



Florida Department of Law Enforcement

OFFICE OF EXECUTIVE INVESTIGATIONS

Correctional Privatization Commission

INVESTIGATIVE SUMMARY

INVESTIGATIVE PREDICATE

On January 31, 2007, Florida Department of Law Enforcement (FDLE) Commissioner Gerald M. Bailey received correspondence from Governor Charlie Crist. In the correspondence, Governor Crist advised that he had been made aware of allegations of improper overpayment by the now defunct Correctional Privatization Commission (CPC) and two corporations that were contracted to operate private prisons in Florida.

Governor Crist directed FDLE to conduct a preliminary investigation to determine whether any criminal violations occurred regarding the alleged overpayments. Inspectors Mark Mitchell and Alexandra Gaskins conducted the investigation between January 31, 2007 and May 8, 2007.

INVESTIGATIVE NARRATIVE

The allegations of improper overpayments originated in a June 30, 2005 report issued by the Florida Department of Management Services (DMS), Office of Inspector General (OIG) regarding the CPC's contract management of the private prisons. The DMS OIG Internal Audit Report Number 2005-61 (hereafter referred to as the DMS OIG report) stated that the CPC had failed to adequately administer the privately operated prison contracts. Additionally, the DMS OIG report stated that the failure to adequately administer the contracts resulted in \$12.7 million in questionable or excessive costs to two private prison operators, The Corrections Corporation of America (CCA), and The GEO Group, Inc. (GEO). The report identified ten "findings" which detailed the alleged excessive or questionable payments.

A portion of the alleged questionable or excessive payments was to GEO in the amount of \$6.7 million. On January 2, 2007, DMS and GEO reached a settlement agreement regarding payments alleged in the DMS OIG report. In the settlement, GEO agreed to repay the State of Florida \$290,952.43, far less than the original \$6.7 million indicated in the DMS OIG report.

The remaining \$6 million in questionable or excessive payments documented in the DMS OIG report were purportedly made to CCA. To date, settlement negotiations have not resulted in an agreement between DMS and CCA. Therefore, the State of Florida has not recuperated any money.

At the direction of Governor Crist, FDLE conducted a preliminary investigation to determine whether any criminal violations occurred regarding the alleged overpayments. In furtherance of the preliminary investigation, FDLE conducted sworn interviews of sixteen individuals, including former CPC Commissioners, former CPC staff members, vendor representatives, DMS staff and legislative personnel. FDLE also analyzed the DMS OIG report and vendor responses, legislative documents, contracts, and other documents related to the contract management and settlement negotiations.

Correctional Privatization Commission (CPC) History

In 1993, the Florida Legislature created the five member volunteer commission for the purpose of administering contracts between the State of Florida and private prison operators. The CPC was tasked with entering into contracts with vendors for the design, financing, acquiring, leasing, construction and operation of private correctional facilities.

The vendors received their funding for the operation of the private prisons through a contractually determined per diem formula. Each of the facility's contracts established the per diem rate the vendors would receive based upon the number of inmates housed in the facilities. The vendors submitted monthly invoices that indicated the current inmate and staffing levels. The CPC would then submit a transmittal letter to the Department of Corrections (DOC) authorizing payment from the DOC budget for the approved invoice amount. Per the facility's contracts, the vendor had to be in compliance with certain contract provisions or the CPC had the authority to deduct funds from the established per diem rate.

In addition to the volunteer commissioners, the CPC employed an Executive Director, staff members and contract monitors who were assigned to each of the private prison facilities. The contract monitors were tasked with ensuring that the provisions of the contracts were enforced and reported to the CPC Executive Director.

During the nine years in operation, the CPC employed two Executive Directors, both of whom left the CPC under controversy. Clayton Mark Hodges served as the Executive Director from July 1993 through July 2002. Hodges resigned from the CPC amid a Florida Commission on Ethics investigation that resulted in Hodges being fined \$10,000. The investigation involved Hodges' involvement in business relationships with private prison operators outside of his position of CPC Executive Director.

Alan Duffee served as the CPC Executive Director from July 2002 until July 2004. Subsequent to Duffee's separation from the CPC, FDLE conducted a criminal investigation which resulted in Duffee's federal conviction of Wire Fraud & Money Laundering. The investigation revealed Duffee embezzled over \$224,000 from the CPC. In July 2004, the Legislature transferred the responsibility of the CPC to DMS and abolished the CPC effective July 2005.

After assuming the responsibilities of the CPC, DMS created the Bureau of Correctional Privatization which became accountable for contract management of the private prison vendors. Subsequently, DMS Secretary Tom Lewis directed the DMS OIG to evaluate the status of the privately operated prisons and the existing contracts. Following the release of the DMS OIG report alleging excessive and questionable payments to the vendors, GEO and CCA provided written responses to the allegations made in the report. The responses provided detailed

documentation and explanations as to why the vendors felt the DMS OIG findings were without merit.

The DMS OIG and the vendors began a negotiation process regarding the alleged questionable and excessive payments. On June 16, 2006, DMS Deputy General Counsel, Matthew F. Minno, sent demand letters to both vendors. The demand letter to GEO stated that DMS found no indication of improper conduct by GEO, but a number of accounting discrepancies needed to be addressed.

The GEO demand letter identified four issues, totaling approximately \$357,520, that required further explanation. The DMS OIG and GEO subsequently began negotiations regarding the unresolved issues. At the conclusion of the negotiations, a settlement amount of \$290,952.32 was reached.

The demand letter to CCA stated that DMS understood CCA's written and verbal responses to the OIG report, but had concluded that money was still due to the State of Florida. The CCA demand letter identified five issues, totaling approximately \$3,637,023.38 in questionable payments, which required further documentation from CCA. Negotiations between CCA and DMS continue and a settlement agreement has not been reached to date.

FDLE Interviews

The following individuals provided statements regarding the CPC to FDLE during the course of this inquiry.

- Steve Rumph, DMS Inspector General
- Sue Herring, Former CPC employee
- Kimberly Mims, Former CPC employee
- Latara Lampkin, Former CPC employee
- Stephanie Sanford, Former CPC employee, Current DMS Bureau of Corrections Privatization employee
- Jeanette Wilk, Former CPC employee
- Clayton Mark Hodges, Former CPC Executive Director
- Mike Barry, DMS Deputy General Counsel
- Matt Minno, DMS Deputy General Counsel
- John Davis, DMS, Office of Inspector General Audit Director
- Laura Bedard, Former CPC Commissioner, Current Deputy Secretary, Florida Department of Corrections
- Steve Ferst, former DMS General Counsel
- James Debeaurgrine, Staff Director of the Florida House of Representatives, Safety and Security Council
- Samuel A. Block, Former CPC Commissioner
- Amber Martin, GEO Vice President of Contracts

As previously stated, the former CPC Executive Director Alan Duffee is currently serving a federal prison term in Forrest City, Arkansas for embezzling approximately \$224,000 from the CPC. No attempt was made to interview Duffee.

DMS OIG REPORT

The DMS OIG report identified ten “findings” that detailed the alleged \$12.7 million in excessive or questionable payments. The following outlines the DMS OIG allegations and the related FDLE investigative findings.

DMS OIG Finding 1:

CPC’s Failure to Enforce Contract Provisions Regarding Vacant Staff Positions Cost the State Over \$4.4 Million

The DMS OIG report indicated that the CPC failed to enforce monetary deductions from vendor per diem for staff vacancies that extended beyond an established time frame. The report indicated that the CPC did not enforce the deductions until 2001, and when the deductions began, the CPC consistently miscalculated the deductions.

Finding 1 included the following two facets:

- I. *The DMS OIG estimated that the CPC failed to make vacancy deductions in the amount of \$1.3 million to GEO and \$2.3 million to CCA prior to 2001.*

GEO responded by stating that the initial three year contracts (1995-1998) for the South Bay and Moore Haven Correctional Facilities stated that “an amount equal to the salary for the position pro-rated for the number of days vacant in excess of the specified times, **will be deducted** from the monthly per diem paid by the commission.” Subsequent GEO contract terms were revised to state “**may be deducted** from the monthly per diem”

GEO further demonstrated that Section 957.03(1), Florida State Statutes stated that the CPC’s authority included the authority to exercise discretion with respect to the enforcement of the contract provisions.

Based upon the information provided in GEO’s response, DMS’s June 16, 2006 demand letter to GEO did not attempt to recoup any of the \$1.3 million estimated for vacancy deductions prior to 2001. Therefore, the settlement between DMS and GEO did not result in any money being returned to the State of Florida for this finding.

DMS Inspector General Steve Rumph advised FDLE that no attempt was made to recoup the funds from GEO because the CPC had the authority to not make deductions that resulted in the questionable or excessive payments. Inspector General Rumph advised FDLE that \$1.3 million was “an estimated number” based on the average GEO vacancy deductions from 2001 to the time of the DMS OIG report. Additionally, Inspector General Rumph stated that because of a lack of documentation regarding vacancies during the time frame, it was impossible to reach an exact dollar amount that should have been deducted from GEO’s per diem. Inspector General Rumph stated that \$1.3 million was a “worst case scenario” of what the State of Florida could have potentially saved if the CPC had enforced deductions to the vendor’s per diem for staff vacancies.

GEO Vice President of Contracts, Amber Martin, advised FDLE that GEO was able to demonstrate that the DMS OIG had miscalculated the number of vacancies during the time frame. Martin stated that GEO provided documentation showing that positions the DMS OIG had indicated were vacant, had actually been filled. Additionally, Martin stated that GEO was able to demonstrate that the contract language stated that the CPC had the discretion to enforce, or not enforce, the deductions.

Former CPC Executive Director Mark Hodges advised FDLE that the issue of position vacancies was addressed in numerous CPC commission meetings. Hodges also stated that representatives of the Florida House, Senate, Department of Corrections (DOC), DMS, and Governor's staff were present for the meetings where position vacancies were discussed.

Hodges advised that the commission did not want to "ding the vendor" for not having permanent employees at a time when the DOC was facing the same staffing difficulties. Hodges again stated that these conversations were documented in recorded commission meetings.

In CCA's response to the DMS OIG report regarding this issue, they purported that the Gadsden, Lake City and Bay Correctional contracts did not stipulate mandatory deductions for position vacancies. Therefore, the CPC had the authority to not make deductions to the per diem. CCA also stated that at all times CCA maintained "security, control, custody, and supervision of inmates in the facility using a variety of methods including costly overtime and employment agencies."

Based upon the information provided in CCA's response, DMS's June 16, 2006 demand letter to CCA did not attempt to recoup any of the estimated \$2.3 million for vacancy deductions prior to 2001.

II The DMS OIG report also alleged that once the CPC began making deductions for position vacancies after 2001, they made miscalculations totaling \$750,000 in funds not deducted. The DMS OIG report stated that the alleged miscalculations were the result of the "CPC not always deducting the correct number of days vacant." DMS OIG identified \$138,726.80 in miscalculated deductions from GEO and \$610,823 from CCA.

Former CPC Senior Management Analyst Sue Herring advised FDLE that she believed the allegation that CPC overpaid vendors \$750,000 by miscalculating the vacancy deductions was incorrect. Herring stated that the CPC started the deductions when the 30 or 45 day grace period expired for the vendor's position. Herring stated that, while the DMS audit did not explain how the \$3.7 million was reached, it appeared that the DMS began the deductions from the first day the position was vacant; not at the end of the grace period.

In GEO's response to the DMS OIG report, GEO indicated that if documentation confirmed that the CPC erred in calculating the vacancy deductions, GEO would be prepared to return the amount indicated in the report: \$138,726.80. According to GEO Vice President Martin, subsequent to the DMS OIG report, the reputation of GEO was being questioned. Martin advised that GEO wanted to resolve the dispute as quickly as possible and thought the \$138,726.29 was a reasonable amount to return regarding the alleged miscalculations.

DMS's June 16, 2006 demand letter to GEO attempted to recoup the \$138,726.80 for vacancy deduction miscalculations. The final settlement agreement between DMS and GEO resulted in GEO returning the full \$138,726.80 for alleged miscalculations.

CCA responded to the DMS OIG report that it had provided vacancy information to the CPC and was not aware of the calculation methodology used by the CPC. The June 16, 2006 demand letter to CCA identified \$610,823 in additional funds that should have been deducted from CCA's per diem. However, to date a settlement agreement has not been reached with CCA.

DMS OIG Finding 2:

CPC Waived Required Staffing Patterns resulting in \$290,000 in additional costs to the State

The DMS OIG report indicated that in April and August 2003, the CPC granted blanket waivers regarding contract staffing requirements. The DMS OIG report stated that by granting the waivers to the vendors, the CPC cost the State of Florida a minimum of \$290,994. The DMS OIG report indicated that the waivers only applied if the vendor outsourced the position to fill the required vacancies. The DMS OIG reported that the CPC waived deductions in the amount of \$114,794 for GEO and \$176,200 for CCA for positions that were not outsourced.

The GEO response to the DMS OIG report stated that on March 5, 2003, GEO submitted written requests for waivers regarding teachers and instructors due to a statewide shortage. GEO also responded that the request was approved at the April 25, 2003 CPC commission meeting.

The June 16, 2006 demand letter to GEO maintained the DMS position that GEO owed the State of Florida \$114,794 for the non-outsourced positions. The final settlement agreement with DMS resulted in GEO returning \$117,552 to the State of Florida. According to GEO Vice President Martin, the reimbursement was increased because GEO conducted an internal inquiry regarding each of the DMS OIG findings. Martin stated that the inquiry into this finding identified an additional \$3,000 that the CPC could have deducted for non-outsourced positions. GEO agreed to repay the State of Florida the additional amount.

It should be noted that Martin advised FDLE that GEO disagreed with the DMS OIG interpretation of the waiver, but conceded to return the full amount owed to the State. Martin stated that GEO disputed that the waivers constituted excessive payments since the CPC had approved the waivers during the Commission meetings. Martin also stated that GEO was able to demonstrate that GEO facilities met American Correctional Association (ACA) standards at all times, regardless of the waived positions.

The June 16, 2006 demand letter to CCA maintained that CCA owed the State of Florida \$176,200 in deductions for waived positions that were not outsourced. In the CCA response to the DMS OIG report, CCA stated that it consistently met ACA standards and complied with contractual obligations. CCA further noted that they requested the waivers and the CPC approved them during Commission meetings. No settlement agreement has been reached between DMS and CCA regarding this finding.

DMS OIG Finding 3:**Vendor (GEO) Received \$3.4 Million in Excessive Competitive Area Differential (CAD) Payments and Per Diem in Lieu of CAD.**

This finding only pertains to GEO.

The DMS OIG report indicated that GEO received \$3.4 million in excessive CAD payments from January 1999 through December 2004. The South Bay Correctional Facility (South Bay) Correctional Officers began receiving a \$6,300 CAD when the facility became operational in February 1997. The \$6,300 was the same amount that the Florida Department of Corrections (DOC) Correctional Officers received annually for CAD in 1997.

In January 1999, the CAD for DOC Correctional Officers was reduced to \$4,400 and in January 2000 it was reduced to \$2,500. During this time frame, South Bay Correctional Officers continued to receive the full amount of \$6,300 for CAD.

The DMS OIG report also indicated that in February 2005, the South Bay contract was renegotiated. The following language was included in the new contract regarding the increase in per diem.

“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 CAD, provided the legislature appropriates such funds”.

The DMS OIG report indicated that by not reducing the CAD along with the DOC, and by increasing per diem in lieu of CAD, the CPC paid GEO a total of \$3.4 million in excessive CAD payments.

The GEO response to DMS OIG report stated that at no time did GEO improperly bill or receive excessive CAD payments or per diem payments in lieu of CAD. The response stated that on January 11, 1999, during the time when the state CAD was being reduced, the CPC directed GEO to continue billing the CAD at the \$6,300 rate. The response stated that GEO had no requirement to pay its correctional officers the same CAD as the DOC officers. Additionally, the response noted that each time the State of Florida reduced CAD for DOC Correctional Officers, the State increased their base salary to offset the reduction.

GEO advised that on July 1, 2002, the CPC agreed to lower the South Bay Commission approved CAD to \$2,500 and increase the per diem rate by an offsetting amount. This essentially mirrored what the State of Florida had done for their Correctional Officers when they increased Correctional Officer salaries after reducing the CAD.

In the June 16, 2006 demand letter, DMS did not attempt to recoup any of the money identified in Finding 2. GEO Vice President Martin stated that during the settlement negotiation process with the DMS OIG, GEO was able to demonstrate that the contract allowed for the CAD payments and per diem in lieu of CAD. Martin stated that the DMS OIG agreed that the documentation justified the CAD payments and agreed that no money should be returned to the State of Florida.

DMS Inspector General Rumph acknowledged that no attempt was made by DMS to recover the funds because the South Bay contract clearly stated that their Correctional Officers would receive the CAD.

DMS OIG Finding 4:

Vendor (GEO) Billed State for Additional Burden on CAD Payments

This finding only pertains to GEO.

The DMS OIG report indicated that the CPC allowed GEO to charge the State of Florida a burden of 20.77% of the CAD to compensate for the state and federal taxes that accompanied the CAD payments. By authorizing the burden, the State of Florida paid \$1.57 million to GEO from February 1997 to December 2004.

GEO responded to the DMS OIG report by stating that the CPC had the authority to negotiate the contract terms and therefore had the authority to authorize the additional burden. The GEO response stated that the burden was “fully negotiated and reviewed by the DMS staff attorney assigned to the CPC, and was fully funded by the Legislature.”

In the June 16, 2006 demand letter to GEO, DMS did not attempt to recoup any of the money identified in Finding 4. DMS Inspector General Rumph advised FDLE that the DMS Management Staff made the decision not to attempt to recover the money because the CPC had authorized the burden. Inspector General Rumph stated that while the CAD was specifically outlined in the contract, the overhead or burden associated with the CAD was not. Inspector General Rumph advised that the burden would not have been paid to the vendor if DMS had originally written the contract.

Former CPC Commissioner, Sam Block, advised FDLE that he recalled the vote during a Commission meeting that allowed the additional burden to be paid to the vendor. Block stated that he voted to allow the burden to be paid because he thought it was a reasonable request from the vendor.

GEO Vice President Martin stated that during the settlement negotiation process, GEO demonstrated to the DMS OIG that the request for proposal and original contract outlined that the CAD payment burden would be billed to the state. Martin stated that at the conclusion of the settlement negotiation, the DMS OIG agreed that GEO was entitled to the additional burden and no money was owed to the State of Florida.

DMS OIG Finding 5:

Vendor (GEO) Received CAD Payments for Terminated Employees

This finding only pertains to GEO.

The DMS OIG report indicated that GEO received CAD payments for terminated employees. The DMS OIG report stated that GEO had submitted monthly invoices to the CPC totaling \$104,000 for CAD payments for employees who were no longer employed by GEO.

GEO's response to the DMS OIG report acknowledged that inadvertent errors had been made related to the billing of CAD payments for terminated employees. GEO Vice President Martin advised FDLE that the internal GEO audit found that the \$104,000 in CAD payments for terminated employees reported in the DMS OIG report was correct. Martin further stated that GEO's internal audit also found that GEO had "under billed" the CPC for newly hired employees in the amount of \$185,000. Martin advised that an error in GEO's internal accounting system resulted in the incorrect CAD billing and has subsequently been corrected. Martin stated that GEO agreed to "zero out" the under payment resulting in no money being returned to GEO or the State of Florida.

DMS Inspector General Rumph acknowledged to FDLE that during the settlement negotiations, GEO presented clear documentation regarding the 'under billings' and agreed that no money would be returned regarding the CAD payments for terminated employees. DMS's June 16, 2006 demand letter to GEO did not request any funds be returned to DMS regarding the payment of CAD for terminated employees.

DMS OIG Finding 6:

CAD Payments Not Used To Enhance Employee Salaries

This finding only pertains to GEO.

The DMS OIG report indicated that GEO used CAD payments to offset correctional officer salary costs rather than to enhance employees' salaries at the South Bay Correctional Facility (South Bay). The DMS OIG report stated that the starting salary for a correctional officer at South Bay was \$28,371, which included a CAD additive of \$6,300. The DMS OIG report further noted that the Moore Haven Correctional Facility (Moore Haven), also operated by GEO, had a starting salary of \$27,000, with no available CAD.

According to the DMS OIG report, because GEO received an additional \$6,300 for CAD but only paid South Bay Correctional Officers \$1,371 more than Moore Haven Correctional Officers, GEO was not enhancing the South Bay officer salaries with the full CAD.

The GEO response to the DMS OIG stated that, "The IG Report has absolutely no basis for its conclusion 'that the CAD is being used to supplement *below-market starting salaries* paid to South Bay employees.'" GEO Vice President Martin advised FDLE that GEO was able to demonstrate to the DMS OIG that GEO had paid correctional staff \$2,000 higher than other correctional facilities in the geographic area.

In DMS's June 16, 2006 demand letter to GEO, DMS did not attempt to recoup any money regarding finding 6 and no money was returned to the State of Florida regarding this issue. DMS Inspector General Rumph advised FDLE that the DMS did not attempt to recoup any money related to this issue because GEO had the authority to set the Correctional Officers' salaries.

DMS OIG Finding 7:**Excessive Per Diem Paid For Maintenance and Repair At Gadsden Correctional Facility.**

This finding only pertains to CCA.

The DMS OIG report stated that the Gadsden Correctional Facility (Gadsden), which is operated by CCA, had received an additional per diem payment of \$2.30 for the facility's major maintenance and repair. The increased per diem was included in the first contract with CCA which was originally written and maintained by the Florida DOC. When the CPC assumed control of Gadsden, the additional per diem was continued. Since the dissolution of the CPC, the DMS Bureau of Corrections Privatization has not changed Gadsden's maintenance and repair funding method.

The DMS OIG report stated that the base per diem rate at the other private prison facilities included funding for maintenance and repair. According to other facility contracts, the vendors were required to pay for all maintenance up to \$5,000 and the CPC would reimburse the vendors for expenses in excess of \$5,000. The Gadsden contract allowed for this additional \$2.30 over the base per diem. However, the contract maintained that Gadsden was required to pay for all repairs to the facility regardless of cost to the vendor. The DMS OIG report indicated that the increased per diem at Gadsden amounted to \$645,000 to CCA annually, while the average annual repair cost for the facility was \$140,000.

In CCA's response to the DMS OIG report, CCA stated that based upon the Gadsden contract, CCA has assumed all risk regarding maintenance and repair of the facility. The CCA responded that, "This flat amount is an insurance payment by the State against future anticipated major maintenance and repair costs." The CCA response further stated that CCA had invested in the latest technology to ensure that maintenance was anticipated and dealt with proactively.

DMS's June 16, 2006 demand letter to CCA, identified \$2,850,000 in maintenance funds that have been received by CCA and not expended. No settlement agreement has been reached between DMS and CCA regarding the Gadsden Correctional Facility maintenance and repair facility.

DMS Inspector General Rumph advised FDLE that CCA could provide no explanation regarding what was done with the surplus funds.

DMS OIG Finding 8:**Trust Fund Used to Supplement The Cost of Contractually Required Programs and Services**

The DMS OIG report indicated that the Privately Operated Institutions Inmate Welfare Trust Fund (POIIWTF) was used to supplement the cost of contractually required programs and services such as education, vocation and chaplaincy. According to the DMS OIG report, the CCA and GEO contracts provided that the POIIWTF would be used for the "benefit and welfare of inmates and may not include items included in the contractors' proposals." The DMS OIG report concluded that the use of POIIWTF to supplement contractually required programs

understated the actual per diem costs.

DMS's June 16, 2006 demand letter to GEO did not request a specific amount of money to be returned to DMS. However, the demand letter did request that GEO provide documentation that would demonstrate the POIIWTF money was not used to pay for contractually required programs.

Inspector General Rumph advised FDLE that the DMS Bureau of Correctional Privatization had compiled a spreadsheet that identified programs that should not have been paid for using the POIIWTF because they were contractually required programs.

The GEO response to the DMS OIG report stated that GEO had used POIIWTF money to fund positions "in addition" to positions required under the terms of their contract. GEO also responded that the POIIWTF had been used to fund new inmate programs not included in the contracts and to enhance programs beyond the contractual requirements.

GEO Vice President Martin advised FDLE that DMS OIG Finding 8 involved a philosophical difference in opinion regarding how the POIIWTF should be used. Martin stated that GEO enhanced the contractually required programs and used the POIIWTF to pay for the enhancements. Martin added that every annual budget was reviewed and approved by the CPC. Martin acknowledged that the DMS OIG demonstrated some instances where GEO inadvertently used the POIIWTF to pay for contractually required programs without CPC approval. Martin stated that the DMS OIG indicated the amount of POIIWTF money that had been used to supplement the contractually required programs was \$34,672.91. GEO agreed to pay the full amount.

In the CCA response to the OIG DMS report, CCA stated that all POIIWTF expenditures were approved by the CPC and budget proposals outlined the staff positions and program expenses. CCA also stated that the CPC Contract Monitor approved all program related expenditures prior to purchase. No settlement has been reached between DMS and CCA regarding this issue.

DMS OIG Finding 9:

Welfare Trust Fund Incurred Loss

This finding only pertains to CCA.

The DMS OIG report indicated that in January 2002, the Gadsden Correctional Facility (Gadsden) changed the commissary operations from bulk distribution to bag distribution at the request of CCA management. According to the DMS OIG report, the change resulted in the cost of goods increasing dramatically in calendar years 2002 and 2003. The DMS OIG audit of the commissary indicated that the average net income from the commissary operations from 1999-2004 was approximately \$203,000. The change of food distribution resulted in the commissary operation averaging a loss of \$53,000 during the subsequent two years.

Former CPC Administrative Assistant Kimberly Mims advised FDLE that she began handling the vendor invoices after Gadsden switched from bulk food distribution to bag food distribution on January 20, 2002. Mims stated that the vendor was required to submit monthly revenue

reports which indicated what funds were taken from or deposited into the POIIWTF. The CPC provided a report to the legislature on September 1st of every year which identified revenues and expenditures from the POIIWTF. Mims stated that she did not recall the CPC addressing the loss of POIIWTF revenue and was unaware of why the vendor changed from bulk food distribution to bag food distribution.

Other former CPC staff members, including former Executive Director Mark Hodges and former CPC Commissioners, advised FDLE that they did not recall Gadsden changing the food distribution method.

In CCA's response to the DMS OIG report, CCA agreed that switching from bulk food distribution to bag food distribution resulted in a decrease in revenue. However, CCA stated that administrative and security concerns led CCA to convert to the bagged commissary method. CCA stated that the conversion to bagged distribution resulted in "positive and quantifiable security and administrative outcomes." Additionally, during negotiations between DMS and CCA, CCA claimed that due to commissary vendor rebates, no loss actually occurred.

In the June 16, 2006 demand letter to CCA, the DMS OIG stated that it could not "allow a loss due to business decisions by CCA to create a reduction in Trust Fund balances." DMS further stated that absent CCA providing clear proof that no Trust Fund money was lost, CCA still owes money to the State of Florida. No settlement has been reached between DMS and CCA regarding this issue.

DMS OIG Finding 10:

Vendors' Per Diem Rates Increased to Pay for CPC Salaries and Expenses

The DMS OIG report stated that in a November 2001 Special Legislative Session, the Legislature zero-budgeted the remaining funds from the CPC's 2001-2002 General Revenue Appropriation. The CPC's General Revenue Appropriation had previously paid for staff salaries and operational expenses for the CPC. The DMS OIG report indicated that the CPC subsequently increased each vendor's contract per diem rate \$0.40 to make up for the funds removed from the General Revenue. While this finding did not include a dollar amount, it was listed as a finding in the report.

The DMS OIG report further indicated that it was unknown if the Legislature intended to eliminate the CPC by zero-budgeting its General Revenue Funding. According to the DMS OIG report, by increasing the per diem to pay for the CPC operating costs, the appearance was created that the vendors were funding those charged with enforcing the vendor's contract provisions.

In the GEO response to the DMS OIG report, GEO stated that the per diem was increased to allow deductions from the facilities payments to cover the CPC expenses. However, there was no net increase in funding to the GEO's facilities. The response also stated that the decision to increase the per diem was made by the CPC and was not suggested or requested by GEO.

The CCA response to the DMS OIG report indicated that the CPC made the decision to increase the per diem without the knowledge or input of CCA. CCA also responded that they had no input regarding how the increased per diem was applied by the CPC.

Regarding the “Legislative Intent” of the zero budget, FDLE conducted analysis of House Bill 797, dated March 7, 2001. While the bill did not become law, the following language regarding the CPC indicated that the Legislature was aware that the per diem would be increased to fund the CPC operating costs:

“During Special Session 2001-C the Legislature fund shifted the General Revenue portion of the operating expenses of CPC to the Grants and Donations Trust Fund. As a result, all ten FTEs and operating expenditures are funded through the Grants and Donations Trust Fund.”

Additionally, when the Legislature removed the remaining funds from the General Revenue, the Legislature did not reassign the duties of the CPC to another entity. This also implies that the Legislature intended for the CPC to continue operating.

Former CPC Legislative Director, Jeanette Wilk, advised FDLE that when the CPC was zero-budgeted, she was told by legislators that the operating funds would be shifted, not eliminated, and that the CPC would not be abolished. Wilk also stated that the legislators were making a political statement that they did not support prison privatization by voting to zero budget the CPC. Wilk also stated that if the legislature’s intent was to eliminate the CPC, the operating funds would have been eliminated completely and the CPC could not have continued operating.

DMS/GEO Settlement Agreement

On January 1, 2007, a settlement agreement was reached between DMS and GEO. The settlement concluded negotiations that began with the June 2005 DMS OIG report which indicated GEO received \$6,709,478.83 in questionable or excessive payments. The negotiation process included an official response from GEO and face to face negotiations between DMS and GEO representatives. In the final settlement agreement, GEO agreed to pay the State of Florida \$290,952.43.

In interviews conducted by FDLE, representatives of GEO and DMS described the negotiation process as civilized and professional. Inspector General Rumph and GEO Vice President Martin each stated that the settlement adequately served the interests of GEO and DMS.

FDLE interviewed DMS Deputy General Counsel Matt Minno. Minno advised that he had twenty-two years experience in civil law and has experience in determining when a settlement or litigation is appropriate. Minno stated that based upon his experience, his review of the DMS OIG Report and the vendor responses, he felt that litigation was not appropriate in this case. Specifically, Minno stated that the fact that all the money referred to in the DMS OIG report was distributed by the CPC and approved by the Legislature led him to the opinion that litigation was not appropriate.

Minno stated that the DMS OIG report was not an indication of money that was owed to DMS from the vendors. Rather, it was money that could have been saved if the contract provisions were more strictly enforced. Minno stated that he attended several meetings with the DMS and

GEO. Minno stated that GEO acknowledged that they wanted to cooperate fully with DMS and if they were found to have received money they were not entitled to, the money would be returned.

Inspector General Rumph also indicated that the \$12.7 million amount indicated in the DMS OIG report did not represent money that was “owed to DMS.” Inspector General Rumph did not agree with the term “overpayments” as it referred to the money identified in the DMS OIG report. According to Inspector General Rumph, the amount represented costs that “could have been avoided” if the contracts were operated in a more efficient manner. Inspector General Rumph advised that when the DMS OIG report was released, he made it clear that the \$12.7 million represented money that could have been saved if the CPC had done its job.

GEO Vice President Martin stated that at the conclusion of the settlement negotiation process, DMS and GEO were satisfied that each party’s best interest was served. Martin stated that GEO acknowledged that some errors were made which resulted in the settlement amount of \$290,952. Martin stated that the negotiation process with members of DMS was very cordial and agreeable. Martin stated that representatives of DMS were “humble and embarrassed” after GEO demonstrated that the alleged “excessive payment” amount was incorrect.

Martin stated that in response to the DMS OIG report, GEO conducted a thorough internal audit to ensure that GEO was correct in their documentation. Martin stated that if the DMS OIG had obtained the documentation prior to writing the report, the report would have been written differently.

INVESTIGATIVE ANALYSIS

During the course of FDLE’s inquiry, numerous historical audits/investigations were discovered regarding the CPC and the monitoring/management of private prisons in Florida.

FDLE compiled the following summary of these audits/investigations that took place from April 1998 through November 2002, specifically noting findings related to FDLE’s inquiry.

It should be noted that many of the findings expressed in the DMS OIG report were previously documented in these audits/investigations. These were public record and available to concerned entities.

Office of Program Policy Analysis and Government Accountability Report # 97-68 **Review of Bay Correctional Facility and Moore Haven Correctional Facility** **April 1998**

FINDINGS:

- The CPC “*did not structure the contracts to ensure that the projected level of operating cost savings was achieved.*” The contract with Bay Correctional Facility (Bay) limited the savings achieved by the state due to excessive payments to CCA for each additional inmate in excess of 90% of prison capacity (marginal per diem rate was set at \$41.60, 94% of its guaranteed rate) Wackenhut’s marginal rate was \$8.87.

RECOMMENDATIONS: Renew Contracts with vendors, with the following modifications:

- Canteen profits and telephone commissions be deposited with the state
- Performance-based program budgeting measures be included
- Renegotiate Bay contract to reduce inmate per diem rate for inmates in excess of 90% capacity

Office of Program Policy Analysis and Government Accountability Report # 99-33

Private Prison Review

**Lake City Correctional Facility Experienced Start-Up Problems, But It Has Improved
February 2000**

PREVIOUS FINDINGS:

- During first year, Lake City Correctional Facility (Lake City) experienced numerous staff vacancies (lasting more than contractually allowed) and noncompliance with state and federal regulations.
- The CPC's Lake City contract had inadequate sanctions for program noncompliance. The CPC has no provisions for authorizing deductions in per diem for poor performance.

RECOMMENDATIONS:

- CPC should renew the CCA contract for Lake City. However, the CPC "*could save over \$560,000 annually by lowering the marginal per diem rate paid to CCA for inmates in excess of 90% capacity.*"
- The CPC "*should add contract provisions to allow it to sanction the vendor for noncompliance with state and federal regulations and contract requirements.*"

Office of Program Policy Analysis and Government Accountability Report # 99-39

Private Prison Review

**South Bay Correctional Facility Provides Savings and Success; Room for Improvement
March 2000**

RECOMMENDATIONS:

- The CPC should increase savings by improving its cost control efforts. The vendors should not be reimbursed for corporate income and sales tax expenses without documentation.

Office of Program Policy Analysis and Government Accountability Report # 99-46

Progress Report

**Bay and Moore Haven Private Prison Contracts Renewed; Bay Costs Increase
April 2000**

FINDINGS:

- "*We question the CPC's contract modification that resulted in a \$785,936 additional payment to CCA to operate Bay in Fiscal Year (FY) 1998-99.*" CPC renewed Bay's contract with a lower marginal per diem rate, however CPC offset savings from the decrease by increasing the guaranteed rate by 6.7% (\$785,936) for the 1998-99 contract year.

Executive Office of the Governor, Office of the Chief Inspector General
Executive Summary Case #: 200004030001
September 8, 2000

This documented an investigation into a complaint by the PBA alleging that the Executive Director of the CPC, C. Mark Hodges, and CPC Employee Ronald Jones violated provisions of Florida Statutes (F.S.).

FINDINGS:

- C. Mark Hodges did NOT violate F.S. by accepting an honorarium from the Management & Training Corporation, a registered lobbyist corporation within the State of Florida who had bid on several contracts initiated by the CPC.
- C. Mark Hodges DID violate F.S. by failing to report the receipt of the honorarium related expenses within the prescribed time.
- Ronald Jones DID VIOLATE F.S. by accepting employment with the CCA within 2 years after leaving the CPC.

RECOMMENDATIONS:

- DMS should have oversight over CPC's areas of travel authorization and procurement.
- DMS should dedicate legal support to CPC.
- DMS Inspector General should review procurement and travel practices of CPC.

Florida Corrections Commission 2000 ANNUAL REPORT
Monitoring Contracted Private Correctional Facilities

SUMMARY:

"The Corrections Commission found serious deficiencies in the contracted monitoring of private correctional facilities."

"The Commission recommends that the Florida Correctional Privatization Commission, created in Chapter 957, Florida Statutes, be abolished, and its functions transferred to the Department of Corrections via a 'Type Two Transfer' as outlined in Section 20.06, Florida Statutes."

FINDINGS:

The Florida Corrections Commission (FCC) reviewed monthly monitoring reports from the CPC for each facility for FY 1998-1999 and 1999-2000. Their findings revealed:

- Some facilities were found in partial or non-compliance for consecutive quarters in areas where monthly payments were based upon compliance with the contract.
- Numerous errors/discrepancies in monthly monitoring reports and in data carried forward and reported in subsequent reports.
- In FY 1999-2000, CPC reported no payment deductions to 3 facilities for vacant positions; although each facility's monthly monitoring reports identified vacancies that exceeded the contractually allowed time.

House Bill (HB) No. 727 March 29, 2001 (NOT PASSED)
Correctional Privatization Commission

SUMMARY:

“HB 727 abolishes the CPC, and transfers all its powers, duties, functions, rules, records, personnel, property, and unexpended balances of appropriations, allocations or other funds of the CPC to the DOC utilizing a type two transfer.”

“The bill repeals Chapter 957, F.S., known as the Correctional Privatization Commission Act.”

FINDINGS:

- Governor’s Recommended Budget for FY 2000-2001 stated the CPC should be transferred to the DOC.
- Documented the findings of a 1998 OPPAGA report concluding that *“the CPC did not structure the contracts to ensure that the projected level of cost savings was achieved.”* Recommended: contracts be renewed with improvements to the cost-effectiveness of the prisons operations.
- Documented OPPAGA’s Lake City CF recommendations: *“CPC must add contract provisions which would allow the CPC to sanction the private vendor for any noncompliance with state and federal regulations, and there must be a restructuring of the marginal per diem rate.”*
- OPPAGA criticized the CPC for paying Wackenhut (GEO Group, Inc.) \$263,499 for Florida corporate income tax and \$94,107 for state sales tax, without the CPC requiring documentation of Wackenhut’s actual tax payments.
- Documented the findings of the FCC's 2000 Annual Report that recommended abolishment.
- Florida PBA claimed *“Gross overpayments”* by CPC to vendors and pointed out a *“number of serious ethical problems”* within the CPC
- The PBA filed an ethics complaint against the CPC director C. Mark Hodges for operating a consulting business out of his state office and for not filling out the required paperwork disclosing his extra sources of income.
- The Florida Commission on Ethics took final action against Dr. Charles Thomas, who was hired by the CPC to be an evaluator of the private corrections industry. Thomas was fined \$20,000 (largest fine in Ethics history) due to contractual relationships he had with 4 companies related to the private corrections industry. These relationships conflicted with his duty to objectively evaluate the corrections industry.
- Documented the findings of The Office of the Chief Inspector General’s Investigation regarding Hodges, Jones and the CPC.

Auditor General Report No. 02-010 July 2001

Florida Correctional Privatization Commission July 1999 through March 2001

SUMMARY

“We found that the Commission had not established the management controls necessary to ensure the safeguarding of its resources and compliance with applicable legal requirements or had not established adequate record systems to demonstrate compliance with such requirements. As a result, the Commission

could not always be assured that State resources were prudently expended for an authorized public purpose and adequately safeguarded. The instances of noncompliance or lack of controls described in this report may have been the result, at least in part, of the absence of written policies or procedures. In addition, sometimes actual practices were not consistent with established policies.”

FINDINGS:

The Auditor General’s audit focused on the CPC’s procedures and records pertaining to various administrative areas. Their findings included:

- The CPC *“has not adopted written policies and procedures requiring the disclosure of all personal, business, Florida Department of Corrections, or Florida Department of Juvenile Justice associations or relationships that could potentially result in an actual or perceived conflict of interest.”*

Florida Corrections Commission 2002 ANNUAL REPORT
Update on Monitoring of Private Prisons in Florida

SUMMARY:

In the FCC’s 2000 Annual Report, the FCC documented that they felt the CPC was not properly monitoring private facilities, nor was the information in the monthly monitoring reports being utilized. Based on these findings the FCC recommended that the CPC should be abolished and functions should be transferred to the Department of Corrections.

*“Although there were bills filed in the House and Senate during the 2001 and the 2002 Legislative Sessions to implement the Commission’s (FCC’s) recommendation regarding the CPC and save the State nearly \$1 million annually, the Legislature did not enact the proposed legislation. **However, during Special Session C in 2002, the Legislature provided that the operating costs of the CPC shall be derived from the per diem paid to the private correctional firms.”***

FINDINGS:

After the initial review in 2000, the FCC staff was subsequently directed to update this issue for the 2002 Annual Report in order to identify what changes had been incorporated by the CPC since the review. The FCC reviewed monthly monitoring reports from the CPC for each facility for FY 2001-2002. Their findings included:

- Facilities were still found to be in partial or non-compliance over several quarters in areas where the facilities receive monthly payments based on compliance with the contract. CPC reported no deductions in FY 2001-2002 associated with these findings.

House Bill No. 797 March 7, 2002 (NOT PASSED)
Correctional Privatization Commission

SUMMARY:

“HB 727 abolishes the CPC, and transfers all its powers, duties, functions, rules, records, personnel, property, and unexpended balances of appropriations, allocations or other funds of the CPC to the DOC utilizing a type two transfer.”

“The bill repeals Chapter 957, F.S., known as the Correctional Privatization Commission Act.”

FINDINGS:

HB 797 documented the same findings reported in 2001’s HB 727. However, noted the following information:

- *“During Special Session 2001-C the Legislature fund shifted the General Revenue portion of the operating expenses of CPC to the Grants and Donations Trust Fund. As a result, all ten FTEs and operating expenditures are funded through the Grants and Donations Trust Fund.”*

Office of Program Policy Analysis and Government Accountability Report # 02-27

Progress Report

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

May 2002

RECOMMENDATIONS:

- CPC should stop reimbursing vendors for tax payments without documentation.
- CPC should specify performance measures and standards in vendor contracts.
- CPC should further address Wackenhut’s failure to meet contract requirements for rehabilitative programs. I.e. Provide sanctions for noncompliance with contract.

Office of Program Policy Analysis and Government Accountability Report # 02-56

Progress Report

**Lake City Correctional Facility Added Programs and Saved 6.5%; Intermediate Sanctions
Still Needed**

November 2002

RECOMMENDATIONS:

- The CPC *“could achieve additional savings by restructuring Lake City’s contract’s marginal rate to reflect actual costs of housing inmates in excess of the contract guarantees.”*
- The CPC should revise its contract for Lake City CF to include intermediate sanctions for noncompliance and non-delivery of contracted level services.

Commission on Ethics Complaint # 00-015, 00-075, 00-163 & 00294 (Consolidated)
Joint Stipulation of Fact, Law And Recommended Order
November 8, 2002

Investigation into the Executive Director of the CPC, C. Mark Hodges:

FINDINGS:

Hodges Violated Florida Statutes by:

- *“Using State paid long distance telephone services or other State resources for personal gain in his private consulting business in a manner that was inconsistent with his public duties.”*
- *“Improperly selling a State owned prison monitoring manual for the special benefit of himself and/or another.”*
- *“Having a conflicting contractual relationship with Dr. Charles Thomas.”*
- *“Having contractual relationships with CPC employees and private consulting clients that created frequently recurring conflicts between Respondent’s private interests and his public duties, and impeded Respondent’s full and faithful discharge of his public duties.”*
- Failing to disclose sources on income related to his private consulting for calendar years 1996 and 1997.

RECOMMENDATION:

- Public censure and reprimand
- A civil penalty of \$10,000

INVESTIGATIVE FINDINGS

On June 30, 2005, the Florida Department of Management Services (DMS), Office of Inspector General (OIG) released a report regarding the contract management of private correctional facilities in Florida. The report was written at the request of DMS Secretary Tom Lewis to evaluate the status of the privately operated correctional facilities and whether the contracts adequately safeguarded the State of Florida's interest. The report scrutinized contracts between the State of Florida and two private prison vendors, The GEO Group, Inc. (GEO) and the Corrections Corporation of America (CCA).

The report concluded that the Correctional Privatization Commission had failed to adequately safeguard the State of Florida's interest and consistently made questionable contract concessions to the vendors. This resulted in \$12.7 million in additional costs to the State. The report alleged excessive payments of \$6.7 million to GEO and \$6 million to CCA.

Subsequent to the DMS OIG report, the DMS Inspector General entered into negotiations with GEO in attempt to recoup the excessive payments. GEO responded to the DMS OIG report and concurred that some excessive payments had occurred. However, GEO disputed several other findings in the report.

DMS reviewed GEO's response and on June 16, 2006 sent a "Demand Letter" to GEO. The letter called for the return of \$357,520 to the State of Florida, significantly less than the \$6.7 million in questionable payments originally identified in the DMS OIG report. The negotiation process continued and a settlement agreement was finalized on January 1, 2007. This negotiation resulted in GEO returning \$290,952.32 to the State of Florida.

CCA provided a written response to the DMS OIG report on August 23, 2005. This response strongly disputed that CCA had received questionable or excessive payments. DMS also sent a "Demand Letter" to CCA on June 16, 2006, which indicated after review of the CCA response, DMS believed CCA had been excessively paid over \$3.6 million. To date, there has been no settlement agreement reached with CCA.

James Debeaugrine, Staff Director of the Florida House of Representatives, Safety and Security Council, advised FDLE that he disagreed with the DMS OIG report. Debeaugrine did not believe the vendors were excessively paid \$12.7 million because the payments were permitted by the contracts. Debeaugrine stated that he felt the DMS OIG report was not completely objective or professional. Debeaugrine stated that the Legislature would not have appropriated funds to the CPC for items that were not called for in the contracts.

Debeaugrine advised FDLE that he never observed any inappropriate relationships between the CPC staff or commissioners and the private prison vendors. Debeaugrine also stated that he never suspected that the contracts were serving the interest of the vendors more than that of the State of Florida. Debeaugrine stated that he was never approached by any vendors or legislative personnel to make decisions that would benefit the vendors.

GEO Vice President Martin advised FDLE that at no time had she ever observed or suspected any CPC staff members or commissioners to be involved in unethical activity. Martin also stated that GEO requested that DMS write a letter to indicate that GEO had done nothing inappropriate

regarding the issues identified in the DMS OIG report. Martin stated that former DMS Secretary Tom Lewis complied with the request and wrote a letter (dated September 20, 2005) which stated DMS did not “find any indication of improper conduct by GEO.”

DMS Inspector General Steve Rumph advised FDLE that the DMS review of the CPC did not reveal any allegations of criminal activity. Additionally, Inspector General Rumph advised FDLE that he did not suspect that there was any “evil intent” by members of the CPC, but rather an attempt to make the private prisons successful. Inspector General Rumph stated that he found no evidence or suspicion that anyone involved in the CPC received any benefit from the prison operators in exchange for “favors.”

Witness interviews conducted by FDLE identified no evidence or allegations that any group or individual associated with the CPC, Florida Legislature or vendors ever solicited or received any benefits or financial compensation in return for decisions affecting the vendors. However, witness statements indicated that GEO and CCA representatives paid for CPC staff and commissioners meals on several occasions.

Through the review of historical investigations, legislative documents and witness interviews, FDLE’s inquiry revealed the following:

- The Florida Legislature reviewed CPC contracts and approved the CPC annual budget.
- There was no evidence that the budget requests were fraudulent or incomplete.
- There was no evidence that any group or individual ever solicited or accepted any compensation in return for decisions that were favorable to the vendors.