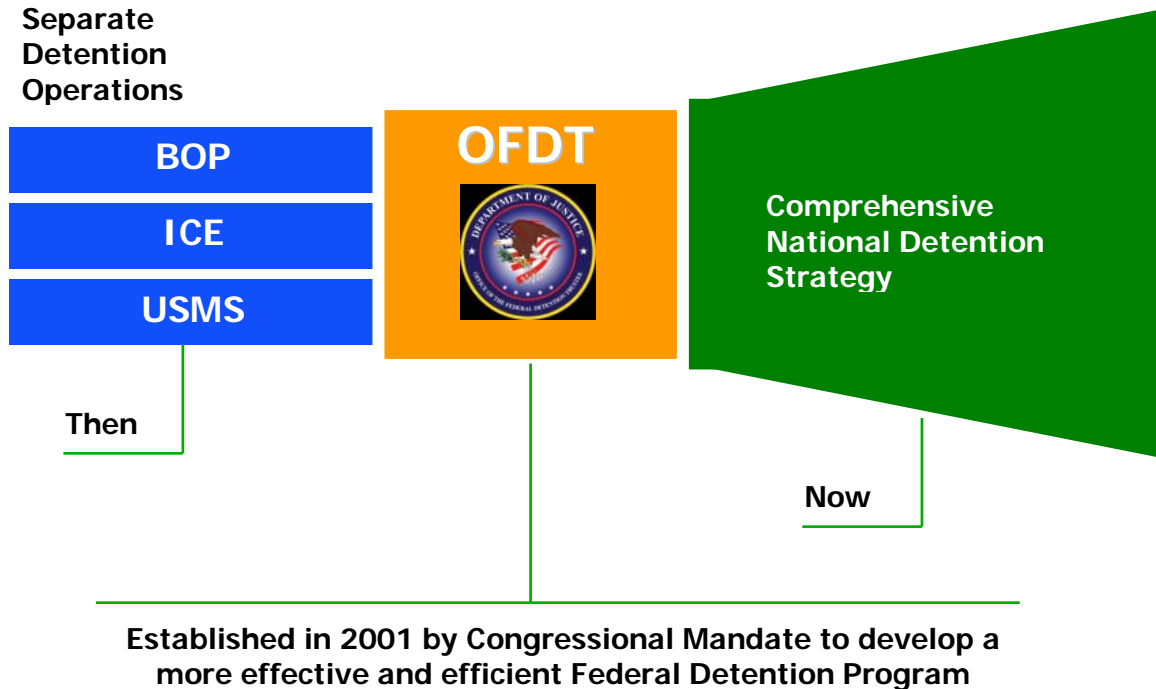
ICE is responsible for the administrative detention of removable aliens. When the Department of Homeland Security (DHS) was formed in 2003, most components of the former Immigration and Naturalization Service (INS) were transferred from the Department of Justice (DOJ) to the DHS and portioned into several DHS organizations, including ICE. Following these transfers, the OFDT entered into an interagency agreement with DHS/ICE to be able to coordinate its detention space needs. For more information on ICE, please visit: <http://www.ice.gov/>.

As Exhibit 2.3.1 shows, the OFDT plans for needed detention bed space and manages resources to prevent duplication of effort or competition with other government components. The OFDT offers the ability for a cross-departmental solution to procure housing for the USMS and ICE. The OFDT does not own or operate its own facilities to house detainees. Rather, most detainees are housed by state, county, and local governments willing to provide detention space in return for a fair and reasonable, fixed per-diem rate. Some detainees are also housed in private facilities under contract to the Federal Government. Lastly, some detainees are housed by the BOP in stand-alone detention centers or detention units in BOP correctional facilities.⁴

³ Although the law originally provided OFDT with authority over detainees in the custody of both the United States Marshals Service (USMS) and the Immigration and Naturalization Service, this statute was enacted prior to the Homeland Security Act, Public Law 107-296, Section 441, which transferred the duties of the INS (now, Immigration and Customs Enforcement or ICE) to the Department of Homeland Security (DHS). Despite the transfer of the former INS to DHS, OFDT has continued to coordinate detention bed space needs of detainees between the USMS and DHS.

⁴ While the BOP's primary responsibility is the secure confinement and care of the sentenced federal prisoner population, BOP is also responsible for operating several detention centers that are used primarily to house USMS detainees. For more information on the BOP, please visit: <http://www.bop.gov/>.

Exhibit 2.3.1: U.S. Federal Detention System



2.4 FEDERAL DETENTION POPULATION TRENDS

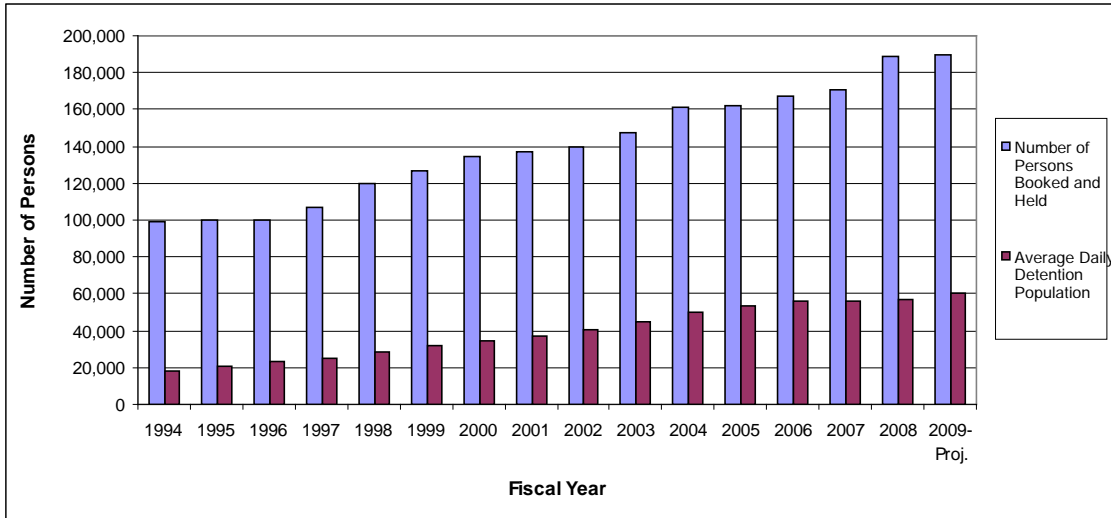
As Exhibit 2.4.1 shows, the federal criminal detention population has grown substantially over the past decade. An increase in the number of USMS bookings per day and in the average time-in-detention have been two primary reasons for growth in the federal detention population.

In the case of criminal detentions, the *Bail Reform Act of 1984* fundamentally changed the administration of bail in the federal criminal justice system by allowing a judge or magistrate to engage in preventative detention upon a determination that a defendant presents too great a danger to the community prior to or during a trial.⁵ This legislation is a significant departure from the previous statutory requirement imposing bail solely for assuring the appearance of the accused at judicial proceedings.⁶ Similarly, the number of administrative immigration detentions has skyrocketed in the past several years due to legislative changes and border security initiatives.

⁵ Robert S. Natalini, *Preventive Detention and Presuming Dangerousness Under the Bail Reform Act of 1984*, 134 U. Pa. L. Rev. 225, 226 (1985).

⁶ *Id.* The *Bail Reform Act of 1966* required that Federal Courts release defendants on their own recognizance or an unsecured bond unless the court believed the defendant would not appear under such minimal supervision. The *Bail Reform Act of 1966* thus expanded the court's authority to determine pretrial detention.

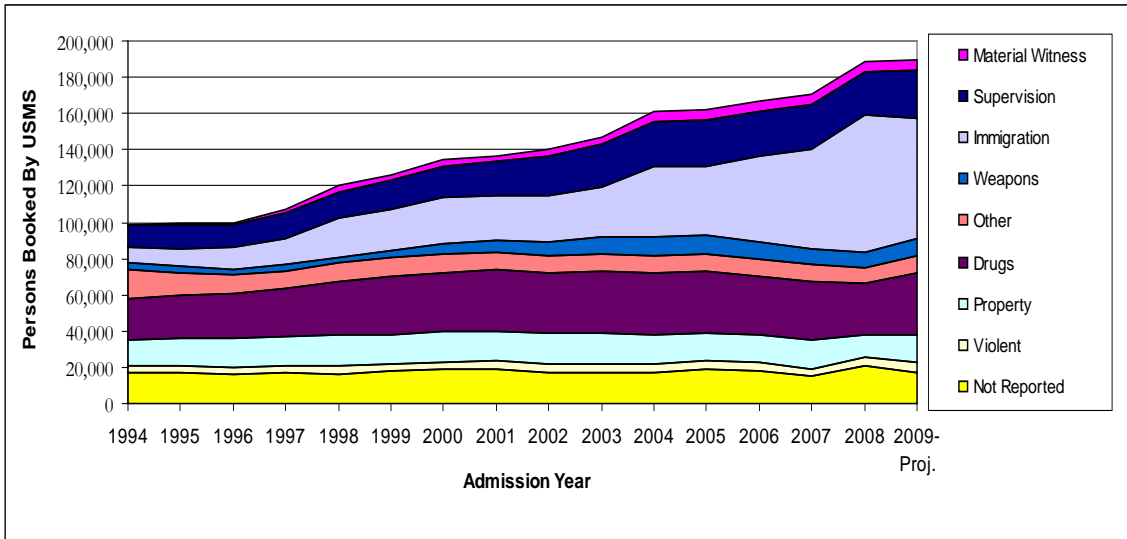
Exhibit 2.4.1: Number of Persons Booked and Held by the USMS, 1994-2009



Sources: U.S. Marshal Service, Prisoner Tracking System, September 30, 2007 Extract (Actual); Office of the Federal Detention Trustee, <http://www.usdoj.gov/ofdt/statistics.htm>. Interviews with OFDT Officials April, 2009.

As Exhibit 2.4.2 shows, in recent years, immigration offenses and drug arrests have comprised the greatest proportion of the total increase in the U.S. detention population. Supervision violations (violations of parole, supervised release, and probation) have also seen an upturn.

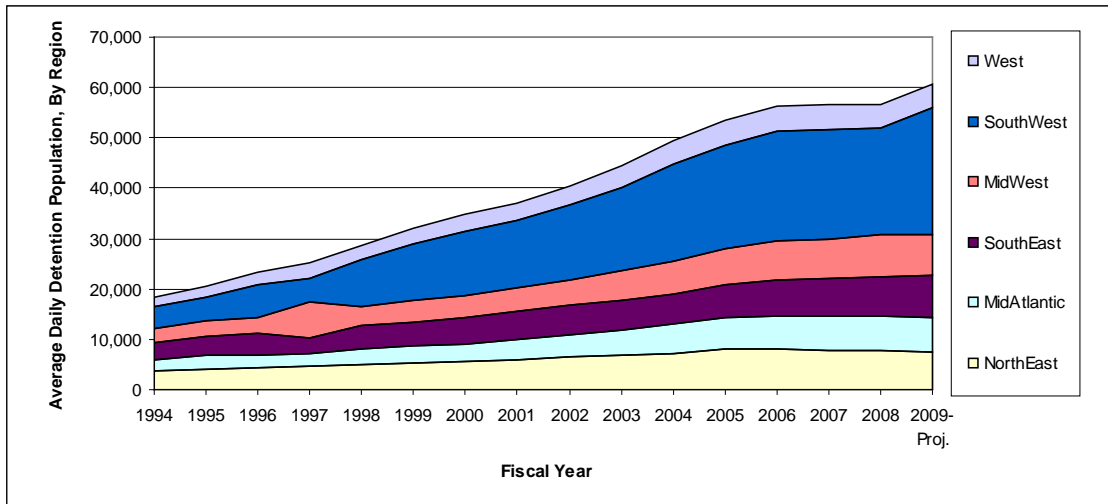
Exhibit 2.4.2: Persons Booked by USMS, by Offense, 1994-2009



Sources: U.S. Marshal Service, Prisoner Tracking System, September 30, 2007 Extract (Actual); Office of the Federal Detention Trustee, <http://www.usdoj.gov/ofdt/statistics.htm>. Interviews with OFDT Officials April, 2009.

While all regions have experienced an increase in the number of detainees (Exhibit 2.4.3), the greatest growth has taken place in the Southwest which comprises Arizona, Central and Southern California, New Mexico, and Texas.

Exhibit 2.4.3: Average USMS Daily Detention Population, by Region, 1994-2009



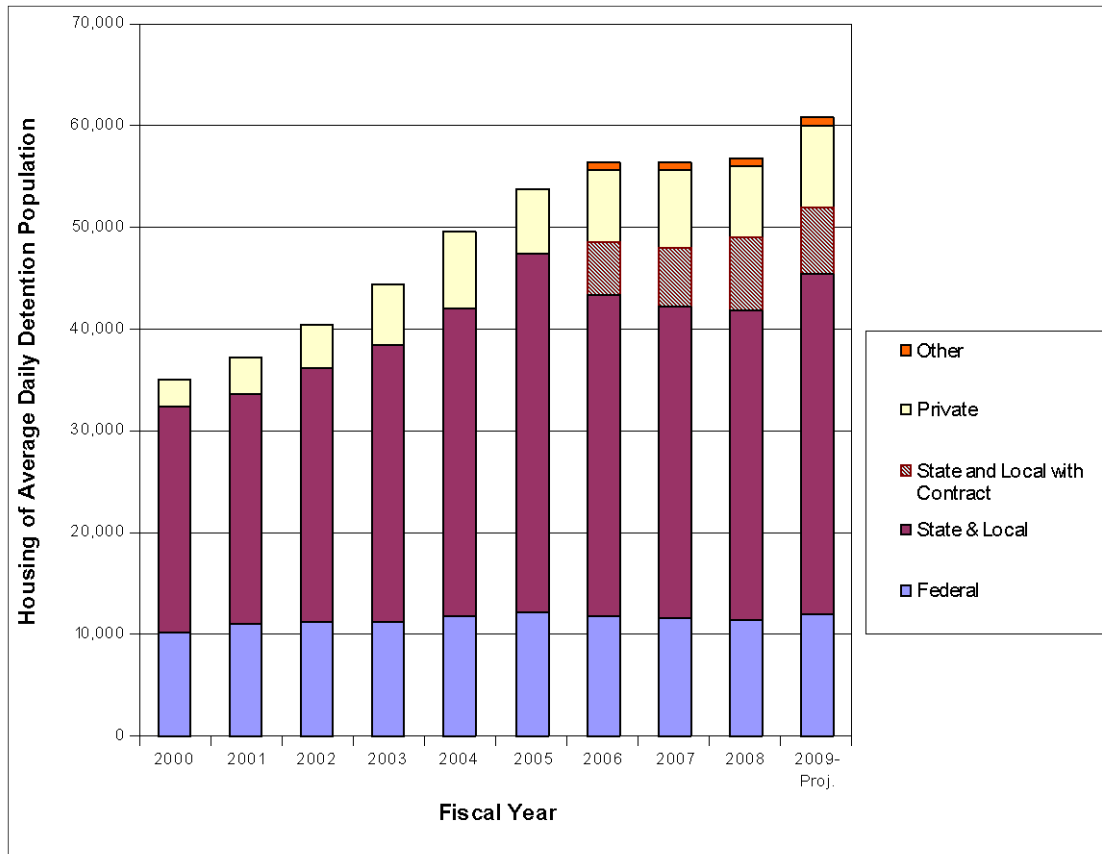
Sources: U.S. Marshal Service, Prisoner Tracking System, September 30, 2007 Extract (Actual); Office of the Federal Detention Trustee, <http://www.usdoj.gov/ofdt/statistics.htm>. Interviews with OFDT Officials April, 2009.

With only a limited number of federal facilities located in mostly metropolitan areas (particularly where federal court facilities exist), the vast majority of federal detainees have been housed in state, county, local, and private facilities. As shown in Exhibit 2.4.4, while all types of facilities have seen an increase in the average number of daily detainees, the number of detainees housed in state and local facilities has increased the most in the past 10-15 years.

Non-federal facilities are needed because of the geographically diverse character of federal judicial districts. Few areas actually need or can sustain large federally-owned and operated detention facilities. Therefore, the use of state, county, local, and private facilities permits USMS and ICE to acquire the minimally needed amount of space in a specific city or region where federal court facilities exist without having to incur the costs of building and operating their own facilities.

As USMS and ICE have become more reliant on state, county, local and private facilities to meet bed space needs, they have also had to compete with an increasing state and local detainee population also requiring bed space. Between 1990 and 2006, the number of people housed in local jails increased from 405,320 to 766,010, an 89% increase. Similarly, the number housed in state or federal prisons increased by 87%, from 738,389 to 1,377,815. Local jails reported utilizing 96% of their available capacity during 2006.

Exhibit 2.4.4: Average USMS Daily Detention Population, by Facility, 2000-2009



Sources: U.S. Marshal Service, Prisoner Tracking System, September 30, 2007 Extract (Actual); Office of the Federal Detention Trustee, <http://www.usdoj.gov/ofdt/statistics.htm>. Interviews with OFDT Officials April, 2009.

Notes:

1. Direct Contract Facilities are privately-owned and –operated facilities.
2. State and Local with Contract facilities are separated from the larger set of State and Local) facilities for the first time in 2006.

Accordingly, to accommodate the growth in the federal detention population – both criminal and administrative – the USMS and ICE have begun to increasingly rely on housing federal detainees at private detention service providers or at state and local facilities increasingly farther away from federal courthouses where detainees may be adjudicated. Housing detainees in facilities more distant from courthouses has the effect of increasing transportation costs and compromising the safety and security of both the community and the detainee. Thus, it is not only the number of new facilities, but also, their location that is essential in alleviating the federal detainee bed space crunch.

2.5 INTER-GOVERNMENTAL AGREEMENTS AND GOVERNMENT CONTRACTS

The USMS, ICE and, to a lesser extent, BOP, enter into agreements with state and local detention facility providers to house federal detainees. Relationships established by Intergovernmental Agreements (IGAs)⁷ with state and local governments are paramount to carrying out the function of federal detention. IGAs are negotiated at a fixed per-diem bed rate for a predetermined amount of time. Under a fixed price agreement, the price for detention services is not based solely on the provider's costs and is not subject to ongoing or retroactive adjustment to reflect costs that are actually incurred. Instead, the price is set at a negotiated level at the time the IGA is executed.

Pursuant to the authority of Section 119 of the Department of Justice Appropriations Act of 2001 (Public Law 106-553), the Attorney General is permitted to enter into contracts and agreements for any reasonable duration and under any reasonable basis. The Attorney General has delegated the OFDT with the authority to implement this law. In May 2005, the Trustee requested a review of costs associated with IGAs and directed that they be standardized for use by all participating agencies. In addition, the Trustee directed that a standardized rate structure be designed and applied to the detention facility providers participating in the IGAs.

On November 18, 2007, the OFDT implemented a new, web-based electronic Intergovernmental Agreement (*eIGA*) system. The *eIGA* system streamlines and automates current IGA forms and processes and manages all IGA-related data as well as archives of transactions. The USMS and OFDT now process all IGAs with state and local detention facility providers through the *eIGA* system. BOP and ICE also plan to implement *eIGA* at a later date. The *eIGA* system is accessed through OFDT's Detention Services Network (DSNetwork). With the *eIGA* system, the state and local detention facility providers complete the online application to request an IGA or a rate adjustment if an IGA is currently in place. The application requires that the facility submit their requested rate, complete the Jail Operating Expense Information (JOEI) forms and other relevant information. Information on the *eIGA* can be found at the OFDT website: <http://www.usdoj.gov/ofdt/procurement.htm>.

⁷ Also known in ICE as Intergovernmental Service Agreements (IGSA)

3. Opportunities for Counties and Municipalities to House Federal Detainees

A large capital project such as a state prison or a county local jail is a major investment and requires careful analysis and planning. This chapter outlines the potential benefits and costs of constructing and operating jails. In addition, it discusses some of the challenges that state, county and local governments must overcome to build facilities, and gives an overview of the steps necessary to determine if the jail facility addition or expansion is appropriate for a community or municipality.

3.1 POTENTIAL BENEFITS

There are potential benefits for states, counties, communities, and municipalities that choose to build detention facilities. As Exhibit 3.1.1 shows, local residents and governments in general, may benefit from increased employment and wages as well as an expanded tax base and potential business development. For many small communities, jails/prisons can potentially provide hundreds of professional, correctional, administrative, and clerical jobs. In 1995, on average, prison facilities supported 266 full- and part-time payroll staff per facility. Of those, 87% were the highest-paying professional, correctional and administrative jobs. Such jobs can have a positive economic impact, particularly on persistently poor communities since both unemployment drops, and income increases generally occur.⁸

Moreover, jail/prison facilities are large-scale enterprises that have many needs. The facilities may attract new service and wholesale businesses to a local economy to meet those needs. The generation of such economic linkages not only creates new business and jobs (many of which are directly related to construction spending), but also expands the local tax base.

Lastly, some communities can benefit from increases in population from new jails/prisons. Many small communities are able to register large increases in population because U.S. Bureau of the Census guidelines currently call for counting inmates, held both at jails and prisons, in the population of the jurisdiction where they are housed⁹. Accordingly, these communities are eligible to receive a greater amount of formula-based grant funding because of the higher population count. Local residents, therefore, benefit from increasing public services without incurring additional program costs.¹⁰

⁸ Farrigan, Tracey and Amy K. Glasmier. "The Economic Impacts of the Prison Development Boom on Persistently Poor Places." Earth and Mineral Sciences Environmental Institute and The Pennsylvania State University. *International Journal of Regional Science*, 2002.

⁹ "Tabulating Prisoners at Their "Permanent Home of Record" Address", U.S. Census Bureau Report, February 21, 2006.

¹⁰ Ibid.

Exhibit 3.1.1: Potential Benefits for Local Residents and Governments

	Employment	Wages	Business Development	Public Benefits
Local Residents	A source of professional, correctional and administrative and clerical jobs.	Potential increase in wages from new jail/prison jobs along with benefits.	Goods and services needed for the jail / prison, locate in the community, providing added jobs.	Potentially increased local public services like police and schools if population levels enhance federal funding.
Local Government	Lower unemployment; fewer residents leaving the community.	Increase in tax revenue.	Expanded tax base as new businesses move in.	Increased federal funding as local population increases.

3.2 POTENTIAL DRAWBACKS

As Exhibit 3.2.1 shows, economic and social benefits are not always enjoyed in all communities and municipalities. The construction, operation, and management of a jail/prison is a very specialized activity that has educational and experience requirements. If local labor markets are unable to support the needs of a jail/prison, it is likely that labor must be hired from outside the community. In this case, there may not be an increase in the employment of local residents.¹¹

A different but related problem is when experienced jail officials, guards, and other staff begin to relocate to jail communities. While many communities, particularly rural communities, are eager to attract new residents, supporting a rapid influx of new people might be very difficult. There may not be an adequate supply of housing, services, or businesses to serve new residents. In addition, an influx of new residents with good jobs may cause resentment in the existing community, leading to social tension that can affect community cohesion.

Moreover, the net economic benefits of a new jail/prison might be diminished by other mitigating factors. For example, jail/prison labor may displace labor in some communities, depressing wages for services such as painting, construction, and other public works projects. Also, even with new business coming into the area, there might be no net increase in tax revenue because new enterprises may cause “replacement effects,” effectively pushing older, locally-owned enterprises out of business.

Additionally, there are other public costs to jail/prison operations that should be considered by state, county, and local officials. For instance, district courts and local public defenders may see increases in their case-loads because they are responsible for dealing with indigent inmates charged with committing crimes within prisons. In low-population areas with large numbers of prisoners, the prisoner share of a district attorney’s or public defender’s caseload can be quite high and can strain limited resources.¹²

¹¹ Beale, Calvin. “Crime and Politics in the 21st Century.” Campaign for Effective Crime Policy Conference. Bethesda Maryland, November 12-14, 1998.

¹² Ibid.

Such outcomes are understandably very disappointing to local residents and officials. Therefore, it is important for communities to fully understand local labor markets and economic conditions before constructing new facilities.

Exhibit 3.2.1: Potential Drawbacks for Local Residents and Governments

	Employment	Wages	Business Development	Public Costs
Local Residents	New employment does not go to existing local residents.	Local wages may be depressed by jail/prison labor.	New prison does not spur net increase in jobs and the creation of new businesses.	Taxpayers must bear the costs of district attorneys, public defenders and other public services.
Local Government	Community must absorb new residents; need to maintain social cohesion within the community.	Reduce tax base by lowering wages.	New jails/prisons do not spur overall increase in tax base.	Local government systems and services are strained.

3.3 CHALLENGES FOR COUNTIES AND MUNICIPALITIES

While many communities acknowledge the need for jail/prison bed space, the construction of such facilities often results in significant opposition from various sectors of the community. This is usually the result of the perception that prison facilities increase local crime and facilitate a decline in property values. Such perceptions tend to be directly related to the proximity of the proposed facility.¹³ In short, the closer residents are to the proposed facility, the more likely they are to oppose it on public safety and economic grounds. This can be a significant challenge for communities and municipalities pursuing a detention facility. Thus, officials and supporters should take steps to mitigate and minimize potential opposition in the planning stages. They must also be sensitive and responsive to residents’ concerns during the public hearing and comment process.

3.4 DETERMINING IF A DETENTION FACILITY IS APPROPRIATE FOR A COMMUNITY

The construction of a jail facility is usually a very large capital investment for a community. While such facilities can offer many economic benefits, they are not “one-size-fits-all” economic development solutions. Thus, if state and local officials are seriously considering constructing a jail facility, they must first commission a detailed feasibility study to understand the potential impact of the project. A feasibility study is an analysis of the overall viability of a large capital project such as a corrections facility. A feasibility study assists decision-makers in determining whether or not to implement a particular project or program by:

¹³ Martin, Randy and David L. Myers. “Public Response to Prison Siting: Perceptions of Impact on Crime and Safety.” *Criminal Justice and Behavior*. 2005: 32; 143.

- Giving focus to the project;
- Examining the economic impacts through all variables: e.g. debt, community issues, etc.;
- Outlining alternative projects;
- Identifying potential challenges;
- Finding ways early-on to mitigate potential challenges and risks; and,
- Providing documentation that the project and its alternatives were thoroughly investigated.

Such studies are often undertaken by an elected body or a government agency responsible for making recommendations about a potential jail construction project. These bodies or agencies typically hire outside experts or consultants to conduct feasibility studies because they are often multidisciplinary and require specialized expertise. While the specific components of feasibility studies differ because of context and informational requirements, typical components would include:

1) Pre-Feasibility Study

A pre-feasibility study might be conducted as a first step to help sort out relevant project alternatives to the jail facility. This can help local courts and state officials get an idea of the relevant trade-offs they will have to make in terms of money, time and resources required to finance and construct a prison facility.

2) Study Introduction and Objective

The study should clearly introduce and describe objectives of the project. This focuses the study and helps the community understand its overall goals.

3) Project Background and Need

The study should also include a detailed project background and describe the projected need for a jail facility or expansion of a facility in the area. This helps give the community a sense of how and why officials came to the decision to explore a prison facility further.

Components of this section may include a discussion of:

- Study area
- Previous studies completed (if any)
- Potential project location and land availability/site issues
- Market demand for the facility (existing and future estimates)
- Potential economic linkages
- Potential fiscal benefits

4) Evaluation of Project Alternatives

Once a preliminary list of alternatives is developed, they should be thoroughly evaluated to understand the opportunity cost of specific alternatives. During this process the number of business alternatives under consideration may be increased or decreased.

During the evaluation process, officials may investigate a variety of ways of organizing the construction and operation of the facility. If the initial analysis is negative, this does not necessarily mean that the proposed facility will not be constructed. A different design concept or a potential change in market conditions could contribute to the viability of the project in the future.

In addition, the evaluation of project alternatives often utilizes several different economic valuation methodologies to assess the impact of various projects. For example, a feasibility study might utilize an economic cost-benefit analysis (a social and economic decision-making tool that estimates benefits to the community). The techniques used in a cost-benefit analysis compare what the community would be like *with* and *without* the project, not *before* and *after* the project. For instance, in determining the impact of a rapid transit system such as the Metro in Washington, D.C., the number of rides that would have been taken with an expansion of the bus system should be deducted from the rides provided by Metro trains. Likewise, the additional costs of such an expanded bus system would be deducted from the costs of Metro trains. In other words, the alternative to the project must be explicitly specified and considered in the evaluation of the project. This is done to isolate the impact of the project in the community.¹⁴

Another type of economic evaluation tool is regional input-output analysis. This tool uses regional multipliers to show how industries in an area will respond to a project. For example, input-output analysis can provide estimates of increases in output, earnings, and employment for all industries in the area that result from an investment in a prison facility. This helps to clarify the interrelationship between the proposed project and how other industries and employment will grow as a result of investing in a prison facility.¹⁵

Components of this section could include:

- In-depth project description
- In-depth description of alternative projects
- Cost estimates of design, construction and operation, and maintenance of projects
- Economic cost-benefit analysis
- Regional input-output analysis
- Institutional factors such as permit requirements, court actions, agreements and contracts.
- Social and physical impacts
- Environmental impacts
- Implementation schedule
- 3-D modeling

¹⁴ Sinden, J.A. and D.J. Thampapillai. *Introduction to Benefit-Cost Analysis*. Australia: Longman Australia, 1995.

¹⁵ Daley, William, Everett M. Ehrlich and J. Steven Landefeld. "Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMMS II). 3rd Ed., March 1997.

5) Financial Analysis

A thorough financial analysis is also needed to evaluate the local, county, or state government's ability to finance the project. This evaluation should be used to explore various financing options for the project.

Components of this section could include a discussion of:

- Amount needed for the proposed facility.
- Summary of potential capital sources for financing of the project.
- Detailed revenue and expenditure projections over the proposed life of the project.
- Potential sources of repayment for various types of financing and debt obligations.
- Fiscal impacts of the project.

6) Results and Conclusions

The conclusions of the study will outline the various alternatives examined and the implications of each. A particular project alternative may not “jump off the page” as being the best one. The decision as to whether to proceed often is not clear cut. However, a feasibility study can help officials assess the potential tradeoffs of moving forward with any prison facility project. A study is a major information source in making the decision to go ahead with the project, delay decisions, or abandon it. Therefore, officials and the community should critically examine the study and its underlying assumptions in order to make an informed and reasonable decision.

This overview of opportunities for Counties/Municipalities creates a framework for government leaders – private industry (corrections/jails) leaders – federal office (both elected and appointed), as well as the other stakeholders. For state, county, and local officials, choices about participating in agreements with the OFDT are about a range of factors. OFDT's needs largely revolve around communities where federal courthouses/judicial facilities exist. Thus, in future analysis, the collaboration of OFDT and a specific community or state will only occur when the national need and goals/objectives of each can be clearly identified and pursued together. If this point is reached, the next step is to examine the Financing Strategies and Programs available.

For projects where OFDT and a governmental jurisdiction are collaborating to increase detainee space capacity, “pay-as-you-go” funding is not likely to be a sound option. Additional bed space costs for construction generally will exceed most governments' ability to simply fund these projects from an operating budget (annual funding). Instead, large projects will fit into a comprehensive Capital Improvement Plan (CIP) with three to ten-year duration. In the municipal bond/public finance marketplace for thousands of state, county, and local governments, capital improvement projects – raising capital in the municipal securities market – and, building large-scale infrastructure and facility projects will require some form of municipal bonds.

4. Financing Options for Building Detention Capacity

Given the rapid growth in demand for detention capacity in all categories of detainees as well as prisoners, many state, county, and local governments have been compelled to devote significantly more financial resources to the construction of detention facilities. Decision-makers face difficult choices when resources are diverted from other important capital and infrastructure projects.

These factors, along with limits on how much debt state and local governments are legally permitted to incur, lead to the further development of innovative public financing mechanisms as well as the use of private capital to build new detention facilities. The following subsections summarize the main financial instruments and methods currently used by state, county and local governments to build new detention space capacity.

4.1 PUBLIC FINANCING OPTIONS

Traditionally, detention facilities, like other public infrastructure, have been financed in one of two ways:

- “Pay-As-You-Go” (small-sized capital improvement projects)
- Municipal Bonds & Securities (large-scale capital improvement projects)

The first method involves the annual appropriation of public monies necessary to complete a proposed project within a single fiscal year. If project construction spans more than a year, then additional funds must be appropriated for each year of construction activity. Under the “pay-as-you-go” approach, a project is explicitly funded as a line item in a government’s annual budget. This financing option is typically not used for large capital projects like new or significantly expanded prison facilities, but rather, for small projects that can be accommodated within a jurisdiction’s normal annual budget.

For larger capital projects, particularly those which require multiple years to build, state and local governments typically finance the construction costs by issuing bonds. A bond is a security instrument which acknowledges that the issuer has borrowed money and must repay it to the bondholder at a specified rate of interest at periodic intervals. A bondholder will be repaid the original amount (the principal) when the bond reaches what is called its *maturity*. Debt securities with a maturity of 12 months or less are known as *notes*; however, bond maturity can last up to 30 years.

Bonds are known as debt securities and can be bought and sold on the open market. Depending on the type of bond and the jurisdiction where it is issued, federal and state tax regulations place different requirements on how and when money raised by a bond sale should be spent.

Most municipal bonds are issued through *underwriters*. An underwriter is a securities dealer or institution, such as an investment bank, which helps state, county, and local governments bring bond issues to market. Underwriters buy the bonds from the issuer and then resell them to investors. In doing so, an underwriter assumes a financial risk and, thus, expects to make a profit. The difference between the purchase price paid by the underwriter to the issuer and the price at

which the bonds are resold to investors represents the underwriter's profit. The underwriter's profit depends on factors such as the interest rate and accurate pricing of the bonds.¹⁶

State and local governments that choose not to use underwriters may issue bonds through dealers who act only as middlemen and do not assume financial risk for profit. Instead, they receive a fee for their selling services. Issuing bonds in this way is known as *direct placement*. Alternately, governments may sell bonds directly to investors without the help of a middleman through a process called *direct purchase*.

Many state, county, and local governments also choose to purchase municipal bond insurance coverage as a way of shielding investors from bond risk, thus making them more appealing investments. The insurance is often utilized for debt issuances with weaker credit/bond ratings.¹⁷ Bond insurers assume responsibility for timely payment of interest and principal if an issuer becomes unable to meet those obligations. The presence of this protection allows an issuer to offer a somewhat lower rate of interest.

There are different types of municipal bonds and each type has ramifications for the level of interest rates paid, a jurisdiction's credit rating, and the impact on debt ceilings. For example, most, but not all, bonds are tax-exempt. For these types of bonds, buyers are usually willing to accept a lower return than for a taxable bond because they will not have to give up some of their return by paying taxes. The following section describes the main categories of municipal bonds that are issued by state county and local governments to finance projects.

General Obligation Bonds

General obligation bonds are fully backed by a pledge from the issuer to collect sufficient tax revenues to repay the principal and interest. Most often this is referred to as a "full faith and credit" pledge. As a result, financial markets consider them one of the most secure investments. The lower risk for general obligation bonds translates into reduced interest rates paid to investors, and therefore, lowers the overall costs of the project.

By the end of the 1990s, approximately one-third of all publicly-issued debt was general obligation debt. These bonds were used not only for jail/prison construction, but also, for other public infrastructure projects including roads, airports, and parks. The monies obtained from the bonds are restricted to financing infrastructure construction only. Operating costs must be recovered through other means.

The ability of some local governments to rely on general obligation bonds to finance jail/prisons and other infrastructure projects is limited in certain jurisdictions by legal restrictions on the total amount of public debt that is permitted to be issued.¹⁸ Additionally, the use of general obligation bonds in some states and their respective county and local government units requires voter approval for any jail/prison construction or expansion, which can be politically difficult to obtain for any governmental jurisdiction.¹⁹

¹⁶ The bonds are priced by calculating the maximum price at which the investors will buy the bond. It is determined by discounting the bond's expected cash flows to the present.

¹⁷ A bond rating evaluates the credit worthiness of the bond issuers. In other words, it is the degree of certainty with which the issuer will repay the investors.

¹⁸ See e.g. Va. Code § 15.2-2634; N.Y. Const., Art. 8; CA Const., Art. 16, § 1.

If a state, county, or local government has identified the projects that are eligible for general obligation bond funding, they must ensure that the bonds are issued correctly. Local officials should seek the advice of a team of public finance market-makers including:

- Bond Counsel
- Public Finance Advisor
- Investment Banker & Underwriter Firms
- Technical Advisors
- Management consultants
- Other Advisors specific to a project

General guidelines for the issuance of general obligation bonds are listed below;

- Review the Project Feasibility Study with a Financial Advisor

As described in Chapter 3, the Feasibility Study includes a variety of analyses that can help the financial advisor and the prospective bond buyers to better understand the financial fundamentals of the project. Details about the facility, cost estimates, and an environmental assessment can help the advisor assist the community in choosing the correct financial strategy.

- Obtain Voter Approval

Some state, county, and local governments are required to obtain voter approval to issue general obligation bonds. These governments must obtain voter approval in the most appropriate manner. Additional professional advisors, e.g., public relations/affairs – media pollsters may be needed.

- Assemble Financial and Legal Team

A well-assembled financial and legal team familiar with state, local and federal requirements for bond issuance should be assembled. This team can help the government entity complete issuing procedures and follow legal regulations. They may also secure insurance for the bonds. In most instances, the financial and legal team will be responsible for the bonds from sale to maturity or for dealing with underwriters.

- Issuance and Sale of Bonds

Following the appropriate legal processes and obtaining voter approval, governments may issue and sell general obligation bonds. During this process, governments are obligated to issue “bond documents” as part of their due diligence to potential investors and bond holders. These documents typically include an official bond statement, financial statements, and other agreements as well as the feasibility study. A government entity may also sell the bonds to an underwriter to bring them to market.

- Investment of Proceeds to Build/Expand the Facility

Following the issuance and sale of general obligation bonds, governments must use the proceeds to build or expand the facility. Legal provisions vary by state; however, bond proceeds may be invested, as long as use of the capital matches with the schedule for a specific project.

- Development of Monitoring Plan for the Investment

During the design and building phases, governments should develop a monitoring plan to ensure that the construction and/or expansion of the facility is performed according to the scope and standards outlined in the feasibility study and financial analysis. Additionally during the operation phase, governments will try to set up a monitoring system to guarantee that the operation of the facility is performed according to government standards.

- Management and Repayment of Bond Principal & Interest

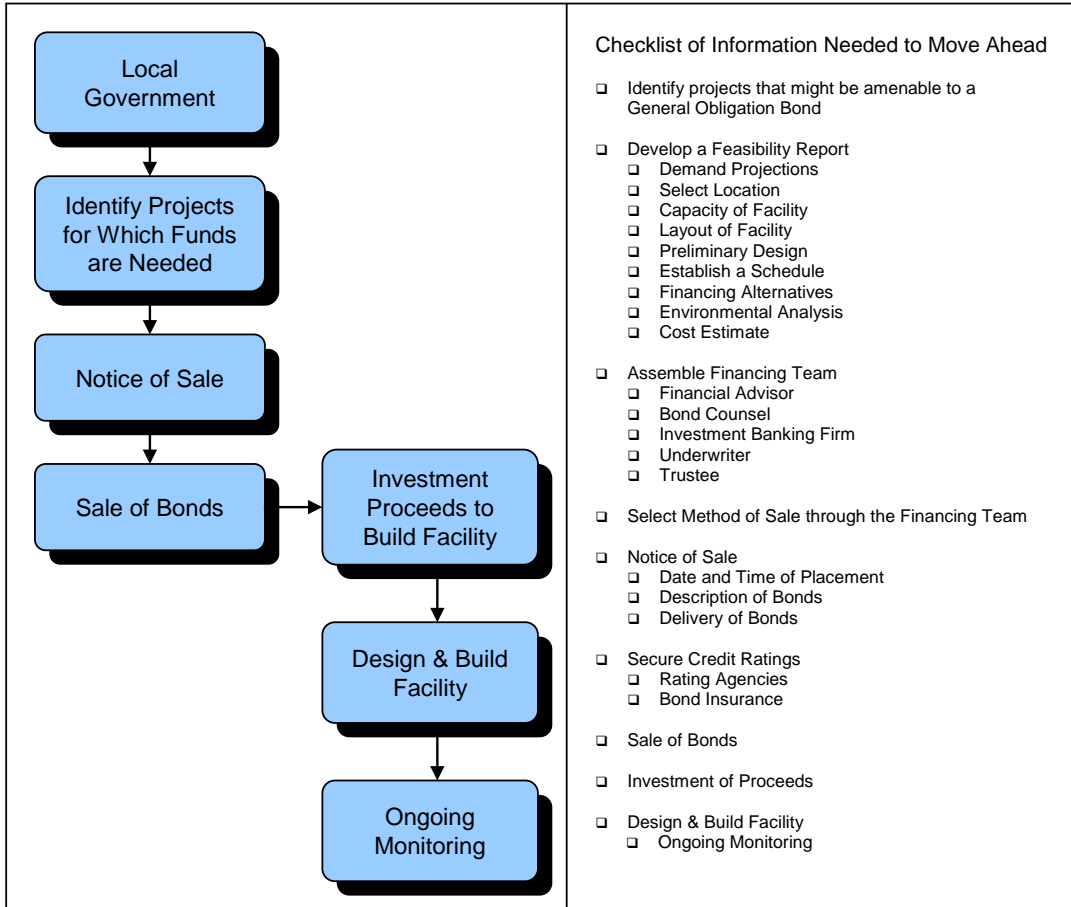
As noted, the financial and legal team will be responsible for general obligation bonds from the sale to the end of the term. As bonds reach maturity, governments are responsible for the repayment of the bond principal in accordance with a debt retirement schedule, with the revenue collected from taxes.

Exhibit 4.1.1 depicts how a general obligation bond is issued and used to finance capital projects:

Exhibit 4.1.1: General Obligation Bond

General Obligation Bonds

A General Obligation Bond is the issuance of debt by a state, county, or local government, through bonds in order to finance infrastructure projects, which are then repaid to investors through the collection of taxes and general government revenues.



Lease Revenue Bonds

Lease revenue bonds differ from general obligation bonds in that repayment is not directly secured through the taxing power of the state or local government, but rather, through a pledge of a specific stream of revenues. This pledge is subject to annual appropriations risk. Due to this difference, lease revenue bonds are referred to as “limited obligation” or “special obligation bonds”.

To issue a revenue bond, the government (state, county, or local) creates a separate (or utilizes an existing entity) non-profit organization or authority which issues tax-exempt lease revenue

bonds.²⁰ This non-profit organization or authority, (usually a state or county development authority) uses the bond revenue to build the facility and then leases it back to the government at a rate that will allow full repayment to the bondholders by the end of the lease period. The title of the facility reverts back to the government agency when the bond or the lease is paid in full.

The ultimate source of the funds used to repay the debt can be derived from a variety of sources, including fees, special tax districts, or general revenue that must be re-appropriated on an annual basis. Limits on these sources vary from state to state.

The debt from these bonds does not count directly toward the state, county, and local debt limit, and, therefore, does not require voter approval. However, the fact that the revenue stream used to pay bondholders is not directly supported by pledged general funds, but by lease payments which come from a variety of sources, means that lease revenue bonds are riskier than general obligation bonds. This translates into higher interest rates paid to bond investors. State, county, and local governments tend to use lease revenue bonds when the debt ceiling has been reached or when it is very difficult to obtain voter approval for general obligation bonds.

As noted, most state and local governments can identify the projects that are eligible for revenue bonds financing without voter approval. However, they should still adhere to the general guidelines below to ensure that revenue bonds are issued correctly.

- Review the Project Feasibility Study with a Financial Advisor

As described in Chapter 3, the Feasibility Study includes a variety of analyses that can help the financial advisor and the prospective bond buyers to better understand the financial fundamentals of the project. Details about the facility, cost estimates, and an environmental assessment can help the advisor assist the community in choosing the correct financial strategy.

- Create a Non-Profit Organization or Authority

Governments should create a non-profit organization or authority to officially issue the bonds and collect lease payments. The creation of this organization or authority should be in accordance with federal, state, county, and local legal requirements. If an existing entity exists, the cooperation of the government and this entity should be ensured.

- Assemble Financing and Legal Team

A well-assembled financial and legal team, familiar with the requirements for bond issuance of federal, state, county, and local financial instruments should be assembled. This team can help the new non-profit organization or authority complete issuing procedures and follow legal regulations. They may also secure insurance for the bonds. In most instances, the financial and legal team will be responsible for the bonds from sale to maturity, or dealing with the underwriters.

²⁰ Public Bonds Website. http://publicbonds.org/prison_fin/prison_fin.htm. November 28, 2007.

- Issuance and Sale of Bonds

Following the establishment of appropriate legal processes, the non-profit organization or authority may issue and sell the general obligation bonds. During this process, the organization or authority is obligated to issue “bond documents” as part of its due diligence to potential investors and bond holders. In addition, the financial and legal team or a hired underwriter will issue a notice of sale and sell the bonds on the market.

- Investment of Proceeds to Build/Expand the Facility

Following the issuance and sale of revenue bonds, the non-profit organization or authority must use the proceeds to build or expand the specified facility.

- Development of Monitoring Plan for the Investment

During the design and building phases, the non-profit organization or authority should develop monitoring plans to ensure that the construction and/or expansion of the facility is performed according to the scope and standards outlined in the feasibility study and financial analysis. Additionally during the operation phase, governments should try to set up a monitoring system to guarantee that the operation of the facility is performed according to government standards.

- Lease Facility Back to the Government

Once the facility is completed, it will be leased back to the governments, which will then make a lease payment to the non-profit organization or authority from revenues or appropriations.

- Collect Lease Payments from Government and Distribute to the Bond Holders

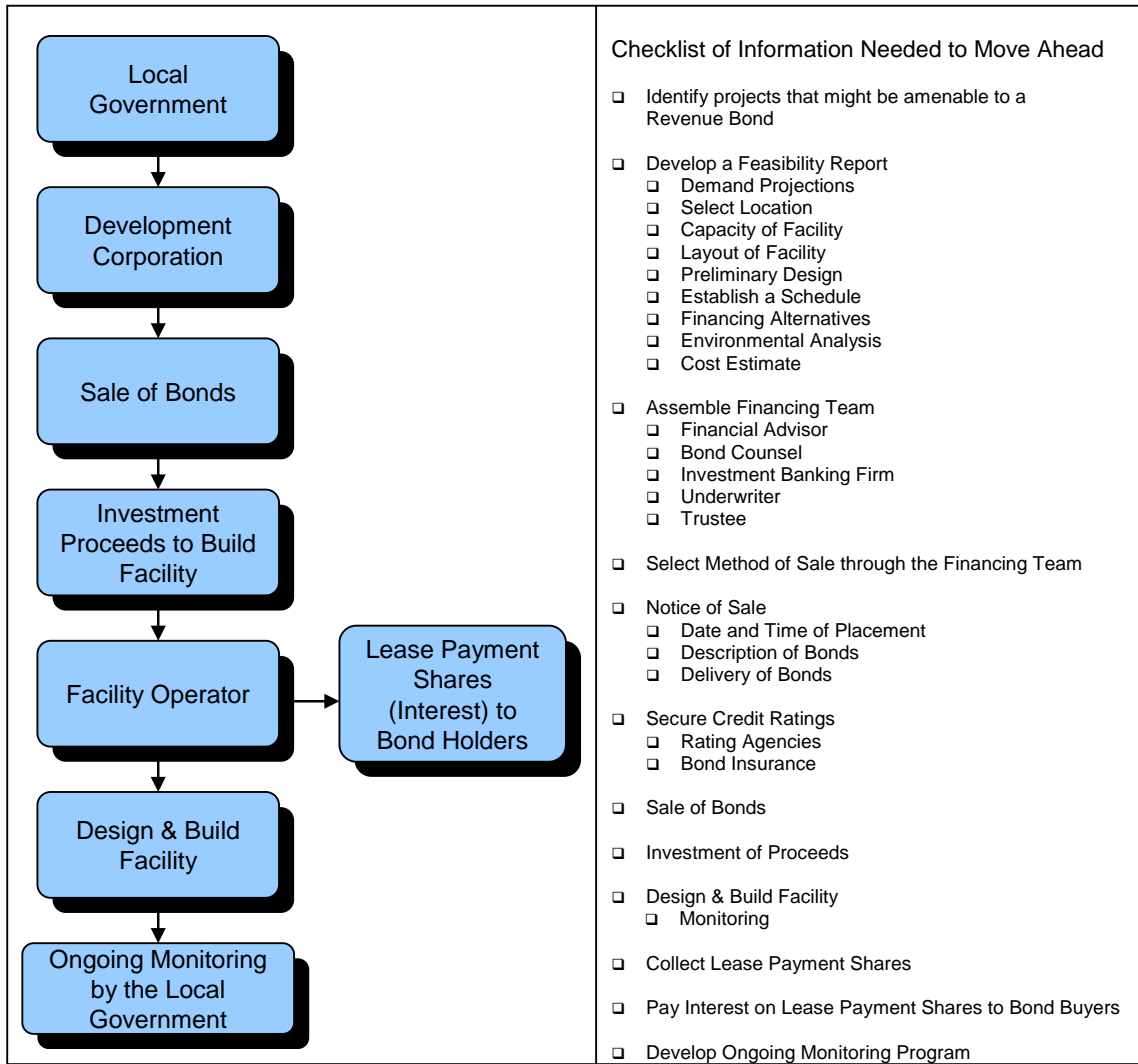
The financial and legal team under the non-profit organization or authority will manage the lease revenue from the government to pay back bondholders. When the bonds reach maturity and are paid back, ownership reverts back to the government and the non-profit organization or authority can be disbanded.

Exhibit 4.1.2 depicts how a lease revenue bond is issued and used to finance capital projects:

Exhibit 4.1.2: Lease Revenue Bonds

Lease Revenue Bonds

A Revenue Bond is the issuance of debt which is secured by a revenue stream coming from leasing the facility to an independent operator



Certificates of Participation (CoPs)

In recent years, state, county, and local governments began to use a specialized type of lease revenue bond to finance capital projects, referred to as Certificates of Participation (CoPs). Under a CoP, instead of receiving interest payments, the owner of the bond receives a share of the lease payments on a specified periodic basis until the bond reaches maturity. Like traditional lease revenue bonds, the government sets up a non-profit organization or authority to build and then lease back the facility. The non-profit organization or authority then collects lease revenues from the government, which it typically assigns to a Trustee, who then distributes the payments to the CoPs holders.

CoPs, like lease revenue bonds, are riskier and more costly than general obligation bonds and generally require a higher interest rate to attract buyers. Like lease revenue bonds, repayment is not directly supported by tax revenue, but by lease payments subject to annual appropriations. It should also be noted that revenue bonds and CoPs can be directly negotiated with private entities or individuals which can reduce competitive bidding for their purchase.

Like lease revenue bonds, most state and local governments can identify the projects that are eligible for CoP financing without voter approval. However, they should still adhere to the following guidelines to ensure that CoPs are issued correctly:

- Review the Project Feasibility Study with a Financial Advisor

As described in Chapter 3, the Feasibility Study includes a variety of analyses that can help the financial advisor and the bond buyers better understand the financial fundamentals of the project. Details about the facility, cost estimates, and environmental assessments can help the advisor assist the community in choosing the correct financial instrument.

- Create a Non-Profit Organization or Authority

Governments should create a non-profit organization or authority to officially issue the CoPs as well as collect lease payments. The creation of this organization or authority should be in accordance with federal, state, and local legal requirements.

- Assemble Financing and Legal Team

A well-assembled financial and legal team, familiar with state, local, and federal requirements for bond issuance should be assembled. This team can help the new non-profit organization or authority complete issuing procedures and follow legal regulations. It might also help secure insurance. In most instances, the financial and legal team will be responsible for lease revenue bonds from sale to maturity or for handling the underwriters.

- Issuance and Sale of Bonds

Following the establishment of appropriate legal processes, the non-profit organization or authority may issue and sell the CoPs. During this process, it is also obligated to issue “bond documents” as part of its due diligence to potential investors and bond holders. In addition, the financial and legal team or a hired underwriter will issue a Notice of Sale and sell the CoPs on the market.

- Investment of Proceeds to Build/Expand the Facility

Following the issuance and sale of CoPs, the non-profit organization or authority must use the proceeds to build or expand the facility specified.

- Development of Monitoring Plan for the Investment

During the design and building phases, the non-profit organization or authority should develop monitoring plans to ensure that the construction and/or improvement of the facility is performed according to the scope and standards outlined in the feasibility study and financial analysis. Additionally during the operation phase, governments should try to set up a monitoring system to guarantee that the operation of the facility is performed according to government standards.

- Lease Facility Back to the Government

Once the facility is completed, it will be leased to back to the government, which will pay a lease to the non-profit organization or authority from revenue or appropriations.

- Collect Lease Payments from Government and Distribute to the Bond Holders

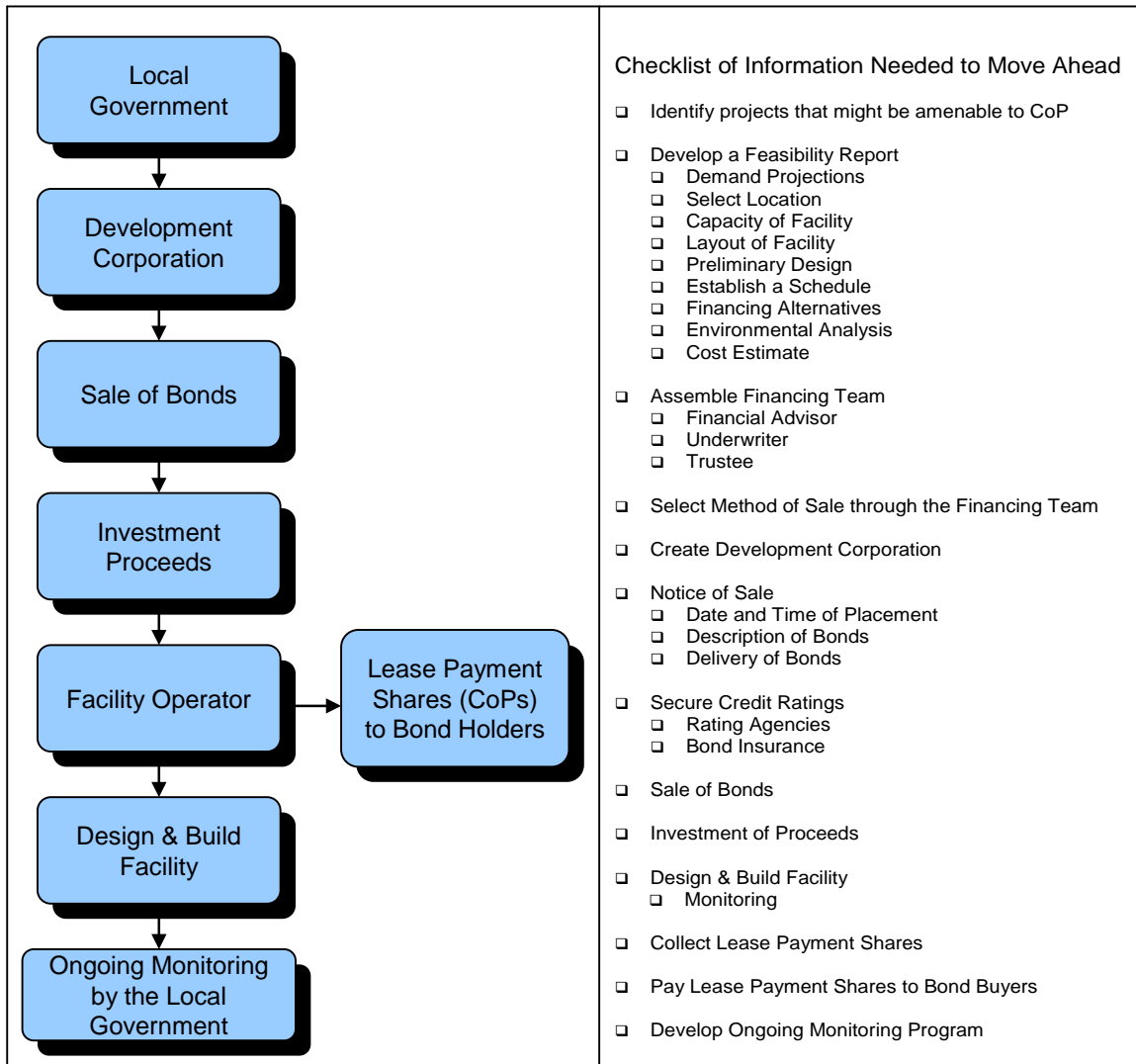
The financial and legal team under the non-profit organization or authority will manage the lease revenue from the government to pay the CoP holders their shares of the lease payments. It will typically assign a Trustee to make direct payments to the CoP holders. When the CoPs reach maturity, the facility ownership reverts to the government and the non-profit organization or authority can be disbanded.

Exhibit 4.1.3 depicts the procedure for accessing the CoP option:

Exhibit 4.1.3: Certificates of Participation

Certificates of Participation

A CoP is a form of revenue bond in which the government agrees to pay a fixed amount to the lessor in exchange for use of the facility



4.2 FEDERAL/STATE GRANT AND LOAN PROGRAMS

There are several federal and state grant and loan programs which assist state and local municipalities and counties to build and improve detention facilities.

Cooperative Agreement Program

The Cooperative Agreement Program (CAP) of the DOJ is an agreement program between the USMS and state and local jail and prison facilities intended to provide federal funds to improve local facilities in exchange for a guarantee of bed space for federal detainees.²¹ In locations where bed space near federal courts is insufficient to house federal detainees, the USMS will pay a grant to a near-by facility in exchange for an agreed number of detainee bed spaces for a fixed amount of time at a per-diem rate. The funding may only be used towards the improvement of the facilities or the construction of new bed spaces. The length of DOJ CAP agreements varies depending on the needs of the USMS and the type of facility. However, for any agreed-upon cost in excess of \$25,000 per bed space, the length of the DOJ CAP agreements cannot be less than 15 years.

DOJ CAP funding, if appropriated by the Congress, is contained within the DOJ, and is then transferred to the OFDT. The OFDT then transfers it to the USMS, which creates a list of federal court cities in need of beds. When DOJ CAP disbursements are approved by the Congress, the USMS Prison Operations Division (POD) evaluates the locations with the most immediate needs. The specific indicators to determine the areas in which bed space is deficient are:²²

1. The results of annual detention status surveys completed by the USMS District offices for each federal court city;
2. Whether a reported shortfall in the number of required detention bed spaces is historically continuous and not based on a temporary spike in detainee population;
3. If there is an alternative, more economical way to meet bed space needs;
4. Whether BOP facilities in the federal court city area have space for USMS detainees;
5. Whether existing facilities in the area could be more efficiently utilized with an IGA or by expanding an existing IGA;
6. Whether existing DOJ CAP agreements could be expanded to provide bed spaces.

The USMS then identifies the projects that are eligible for the DOJ CAP. In order to improve the likelihood of being selected for the DOJ CAP, state and local governments should take the following steps:

- Review DOJ CAP Requirements

State and local governments wishing to receive DOJ CAP funding should review the minimum basic requirements for the program²³. While state and local governments cannot directly apply for DOJ CAP funding, having a clear understanding of facility cost estimates,

²¹ The Federal Government offers other CAPs through a variety of agencies. See Section 6.2 for details.

²² The United States Department of Justice, Office of the Inspector General, Audit Division. "The United States Marshals Service's Cooperative Agreement Program: Audit Report." June 2005

²³ This information is in the CAP application and can be obtained from the U.S. Marshals' Service.

bed space availability and proposed expansion or improvements can help during the application process.

- Seek Legal Counsel

State and local governments that are notified that they qualify for DOJ JCAP funds should seek competent legal counsel to assist in completing the application.

- Submit Application

The DOJ CAP application is a standard application to obtain budget information as well as assurances that the state or local government will comply with all federal statutes and contractual obligations set forth in a DOJ CAP agreement signed by the parties.²⁴ As noted, this should be completed with the help of legal counsel.

- Negotiate terms with USMS

Once the application is accepted, the local government may want to negotiate the number of bed spaces, the per-diem rate, and the length of the agreement with the USMS.

- Develop Monitoring Plan for CAP Funds

The local government should develop a monitoring plan for the construction and improvement of detention facilities. Misuse of DOJ CAP funds by state or local governments may result in the termination of the CAP Agreement. Additionally during the operation phase, recipients should set up an ongoing monitoring system to guarantee that the operation of the facility is performed according to government standards.

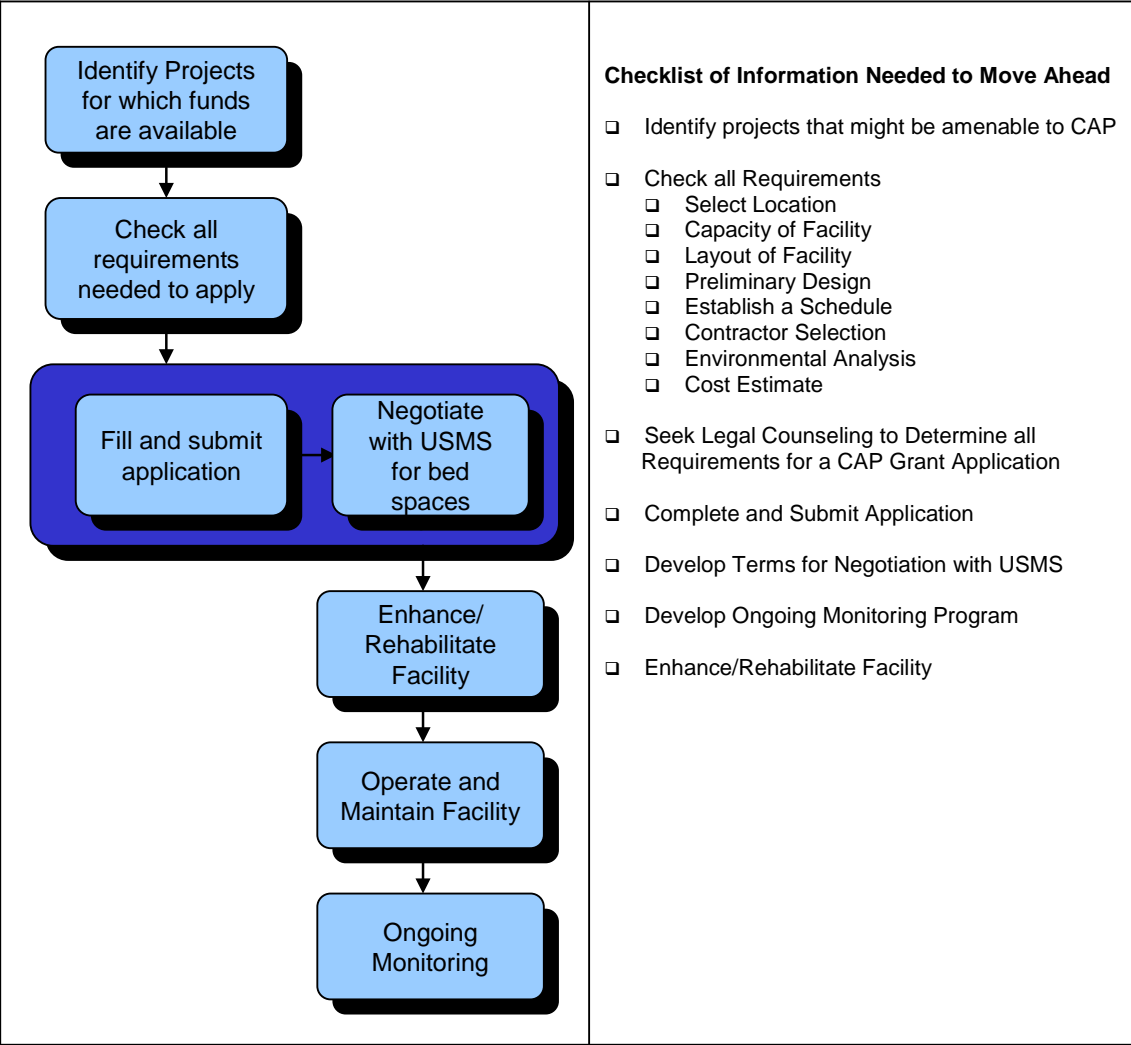
Exhibit 4.2.1 below shows a description of how DOJ CAP funds are distributed:

²⁴ OMB Circular No. A-102(1)(b)(1).

Exhibit 4.2.1: DOJ’s Cooperative Agreement Program

Cooperative Agreement Program

The USMS CAP can pay a grant to the local jail or prison facility in exchange for an agreed number of bed spaces at a fixed rate. The funding can only be used to improve existing bed spaces or for the creation of new ones.



State Grant and Loan Programs for Detention Facility Construction

The types and availability of state funding for facilities vary greatly. Some states allow local jurisdictions to compete for construction grants, while others establish programs for the counties to access based on certain criteria. Some programs require that the grantee supply matching funds. Typically, these funds are managed by the State's Department of Corrections or at the county and local levels.

States can provide grants and loans to build or expand a jail. There are specific requirements that need to be satisfied in order to obtain them. Local governments should check with their states to determine what these requirements are. The difference between the two is that the principal of the loans needs to be paid back to the state along with interest that can vary depending on the particular government and interest rate. A grant does not need to be repaid, but it requires some level of reporting and may carry some terms or restrictions.

The size of the state programs can be quite large. For example, the Governor of California in May 2007 signed a bill appropriating \$1.2 billion in jail construction funding through lease-revenue bonds. The state's corrections agency, the Corrections Standards Authority (CSA), will administer the funds using a competitive Request for Proposals (RFP) process.²⁵

State governments identify the projects that are eligible for grant and loan funding. To improve the likelihood of being selected for this funding, communities should take the following steps:

- **Develop a Feasibility Study**

As described in Section 3, a feasibility study involves a variety of tasks that help the state governments understand the financial fundamentals of the project. Details about the facility, and cost estimates, as well as an environmental assessment, can help state governments understand whether the overall project is appropriate to receive state funding.

- **Seek Legal Counsel**

Legal counsel can help state and local governments check legal requirements and complete applications.

- **Negotiations with USMS**

If the facility is to be used to house USMS detainees, then the facility owner should negotiate the details with the USMS (via the OFDT).

- **Submit Application**

State grant and loan program applications will vary from state-to-state; however, most will contain standard legal and financial guarantees that should be reviewed with legal counsel.

²⁵ See http://info.sen.ca.gov/pub/07-08/bill/asm/ab_0851-0900/ab_900_bill_20070427_enrolled.html

- Investment of Grant or Loan to Build/Expand the Facility

Following acceptance of the application, governments must use the proceeds to build or expand the facility specified.

- Development of Monitoring Plan for the Investment

During the design and build phases, governments should develop monitoring plans to ensure that the construction and/or improvement of the facility is performed according to the scope and standards outlined in the feasibility study and financial analysis. Additionally during the operation phase, governments will try to set up an ongoing monitoring system to guarantee that the operation of the facility is performed according to government standards.

Exhibits 4.2.2 and 4.2.3 show descriptions of the typical processes for securing state grant and loan funding:

Exhibit 4.2.2: State Grant Programs

Grants

A Grant is funding for a project that does not need to be paid back to the local/state government

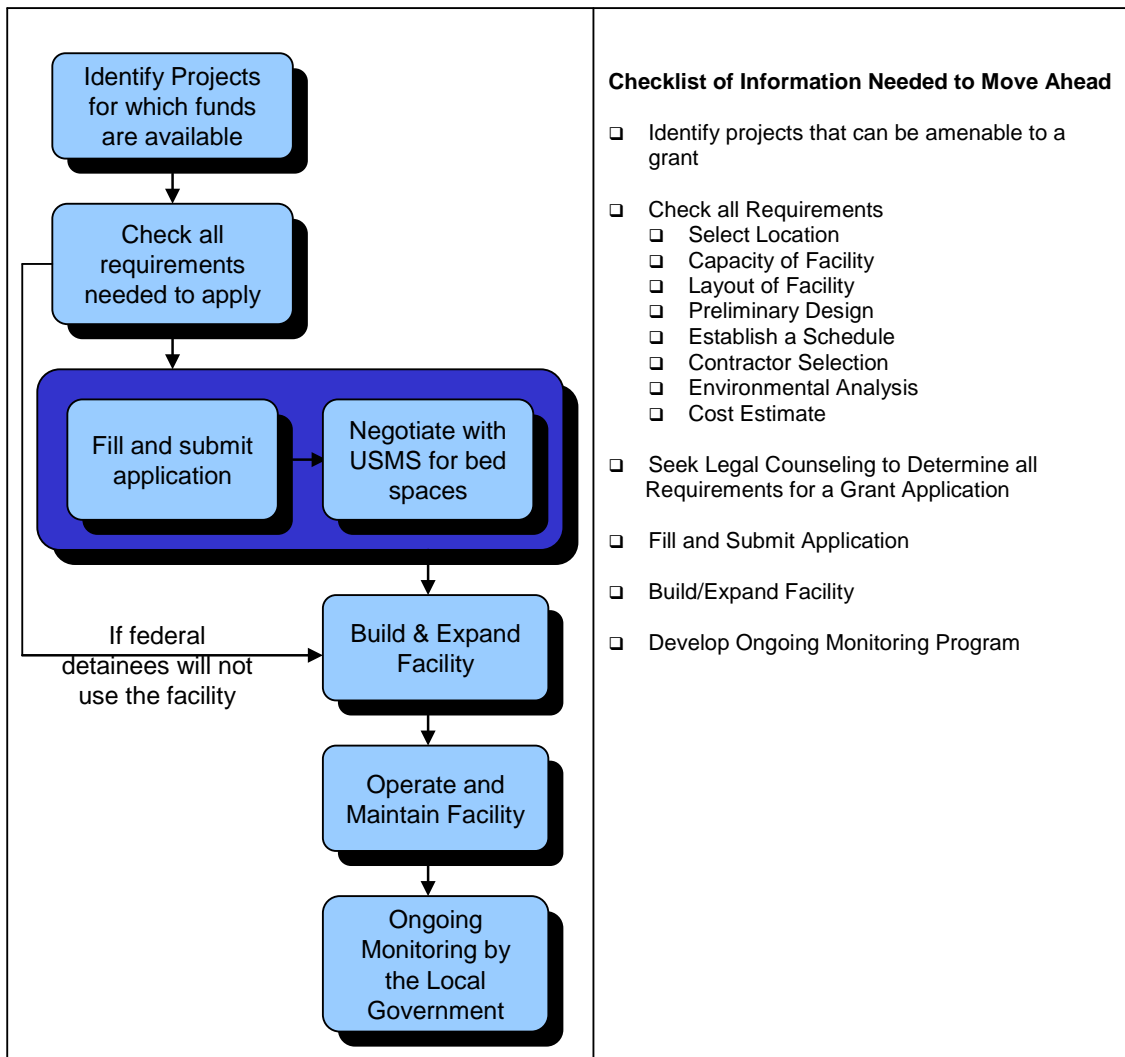
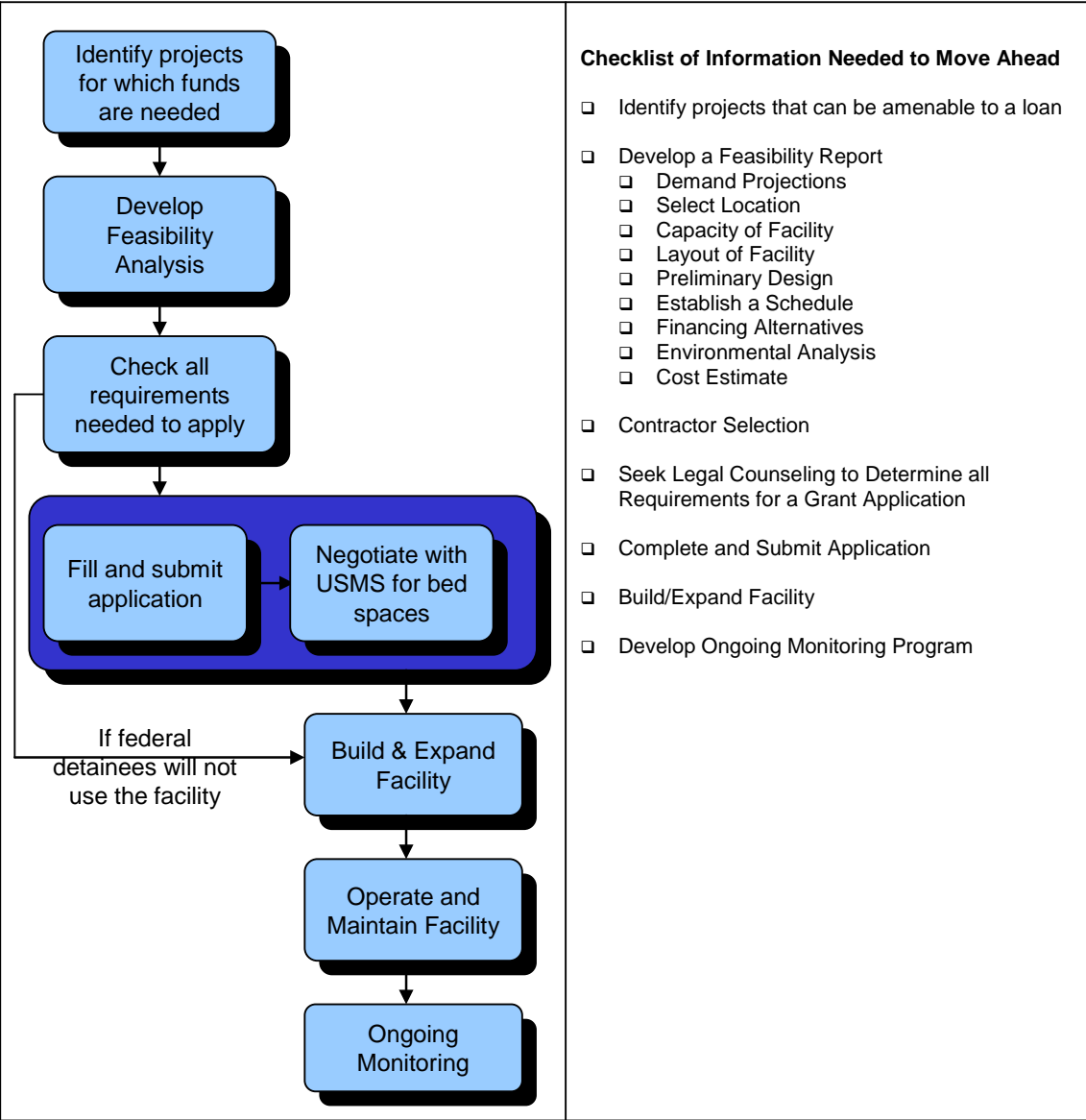


Exhibit 4.2.3: State Loan Programs

Loans

A State Loan is a financing vehicle from the federal government at favorable terms to the state and local governments. Facilities obtain a loan from the state government to build or expand.



4.3 PRIVATE FINANCING OPTIONS

In addition to public financing mechanisms, in recent years, state, county, and local governments have increasingly utilized private financing to help build and expand facilities. While still rare for jail construction, private financing has the advantage of being more flexible and often more expedient than public financing options.

Private Bank Loans

State, county, and local governments can approach private commercial banks for debt financing through loans. Like other business ventures, state and local governments are required to provide business plans and financial information in order to take out such loans. Also, like other business ventures, the risk of the project will affect the interest rate and the terms of the loan agreement. In some states, business ventures made of loans/private financing are not allowable under the law. Additionally, this approach can create complex problems.

When applying for a private bank loan, communities should take the following steps:

- Develop a Feasibility Study

As described in Section 3, a feasibility study involves a variety of tasks that help the state government understand the financial fundamentals of the project. Details about the facility and cost estimates can help commercial banks understand whether the overall project is appropriate to receive commercial funding.

- Develop a Working Relationship with the Bank

Like other ventures, state and local governments should begin working relationships with commercial banks once they think commercial loans are a viable source of financing.

- Seek Legal Counsel

Legal counsel can help state and local governments check legal requirements and complete applications.

- Submit Application

Submit the necessary documents required by the financing institution.

- Investment of Grant or Loan to Build/Expand the Facility

Following acceptance of the application, governments must use the proceeds to build or expand the facility specified.

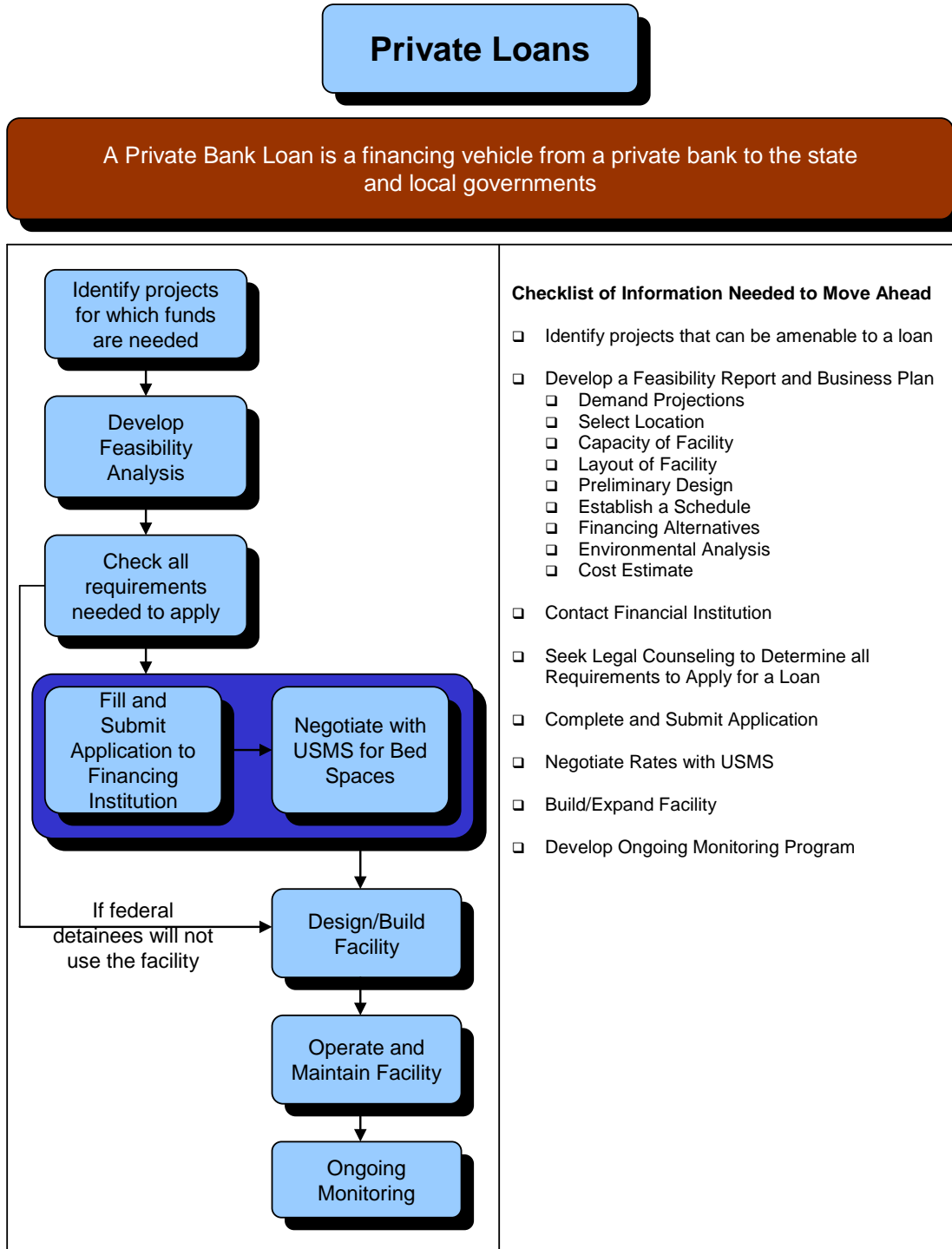
- Development of Monitoring Plan for the Investment

During the design and build phases, governments should develop monitoring plans to ensure that the construction and/or improvement of the facility is performed according to the scope

and standards outlined in the feasibility study and financial analysis. Additionally during the operation phase, governments should try to set up an ongoing monitoring system to guarantee that the operation of the facility is performed according to government standards.

Exhibit 4.3.1 shows the typical process for securing a private loan.

Exhibit 4.3.1: Private Loans



Case Study: Grady County Private Financing

Grady County Jail Facility

Grady County, Oklahoma, is a community of approximately 49,300 people located between Oklahoma City and Lawton. In 1977, Grady County placed an initiative on the ballot to institute a half cent sales tax to fund payments for general obligation bonds to build a new fairground, water treatment facility and jail facility. The county's existing jail facility was old and only held approximately 70 minimum security county inmates. Under this initiative, a new facility would be built within walking distance of the old one to house additional inmates and detainees for county, state and federal agencies. The initiative failed, due in part to a lack of public information about the proposed facility. In addition, there seemed to be some public confusion about why a new fairground, water treatment facility and a jail were bundled together in the same initiative.

However, the county was not deterred after the initial failure to secure voter approval. The old jail facility was in disrepair and was not sufficient to meet demand for county inmates. Therefore, in 1999, the Grady County Industrial Authority issued approximately \$12.6 million in revenue bonds, which did not need voter approval. A second issue of \$4.5 million was offered in 2001 when construction costs exceeded projections. Bond payments were expected to be repaid with revenue generated from leasing beds to county, state, and federal agencies.

In 2001, the facility was transferred to the Grady County Jail Authority. However, cost overruns continued to plague the construction and the facility opened that year with its 4th floor, unfinished (it exists, but cannot hold inmates or detainees). This meant that the facility could house only 224 inmates out of a proposed 457. Without a functional 4th floor, the jail could only collect a limited amount of revenue.

To make matters worse, the projected revenues were unrealistic. The developer's feasibility analysis stated that the jail would receive \$85 per day for federal detainees. Instead they received a rate of \$33.60 per day when the jail opened. In 2005, they renegotiated the rate up to \$47 per day which helped, but still fell short of projections. In addition the county agreed to pay the facility \$600,000 per year to house approximately 110 of its inmates. That amount only covers approximately 5 1/2 months of costs of county inmates.

Recognizing that there was a shortfall, the County went back to the voters in 2002 asking for a half cent tax increase. The voters rejected the increase. By 2003, the prison wasn't taking in enough prisoners at high prices to make the required payments to bondholders.

In order to avoid default on its bond payments, the facility appropriated surplus revenue from the Grady County Housing Authority as well as revenue from the Oklahoma Department of Corrections. While these funds rescued the facility from default, the Sheriff's Office and the Jail Authority recognized that it was in serious financial trouble. Facility officials concluded that the completion of the 4th floor, with its capacity to hold an additional 234 inmates and detainees could bring in enough revenue from local, state and federal contracts to make the facility completely self-sustaining.

Securing Additional Financing for the 4th Floor

In 2004, facility officials applied for Rural Development Loan funds from the U.S. Department of Agriculture (USDA) to secure funding for the 4th floor expansion. Although the USDA worked closely with officials, the facility was unable to secure the loan because of prior insurance issues regarding the bonds. The bonds were initially insured, but the insurance company pulled its coverage in mid-2004 when it decided that it would no longer provide insurance in the state of Oklahoma.

With few other public options, officials began a dialogue with a consortium of private banks in the area. After two separate financial analyses, facility officials were able to secure a \$3.3 million short term loan from the consortium to complete the 4th floor. They plan to pay the debt with the revenue stream generated from the additional 234 beds on that floor. Officials indicate that of the financing options they tried, the private sector option was the most simple and straightforward to secure.

Cost Saving Strategies

Moreover, officials have devised a strategy to save additional money by hiring contractors for some services. Although the county cannot contract outside operations because of statutory restrictions on having a private operator at a certain distance from a school, they have decided to contract-out meal services. Not only does this provide cost savings, but it will also cover voluntary, faith-based meal requirements for inmates and detainees. In addition, the company contracted to provide the meals has agreed to hire existing meal service employees, maintaining the jobs already created by the facility.

4.4 PUBLIC-PRIVATE PARTNERSHIPS

Public-Private Partnerships (PPP) are contracts between governments and private entities to provide the public sector infrastructure, facilities, or services for a specified term. PPP generally involve the shift of some financial risk and responsibility to the private sector. These partnerships attempt to optimize the efficiency and effectiveness of products and services by leveraging the operational strengths of the private sector. In particular, governments may want to consider PPPs if:

- 1) The jurisdiction does not have the financial capabilities of completing the project;
- 2) The quality of the project or the service would benefit;
- 3) Having a private partner would complete the facility sooner (especially in the case of time constraints);
- 4) The legal framework is conducive to private sector involvement (in particular, no prohibitions of private involvement); and,
- 5) Citizens favor private sector involvement.

State and local governments sometimes face opposition from the public or interagency opposition to proposed PPPs. Some state or local entities or organizations may fear a decline in the quality of

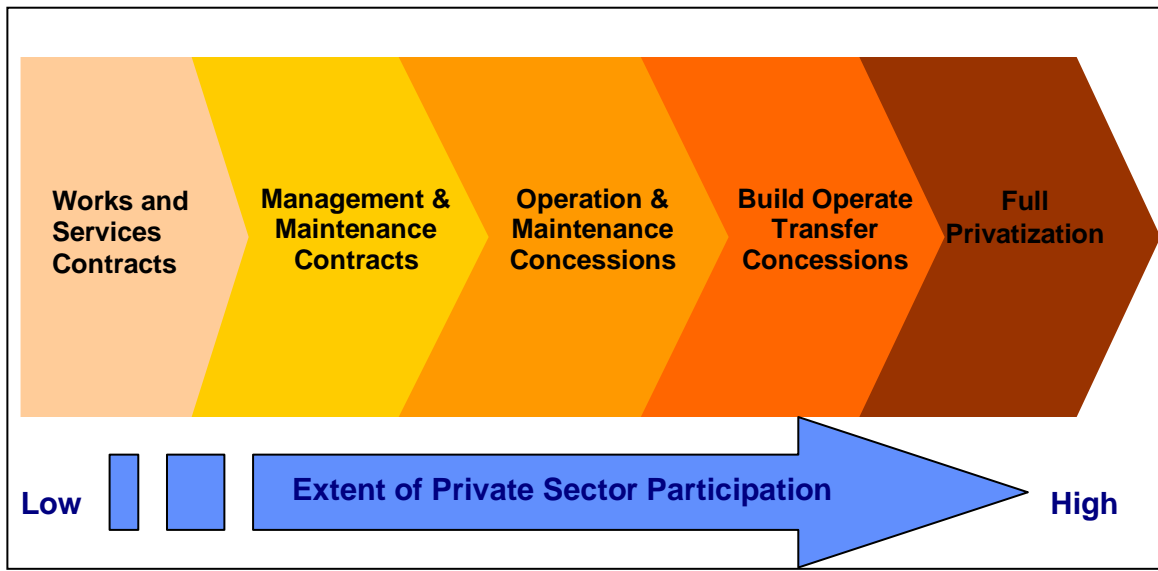
services rendered. There may also be resistance from unions, which fear job losses. For this reason, it is important to perform a feasibility study that involves a true cost assessment and cost-benefit analysis. This includes assessing the true cost of building the facility and operating it, as well as the loss of control that would follow. The benefits should also be analyzed, including non-market benefits like the transfer of risk.

State and local governments also should keep in mind that the private sector is interested in projects with revenue generating capabilities, project viability, and strong local government support. This means that such a governmental entity must offer an attractive proposition to the private sector.

The roles of the private sector can vary depending on the projects, but it is ultimately the government’s responsibility to ensure the integrity of jail/prison facilities. In writing contracts with private firms, state and local governments must try to balance their obligations to protect and provide for the social welfare with the firms need to run its operations efficiently and effectively. If a government imposes too few regulations, the firm may have an incentive to act contrary to the government’s interest; conversely, if it imposes too many regulations, it may be too costly for the firm to operate.

As Exhibit 4.4.1 shows, private firms operate under various types of contractual arrangements with the public sector with varying degrees of private sector involvement. The left-hand side of the exhibit denotes full public ownership, with limited private sector involvement, while the right-hand side denotes full private ownership. The type of contract and partnership is described in detail below.

Exhibit 4.4.1: Public-Private Partnerships



Works and Services Contracts

A works and services contract is a public standard contract with a private firm to design, build, and maintain a public facility which is operated by a state or local government. All revenues and

expenses are the responsibility of the public sector. It is a fixed-term contract and does not bear any risk by the private sector. Once the contract is completed, the firm does not have any interest or duties in the ownership or the operation of the facility.

The state or local government identifies the projects that are eligible for works and services contracts. In order to effectively issue a works and services contract, a government should:

- Issue a Request for Information

State or local governments should issue a Request for Information (RFI) in order to notify potential bidders of the available contract. The RFI outlines the potential terms of the contract and the rules for proposal submission. The RFI also provides the private sector with an opportunity to comment on the proposed contract.

- Issue a Request for Proposals

State or local governments should then issue a Request for Proposals (RFP). This document is more refined than the RFI and outlines technical specifications and the selection criteria for potential bidders. RFPs should also clearly define the required service and give providers a timeline for proposal submission.

- Select Private Partner and Secure Necessary Approvals

After receiving proposals, state and local governments should set up an appropriate selection process to evaluate each offer and select the best one according to the parameters in the RFP. Governments should then secure the necessary approvals to develop the contract.

- Seek Legal Counsel

Legal counsel will generally be required for contract development and/or contract negotiations with the selected firm.

- Develop a Contract Monitoring Program

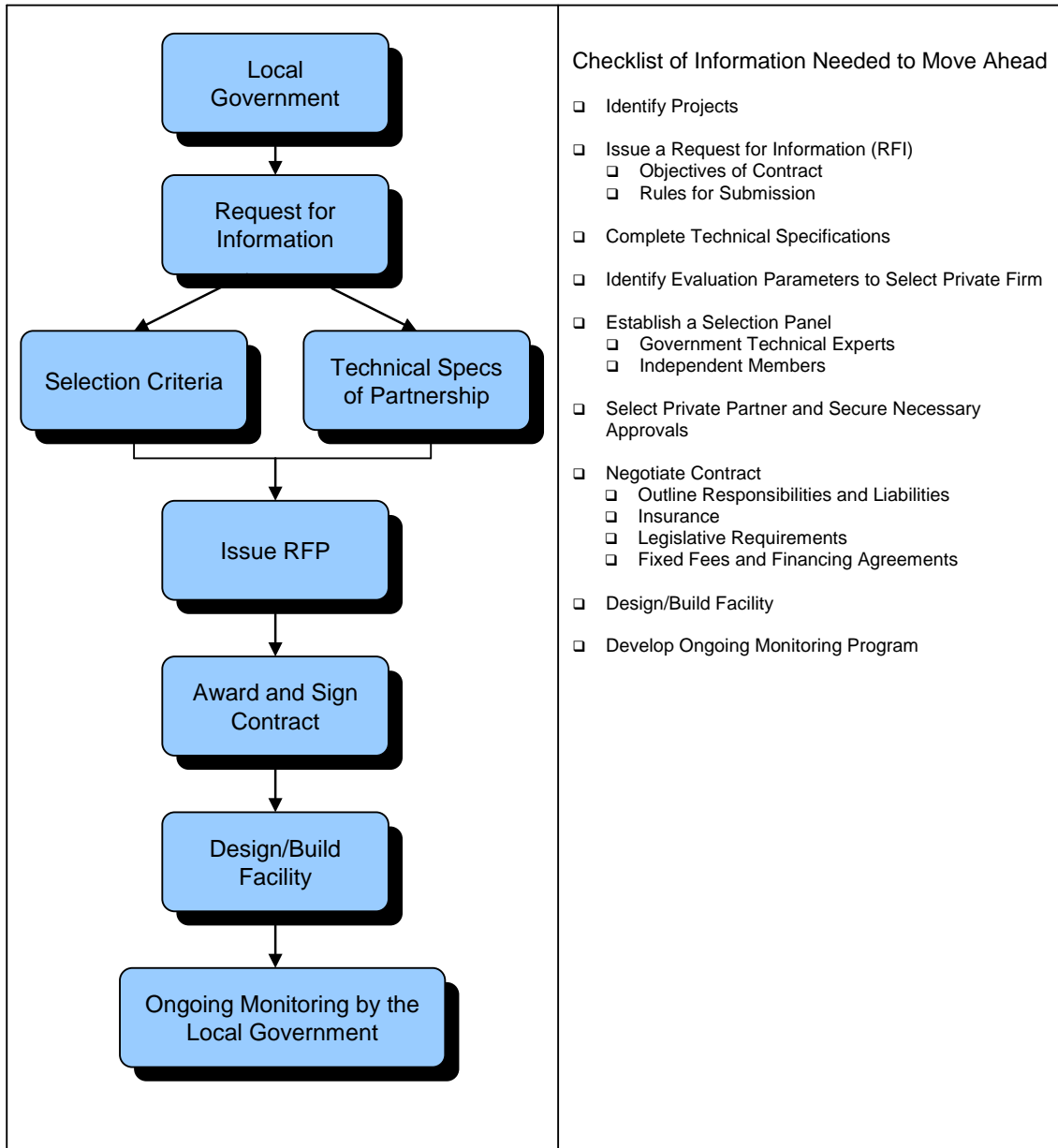
State and local governments should develop a contract monitoring program to track the correct execution of the contract. This could include the use of inspectors and quality parameters to monitor satisfactory progress by the firm.

Exhibit 4.4.2 shows a description of the typical process of securing a works and services contract:

Exhibit 4.4.2: Works and Services Contracts

Works and Service Contracts

A W&S Contract is a public standard contract with a private firm to design, build and maintain a public facility which is operated by the public sector



Management and Maintenance Contracts

A management and maintenance contract is a contract with a private firm to operate and/or maintain a publicly-owned facility and typically lasts one to five years. The public sector bears the operational risks, except for emergencies and *force majeure* (frees both parties from liability or obligation when an extraordinary event or circumstance beyond the control of the parties, such as war, strike, riot, crime, or an act of God prevents one or both parties from fulfilling their obligations under the contract). However, the longer the duration of the contract, the more the risk shifts to the private entity. The private firm has the freedom to choose the appropriate management and maintenance work methods which satisfy the quality level specified under the contract. There are three primary types of Management and Maintenance Contracts, including:

- ***Quantity Based Maintenance Contracts***

The public sector supervises maintenance and pays the private firm accordingly to maintenance performed using unit prices.

- ***Performance Contracts***

The private firm has more freedom because performance specifications are pre-defined for the duration of the contract. The private firm can utilize any reasonable methodologies or equipment to undertake the work.

- ***Management Contracts***

Operation and maintenance of the facility is contracted for a fixed fee.

States and local governments can identify the projects that are eligible for Management and Maintenance contracts. In order to effectively issue a Management and Maintenance Contract, a community should:

- **Issue a Request for Information**

State or local governments should issue a RFI in order to notify potential bidders of the available contract. The RFI outlines the potential terms of the contract and the rules for proposal submission. The RFI also provides the private sector with an opportunity to comment on the proposed contract.

- **Issue a Request for Proposals**

State or local governments should then issue a RFP. This document is more refined than the RFI and outlines technical specifications and the selection criteria for potential bidders. RFPs should also clearly define the required service needed and give providers a timeline for proposal submission.

- **Select Private Partner and Secure Necessary Approvals**

After receiving proposals, state and local governments should set up an appropriate selection process to evaluate each offer and select the best one according to the parameters in the RFP. Governments should then secure the necessary approvals to develop the contract.

- Seek Legal Counsel

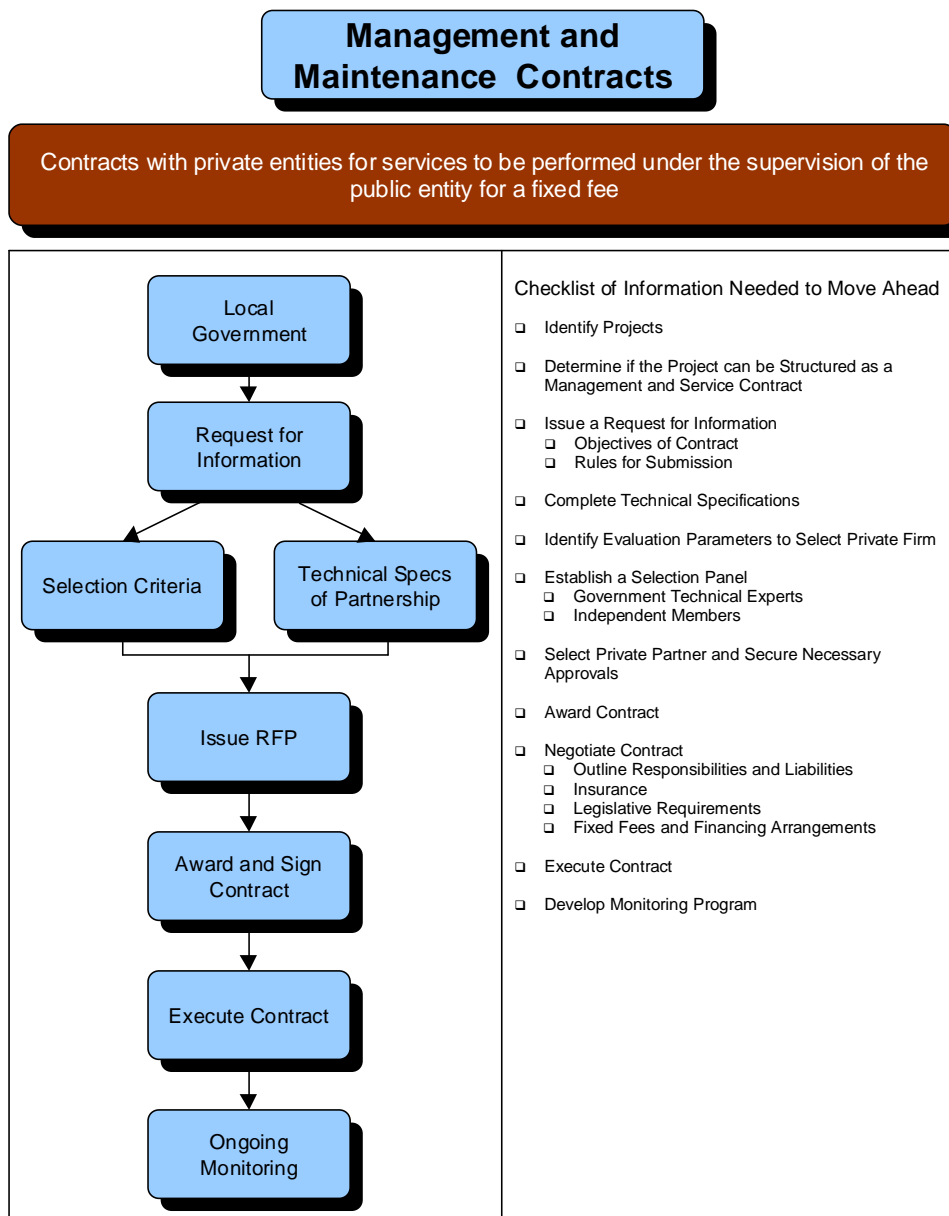
Legal counseling will generally be required for contract development and/or contract negotiations with the selected firm.

- Develop a Contract Monitoring Program

State and local governments should develop a contract monitoring program to track for the correct execution of the contract. This could include the use of inspectors and quality parameters to monitor satisfactory progress by the firm.

Exhibit 4.4.3 shows the typical process of securing a Management and Maintenance contract:

Exhibit 4.4.3: Management and Maintenance Contracts



Operation and Maintenance Concessions

Operation and maintenance concessions involve the transfer of the operation and maintenance of a detention facility to the private sector which, in turn, collects a user fee. This is a full PPP in which operational risk shifts from the government provider to the private entity. The private entity must also upgrade the facilities or infrastructure, which can result in service quality improvement for users.

This kind of PPP can be attractive to governments because of potential increased efficiency. However, the inability to respond quickly to changing demand needs and the partial loss of control in the operations can cause disadvantages.

The state or local government identifies the projects that are eligible for Operation and Maintenance Concessions. In order to effectively issue Operation and Maintenance Concessions, a community should:

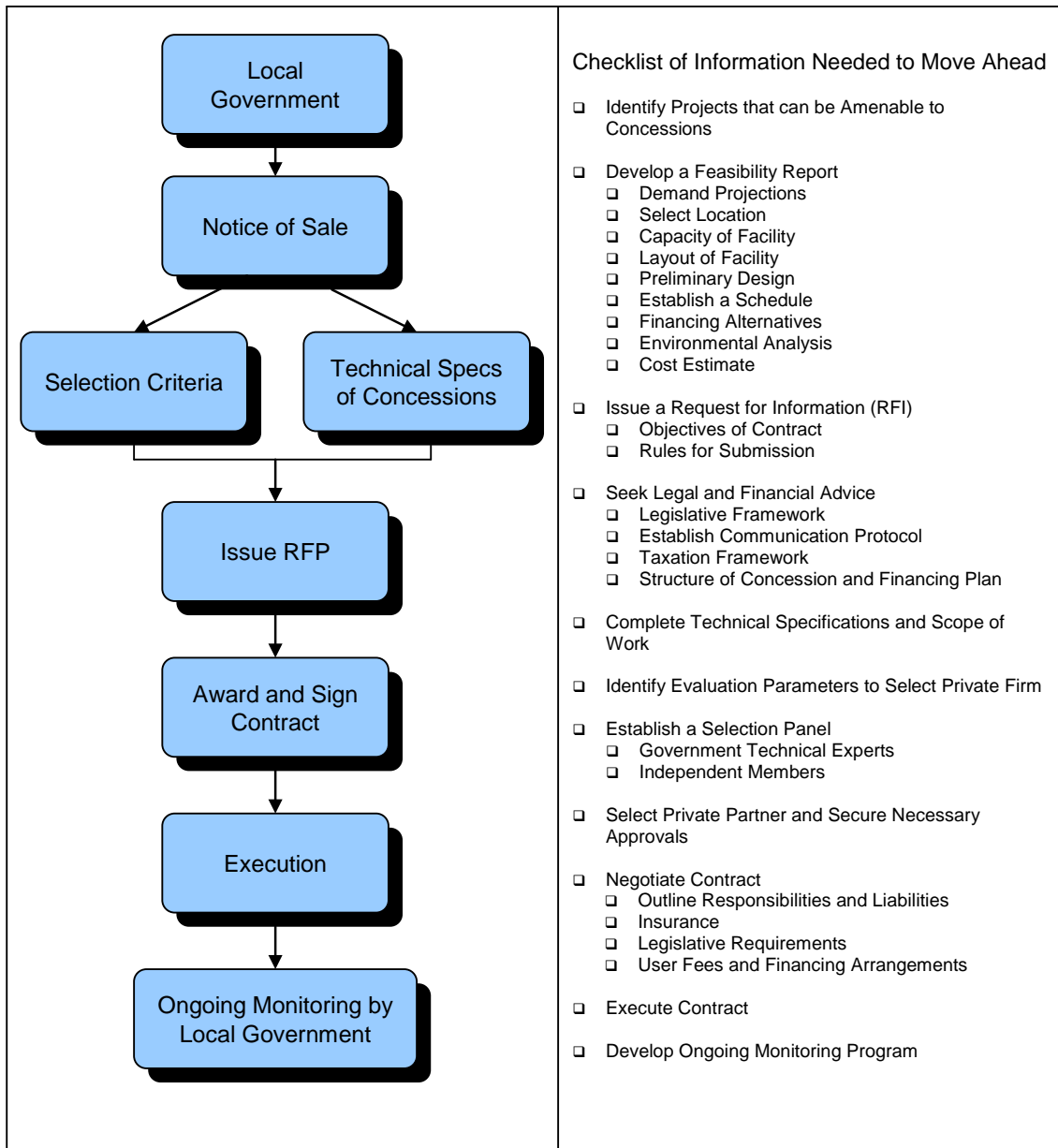
- Develop a Feasibility Study
As described in Section 3, a feasibility study involves a variety of tasks that help the state government understand the financial fundamentals of the project. Details about the facility and cost estimates, as well as an environmental assessment, can help state governments understand whether the overall project is appropriate for a public-private partnership.
- Issue a Request for Information
State or local governments should issue a RFI in order to notify potential bidders of the available contract. The RFI outlines the potential terms of the contract and the rules for proposal submission.
- Issue a Request for Proposals
State or local governments should then issue a RFP. This document is more refined than the RFI and outlines technical specifications and the selection criteria for potential bidders. RFPs should also clearly define the required service and give providers a timeline for proposal submission.
- Select Private Concessionaire and Secure Necessary Approvals
After receiving proposals, state and local governments should set up an appropriate selection process to evaluate each offer and select the best one according to the parameters in the RFP. Governments should then secure the necessary approvals to develop the contract.
- Seek Legal Counsel
Legal counsel will generally be required for contract development and/or contract negotiations with the selected firm.
- Develop a Contract Monitoring Program
State and local governments should develop a contract monitoring program to track the correct execution of the contract. This could include the use of inspectors and quality parameters to monitor satisfactory progress by the firm.

Exhibit 4.4.4 shows the typical process of securing an Operation and Maintenance Concession:

Exhibit 4.4.4: Operation and Maintenance Concessions

Operations and Maintenance Concessions

Transfer of the operation and maintenance of a detention facility to the private entity, which in turn collects a user fee



Case Study: Delaware County Public-Private Partnership

Delaware County (Later named George W. Hill Correctional) Facility Background

Delaware County is located in southeastern Pennsylvania along the Delaware River. It is adjacent to Philadelphia County and contains many of the suburbs that serve Philadelphia. By 1993, Delaware County found itself with more detainees and prisoners than its existing jail facilities could adequately house. Among its inmates at the time, 65% were detainees who were awaiting trial or sentencing and the remainder consisted primarily of non-violent offenders serving fewer than five years.

In order to find a solution to this problem, the county's Board of Prison Inspectors hired an independent consulting firm to evaluate the county's facilities and make recommendations about its future needs. The consultant found that the main building's condition had deteriorated below acceptable standards. The consultant recommended both the renovation of some existing buildings as well as the construction of new buildings for the facility.

PPP: Works and Services/Operation and Maintenance Concession Hybrid

Based on the consultant's recommendations, the Board of Prison Inspectors decided to pursue a contract with a private firm to design and operate a newly-renovated Delaware County facility. In order to achieve this, the Board requested proposals from firms, which specified that the County required one firm to handle the project from the design phase through the operation phase, rather than a consortium of firms. The Board made this decision consciously because it believed that it could take advantage of the efficiencies attained by having only one firm manage the entire project.

The Board also made sure that the contract terms specified its ultimate authority in the design and operation of the facility. Thus, the Board made it clear from the beginning that management of the facility was subject to the control and supervision of the County and the County Board. This was because the Board wanted to avoid two potential problems if it signed a contract with a private firm:

- 1) Cost increases beyond a reasonable level over the life of the contract, with no way to cancel the contract; and,
- 2) The County being unable to set the terms for safe and adequate operation of the facility.

Two firms bid on the subsequent RFP, and the firm that won (The GEO Group, Inc) offered the lowest operating cost. For the first part of the project, The GEO Group worked with the County to design a facility that would fit both the County's needs and the firm's interest in terms of efficiency. In the second phase, GEO Group managed and supervised the construction and renovation of the facility. The GEO Group itself did not invest the money to construct the facility. Instead, the County issued general obligation bonds to finance the facility and released a RFP for construction services (the bonds are financed by the county's capital budget). Thus, the County contracted directly with the construction firm, but placed it under the direct supervision of the winning design and operations firm. Under this arrangement, the facility, holding 1,382 inmates, was completed on time and under budget at a total cost \$55.84 million.

The GEO Group also began operations under an operation and maintenance type concession. The County mandated that the firm offer basic social services, such as education programs, recreation & exercise programs, a library, and a small grocery store.

The contract also required the operator to meet or exceed regulations set by the National Commission on Correctional Health Care. To date, The GEO Group has been accredited twice by the Commission. Accreditation is granted after a process of on-site inspection and auditing conducted by both the operator and the Commission. If the operator fails to comply or fails to gain accreditation, it could face termination of the contract.

George W. Hill Correctional Facility Today

Delaware County continues its daily functional service contract with The GEO Group to manage the Delaware County Jail (later renamed George W. Hill Correctional Facility). The facility is currently responsible for the secure confinement of pre-trial detainees and persons serving a county sentence of two years less one day or a state sentence of five years less one day. In 2005, the prison maintained a daily average population of 1,817 residents.

The County actively engages with The GEO Group through: 1) daily operational reports; 2) weekly security meetings and weekly reports covering anything from medical and security issues to daily and contractual issues; 3) monthly staff meetings and monthly reports covering staffing issues, wastewater issues, and sewerage issues, and, 4) serious incident reports covering assaults, use of force and weapons, and contraband found on the premises.

The facility has achieved the following certifications and awards:

- ❖ Certification by the American Correctional Association;
- ❖ Certification by the American Medical Association as a Health Care Facility;
- ❖ Received an Excellent rating from the Pennsylvania Department of Corrections;
- ❖ Received an Excellent rating from the Federal Bureau of Prisons;
- ❖ The K-9 unit continues to gain recognition through the United States Police Canine Association.

Sources: Interviews with Delaware County officials and
<http://www.co.delaware.pa.us/depts/prison.html>

Build-Operate-Transfer (BOT)

Under a build-operate-transfer PPP, private firms finance, build, and operate the facility but the facility is owned by the government and will return to its owner at the end of a fixed-term lease. The private firm also collects user fees as a partial return on the investment.

The public sector maintains ownership of the asset, meaning that it continues to control the service standards, the user fees charged, and maintenance. The government has the ability to terminate agreements if the service or performance levels are below standard. This type of PPP could also bring operational savings if the private entity develops efficient ways to operate the facility, in addition to savings on the build and design components.

The government identifies the projects that are eligible for BOT and the following checklist must be followed:

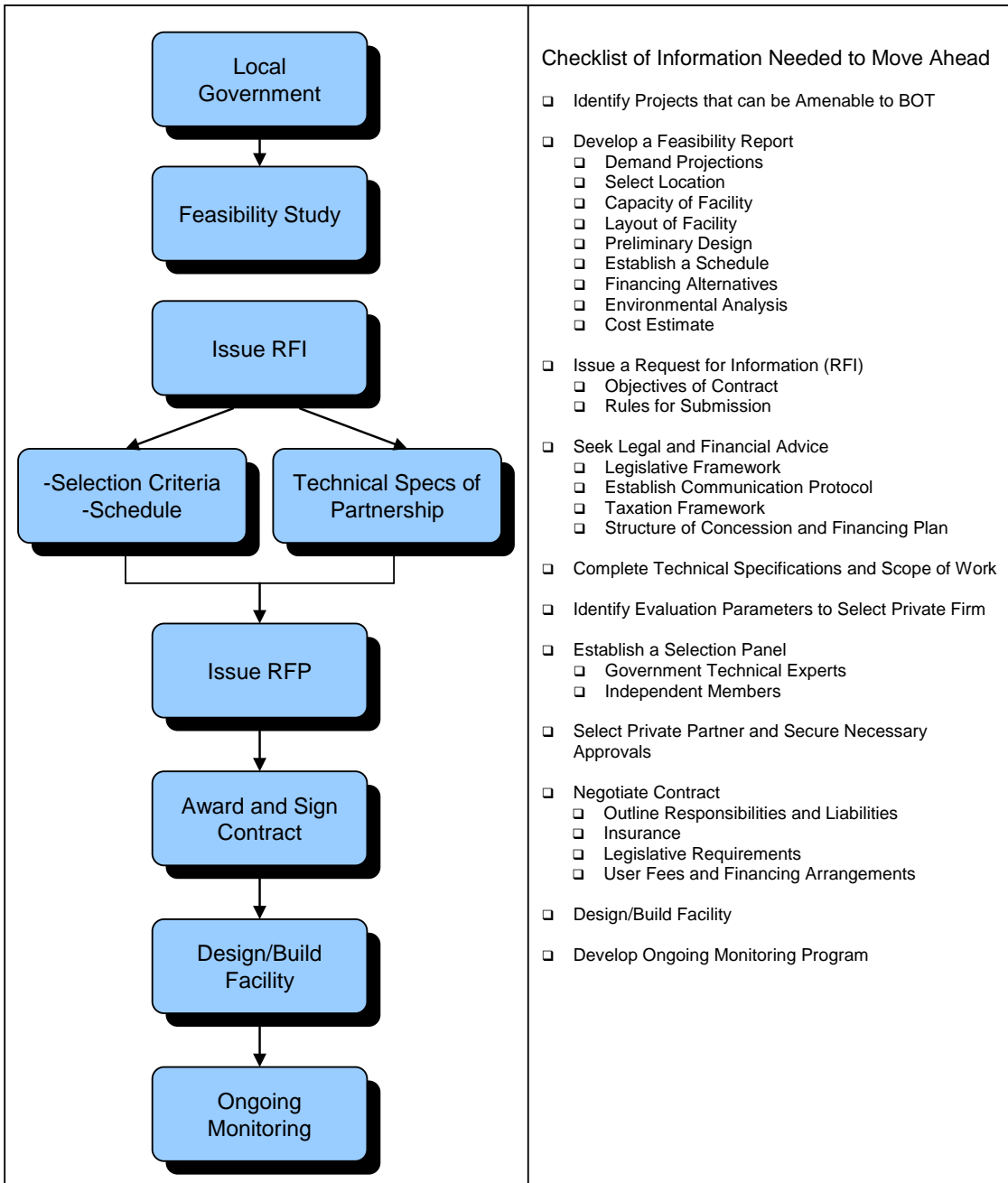
- **Develop a Feasibility Study**
As described in Section 3, a feasibility study involves a variety of tasks that help the state government understand the financial fundamentals of the project. Details about the facility and cost estimates, as well as an environmental assessment, can help state governments understand whether the overall project is appropriate for a public-private partnership.
- **Issue a Request for Information**
State or local governments should issue an RFI in order to notify potential bidders of the available contract. The RFI outlines the potential terms of the contract and the rules for proposal submission.
- **Issue a Request for Proposals**
State or local governments should then issue a RFP. This document is more refined than the RFI and outlines technical specifications and the selection criteria for potential bidders. RFPs should also clearly define the required service needed and give providers a timeline for proposal submission.
- **Select Private Concessionaire and Secure Necessary Approvals**
After receiving proposals, state and local governments should set up an appropriate selection process to evaluate each offer and select the best one according to the parameters in the RFP. Governments should then secure the necessary approvals to develop the contract.
- **Seek Legal Counsel**
Legal counsel will generally be required for contract development and/or contract negotiations with the selected firm.
- **Develop a Contract Monitoring Program**
State and local governments should develop a contract monitoring program to track the correct execution of the contract. This could include the use of inspectors and quality parameters to monitor satisfactory progress by the firm.

Exhibit 4.4.5 shows a description of the typical process of securing a BOT:

Exhibit 4.4.5: Build-Operate-Transfer

Build-Operate-Transfer

Private firms finance, build and operate the local detention facility, but the facility is owned by the local/state government and will return to the owner at the end of the lease. The private entity also collects a user fee.



Full Privatization

Some state and local governments are trying to transfer their role from financiers and operators of jails and prisons to facilitators and regulators of jail and prison services provided by private firms. This can lower the government risk liability, while still providing a needed service. Private firms independently own and operate the jails and contract directly with local, state, and federal government for bed space. They generate their revenue from these contracts. Local, state, and federal government may write performance provisions into their contracts, but financing and operational risk is allocated to the private sector.

In addition, private firms have less financing constraints than state and local governments. Many firms can raise substantial amounts of capital fairly quickly through capital markets and commercial banks.

Many private firms have also formed REITs (Real Estate Investment Trusts) to raise investment capital for prison and detention facilities. A REIT is a corporation that holds and manages real estate in compliance with federal tax rules that allow it to distribute income to its shareholders without paying corporate income tax levels. REITs must distribute 95 percent of their profits to shareholders in the form of dividends. These characteristics make REITs attractive to investors who are willing to pay a relatively higher price for them. REITs are considered securities that sell like stocks on the major exchanges and invest in real estate directly, either through equity or through mortgages.²⁶

As full privatization denotes, private firms make their own siting and financing decisions based on their analysis of where a facility would be most profitable. However, state and local governments interested in attracting a private firm to own and operate a facility in their area can take the following steps:

- **Develop a Feasibility Study**
As described in Section 3, a feasibility study involves a variety of tasks that help the state government understand the financial fundamentals of the project. Details about the facility and cost estimates, as well as an environmental assessment, can help state governments understand whether the overall project is appropriate for a public-private partnership.
- **Issue a Request for Information**
State or local governments should issue a RFI in order to notify potential bidders of the available contract. The RFI outlines the potential terms of the contract and the rules for proposal submission.
- **Issue a Request for Proposals**
State or local governments should then issue a RFP. This document is more refined than the RFI and outlines technical specifications and the selection criteria for potential bidders. RFPs should also clearly define the required service and give providers a timeline for proposal submission.

²⁶ Brown & Wood, LLP. "Alternatives for Financing Prison Facilities." Brown & Wood, LLP, 1999.

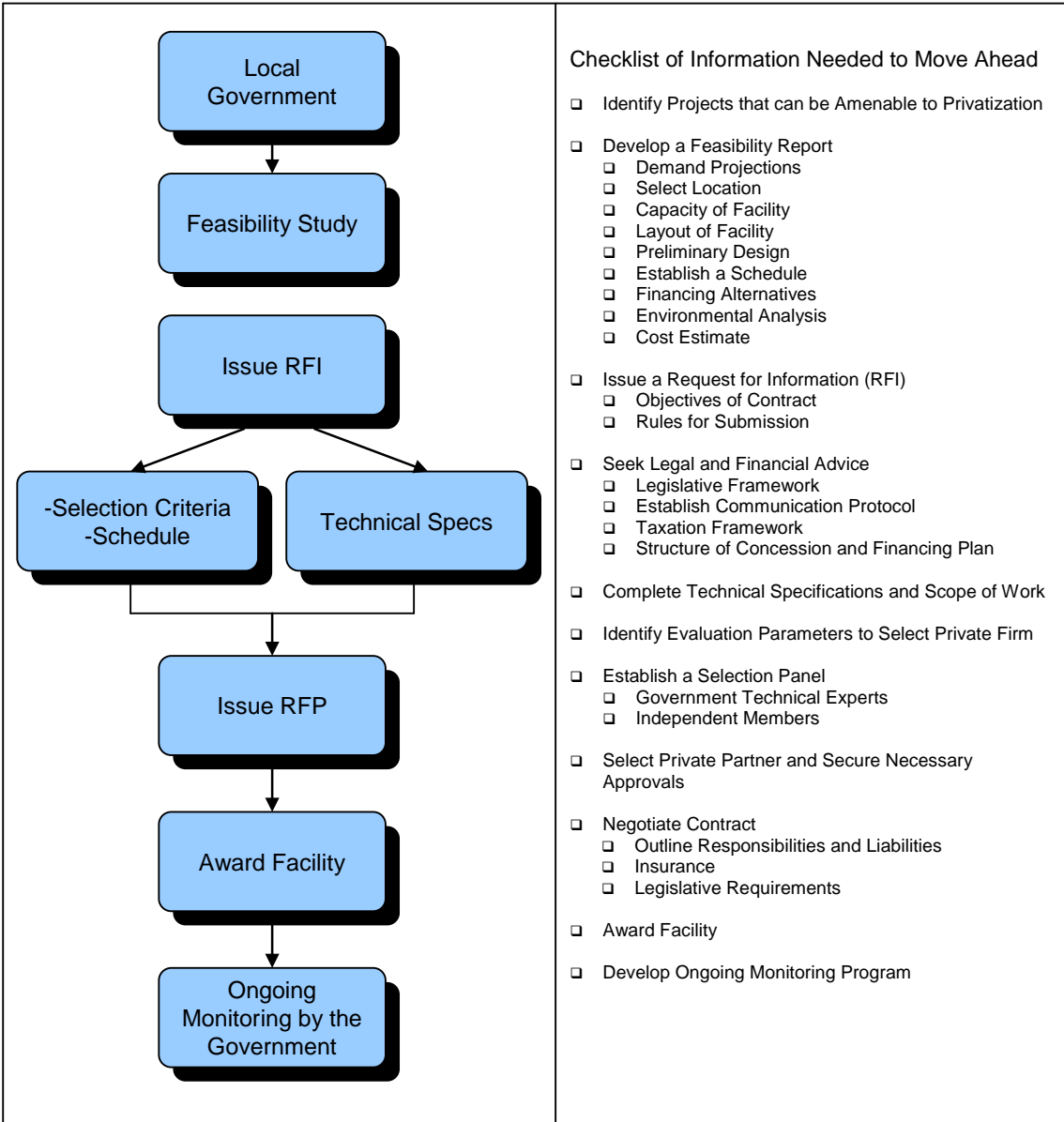
- Develop a Working Relationship with the Firms
From the outset, state and local governments should begin working relationships with private firms if they think a firm may want to locate in their area. This will help both the firm and the government understand their options and obligations.
- Select Private Firm and Secure Necessary Approvals
After receiving proposals, state and local governments should set up an appropriate selection process to evaluate each offer and select the best one according to the parameters in the RFP. Governments should then secure the necessary approvals to develop the contract.
- Seek Legal Counsel
Legal counsel will generally be required for contract development and/or contract negotiations with the selected firm.
- Develop a Contract Monitoring Program
State and local governments should develop a contract monitoring program to track the correct execution of the contract. This could include the use of inspectors and quality parameters to monitor satisfactory progress by the firm.

Exhibit 4.4.6 shows the typical process for privatization.

Exhibit 4.4.6: Full Privatization

Privatization

Private firms own, finance, build and operate the local detention facility.



4.5 CHOOSING FINANCING OPTIONS

The choice between public and private financing depends on a variety of characteristics unique to each state and local government. Before choosing any of these financing options, a government should review how it delivers all services, finances projects, and builds infrastructure. If a local government has consistently provided efficient services to the community, there may be a resistance to private sector involvement. On the other hand, new facilities are not always seen as a service to the community in which they are located. Instead, they are seen as an economic vehicle, providing new jobs and economic linkages. In such cases, communities may not be opposed to private sector involvement.

In this way, how state and local governments deliver services, as well as how those services are perceived, influence financing options. These are, in turn, shaped by state and local laws and regulations which may make it easier or more difficult to involve the private sector. Thus, state and local officials should consider the following when choosing financing options:

- Financial Status
- Long-Term Community Objectives
- Tax Framework
- Legal Framework

The long-term objectives in terms of economic development, land use, employment, and social cohesion should all be considered when choosing a financing option. While some options may make sense economically, significant political or social opposition to any one option may have negative impacts on the community.

Individual state tax and legal frameworks can make private finance or the use of PPPs easier or more difficult, which will influence which options communities choose. In jurisdictions in which the tax and legal requirements are fairly restrictive for PPPs, there will generally be public financing.

The overall financial situation of a government will also have an impact on financing decisions. State and local governments with high levels of debt or with low credit ratings may not want to issue additional debt. The cost of borrowing should be carefully evaluated, as well as the accuracy of the projections of demand and revenue of the facility.

5. Legal and Regulatory Requirements

There are many legal and regulatory requirements that must be taken into account before a capital financing project is initiated. For instance, there are specific regulatory and legal requirements that are unique to the type of capital financing structure utilized. Additionally, federal and state laws may also impose environmental standards on capital projects.

The laws and regulations discussed in this section are only a sample of the requirements that may be imposed. This section highlights only the critical legal and regulatory requirements that should be considered when engaging in a capital project. Nothing in this section should be relied upon or construed as legal advice. **As such, prior to initiating a capital project, it is highly recommended that competent legal counsel be consulted.**

5.1 NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) PROCESS

Background

The construction of a new detention facility or the expansion of an existing facility could trigger the requirement for a Federal Environmental Review, under certain conditions. Passed in 1969, the NEPA was a landmark piece of legislation that requires environmental reviews of all *major federal actions* that could *significantly affect the environment*. The type of environmental review required can range from a relatively brief environmental assessment (EA) that is prepared to determine if the proposed project would have a significant affect on the environment to a highly detailed environmental impact statement (EIS), if the proposed federal action would result in significant impacts.

In the four decades since its passage, a large body of jurisprudence has been created that defines the roles and responsibilities for implementing NEPA as well as its scope and applicability. The Council of Environmental Quality (CEQ), which was established under Title II of NEPA has published government-wide regulations for implementing the law. These regulations are found at Parts 1500 through 1508 of Title 40 of the Code of Federal Regulations. Most federal agencies publish their own guidelines. The U.S. Department of Justice, for example, has published NEPA procedures that incorporate CEQ regulations (Part 61 of Title 28 of the Code of Federal Regulations).

Applicability of NEPA to Facility Construction and/or Expansion Projects

The key words in the NEPA legislation are “**major federal actions**” that could “**significantly affect the environment**”. Hence, privately financed projects that would be constructed on private lands, while potentially subject to a broad spectrum of other federal, state, and local environmental laws, regulations, and polices, are not required to undergo environmental reviews under NEPA. Such projects are clearly not federal actions but private actions. In addition, actions to lease existing bed space, regardless of the source of funding, would not significantly affect the environment and, therefore, not fall under the purview of NEPA.

The primary question facing a proposed detention center project as to whether NEPA is applicable is “where are the funds coming from.” Projects to construct new facilities or expand

existing ones that are funded or financed using private monies or state or local obligation bonds would not be generally considered federal actions. One potential exception would be if the proposed project were to be constructed on federal lands, which would then likely require a federal environmental review. Another possible exception is if a large share of the facility's beds are to be occupied by federal detainees.

In contrast, a proposed project receiving federal grants would likely be subject to NEPA procedures. For example, under the VOI/TIS²⁷ administered by the U.S. Department of Justice, awardees were required to comply with the environmental impact review procedures mandated by NEPA, CEQ's implementing regulations, and other federal environmental impact review requirements. Similarly, a project receiving CAP funds would potentially be under the purview of NEPA. The actual type of review is dependent on the magnitude of the project and other factors such as its proximity to sensitive physical environments or potential impact on surrounding human populations.

State NEPA and other Applicable Environmental Review Requirements

Compliance with Federal NEPA requirements might be a necessary, but not a sufficient, condition for a project to proceed to actual implementation. A large number of states, including California, Connecticut, Georgia, Hawaii, Indiana, Maryland, Massachusetts, Minnesota, Montana, Nevada, New Jersey, New York, North Carolina, Virginia, Washington, Wisconsin, as well as the District of Columbia, have enacted environmental planning and review regulations similar to NEPA. These state environmental laws and associated regulations must be consulted to determine their applicability to a proposed construction or expansion project.

In general, most states that have enacted environmental protection laws require the implementing state agency to coordinate with the federal agency to ensure compliance with both, state and federal regulations and also to reduce duplication of efforts. For example, where state environmental protection laws require the state to prepare an environmental impact statement for a capital project, most states allow for the submission of the federal EA or EIS to fulfill that requirement.

Finally, it should be noted that large capital projects often have to comply with a broad spectrum of other environmental laws and regulations, and executive orders, especially if they represent significant new sources of air or water pollution, or which would alter a sensitive environment. Applicable environmental laws and executive orders could include, among others, the following:

- Clean Air Act
- Clean Water Act
- Safe Drinking Water Act
- Federal Water Pollution Control Act
- Coastal Zone Management Act
- Endangered Species Act
- Wilderness Act
- Executive Order on Environmental Justice
- Executive Order on Floodplain Management

²⁷ VOI/TIS (Violent Offender Incarceration and Truth in Sentencing Incentive).

Although these laws and executive orders are mostly incorporated into the NEPA process, they might need to be complied with regardless of NEPA, depending on the project's characteristics and its potential impact on surrounding environmental and human resources.

5.2 LEGAL/LEGISLATIVE REQUIREMENTS FOR CERTAIN BOND TYPES

Bonds are a popular mechanism by which to finance capital projects because they are considered public securities that are given preferential tax and registration treatment.²⁸ The constitution, statute or code of a particular jurisdiction will generally set forth the procedural requirements for issuing and obtaining a bond.²⁹ The precise procedure for obtaining or issuing a bond varies substantially between jurisdictions.³⁰ Oftentimes, statutes governing bond issuance are even more nuanced depending on the type of bond at the time of issue.³¹

This section is intended to give a broad overview of various types of legislation applicable to using bonds as a method of capital financing. Bonding laws and regulations, whether state or federal, are complicated. As such, competent legal counsel should be consulted prior to engaging in any bonding transaction.

General Obligation Bonds (GOB)

General obligation bonds³² are bonds for the payment of principle and interest, which are guaranteed by the credit of the state or political subdivision.³³ A common type of municipal bond, GOBs are, by definition, governed by either state or local law.

The specific legal framework governing general obligation bonds varies substantially between jurisdictions. In general, the authority of a state entity to issue GOBs derive from a state's respective constitution and statutes.³⁴ These legal provisions generally authorize the creation of GOBs by either explicitly stating the requirements for incurring public debt, providing procedures for incurring general obligation debt, prohibiting the state legislature from creating certain liability without a public vote, or by other means.³⁵ For example, while the Minnesota state constitution authorizes its state legislature to issue revenue bonds, the state's statutes also require that the legislature satisfy the following tests: 1) the project being financed by GOBs must be publicly owned; 2) the project must be a capital expenditure; 3) the project must be for a public purpose; and, 4) the purpose for which bonds are to be issued must be clearly set forth in the law.³⁶ Other states, such as New Mexico, do not include a statutory test, but require compliance

²⁸ Under the Securities Act of 1933, bonds are permanently exempt from registration regulations typically applied to the issuance and sale of securities.

²⁹ 64 Am. Jur. 2d Public Securities and Obligations § 124

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *See* Am. Jur. 2d Public Securities and Obligations § 13

³⁴ *See* West's Ann.Cal.Const. Art. 16, § 1 (under section 1.5 of the California Constitution, the California treasury is authorized to establish a fund to issue general obligation bonds); Minn. Const. Art. XI, § 5; TX. Const., Art. 3, §49.

³⁵ This is only a general description of the Minnesota, New Mexico, and California constitutional provisions. This is not an exclusive explanation.

³⁶ Minn. Const. Art. XI, §5

with voting and maintenance requirements.³⁷ The legal framework of GOBs is further complicated by the fact that many states have promulgated statutes specific to the state agency issuing the GOB.³⁸

A state may issue general obligation bonds to finance a variety of projects, with each project governed by a different statute. For example, the Texas Constitution authorizes the Texas Higher Education Coordinating board to issue and sell general obligation bonds to finance student loans.³⁹ In other instances, if an agency engages in the construction and repair of a public facility, the Texas Constitution authorizes the Texas Public Finance Authority to issue GOBs for the acquisition or construction of a public building.⁴⁰ Likewise, the issuance of GOBs in New Mexico for capital expenditures for care facilities, public educational facilities, and other state capital expenditures are also governed by various state statutes.⁴¹

Revenue Bonds

A revenue bond is a type of bond supported by the revenue from a specific project, such as a stadium or toll bridge project. In general, any government agency that generates operating revenues and expenses can issue revenue bonds.⁴²

Revenue bonds are secured by specific collateral rather than being secured by taxes as in the case of obligations bonds. Revenue bonds are generally financed at a higher interest rate than other bonds due to the fact that the income from the project cannot be predicted with certainty. Furthermore, revenue bonds do not have a full faith and credit taxing power pledge. By nature of their design, revenue bonds are slightly riskier than other bonds because if the projects do not produce enough revenue, the bonds may default, and payments to bond holders will be deferred. As such, holders of revenue bonds will typically leverage a revenue bond against insurance in order to reallocate the potential risk of default.

Like general obligation bonds, legislation governing revenue bonds are also specific to the jurisdiction and state agency issuing the bond. Many states, such as Michigan, have enacted a revenue bond act, authorizing municipalities to issue revenue bonds for the purchase, procurement, construction, and maintenance of public facilities and infrastructure.⁴³ In other states, revenue bonds are governed by specific statutes depending on the type of work being performed. The California State Public Works Board operates under such a scheme, issuing revenue bonds for public buildings construction, prison construction, technology and educational research, and energy and water conservation projects pursuant to different California statutes.⁴⁴ However, whether authorization to issue revenue bonds is governed by an act or by statute, the legislative framework varies greatly between states, and competent local legal counsel should be consulted prior to engaging in a revenue bond transaction.

³⁷ NMS § 5-11-19

³⁸ California State Government Code, Title 2, Division 4, Part 3 (Section 16650 et seq.) sets out the statutory framework for GOB bonds. Statutory authorization for individual GOB bond measures is placed programmatically in the codes (e.g., prison authorizations are located in the Penal Code).

³⁹ TX. Const., Art. 3, §§ 50B-4, 50B-4.

⁴⁰ TX. Const., Art. 3, § 49

⁴¹ New Mexico HB 17; 2000 and 2001 General Obligations

⁴² See *supra*, note 22.

⁴³ See Michigan Public Revenue Act of 1933;

⁴⁴ Ca. Govt. Code §§ 15815, 15819.3, 15820, and 15814.15, sequentially.

Certificates of Participation (CoP)

A certificate of participation is an instrument evidencing a pro rata share in a specific pledged revenue stream, usually lease payments by the issuer that are subject to annual appropriation. The certificate entitles the holder to receive a share, or participation, in the lease payments from a particular project. The lease payments are passed through the lessor to the certificate holders. The lessor typically assigns the lease and lease payments to a Trustee who then distributes the lease payments to the certificate holders. CoPs differ from GOBs because while GOBs are secured by the credit of the issuing municipality, CoPs generally require approval from a state legislature or a country governing board to ensure repayment amounts. This raises the issue that a legislature could potentially not approve a CoP, and pledged monies for the capital project would be lost.

CoPs, like GOBs, are governed by different rules and regulations depending on the issuing jurisdiction.⁴⁵ For instance, in Santa Barbara, California, the procedure for issuing a CoP is:

- 1) The county must identify a leasable asset, the purpose for incurring debt, and the amount of debt to be incurred.
- 2) The county leases or transfers the leasable asset to a lessor.
- 3) The lessor leases the asset back to the County.
- 4) The lessor's rights to receive lease payments are transferred to a Trustee.
- 5) The Trustee executes CoPs which are sold to members of the public.

It is necessary to note, however, that only a few states have enacted legislation authorizing its agencies to issue CoPs. As such, necessary diligence must be practiced before initiating a CoPs transaction.

5.3 FEDERAL AND STATE GRANTS/LOANS

A grant is an award of financial assistance from either a state or federal agency to a recipient to carry out a public purpose. Grants are available from both federal and state governments. Federal grants are considered economic aid issued by the government out of the general federal revenue. Federal grants are defined and governed by the Federal Grant Cooperative Agreement Act of 1977,⁴⁶ which defines a grant as the following:

“...a legal instrument reflecting the relationship between the United States Government and a State, a local government, or other entity when 1) the principle purpose of the relationship is to transfer a thing of value to the State or local government or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government; and 2.)

⁴⁵ See e.g. KS Stat. §75-37,101; NC Stat. §142-80

⁴⁶ See 31 U.S.C.A. §6304

substantial involvement is not expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.”⁴⁷

There are a number of grant programs available for financing a capital project. This section will only discuss a few of the grants that may be available for financing a capital project.

Cooperative Agreement Program (CAP)

A Cooperative Agreement Program is an agreement between a federal agency and a state government, a local government, or other recipient, whereby the purpose of the relationship is to transfer value to the state, local or other recipient to carry out a public purpose.⁴⁸ CAP is a federal program authorized under 31 U.S.C. §6305, and regulated by federal accounting standards, and regulations promulgated by the Office of Management and Budget (OMB). There are numerous requirements placed on both the federal agency implementing the CAP, and the recipient local government. Under the enabling statute, when a federal agency enters into a CAP, the awarding agency is expected to be substantially involved in the project.⁴⁹ Most agencies will satisfy this requirement by being intimately involved with the project planning, oversight, or disbursement of funds. These requirements will often be contractual obligations between the granting agency and the recipient local government. As such, failure by the recipient to comply with any of the contract requirements could result in termination and suspension of the recipient from the CAP.

As mentioned, the OMB⁵⁰ has also promulgated regulations governing pre-CAP award, post-CAP award, and after-the-grant procedures. Before any money can be disbursed under CAP authority, and unless otherwise provided for by another statute, federal agencies must satisfy a public notice requirement by providing the general public with advance notice of its intention to provide CAP funding.⁵¹ In certain instances, the federal agency may be required to provide the public with an opportunity to comment on intended funding priorities.⁵² These requirements must provide transparency in the allocation of public funds. After satisfying the notice requirement, the agency must develop an application using federally-mandated standard applications forms.⁵³ Specific information the federal agency is required to collect varies according to whether the project is construction or non-construction. However, federal agencies are generally required to obtain budget information and standard assurances that the state or local government will comply with all federal statutes, and all contractual obligations set forth in a CAP agreement signed by the parties.⁵⁴ The most important assurance, however, involves debarment and suspension disclosures. Federal agencies are prohibited from awarding assistance to CAP applicants who are excluded or ineligible for participation in federal assistance programs.⁵⁵ This requirement ensures that individuals suspended from receiving public monies do not misuse or misappropriate CAP funds.

⁴⁷ 31 U.S.C.A §6304()

⁴⁸ 31 U.S.C.A. §6305.

⁴⁹ *Id.*

⁵⁰ The OMB is apart of the executive branch and oversees the management, legislative, regulatory, and budgetary issues of all federal agencies.

⁵¹ OMB Circular No. A-102(1)(b)(1).

⁵² *Id.* at 102(1)(b)(2).

⁵³ *Id.* at 102(1)(c)(1)

⁵⁴ *Id.*

⁵⁵ *Id.*

After a CAP application is completed and approved by the federal agency, the agency is required to oversee the transfer of the funds and ensure compliance with federal treasury laws. Most importantly, the federal agency is required to obtain financial status reports from recipients to ensure that the CAP funds are being appropriately spent. OMB Circular A-133 entitled “Audits of State and Local Governments” sets forth standards for obtaining consistency and uniformity among federal agencies for the audit of non-federal entities expending Federal awards.⁵⁶ OMB Circular A-133 lists the audit requirements to which the applicant must comply after receipt of CAP funds. As such, it is necessary for the recipient to keep meticulous records of all transfers and expenditures made during the capital financing project in order to avoid a negative audit determination and possible termination of the CAP award.⁵⁷

Notwithstanding any continuing, contractual obligation between the parties, after completion of the capital financing project, the CAP-granting agency is required to notify grantees in writing before the end of the grant period of final accounting and status reports that must be received in order to complete the project.⁵⁸

This section only provides a brief explanation of the main federal legislation governing CAPs. The information contained in this section is by no means an exhaustive explanation of CAP legislation and regulations. Prior to engaging in any transaction involving a CAP, appropriate legal counsel must be consulted.

Other Federal Programs

Depending on the project, there are numerous grant financing options available through the Federal Government. Currently, federal agencies provide grant opportunities for projects involving the Arts, Community Development, Disaster Prevention and Relief, Health, Humanities, Agriculture, Business and Commerce, Natural Resources, and a number of other categories.⁵⁹ Many of the available grants can be researched by contacting the appropriate federal agency, or by accessing <http://www.grants.gov>, which is a forum to find and apply for federal government grants. This site is managed by the U.S. Department of Health and Human Services, but includes grant opportunities from all federal agencies.

Federal grants include a labyrinth of laws and regulations. It is imperative that the state agency or individual seeking a federal grant completely research a particular grant program, and consult with legal counsel before applying.

5.4 PRIVATE FACILITIES AND PPP FRAMEWORKS

As populations and cities expand, federal, state, and local governments are continually looking for new and innovative means for financing public capital projects.⁶⁰ Substantial costs and the increased need for specialized expertise have caused governments to increasingly seek out private

⁵⁶ Circular A-133, Subpart A, §100.

⁵⁷ *Id.* at 133, § .225

⁵⁸ OMB Circular No. A-102(3)

⁵⁹ For an exhaustive list, please see <http://www.grants.gov>

⁶⁰ Gillian E. Metzger, *Privatization as Delegation*, 103 Colum. L. Rev. 1367, 1370 (2003).

entities.⁶¹ In many instances, it is often the case that private sector entities are better equipped to handle capital financing projects.⁶² As such, governments are increasingly engaging in PPPs and other capital financing privatization contracts to finance capital projects.

Simply defined, a PPP is a contractual agreement between a public agency and a private sector entity. This arrangement utilizes the skills and assets of public and private sector entities for the development of a service or facility for the use of the general public. PPPs can and have been used in a number a public financing projects including public transportation construction projects, public health, and public housing projects.⁶³ PPPs are thus an important financing option that should be considered as a source of income.

State PPP Laws and Regulatory Requirements

Executive Order 12803 was issued by the President in 1992 setting forth federal requirements related to the disposition of federal interests in grant-funded infrastructure facilities.⁶⁴ The Order allows executive agency heads to modify programs controlling federally-financed facilities to encourage privatization.⁶⁵ The Order authorizes the Federal Government to use, among other strategies, PPPs to privatize facilities relating to waste and wastewater, education, health care, corrections, building construction power, park and recreation, and technology. Projects within any of these sectors are governed by specific regulations and a specific legal framework.

Many states have passed legislation authorizing the private sector to contract with the Federal Government on a PPP basis. Particularly, there is much state legislation authorizing PPPs for transportation projects.⁶⁶ Such legislation begins with recognition that there is a “public need” for the development or operation of transportation facilities.⁶⁷ Then, the statutory framework will describe, in detail, the method and requirements for receiving and maintaining PPP funds.⁶⁸ As of the time of this Handbook, only 21 states have enacted legislation governing PPPs for transportation projects.

As mentioned, PPPs are also used in a number of other sectors. The National Council for Public-Private Partnerships has performed a number of case studies on PPPs in technology, water/wastewater infrastructure, public safety, public works, and real estate and economic development. The wide-spread application of PPPs across different sectors of industry reaffirms the need to seek out appropriate legal counsel prior to engaging in a PPP relationship.

⁶¹ *Id.* at 1378.

⁶² Patricia A. Salkin, Lora A. Lucero, *Community Redevelopment, Public Use, and Eminent Domain*, SL005 ALI-ABA 1793 (2005).

⁶³ *See infra*, note 47; *see also* Bryan Mercurio, *Resolving the Public Health Crisis in the Developing World: Problems and Barriers of Access to Essential Medicines*, 5 *Nw. U. J. Int’l Hum. Rts.* 1, 59 (2006) (discussing in part PPPs as an increasingly popular method of financing health care projects); *see* <http://ncppp.org/>, a website discussing the use and prevalence of PPPs throughout different industries and sectors.

⁶⁴ *See* Public-Private Partnerships (Privatization) at <http://www.epa.gov/OWM/cwfinance/privatization.htm> (accessed November 18, 2007); *see also* Executive Order 12803.

⁶⁵ Executive Order 12803(3)(a).

⁶⁶ *See* U.S. Department of Transportation website at http://www.fhwa.dot.gov/PPP/tools_state_legis_statues.htm, September 15, 2007. The U.S. Department of Transportation has identified 23 U.S. States and one U.S. territory that have enacted statutes that enable PPP approaches for transportation infrastructure projects.

⁶⁷ *See* N.C. Gen. Stat. §136.89.180; TX. Transp. Code § 223.203

⁶⁸ The statutes will generally discuss commingling public and private funds, exemptions, and imposition of fees among other requirements. *See infra*, note 52 for a list of states that have enacted PPP legislation.

6. Doing Business with the Federal Government

Understanding and navigating through the myriad of federal programs designed to assist communities to build and effectively manage prisoners and detainees can be a daunting task for any community. The first section of this chapter focuses on how communities can utilize IGAs as well as the CAP.

The second section gives communities a brief overview of other federal programs that may help them to more effectively manage prisoners and detainees. While there are currently no grants or funding programs through the Federal Government to build and expand jails except for the USMS CAP program, the Federal Government does have a number of benefit, discretionary, formula, and payment grants to assist communities through the Department of Justice.

6.1 OVERVIEW OF PROGRAMS THROUGH THE OFDT

Intergovernmental Agreements (IGAs)

As referenced in Section 2.4 (Intergovernmental Agreements and Government Contracts), the USMS, ICE and the BOP, enter into agreements with state and local detention facility providers to house federal detainees. These detention services are acquired using a fixed-pricing arrangement rather than cost-reimbursement. Establishing a fixed-price IGA provides for a price that is not subject to any adjustment on the basis of the detention facility provider's cost experience in performing, placing the risk and incentive for controlling costs on the provider.

Various price analysis techniques and procedures are used to ensure that a mutually-acceptable price is determined. Examples of such techniques include, but are not limited, to the following:

- Comparison of previously proposed per diem rates with previously completed government and /or commercial contracts.
- Comparison of proposed per diem rates with independent government cost estimates.
- Comparison of proposed per diem rates with per diems in the geographical location of the detention facility, to include federally operated facilities.
- Projection of cost trends, on the basis of current and historical cost or pricing data.
- Evaluating the effect of current practices on future costs. In conducting this evaluation, the Government will ensure that the effects of inefficient or uneconomical past practices are not projected into the future, and,
- Cost realism analysis that independently reviews and evaluates specific elements of the proposed cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed.

The fixed-price arrangement places the maximum risk and full responsibility for all cost and resulting profit or loss upon the provider. It offers the maximum incentive for the detention facility provider to control costs and perform effectively, while imposing the minimum administrative burden on both parties.

In order for the providers to establish an IGA with the USMS and the BOP, they need to apply through the eIGA system. (See section 2.4) If a detention facility provider currently has an IGA established, a per diem rate can be adjusted once it has been in effect for twenty-four (24) months. All price adjustment requests must also be completed through the eIGA system. All per diem rates will be based on a core rate baseline. The core rate baseline is a model that is based on historical data developed by OFDT. This data establishes a baseline for negotiating fixed-price rates. For more information on how the eIGA application process works, please view the eIGA User's Manual at <https://edes.usdoj.gov/iga/igamenu.aspx>.

For more information regarding the OFDT's procurement process, please visit the following website at <http://www.usdoj.gov/ofdt/procurement.htm>.

This section provides a brief overview of the IGA. Prior to entering into an IGA or any agreement with the Federal Government, state and local detention facility providers should consult appropriate legal and financial counsel.

DOJ's Detention Cooperative Agreement Program

The CAP of the DOJ is an agreement program between the USMS and state and local detention facilities to provide federal funds to improve local facilities in exchange for a guarantee of bed space for federal detainees for an agreed-upon number of years.⁶⁹ The use of bed space under the CAP still requires an IGA between the USMS and the facility. The USMS pays the facility the negotiated IGA per diem rate. All IGA rules and regulations discussed in the section above apply under the CAP (for additional details, please see Section 4.2).

The information contained in this section is by no means an exhaustive explanation of DOJ's CAP legislation and regulations. Prior to engaging in any transaction involving a DOJ CAP, appropriate legal counsel should be consulted.

Future OFDT Programs

OFDT is currently considering the development of contract vehicles that would allow it to pay state and local governments for the construction and expansion of jail and prison facilities in exchange for a pre-defined bed space guarantee. For example, if a state or local government is building or expanding a detention facility and unexpectedly experiences a budget overrun, the state or community may contract with OFDT for funds to complete the project in exchange for guaranteed bed space for a pre-defined period of time at a fixed per diem rate. Likewise, if a state or community wants to build or expand a 1,000 bed facility, the OFDT will be able to pay for the construction of 100 of those beds, in exchange for guaranteed bed space.

⁶⁹ The Federal Government offers a variety of other CAP through various agencies. This section only refers to the CAP under the DOJ for prison improvement/expansion.

6.2 OVERVIEW OF OTHER PROGRAMS IN THE FEDERAL GOVERNMENT

U.S. Department of Justice, Office of Justice Programs

While federal funding for state and local jail and prison construction is limited primarily to the CAP, the Department of Justice, Office of Justice Programs (OJP) offers a wide variety of grants and training programs to serve the needs of state and local governments. Such grant and training programs are designed to strengthen the local criminal justice system and may be able to support the corrections activities of state and local governments. A list of broad grant programs can be found at the OJP's Funding Opportunities page at <http://www.ojp.usdoj.gov/funding/funding.htm> and a list of training programs can be found at its Training and Technical assistance page at <http://www.ojp.usdoj.gov/training/training.htm>.

U.S. Department of Justice, Bureau of Justice Assistance

In addition to OJP, the Department of Justice, Bureau of Justice Assistance (BJA) provides policy leadership and assistance in support of local criminal justice strategies to achieve safe communities. One of BJA's most important functions is to support state, local, and tribal justice systems through training and technical assistance programs. BJA-sponsored technical assistance helps practitioners develop and implement comprehensive strategies for public safety and improving criminal justice systems. BJA also offers a variety of grants programs in support of state, local and tribal justice systems. For more information on BJAs grants and technical assistance programs, please visit: <http://bjatraining.ncjrs.gov/>.

U.S. Department of Agriculture, Rural and Community Development

The USDA provides a variety of programs for rural and community development. In particular, the Department provides grants and loans to communities in rural areas to develop essential community facilities for public use in rural areas. These facilities include public buildings such as detention and prison facilities. Community Programs utilizes three flexible financial tools to achieve this goal: the Community Facilities Guaranteed Loan Program; the Community Facilities Direct Loan Program; and, the Community Facilities Grant Program. For more information on the USDA's Rural and Community Development programs please visit: <http://www.rurdev.usda.gov/rhs/cf/cp.htm>.

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List of Acronyms

BJA	Bureau of Justice Assistance (DOJ)
BOP	Federal Bureau of Prisons
BOT	Build-Operate-Transfer
CAP	Cooperative Agreement Program
COP	Certificate of Participation
CEQ	Council of Environmental Quality
CIP	Capital Improvement Plan
CSA	Corrections Standards Authority
DHS	Department of Homeland Security
DOJ	Department of Justice
DSNetwork	OFDT's Detention Services Network
EA	Environmental Assessment
EIS	Environmental Impact Statement
GOB	General Obligation Bonds
JOEI	Jail Operation Expense Information
JPATS	Justice Prisoner and Alien Transportation System
ICE	Immigration and Customs Enforcement
IGA	Intergovernmental Agreements
eIGA	Electronic Intergovernmental Agreement
INS	Immigration and Naturalization Service
NEPA	National Environmental Policy Act
OFDT	Office of the Federal Detention Trustee
OJP	Office of Justice Programs (DOJ)
OMB	Office of Management and Budget
POD	Prisoner Operations Division
PPP	Public-Private Partnerships
REIT	Real Estate Investment Trusts
RFI	Request for Information
RFP	Request for Proposals
RFQ	Request for Qualifications
USDA	U.S. Department of Agriculture
USMS	United States Marshals Service
VOI/TIS	Violent Offender Incarceration and Truth in Sentencing Incentive