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Progress Report

April 2000 **Report No. 99-46**

Bay and Moore Haven Private Prison Contracts Renewed; Bay Costs Increase

at a glance

The Correctional Privatization Commission has renewed contracts for two private prisons, Bay Correctional Facility and Moore Haven Correctional Facility. Our prior report found that neither prison had provided the required 7% level of cost savings during Fiscal Year 1996-97.

We question the Correctional Privatization Commission's contract modification that resulted in a $785,936 additional payment to Corrections Corporation of America to operate Bay in Fiscal Year 1998-99. (See "Current Status," page 4.)

The Department of Corrections has increased the percentage of medium custody inmates at Bay and Moore Haven, which has enabled the state to benefit from the security available at these prisons.

Private prison canteen profits and telephone commissions are now deposited into a new trust fund created by the 1998 Legislature.

Purpose

In accordance with state law, this progress report informs the Legislature of actions taken by the Correctional Privatization Commission and the Department of Corrections in response to our 1998 report.[1,2]

Background

Prison privatization is often advocated as a means to reduce the cost of incarceration. The Legislature created the commission for the purpose of entering into contracts for the operation of private prisons in 1993, and established a requirement that private prisons should produce a 7% cost savings compared to public prisons.

When the commission awarded contracts in 1994 to construct and operate two private correctional facilities, Bay and Moore Haven, it projected that each contract would meet the 7% cost savings requirement established in law.

[1] Section 11.45(7)(f), *F.S.*

[2] *Review of Bay Correctional Facility and Moore Haven Correctional Facility*, OPPAGA Report No. 97-68, April 1998.

Private prisons built through the commission differ from most public prisons in Florida partly because the Legislature intended the private prisons to provide more programs than are typically offered in public prisons. In addition, Bay Correctional Facility and Moore Haven Correctional Facility are smaller than most public prisons and house inmates who are less likely to have medical and psychological restrictions than inmates in public prisons. To analyze the construction and operating costs in our 1998 review and to evaluate the performance of Bay and Moore Haven in comparison to public prisons, we selected the most comparable public prison(s), and then made adjustments as necessary to improve comparability.

Prior Findings

Our 1998 report found that although private prison vendor performance during the 1996-97 fiscal year was satisfactory, the private prisons did not provide the state with the 7% level of overall cost savings anticipated by statute. Bay, operated by Corrections Corporation of America (CCA), was more costly to construct than public prisons constructed during the same period and did not provide operating cost savings to the state during the 1996-97 fiscal year. Moore Haven, operated by Wackenhut Corrections Corporation, was constructed within the cost range of public prisons built during the same time period. Moore Haven saved about $480,000 during the 1996-97 fiscal year or approximately 4% less than comparable public prison operating costs at that time.

Two aspects of the contracts with Bay and Moore Haven had limited the savings achieved by the state. First, the vendors had not been required to return canteen profits and telephone commissions to the state treasury, as do public prisons. We estimated that doing so would have increased private prison savings by about 2.3% for Bay and 3.1% for Moore Haven.

Second, the contract with CCA for Bay was structured to provide excessive payments to the vendor for each additional inmate in excess of 90% of prison capacity. Each vendor's operating contract consists of two per diem rates: a guaranteed rate for 90% of prison capacity that will be paid regardless of the number of inmates assigned to the prison, and a marginal rate for each additional inmate assigned to the prison in excess of the 90% guaranteed rate. [3] In our previous report, we found that CCA's marginal rate was set at $41.60, or 94% of its guaranteed rates. In contrast, the marginal rate for Wackenhut was $8.87. This suggests that the state paid CCA more than was necessary to house inmates in excess of 90% capacity.

The private prisons had introduced some different methods of construction and operation into the state correctional system, such as a more compact prison design and greater use of technology such as cameras in the housing units.

[3] The guaranteed rate is designed to assure that fixed costs such as staffing and prison operations will be covered despite fluctuations in inmate population. The marginal rate covers the variable costs for food and other supplies that are not incurred unless the population exceeds the guaranteed 90% level of 675 inmates. For the 1996-97 fiscal year, the Department of Corrections estimated that its marginal rate was less than $7 per inmate.

Prior Recommendations

Our 1998 report recommended that the commission renew its contracts with CCA for the operation of Bay, and with Wackenhut for the operation of Moore Haven with certain modifications, including

- changing the per diem rates to produce at least 7% savings from the costs for a similar-sized public prison such as Lawtey Correctional Facility;
- reducing the inmate per diem rate for inmates in excess of the guaranteed 90% of capacity at CCA's Bay Correctional Facility to a level that was more reflective of the marginal costs of keeping each additional inmate;
- requiring Inmate Welfare Trust Fund proceeds (canteen profits and telephone commissions on inmate telephone calls) to be deposited with the state treasury and used to offset the costs of the private prisons; and
- collecting and reporting data for selected performance measures established by the Legislature for the department in the General Appropriations Act in the areas of custody and control, health services, and offender work and training.

We recommended that the private vendors

- propose modifications to the prison perimeters to increase custody status to a level that can house close custody inmates to enable the state to assign program-eligible close custody inmates to the private prisons, and
- develop plans to expand the capacity of the two facilities to over 1,000 beds. The construction and expansion costs should be significantly lower than the initial per bed construction cost, and the proposed inmate operating per diem after expansion should be substantially lower than the current per diem.

We recommended that the department

- assign only enough inmates to Bay to keep its population at 90% of capacity until the contract had been renegotiated to reduce the inmate per diem rate for inmates in excess of 90% capacity and
- assign a higher proportion of medium custody inmates to Bay and Moore Haven.

We recommended that the Legislature

- direct the commission and the department to develop a plan regarding the possible use of inmate labor in the construction of future private prisons and
- revise Ch. 951.07, *F.S.*, to ensure that the state achieves operating cost savings from prison privatization by requiring that the contracted rate for future private prisons provide 7% cost savings over the certified state direct costs for a similar prison. The revision should also require that the commission consider the effect of proposed annual contract increases in evaluating the projected cost savings and, if possible, limit annual contract increases to the increases in the department's per diem rates.

Current Status

We question the Correctional Privatization Commission's contract modification that resulted in a $785,936 additional payment to CCA. As we had recommended in our prior report, the commission revised the contract with CCA for the operation of Bay to provide for a lower marginal per diem rate for inmates over the guaranteed 90% of the 750-bed capacity of the prison. A marginal rate that far exceeded the variable cost of additional inmates was a primary reason that CCA's operation of Bay Correctional Facility had not provided the state with cost savings.[4]

However, contrary to our recommendation to renegotiate a lower state cost, the commission offset savings from its decrease of the marginal rate by increasing the guaranteed rate by 6.7% ($785,936) for the 1998-99 contract year. (See Exhibit 1.)

Exhibit 1
Decrease in Marginal Rate Offset by Increase in the Guaranteed Rate for Bay Correctional Facility for the 1998-99 Contract Year

Contract Years	Guaranteed Rate	% Increase Over Previous Year	Marginal Rate	% Increase Over Previous Year
1996-97	$45.88		$41.60	
1997-98	47.71	+4.00%	43.26	+4.00%
1998-99	**50.90**	**+6.70%**	**14.55**	**-66.00%**
1999-00	51.84	+1.85%	14.82	+1.85%

Source: OPPAGA analysis of commission data.

The total contract price at 100% capacity was the same for the 1998-99 fiscal year as it had been for the 1997-98 fiscal year. But, at any point below 100% capacity, CCA was to be paid more during the 1998-99 fiscal year due to the higher guaranteed rate. Essentially, the commission's revision guaranteed that CCA would be paid up to 6.7% ($785,936) more for its services in 1998-99 than it had been paid during the previous year. (See Exhibit 2.)

Exhibit 2
Commission Revision of Guaranteed and Marginal Per Diem Rates for Bay Private Prison Results in $785,936 Increase in Guaranteed Annual Payments to CCA

Contract Years	90% Capacity (675)	95% Capacity (712)	100% Capacity (750)
1997-98	$11,754,551	$12,338,778	$12,938,794
1998-99	12,540,487	12,736,985	12,938,794
Increased payout for 1998-99	**$ 785,936**	**$ 398,207**	**$ 0**
Percent increase	6.7%	3.2%	0%

Source: OPPAGA analysis of commission data.

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[4] Each vendor's operating contract consists of two per diem rates: a guaranteed rate for 90% of prison capacity, an amount that will be paid regardless of the number of inmates assigned to the prison and a marginal rate for each inmate assigned to the prison in excess of the 90% guaranteed rate. The guaranteed rate is designed to allow a vendor to be sure that fixed costs will be covered despite fluctuations in inmate population. The marginal rate would then cover the additional variable costs that are incurred as a result of housing additional prisoners. In our previous report, we found that CCA's marginal rates were set at 94% of its guaranteed rates and more than $30 higher than Wackenhut's marginal rates, suggesting that the state paid CCA more than was necessary to house inmates in excess of 90% capacity.

The Legislature appropriated the same amount of funds for 1998-99 as had been appropriated for 1997-98 for these private prisons. However, the commission's revision of contract rates resulted in increased payments to CCA. Moore Haven continued to operate at the same per diem rates that had been used during the previous contract year. (See Exhibit 3.)

Our prior report found that Bay was less cost-effective to construct and to operate than Moore Haven. The $785,936 increase in the guaranteed portion of the CCA contract further reduces the relative cost efficiency of the Bay contract.

Exhibit 3
Moore Haven Was Given No Price Increase for the 1998-99 Contract Year

Contract Years	Guaranteed Rate	Marginal Rate	% Increase
1996-97	$48.84	$8.87	---
1997-98	50.30	9.14	3.0%
1998-99	50.30	9.14	0.0%
1999-00	51.23	9.31	1.8%

Source: OPPAGA analysis of commission data.

Canteen profits and telephone commissions are now deposited into a trust fund established by the Legislature. The 1998 Florida Legislature changed the law to require that certain private prison proceeds, including canteen profits and telephone commissions, be deposited into the newly created Department of Corrections Privately Operated Institutions Inmate Welfare Trust Fund. The commission's contract requires compliance with state laws, so this recommended action has been accomplished. During Fiscal Year 1998-99, $209,162 for Moore Haven and $231,540 for Bay were received and deposited into this trust fund.

Performance-based program budgeting measures not included in contracts. The commission has not included performance-based program budgeting measures in its contracts. The department is now operating under performance-based program budgeting, and has established performance-based program measures for its operations. Examples of department performance measures for custody and control include inmate escapes, batteries committed by inmates on inmates, batteries committed by inmates on staff, number of major disciplinary reports per 1,000 inmates, and positive and negative results of inmate drug tests.

Similar performance measures and data need to be maintained on the private prisons to allow comparisons of private and state prison performance in custody and control, health services, and offender work and training programs. The commission should also use these measures to evaluate the performance of the private prison vendors and to compare private prison performance to that of state prisons for inclusion in its annual report to the Legislature on private prison performance.

No actions have been taken on adapting private prisons to house close custody inmates or on expanding the capacity of the private prisons. The commission's executive director reports that the commission and the vendors have discussed modifications to the prison perimeters to house close custody inmates and expanding Bay and Moore Haven capacities to over 1,000 beds, but have taken no action. The executive director stated that the commission has had no indication that the Legislature actually wants the commission to do these things. As long as Florida's prison capacity exceeds the number of inmates sentenced to prison, we agree that no action is necessary. However, as new beds and higher custody level beds are needed in the future, enlarging or enhancing existing smaller facilities like Bay and Moore Haven by adding appropriate custody level beds could achieve benefits of economy of scale at a lower cost to taxpayers.

No new construction of private prisons is anticipated in the short term, but the use of inmate labor will be considered if a new private prison is built. The commission's executive director stated that if a new private prison is constructed, the use of inmate labor will be considered. However, there have been no private prisons constructed in the past three years. Two new private prisons that were initially authorized by the 1998 Legislature have been deferred indefinitely due to the decreased demands of inmate population growth.

The Department of Corrections now assigns a higher proportion of medium custody inmates to Bay and Moore Haven. Bay and Moore Haven were constructed to house medium custody inmates, but only about 53% of the inmates were classified as such at these prisons during the 1996-97 fiscal year, and 47% were minimum custody inmates who could be housed in less secure, less costly housing. The department has increased the proportion of medium custody inmates at Bay and Moore Haven, enabling the state to benefit from the security available at these prisons. Current levels of medium custody inmates are 82% for Bay and 66% for Moore Haven, significantly higher than the approximately 53% assigned during Fiscal Year 1996-97.

OPPAGA recommendations in other recent reports can be applied to the Bay and Moore Haven contracts. OPPAGA has recently published two additional reviews of private prisons in Florida, *Private Prison Review: Lake City Correctional Facility Experienced Start-Up Problems, But It Has Improved*, Report No. 99-33, February 2000, and *Private Prison Review: South Bay Correctional Facility Provides Savings and Success; Room for Improvement*, Report No. 99-39, March 2000. In these reports we recommended that the Legislature develop a new approach to setting the per diem rate for private prisons. To ensure that privatization achieves a 7% cost savings to the state for each private prison, the Legislature should direct the commission and the department to work together to develop a methodology for indexing correctional costs so that vendor contracts can be set at 7% below public prison costs. We believe that an annual process is needed to determine actual public prison costs and that private prison per diems should be set based upon that determination. This annual process would include a determination of

- the average cost to the state of maintaining custody of an inmate within the secure perimeter of a public prison;
- the average cost of providing educational, vocational, substance abuse treatment, and other programs to each participating inmate; and
- the average cost of health services for typical inmates as well as average cost for inmates diagnosed with selected high cost medical conditions.

The state of Mississippi currently uses a process required by state law in which a third party determines the annual public prison cost. Contracts with private prison vendors must save a minimum of 10% from the state certified cost. [5]

The commission should use performance-based program measures to evaluate the performance of the private prison vendors, and to compare private prison performance to that of state prisons for inclusion in its annual report to the Legislature on private prison performance.

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[5] See *Mississippi Department of Corrections' FY 1999 Cost Per Inmate Day,* Report 400, by the Mississippi Joint Legislative Committee on Performance Evaluation and Expenditure Review, December 1, 1999.

The Florida Legislature

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