

oppaga Progress Report

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Correctional Privatization Commission Improved Management of South Bay Contract; More Savings Possible

at a glance

To ensure cost savings in private prisons, the Legislature created a work group to determine the public prison per diem each year and require private prisons to operate at least 7% below that cost.

The Correctional Privatization Commission has improved management of the South Bay contract by implementing our recommendation to recover state payment for vendor staff vacancies that exceed contract limits.

The commission has also included recidivism, savings, and program information in its annual report.

The commission has not implemented our recommendations to

- stop reimbursing vendors for tax payments without documentation, and
- specify performance measures and standards in vendor contracts.

We also recommend that the commission further address Wackenhut Corrections Corporation's failure to meet contract requirements for rehabilitative programs.

Purpose

In accordance with state law, this progress report informs the Legislature of actions the Correctional Privatization Commission has taken in response to the findings and recommendations of our 2000 report on the commission's management of the South Bay Correctional Facility contract.^{1, 2}

Background

The Legislature established the Correctional Privatization Commission in 1993 for the purpose of entering into contracts for the design, construction, and operation of private prisons in Florida.³ The Legislature directed that the commission only enter into contracts that are projected to result in at least 7% savings over public provision of a similar facility. The commission contracted with Wackenhut Corrections Corporation to operate a 1,318-bed adult male prison in South Florida known as South Bay Correctional Facility, which first opened in February 1997.

¹ Section 11.45(7)(f), *Florida Statutes*.

² *South Bay Correctional Facility Provides Savings and Success; Room for Improvement*, OPPAGA [Report No. 99-39](#), March 2000.

³ Chapter 93-406, *Laws of Florida*.

Previous Findings

Our earlier analysis concluded that South Bay achieved the required cost savings; however, we noted that further savings were readily achievable through improved contract management by the Correctional Privatization Commission.

Cost savings from private prisons result in large part from the ability of private vendors to reduce certain personnel costs, such as retirement benefits. While the state pays approximately 18% of each public prison correctional officer's salary into the Florida Retirement System, Wackenhut caps its retirement expense at 2.5% of an employee's salary, and the company pays that only if the employee contributes 5% of his or her salary. According to a South Bay official, less than 10% of the employees at that private prison participated in the retirement program. We estimated that public prison employee retirement costs exceeded private prison retirement costs by approximately \$1.7 million per year, or approximately the amount of savings realized by South Bay when compared to the most comparable public prison.⁴ The healthcare benefits for South Bay employees were also less than those for state workers, providing additional opportunities for savings.

To balance the private prison vendor's interest in profits, the commission is responsible for ensuring that cost savings are maximized for the state. We identified two ways in which the commission could further reduce the cost of South Bay. We recommended that the commission (1) discontinue the payment of estimated tax amounts and (2) deduct payments for vendor staff vacancies, as authorized by the contract.

⁴ This figure does not include the additional amounts paid by the state during the 1997-98 and 1998-99 fiscal years to reduce the unfunded liability of the Florida Retirement System.

We also recommended that the commission include specific performance measures in vendor contracts; these measures should parallel those of the Department of Corrections to facilitate comparisons of private and public prison performance.

We recommended that the commission revise its annual report to provide essential information to the Legislature, including cost comparisons, evaluation of specific performance measures, and recidivism data.

We recommended that the Legislature change its approach for establishing payment levels for private prisons to base vendor prices on public prison costs from the previous year. The state of Mississippi adopted a similar process.⁵

Actions Taken

In 2001, the Legislature revised Florida law to provide a process for using annual public prison per diem rates as an index for setting private prison appropriations. In addition, the commission implemented two of our recommendations.

The Legislature has developed a new method to assure cost savings.

To assure that prison privatization meets the 7% savings requirement throughout the life of the contract, the Legislature established a process for an annual determination of public prison costs.

⁵ Mississippi Code Ann. ss. 47-5-1201 et seq. requires the Mississippi Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER) to contract annually with a public accounting firm, which certifies a state cost per inmate day for a comparable state facility. The law further requires use of the certified cost as the basis for verifying the 10% savings required for private prisons. The 1999, 2000, and 2001 reports are available on the PEER website: <http://www.peer.state.ms.us/reports/rpt400.pdf>, <http://www.peer.state.ms.us/reports/rpt415.pdf>, <http://www.peer.state.ms.us/reports/rpt428.pdf>.

In July 2001, PEER calculated necessary costs per inmate day specifically for the ten state regional prisons and two of the five private prisons. <http://www.peer.state.ms.us/reports/rpt419.pdf>.

Section 957.07, *Florida Statutes*, directs the prison per diem workgroup to develop consensus public prison per diem rates for the Legislature to use in setting the appropriations for privately operated prisons. Requiring savings based on public prison costs ensures that private prisons consistently produce savings.

The commission has begun recovering state payment for vacant vendor positions

The South Bay contract stipulates that “if the contractor has less than the required number of employees for more than the specified time, an amount equal to the salary for the position(s) pro-rated for the number of days vacant in excess of the specified times may be deducted from the monthly per diem paid by the commission until such time as the position is filled.”⁶

The commission began assessing vacancy deductions in the 2001-02 fiscal year. As of April 15, the commission had assessed Wackenhut Corrections Corporation \$18,441.75 for staff vacancies at the South Bay Correctional Facility.⁷

The commission provided additional information in its 2001 annual report

The commission’s 2001 annual report did include cost comparisons, program information, and a recidivism study, as we recommended. Reporting this type of information helps provide the Legislature information it needs to assess and compare the costs and performance of private prisons.

⁶ The contract requires security positions to be filled within 30 days, non-security positions within 45 days.

⁷ Charges were assessed for vacant assistant security warden, vocational instructor, and recreation specialist positions.

Action Needed

The commission is continuing to reimburse the vendor for undocumented corporate income and sales tax costs

The commission reimburses the contractor for estimated instead of documented tax costs. For example, in the 1997-98 and 1998-99 fiscal years, the commission’s payments to Wackenhut included estimated corporate income tax expenses of \$130,215 and \$133,284, respectively. However, Wackenhut officials told the commission that it paid no corporate income tax in 1997. For 1998, Wackenhut officials told OPPAGA that it paid a total of \$148,534 in Florida corporate income tax on its combined Florida operations; this tax liability was determined for the corporation rather than for individual facilities.⁸ It would therefore appear that the commission overpaid the vendor in excess of \$130,000 for corporate taxes during that two-year period alone.

The commission reports that it is still not requiring documentation of corporate income and sales tax prior to reimbursing the vendors for these expenses.

The commission has not used legislative performance measures

In responding to our recommendation that they incorporate performance measures into the South Bay contract, commission staff stated that the entire contract was a performance measure and that contract performance is reviewed on a daily basis.

⁸ Wackenhut officials estimated that the tax liability for South Bay alone would have exceeded the amount actually paid to the state for the whole corporation.

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However, the Legislature needs the commission to collect information matching that which the Legislature requires the Department of Corrections to report, so that the performance of private and public prisons can be more easily compared.

The commission has not penalized the vendor for failure to meet program requirements

During our fieldwork for this progress report, we also noted a problem that was not discussed in our earlier report. Throughout the two-year period since our previous review in March 2000, the vendor has not provided the number of education and vocation program hours specified by the contract. At the commission's request, the vendor did provide a corrective action plan in March 2002. The plan provides a schedule of actions that Wackenhut will take so as to allow the company to "more conclusively evaluate the need for contract modification and/or program adjustments." The commission has not imposed penalties for the vendor's failure to meet program requirements.

In our February 2000 review of Lake City Correctional Facility, we recommended that the commission renegotiate its contract to provide explicit sanctions for noncompliance and non-delivery of contracted level of services.⁹ We recommend that the commission take similar action to address program non-compliance at South Bay. Sanctions could include fines and/or reductions in inmate per diem rates until program deficiencies are resolved.

⁹ *Lake City Correctional Facility Experienced Start-Up Problems, But It Has Improved*, [Report No. 99-33](#), February 2000.

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