Internal Audit Report Number 2005-61

D M S Department of Management Services

OFFICE OF INSPECTOR GENERAL

Evaluation Report

Contract Management of Private Correctional Facilities

June 30, 2005

DEPARTMENT OF MANAGEMENT
SERVICES

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Tom Lewis, Jr.
Secretary

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June 30, 2005

Tom Lewis, Jr., Secretary
Department of Management Services
4050 Esplanade Way, Suite 235
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Dear Secretary Lewis:

This report presents the results of our evaluation of *Contract Management of Private Correctional Facilities*. In accordance with Section 20.055, Florida Statutes, we presented a preliminary report to the Division of Fleet Management, Federal Property Assistance & Correctional Privatization for management's review. The Division's response to the issues and recommendations are included in this report.

We appreciate the assistance provided by Division personnel during our review.

Respectfully Submitted,

Steve Rumph
Inspector General

SR/crm

EXECUTIVE SUMMARY

PURPOSE OF AUDIT

This review was requested by the Secretary of the Department after responsibility for contracting for and managing privately operated correctional facilities was transferred from the now defunct Correctional Privatization Commission (CPC) to the Department of Management Services (DMS). The objective of our review was to evaluate the status of the privately operated correctional facilities at the time of their transfer to DMS and to determine whether existing contracts were adequate to safeguard the State's interest. Our review was performed in accordance with Section 20.055, Florida Statutes.

RESULTS IN BRIEF

The majority of issues discussed in this report stem from a lack of oversight by the State organization formerly charged with reviewing, directing and monitoring the operations of privately operated correctional facilities, the CPC. Other issues involving the failure of the State to annually develop current per diem rates and the division of responsibilites for oversight and management of private corrrectional facilities between DMS and the Department of Corrections (DOC) are also discussed.

CPC OVERSIGHT

Our review showed the CPC failed to adequately safeguard the State's interest. Available records and contract documentation showed that the CPC consistently made questionable contract concessions to the vendors. Consequently, the State incurred about $12.7 million in additional costs.

Issues relating to oversight include:

- The CPC failed to enforce contract provisions relating to the reporting of vacancies in staff positions. The CPC did not require the vendors to report vacancies during the major portion of the time the contracts were in effect and when vendors did report vacancies, the CPC did not reduce vendors' monthly per diem payments in accordance with contract provisions. This resulted in vendors at the five facilities receiving payments of about $4.5 million to which they were not entitled.

- The CPC allowed vendors to waive required staffing patterns for non-correctional positions and did not reduce vendors' monthly per diem payments. As a result, the State overpaid vendors about $290,000 for vacant positions during the period from July 1, 2001 through December 31, 2004.

- The vendor at the South Bay Correctional Facility received questionable payments of about $3.4 million during the period of January 1, 1999 through December 31, 2004, for salary additives referred to as Competitive Area Differential (CAD) payments. The $3.4 million in questionable payments included $1.86 million in overpayment errors, which, when discovered, the CPC made no effort to recover. Moreover, although State Competitive Area Differential rates were reduced during the contract period, the CPC arbitrarily increased the vendor's contracted per diem rates to cover the difference between the higher differential pay and the reduced differential pay. As a result, the vendor received an additional $1.54 million in per diem payments in lieu of direct CAD payments and contract per diem rates were artificially inflated.

- The State was charged a "burden" or overhead on the Competitive Area Differential payments the South Bay vendor received during the contract period. These burden payments amounted to about $1.57 million. We could find no justification or authorization for a vendor to receive such payments. Moreover, our review showed that not only were burden payments not authorized but were greatly overstated by the vendor.

- In a November 2001 special session, the Legislature zero-budgeted CPC salaries and expense funds. Subsequently, the CPC authorized a per diem increase to the vendors who in turn remitted the per diem increase back to the CPC's Grants and Donations Trust Fund. These funds were then used to pay CPC staff salaries and expenses. This action caused per diem rates to be artificially inflated. Also, because the Department was unaware of this transaction it could have resulted in loss of salary dollars for current Department employees when new contracts were negotiated. We could not determine whether legislative leaders knew of and condoned the actions by the CPC. This was brought to the attention of Department management during the review.

- Gadsden Correctional Facility receives an additional per diem rate of $2.30 per inmate (up to 768 inmates) or about $645,000 per year for routine and major maintenance and repair of the facility under the terms of its contract. However, records show that Gadsden Correctional Facility expends an average of only $170,000 annually for facility maintenance and repair. As a result, the State paid about $2.85

million more for maintenance and repair than the vendor expended for calendar years 1999 through 2004.

- The Inmate Welfare Trust Fund is used to supplement the cost of contractually required programs and services. This understates actual per diem rates and should be considered when evaluating compliance with statutory cost savings requirements. During Fiscal Year (FY) 2003-04, vendors expended about $988,000 from the Trust Fund for contractually required programs and services.

DEVELOPMENT OF PER DIEM RATES

Per diem rates have not been determined on an annual basis as required by law. The Prison Per-Diem Workgroup is responsible for annually developing per diem rates to ensure that private correctional facilities are being operated at less cost than public correctional facilities. However, the Workgroup has not met since 2002. Because currrent per diem rates have not been developed, the State cannot answer the basic question of whether private prisons are operating at less cost than public prisons, as required by law. Consequently, the Department is limited in its ability to negotiate new contracts or renegotiate existing contracts that ensure the State's interests are adequately safeguarded. During the course of this review, the Workgroup convened, at the Department's request, to discuss and develop per diem rates.

DIVISION OF RESPONSIBILITIES

Currently, the responsibilities for the oversight, management and operations of private prisons are divided between DMS and the Department of Corrections (DOC). This is not only cumbersome but also creates problems with internal controls. Transferring the management and supervision of private prisons to the DOC could potentially save the State about $631,000 per year in salaries and administrative expenses. Moreover, the DOC has the background and knowledge to better monitor and administer the operations and management services contracts.

OTHER CONSIDERATIONS

Originally, our review was scheduled to cover only Gadsden Correctional Facility. However, during the course of the review, it became apparent there were issues impacting all privately operated facilities and the service contracts in general. As a result, the scope of our review was expanded to include South Bay Correctional Facility as well as a review of records pertaining to the other three facilities. The on-site reviews at Gadsden and South Bay ensured audit coverage of the two vendors who currently operate the State's five private prisons.

Also during the course of our review, we noted problems with contract monitoring procedures. Due to the scope of review required to fully develop contract monitoring issues and the importance of timely addressing the issues contained in this review, a separate report on contract monitoring procedures will be issued during the first quarter of FY 2005-06.

MAJOR RECOMMENDATIONS

We recommend that the Department provide contractors with written instructions for reporting vacant positions and require Contract Monitors to verify the accuracy of the contractors' vacancy reports. ***We also recommend*** that per diem payments in lieu of CAD be terminated at South Bay Correctional Facility and that for all future Request for Proposals (RFP) or Invitations to Negotiate for private prison operations, DMS instruct bidders to make offers only on the vendor's best bid. In addition, ***we recommend*** that during the next legislative agenda, the Department propose (1) the deletion of the Inmate Welfare Trust Fund and (2) the transfer of responsibility for contracting and monitoring of private prisons to the DOC.

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INTRODUCTION AND BACKGROUND

Early Privatization Efforts

In 1985, the Florida Legislature authorized the Department of Corrections (DOC) to contract with private vendors for needed services, if more cost efficient or timely than those provided by the DOC.[1]

In 1989, the Florida Legislature authorized the DOC to contract with private vendors to design, construct and operate correctional facilities if substantial savings could be realized.[2] The Legislature did not define substantial savings.

In the 1990 General Appropriations Act, the Legislature mandated that the DOC enter into a contract with a private vendor to construct and operate a correctional facility in Gadsden County. The Legislature directed the DOC to achieve a savings of 10 percent below the combined cost of constructing and operating a DOC facility. The DOC issued a Request for Proposal (RFP) which required that vendors achieve a savings of 10 percent for construction as well as a savings of 10 percent for operations. However, prospective vendors were unable to meet the required savings for both construction and for operations.

[1] Chapter 85-340, Laws of Florida
[2] Chapter 89-576, Laws of Florida

In the 1991 General Appropriations Act, the Legislature directed the DOC to issue another RFP for the construction and operation of Gadsden Correctional Facility. The Legislature directed DOC to achieve a cost savings of 10 percent for operations and substantial savings for construction as determined by the DOC. U.S. Corrections Corporation was awarded the contract. The vendor's proposal offered a savings on construction costs of 5 percent less than DOC's costs and savings on operating costs of 11.6 percent. The DOC and the vendor entered into an operations contract in 1994. Gadsden Correctional Facility became operational in March 1995.

Creation Of Correctional Privatization Commission

In 1993, the Legislature created the Correctional Privatization Commission (CPC) for the purpose of entering into contracts with private vendors for the design, financing, acquiring, leasing, construction, and operation of private correctional facilities.[3,4] The Legislature also required a savings of

[3] Chapter 93-406, Laws of Florida
[4] Correctional facilities include major institutions as well as other facilities managed by private vendors on behalf of DOC and the Department of Juvenile Justice.

7 percent over the costs of a similar DOC facility. Again, the Legislature did not define whether the 7 percent savings applied to the total cost of construction and operations, or to the separate costs of construction and of operations. The CPC subsequently entered into contracts with private vendors for the construction and operation of six additional correctional facilities: two for youthful offenders aged 14 to 18, one for youthful offenders aged 19 to 24, and three for adult male offenders. The CPC awarded contracts for each of the three adult facilities based on a combined savings of 7 percent for both construction and operations.[5] The Legislature transferred the contracts for juvenile offenders to the Department of Juvenile Justice in 1996 and in 1999 the Legislature transferred the Gadsden contract from the DOC to the CPC.

Creation Of Prison Per-Diem Workgroup

Legislation, enacted in 2001[6], established the Prison Per-Diem Workgroup for the purpose of developing consensus per diem rates to be used in determining the per diem rates of privately operated prisons. The Workgroup consists of personnel from the Office of the Auditor General, Office of Program Policy Analysis and Government Accountability, and staff of the House and Senate appropriations committees.

The law specifies that it is the Legislature's intent that the consensus per diem rates be used to determine the level of funding provided to privately operated prisons. In addition, funding levels must reflect at least a 7 percent savings when compared with DOC costs. The Workgroup is required to annually develop consensus per diem rates which are to be used to determine per diem rates of privately operated facilities. Each contract contains a clause permitting adjustments to per diem rates, annually.

DMS Assigned Responsibility For Correctional Facilities

Effective July 1, 2004 the Legislature transferred the duties and responsibilities for contracting for, and managing privately operated correctional facilities to the Department of Management Services (DMS) and abolished the CPC effective July 1, 2005.[7] The Legislature also authorized the Department to enter into contracts pursuant to Chapter 957, Florida Statutes, and to acquire the contractual rights and assume the contractual obligations of the CPC for existing contracts. DMS assigned responsibility for the privately operated prisons to the Division of

[5] The three Youthful Offender facilities were exempt from the savings requirement of Chapter 957, Florida Statutes.

[6] Chapter 2001-379, Laws of Florida

[7] Chapter 2004-248, Laws of Florida

Fleet Management, Federal Property Assistance and Correctional Privatization. The Bureau of Correctional Privatization (BCP) was created within the Division to administer the contracts. A Contract Monitor is assigned to each facility to monitor facility compliance with contract provisions.

DMS is presently responsible for administering contracts for five privately operated correctional facilities. These five facilities are managed by two vendors: the Corrections Corporation of America (CCA) and GEO Group, formerly Wackenhut Corrections Corporation.

Correctional Facilities For Which DMS Is Responsible

Correctional Facility	Number of Beds	Offenders	Custody Level	Operational Date	Private Contractor
Gadsden	1,036	Adult Female	Minimum/ Medium	March 1995	Corrections Corporation of America
Bay	750	Adult Male	Minimum	August 1995	Corrections Corporation of America
Lake City	893	Male Youthful Offenders	Minimum/ Medium	February 1997	Corrections Corporation of America
Moore Haven	750	Adult Male	Minimum/ Medium	July 1995	GEO Group
South Bay	1,861	Adult Male	Close	February 1997	GEO Group
Total	5,290				

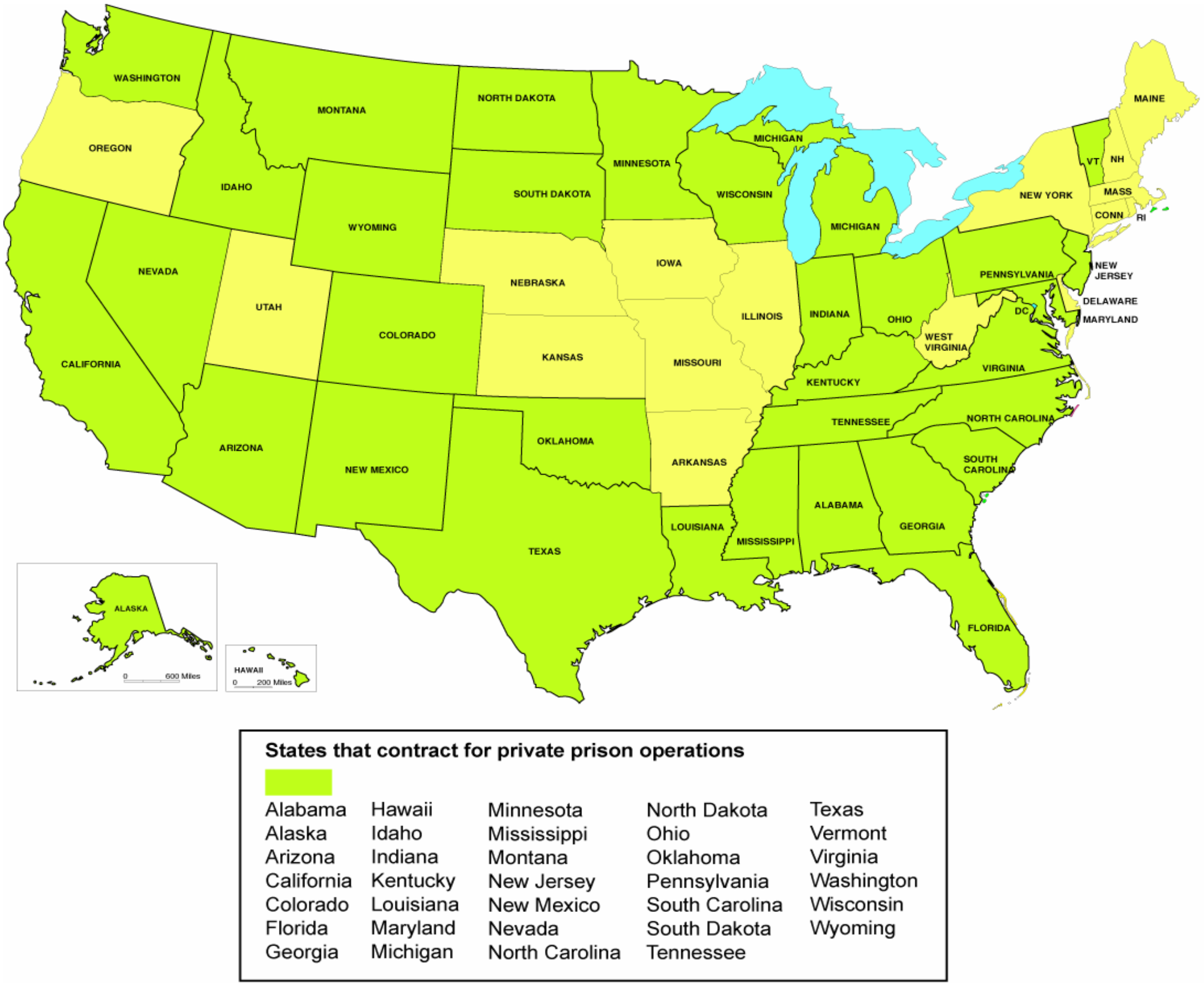
Table 1

A sixth private prison is scheduled for construction in Jackson County, near Graceville. Currently, the Department is negotiating with four vendors for construction and operation of the new facility. The facility will house 1,500 adult male offenders and is scheduled to begin operations during Fiscal Year 2007. During the 2005 session, the Florida Legislature approved the addition of 385 beds at Gadsden, 235 beds at Bay and 235 beds at Moore Haven by July 2007.

Florida Is The Only State Where Privately Operated Correctional Facilities Are Not Administered By State's Corrections Authority

As of 2004, Florida was one of 34 states which contracted for privately operated prisons. With the exception of Florida, privately operated facilities are administered and managed by the state's corrections authority. The following map shows those states with privately operated prisons.

STATES WITH PRIVATELY OPERATED PRISONS



Source: U.S. Department of Justice

Chart 1

Vendor Per Diem Rates

Vendors receive payment for providing operations and management services based on specified daily per diem rates. All contract per diem rates are based on a two-tiered system[8]: a primary per diem rate and a marginal per diem

[8] When calculating the total per diem rates, the combination of primary and marginal rates is often referred to as the blended rate.

rate. Contracts are structured so that vendors are guaranteed a primary per diem rate for each inmate up to 90 percent of capacity. The State is obligated to pay this primary or guaranteed rate even if the inmate population falls below 90 percent of capacity. In theory, this guaranteed rate ensures that vendors will cover their fixed costs. For each inmate in excess of 90 percent of capacity, vendors are paid the marginal per diem rate which covers the variable costs associated with each additional inmate above 90 percent capacity. The number of offenders housed in private facilities may not exceed 100 percent of capacity. As of April 2005, per diem rates at the five facilities were:

Per Diem Rates

<table>
<tr><th>Facility</th><th>Capacity</th><th colspan="2">Primary Rate (90 %)</th><th colspan="2">Marginal Rate (10 %)</th></tr>
<tr><td>Bay</td><td>750</td><td colspan="2">$58.26</td><td colspan="2">$16.53</td></tr>
<tr><td>South Bay</td><td>1,318</td><td colspan="2">$51.09</td><td colspan="2">$ 7.76</td></tr>
<tr><td>Moore Haven</td><td>750</td><td colspan="2">$57.57</td><td colspan="2">$10.39</td></tr>
<tr><td>Lake</td><td>350</td><td colspan="2">$78.88</td><td colspan="2">$74.78</td></tr>
<tr><td>Gadsden</td><td>1,036</td><td>768 @ $59.56</td><td>32 @ $43.23</td><td>96 @ $35.00</td><td>140 @ $39.57</td></tr>
</table>

Table 2

Contract Funding And Vendor Payment Procedures

As provided in Section 957.15, Florida Statutes, the Department requests the appropriation of funds for operations contracts and lease-purchase agreements in a request to the DOC. DOC is required to include the request as a separately identified item in its legislative budget request and must forward the Department's request to the Legislature without change. The Legislature then appropriates the funds for facility operations and lease-purchase payments to the DOC. Although DOC processes the payments to vendors, the Department contracts directly with the vendors, monitors vendor operations and authorizes DOC to make payment.

Vendors submit a monthly invoice to DMS for each contracted facility. The Department reviews the invoice and per contract provisions, makes deductions from the invoice when, for example, the vendor's staffing vacancies exceed the contractually allowed timeframes. The Department then submits a transmittal letter to the DOC authorizing payment of the approved invoice amount.

During FY 2004-05, a total of $106.4 million was appropriated for the operation and maintenance of $104.3 million in General Revenue and $2.1 million in Trust Funds. General Revenue funding included $14.6 million for lease purchase payments and $1.1 million for payments in lieu of taxes to local governments.

Privately Operated Institutions Inmate Welfare Trust Fund

In 1998, the Legislature established the Privately Operated Institutions Inmate Welfare Trust Fund (Inmate Welfare Trust Fund) within the DOC.[9] The trust fund was established for the benefit and welfare of inmates incarcerated in private correctional facilities under contract with the CPC (now DMS) and is funded primarily from sales to inmates.

Each month, vendors deposit into the trust fund the net proceeds from inmate canteens, all telephone and vending commissions, and revenue from similar sources. As provided in Section 945.215, Florida Statutes, the trust funds may be expended only pursuant to legislative appropriation. The contractors submit a budget to DMS for salaries and expenses for programs and services paid for with Inmate Welfare Trust Funds. The

privately managed prison facilities. The appropriation consisted of

Department forwards the vendors' approved requests for trust fund appropriations to the DOC along with the request for facility operations funding. After the Legislature appropriates General Revenue and Inmate Welfare Trust Funds for private prison operations, DOC has no authority over the funds other than to pay the vendor the amount DMS certifies for payment.

[9] Chapter 98-386, Laws of Florida

DISCUSSION ISSUES AND RECOMMENDATIONS

ISSUE 1

CPC FAILED TO ADEQUATELY ADMINISTER PRIVATELY OPERATED PRISON CONTRACTS

The CPC consistently failed to safeguard the State's interests in its role as the steward of privately operated correctional facilities. Our review showed numerous instances where vendors' interests were considered over the State's interests. CPC staff failed to perform routine reviews of contractually required reports submitted by the vendors to determine their accuracy or to question vendors' calculations involving monetary reimbursements, particularly in regard to deductions for staff vacancies. Records of contract negotiations and subsequent contract modifications favorable to vendors were not readily available to explain why certain actions were or were not taken by the CPC. In particular, we questioned the propriety of the method the CPC used to authorize Competitive Area Differential pay to a private vendor.

The contracts issued by the CPC did not adequately define how vendors should use the Inmate Welfare Trust Fund, nor did the CPC establish internal policies and guidelines for vendors' use of the Trust Fund. Consequently, the trust funds were used to supplement vendors' operational costs, thereby understating actual per diem costs. The CPC also authorized an increase in vendors' per diem rates to pay for CPC staff salaries and expenses after its budget was eliminated by the Legislature. The increased per diem was deducted from the vendors' invoices and the funds deposited into the CPC's Grants and Donations Trust Fund for payment of salaries and expenses. This action served to artificially inflate contracted per diem rates and to create potential conflicts of interest between the CPC and its vendors.

As a result of the CPC's failure to adequately perform its statutory functions, the State incurred about $12.7 million in questionable and excessive costs. Moreover, the statutory mandated requirement that private prisons operate at a 7 percent savings over public prisons could not be determined.

- Finding 1 -

CPC Failure To Enforce Contract Provisions Regarding Vacant Staff Positions Cost The State Over $4.4 Million

The State paid facility vendors over $4.4 million in payments for vacant staff positions. This occurred because the CPC did not require vendors to report vacant staff positions for a major portion of the contract terms. Moreover, when vendors did report vacancies, the CPC did not correctly calculate the number of vacant days by staff position and did not reduce vendors' invoices by the correct amount.

Contractual Requirements

Contractually, vendors are required to supply sufficiently trained staff to provide for and maintain the security, control, custody, and supervision of inmates of the facilities. Positions are to be staffed in accordance with the staffing pattern approved in the contract for each facility. Staffing patterns identify critical posts, primary/flexible posts, total staff required per position, and overall total staff.

The vendor is required to fill any vacant security position within thirty (30) days and non-security positions within forty-five (45) days after the date of a vacancy.[10] A vacancy occurs when an employee resigns, is terminated, or reassigned to another position. Should a position remain vacant for more than the specified time, a monetary deduction is made using the base salary of the vacant position. Vendors are required to report vacancies monthly. Using the vacancy listing, vacancies for staff positions in excess of the specified time are calculated and monetary deductions are made from the vendor's monthly invoice. The monetary deductions made for excessive vacancies are not penalties to the vendors but are recoupment of payments to vendors for contractually required staff positions.

Vendors Not Required To Report Vacancies

Contrary to contract terms, the CPC did not require vendors to report staff position vacancies during the majority of the time the contracts were in force. Due to a lack of documentation, we could not determine whether vendors were simply not required to report position vacancies or if reported, the CPC chose not to enforce the contract

[10] Prior to July 1, 2003, Gadsden Correctional Facility contract allowed only a 14 day vacancy period for both security and non-security positions.

terms by making the appropriate monetary deductions. For example:

- At Bay Correctional Facility, the CPC made no deductions in per diem payments for vacancies between August 1995, when the facility became operational, and August 2001.

- At Lake City Correctional Facility, no deductions were taken between February 1997, when the facility became operational, and February 2000. Although deductions were made on the February 2000 invoice, no further deductions were made until September 2001.

- At Moore Haven Correctional Facility, no deductions were taken between July 1995, when the facility became operational, and December 2001.

- At South Bay Correctional Facility, no deductions were made between February 1997, when the facility became operational, and December 2001.

- At Gadsden Correctional Facility, no deductions were made between August 2000 and August 2001.

Former staff of the CPC stated that they did not recall if vendors were simply not required to report vacancies or if the CPC established a policy of not requiring deductions for the vacancies. Regardless of the CPC's rationale, deductions for position vacancies were not made although the vendors were paid a per diem based on full staffing levels.

While the total amount of funds the CPC failed to deduct cannot be determined due to incomplete vendor reporting, we estimate that the CPC failed to make deductions of over $3.7 million for vacant positions at the five facilities.[11]

Incorrect Calculation of Vacancy Deductions

When the CPC did begin making deductions for position vacancies, our review showed that the CPC consistently miscalculated the number of vacant days per position as reported by the vendors. Further, the CPC did not always deduct the correct amount when it determined the correct number of days vacant. Based on available records, we determined that an additional $750,000 should have been deducted from vendors' payments during this time. The following table shows the difference in calculations between the CPC and OIG.

[11] The estimate of $3.7 million was determined by (1) averaging the number of vacancy deductions reported per month per facility for the period of time when facilities reported vacancies as required and (2) multiplying the average vacancy deduction per month as determined in (1) by the number of months vacancies were not reported.

Vendor Vacancy Deductions

Facility	Reporting Period	CPC Deductions	OIG Calculations	Difference
Gadsden	August 2001-December 2004	$631,606.80	$1,039,419.84	$407,813.04
Bay	April 2002-December 2004	$436,823.15	$496,913.39	$60,090.24
Lake City	August 2001-December 2004	$232,315.12	$375,235.22	$142,920.10
South Bay	May 2002-December 2004	$270,534.54	$368,506.87	$97,972.33
Moore Haven	May 2002-December 2004	$212,415.79	$253,170.26	$40,754.47
		$1,783,695.40	**$2,533,245.58**	**$749,550.18**

Table 3

Our review showed that errors made by the CPC fell into three general categories:

- In cases where vendors submitted vacancy reports, the CPC failed to accurately calculate the number of days positions were vacant. This was the result of errors made by CPC staff when counting vacant days by position.

- Vendor vacancy reports did not contain detailed documentation concerning vacant positions. The CPC staff failed to consistently verify the accuracy of the vacancy reports. Consequently, CPC staff did not detect errors contained in the vendor reports.

- When CPC staff correctly calculated the days vacant, staff did not always deduct the correct amount from vendors' invoices.

Recommendations

1. ***We recommend*** that the BCP provide contractors with written instructions for reporting vacant positions.

2. ***We recommend*** that the BCP require its Contract Monitors to review vendor records to verify the accuracy of the vacancy reports prior to the reports being forwarded to the BCP.

Bureau Response

1. We concur and prior to the issuance of this report, had already set up a method of comparing those vacancies against program numbers through the monthly reports. We have also made the reporting method consistent in all five facilities. These changes went into effect in November 2004. In January 2005, the process for calculating deductions was also modified. In July 2004, when DMS took over oversight responsibility, DMS required each facility to submit a position control document monthly in addition to a vacancy report. The position control document submission began with the August 2004 reporting period. An e-mail was sent on 3/25/05 to BCP staff to implement a report monthly reflecting vacancies in the program areas beginning with the July 2004 reporting period.

2. We concur. The Contract Monitors have been given more explicit instructions on the reporting and have been given a 48 hour turn-around on inconsistent numbers once the central staff has notified them of same.

-Finding 2 -

CPC Waived Required Staffing Patterns

The CPC waived contractually required staffing patterns for certain staff positions at all correctional facilities for the period of April 2003 through March 2005. The blanket waivers violated both contract requirements and Florida Administrative Code. As a result of the blanket waivers, the CPC did not require vendors to refund a portion of the per diem payments they continued to receive for full staffing levels. Consequently, the waivers cost the State a minimum of $290,000 in additional costs.

Contractual And Rule Requirements

The operations and management services contracts require that vendors provide designated services for inmates in accordance with American Correctional Association (ACA) standards. The contracts further require that positions providing these services will be staffed with qualified employees in accordance with the staffing pattern provided in the vendor's proposal. The vendors are required to fill any vacant non-security position within forty-five (45) days after the date of a vacancy. All contracts contain a provision allowing vendors to subcontract for any of its responsibilities in order to meet standards.

Chapter 60AA-1.008, Florida Administrative Code, allows for and prescribes procedures for the vendors to request waivers for ACA staffing and other standards. Each waiver request must be in writing and is applicable only to the facility for which it is granted.

CPC Approved Blanket Waivers For Vacant Positions

In April 2003, the CPC granted a blanket waiver to contract staffing requirements for vacancies in staff positions for Registered Nurses and vocational and academic instructors at all facilities. In August 2003, the CPC granted another blanket waiver to all facilities for vacancies in Licensed Practical Nurse positions.

A review of the minutes of the CPC's quarterly meetings, during which the waivers were granted, specified that the Executive Director informed the Commission that vendors were encountering difficulties in recruiting for the positions. However, there were no documents or other evidence to verify that vendors had requested the waivers. It appears that the blanket waivers were granted in order to allow facilities to avoid monetary deductions for vacant non-security positions. We did, however, find records that disclosed that Lake City had properly requested a waiver for these positions prior to the quarterly meetings. The waiver request showed that Lake City had contracted for the vacant positions through a temporary employment firm. Therefore, at Lake City, the positions were fully covered and in compliance with contract and ACA standards. We noted that this waiver was correctly granted. However, while Lake City continued to pay a temporary employment firm to fill their vacant positions, the other four facilities were not required to fill the positions and continued to receive per diem payments for vacant positions.

Facilities Provided No Documentation Supporting Need For Waivers

After granting the blanket waivers, the CPC did not require facilities to document that vacancies actually existed for those positions which were waived. Two of the facilities (Gadsden and South Bay) submitted vacancy reports which showed the status of the vacant positions as required; however, two other facilities (Bay and Moore Haven) did not submit any information on the vacancy reports concerning the status of the positions.

While Chapter 60AA-1.008, Florida Administrative Code, allows waivers to ACA staffing standards, it does not preclude the State from continuing to make monetary deductions for vacant positions and the CPC should have continued to make monetary deductions from the vendors' monthly invoices. Failure to do so cost the State a minimum of $290,994 for the period of April 2003 through December 2004 for the Gadsden and South Bay facilities. We could not calculate the amount of deductions the CPC should have made for the Bay and Moore Haven facilities as the vendors did not report whether vacancies existed in these positions.

Waivers Cancelled By Department

During the course of this audit, the blanket waivers were brought to the attention of the BCP. The BCP issued a memorandum dated February 25, 2005 rescinding all waivers effective March 1, 2005. The memorandum included procedures for facilities to follow to correctly request waivers.

Recommendation

3. ***We recommend*** that the BCP require vendors to subcontract for non-security positions that remain vacant beyond a specified time.

Bureau Response

3. We concur. The blanket waivers were rescinded and the requirement for subcontracting is in effect. This process was initiated by memorandum dated February 25, 2005, effective March 1, 2005.

Specific instructions for requesting waivers to fill vacant positions with contracted staff were also provided.

-Finding 3 -

Vendor Received $3.4 Million in Excessive CAD Payments And Per Diem In Lieu Of CAD

The vendor at the South Bay Correctional Facility received excessive CAD and per diem in lieu of CAD totaling about $3.4 million during the period of January 1999 through December 2004. The vendor invoiced the State for excessive CAD payments in the amount of $1.86 million during the period of January 1999 through June 2002. Although the State had significantly reduced CAD rates for its Correctional Officers during this period, the vendor continued to bill at the higher rate. Once the overpayments were brought to the attention of the CPC, no action was taken to recoup the overpayments. Instead, the CPC allowed the vendor to bill for and receive an increase in per diem to offset the reduced CAD. The excess per diem paid in lieu of CAD amounted to about $1.54 million for the period of July 2002 through December 2004.

Competitive Area Differential Pay

Competitive Area Differential pay is a salary additive authorized by the State for specific positions within a State agency when the agency can demonstrate that the additive is based on geographical, localized recruitment, turnover, or competitive pay problems.[12] The State has designated Palm Beach County as part of CAD Region 1, which entitles State employees working in the county to receive a salary additive. South Bay Correctional Facility is located in Palm Beach County. Under the terms of the December 1995 contract, the CPC authorized designated facility employees to receive the same CAD authorized for State employees.[13]

Subsequent to South Bay becoming operational, CAD rates for designated State positions have remained constant with the exception of rates for Correctional Officers which have decreased significantly as shown in Table 4.

[12] Chapter 60L-32.0012, Florida Administrative Code

[13] "The CONTRACTOR may request, and the COMMISSION shall not unreasonably deny, a competitive-area differential (CAD). Any COMMISSION-approved CAD adjustment must be used exclusively for the enhancement of relevant employee salaries."

Region 1 CAD Rates

CAD PAY FOR STATE CORRECTIONAL OFFICERS		
February 1, 1997 – December 31, 1998	January 1, 1999- December 31, 1999	January 1, 2000- Currrent
$6,300	$4,400	$2,500

Table 4

Vendor Invoiced CPC For Higher CAD

When South Bay became operational in February 1997, the State paid a CAD of $6,300 per Correctional Officer. On January 1, 1999, the State reduced CAD for Correctional Officers from $6,300 to $4,400. Although the CAD was reduced, the vendor continued to invoice the CPC for CAD at the previous rate of $6,300 per Correctional Officer, or a difference of $1,900 per position.

In January 2000, State CAD rates were further reduced to $2,500. However, the vendor continued to invoice the CPC at the $6,300 rate through June 2002, or a difference of $3,800 per position. Based on available documentation, the CPC became aware of the overpayments at that time. However, the CPC took no action to recoup any of the overpayments. Consequently, the vendor received excessive CAD payments of approximately $1.86 million from January 1999 through June 2002.

Contract Renegotiated

The 1995 South Bay contract was renegotiated in February 2000. One substantive change in the contract resulted from the addition of language involving payment of CAD. The following language was added to the new contract:

> ***"In the event the CAD is no longer available to the facility employees, the per diem shall be adjusted to compensate affected employees through payments to CONTRACTOR in the same amount as was available through the CAD, provided the legislature appropriates such funds."***

Although the contract language authorizes the vendor to receive payment of per diem in lieu of CAD, such an arrangement appears to violate the purpose of the negotiated per diem rates contained in the contract. Also, there is no statutory authority entitling vendors to additional per diem in lieu of CAD. Rather, this appears to have been an arrangement between the CPC and the vendor.

Per Diem Increased To Offset Lower CAD Rates

In July 2002, the vendor reduced the CAD billing from $6,300 per Correctional Officer to the lower State-approved CAD of $2,500. However, at the same time, the CPC permitted the vendor to increase its per diem rate billing by an additional $1.39 on the first 1,186 inmate days (90 percent of capacity). The increase in per diem offset the difference between the approved CAD of $2,500 and the higher CAD of $6,300 the vendor had been billing through June 2002.

We could locate no documents, contractual or otherwise, discussing the negotiation of this issue between the CPC and the vendor and noted that the contract was not amended to reflect the per diem increase. However, the CPC approved payments to the vendor at the increased per diem rate. This resulted in overpayment of about $3,800 per Correctional Officer position. The vendor billed for and received the higher per diem from July 2002 through December 2004. This resulted in excessive payments of about $1.54 million. And, as noted above, the vendor continued to separately bill the CPC for the State-approved CAD rate of $2,500 per Correctional Officer. Moreover, as questionable as the contract language is, the vendor would not be entitled to per diem in lieu of CAD and simultaneously receive CAD.

Accordingly, the vendor was paid a total of about $3.4 million in excessive CAD and per diem in lieu of CAD payments from January 1, 1999, through December 31, 2004.

CAD Inflated Per Diem Rates

Based on our review of the original 1995 contract and the 2000 renegotiated contract, we have concluded that the contract language concerning CAD payments was flawed and resulted in inflated per diem rates. The language contained in the 1995 RFP was misleading to proposers. Based on the RFP, bidders were informed that payment for CAD would be an additive to their offered per diem rates. Since the CAD payments were in addition to negotiated per diem rates, the CAD payments were not subject to the 7 percent savings requirement. This is contrary to Section 957.07, Florida Statutes. Moreover, the issue of CAD payments was compounded by the 2000 contract which authorized per diem payment in lieu of CAD.

In conclusion, we cannot determine why the CPC would issue RFP's and negotiate contracts containing such flawed provisions.

Recommendations

4. ***We recommend*** that the BCP immediately terminate per diem

payments in lieu of CAD at South Bay Correctional Facility.

5. ***We recommend*** that in all future RFP's or Invitations to Negotiate for private prison operations, bidders should be instructed to make offers based only on the vendor's best bid price.

Bureau Response

4. We concur on this issue. If legal review determines that this section [of the contract] may not be immediately terminated, we will address through the re-bid/renewal process that will be finalized prior to July 2006.

5. We concur. In all future RFP's or ITN's, bidders will be instructed to make offers based only on their best bid price.

-Finding 4 -

Vendor Billed State For Additional Burden On CAD Payments

The South Bay vendor billed the State for additional overhead, or burden, on CAD payments. The CPC authorized payment of about $1.57 million for these costs during the period from February 1997 through December 2004.

Vendor Charged An Additional Burden For CAD

The South Bay vendor charged an additional "burden" to the State for payment of CAD. We discussed this additional charge with vendor representatives who explained that the burden covered the marginal cost of paying an increased salary to employees due to the CAD. The vendor representatives explained that the burden charge was "tied" to the additional cost to the vendor of paying Federal Unemployment Tax Act (FUTA), State Unemployment Tax Act (SUTA), and Federal Insurance Contributions Act (FICA) costs. We determined that the burden percentages varied by type of position receiving CAD. We also noted that the burden percentages increased in July 2002. For example, the amount charged by the vendor for a Correctional Officer was 20.77 percent prior to July 2002 and 26.9 percent from July 2002 to the present.

We could find no statutory authority for the State to pay such a burden and question why the CPC would authorize the payment of any portion of a vendor's taxes.

Burden Charges Overstated

Notwithstanding the issue of whether the vendor is entitled to receive burden payments on CAD, the burden percentages the vendor charged the State were significantly overstated.

- The current FUTA tax rate is 6.2 percent of an employee's first $7,000 paid in wages during a calendar year. Employers who pay the employment tax on a timely basis receive an offset credit of up to 5.4 percent regardless of the rate of tax they pay the State. Therefore, the net Federal tax rate is generally 0.8 percent (6.2 % – 5.4 %). This equates to a maximum of $56 per employee per year in federal tax.

- Florida SUTA is similar to FUTA in that there is a taxable wage limit of $7,000 coupled with a variable rate between 0.1 percent and 5.4 percent. Regardless of the vendor's SUTA rate, the marginal cost on increased wages is negligible given a wage limit of $7,000.

- A review of the vendor's fringe benefits, such as insurance and retirement, indicates that there is likely no, or minimal marginal cost associated with paying increased wages through CAD. For example, medical and dental coverage, paid jointly by the vendor and employee, would not change based on wages. The vendor's 401(K) contributions could be impacted, but only slightly due to participation rates, matching percentages, and vesting rights which are outside the scope of this audit.

The 7.65 percent FICA contribution that the vendor is required to pay on wages appears to be the only reasonable marginal cost. However, there appears to be no rationale for the State to pay for a vendor's FICA on a salary additive that is intended to enhance its employees' pay and ultimately benefit the vendor through decreased turnover and reduced recruiting costs.

It is unlikely that payments for burden costs are authorized. However, even if appropriate, the amount the CPC allowed the vendor to charge appears to be well above that which would be required to cover the vendor's marginal costs. Moreover, the contract contains no provisions for payment of burden costs above the CAD payment and therefore would not be the responsibility of the State.

Recommendation

6. ***We recommend*** that the BCP immediately terminate burden payments on CAD.

Bureau Response

6. We concur. If legal review determines that this section [of the contract] may not be immediately terminated, we will address through the re-bid/renewal process that will be finalized prior to July 2006.

-Finding 5 -

Vendor Received CAD Payments For Terminated Employees

The South Bay vendor submitted invoices in the amount of $104,000 for CAD payments for employees who were no longer employed at the facility.

Vendor Charged State for CAD on Individuals No Longer Employed

We obtained a Personnel Actions History – Terminations Report from the vendor detailing a list of all employee terminations from July 1999 through December 31, 2004. We compared the list of terminated employees to the monthly CAD invoices submitted by the vendor. This comparison showed that the vendor received CAD payments for 73 individuals well after their termination. While the names of some of the terminated employees were shown on the CAD invoices only a few weeks after their reported termination dates, others were listed on the CAD invoices for over a year after their reported termination dates. The average length of time for all 73 employees shown as terminated but reflected on CAD invoices was about 19 weeks, or about 4 monthly billing cycles.

Vendor Stated Billings An Oversight

We examined personnel files during our on-site visit at South Bay. Our sampling of the personnel records verified that the employees had, in fact, been terminated. Facility personnel stated that the CAD billings for terminated employees were an oversight. Neither the Contract Monitor nor the CPC staff had reviewed the CAD invoices for accuracy.

Based on CAD payments for the contract period, overpayments of about $104,000 were made for employees no longer employed by the vendor.

Recommendation

7. ***We recommend*** that the BCP require Contract Monitors to verify the accuracy of vendor invoices prior to the BCP's approval for payment.

Bureau Response

7. We concur. If legal does not recommend termination of the CAD payments, the BCP will ensure that the Contract Monitor at South Bay Correctional Facility is properly trained to verify the vendor invoices

for accuracy prior to approval for payment.

-Finding 6 -

CAD Payments Not Used To Enhance Employee Salaries

Our review shows that the South Bay vendor used CAD payments to offset salary costs rather than to enhance employees' salaries.

CAD Improperly Used

According to Florida Administrative Code, a CAD additive for State employees is justified when it can be demonstrated that the additive is based on geographical, localized recruitment, turnover, or competitive pay problems. The contract between the South Bay vendor and the CPC provides for a CAD additive for the vendor's employees.

Currently authorized State CAD rates are:

Region 1 CAD Rates

Correctional Officer	$2,500
Classification Officer	$2,740
Clerk Typist	$1,269
Licensed Practical Nurse	$1,456
Psychologist	$ 957
Dental Technician	$ 957

Table 5

Although the vendor at South Bay has been receiving CAD payments to enhance employees' salaries since February 1997, it appears that the CAD is being used to supplement below-market starting salaries paid to South Bay employees. The CAD additive, in turn, offsets the vendor's low starting salaries. In effect, the State's CAD payments are subsidizing the vendor's payroll rather than serving as an additive to compensate for geographical, localized recruitment, turnover, or competitive pay problems.

CAD Used To Offset Low Salaries

The current starting salary for a certified Correctional Officer employed at South Bay is $28,371, which includes a CAD additive of $6,300 (CAD of $2,500 plus per diem in lieu of CAD of $3,800). At Moore Haven Correctional Facility, operated by the same vendor and located approximately 25 miles north of South Bay, the current starting salary for the same position is $27,000. The CPC's Moore Haven contract does not authorize payment of a CAD. Given that the vendor receives $6,300 CAD (plus burden percentage) for each certified Correctional Officer on its payroll at South Bay, the compensation difference of only $1,371 in salary between South Bay and Moore Haven indicates that the vendor is not enhancing the salaries of South Bay employees with the full CAD additive.

It therefore appears that the vendor is using CAD payments to supplement low starting salaries for certified Correctional Officers at South Bay. Net of the CAD payments, starting salaries for Correctional Officers at South Bay would be $22,071 as compared to starting salaries at Moore Haven of $27,000. It is highly questionable that the same vendor would pay a difference in starting salaries of about $5,000 for identical positions at two facilities located in close proximity. We therefore concluded that the CAD payments were a mechanism for supplementing the lower starting salary.

It becomes apparent that the vendor has created its own "competitive pay" problem by paying artificially lower starting salaries and using the CAD to offset the difference in its own payroll.

Recommendation

8. ***<u>We recommend</u>*** that in all future RFP's or Invitations to Negotiate for private prison operations, bidders should be instructed to make offers based only on the vendor's best bid price.

Bureau Response

8. See response to Recommendation Number 5.

-Finding 7 -

Excessive Per Diem Paid For Maintenance And Repair At Gadsden Correctional Facility

Gadsden Correctional Facility receives an additional per diem payment of $2.30 per inmate for the first 768 inmates or about $645,000 per year for the facility's routine and major maintenance and repair. However, records show that the vendor's expenditures averaged only $170,000 annually for calendar years 1999 through 2004. As a result, the State paid about $2.85 million more for maintenance and repair than was expended. The separate per diem payment for maintenance and repair gives the vendor the opportunity to earn greater profits by limiting the level of maintenance and repair services provided.

Gadsden Correctional Facility Receives Maintenance and Repair Per Diem

Unlike the other four correctional facilities, Gadsden Correctional Facility receives a separate per diem of $2.30 on it first 768 inmate days, or $645,000 annually, to cover the costs of routine and major maintenance and repair. The per diem rates at the other four facilities include funding for maintenance and repair; however, these facilities remit a monthly amount back to the BCP for major maintenance and repair costs. Vendors' major maintenance and repair contributions are deducted from the monthly per diem reimbursement and placed in the BCP's trust fund. The vendors are required to pay for all maintenance and repair costs up to $5,000. Maintenance and repair costs over $5,000 are paid from the fund as approved by the BCP. This arrangement gives the State a certain level of assurance that the facilities will be in good working order at the time the State takes possession. Because the State is not directly involved in the funding or in the cost of maintenance and repair at the Gadsden facility, the State has less assurance that the facility is being properly maintained and repaired.

We could not determine why Gadsden Correctional Facility would receive a separate per diem payment for maintenance and repair costs. However, we did find undated and unsigned memorandums in the contract files which indicated that when the contract was executed, the vendor and CPC agreed that the additional $2.30 would be an increase to per diem and that some of the funds might be used for maintenance. However, such an arrangement, if agreed to by the vendor and the CPC, is at odds with the executed contract which specifies that the payments are for maintenance and repair only.

Maintenance And Repair Per Diem Excessive

During calendar years 1999 through 2004, Gadsden Correctional Facility received $3,868,416 in per diem payments for maintenance and repair. However, a review of the vendor's reported maintenance and repair costs shows that the vendor expended $1,020,021 during this same period, as shown in the following Table.

Per Diem Received vs
Maintenance And Repair Costs

	CY 1999	CY 2000	CY 2001	CY 2002	CY 2003	CY 2004	Total
Per Diem Paid	$644,736	$644,736	$644,736	$644,736	$644,736	$644,736	$3,868,416
Maintenance and Repair Cost	$168,269	$112,016	$171,700	$174,623	$202,572	$190,841	$1,020,021
Difference	$476,467	$532,720	$473,036	$470,113	$442,164	$453,895	$2,848,395

Table 6

As shown in Table 6, Gadsden Correctional Facility received $2,848,395 more for maintenance and repair than was expended over the 6 calendar years, or an extra $1.69 per inmate day for the first 768 inmates, annually.

Vendor Has Profit Motive To Avoid Repair Expense

Contractual provisions such as the one at Gadsden Correctional Facility do not ensure that the State's interests are adequately protected. During our review we examined documentation showing the vendor had requested funds from the CPC in the amount of $150,000 to construct new boiler rooms in the housing units as the gas lines and air conditioning units were in the same room. The vendor justified the request based on safety concerns. The CPC denied the request for funds and suggested that the vendor use its own funds from the maintenance and repair per diem.

We noted that the repairs were not made by the vendor. We asked why the repairs had not been made and if this constituted a safety concern. The vendor's explanation for not making the repairs was that the request for funds was only an estimate and was obtained only in the event that the existing construction configuration did not pass State inspection. However, the contract requires the vendor to perform all maintenance, repair, and renovations, routine or otherwise. For this purpose, the vendor receives $644,736, annually. While we found nothing to indicate the vendor was not performing adequate maintenance and repair, based on this example, it appears that the State's interest in this property may not be optimally protected.

Recommendation

9. ***We recommend*** that the Gadsden contract be revised to conform to other facilities regarding routine and major maintenance and repair costs.

Bureau Response

9. We concur. We will process this request through legal to amend the contract prior to the rebid/renewal period that does not take effect until the expansion is complete (per '05 proviso).

-Finding 8 -

Trust Fund Used To Supplement The Cost Of Contractually Required Programs and Services

The Inmate Welfare Trust Fund is used to supplement the cost of contractually required programs and services. The use of the Trust Fund to supplement correctional facilities' operational requirements understates actual per diem costs and should be considered when evaluating compliance with statutory cost savings requirements.

Establishment of Trust Fund

Prior to 1998, vendors deposited net receipts from commissary operations and proceeds from telephone and vending commissions and other revenue sources generated at the correctional facilities into an inmate welfare trust fund account established by the vendors and approved by the CPC. The service contracts required the vendors to use these funds exclusively for the benefit, education, and general welfare of facility inmates.

In 1998, the Legislature created the Privately Operated Institutions Inmate Welfare Trust Fund (POIIWTF) within the DOC. Establishment of the Trust Fund effectively gave the State greater control over the use of such revenues.

Contractual Requirements

Contractually, vendors are required to provide inmates a wide range of programs and services, including substance abuse, wellness programs, academic and vocational training programs, library, chaplaincy, and visitation services. The contracts further provide that the Inmate Welfare Trust Fund is to be used for the benefit and welfare of inmates and may not include items included in the contractors' proposals. In addition, Chapter 60AA-203.101, Florida Administrative Code, provides that Inmate Welfare Trust Funds:

> ***May be used to provide unique and innovative programs for inmates' reintegration into society and that such expenditures do not include any program contemplated in the contract.***

Trust Funds Used to Pay for Contractual Requirements

Based on our review, it appears that the CPC allowed contractors to use the Trust Fund to pay for contractually required programs and services. While the contract provisions themselves are clear that the trust funds should not be used to supplement programs and services included in the contractor's negotiated per diem rates, the CPC allowed the vendors to designate certain staff positions to be reimbursed from the Trust Fund. These designated positions were identified in the vendors' staffing patterns which were included as an attachment to the contracts.

While some of the trust-funded positions could reasonably be approved for reimbursement from the Trust Fund, others could not. For example, at Gadsden, we noted that salaries for the positions of Chaplain, Administrative Clerk (Chaplain), Librarian, Library Aide, and Education Counselor are reimbursed from the Trust Fund. Clearly, these positions are part of the contract requirements to provide education, vocational, chaplaincy and other specified programs and services.

Distributions from Trust Fund not Equal Among Facilities

We noted that there was an inequitable distribution of trust funds across the five correctional facilities, with some facilities using trust funds more extensively than others for required programs and services. We attributed this to the fact that the CPC had not established internal policies for the use of the Trust Fund.

During Fiscal Year 2003-04, vendors expended $987,617 from the Trust Fund for the programs and services shown in Table 7.

Trust Fund Expenditures
Fiscal Year 2003-04

Expenditure Category	Funds Expended
Education Programs	$607,944
Religious Services	$125,463
Wellness Programs	$101,598
Inmate Libraries	$ 96,993
Visitation Programs and Other Inmate Activities	$ 54,961
Facility Enhancement (Fixed Capital Outlay)	$ 658
Total	$987,617

Table 7

Trust Fund expenditures by facility were:

Trust Fund Expenditures
Fiscal Year 2003-04

Correctional Facility	Capacity	Trust Fund Expenditures	% of Trust Fund Expenditures
Gadsden	1,036	$504,519	51 %
South Bay	1,318	$223,692	23 %
Moore Haven	750	$118,613	12 %
Bay	750	$110,111	11 %
Lake City	350	$ 30,682	3 %
Total	4204	$987,617	100 %

Table 8

While some Trust Fund expenditures may have been justified, based on the lack of policies or other guidance, it is difficult to determine which vendor costs should have been reimbursed from the Trust Fund. However, based on a review of services and programs, the position staffing for the majority of the programs and services are contractually required and should not have been paid with Trust Funds.

We also noted that the contracts did not require vendors to identify how certain programs or services offered inmates unique or innovative opportunities beyond those available at public facilities. Our review of available CPC documentation did not disclose any instances where a facility justified use of trust funds for an innovative program or service above those required by contract. Moreover, because contract payments are based on a fixed daily rate, vendor costs are not tracked by category (e.g. operations, health services or educational services). Therefore, the Department cannot determine whether contractors are using trust funds to offset expenditures for services and programs in addition to those contained in the contracts, or whether the funds are used to supplement programs and services that are already contractually required.

Use of Trust Funds Understates Vendors' Per Diem Rates

In comparison to the privately operated facilities, the Department of Corrections uses proceeds from commissary operations, telephone and vending commissions and other sales to inmates to offset the taxpayer's contribution to General Revenue funding for the State correctional system. Income from these sources is thus included in

DOC's reported per diem rates for its correctional facilities. However, Inmate Welfare Trust Funds are not included in the contracted per diem rates of privately operated prisons and are used to subsidize the cost of required programs and services. The contracted per diem rates thus do not accurately reflect actual operational costs.

The effect of trust-funded expenditures on each institution's per diem rates is shown in Table 9.

Effect on Per Diem Rates at Privately Operated Institutions Fiscal Year 2003-04

Correctional Institution	Blended Contract Per Diem Rate	Trust Fund Expenditures	Increased Cost Per Inmate-Day	Effective Per Diem Rate
Gadsden	$54.08	$504,519	$1.33	$55.41
South Bay	$46.76	$223,692	$0.46	$47.22
Moore Haven	$52.85	$118,613	$0.43	$53.28
Bay	$54.09	$110,111	$0.40	$54.49
Lake City	$78.47	$30,682	$0.24	$78.71

Table 9

The use of trust funds to supplement vendor programs and services results in an effective per diem rate that exceeds contracted rates. Accordingly, when determining compliance with statutory cost savings requirements, the costs of supplementing contractual services and programs paid from trust funds should be considered when determining actual per diem rates.

Recommendation

10. ***We recommend*** that, as part of its next legislative agenda, the BCP, in coordination with the DOC, propose the deletion of the Privately Operated Institutions Inmate Welfare Trust Fund and that funds generated from sales to inmates be deposited into the General Revenue fund to reduce General Revenue funding for the State's private correctional facilities.

Bureau Response

10. We concur. We will propose legislation eliminating the Inmate Welfare Trust Fund, recommending that these funds be placed in General Revenue. In addition, the BCP will ensure that funds generated from sales to inmates will be solely for the benefit of inmates and not to supplement contractually required services and programs.

-Finding 9 -

Welfare Trust Fund Incurred Loss

The CPC did not adequately monitor vendors' trust fund reports. Consequently, the CPC did not address a $200,000 decrease in commissary revenues at Gadsden Correctional Facility or the facility's use of other trust fund income to cover net operating losses.

Contract Requirements

The operations and management services contracts require vendors to provide an inmate commissary. Vendors are required to deposit their net proceeds from commissary operations as well as proceeds from telephone and vending commissions and other revenue sources into the Trust Fund, monthly. Vendors are required to submit to the CPC a monthly report of Trust Fund deposits and expenditures.

CPC Did Not Monitor Trust Fund

Our review of Gadsden Correctional Facility's commissary operations showed that the CPC failed to monitor and address issues concerning a significant decline in revenue from commissary sales and the use of other Trust Fund revenues to offset the vendor's net operating losses.

On January 20, 2002, Gadsden Correctional Facility changed its commissary operations from bulk distribution to bag distribution at the request of CCA corporate management. Under a bag distribution system, instead of maintaining inventory on-site, inmates are required to submit a weekly order for commissary goods. CCA's subcontractor for commissary services then bags each order individually and ships the bags to Gadsden Correctional Facility for distribution to inmates.

Commissary Sales History

While Gadsden's commissary sales remained relatively constant during the period of our review (1999-2004), the cost of goods sold (what Gadsden reported paying for items resold to inmates) increased significantly during Calendar Year (CY) 2003. The following table shows Gadsden's reported net income from canteen operations for the period reviewed.

Income From Canteen Operations

	CY1999	CY2000	CY2001	CY2002	CY2003	CY2004
Sales	$ 830,324	$ 846,357	$ 864,327	$ 897,117	$796,158	$ 883,520
Less Cost of Goods Sold	$(502,343)	$ (545,825)	$ (546,654)	$(559,459)	$ (777,694)	$ (882,068)
Gross Profit	$ 327,981	$ 300,532	$ 317,673	$ 337,658	$ 18,464	$ 1,452
Gross Profit Margin	39.5 %	35.5 %	36.85 %	37.6 %	2.3 %	0.2 %
Operating Expenses	$ (140,203)	$ (100,251)	$ (118,970)	$ (111,371)	$ (58,960)	$ (67,382)
Net Income	$ 187,778	$ 200,281	$ 198,703	$ 226,287	$ (40,496)	$ (65,930)

Table 10

As shown in Table 10, the cost of goods sold went up significantly beginning in CY 2003. The increase in cost of goods sold consequently resulted in a net loss from commissary operations for CY 2003 and CY 2004. Net income from commissary operations, which had averaged about $203,000 annually for the preceding four-year period, now showed an average loss of about $53,000 for the latest two-year period. Our discussions with the vendor and the vendor's accountant have not resulted in an explanation of why commissary revenues decreased so significantly.

Conversely, the CPC failed to notice or question the resulting loss of income from commissary operations. Chapter 60AA-203.101, Florida Administrative Code, directs the CPC Executive Director to appoint Commission members to an Inmate Welfare Fund Policy Committee to annually review facilities' Inmate Welfare Fund budgets. BCP staff reviewed CPC records and could find no documentation indicating that the CPC had established such a policy committee.

The CPC thus allowed the vendor to deduct the net loss from canteen operations from other inmate-generated income (such as telephone and vending commissions) rather than requiring the vendor to recognize the losses as a corporate expense. More importantly, deducting the losses from other revenue sources reduced the facility's contribution to the Inmate Welfare Trust Fund.

Recommendation

11. ***<u>We recommend</u>*** that the BCP regularly review vendor Trust Fund operations to include commissary or other operations where revenues are derived from inmate sales. Should the operations not generate funds or operate at a net loss, the BCP should determine if vendors are profiting from sales or if facility operations should be revised.

Bureau Response

11. The BCP has established an Inmate Welfare Fund Policy Committee to review the facility Inmate Welfare Trust Fund budgets.

-Finding 10 -

Vendors' Per Diem Rates Increased To Pay For CPC Salaries And Expenses

In a November 2001 special session, the Legislature zero-budgeted the remaining $263,489 from the CPC's $500,652 2001-02 General Revenue appropriation for staff salaries and operating expenses. Subsequently, the CPC increased each vendor's contracted per diem rate by the amount needed to cover CPC costs. The vendors then remitted the amount of the per diem increase to the CPC's Grants and Donations Trust Fund to pay for staff salaries and operating expenses. The CPC's action artificially inflated contracted per diem rates. Also, because the reason for the increase in per diem was not disclosed in the contract amendment authorizing the increase, the Department was not aware that a portion of contracted rates were designated for CPC operations. This action could have resulted in a loss of salary and expense dollars for current Department employees when the Department enters into negotiations to renew existing contracts, establish rates for facility expansion, or execute contracts for operation of newly constructed prisons.

Legislature Eliminated General Revenue For CPC Salaries And Operations

In the November 2001 special session, the Legislature eliminated funding for the CPC's own operations. To compensate for the loss of its General Revenue funding, the CPC increased the per diem rate at each facility by $0.40 on the first tier of inmate man days. The amount of the per diem increase was then deducted from the vendors' monthly invoices for services and deposited into the CPC's Grants and Donations Trust Fund.

Legislative Intent Unknown

It is not known whether the Legislature intended to eliminate the CPC by zero-budgeting its General Revenue funding, or intended for the vendors to bear the cost of CPC operations. If it was the Legislature's intent that vendors bear the cost of CPC operations within existing contracted rates, the CPC undermined Legislative intent by amending the service contracts to increase the contracted per diem at each facility. If, however, the Legislature intended to permanently eliminate General Revenue funding for CPC operations and not the CPC itself, the CPC had no recourse but to bill the vendors for its salaries and expenses and use the increased per diem rates to offset the loss of direct General Revenue funding. As the Legislature transferred CPC spending authority to its Grants and Donations Trust Fund, it would appear that the Legislature expected the CPC to use available trust funds for this purpose. However, the Trust Fund balance was only about $150,000 at the time and was not sufficient to fund all CPC costs.

Actions Artificially Increased Per Diem Rates

Whatever the rationale for the Legislature's actions, for all intents and purposes, the CPC continued to operate with General Revenue funds. Instead of direct funding from General Revenue, funds for CPC operations were deducted from each vendor's reimbursement for services, which is paid from General Revenue.

Because the CPC's action only resulted in a change in funding source, the financial effects were neutral; however, the policy effects were not. Foremost, this action artificially inflated contracted per diem rates. The special session legislation also prescribed specific cost savings and created the Prison Per-Diem Workgroup to set consensus per diem rates. The CPC's actions thus undermined the generally accepted practice of negotiating contracts on the basis of costs attributable to services rendered.

The CPC's actions also created a serious control deficiency in that the Department's Bureau of Correctional Privatization is now fully funded by the vendors whose contracts it administers. This funding mechanism places the Bureau in the untenable position of enforcing contractual provisions paid for by its own funding sources. Should the Bureau need to terminate a contract for cause, it would face losing a portion of its operating funds. Moreover, when existing contracts are renewed, or new contracts awarded, the effect of the contract amendments could result in loss of Bureau funding.

Due to the transition of responsibility for prison operations from the CPC to the Department, the Department was unaware of the CPC's funding practices. However, during the course of this review, the nature of the CPC funding was brought to the Department's attention. The Department subsequently requested direct General Revenue funding to cover the BCP's costs for the 2005-06 Fiscal Year.

Recommendation

12. ***We recommend*** that the Department amend each service contract to reduce vendors' per diem rates by the $0.40 increase and discontinue deducting BCP

operations costs from vendors' invoices.

Bureau Response

12. We concur. Adjustments have been made through the 1 and 2 year renewals that take effect July 1, 2005.

END OF ISSUE 1

ISSUE 2

CONSENSUS PER DIEM RATES NOT DETERMINED

Legislation enacted in 2001[14] established a Prison Per-Diem Workgroup to meet annually to develop consensus per diem rates for the CPC to use when determining per diem rates of privately operated prisons. The Workgroup consists of representatives from the Office of the Auditor General, the Office of Program Policy Analysis and Government Accountability, and the staffs of the appropriations committees of both the Senate and the House. The stated intent of this legislation is to determine the level of funding provided to privately operated prisons. Funding levels must reflect a 7 percent savings when compared to the operation of DOC facilities. However, because the Workgroup has not met since 2002, current consensus rates are not available to the Department to facilitate development of Legislative Budget Requests for privately operated prison operations and adjustments to current rates for an increased number of inmates at expanded facilities. Moreover, we noted that the CPC was not proactive in requesting or ensuring that the rates were obtained from the Workgroup. In conjunction with other issues discussed in this report, these actions have resulted in the Department being unable to determine whether pricing structures meet statutory savings requirements at the five privately operated correctional facilities.

[14] Chapter 2001-379, Laws of Florida

-Finding 1 -

Consensus Per Diem Rates Not Developed

Consensus per diem rates for the operation of private correctional facilities have not been determined on an annual basis as required by State law. State organizations responsible for determining annual per diem rates for operation of private prisons have not met since 2002. Because reliable and consensus per diem rates have not been developed, the State cannot answer the basic question of whether private prisons are operating at less cost than public prisons as required by law. Lacking baseline rates, the Department is limited in its ability to determine whether the 7 percent savings requirement is being met or to renegotiate existing contracts that ensure the State's interests are adequately safeguarded.

Prison Per-Diem Workgroup Has Not Developed Current Per Diem Rates

In 2002, the Legislature established the Prison Per-Diem Workgroup to develop consensus per diem rates for privately operated prisons by February 1, 2002, and each year thereafter from data provided by the Department of Corrections for the most recent fiscal year. The statutes require the Workgroup to calculate average per diem rates for adult male, youthful offender male, and female populations and make adjustments in the DOC rates to account for variation in size and location of DOC correctional facilities. However, the Workgroup has not met since 2002.

The Workgroup published per diem rates on June 7, 2002, using DOC's Fiscal Year 2000-01 data. However, rather than providing baseline rates, the Workgroup offered a range of per diem rates (low, average, and high) based on facility size for two of the three male facilities and the youthful offender facility.

Because the Workgroup established ranges for male and youthful offender facilities rather than specific consensus rates, the CPC had flexibility in using the rates to justify private prison pricing structures and to show that savings could exist. However, the CPC did not determine if per diem rates met the statutorily required savings of 7 percent over DOC costs. The CPC did report that the female facility at Gadsden had savings of only 1.38 percent, yet it made no adjustments to the vendor's contracted per diem rates.

Although the contracts provide for an adjustment in rates based on the operating costs of the DOC, the CPC increased per diem rates at all facilities by 3 percent for Fiscal Year 2002-03 and 2.1 percent for four of the five facilities in Fiscal Year 2003-04, with South Bay receiving 3 percent. Because consensus rates were not available, the CPC continued to renew contracts without reference to current DOC rates or determining the appropriateness of such rates.

Private Vendor Rates Increasing While DOC Rates Decreasing

As reported by the DOC, average per diem rates have decreased from Fiscal Years 2000-2001 through 2003-04. Conversely, per diem rates of the private facilities increased over the same period, as shown in Table 11.

Changes In Per Diem Rates

Facility Type		FY 2000-01	FY 2003-04	Percent Change
Youthful Offender	Private	$72.10	$78.47	+ 8.8%
	DOC	$55.65	$52.23	-6.1%
Female	Private	$52.13	$54.08	+3.7%
	DOC	$68.15	$58.52	-14.1%
Male	Private	$46.40	$50.33	+8.5%
	DOC	$41.22	$39.28	-4.7%

Table 11

Florida Statutes require that private prisons operate at a cost savings to the state of at least 7 percent when compared to publicly operated prisons. There are many factors involved in determining comparable per diem rates; therefore, the Legislature established the Workgroup to develop consensus rates. Because the Workgroup failed to establish consensus rates, annually, and because the CPC made questionable contract concessions to vendors, the Department cannot determine whether current contracted rates constitute a savings over the cost of public prisons.

Accordingly, the ability of Department managers to renew contracts at the required savings to the state is, for all practical purposes, impossible to accomplish given that consensus per diem rates are not available.

Consensus Rates Needed - One New Prison Coming On Line And Increasing Capacity At Existing Facilities

The importance of timely consensus per diem rates can be demonstrated by examining the current situation the Department has inherited. The Department is currently negotiating a contract for the construction and operation of a new 1,500 bed facility near Graceville. Moreover, Lake City and South Bay are both in the process of increasing capacity by 543 beds and will likely be at the new capacity by July 1, 2005. Expanded capacity is of less importance at South Bay where economies of scale already exist with a current capacity of 1,318 beds. However, Lake City has a current capacity of just 350. At the expanded design capacity of 893 beds, the current blended rate of $78.47 is not in line with comparable DOC facilities. The following chart shows DOC–reported per diem rates by average daily population for Youthful Offender facilities as compared to per diem rates at Lake City.

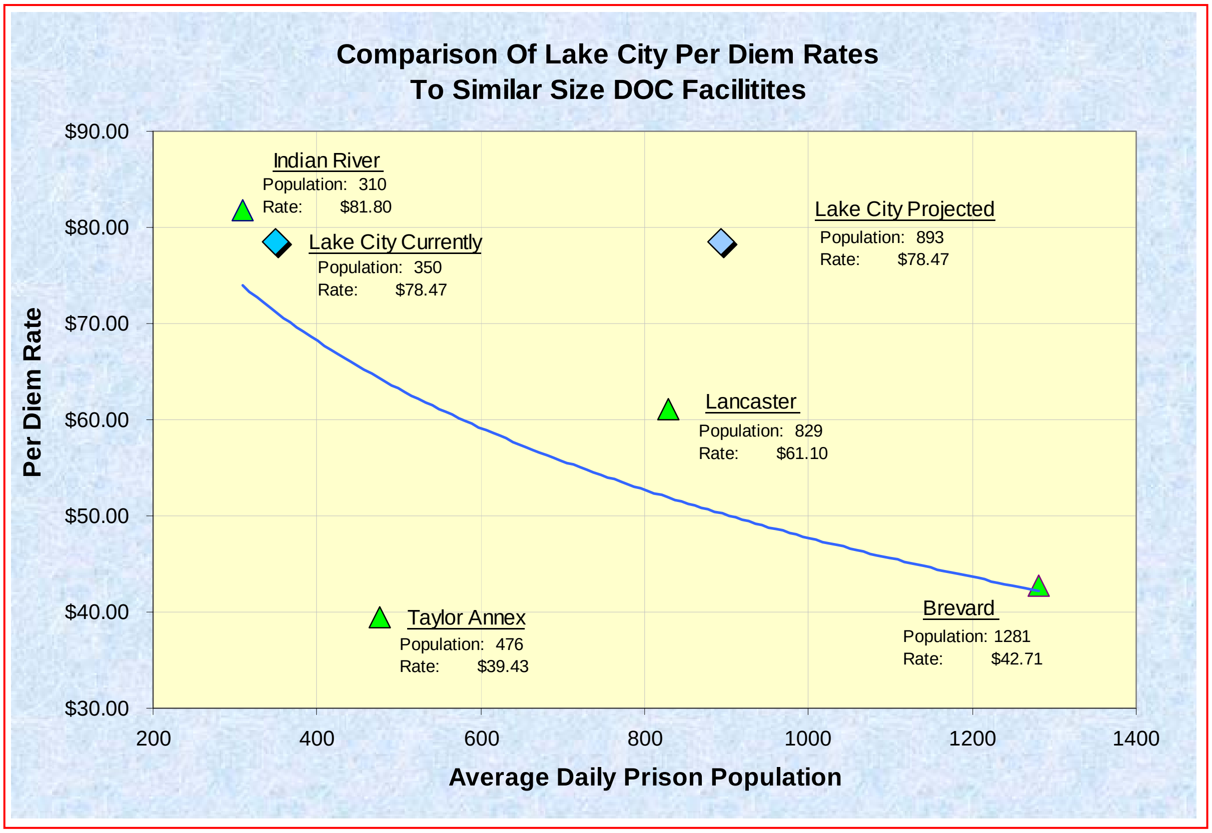


Chart 2

As illustrated in Chart 2, operational costs decrease as prison population increases due to economies of scale. Thus, a capacity increase from 350 to 893 inmates at Lake City should result in a significant decrease from the current $78.47 daily rate.

As a result of the FY 2005 Legislative session, capacity at three other facilities (Bay, Gadsden, and Moore

Haven) is also being increased. In conjunction with the increased capacities at Lake City and South Bay and the new construction at Graceville, this further illustrates the need for consensus per diem rates to be determined both annually and timely.

Workgroup Currently Meeting To Determine Rates

During the course of this audit and at the urging of DMS management, the Workgroup is currently meeting to establish consensus per diem rates. The updated rates will help DMS meet statutory savings objectives.

Based on information provided by the OIG, the Workgroup lowered the benchmark per diem rate of $80.40 calculated for Lake City to $60.91 to account for the increased capacity and subsequent economies of scale. It is expected that finalized consensus per diem rates will be available within the near future.[14]

Recommendation

13. ***<u>We recommend</u>*** that the BCP maintain direct communication with the Workgroup to ensure that consensus per diem rates are available on an annual basis.

Bureau Response

13. We concur. We will maintain communication with the Workgroup through the Department's executive management staff. The BCP will also engage in dialogue with the members of the Workgroup during the year to ensure that the Workgroup is aware that consensus per diem rates must be provided annually.

END OF ISSUE 2

[14] On June 17, 2005, the Workgroup completed its report on consensus rates. The final report was forwarded to the President of the Florida Senate and Speaker of the House of Representatives. As in the prior report, the Workgroup provided non-specific data rather than baseline data useful to the Department in negotiating operations and management contracts for private prison operations. The report provides various numbers that could be interpreted in differing ways by state and vendor negotiators. The Workgroup's efforts thus failed to meet the statutory

requirement to derive consensus per diem rates for the Legislature to use in determining funding levels for the privately operated prisons. Further, the Department will have to use the Workgroup's results to calculate its own benchmark data. This process leaves the Department more susceptible to administrative challenges and delays in meeting contract timelines. As this report recommends, placing privately operated prisons under DOC jurisdiction would eliminate the need for the Workgroup.

ISSUE 3

DOC SHOULD ADMINISTER PRIVATELY OPERATED PRISONS

Although the CPC was administratively housed within DMS, the Department Secretary had no authority over Commission operations. And, as is apparent throughout this report, the CPC functioned autonomously and with little oversight or accountability. By dissolving the CPC and giving DMS the responsibility to contract for private prison operations, the Legislature imposed Executive Agency-level accountability and control over private prison operations. However, the selection of DMS as the host agency does not address concerns inherent in the current operational framework.

-Finding 1 -

Management and Supervision Of Private Prisons

The responsibility for contract management and monitoring of private prisons is currently divided between DMS and DOC. Transferring these responsibilities to the DOC would consolidate responsibilities, increase efficiencies and potentially save the State about $631,000 annually in administrative costs.

Use of Privately Operated Prisons

Creation of the Correctional Privatization Commission in 1993 served to jump-start the state's use of private vendors for construction and operation of correctional facilities. Although the primary mission of both public and privately operated prisons is to protect the public's safety, the CPC was also charged with achieving cost savings in prison operations and with reducing recidivism. An underlying assumption in outsourcing prison operations was that private vendors could achieve greater efficiencies and improve performance outcomes through innovation.

As discussed previously, Florida is the only state with contracted prison operations wherein privately operated facilities are not administered by the state corrections authority. In most states, the decision to outsource prison operations was driven by the need to bring additional beds on-line quickly, and in these states, privately operated prisons tend to model the state's public facilities.

Improvements in Financial Accountability and Control Mechanisms

Fiscal responsibility for the State's privately operated prisons is currently split between DMS and DOC. Therefore, neither agency has full accountability or control over financial matters. The Legislature appropriates funding for the private facilities to DOC as part of the overall appropriation for State correctional facilities. With one exception, DOC has no authority over appropriated funds except to pay vendors the amounts certified by DMS. DOC does verify and certify the vendor's billing for the number of inmate days provided. In the event that the vendor's and DOC's counts differ, DMS reimburses the vendor based on DOC's count. DOC has no authority over expenditures except to pay vendors the amounts certified by DMS. DOC is thus accountable for expenditures which have not been processed through DOC's own financial control system. And, because DMS does not pay the bills, invoices submitted for DOC payment are not subject to DMS' own internal controls. Both departments must thus rely on the BCP to exercise a level of financial accountability and control that, for sound business practices, is generally not delegated to the division or bureau level.

Determining Whether Contracted Per Diem Rates Meet Required Cost Savings Is Problematic

DMS negotiations with vendors for per diem rates that meet required cost savings are hampered by the lack of a consistent methodology for calculating and comparing contracted rates with DOC's costs to operate public facilities. The 2001 Legislature created the Prison Per-Diem Workgroup to develop consensus per diem rates for use in determining funding levels for privately operated prisons. The Legislature also required that funding levels reflect at least a 7 percent cost savings when compared with DOC costs.

In 2002, the Workgroup established a range of low, medium, and high per diem rates for the CPC to use in contract negotiations. Although the CPC's service contracts provide for annual rate adjustments, the CPC did not renegotiate or adjust contracted rates subsequent to publication of the Workgroup's baseline costs. Because the Workgroup did not calculate new rates in the succeeding fiscal years, DMS cannot determine if existing contracts comply with the state's cost savings requirements.

Placement of the privately operated prisons within DOC would alleviate the guesswork in developing consensus rates. DOC could negotiate the cost of services based on its own calculations for the cost of operating public facilities. Such reorganization would eliminate the need for the Prison Per-Diem Workgroup, which has historically not met statutory requirements to annually calculate consensus rates.

Benefits Of Placing Privately Operated Correctional Facilities Under DOC Jurisdiction

We identified the following benefits of placing responsibility for administering privately operated prisons within the DOC:

- Administration of privately operated facilities is more in line with DOC's core mission than with that of DMS. DMS is responsible for providing infrastructure support to state agencies and historically has not provided corrections services.

- The state could realize potential savings of approximately $631,000 by eliminating the BCP and incorporating responsibility for private prison operations within DOC's existing organizational structure.

- DOC is better positioned to monitor and evaluate results of private prison academic, vocational, substance abuse, and other programs. These costs add significantly to per diem rates. To date, neither the CPC nor external review entities have compared the costs and results of private prison programs with those of public facilities.

Recommendations

14. ***We recommend*** that, as part of the Department's next Legislative agenda, the BCP propose the transfer of responsibility for contracting and monitoring of private prisons to the DOC.

15. Alternatively, ***we recommend*** the BCP propose the transfer of responsibility for appropriations and budgeting authority to DMS.

Bureau Response

14. We concur to amend statute with one of two options. Department management will propose legislation directing the transfer of private prison to the DOC. The proposal will contain alternative language that should the Legislature determine not to transfer private prisons to DOC, that responsibility for appropriations and budget authority be transferred from DOC to DMS.

15. We concur. Please see #14.

END OF ISSUE 3

Exhibit A – Summary of Monetary Benefits

Issue No.	Description	Amount	Category
ISSUE 1			
Finding 1	CPC did not reduce vendors' per diem for vacant staff positions CPC did not correctly calculate vacancies.	$3,700,000 $750,000	Management or operating improvements/savings
Finding 2	CPC issued blanket waivers for vacant positions. Vendors' per diem payments not reduced.	$290,000	Management or operating improvements/savings
Finding 3	Vendor received excessive CAD payments. Vendor received per diem in lieu of CAD which was not authorized.	$1,860,000 $1,540,000	Management or operating improvements/savings
Finding 4	Vendor billed State for overhead on CAD.	$1,570,000	Management or operating improvements/savings
Finding 5	Vendor received CAD for employees not employed.	$104,000	Management or operating improvements/savings
Finding 7	Vendor received excessive per diem for maintenance and repair	$2,850,000	Management or operating improvements/savings
ISSUE 3			
Finding 1	Transfer of responsibility for contracting and monitoring of private prisons to DOC.	$631,000	Potential annual recurring savings

Exhibit B – Objective, Scope and Methodology

OBJECTIVE

The overall objective of this audit was to evaluate the status of the privately operated correctional facilities at the time of their transfer to DMS. Our specific objective was to determine whether existing contracts adequately safeguard the State's interests.

SCOPE

The audit, conducted in accordance with the ***Standards for the Professional Practice of Internal Auditing***, included a review of Correctional Privatization Commission (CPC), Department of Corrections (DOC) and Bureau of Correctional Privatization (BCP) documents and records for the years from 1991-2005. These documents and records pertained to the procurement of outsourced prison operations, including compliance with statutory cost savings requirements; development of contracted per diem rates and the effect of certain administrative actions on the per diem rate structure; and the state's administration and management of outsourced operations, including accountability and control mechanisms.

METHODOLOGY

To accomplish the audit objective, we performed the following steps:

- Reviewed applicable Laws of Florida, Florida Statutes and Florida Administrative Code.

- Reviewed relevant reports published by the Florida Corrections Commission, Department of Corrections, the Prison Per-Diem Workgroup, Office of the Auditor General and the Office of Program Policy and Government Accountability.

- Reviewed the literature on private prison operations in other states, including contracting and monitoring of outsourced prison operations; use of performance-based contracts and measurement of performance outcomes of privately operated prisons; and evaluations of whether privately operated correctional facilities are, or are not, less costly to operate than public facilities.

- ➢ Conducted on-site interviews with vendor staff at Gadsden and South Bay correctional facilities; interviewed selected vendor staff at all facilities by telephone and/or e-mail; and interviewed former CPC staff and current BCP staff, including Contract Monitors.

Steps associated with specific areas included the following:

- ➢ Position Vacancies/Waivers

    - Analyzed vacancy reports submitted to the CPC, as available from the five facilities for the period from August 2001 through December 2004
    - Compiled data on vacancy deductions from vendor invoices for the period from February 1997 through December 2004
    - Compiled information on vacancy waivers from minutes of the CPC's 2001 quarterly meetings and BCP staff interviews

- ➢ Competitive Area Differential Payments

    - Compiled and compared vendor and State data on CAD payments for the period February 1997 to December 2004
    - Compiled data from paid invoices to calculate State overpayments for CAD rates, burden charges, and payments in lieu of CAD
    - Compared vendor's Personnel Action-History Reports with the vendor's CAD billings to identify CAD overpayments for terminated employees

- ➢ Maintenance and Repair Per Diem, Gadsden Correctional Facility

    - Calculated cost of per diem payments to the vendor for maintenance and repair for Calendar Years 1999 through 2004; compiled data from vendor's records of expenditures and calculated effect on vendor's per diem rate

- ➢ Use of Inmate Welfare Trust Funds

    - Compiled and analyzed data and information on Inmate Welfare Trust Fund revenues and expenditures from Fiscal Years 1999-2000 through 2003-04 from the following sources:
        - CPC and BCP annual reports to the Legislature on Trust Fund revenues and expenditures
        - Vendors' budget requests for use of Trust Funds

- Vendors' Trust Fund Profit and Loss Statements
- DOC financial records

- <u>Payment of CPC Salaries and Expenses</u>

  - Analyzed changes in contracted per diem rates, invoice deductions, and CPC records and documents from November 2001 to December 2004 to identify CPC's basis for increasing per diem rates over time, including annual cost-of-living increases and increases related to payment of CPC salaries and expenses

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MEMORANDUM

DATE: June 29, 2005

TO: Steve Rumph, Director, Office of the Inspector General

FROM: Rosalyn Murphy, Director, Fleet Management, FPA & Correctional Privatization

SUBJECT: Response to Internal Audit Report Number 2005-61 Contract Management of Private Correctional Facilities

The Bureau of Correctional Privatization (BCP) reviewed the Internal Audit Report Number 2005-61 conducted by your office which evaluated the status of the privately operated correctional facilities at the time of their transfer to DMS. Attached are your recommendations and the BCP's response as noted in the report.

If you have any questions or need further information, please let me know.

RM:tr

Attachment

Response to Internal Audit Report Number 2005-61

1. ***Recommended*** that the BCP provide contractors with written instruction for reporting vacant positions.
   Response: We concur and prior to the issuance of this report, had already set up a method of comparing those vacancies against program numbers through the monthly reports. We have also made the reporting method consistent in all five facilities. These changes went into effect in November 2004. In January 2005, the process for calculating deductions was also modified. In July 2004, when DMS took over oversight responsibility, DMS required each facility to submit a position control document monthly in addition to a vacancy report. The position control document submission began with the August 2004 reporting period. An email was sent on 3/25/05 to BCP staff to implement a report monthly reflecting vacancies in the program areas beginning with the July 2004 reporting period.

2. ***Recommended*** that Contract Monitors be required to review vendor records to verify the accuracy of the vacancy reports prior to the reports being forwarded to the BCP.
   Response: We concur. The Contract Monitors have been given more explicit instructions on the reporting and have been given a 48 hour turn-around on inconsistent numbers once the central staff has notified them of same.

3. ***Recommended*** that the BCP require vendors to subcontract for non-security positions that remain vacant beyond a specified time.
   Response: We concur. The blanket waivers were rescinded and the requirement for subcontracting is in effect. This process was initiated by memorandum dated February 25, 2005, effective March 1, 2005. Specific instructions for requesting waivers to fill vacant positions with contracted staff were also provided.

4. ***Recommended*** that the BCP immediately terminate per diem payments in lieu of CAD at South Bay Correctional Facility.
   Response: We concur on this issue. If legal review determines that this section may not be immediately terminated, we will address through the re-bid/renewal process that will be finalized prior to July 2006.

5. ***Recommended*** that in all future RFP's or Invitations to Negotiate for private prison operations, bidders should be instructed to make offers based only on the vendor's best bid prices.
   Response: We concur. In all future RFP's or ITN's, bidders will be instructed to make offers based only on their best bid price.

6. ***Recommended*** that the BCP immediately terminate burden payments on CAD.
   Response: We concur. If legal review determines that this section may not be immediately terminated, we will address through the re-bid/renewal process that will be finalized prior to July 2006.

7. ***Recommended*** that the BCP require Contract Monitors to verify the accuracy of vendor invoices prior to their approval for payment.
   Response: We concur. If legal does not recommend termination of the CAD payments, the BCP will ensure that the contract monitor at South Bay Correctional Facility is properly trained to verify the vendor invoices for accuracy prior to approval for payment.

8. See recommendation Number 5.

9. ***Recommended*** that the Gadsden contract be revised to conform to other facilities regarding maintenance and repair costs.
   Response: We concur. We will process this request through legal to amend the contract prior to the rebid/renewal period that does not take effect until the expansion is complete (per '05 proviso).

10. ***Recommended*** that, as part of its next legislative agenda, the BCP propose the deletion of the Privately Operated Institutions Inmate Welfare Trust Fund and that funds generated from sales to inmates be deposited into the General Revenue fund to reduce General Revenue funding for the State's private correctional facilities.
    Response: We Concur. We will propose legislation eliminating the Inmate Welfare Trust Fund, recommending that these funds be placed in General Revenue. In addition, the BCP will ensure that funds generated from sales to inmates will be used solely for the benefit of inmates and not to supplement contractually required services and programs.

11. ***Recommended*** that the BCP regularly review vendor Trust Fund operations to include commissary or other operations where revenues are derived from inmate sales. Should the operations not generate funds or operate at a net loss, the BCP should determine if vendors are profiting from sales or if facility operations should be revised.
    Response: We concur. The BCP has established an Inmate Welfare Fund Policy Committee to review the facility Inmate Welfare Trust Fund budgets.

12. ***Recommended*** that the Department amend each service contract to reduce the vendors' per diem rates by the $0.40 increase and discontinue deducting BCP operations costs from vendors' invoices.
    Response: We concur. Adjustments have been made through the 1 and 2 year renewals that take effect July 1, 2005.

13. ***Recommended*** that the BCP maintain direct communication with the Workgroup to ensure that consensus per diem rates are available on an annual basis.

Response: We concur. We will maintain communication with the Workgroup through the Department's executive management staff. The BCP will also engage in dialogue

with the members of the Workgroup during the year to ensure that the Workgroup is aware that consensus per diem rates must be provided annually.

14. ***Recommended*** that, as part of its next Legislative agenda, the BCP propose the transfer of responsibility for contracting and monitoring of private prisons to the DOC.
    Response: We concur to amend statute with one of two options. Department management will propose legislation directing the transfer of private prison to the DOC. The proposal will contain alternative language that should the Legislature determine not to transfer private prisons to DOC, that responsibility for appropriations and budget authority be transferred from DOC to DMS.

15. Alternatively, ***recommend*** that the BCP propose the transfer of responsibility for appropriations and budgeting authority to DMS.
    Response: We concur. Please see #14.

Exhibit D – Distribution List

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