

CALIFORNIA DEPARTMENT OF CORRECTIONS

It Needs to Better Ensure Against Conflicts of Interest and to Improve Its Inmate Population Projections

Audit Highlights . . .

Our review of the California Department of Corrections' (department) processing of two no-bid community correctional facility (CCF) contracts and its projections of inmate populations revealed the following:

- Although one CCF contract was never executed, actions taken by two of the contractor's employees who formerly worked for the department may have violated conflict-of-interest laws.*
- The department does not ensure that retired annuitants in designated positions file statements of economic interests.*
- The department, the facility owner, and the potential contractor all incurred costs before the department received approval to proceed with a no-bid contract.*
- Information the department relied upon to determine the need for the no-bid contracts appears accurate.*

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California Department of Corrections and Rehabilitation's response as of November 2005

The California Department of Corrections' (department) fiscal year 2003–04 budget did not include funds to continue the contracts for three private community correctional facilities (CCF). However, in 2004 the department experienced a large unexpected increase in inmate population because parole reform programs were not carried out and because new inmate admissions from counties increased. Since prior population projections had generally projected a stable population through 2009, the department did not expect this large increase. To respond to this situation, the department put thousands of added beds into use, some located in "overcrowding" areas—temporary beds placed in areas that are more difficult to secure, such as gymnasiums and dayrooms. In summer 2004, the Youth and Adult Correctional Agency and the department decided to reactivate two of the closed CCFs, McFarland and Mesa Verde, using one-year, no-bid contracts, while initiating a competitive bidding process for a longer-term solution.

The department's Population Projections Unit (projections unit) generates population projections for time frames that span six fiscal years, monitors and reports on the quality of the projections, and explains inconsistencies between actual and projected populations. The annual population projections correspond with the State's budget cycle and drive the department's annual budget request. The department prepares its budget request using the fall population projection and submits this request to the Department of Finance (Finance) for use in preparing the Governor's Budget. It revises its budget request based on the spring population projection and submits the revision to Finance for inclusion in the May revision of the

☑ *The department's inmate population projections are useful for budgeting, but have limited value for longer-range planning, such as determining when to build additional facilities.*

☑ *Because certain practices increase the subjectivity of the department's projections and no documentation of the projection process exists, our statistical expert could not establish the validity of the projection process.*

Governor's Budget. The department also uses these projections to assess the ability of its facilities to house the inmate population over a six-year timeline.

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits evaluate the process the department used to negotiate and enter into two no-bid contracts for private prison facilities to determine whether its policies and procedures are consistent with and adhere to current laws and regulations, particularly in relation to conflict-of-interest rules. In addition, the audit committee asked us to analyze information the department used in its decision to enter into the two no-bid contracts to determine whether such information was accurate and reliable, to analyze the reasonableness and consistency of its method of tracking and projecting inmate population, and to assess the validity of any cost savings it identified.

Finding #1: The department began incurring costs related to the Mesa Verde contract prior to receiving appropriate approval.

Before awarding a contract without competition, the department must obtain the approval of General Services. Also, as part of the contract award process, after General Services' approval of the request justifying an exemption from competitive bidding, the department operations manual requires contracts to be forwarded to the contractor for signature. This was the process the department used in executing the McFarland contract. However, it sent the Mesa Verde contract to the contractor for signature before obtaining General Services' approval of its justification for exemption. The department later rescinded its request for exemption because of a decline in inmate population and because of conflict-of-interest concerns. It did notify the contractor by letter that the contract was not fully approved or in effect until General Services gave its final approval. Nevertheless, the department, the facility owner, and the potential contractor all incurred costs before receiving approval from General Services.

We recommend that, to strengthen controls over its processing of no-bid contracts, the department wait until all proper authorities have approved the no-bid contract justification request before sending a contract to a contractor for signature or signing the contract itself.

Department's Action: None.

The department states that its normal contracting procedures comply with this recommendation. However, it further states that when timing is critical for procuring essential services, obtaining the contractor's signature in advance helps to expedite the process, but does not, in any way, execute the contract.

Finding #2: Although the department has controls in place to identify conflicts of interest, a conflict may have existed with the unexecuted Mesa Verde contract.

Despite conflict-of-interest disclosure requirements in the contract, Civigenics—the Mesa Verde contractor—did not disclose that two of its employees had worked for the department within the past year. As of July 2005, these same two Civigenics employees were also listed as current retired annuitants available to work at the department. According to Civigenics officials, the company hired one former high-ranking department employee to develop a strategic plan and the other to help with the reactivation of Mesa Verde. The employment of the two individuals by both the department and Civigenics created potential conflicts of interest that, had the contract been fully executed, could have rendered it void. Moreover, certain contacts between these two individuals and the department during the contract formation process raise the possibility that conflict-of-interest laws were violated even though the contract was never fully executed.

We recommended that the department require key contractor staff to complete statements of economic interests (statements).

Department's Action: Pending.

The department states it will meet with the Office of Legal Affairs (OLA) to revisit the legal issues of imposing a mandatory requirement that all key contractor staff complete a Statement of Economic Interests form. The department further states that previously, OLA had advised it that requiring all key contractor staff to complete a Form 700—Statement of Economic Interests may be too over-inclusive without legal basis to do so, but added that the department may be able to use a form that mirrored the Form 700.

Finding #3: The department can improve its collection and review of required disclosure forms.

State law requires agencies to adopt a conflict-of-interest code that designates employees in decision-making positions and requires them to file periodic statements. Accordingly, the department has adopted regulations that list the designated positions and spell out the disclosure requirements. Although most of the employees who are assigned to designated positions with a role in developing the CCF contracts completed the required statements, some did not. All 20 department staff who had a role in developing the two facilities contracts we reviewed filed statements covering all or part of 2004, but two retired annuitants associated with one of these contracts did not. Also, the department does not ensure the completeness of the statements employees do file. Four of the 20 employees whose statements we reviewed filled out their statements incorrectly. Because the department does not review all the filed statements for accuracy or completeness, it cannot ensure that its employees in designated positions have met their respective disclosure requirements.

The department's practice of continuing former employees as active retired annuitants when they are not actually working could create confusion about whether its retired annuitants are subject to revolving-door prohibitions or the conflict-of-interest provisions that apply to current employees. According to the department, one of the primary reasons it hires staff who retire at the deputy director level and above as retired annuitants is to provide expert testimony in pending litigation. Typically, the department appoints retired annuitants to one-year terms and will reappoint them in the subsequent year if their services are still needed. However, because of the state hiring freeze in effect during 2001, the former department director issued a memo directing each institution and the department's headquarters personnel office to delete the expiration dates of all currently employed retired annuitants as of December 31, 2001, to eliminate the need to seek formal freeze exemptions approved by Finance each new calendar year. According to the chief of Personnel Services, although as of August 2005, the department is still abiding by its policy of not entering expiration dates on its appointments of retired annuitants, it plans to ask each division to annually advise personnel services' staff which retired annuitants are no longer working. The department will then separate the identified retired annuitants from state service. However, until it implements this change, the department will continue to be at risk from potential conflicts of interest with its contractors and has no way of knowing if its retired annuitants are still needed.

We recommended that the department:

- Ensure that its retired annuitants in designated positions submit required statements.
- Ensure that statements submitted by staff are complete.
- When appointing retired annuitants, limit such appointments to a one-year period and require annual reappointment.
- Consider contracting with retired staff to provide expert testimony in litigation instead of its current practice of hiring them as retired annuitants.

Department's Action: Partial corrective action taken.

The department states that retired annuitants performing duties in designated positions will be required to annually file statements of economic interests. For other staff, the department states that it will perform a cursory review on the cover page of each statement of economic interests to ensure all items are complete. The department further states that it is posting expiration dates on all current retired annuitant appointments, and will enter a 12-month expiration date on all new appointments. Finally, the department is studying the feasibility of contracting with former employees to provide expert testimony in litigation rather than hiring them as retired annuitants.

Finding #4: The cost comparisons the department used to justify the no-bid contracts were incomplete.

Although the information on which the department based its decision to open two CCFs using no-bid contracts appears reasonable, its justification for these contracts included incomplete cost comparisons. The department stated in its justification that the two contracts represented a potential cost savings to the State because the per diem rates for the facilities are less than the daily jail rate of \$59, the maximum the department can reimburse counties for detaining certain state parolees who have violated parole and therefore are being sent back to prison. However, the two costs are not comparable. Because the CCF contract amounts, unlike the daily jail rate, do not include all the costs of housing an inmate, the department's claim of cost savings is misleading. Compared to other CCF contracts in place in 2004, however, the average annual per-bed cost of the two no-bid contracts appears to be within a reasonable range.

We recommended that the department include all its costs when it decides to include cost comparisons in justification requests or state that the cost comparison is incomplete.

Department's Action: Corrective action taken.

The department states that future no-bid contract justifications containing cost comparisons or benchmarks used for housing inmates will be comparable.

Finding #5: With high error rates, the department's longer-term projections do not accurately predict its need for inmate housing.

In developing its budgets, the department primarily relies on information from the first two years of a projection, which reflects the period for which the department is preparing a budget. The average error rate of the projection process in the first two years is less than 5 percent and therefore appears reasonable for this purpose. However, because of the time needed to build a new prison, the department also uses projections to assess the sufficiency of its facilities to house future inmate populations. For this assessment the department uses all six years of the projection period. The

department's average error rate increases rapidly beginning in the third year, reaching almost 30 percent by the end of the sixth year. Therefore, the department's reliance on its projections in assessing the sufficiency of its facilities and planning future prison construction appears misplaced.

We recommended that, if the department intends to continue using the projections for long-term decision making, such as facility planning, it ensure that it employs statistically valid forecasting methods and consider seeking the advice of experts in selecting and establishing the forecasting methods that will suit its needs.

Department's Action: Pending.

The department states that it is working with the Office of Research to establish an interagency agreement with statistical experts at either the CSU or UC systems to review the existing simulation model and projections process.

Finding #6: The department does not properly update its projection data.

The department's projection model uses data from prior experiences to establish the likelihood of certain events occurring at steps along the projection process. For example, at a given point in the simulation model, an inmate hypothetically may have a 40 percent chance of being released on parole, a 50 percent chance of remaining in prison for at least another month, and a 10 percent chance of dying in prison. However, the department does not always properly update the frequencies—or relative percentages of the likelihood of different options occurring—using sufficient historical data. Rather than using a statistical process to develop the frequencies, the department takes the same frequencies used in its previous projection and then updates the numbers based on analysts' experience and review of the actual data since the last projection. This method increases the possibility of bias entering into the projection. According to our statistical expert, the department cannot support its forecasts using its present methodology.

We recommended that, to increase the accuracy and reliability of its inmate projection, the department update its variable projections with actual information, whenever feasible to do so.

Department's Action: Pending.

The department states that it will develop a database that will store data and be used to update its variable projections in its simulation model.

Finding #7: Contrary to its policy, the projections unit used speculative estimates in its projections.

At the direction of the department and contrary to its own policy, the projections unit used estimates in its projections that are not based on past experience or that include information from programs whose effects could not be reasonably estimated in

several instances. Specifically, in the 2004 spring and fall projections, the department's former chief deputy director of support services directed the projections unit to include the estimated effects of various parole reforms. According to the manager of the projections unit, these estimates were based on changing criteria, and the parole reforms in question had numerous issues that needed to be resolved before any reasonable expectation of population reductions could be estimated. From our review of department policy memos, we noted that criteria such as which inmates were eligible for these programs and the maximum amount of time inmates could be enrolled changed during the time period in which these projections were being made. Nonetheless, department management required the projections unit to include the estimates in its population projections, thus compromising the unit's independence. Without being able to function independently of internal or external pressure to use certain data or arrive at certain conclusions, the credibility of the projections unit's forecasts is diminished.

We recommended that the department disclose when a projection includes estimates for which inadequate historical trend data exists, such as the estimated effects of a new policy, and the specific effect such estimates have on the projection.

Department's Action: Corrective action taken.

The department states that in the future, when a projection includes estimates for which inadequate historical trend data is limited, it will publish two projections; one which will be based on historical trends and one which includes the estimates; and it will show the impact that the estimates have on the trend projection.

Finding #8: The department failed to obtain information from counties that would have alerted it to rising admissions.

In addition to the unrealized effects of parole reforms, the spring 2004 population projection was also understated because of an unexpected rise in inmate admissions from counties. Because county superior courts sentence felons to state prison, changes in county policies on prosecuting criminals can affect inmate admissions at the state level. Los Angeles County was the primary source of the rising inmate admission rate during this period. According to the department's director, the new chief of police of the city of Los Angeles changed the city's approach to policing, increasing the number of people being sent to prison. However, until recently, the department did not have an effective process in place to communicate with local governments to identify such changes and their effect on the number of inmates being sentenced to prison. The department is developing ways to establish better communications with the counties.

We recommended that the department continue its recent efforts to enhance its communications with local government agencies to better identify changes that may materially affect prison populations.

Department's Action: Pending.

The department states that it is communicating with the California District Attorney's Association in an effort to establish contacts with the district attorneys offices in major counties. It adds that the department will work with the association to establish a shared data base.

Finding #9: Lack of documentation casts doubt on the validity of the projection process.

To assess the statistical validity of its projection process, our statistical expert met with key department staff to review the documentation of the projection method. However, the department does not have documentation describing its complete projection model, so we were unable to assess its validity. According to our statistical expert, documenting a projection process, including the computer program used, is important so others can evaluate the process and understand its limitations and capabilities. She added that, for staff within the department, such documentation is very valuable for the continuity of the forecasting process when current staff retire or leave. She concluded that data analysis is a constantly evolving process and appropriate documentation is crucial in all stages to continuously improve the analysis as more and more data become available. According to the chief of the branch that includes the projections unit, it is currently revising the projection model and plans to produce documentation for the revised version.

We recommended that the department fully document its projection methodology and model.

Department's Action: Partial corrective action taken.

The department states that it is in the process of writing documentation for its simulation model, and is about 50 percent complete.