

CHAPTER

12 Government Contracts and Grants

Federal, state, and local government funding is one of the most common and most important sources of financial support for human service agencies and programs. Consequently, human service administrators need to be knowledgeable about the ins and outs of various types of government funding and how to identify government funding opportunities. Human service administrators also need to be familiar with the differences between procurement and assistance relationships as well as the differences between the major types of government human service contracts.

This chapter looks at the topics of government contracts, grants, and the less well known cooperative agreements. The chapter also provides guidance on how to locate information about government grants, contracts, and cooperative agreements. Because state and local governments today make more use of contracts for human services than they do of grants, the chapter also describes the two major procurement approaches used to select contractors and the three major types of government human service contracts.

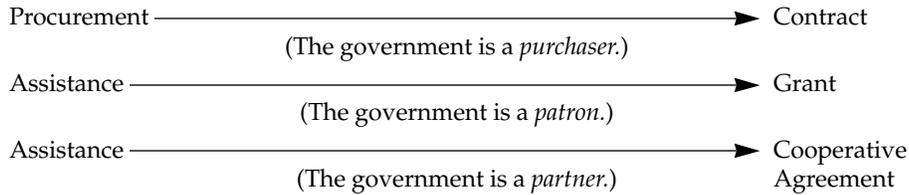
Contracts, Grants, and Cooperative Agreements

A good place to begin a discussion of government funding is with the Federal Grant and Cooperative Agreement Act. As Figure 12.1 illustrates, the act identifies two types of financial relationships (procurement and assistance) and three types of financial instruments (contracts, grants, and cooperative agreements).

A *procurement relationship* is said to exist when a federal department or agency expends funds to secure (purchase) goods or services for its own purposes. An *assistance relationship* is said to exist when a federal department or agency provides funds to another agency (such as a state or local government human service agency or a private nonprofit human service agency) to assist that agency in discharging its own responsibilities.

The distinction between a procurement relationship and an assistance relationship is more than just semantics. Differing sets of federal regulations apply to procurement relationships and assistance relationships. Also, different case law covers procurement and assistance relationships. For example, agencies competing for federal contracts (procurement relationships) can file complaints with the General Accounting Office (GAO) if they believe they have been treated unfairly.

FIGURE 12.1 Uses of Contracts, Grants, and Cooperative Agreements as required by the Federal Grant and Cooperative Agreement Act



Purchaser

The federal department or agency is a *purchaser* of goods and services through the use of a *contract*.

Patron

The federal department or agency is a *patron* supporting the efforts of another agency through the use of a *grant*.

Partner

The federal department or agency is a *partner* sharing decision making with another agency through the use of a *cooperative agreement*.

No similar appeals process exists for grants and cooperative agreements (assistance relationships).

The difference between procurement and assistance relationships also has practical service delivery implications for human service agencies and for clients. In assistance relationships, service recipients are considered to be the clients of the human service agency receiving federal funding, not the federal department or agency. In procurement relationships, the reverse is the case; service recipients are considered to be clients of the federal government whereas the human service agency is simply a paid service provider.

The Federal Grant and Cooperative Agreement Act restricts the use of contracts to procurement relationships. The act subdivides assistance relationships into two categories: (1) those that are required to use grants and (2) those that are required to use cooperative agreements. Referring again to Figure 12.1, sometimes a federal department or agency acts much like a patron and is essentially “giving” money to support the activities of a state or local government or a private nonprofit agency human service agency. In assistance relationships of this nature, the act requires that the funding instrument be a grant. The point should be stressed that even when a federal department or agency gives money to another agency, the funds still come with strings attached, but not nearly the number of strings that come with cooperative agreements and contracts.

In some situations, a federal department or agency may wish to become a partner with a state or local government or private nonprofit human service agency in a sort of joint venture arrangement. For example, the U.S. Department of

Health and Human Service might be interested in testing a new treatment modality or program design, or in conducting some type of special evaluation, or it may simply want to be actively involved in making decisions about a particular demonstration program or activity. For assistance relationships of this type, the act requires that the funding instrument be a cooperative agreement.

The Federal Grant and Cooperative Agreement Act also requires that every federal program identify the nature of its financial relationships (procurement or assistance) and the types of financial instruments (contracts, grants, cooperative agreements) it uses. Consequently, when a state or local government or private nonprofit human service agency is considering applying for funding under a particular federal program, it can determine in advance the types of financial relationship and financial instrument that the program uses.

Unfortunately, the Federal Grant and Cooperative Agreement Act applies only to federal departments and agencies. State and local governments have their own policies concerning when a contract or a grant is the more appropriate financial instrument. In general, state and local governments tend to favor procurement relationships over assistance relationships and favor contracts over grants. Cooperative agreements are unique to the federal government; state and local governments generally do not use cooperative agreements. However, sometimes when a state or local government uses a grant, for all practical purposes it takes on the characteristics of a cooperative agreement.

Sources of Information about Government Contracts, Grants, and Cooperative Agreements

How does one locate information about government contracts, grants, and cooperative agreements, how much funding is available, and who can apply? At the federal level, two primary sources are the *Catalogue of Federal Domestic Assistance* and the *Commerce Business Daily*.

The *Catalogue of Federal Domestic Assistance* is an encyclopedic listing of all domestic (noninternational) human service and non-human service federal programs in all federal departments and agencies that provide assistance-type funding to state and local governments, Indian tribal governments, and private nonprofit agencies. The catalogue is cross referenced by type of program and by federal department and agency. A brief description of each program appears in the catalogue together with its annual funding levels as well as information about who is eligible to apply for the funding. Figure 12.2 is an abridged catalogue listing for the Social Services Block Grant (SSBG) program.

As Figure 12.2 illustrates, the SSBG provides federal funding for a variety of human service programs directed at five major objectives: (1) preventing, reducing, or eliminating dependency; (2) achieving or maintaining self-sufficiency; (3) preventing neglect, abuse, or exploitation of children or adults; (4) preventing or reducing inappropriate institutional care; and (5) securing admission or referral for institutional care when other forms are inappropriate. The U.S. Department of

FIGURE 12.2 The *Catalogue of Federal Domestic Assistance* Listing for the Social Services Block Grant (Abridged)

93.667 Social Services Block Grant

020 (Social Services)

030 FEDERAL AGENCY: ADMINISTRATION FOR CHILDREN AND FAMILIES,
DEPARTMENT OF HEALTH AND HUMAN SERVICES

040 AUTHORIZATION: Social Security Act, Title XX, as amended; Omnibus Budget Reconciliation Act of 1981, as amended, Public Law 97-35; Jobs Training Bill, Public Law 98-8; Public Law 98-473; Medicaid and Medicare Patient and Program Act of 1987; Omnibus Budget Reconciliation Act of 1987, Public Law 100-203; Family Support Act of 1988, Public Law 100-485; Omnibus Budget Reconciliation Act of 1993, Public Law 103-66; 42 U.S.C. 1397 et seq.

050 OBJECTIVES: To enable each State to furnish social services best suited to the needs of the individuals residing in the State. Federal block grant funds may be used to provide services directed toward one of the following five goals specified in the law: (1) to prevent, reduce, or eliminate dependency; (2) to achieve or maintain self-sufficiency; (3) to prevent neglect, abuse, or exploitation of children and adults; (4) to prevent or reduce inappropriate institutional care; and (5) to secure admission or referral for institutional care when other forms of care are not appropriate.

060 TYPES OF ASSISTANCE: Formula Grants.

080 ELIGIBILITY REQUIREMENTS:

081 Applicant Eligibility: The 50 States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and American Samoa.

090 APPLICATION AND AWARD PROCESS:

092 Application Procedure: Submission of a pre-expenditure report application is required.

093 Award Procedure: States are awarded funds quarterly.

120 FINANCIAL INFORMATION:

121 Account Identification: 75-1534-0-1-506.

122 Obligations: (Grants) FY 98 \$2,299,000,000; FY 99 \$1,909,000,000; and FY 00 est \$2,380,000,000.

Health and Human Services administers the SSBG program. Only states and other select governments may apply for SSBG program funding. The amount of funding available for fiscal year 2000 is \$2.38 billion and the funding instrument used is a *grant*. While the SSBG example does not provide direct funding for private nonprofit human service agencies, many other federal programs listed in the catalogue do.

An online version of the *Catalogue of Federal Domestic Assistance* can be accessed, and service statements can be downloaded, through the Internet home page of the federal Office of Management and Budget (see this book's Appendix).

The *Commerce Business Daily* is a newspaper-type publication that is published every working day and lists announcements of human service and non-human service contracts, grants, cooperative agreements, requests for proposals (RFPs), and invitations for bids (IFBs) made by various federal departments and agencies (RFPs and IFBs will be discussed shortly). The announcements state who can apply, how much funding is available, and application deadlines. Figure 12.3 is an example of an announcement for a job creation/retention program in areas impacted by the North American Free Trade Act. Up to \$6 million is available. Any 501(c)(3) or 501(c)(4) nonprofit agency can apply as well as private institutions of higher education, state and local governments, and Indian tribal governments. The type of financial instrument used is a grant.

Finding out about the availability of human service contracts and grants from state and local governments is somewhat more involved. The two most common ways are to be placed on a bidders list or by reading the legal advertisements section of the daily newspaper.

The process for being placed on a state or local government's bidders list usually involves contacting the government's procurement office or human service agency. Various forms must be completed and submitted. Private nonprofit human service agencies may also be required to submit copies of their articles of

FIGURE 12.3 Listing from the *Commerce Business Daily* (Abridged)

COMMERCE BUSINESS DAILY ISSUE OF OCTOBER 19,1999 PSA#2457

Community Adjustment and Investment Program

GRANT SOLICITATION: FOR JOB CREATION/RETENTION IN TRADE IMPACTED COMMUNITIES SINCE THE ADVENT OF NAFTA (*North American Free Trade Agreement*)

ANNOUNCEMENT 001: The North American Development Bank, on behalf of the United States Community Adjustment and Investment Program (the "CAIP"), will issue a Solicitation for Grant Applications on October 15, 1999. Up to \$6 million will be available on a competitive basis to fund grants for specific projects and technical assistance designed to aid in creating and preserving private sector jobs in designated communities that have lost, or may lose, jobs due to changes in international trade patterns associated with the passage of the NAFTA. Applicants for CAIP grants may seek to combine grant funds with loan funds from the CAIP direct lending program.

ELIGIBLE APPLICANTS: 501(c)(3) and 501(c)(4) nonprofit organizations, public and private institutions of higher education, state and local political subdivisions and agencies, and Indian tribal governments. For further information or a copy of the Solicitation for Grant Applications, please contact the Project Director at (999) 123-4567.

DEADLINE: The deadline for receipt of applications is January 17, 20XX. It is expected that grant awards will be announced in March 20XX.

Source: Adapted from the *Commerce Business Daily* <<http://www.ld.com/cbd/today/index>> (10/19/99).

FIGURE 12.4 Announcement of a Request for Proposals (RFP) for a Child Care Assistance Program

The State Department of Human Services (the “Department”) is soliciting proposals from qualified organizations to administer the department’s child care subsidy program called the Child Care Assistance Program (CCAP).

Proposals must be received no later than 5:00 P.M. on Friday, January 31, 20XX. Late proposals will not be considered. A mandatory proposer’s conference will be held on Monday, January 3, 20XX, at the department’s headquarters.

To request a copy of the request for proposals (RFP), interested parties should contact the department’s Office of Contract Services at (999) 123-4567.

incorporation, bylaws, and most recent annual report. As part of the application process, a human service agency generally has to identify the types of services it is interested in providing. When a human service agency is placed on a state or local government’s bidders list, it is then routinely sent notices of impending requests for proposals (RFPs) or invitations for bids (IFBs) or the actual IFB or RFP package itself for the indicated services.

The other method of learning about state and local government contracting opportunities is to frequently check the legal advertisements section of the major local newspaper. The procurement laws and regulations of most state and local governments require that contracting opportunities (both human service and non-human service) be announced in a “newspaper of general circulation” within the government’s service area. Figure 12.4 is an example of a request for proposals (RFP) announcement in the legal advertisements section of a newspaper. At a minimum, these legal advertisements usually state the department that is making the announcement, the type of solicitation involved (IFB or RFP), and the due date. The amount of available funding may be specified. Some state and local government departments also maintain home pages on the Internet. Announcements of IFBs and RFPs frequently appear on these home pages.

Types of Procurements

As previously mentioned, state and local governments tend to prefer the use of contracts over grants. This has not always been the case. In the early 1970s, grants were preferred to contracts for human service programs. However, with the creation of Title XX of the Social Security Act in 1975 (now the Social Services Block Grant), the federal government required states to either provide human services directly or use contracts. Other federal human service programs administered by state and local governments also began switching from grants to contracts (Kettner and Martin, 1987; Lauffer, 1997). Today, contracts are the state and local government financial instruments of choice for human service programs. Lauffer

(1997:74) forecasts that by the year 2010, over 80 percent of all government funding for human service programs will involve the use of contracts.

Procurement is the generic term for the process used by governments (federal, state, and local) to select contractors and award contracts (both human service and non-human service). The following discussion focuses on procurement at the state and local government levels, though the processes and procedures are also broadly representative of the federal government's approach.

In selecting contractors and awarding contracts, state and local governments generally use one of two procurement approaches: the request for proposals (RFP) or the invitation for bids (IFB). The request for proposals approach is also known as *competitive negotiation*. The invitation for bids approach is also called *formal advertising*, *competitive bidding*, and *sealed competitive bidding*. Although the names vary, the two approaches are fairly standardized across state and local government departments as well as federal departments and agencies. Both procurement approaches are competitive in nature, meaning that they are designed to solicit more than one bid or proposal. Of the two approaches, the RFP is used more frequently for human service programs, although significant use is also made of the IFB.

The Request for Proposals (RFP)

In the RFP approach, interested human service agencies (prospective contractors) prepare a proposal, usually with an accompanying operating budget, as specified in the state or local government's RFP package. In the proposal narrative section of the RFP package, a prospective contractor details how it intends to provide the service including any specific treatment modalities; identifies the education, qualifications, and experience of staff who will be involved in providing the service; and in general attempts to impress the state or local government that it would make the best contractor. In the budget section, a prospective contractor identifies all the items of cost (both direct and indirect or overhead) it estimates will be incurred in providing the service. The RFP package gives the due date for submission of completed proposals, specifies the criteria by which proposals will be evaluated, and usually states that late proposals will not be considered.

The state or local government reviews all the proposals submitted on time and selects the prospective contractor whose proposal is the most advantageous to the government, price and other factors (e.g., service quality issues) being considered. Though the criteria used in the evaluation of proposals, as well as the individual weights assigned to each criterion, vary from procurement to procurement, they also tend to be generally reflective of similar issues and concerns. Figure 12.5 is an example of a set of proposal evaluation criteria and weights for a human service RFP.

In Figure 12.5, the criteria are divided into four major categories: proposal criteria, organizational criteria, service delivery criteria, and cost criteria. As a general rule, cost is not the most important criterion in the evaluation of proposals submitted in response to a RFP. If a state or local government wants to make cost the major

FIGURE 12.5 Representative Criteria Used to Evaluate Proposals Submitted in Response to a Request for Proposals

1. Proposal Criterion

- A. The proposal is properly completed, contains all attachments, exhibits, and budgets; and is signed by an authorized representative of the proposer. (10 points).

2. Organizational Criteria

- A. The proposer has the programmatic and financial ability to successfully provide the program or service (15 points).
- B. The proposer has a successful history of providing the program or service (10 points).
- C. The proposer has a successful history of providing the program or service under previous government contracts or grants (10 points).

3. Service Delivery Criteria

- A. The proposer's overall service delivery approach is both feasible and acceptable (15 points).
- B. The proposer has (or can acquire) the necessary staff, equipment, and facilities to provide the service (15 points).

4. Cost Criterion

- A. The proposer's costs are both allowable and reasonable (25 points).
-

factor in a procurement, then it will generally use the invitation for bid. As Figure 12.5 indicates, significant weight is usually placed on the proposer's programmatic and financial capabilities, its previous service delivery experience, and the feasibility and acceptability of its service delivery approach.

When all proposals have been scored, the state or local government sits down with the highest-scoring proposer and the two parties negotiate a final agreement. When all the terms and conditions of the final agreement are reduced to writing and signed by both parties, a legally binding contract comes into being (Kettner & Martin, 1987).

The Invitation for Bids (IFB)

The invitation for bids (IFB) approach is generally used only when a state or local government department knows exactly what it wants to purchase in terms of the type of service, staff qualifications, quality standards, client characteristics, and other factors. In the IFB approach, no negotiation takes place. The state or local government department specifies (sometimes in great detail) in the IFB package

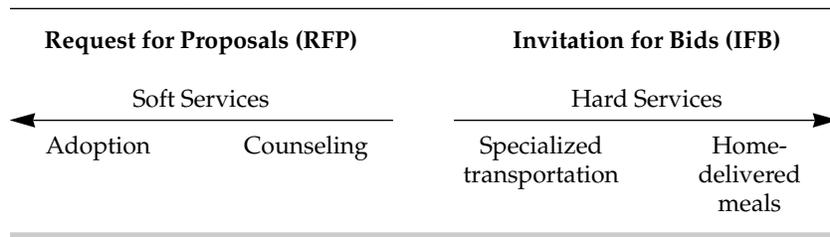
the service it wishes to purchase. Prospective contractors interested in providing the service simply fill in the sections of the IFB package that ask for the unit price and/or the total price they propose to charge. Like the RFP package, the IFB package usually states that bids submitted late will not be considered. The IFB package is structured in such a fashion that once a prospective contractor completes and signs the document, it becomes a firm legal offer (Kettner & Martin, 1987).

At the specified time for the opening of bids, the state or local government opens all bids submitted on time and records the bid prices. The contract is usually awarded to the responsible prospective contractor (meaning that the agency has the necessary programmatic and financial capabilities to provide the service) submitting the lowest responsive bid (meaning that the bid was properly completed and submitted on time). Because a completed IFB package constitutes a firm legal offer, the state or local government department has only to sign the IFB document and a legally binding contract comes into existence.

Because most state and local government departments want to have at least some negotiations with a prospective contractor when human service programs are involved, the RFP approach tends to be used more often than the IFB approach. Nevertheless, the procurement of at least some human services by at least some state and local governments does involve the IFB approach. As a general statement (see Figure 12.6), the RFP approach is used more frequently with *soft services* (services directed at clients), whereas the IFB approach is used more frequently with *hard services* (services directed at things). As Figure 12.6 illustrates, the difference between hard and soft services is one of degree more than an absolute distinction. Thus, on the soft services end of the continuum, one would generally find the RFP approach used for such human services as counseling and various therapies, whereas at the hard services end of the continuum, one would expect to find the IFB approach used with such human services as specialized transportation, congregate meals, and home-delivered meals.

Human service administrators need to understand the differences between the RFP approach and the IFB approach and what the differences mean in terms of the selection of contractors and the awarding of contracts. In the case of the RFP approach, cost and price information included in a submitted proposal is simply information that will be used in final contract negotiations. However, when a

FIGURE 12.6 The Relationship between Soft and Hard Human Services and the Two Major Procurement Approaches



human service agency includes a price in an IFB package, the agency must be prepared to accept a contract for that amount.

Types of Contracts

Government contracts are generally classified according to their method of compensation (Keyes, 1990). When contracting for human services, state and local governments tend to use (1) cost reimbursement contracts, (2) performance contracts, and (3) capitated (managed care) contracts.

Cost Reimbursement Contracts

Under a *cost reimbursement contract*, a contractor *is* reimbursed for actual allowable expenses incurred in the provision of the service, usually in accordance with an approved line-item operating budget that is included as part of the contract. If an expense is not actually incurred, then it is not reimbursable. Because of this principle, a “settling up” generally occurs following the completion of a cost reimbursement contract. For example, a final accounting or an audit of a \$100,000 cost reimbursement contract might determine that only \$95,000 in allowable expenses were actually incurred by the contractor. If the contractor received the full payment of \$100,000, it would have to return the excess funding for which no offsetting allowable expenses were incurred. Though cost reimbursement contracts usually have a face dollar value, the amount is best thought of, not as a guaranteed figure, but rather as a maximum that can be claimed.

From the perspective of state and local government departments, a major deficiency of cost reimbursement contracts is that they do not relate the contractor’s compensation to any performance considerations. Because of this deficiency, many state and local governments are moving away from the use of cost reimbursement contracts in favor of performance contracts or capitated (managed care) contracts.

Performance Contracts

A *performance contract* is one that focuses on the outputs and outcomes of service provision and ties either contract payments, contract extensions and renewals, or both to their achievement (Martin, 2000b). The subjects of outputs (the amount of service provided measured in units of service) and outcomes (quality of life changes in clients as a result of service provision) were discussed at length in Chapter 6 dealing with performance measures.

There is no one single way to structure a performance contract. The structure of a performance contract is limited only by the creativity of the state or local government. Figure 12.7 provides several examples of how a performance contract might be structured.

FIGURE 12.7 Examples of Performance Contracts**Payment (Outputs or Units of Service)**

1. The contractor shall be paid at the rate of \$____ per hour for each hour of counseling services provided.
2. The contractor shall be paid at the rate of \$____ per meal for each home-delivered meal provided.

Payment (Outcomes)

1. The contractor shall be paid at the rate of \$____ for each client who completes the job training program.
2. The contractor shall be paid at the rate of \$____ for each client who completes the drug treatment program.

Payment (Mixture of Outputs and Outcomes)

1. The contractor shall be paid:
 - A. 75 percent of its per client fee for each client who completes the job training program.
 - B. 15 percent of its per client fee for each client who is placed in a job.
 - C. 10 percent of its per client fee for each client who remains in the job for a period of at least six months.

Renewal or Extension

In order for the contract to be renewed or extended:

- A. ____ percent of the families served by the contractor will have no verified reports of child abuse or neglect during the past six months (child abuse program).
- B. ____ percent of persons discharged will successfully complete treatment with no documented alcohol or other drug use during the month prior to discharge (drug treatment program).
- C. ____ percent of homeless persons served will receive housing and other supportive services (homeless services program).

As Figure 12.7 illustrates, a performance contract can tie a contractor's compensation to outputs (units of service), outcomes, or a combination thereof. The achievement of specific levels of outputs or outcomes can also be considerations in contract renewals and extensions. Some federal job training programs (e.g., welfare-to-work initiatives) require that state and local governments use performance contracts.

Unlike cost reimbursement contracts, the amount of compensation that a contractor receives is not determined by the amount of expense incurred, but rather by (a) the amount of outputs (units of service) provided, (b) the number of outcomes achieved, or (c) some combination thereof. If a contractor provides the mutually agreed amount of outputs (units of service) or achieves the mutually

agreed number of outcomes, the revenues earned should be equal to or greater than expenses incurred. However, if a contractor's actual performance falls short of its contractually obligated performance, revenues may well be less than the actual expenses and a contractor could lose money on a contract. A performance contract involves more contractor risk than does a cost reimbursement contract. However, a performance contract is still less risky from the contractor's perspective than is a capitated (managed care) contract.

Capitated (Managed Care) Contracts

Capitated (managed care) contracts are designed to control the utilization of services and resources (Kamerman & Kahn, 1998). Under capitated contracts, a contractor usually receives a fixed payment to provide services to a client for a fixed period of time. As is the case with performance contracting, there is no one general approach to capitated contracting. Some of the more ambitious examples of capitated contracting for human services programs are found in the State of Kansas.

The Kansas Department of Social and Rehabilitative Services (Kansas SRS) has been experimenting with capitated contracting for child welfare services for several years now. Under the Kansas SRS approach, a contractor is paid a one-time fee for each child placed in its care irrespective of how long the child remains in care. For example, a contractor providing foster care services might receive a one-time payment of \$15,000 for each child placed in its care. This payment is the only compensation the contractor receives no matter how long the child remains in care. Assuming that the average annual cost of foster care nationally is between \$17,000 and \$25,000 (Eggers, 1997), if a child remains in the contractor's care for more than about nine months, the contractor will lose money. If an appropriate and timely placement is made, however, the contractor could actually make money on the contract. To ensure that financial considerations do not drive quality-of-care considerations, the capitated contracts used by the Kansas SRS contain specific performance standards. Figure 12.8 provides examples of performance standards utilized in Kansas SRS foster care capitated contracts. According to Kamerman and Kahn

FIGURE 12.8 Examples of Kansas Social and Rehabilitative Services Capitated (Managed Care) Contract Performance Standards for Residential Foster Care

1. At least 90 percent of children will not experience a confirmed incident of abuse or neglect.
2. At least 90 percent of children in care will not experience more than three placement moves subsequent to referral.
3. At least 65 percent of children will be placed with at least one sibling.
4. At least 70 percent of children will be placed within the region where they live.

Source: Adapted from Lawrence L. Martin (2000b). "Performance Contracting in the Human Services: An Analysis of Selected State Practices." *Administration in Social Work* (forthcoming).

(1998), capitated contracting could well become the wave of the future in human service contracting.

Cost reimbursement contracts, performance contracts, and capitated contracts have different objectives and create differing sets of duties and obligations on the part of human service agencies serving as contractors. Performance contracts and capitated contracts place substantially more financial risk on contractors.

Summary

This chapter looked at the topics of procurement relationships, assistance relationships, contracts, grants, and cooperative agreements. The chapter also discussed the two major types of procurements (requests for proposals and invitations for bids) and the three major types of human service contracts (cost reimbursement, performance, and capitated or managed care). The suggestion was made that human service administrators need to understand the conceptual and practical differences between procurement and assistance relationships and between the different types of financial instruments used by governments.

In the next chapter, the discussion shifts from government funding for human service programs to private sources of funding and to various other fund development techniques.