



Department of Management Services



OFFICE OF INSPECTOR GENERAL

Contract Monitoring at Privately Operated Prisons

EXECUTIVE SUMMARY

This is the second of two audits of the Department of Management Services' (Department) administration and management of contracts for private prison operations. In our first report on *Contract Management of Private Correctional Facilities*¹ we identified several issues with the Department's prison contract monitoring function. Due to the scope of the review needed to fully develop these issues, a decision was made to exclude them from the first audit.

Accordingly, the objective of this review was to evaluate the status of contract monitoring procedures at privately operated correctional facilities. The review was performed in accordance with Section 20.055, Florida Statutes.

¹ *Contract Management of Private Correctional Facilities*, Office of Inspector General, Department of Management Services, Report No. IA 2005-61, June 30, 2005.

OVERVIEW

The Department needs to strengthen its monitoring of contracts for operation of private correctional facilities to ensure that vendor performance meets contract requirements. The contract monitoring issues we identified can be attributed in large part to the failure of the Correctional Privatization Commission (Commission) to satisfactorily perform its statutory duties regarding private prison management. Thus, when the responsibility to contract for and manage the prisons was transferred from the Commission to the Department, the Department inherited a dysfunctional contract management and monitoring program.

At the time of the transfer, management of privately operated prisons did not fall within the Department's mission nor did the Department have staff with the knowledge and experience to manage privately operated prisons.

Moreover, this responsibility was transferred to the Department without the necessary authority, resources or direction required to assume such a critical mission.

At the time of the transfer of responsibility, the contracts for operation of the five private prisons were scheduled for either renewal or resolicitation. Each facility was also in the process of being expanded to accommodate a larger number of inmates. In addition, a new facility was authorized by the Legislature which required the negotiation of a new construction and management contract. Department resources had to be prioritized to accomplish these critical procurement issues. Contract monitoring was therefore not an urgent matter given these other priorities.

Successfully managing privately operated prisons involves more than procuring and issuing contracts. It requires constant oversight and involvement with vendors to ensure that vendors not only adhere to contract terms but that the safety of the public and welfare of inmates are ensured. Such a mission requires an associated organizational structure, resources, and the authority necessary to assure a satisfactory outcome. While the Department of Corrections (DOC) is organized and staffed to accomplish this mission, the Department of Management Services is not.

While many of the contract monitoring problems identified remain to be resolved, the Department is aware of, and has taken steps to correct many of these issues. For example, the Department has filled all vacant Contract Monitor positions and is in the process of developing and providing training for Contract Monitors. Moreover, the Department has requested additional resources to better accomplish its mission.²

RESULTS OF REVIEW

Currently, the contract monitoring function for privately operated correctional facilities needs improvement to ensure that vendors' performance meets contract terms and conditions. To accomplish this goal, the Department needs to:

- Develop comprehensive policies and procedures on which a uniform contract monitoring and reporting system depends. These procedures should include:
 - priorities for those prison operations which should be reviewed;
 - frequency of review for each priority item;
 - standards for reporting and documenting reviews;

² The 2006 Legislature authorized three additional positions.

- standards for verifying vendor-provided data used to evaluate compliance with contract provisions; and
 - Standards for resolving noncompliance issues.
- Define and formalize the lines of responsibility between the Department and the DOC involving budget, property management, and reporting and notification of other issues common to both organizations.
 - Establish procedures to account for and control state-owned tangible personal property and real property paid for with Privately Operated Institutions Inmate Welfare Trust Fund (Inmate Welfare Trust Fund) moneys.

**MAJOR
RECOMMENDATIONS**

We recommend that the Department’s Bureau of Private Prison Monitoring (Bureau) develop comprehensive policies and procedures for monitoring contracts with private prison providers and for establishing accountability and control over state-owned tangible personal property and real property purchased with Inmate Welfare Trust Fund moneys. *We also recommend* that the Bureau coordinate with the DOC to establish

Memorandums of Understanding or other types of agreements that define and spell out the Department’s responsibilities and authority relative to the DOC’s.

BACKGROUND

IMPORTANCE OF CONTRACT MONITORING

National studies on contracting for private correctional services stress the importance of monitoring contract compliance and being able to demonstrate noncompliance if it occurs. How well an agency monitors the vendor’s performance is the most important factor to a successful contract. An effective monitoring program allows the contracting agency to identify problems early on, at a time when they are most easily corrected.

The overall purpose of contract monitoring is to ensure that vendors provide quality services in accordance with contract requirements, including applicable laws, rules, policies and procedures, and standards. Monitoring provides the primary evidence in support of the agency’s decision to impose financial sanctions, terminate the contract, or take other action.

MONITORING IS A SYSTEMATIC PROCESS

Effective monitoring requires development of a systematic review process which includes continuing coverage of all contract areas, documentation and notification of the results of the review, and a process to ensure that documented areas of noncompliance are corrected in a timely manner. A comprehensive monitoring program assures that facilities perform to standards, comply with contract requirements, and provide essential services. The contracting agency must:

- Develop a plan for carrying out the monitoring function;
- Develop monitoring standards;
- Develop monitoring documents;
- Select and train monitors; and
- Report vendor performance against standards.

DEPARTMENT ORGANIZATIONAL STRUCTURE

Effective July 1, 2004, the Legislature transferred the responsibility for contracting for and monitoring the operation of five (5) privately operated correctional facilities to the Department. The Bureau, within the Division of Specialized Services, is

responsible for contracting for, and administering contracts for the operation and management of each facility.

The Bureau employs a Bureau Chief, 5 administrative staff and 5 Contract Monitors to administer and manage the private prison operations. Among other duties, the Bureau is specifically responsible for monitoring contracted services and ensuring vendor compliance with contract terms and conditions. As required in Statute, the Bureau employs a full-time Contract Monitor at each facility to assist in carrying out its monitoring function.

DUTIES OF CONTRACT MONITORS

The Contract Monitor is the liaison between the facility and the Bureau. The Contract Monitor is responsible for reviewing facility operations to assess compliance with contract requirements and for reporting the results of this review to the Bureau. The Contract Monitor has the right of continuous access to all areas of the facility as well as to the vendor's personnel files and other files and records of a non-proprietary nature.

PRIVATE CORRECTIONAL FACILITIES CONTINUE TO EXPAND IN FLORIDA

Florida currently has five privately operated prisons with a total capacity of 5,390 beds.

The 2005 Legislature directed the Department to contract for the expansion of three facilities. By July 1, 2007, the total number of beds will have increased by 854 (384 beds at Gadsden and 235 beds each at Bay and Moore Haven). Completion of a sixth, 1,500-bed facility in Jackson County, near Graceville will bring

the Department's total contracted capacity to 7,744 beds in 2007.

During Fiscal Year 2005-06, about \$109 million was appropriated for the operation and maintenance of the existing five privately managed prisons.

Private Correctional Facilities

Correctional Facility	Number of Beds	Offenders	Custody Level	Vendor
Gadsden	1,136	Adult Female	Minimum/ Medium	Corrections Corporation of America
Bay	750	Adult Male	Minimum/ Medium	Corrections Corporation of America
Lake City	893	Male Youthful Offenders	Minimum/ Medium	Corrections Corporation of America
Moore Haven	750	Adult Male	Minimum/ Medium	GEO Group
South Bay	1,861	Adult Male	Medium/ Close	GEO Group
Total	5,390			

Table 1

DISCUSSION ISSUES

**ISSUE 1
COMPREHENSIVE CONTRACT MONITORING PROGRAM NEEDED**

Existing policies and procedures do not provide the framework needed to effectively monitor vendor compliance with contract requirements. There are no priorities for reviewing specific prison operations or requirements for how frequently Contract Monitors should review these operations.

Guidelines and standards for reporting and documenting vendor noncompliance have not been established and there are no procedures for routine follow-up of noncompliance issues. Also, State rule requiring contractors to make written replies to noncompliance issues needs to be strictly enforced.

PRIORITIES AND FREQUENCY OF REVIEWS

The Bureau's Contract Monitors currently use a *Monitoring Manual* prepared by the now defunct

Commission to evaluate vendor compliance with contract requirements. The *Manual* consists of a series of check lists of prison operations and is insufficient for its stated purpose. However, in the absence of other written policies and procedures, the Monitors continue to use the *Manual* as the primary tool for monitoring vendor compliance.

Effective monitoring requires systematic review of all contract areas. However, not all contract areas have equal weight or require the same frequency of review. The *Manual* does not set priorities for reviewing individual prison operations, or prescribe how frequently an operation should be reviewed. For example, the contracts require that vendors staff all critical security positions during each shift in accordance with the facility's security post chart. While the *Manual* lists this requirement, it does not specify how frequently Monitors should assess compliance—that is, at every shift, once daily, or at some other interval. In addition, the *Manual* does not direct Monitors to review prison operations during second and third shifts or on weekends. Lacking any specific guidance, it is left to the individual Monitor to ensure that all prison operations are given the appropriate priority and frequency of review.

The Bureau should rank individual operations in terms of their overall importance to the facility's safe and efficient operation. Then, based on this ranking, the Bureau should prescribe how frequently the Monitor should review each operation. Some operations

should be reviewed daily, while other operations may require only quarterly or annual review.

DOCUMENTATION AND REPORTING OF VENDOR COMPLIANCE

Monitors report exceptions to contracted standards in quarterly reports they submit to the Bureau.³ Contract standards establish minimum requirements for all aspects of prison operations and treatment of inmates, including security operations, staffing, health care services and inmate programs.

Information in the quarterly reports helps support the Bureau's actions to hold the vendor accountable for correcting deficiencies. The reports support decisions to find the vendor in material breach of contract, to impose financial sanctions and/or terminate the contract. The reports also support decisions on whether to renew contracts.

Lacking formal guidelines and requirements, there is no assurance that the Monitors' reviews are sufficient to support a finding of either compliance or noncompliance. To compound this problem, Monitors are not required to

³ Monitors also submit monthly Security and Institutional Operations Reports of operations during the past month, such as number of inmates in confinement, results of urinalysis testing, and disposition of inmate grievances. The reports also include the number and type of incident reports the facility forwarded to the DOC Office of Inspector General.

document the basis for their findings and conclusions.

The Monitors do not report how frequently they reviewed operations during the reporting quarter or the methods they used to evaluate operations, such as reviewing a sample of logs and records, observing staff, or interviewing inmates. Because the Monitors do not report such supporting information, it is generally not clear why the contractor was found in compliance or noncompliance. It is also unclear whether the Monitors look at certain operations at all.

A review of quarterly reports showed that Monitors rarely reported deficiencies in areas other than security operations and program participation. Because there were so few exceptions reported in other areas, it did not appear that the Monitors had routinely assessed vendor compliance in most operational areas.

We reviewed the quarterly reports submitted to the Bureau by each of the 5 Contract Monitors during the 18-month period from July 2004 to December 2005. During this period, no exceptions to standards were reported in 13 of the 27 areas the Monitors reviewed. A single exception was reported in 6 additional areas. It is doubtful that over an 18-month period 5 prisons remained in nearly full compliance with American Correctional Association⁴ and other federal, state and local standards for

prison operations and treatment of inmates.

As an example, none of the Monitors reported deficiencies related to property inventory records. We determined that with the exception of one facility the contractors' inventories of state-owned tangible personal property were not complete. Vendors frequently failed to record purchase price or did not consistently record the date of purchase, serial number, or the item's assigned location. Given the failure to find any exceptions to standards in this area, it appeared that the Monitors had not reviewed the vendors' compliance with property accountability requirements (see Issue 4).

While it is possible that only a few deficiencies occurred in most areas, the basis for the Monitors' findings was not readily apparent. Monitors do not provide information in the report to support a finding of either compliance or noncompliance. Although the Monitors maintain some supporting documentation, Bureau staff had not reviewed this documentation to determine its sufficiency. Further, there are no requirements regarding the type or extent of documentation needed to support Monitors' findings.

In the area of inmate programs, Monitors found vendors in noncompliance with contract provisions if the number of inmates who participated in programs during the quarter did not meet the number required in contract. The basis for these findings was the vendor's self-reported data on inmate participation. However,

⁴ *The Standards for Adult Correctional Institutions* (Fourth Edition, 2003) published by the American Correctional Association (ACA).

the Monitors did not verify the accuracy of the data.

VERIFICATION OF VENDOR DATA

Verifying vendor-provided data would help ensure that vendors do not overstate participation numbers. Periodic data verification would also help ensure that vendors provide correct data in other areas. For example, underreporting the number of positive drug tests or number of use of force reports could mask problems in security operations. However, the Bureau has no policies, procedures or requirements for Contract Monitors to verify the accuracy of vendor-reported data and information.

RESOLUTION OF NONCOMPLIANCE FINDINGS

Chapter 60AA-2.001, Florida Administrative Code, provides that within 20 days of notification the vendor must make a written reply to all noncompliance findings.⁵ This requirement helps hold the vendor accountable for correcting deficiencies. However, the Bureau has not implemented this rule.

Monitors do not require a response from the contractor or follow standard

⁵ The rule also requires a written reply for all findings of partial compliance. However, the Bureau has not defined the difference between partial compliance and noncompliance; therefore, the distinction is left to the individual Contract Monitor. We concluded that the vendor is either in compliance or not. We therefore treated findings of partial compliance as noncompliance findings.

procedures for notifying vendors of compliance issues. Further, the Monitors do not routinely give vendors formal written notice of noncompliance findings. Monitors generally notify the vendor of a compliance issue in person or by e-mail.

Because no policies and procedures have been established to enforce the 20-day reply period, each Monitor determines independently whether to request a response to a noncompliance finding. And generally, Monitors do not request one.

We acknowledge that a formal response is not always needed as vendors often resolve issues upon notification of a problem. However, without a written response, the vendor has little incentive to timely correct issues and deficiencies may go unresolved over a number of quarters.

For example, one Monitor found a vendor in noncompliance for failing to offer smoking cessation classes during the 12-month period from January to December 2005. The vendor thus failed to comply with a State law ⁶ requiring that both public and privately operated correctional facilities make smoking cessation assistance available to inmates. During this period, the Monitor did not request a Plan of Action. Further, the report for the first quarter of 2006 does not report whether the deficiency still existed or had been resolved.

The Bureau has not established policies and procedures to ensure that

⁶ Section 944.115, Florida Statutes.

deficiencies are resolved timely. Monitors are not required to follow-up on the status of corrective action and generally do not report whether a deficiency was corrected. Should deficiencies remain unresolved, documentation of the notification and reply process would help support any subsequent actions the Bureau may need to take, such as finding the vendor in material breach of contract.

Monitors rarely provided follow-up information in the quarterly report on exceptions reported in the previous report. There appeared to be a tacit understanding that if the same exception was not reported in the subsequent quarter the vendor had corrected the deficiency. However, the Monitors seldom affirmed that an issue had been resolved.

For example, in one quarterly report, a Monitor cited numerous exceptions to security standards, including inaccurate weapons and ammunition logs, restricted keys issued to unauthorized staff and failure to follow correct procedures for verifying inmate counts. We could not determine from subsequent reports if the Monitor had followed-up on the deficiencies and whether the issues had been resolved. Similarly, the tracking sheet maintained by the Bureau did not show whether the issues had been resolved.

During the six months from July 2005 to December 2005, one facility failed to meet contract requirements for inmate participation in academic, vocational and behavioral programs. The facility had staff vacancies in all program areas,

but particularly in vocational education where three instructor positions remained vacant. During this time, the number of inmates who participated in vocational education classes each month ranged from 36% of the number required in contract to 52% of the contracted number. In addition to presenting a compliance issue, low participation in inmate programs may indicate that inmates are not occupied in productive activities, which in turn presents a security issue.

The Monitor requested and received a Plan of Action for each month from July 2005 to December 2005. The vendor's Plan—to continue advertising to fill staff vacancies—did not bring the facility into compliance. However, the Bureau took no additional action and the vendor continued to receive full payment for partial services. During the first 6 months of 2006, monthly participation in vocational programs ranged from 28% of the contracted number to 53% of contract requirements. The quarterly reports filed by the Monitor for this period noted the vendor's noncompliance but did not report whether the vendor had taken any action to resolve the deficiency. Further, the Bureau did not act on the reported information.

The Bureau has other remedies available to assist in enforcing vendor compliance. Should vendors fail to correct a deficiency, the Bureau may find the vendor in material breach of the contract and assess liquidated damages. However, such action should be used as a last resort. Establishing a comprehensive contract monitoring

program would help ensure that vendors take corrective action timely and forestall the need to invoke more drastic remedies.

ISSUE 2

THE BUREAU NEEDS TO COORDINATE WITH THE DOC TO CLARIFY EACH PARTY'S RESPONSIBILITIES AND ENFORCEMENT AUTHORITY

The Bureau has not established formal agreements or understandings with the DOC that clarify each party's responsibilities and define which entity has final decision-making and enforcement authority in various situations. Management of the private prisons was transferred to the Department without clarification of the Department's responsibilities, control and authority with respect to those of the DOC. As a result, the Department's responsibilities and authority are not clearly defined for situations ranging from riot or other serious event to enforcing correction of deficiencies found in the DOC security audits.

RESPONSIBILITY FOR OVERSIGHT, MANAGEMENT AND OPERATION OF PRIVATE PRISONS DIVIDED

In our Audit Report: *Contract Management of Private Correctional Facilities*⁷ we noted that responsibility for oversight, management and operation of private prisons is divided between the Department and the DOC. The DOC houses some of the offenders

⁷ OIG Report No. IA 2005-61.

committed to its custody in private prisons while the Department contracts with private providers to operate the prisons. When the DOC places inmates in the private prisons, it does not relinquish its responsibility for ensuring that the inmates receive essential services in facilities that fully comply with the DOC's own security standards.

The Department is similarly responsible for ensuring that its contractors provide essential services to inmates in secure facilities. Given this overlap in responsibility, however, it is not always clear which department has final decision-making and enforcement authority. When the private prisons were transferred to the Department, little effort was made to clarify these issues or to establish policies and procedures regarding coordination with the DOC. We therefore recommended in our prior audit that the Department propose the transfer of the procurement, management and operation of private prisons to the DOC. As the Department did not pursue this recommendation we determined that the Bureau could resolve coordination issues by working with the DOC to clarify each party's responsibility, control and authority.

SECURITY

Security is of overriding concern in prison operations. However, the Bureau and the DOC have not established a Memorandum of Understanding or other instrument that identifies and defines actions each party will take in response to a major security threat such as riot, death, or escape. Further, there

is no Memorandum of Understanding concerning the temporary takeover of a private prison by the DOC and no written policies and procedures to guide an orderly takeover should one be necessary.

Rule⁸ requires that vendors notify both the Contract Monitor and the DOC when a serious event occurs. However, Bureau staff could not clearly articulate the notification process or the actions the Bureau and the DOC would take when notified. Lacking some type of formal agreement, neither party's responsibilities nor authority to take action are spelled out should a major security event occur. Nonetheless, the DOC is prepared to safeguard inmates housed in privately operated prisons. For example, the DOC has moved inmates to safer locations during hurricanes. The DOC also conducts an annual review of internal procedures for assuming temporary control of private facilities.

DOC SECURITY AUDITS

Rule⁹ provides that the DOC may conduct security audits of privately operated prisons consistent with the State law¹⁰ governing security reviews of correctional facilities under the DOC's jurisdiction. However, the Bureau has not established procedures to coordinate with the DOC and the vendor on the results of security audits,

⁸ Chapter 60AA-2.004, Florida Administrative Code.

⁹ Chapter 60AA-5.004, Florida Administrative Code.

¹⁰ Section 944.151, Florida Statutes.

nor has it established procedures to ensure that vendors correct security deficiencies.

For example, there is no agreement between the Bureau and the DOC to ensure that Contract Monitors receive a copy of the security audit. There is also no requirement that vendors provide the Contract Monitor with a copy of the audit report or of the corrective action plan, should one be needed. Further, there are no policies and procedures for Contract Monitors to monitor and report to the Bureau on the vendor's progress in correcting security deficiencies.

With respect to the privately operated facilities, the DOC is responsible for identifying security deficiencies while the Bureau is responsible for ensuring their timely correction. Should the vendor fail to correct a noncompliance issue, it is the Bureau, and not the DOC that has the authority to enforce compliance through remedies available in contract. However, should a deficiency remain unresolved, the DOC's authority to resolve the issue is not clear.

DOC INVESTIGATIONS

Responsibility for investigating serious incidents that occur at the private prisons is split between the vendor and the DOC. The Bureau's role in these investigations is not clearly defined. Serious incidents include use of force, assault or battery on inmates or staff, and possession of controlled substances, weapons, or other contraband.

Vendors are required to report serious incidents to the DOC. The DOC's Inspector General then determines whether the vendor or the DOC should investigate the circumstances surrounding the incident. However, the Bureau has not established an agreement with the DOC whereby Contract Monitors are notified of the results of the DOC's investigations. Further, the Bureau has not established policies and procedures for Contract Monitors to track the progress of investigations or follow-up on the results of investigations conducted by either the vendor or the DOC.

Chapter 60AA-2.002, Florida Administrative Code, requires that vendors notify and inform the Contract Monitor of the progress and results of any investigation it undertakes at the facility. However, the Bureau has not established procedures to implement this rule.

Tracking and reviewing results of investigations would assist the Bureau in identifying possible deficiencies, especially any deficiencies in security operations. For example, if the results of a series of investigations show that inmates are obtaining contraband during visitation, then the Bureau may need to work with the vendor and the DOC to identify and correct any security deficiencies in the vendor's visitation services.

COOPERATIVE TRANSFER AGREEMENT

The Bureau is required by law to enter into a three-party Cooperative Transfer Agreement with the vendor and the DOC. These Agreements establish the responsibilities of the vendor, the Department and the DOC regarding the assignment and transfer of inmates to private prisons.

Private prison vendors are prohibited by law from making decisions about the assignment of inmates to private prisons or their transfer between public and private facilities. These decisions are made by the DOC. The Cooperative Transfer Agreement establishes the facility's inmate population profile, that is, the percentage of inmates the DOC will transfer to the facility who are violent habitual offenders, have a moderate/severe physical health impairment, etc. Each party is required by law to comply with the Agreement.

Cooperative Transfer Agreements illustrate how the parties can coordinate activities, define appropriate lines of responsibility and designate which entity has authority to act in different situations. Although the agreements are required by law, only one Cooperative Transfer Agreement was current at the time of our review.

ISSUE 3**ACCOUNTABILITY AND CONTROL
OF FINANCIAL MATTERS
NOT RESOLVED**

We noted in a prior audit report¹¹ that fiscal responsibility for the State's private prisons is split between the Department and the DOC with neither agency having full accountability and control over financial matters. However, the Department has not sought to correct this situation. This issue continues to affect full accountability for over \$109 million in annual expenditures for private prison operations.

LEGISLATIVE BUDGET REQUEST

State law¹² requires the Department to submit its request for private prison funding to the Legislature through the DOC. The DOC includes the Department's request in its own budget submission but must submit the request without change. Because the General Revenue funding to operate the privately operated prisons is not appropriated to the Department, the request does not go through the Department's own budget process and is not approved by the Department's Secretary. The Bureau thus has nearly total responsibility for submitting an accurate and complete budget request and the submission receives relatively little review at the Department level.

¹¹ OIG Report No. IA 2005-61.

¹² Section 957.15, Florida Statutes.

**ACCOUNTABILITY AND INTERNAL
CONTROLS**

The law also provides that the DOC has no authority over appropriated funds except to pay vendors the amount the Department certifies for payment. The DOC's Finance and Accounting Office does not audit the invoices the Bureau submits for payment. The DOC does not have the information or documentation needed to assess the accuracy or correctness of the payments it makes on the Bureau's behalf.

Similarly, the Bureau submits invoices without benefit of review by the Department's own Finance and Accounting Office. Both agencies must therefore assume that the Bureau has reviewed supporting information submitted by the vendors and that payments to vendors are in accordance with contract provisions.

However, the Bureau has not established policies and procedures to ensure that reimbursements to vendors are accurate. In addition, the Bureau has not established procedures to ensure that reimbursements to vendors from the Inmate Welfare Trust Fund are in accordance with the contractor's approved trust fund budget.

As reported in our first audit, Inmate Welfare Trust Fund moneys have been used for other than their intended purpose. And as discussed below (see Issue 4), tangible personal property and real property have not been properly entered into either the Department's or the DOC's books of account. This is an

example of internal financial and control problems that currently exist.

As long as the General Revenue appropriation and Inmate Welfare Trust Fund remain within the DOC, it will be difficult for the Department to establish effective accountability and control over the request for, and expenditure of funds for private prison operations.

ISSUE 4

PROPERTY PURCHASED WITH INMATE WELFARE TRUST FUND MONEYS NOT ADEQUATELY CONTROLLED

A system to account for and control state-owned property purchased with Inmate Welfare Trust Fund moneys has not been implemented. This situation exists due to the overlap in responsibilities for private prison operations between the Department and the DOC. While the Inmate Welfare Trust Fund is managed by the DOC, the privately operated prisons are managed by the Department. Neither the Department nor the DOC has established controls over state-owned tangible personal property and real property purchased with the trust funds for use at the privately operated prisons. As a result, there is no assurance that the property has been properly accounted for in a manner consistent with State laws and rules.

PROPERTY CONTROL REQUIRED

Chapter 273, Florida Statutes, establishes the broad requirements for accountability of state-owned tangible

personal property including the proper supervision, control and disposition of such property. The Chief Financial Officer establishes specific rules to implement these requirements. The Department maintains additional internal policies and procedures for property control.

However, the Bureau has not established procedures to address the recording of real property or the recording and control of state-owned tangible personal property purchased with Inmate Welfare Trust Fund moneys. Moreover, the Bureau's contracts with vendors of privately operated prisons generally do not address the control and disposal of State-owned tangible personal property located at the prisons.

INMATE WELFARE TRUST FUND MONEYS USED TO PURCHASE TANGIBLE PERSONAL PROPERTY AND REAL PROPERTY

The State created a separate trust fund within the DOC to be used for the welfare and benefit of inmates incarcerated in privately operated correctional facilities. The trust fund consists of net proceeds from commissary and vending operations, telephone commissions and similar sources. The trust funds can be spent only pursuant to Legislative appropriation.

Inmate Welfare Trust Fund moneys have been used to purchase a variety of tangible personal property items for use in academic, vocational and other programs at the private prisons. Items

purchased have included computer hardware, law books, photocopy machines and other items of a nonexpendable nature. The trust funds have also been used to fund the construction of program facilities, such as greenhouses and Prison Industry Enhancement (PIE) program buildings.

During the period from Fiscal Year 1999-00 to Fiscal Year 2003-04, vendors received \$6,229,859 in reimbursements from the Inmate Welfare Trust Fund for program costs, including the cost of tangible personal property items used in program operations. We could not determine total expenditures for these items as they were not booked into the State property sub-system. A portion of the trust funds, \$718,642, was used for building construction and renovation.

**TANGIBLE PERSONAL PROPERTY
PURCHASED WITH TRUST FUND
MONEYS NOT FULLY ACCOUNTED
FOR**

Our review showed that neither the Department nor the DOC had implemented procedures to ensure proper accounting and control of tangible personal property purchased with Inmate Welfare Trust Fund moneys.

An accounting problem and control deficiency has been created by having the Inmate Welfare Trust Fund housed at the DOC and expenditure approval at the Department. Items purchased with the trust funds are not subject to either the Department or the DOC property accountability guidelines and controls. Neither agency has tagged or booked

the property into the State property sub-system. In essence, the State relies solely on the vendors for accountability and control of tangible personal property purchased with Inmate Welfare Trust Fund moneys.

Four of the vendors are not contractually required to maintain a separate inventory of state-owned tangible personal property. While these vendors do maintain an inventory, our review found that not all lists were current or complete. For example, information on purchase price, date of purchase and location of the item were not always recorded.

One facility is required by contract to maintain an inventory of all furnishings and equipment, including items purchased with Inmate Welfare Trust Fund moneys. Review of the property list from this facility showed that the list was incomplete when compared with purchase receipts.

We inventoried 39 items listed on the Inmate Welfare Trust Fund property inventory at this facility. Four of the items could not be located—two photocopy machines valued at \$1,000 and \$3,500, respectively and two floor buffers valued at \$665 and \$816, respectively.

The vendor reported that the photocopy machines had become inoperable and may have been traded in. However, there was no documentation available to verify whether a trade-in had occurred or if any trade-in value was received. We were told that the two floor buffers had become inoperable and were cannibalized to create one operable

machine. We verified this had occurred and determined the action was a valid choice by the vendor to maximize resources; however, the vendor's inventory records did not reflect the change.

While there is no evidence of malfeasance on the vendor's part, State laws and rules provide for periodic inventories of tangible personal property, a surplus certification process which identifies items of minimal use or value to the State, and a disposition process for items certified as surplus.

We also located various property items purchased with Inmate Welfare Trust Fund moneys that were not listed on the vendor's inventory records but for which the vendor had been reimbursed. These items included computer equipment, tools, and exercise equipment affixed to the facility property. All items were accounted for. However, the contract requires that items purchased with Trust Fund moneys be accounted for on the vendor's property inventory records.

**VENDOR USED TRUST FUND
MONEYS TO PURCHASE
COMPUTERS AND SOFTWARE FOR
ADMINISTRATIVE USE**

The Fiscal Year 2003-04 Inmate Welfare Trust Fund budget for Gadsden Correctional Facility included funding to equip two computer laboratories: one for the facility's academic program and a second lab for a vocational education program in business. In June 2004, the vendor was reimbursed approximately \$59,000 for the purchase of 38 personal computers, software, a server, and

associated computer equipment to furnish the two labs. However, only one of the labs was placed into operation using 20 of the 38 computers. The remaining 18 computers were used by academic and vocational education program staff for administrative purposes. Although all equipment was located, a stronger system of internal controls would increase the likelihood that State-purchased tangible personal property will be used only for its intended purpose.

**CONSTRUCTION PROJECT
PURCHASES**

Inmate Welfare Trust Fund moneys were also used for construction projects. In Fiscal Year 1999-00, \$479,882 was expended for construction projects and in Fiscal Year 2000-01, \$230,371 was expended. The funds were primarily used for construction of buildings for PIE programs, including \$200,750 for a PIE building at South Bay Correctional Facility and \$199,250 for a PIE building at Moore Haven Correctional Facility. Other projects involved construction or renovation of PIE buildings, chapels and greenhouses.

Real property should be capitalized and depreciated using applicable accounting guidelines. However, the capital assets were not listed in the State property subsystem as additions to the facilities. While it is unlikely that items such as buildings will go missing, proper accounting procedures require that the additions be included as part of the facility and the costs included in the value of the facility and properly depreciated.

THE DEPARTMENT SHOULD CONTROL TRUST FUND

If the Department is to continue administering the State's privately operated prisons, and if the Inmate Welfare Trust Fund is to continue functioning in the same manner, vendor commissary receipts should be deposited in, and administered from a Department Trust Fund.¹³ This change will result in better control and accountability for expenditures, and help ensure that State and Department accounting and property rules and guidelines are followed.

Currently, the DOC controls the Inmate Welfare Trust Fund but does not book property purchased with Trust Fund moneys as the DOC does not have control of the property. Conversely, the Department has not taken steps to control property purchased with Trust Fund moneys because the Trust Fund resides within the DOC. Therefore, neither the Department nor the DOC has control over property purchased with Trust Fund moneys.

Should the Department assume responsibility for property accountability, Contract Monitors are the only Department personnel located at the privately operated prisons, and, by extension, are the logical choices to

¹³In OIG Report No. 2005-61, we recommended that the DOC administer the State's privately operated prisons and that the Privately Operated Institutions Inmate Welfare Trust Fund be deleted, with net proceeds from sales to inmates deposited into the General Revenue fund.

undertake a role in property accountability. Accordingly, Contract Monitors should be delegated the role of property custodian.

RECOMMENDATIONS

1. *We recommend* that the Bureau develop comprehensive policies and procedures for monitoring prison operation and management services contracts. These policies and procedures should include in-depth guidelines for Contract Monitors' use in monitoring vendor compliance with contract terms and conditions.
2. *We recommend* that the Bureau work with the DOC to establish Memorandums of Understanding or other types of agreements that define and spell out the Department's responsibilities and authority relative to the DOC's, particularly for areas related to security operations, to include security audits and investigation of serious incidents.
3. *We recommend* that the Bureau request that the Legislature create an Inmate Welfare Trust Fund within the Department for the welfare and benefit of inmates housed within the Department-managed facilities or, *alternatively*, the Department coordinate with the DOC to deposit revenue designated for the Inmate Welfare Trust Fund into an existing Department Trust Fund to be designated for private prison operations.
4. *We recommend* that the Bureau coordinate with the DOC to establish a

system for ensuring accountability and control of State-owned property at privately operated prisons regardless of where the Trust Fund resides.

BUREAU'S RESPONSE

The Bureau's complete response is attached in Exhibit A.

OBJECTIVE, SCOPE AND METHODOLOGY

The overall objective of this audit was to evaluate the effectiveness of the contract monitoring function within the Bureau. Our specific objectives were to determine whether the Bureau's contract monitoring policies and procedures provide the structure needed to effectively monitor vendor compliance with contract terms and conditions; to evaluate the status of the Bureau's policies and procedures for matters requiring coordination with the DOC; and to evaluate accountability and control mechanisms.

The audit was conducted in accordance with the *International Standards for the Professional Practice of Internal Auditing* and included a review of relevant Bureau documents and records for the years from 1999 to 2006.

In conducting this audit, we interviewed Contract Monitors and other appropriate Bureau and the Department staff; analyzed contract terms and conditions; researched applicable Florida Statutes and Florida Administrative Code; reviewed Contract Monitor reports; evaluated

vendor invoices and property inventories; reviewed literature on management of contracted prison operations in other states; and reviewed and evaluated other documentation, as appropriate.

Exhibit A - Bureau's Response



DEPARTMENT OF MANAGEMENT
SERVICES

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Secretary Linda H. South

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MEMORANDUM

DATE: March 6, 2007

TO: Steve Rumph, Inspector General

FROM: Terry Rocco, Chief, Bureau of Private Prison Monitoring *Terry Rocco*

CC: Rosalyn Ingram, Director, Division of Specialized Services

SUBJECT: Response to Inspector General's Report No. IA 2006-28, Contract Monitoring at Privately Operated Prisons

The Bureau of Private Prison Monitoring received the Inspector General's Report No. IA 2006-28, Contract Monitoring at Privately Operated Prisons, dated January 16, 2007, and provides the following response to the recommendations.

Recommendation #1: We recommend that the Bureau of Private Prison Monitoring develop comprehensive policies and procedures for monitoring prison operation and management services contracts. These policies and procedures should include in-depth guidelines for Contract Monitors' use in monitoring vendor compliance with contract terms and conditions.

Bureau's Response: The Bureau concurs. The Bureau will develop comprehensive policies and procedures to include in-depth guidelines for the Contract Monitors to use in determining contract compliance by August 31, 2007.

Subsequent to the Contract Monitor training in 2006, the "monitoring tool" utilized by the Contract Monitors was completely revamped. Previously, it was a basic checklist. The tool now requires daily, weekly, biweekly, monthly, bimonthly, quarterly, biannual, annual, and as needed monitoring of contractual requirements to document areas of noncompliance and that noncompliance issues are addressed and corrected in a timely manner. Contract Monitor training was held in February 2007, which included discussions relating to improvements needed in the tool.

Recommendation #2: We recommend that the Bureau work with DOC to establish Memorandums of Understanding or other types of agreements that define and spell out the Department's responsibilities and authority relative to DOC's, particularly for areas related to security operations, to include security audits and investigation of serious incidents.

March 6, 2007

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Bureau's Response: The Bureau concurs. The Bureau will seek guidance and assistance from its legal department in developing and implementing Memorandums of Understanding that may be required to define each agency's responsibilities by August 31, 2007.

The following processes were implemented prior to the issuance of this report.

- The Bureau's staff was added to the DOC's mailing lists for Emergency Action Center notifications and assignments of investigations by the DOC's Inspector General's Office which enables the Bureau to have real time information of incidents occurring at the facilities and enables the Contract Monitors to better monitor facility activity.
- The DOC is currently reviewing the draft policy/procedure that the Bureau prepared relating to announced/unannounced security audits. Currently, the DOC makes the determination as to whether the DOC or the facility's inspector will investigate incidents.

Recommendation #3: We recommend that the Bureau request that the Legislature create an Inmate Welfare Trust Fund within DMS for the welfare and benefit of inmates housed within DMS-managed facilities or, alternatively, DMS coordinate with DOC to deposit revenue designated for the Inmate Welfare Trust Fund into an existing Trust Fund within the Department to be designated for private prison operations.

Bureau's Response: The Bureau concurs. The Bureau will seek guidance and assistance from its legal department in drafting language for legislative approval this session to either create an Inmate Welfare Trust Fund within the DMS or will coordinate with the DOC to deposit said funds into an existing trust fund within the DMS designated for private prison operations.

Recommendation #4: We recommend that the Bureau coordinate with the DOC to establish a system of ensuring accountability and control of State-owned property at privately operated prisons regardless of where the Trust Fund resides.

Bureau's Response: The Bureau concurs and will establish a system of ensuring accountability and control of State-owned property by developing policies and procedures that set out the Contract Monitors' responsibilities in tracking property inventory. The operational contracts will be amended to reflect these responsibilities as well as each vendor's responsibility. The Bureau will coordinate this effort with the DOC by August 31, 2007.

Exhibit B - Distribution List

William O. Monroe, Auditor General

*Gary VanLandingham, Director, Office of Program Policy Analysis and
Government Accountability*

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To promote accountability, integrity, and efficiency, in government, the Office of the Inspector General makes audits of the Department of Management Services programs, activities, and functions. This audit was made in accordance with applicable standards contained in the *International Standards for the Professional Practice of Internal Auditing*, issued by the Institute of Internal Auditors.

Other audit reports prepared by the Office of Inspector General of the Department of Management Services can be obtained on our Web site (http://dms.myflorida.com/administration/inspector_general); by telephone (850 488-5285); or by mail (4040 Esplanade Way, Suite 135, Tallahassee, Florida 32399).