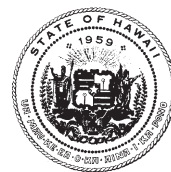

Management Audit of the Department of Public Safety's Contracting for Prison Beds and Services

A Report to the
Governor
and the
Legislature of
the State of
Hawai'i

Report No. 10-10
December 2010



THE AUDITOR
STATE OF HAWAII

Office of the Auditor

The missions of the Office of the Auditor are assigned by the Hawai'i State Constitution (Article VII, Section 10). The primary mission is to conduct post audits of the transactions, accounts, programs, and performance of public agencies. A supplemental mission is to conduct such other investigations and prepare such additional reports as may be directed by the Legislature.

Under its assigned missions, the office conducts the following types of examinations:

1. Financial audits attest to the fairness of the financial statements of agencies. They examine the adequacy of the financial records and accounting and internal controls, and they determine the legality and propriety of expenditures.
2. Management audits, which are also referred to as performance audits, examine the effectiveness of programs or the efficiency of agencies or both. These audits are also called program audits, when they focus on whether programs are attaining the objectives and results expected of them, and operations audits, when they examine how well agencies are organized and managed and how efficiently they acquire and utilize resources.
3. Sunset evaluations evaluate new professional and occupational licensing programs to determine whether the programs should be terminated, continued, or modified. These evaluations are conducted in accordance with criteria established by statute.
4. Sunrise analyses are similar to sunset evaluations, but they apply to proposed rather than existing regulatory programs. Before a new professional and occupational licensing program can be enacted, the statutes require that the measure be analyzed by the Office of the Auditor as to its probable effects.
5. Health insurance analyses examine bills that propose to mandate certain health insurance benefits. Such bills cannot be enacted unless they are referred to the Office of the Auditor for an assessment of the social and financial impact of the proposed measure.
6. Analyses of proposed special funds and existing trust and revolving funds determine if proposals to establish these funds are existing funds meet legislative criteria.
7. Procurement compliance audits and other procurement-related monitoring assist the Legislature in overseeing government procurement practices.
8. Fiscal accountability reports analyze expenditures by the state Department of Education in various areas.
9. Special studies respond to requests from both houses of the Legislature. The studies usually address specific problems for which the Legislature is seeking solutions.

Hawai'i's laws provide the Auditor with broad powers to examine all books, records, files, papers, and documents and all financial affairs of every agency. The Auditor also has the authority to summon persons to produce records and to question persons under oath. However, the Office of the Auditor exercises no control function, and its authority is limited to reviewing, evaluating, and reporting on its findings and recommendations to the Legislature and the Governor.



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State of Hawai'i

"... if the contract between the PSD and the City of Eloy is such where the City of Eloy is not contributing to the performance of the contract, and is a pass-through mechanism to contract with CCA, this would be considered a circumvention of the statutes and an inappropriate use of the inter-governmental exemption...."

— chief procurement officer

Recommendations

Responses

Previous Audits

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<http://www.state.hi.us/auditor>

Management Audit of the Department of Public Safety's Contracting for Prison Beds and Services

Department's misleading cost data and improper contracting make prison solutions more elusive

"Quick and dirty" numbers

In December 1995, in an effort to address persistent prison overcrowding, the Department of Public Safety (PSD) began transferring inmates to out-of-state facilities. The transfer was viewed as a stop-gap measure that would give prison officials time to increase in-state capacity. Today, about 2,000 male inmates, approximately one-third of Hawai'i's inmate population, are held at facilities in Arizona.

Department officials have testified that sending inmates off-island is a temporary measure. However, we found that management does not understand the necessity of providing detailed and accurate financial information to policymakers and the public, a key component in solving this crisis. For instance, PSD reports that it spends about twice as much to maintain an inmate in-state. However, we found that these cost estimates are based on a flawed methodology designed around what is easiest for the department to report, or, as one PSD official characterized, "quick and dirty" numbers. The department ignores a major component for calculating these costs—capacity versus use. In addition, PSD underutilizes the capabilities of its inmate tracking management system, which can collect and compute inmate days and other information that would assist managers. Moreover, this inmate tracking system is often used incorrectly. In one analysis, we found errors in 28.4 percent of the tracking system's reports. The interim director contends that PSD provided a simple cost estimate because it could not articulate the complexity of calculating the myriad expenses incurred by individual inmates at differing facilities on a specific day. The department misses the point. The Offendertrak management system, if used accurately and to its capabilities, would enable prison managers and policymakers to make decisions with reliable information.

Circumventing the law

In 2006, the past department director signed an inter-governmental agreement (IGA) with the City of Eloy, Arizona, to consolidate housing for Hawai'i inmates to three prisons owned and operated by Corrections Corporation of America (CCA), a for-profit provider of correctional facilities. At the time, the corporation was building a \$95 million prison in Saguaro, Arizona, specifically for Hawai'i inmates.

As the name indicates, IGAs are agreements that involve government-to-government transactions. These agreements are exempt from competitive procurement methods that state agencies must generally employ when soliciting proposals, a requirement of the Hawai'i Public Procurement Code. However, in the department's IGA with Eloy, the department actually conducts all transactions directly with CCA. We found no evidence that Eloy sub-contracted inmate services to CCA, nor is the city compensated for its role in the agreement. In the State chief procurement officer's opinion, such a contract inappropriately used the IGA exemption and is circumventing the law. Through this misuse of the exemption, the department was able to secure CCA as its preferred provider. In addition, we found that the IGA does not contain safeguards that protect the State's interests in the event of a dispute or if funds are not appropriated or available to pay CCA, so the State is exposed to a liability risk.

We found that the department has no written policies or procedures for contract administration, and the administrator and staff readily accepted CCA's representations and conclusions of its performance without verifying statements against documented evidence. At the time of our fieldwork, the department had no plans for contracting for private prison beds beyond June 30, 2011, when its contract with Eloy and CCA will expire. The interim director reports that the department is working with the City of Eloy and CCA to establish a separate agreement that will specify and document the working relationship between the two parties. However, the fundamentally flawed agreement should not be revisited. Instead, the department would be better served by guidance and training from the State Procurement Office. Doing so would better address the need for private prison beds beyond 2011 by helping to ensure that procurement occurs properly in the first place.

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Submitted by

THE AUDITOR
STATE OF HAWAI'I

Report No. 10-10
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Foreword

This report on the management audit of the Department of Public Safety responds to a request by the president of the Senate and the speaker of the House of Representatives to initiate an audit that focuses on contracting for prison beds and services with non-Hawai'i entities and compares in-state and out-of-state incarceration costs. We conducted the audit pursuant to Section 23-4, Hawai'i Revised Statutes, and Article VII, Section 10 of the Hawai'i State Constitution, which require the Auditor to conduct postaudits of the transactions, accounts, programs, and performance of all departments, offices, and agencies of the State and its political subdivisions.

We wish to express our appreciation for the assistance extended to us by the director and staff of the Department of Public Safety, the State Procurement Office, and others whom we contacted during the course of the audit.

Marion M. Higa
State Auditor

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Chapter 1

Introduction

This report responds to a request by the speaker of the House of Representatives and the president of the Senate asking the Auditor to exercise her authority to conduct a management audit that 1) focuses on the Department of Public Safety's contracting for prison beds and services with non-Hawai'i entities and 2) compares in-state and out-of-state incarceration costs. The audit was undertaken pursuant to Section 23-4, Hawai'i Revised Statutes (HRS) and Article VII, Section 10 of the Hawai'i State Constitution, which requires the State Auditor to conduct post audits of the transactions, accounts, programs, and performance of all departments, offices, and agencies of the State of Hawai'i and its political subdivisions.

Background

Prison overcrowding has been a significant problem in Hawai'i. In September 1984, the American Civil Liberties Union filed a class-action lawsuit on behalf of inmates at the O'ahu Community Correctional Center and the Women's Community Correctional Center, calling crowded conditions life-threatening. As part of the settlement, the State consented to federal court supervision of both facilities. From June 1985 to September 1999, under the federal consent decree, the Department of Public Safety was required to address deficiencies related to health care, sanitation, inmate idleness, and staff shortages. The most significant problem was overcrowding, which the consent decree addressed by setting maximum capacities for both facilities based on standards of professional organizations such as the American Correctional Association.

In 1993, the Legislature determined that a permanent solution to overcrowding was needed to terminate federal court supervision, prevent future litigation, and enable the department to more effectively operate its facilities. Act 343, Session Laws of Hawai'i (SLH) 1993, created the Corrections Population Management Commission to maximize inmate population limits for each correctional facility and recommend cost-effective mechanisms, legislation, and policies to prevent the inmate population from exceeding those limits. The commission developed an Omnibus Corrections Population Management Plan with recommendations to control inmate populations and overcrowding through: 1) intermediate sanctions to divert offenders from the prison system; 2) programs to facilitate rehabilitation and reintegration of incarcerated persons to reduce their length of stay in prison; and 3) expansion of the correctional system by building more jail and prison bed space.

Use of non-state facilities

In December 1995, in an effort to address the prison overcrowding crisis, the department initiated a transfer of prison inmates to out-of-state facilities. From 1995 to 1998, the department housed 600 inmates in Texas with the Bobby Ross Group. The first transfer of Hawai'i inmates was viewed as a "short-term solution to chronic overcrowding"—an attempt to give prison officials "breathing room" until new prison cells could be built to accommodate bed space needs and future demands. In screening inmates for possible transfer to mainland prisons, the department rejected those with: 1) pending court cases; 2) serious health problems; 3) maximum-security classification; 4) a history of institutional violence; and 5) an escape record.

In 1998, a downturn in the economy derailed funding for major prison expansion, and both state legislators and prison officials began to reexamine the use of out-of-state facilities as a longer-term solution than first proposed. What started as a temporary solution to relieve prison overcrowding is today a matter of state policy.

Policy to transfer adult inmates out-of-state

Today, the department's policies and procedures for the transfer of inmates to out-of-state facilities is based on the inmates' classification, individual needs, resources and facilities available, the exigencies of the community, and in consideration of the provisions of the Community Safety Act of 2007. The department's Mainland and Federal Detention Center Branch (Mainland/FDC Branch) is responsible for determining the eligibility status of each inmate screened for out-of-state transfer. The current considerations are: 1) time left to serve on sentence; 2) program refusals, non-clinical discharge, or misconducts incurred; 3) parole violators with more than 12 months to serve; 4) no pending criminal charges; 5) no medical or mental health conditions that may affect an inmate's ability to function within a normal range; and 6) inmates that volunteer and have cleared all facility holds. The Mainland/FDC Branch makes all transfer arrangements with the private prison vendor, which completes the final screening and selection in accordance with appropriate state statutes.

Corrections Corporation of America

The Corrections Corporation of America (CCA) is the owner and operator of privatized correctional and detention facilities and the nation's leading provider of correctional solutions to federal, state, and local governments. As of April 2010, CCA operated 65 correctional and detention facilities, including 44 facilities that it owns, with a total design capacity of approximately 87,000 beds in 19 states and the District of Columbia. The corporation reportedly offers offenders in its prisons a variety of rehabilitation, vocational, and education programs, including addictions treatment, General Educational Development preparation

and testing, post-secondary studies, life skills, employment training, recreational options and work opportunities.

In July 1998, the department entered into its first contract with the CCA to address prison overcrowding. As of June 2010, 55 of Hawai'i's medium security male inmates were housed at the Red Rock Correctional Center, two at Florence Correctional Center, and 1,883 at Saguaro Correctional Center. The corporation owns and operates these three correctional centers in Arizona. In FY07, the contract price per inmate per day was reportedly \$57. This price has steadily increased to \$61.68 as of July 2009.

From September 2005 to September 2009, some of Hawai'i's female inmates were housed in Otter Creek Correctional Center in Kentucky, which is also owned and operated by CCA. The contract price was \$51.90 per inmate per day. In September 2009, the contract was cancelled and 128 female inmates were returned to Hawai'i.

Federal Detention Center

The Federal Detention Center (FDC) operated by the U.S. Bureau of Prisons is located near Honolulu International Airport. It opened in 2001 with an original bed capacity of 670 inmates. Today, FDC has a capacity for about 862. Since June 2001, the State has leased bed space at the detention center primarily to relieve jail overcrowding. The center holds a combination of pre-trial detainees and sentenced felons, male and female, with less than one year to serve. As of June 2010, the FDC held about 400 Hawai'i inmates, 300 males and 100 females.

The department pays a rate equal to the FDC's per day cost, which is set annually by the U.S. Bureau of Prisons. In July 2001, the first 25 inmates to occupy the center cost the State \$90 per inmate, per day. The initial inter-governmental agreement allowed the State to house up to 200 male inmates. Since August 2009, the State may house up to 550 male and female inmates at the FDC. The 2010 rate is \$89.18.

Organization of the Department of Public Safety

The Department of Public Safety is responsible for formulating and implementing state policies and objectives for correctional, security, law enforcement, and public safety programs and functions, and maintaining all public or private correctional facilities and services. The department's mission is to provide for the safety of the public and state facilities through law enforcement and correctional management.

The department is headed by a director who oversees, directs, and coordinates the plans, programs, and operations to provide for the safety of people, both residents and visitors, from crimes against people

and property. The director is assisted by three deputy directors for administration, corrections, and law enforcement.

- The Administration Division oversees the department's expenditures, capital improvement projects, procurement of goods and services, and statewide training program for both uniform and civilian departmental personnel.
- The Corrections Division manages the State's community correctional centers (jails) on O'ahu, Hawai'i, Maui, and Kaua'i, and correctional facilities (prisons) located on O'ahu and the mainland, to provide for the care, custody, control, and educational and reintegration programs for prison inmates.
- The Law Enforcement Division is responsible for preserving the peace. The division protects the public in designated areas, including all state property and facilities, and enforces specific laws and rules for the prevention and control of crime. The division is made up of the Narcotics Enforcement Division and the Sheriff Division.

Exhibit 1.1 shows the department's organization chart. We focus our discussion on processes within relevant sections of the administration and corrections divisions.

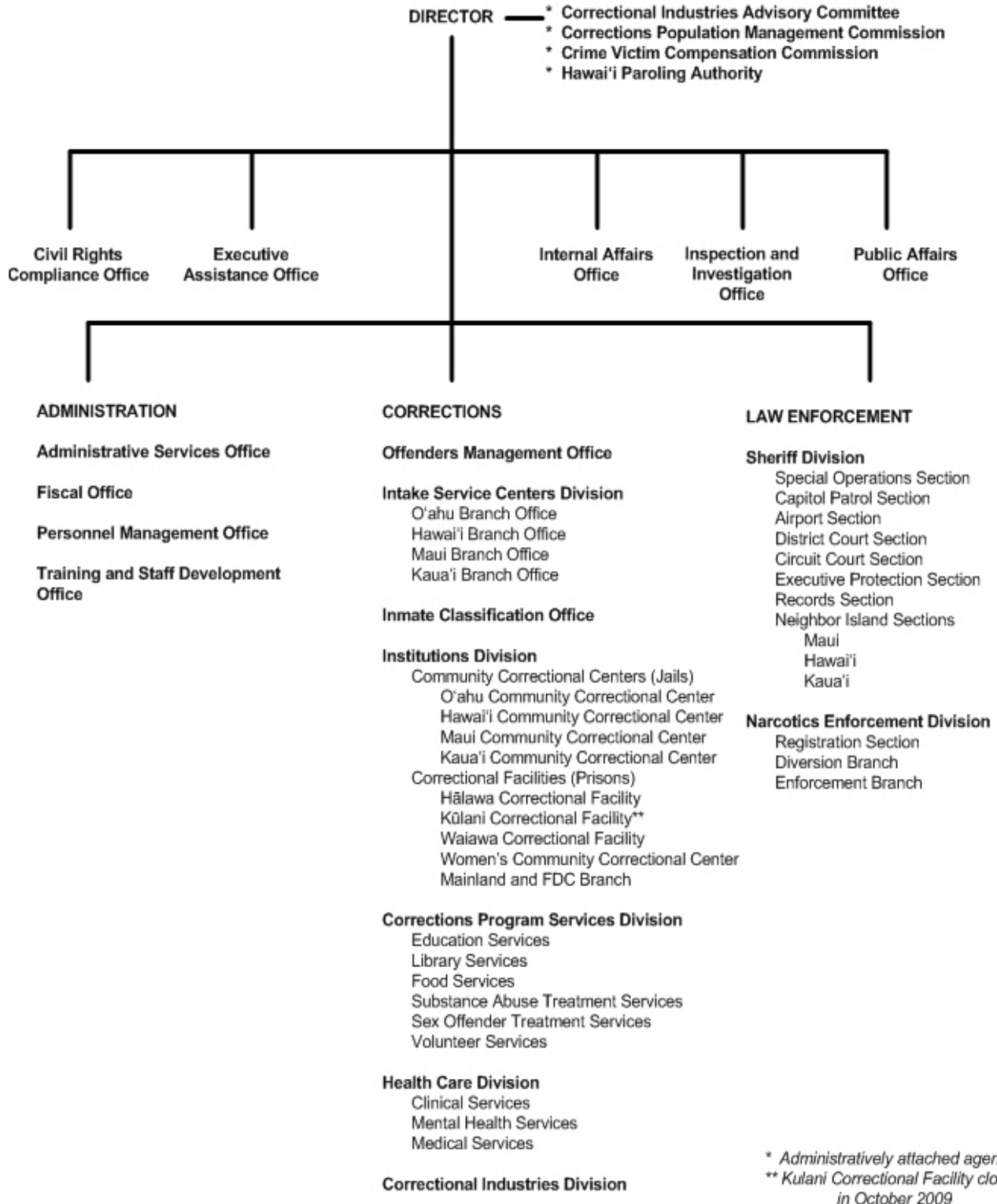
Corrections Division

Jails are normally a county responsibility; however, in Hawai'i, corrections management is solely a state function. The department's corrections division is responsible for managing both jails and prisons. The Office of the Deputy Director for Corrections provides for the custody, care, and assistance of all persons incarcerated by the courts or otherwise subject to confinement based on an alleged commitment of a criminal offense. The deputy director oversees seven divisions or offices: 1) Offender Management Office; 2) Intake Service Centers Division; 3) Inmate Classification Office; 4) Institutions Division; 5) Corrections Program Services Division; 6) Health Care Division; and 7) Correctional Industries Division.

O'ahu Intake Service Center

The O'ahu Intake Service Center completes an intake screening for all newly admitted individuals that are detained or committed to the O'ahu Community Correctional Center. The initial classification of a jail or prison inmate is conducted to determine the custody designation appropriate to the inmate's needs and the risk the inmate represents to security. The five custody designations to which an inmate can be assigned are: maximum, close, medium, minimum, and community.

**Exhibit 1.1
Department of Public Safety Organization Chart**



Source: Organization chart created by Office of the Auditor with information provided by the Department of Public Safety.

Jail inmates should have an initial custody screening instrument completed within 72 hours of admission. Prison inmates must have an initial custody instrument completed by the assigned case manager within 60 days upon transfer to the Reception, Assessment, and Diagnostic (RAD) unit. The RAD unit identifies medical, mental health, and other service needs and recommends an initial housing placement and security classification.

Institutions Division

The Institutions Division consists of jails, in-state prisons, and the Mainland/FDC Branch. The community correctional centers provide the customary jail function for pretrial detainees, and short-term (misdemeanants) sentenced population and convicted offenders serving sentences of less than one year. There are four jails—located on O‘ahu, Hawai‘i, Maui, and Kaua‘i. The jails also provide furlough or re-entry programs for those who have almost completed their felony sentences, and are returning to the community. Jail population consists of both male and female detainees and inmates.

The prisons, referred to as correctional facilities, hold the higher-level sentenced offenders (felons) according to their assigned classification with longer incarceration terms. As of October 2009, with the closing of the Kūlanī Correctional Facility, there are three Hawai‘i prisons all located on O‘ahu: Hālawā Correctional Facility, Waiawa Correctional Facility, and the Women’s Community Correctional Center. Based on their risk to other inmates, staff, and the community, male felons who require more controls are placed at the Hālawā Special Needs or Medium Security Facility. Those who present lesser risks are placed in the minimum security Waiawa Correctional Facility. Female felons are assigned to the Women’s Community Correctional Center and the Federal Detention Center.

Exhibit 1.2 details the capacities of the in-state and non-state facilities utilized by the department.

The Mainland and FDC Branch

The Mainland/FDC Branch was initially created as a special program in November 2004 to “deal with approximately 2,100 inmates with contracts [totaling] \$60,211,435.” Sections 64 and 65 of Act 178, SLH 2005, authorized the general fund appropriations. The branch oversees and monitors the state contracts with private mainland prisons and the FDC in Honolulu for the housing and care of Hawai‘i’s inmates. Its primary responsibility includes custody and programming of inmates housed in private contract facilities on the mainland and fiscal responsibility for the inmates placed at the FDC. Prior to 2004, the program was personally managed by the deputy director of corrections.

Exhibit 1.2
Department of Public Safety Capacities of Correctional Centers and Facilities

State Correctional Centers (Jails)	LOCATION	DESIGN CAPACITY	OPERATIONAL BED CAPACITY
Hawai'i Community Correctional Center	Hilo, Hawai'i	206	226
Kaua'i Community Correctional Center	Lihu'e, Kaua'i	110	128
Maui Community Correctional Center	Wailuku, Maui	209	301
O'ahu Community Correctional Center	Honolulu, O'ahu	628	954
Total		1,153	1,609
State Correctional Facilities (Prisons)			
Hālawā Correctional Facility	'Aiea, O'ahu	586	1,124
Waiawa Correctional Facility	Waipahu, O'ahu	294	334
Women's Community Correctional Center	Kailua, O'ahu	258	260
Kūlanī Correctional Facility	Hilo, Hawai'i	160	160
Total		1,298	1,878
Total Capacity, State Facilities		2,451	3,487
Non-State Facilities			
Red Rock Correctional Center	Eloy, AZ	1,596	*
Saguaro Correctional Center	Eloy, AZ	1,896	*
Total		3,492	*
Federal Detention Center	Honolulu, Hawai'i	670	862
Total Capacity, Non-State Facilities		4,162	862
Total Capacity, All Facilities		6,613	4,349
*Kūlanī Correctional Facility closed October 2009. All inmates were transferred to other locations. We include here to note bed capacity as a result.			

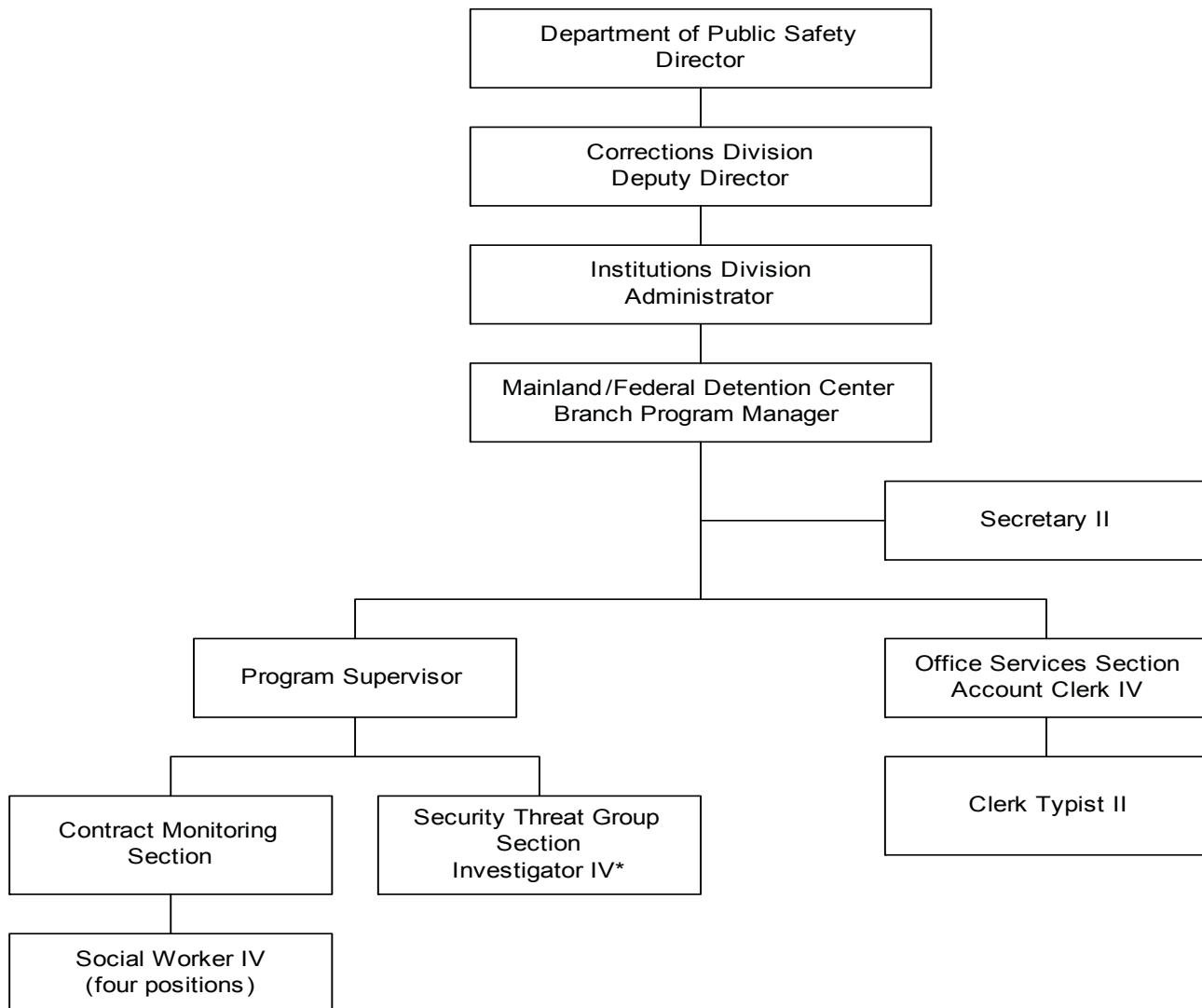
Source: Compiled by the Office of the Auditor from the Department of Public Safety 2008 Annual Report and Corrections Corporation of America website.

In 2006, the Legislature authorized and approved ten permanent civil service positions to monitor the out-of-state contracts and inmates.

This branch provides for the basic needs of prison inmates by developing and maintaining a secure, safe, healthy, and humane social and physical environment. This branch also facilitates participation in academic and work/training programs designed to prepare these inmates for reintegration into the community. The branch's goal is to monitor and ensure compliance with the agreements for the secured care, custody, and availability of programs for Hawai'i inmates housed in out-of-state

facilities and the FDC. In addition to monitoring the current agreements, the branch is tasked with ensuring that the quality of programs in the contracted out-of-state facilities is equal to or better than programs in the state facilities. Exhibit 1.3 provides the Mainland/FDC Branch’s organization chart.

Exhibit 1.3
Department of Public Safety, Mainland/FDC Branch Organization Chart

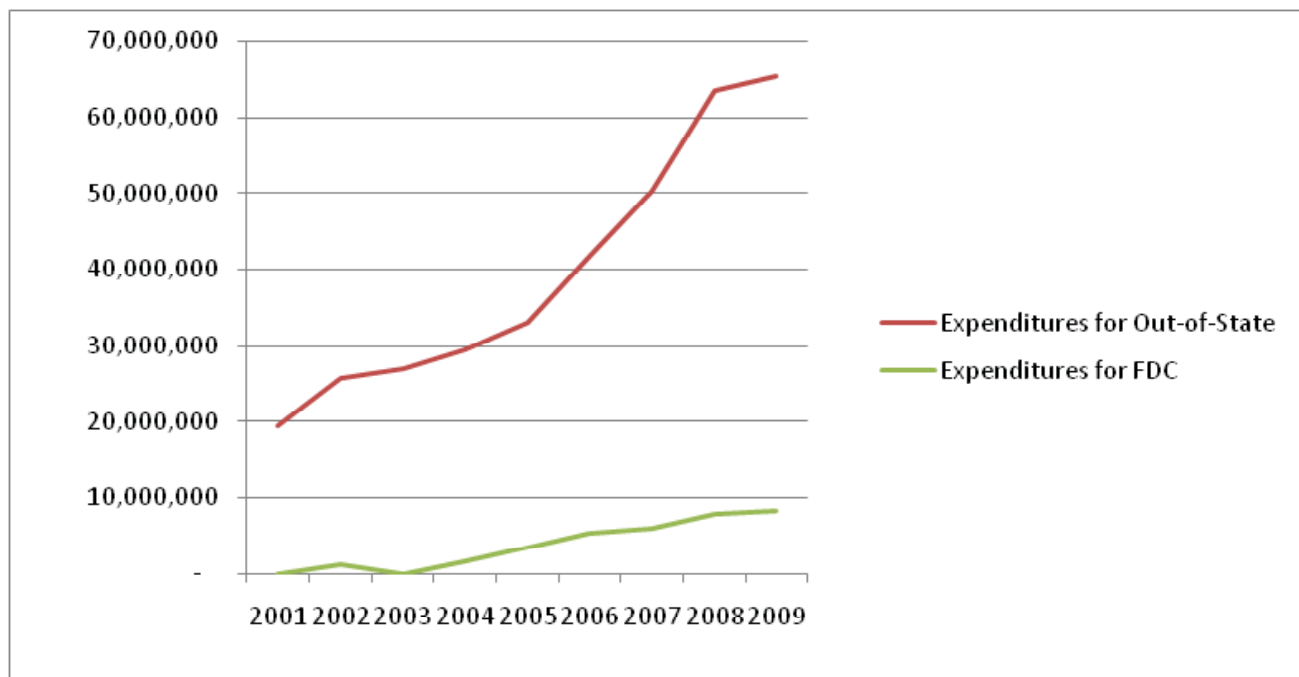


*Position abolished by Legislature in 2009 under Act 162

Source: Organization chart created by Office of the Auditor with information provided by the Mainland/FDC Branch

General funds for all costs associated with housing out-of-state and FDC inmates are appropriated in the PSD 808 Non State Facilities program. Prior to FY08, the appropriations were included with the PSD 900 Administration program. Exhibit 1.4 details actual amounts expended as reported annually in required legislative reports. Since FY01, the actual amounts expended for the out-of-state facilities have more than tripled, as shown in Exhibit 1.4.

Exhibit 1.4 Non-State Facilities, FY01-FY09 Expenditures



Source: Data compiled by the Office of the Auditor from FDC/Mainland branch expenditures reports

Prior audits

Although this is our first management audit of the department's contracting for private prison beds and services, we have conducted several audits of the department's security staffing and procurement practices.

- Report No. 92-27, *A Review of a Formula for Security Staffing at the Department of Public Safety*, recommended that the department prioritize all security posts and work positions. The audit also recommended that the department limit the use of overtime to emergencies or non-coverage of security posts.
- Report No. 94-18, *A Follow-Up Review of Security Staffing in the Department of Public Safety* found that the department had made steps towards implementing our earlier audit recommendations, but implementation was limited.

- Report No. 00-05, the *Management and Financial Audit of the Department of Public Safety*, found the director of public safety failed to provide the leadership and guidance needed to efficiently staff facilities and control the department's extraordinary overtime costs. We found breaches in prison security that seriously jeopardized public safety where the misclassification of inmates resulted in inmates being improperly confined in lower-security levels or incorrectly released into community furlough programs. We also found that inmates were not provided with adequate access to health care services nor were inmate grievances addressed in a timely manner.

We have also conducted several financial audits of the Department of Public Safety.

- Report No. 92-26, *Financial Audit of the Department of Public Safety*, reported on the department's failure to exercise adequate control over the use of leave and overtime, stating that this resulted in excessive overtime costs.
- Report No. 02-10, *Financial Audit of the Department of Public Safety*, KPMG LLP found deficiencies in the financial accounting and internal control practices of the department. The department continued to experience unusual patterns of sick leave, and overtime costs were significant. The department continued to maintain a significant outstanding balance of salary overpayments that cannot be collected.
- Report No. 06-05, *Financial Audit of the Department of Public Safety 2006*. While the certified public accounting firm of KPMG LLP found the financial statements were presented fairly, there were several deficiencies in the internal controls over financial reporting and operations. The department had difficulty reconciling and transferring inmate trust account balances accurately and timely. Uninhibited sick leave usage continued to result in significant overtime costs. Lastly, the department continued to maintain a significant outstanding balance of salary overpayments that cannot be collected.

Objectives of the Audit

1. Evaluate the Department of Public Safety's data relating to incarceration costs.
2. Assess the department's efforts to procure and administer contracts for prison beds and services.
3. Make recommendations as appropriate.

Scope and Methodology

Our audit focused on the department's contracting for prison beds and services. We reviewed in-state and out-of-state incarceration costs and analyzed the methodology used. We evaluated management's cost data utilization. In addition, we evaluated the department's procurement process for sending inmates to out-of-state facilities, including the procurement methods selected, execution of agreements, contract administration, and overall monitoring.

We conducted interviews with legislators, department personnel and managers, and representative officials from the non-state facilities. We reviewed pertinent policies and procedures, reports, and other documents to assess management's adherence to state laws. We conducted site visits to observe processes in place for monitoring contractor performance and to determine comparability between facilities. Our audit focused on the time period of July 1, 2006 through June 30, 2010.

Our audit was conducted between May 2010 and October 2010 according to the Office of the Auditor's *Manual of Guides* and generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Auditor's access to information

Our audit was marked by numerous roadblocks to our access to information. Department officials repeatedly attempted to deny us direct access to individuals and documents, define our audit scope, and stop us from conducting an audit at all, among other issues.

At the onset of our audit, we provided our request for information to the department, a standard procedure during the preliminary planning phase of an audit. Our first request for documents was made to the department on June 22, 2010. We repeated this request on July 13, 2010 and July 21, 2010. Documents were provided piecemeal and oftentimes, had been filtered through management, as opposed to directly by the responsible individual.

For requests specific to Offendertrak, the department's inmate tracking system, the deputy director of administration questioned our need for the information, maintaining that it was not pertinent to the scope of our audit. The management information system administrator was instructed not to meet with our analyst or provide answers to questions about Offendertrak. Instead, all inquiries were directed to the business management officer and the deputy director of administration. We took

the alternate route of interviewing the Motorola engineer who installed Offendertrak in order to understand the system's capabilities. We also researched the budget history through which the department obtained the appropriation for the system.

During the preliminary planning phase of this audit, the department director and the Mainland/FDC Branch administrator invited members of the audit team to accompany the contract monitors on their quarterly site visit—from June 29 to July 1, 2010—to observe the monitoring practices in place. On the second day of observation, the Saguaro warden informed us that he would not allow us to obtain copies of any documents on instructions from the department director. The director questioned our legal authority to proceed with the audit because of the governor's veto of House Bill No. 415, House Draft 1, Senate Draft 2, Conference Draft 1 of the 2010 legislative session which had called for a prisons audit that included the closure of Kūlani Correctional Facility. The director wanted requests to be routed through his office for review and final release of documentation.

On several occasions, the director screened our requests, raised questions, and denied access in an attempt to define our scope and control our workflow, thus causing delays in fieldwork. For example, on July 14, 2010 we sent an email to the director requesting the documents previously reviewed by the audit team at Saguaro. On July 21 and July 27, 2010 we followed up on that request, and on July 30, 2010, we received notice that the director would not provide the documents because he deemed them confidential and beyond the scope of our audit objectives. We proceeded, anticipating that the supporting documentation would be included in the final audit report by the department's own contract monitoring audit team that we had been invited to join. We again experienced some delays in our fieldwork because the final audit report was not released until the director authorized the branch administrator to do so. Lastly, towards the end of our fieldwork, the Institutions Division administrator issued an advisory email to all wardens to submit any response to our inquiries to management first for approval.

Audit delays

Our requests for information in this audit do not differ from requests made in prior audits. We routinely request preliminary information to plan and define our audit fieldwork, such as department organization charts, functional statements, budget documents, and procedural manuals. Lacking such foundational information, we filled in gaps in our knowledge with interviews of departmental employees and contracted parties.

Auditor’s authority to access information

The Auditor’s constitutional (Article VII, Section 10 of the Hawai‘i State Constitution) and statutory (Chapter 23, HRS) powers in their totality support the principles of objectivity and independence that the 1950 constitutional drafters envisioned for a fearless “watchdog of public spending.” Section 23-5, HRS, gives the Auditor authority to examine and inspect all accounts, books, records, files, papers, and documents and all financial affairs of every department, office, agency, and political subdivision. Further, Section 92F-19, HRS, of the Uniform Information Practices Act, requires agencies to share records with the Office of the Auditor. The administration’s withholding of records and questioning of our need for information caused delays in carrying out the Auditor’s constitutional and statutory authority to conduct post-audits.

It is the constitutional duty of the Auditor to conduct post-audits of the transactions, accounts, programs, and performance of all departments, offices, and agencies of the State and its political subdivisions. The 1978 Constitutional Convention clarified these duties, making clear that the office’s post-auditing functions are not limited to financial audits, but also include program and performance audits of government agencies. While financial audits attest to the accuracy of financial statements and adequacy of financial records and internal control systems of agencies, program and performance audits assess the performance, management, and effectiveness of government agencies and programs—providing information to improve operations, facilitate decision making, and increase public accountability.

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Chapter 2

Management Evades Accountability for Prison Costs and Contracts

We found the Legislature is not given sufficient information regarding the costs associated with the care and custody of offenders in out-of-state and in-state facilities. Instead, management chooses to report artificial cost figures derived from a calculation based on a flawed methodology, designed entirely on what is easiest for the department to report. Because funding is virtually guaranteed, management is indifferent to the needs of policymakers and the public for accurate and reliable cost information. As a result, true costs are unknown. Unfortunately, without accurate and reliable cost data, the State cannot appropriately address the continuing problem of prison overcrowding.

Our audit also assessed the department's efforts to procure and administer contracts for prison beds and services. We focused primarily on the department's contracts to house a majority of Hawai'i's male, medium security inmate population in out-of-state prison facilities, owned and operated by the Corrections Corporation of America (CCA). We found that department directors, past and present, have misused their procurement authority to circumvent the process that agencies are required by law to follow. By treating CCA as a government agent, instead of a private for-profit corporation, the department was able to secure the company as the vendor of choice, relieving it from the open competition that the Hawai'i Public Procurement Code was designed to ensure.

Moreover, the department director has ignored his oversight responsibility to administer contracts for the care and custody of inmates housed in out-of-state facilities, thus leaving the operational staff ill-prepared to contract for private prison beds beyond June 30, 2011, when the current contract expires. The director leaves for the next management team a department with no policies and procedures aligned with the Hawai'i Public Procurement Code, no objective evaluation to measure CCA's performance, and no plan for contracting for private prison beds to reasonably ensure fiscal responsibility in obtaining the best value at prices the State can afford.

Summary of Findings

1. Long term solutions for prison overcrowding cannot be addressed since true incarceration costs are unknown.
2. In "partnership" with its vendor, the department circumvented the procurement process and ignored oversight responsibility for out-of-state contracting.

Background

In December 1995, the department initiated a transfer of prison inmates to a privately-run facility in Texas. Initially, the transfer out of state was viewed as a temporary solution to relieve prison overcrowding in an effort to give prison officials time to increase in-state capacity to meet future demands. However, an economic downturn several years later derailed funding for major prison expansion, and what started as a temporary solution to relieve prison overcrowding is now a matter of state policy.

Today, there are approximately 2,000 inmates currently held at Corrections Corporation of America facilities in Arizona. Both the director and deputy director for administration stated that there is no available bed space to bring back the 2,000 inmates housed in mainland prisons. The Mainland and Federal Detention Center Branch (Mainland/FDC Branch) administrator concurred, stating that the department will need to enter into another agreement to house those inmates.

Prison Overcrowding Cannot Be Addressed Since True Incarceration Costs Are Unknown

We found that the department does not provide accurate and reliable incarceration cost data to policymakers and the public. Without this information, policymakers cannot begin to address long-term solutions to the problem of prison overcrowding.

The department repeatedly misled policymakers and the public by reporting inaccurate incarceration costs. To justify the practice of sending inmates to mainland facilities and guarantee funding, the department reports that it spends approximately twice as much to maintain an inmate in-state. These reported costs are calculated through a flawed methodology, designed entirely on what is easiest for the department to report. The department willfully ignores a major component for calculating these costs—an accounting of inmate days. Although the department is equipped with tools to effectively track inmate data through Offendertrak, a computer-based, inmate-tracking system installed in 1999, department management has not emphasized the need for accountability and chooses instead to provide artificial inmate costs.

Management reports misleading cost data

The department reports annually to the Legislature the cost per day to house inmates in-state, in mainland facilities, and in the Federal Detention Center in Honolulu. These costs are misleading because they are based on non-comparable data. For instance, there are inconsistencies in the usage of the number of days inmates are housed. In addition, we found that shared costs are not being allocated or assigned appropriately, resulting in skewed cost reporting.

Lastly, the department has woefully underutilized Offendertrak, designed as a comprehensive inmate management tool. Relevant to the cost per inmate day calculation, Offendertrak has the capabilities to provide actual inmate day counts. However, the actual data input and reports generated by Offendertrak are not reliable due to inconsistencies in system usage by the correctional facilities. Department officials lack a basic understanding of the system's capabilities that could be used to aid in their planning and decision making as originally intended.

Cost per inmate day calculation methods lack comparability

Typically a cost calculation begins with the costs of resources consumed, usually measured by the amount expended, allocated to a specific output. In the case of incarceration costs, the specific output is the housing of an individual inmate. Therefore, a reasonable incarceration cost calculation consists of total amount expended allocated to the number of inmates housed. The department's model for determining costs does not follow this basic premise. The department reports three different costs per inmate day: in-state cost includes all in-state prisons and jails; a mainland facilities cost, used for prison overflow; and a Federal Detention Center (FDC) cost, used primarily for jail overflow. These costs differ in calculation due to a lack of comparable costs and the inconsistent usage of actual number of inmates housed.

For instance, the department uses the operational bed capacity for in-state calculations instead of actual inmate days. The director explained that day-to-day data is unknown because each facility reports its head counts on a weekly and monthly basis. In addition, according to the director, the Legislature and the public would be very confused if the department provided daily or monthly calculations because Hawai'i facilities do not have a stable population. Exhibit 2.1 details the department's cost per inmate day breakdown.

The calculation for in-state cost per inmate day begins with all general fund incarceration costs. This includes all the state facilities, programs, and health care costs. For the FY07-FY09 calculations, the facilities included prisons—Hālawala Correctional Facility, Kūlanī Correctional Facility, Waiawa Correctional Facility, Women's Community Correctional Center; and jails—Hawai'i Community Correctional Center, Maui Community Correctional Center, O'ahu Community Correctional Center, and the Kaua'i Community Correctional Center. Program services include such items as education, substance abuse treatment program, sex offender treatment program, library programs, and food. In addition to costs for these programs, a portion of general administration is allocated to the total expenditures for in-state facilities.

Exhibit 2.1**Department's Cost Per Inmate Day Breakdown for FY07 Through FY09**

DESCRIPTION	FY07	FY08	FY09
In-state cost per day calculation			
In-state costs	\$151,232,338	\$161,237,232	\$166,372,908
Administration	\$9,462,439	\$13,532,643	\$10,020,220
Total	\$160,694,777	\$174,769,875	\$176,393,128
Inmate days (3,487 bed x 365 days)	1,272,755	1,272,755	1,272,755
In-state cost per inmate day	\$126	\$137	\$139
Mainland facility cost per day calculation			
Mainland costs	\$50,291,460	\$55,524,915	\$57,384,990
Administration	-		
Total	\$50,291,460	\$55,524,915	\$57,384,990
Inmate days (actual)	724,088	745,108	746,207
Mainland cost per inmate day	\$69	\$75	\$77
Federal Detention Center cost per day calculation			
Federal Detention Center cost per inmate day	\$79	\$84	\$87

Source: Department of Public Safety

To complete the in-state cost per inmate day calculation, the department divides total expenditures by the total fixed annual operational bed capacity, not current head counts, for the facilities listed above. Operational bed capacity refers to the maximum capacity, in excess of original design, for the facility. As a result, the calculation is skewed, because it does not reflect the actual number of inmates housed. The department completely ignores the fact that the actual number of inmates is the driver of costs. The department purposefully skews reporting of in-state costs.

In comparison, the out-of-state incarceration cost calculation is driven primarily by the per diem cost per inmate charged under the State's contract with its private prison vendor. Additional expenditures incurred such as transportation, health care, and administrative costs for the Mainland/FDC Branch that oversees contract performance are also included. The total amount expended for the housing and care of these inmates is then divided by the actual number of inmate days (based on contractor billings) to determine the mainland cost per inmate day.

Lastly, the cost per inmate day calculation for the FDC is much simpler. The department reports only the per diem cost charged the State by

the U.S. Bureau of Prisons and does not include either the branch's administrative costs or allocate any share of general administrative costs. Medical costs are not included but are absorbed by the department.

In addition, no share of administrative expenditures (i.e., accounting, finance, training, etc.) is allocated to either the mainland or the FDC calculation and costs are absorbed within the in-state calculation.

Besides the lack of comparability in cost calculation methods, the department fails to analyze costs based on the differences in each facility's spending, driven not only by the actual head count but also other factors. The in-state calculations include all inmates, regardless of gender, security classification, or other factors. The mainland facilities house a very specific population: male, medium security or protective custody inmates. The FDC houses primarily jail overflow, both male and female.

In keeping with our project scope, we attempted to isolate for comparison purposes the inmate per day costs for male, medium security prison inmates housed at the Saguaro Correctional Center and Hälawa Correctional Facility. A true cost comparison could not be performed because of differences in the building design that drives staffing needs, the program offerings specifically needed at each location, and the level of medical and other services provided. For example, the Saguaro Correctional Center, built in 2007, can house up to 1,896 inmates, with uniformed staff of 226. In contrast, the medium security Hälawa facility, built in 1987, houses 992 inmates with a corresponding security staff of 290. Photographs documenting our observations of both facilities can be found at Appendix A.

Flawed methodology results in artificial cost reporting

The department's inmate cost methodology is flawed because it reports costs per inmate day in the aggregate and does not distinguish between differences in facilities or security classifications. Also, administration expenses which support the total department (i.e., accounting, finance, training, etc.) are not shared with the mainland and FDC populations. Moreover, in-state/out-of-state costs are not identified or classified accurately. The resulting reported costs are artificial at best, because the calculations are based on inaccurate and incomplete data.

According to the *Statement of Federal Financial Accounting Standards 4: Managerial Cost Accounting Standards and Concepts*, reporting entities should report the full costs of outputs in general purpose financial reports. Full cost can be described as having two major components of direct and indirect costs. Direct costs can be readily identified as contributing directly or indirectly to the output. For example, direct

costs can include salaries, materials, equipment, and office space. Indirect costs are for identifiable supporting services. Examples include general administration services, general research and technical support, and security. These indirect costs are pro-rated based on a common denominator across responsibility segments, such as number of employees, or direct costs incurred in segments.

We found that the department does not allocate its indirect general administration costs to its mainland and FDC populations, skewing further the inmate cost calculations. These omissions have resulted in understated costs per inmate day for those specific populations. The department's general administration provides department-wide support services such as managerial and technical support, budget preparation, budget execution, fiscal accounting, payroll, procurement, and training. General administration costs attributed to corrections were included in the in-state cost per inmate day. However, the department does not allocate these corrections administration costs to the per inmate day rate for the non-state facilities.

The department's budget supervisor, responsible for calculating the per inmate day costs, does not allocate any share of general administration to the non-state inmate costs because she maintains the share is minimal. We disagree. Using FY08 year-end inmate numbers for state, mainland, and FDC shares of population, the mainland inmates comprise 34.7 percent of year-end incarcerated inmates. Cost accounting guidance states that shared costs can be allocated using a common divisor. In this case, using inmate population would be reasonable. We found this practice in use in other states, such as the Mississippi Department of Corrections. If this principle of shared costs was applied to FY08 general administrative costs, Hawai'i's share of corrections' general administration costs of \$13,532,643 would be allocated, adding \$4.7 million to mainland expenditures. Because this principle was not applied, the corresponding in-state per inmate day cost is overstated. Exhibit 2.2 details the FY08 year-end inmate head count and corresponding allocation of general administrative expenditures by in-state, mainland, and FDC categories.

Management should define and establish responsibility segments to measure and report the costs of each segment's outputs. A *responsibility segment* is defined as a component of an entity that is responsible for conducting a major line of activity. For each segment, managerial cost accounting should define and accumulate outputs, and quantify each type of outputs in units. Accounting for entity-wide revenues and expenses in aggregate (total) does not serve costing purposes.

Exhibit 2.2**Allocation of Administrative Costs to In-State, Out-of-State, and Federal Detention Facilities, FY08**

Facilities	FY08 Year-End Inmate Head Count	Percentage of Inmates to Total Population	FY08 General Administrative Costs, Allocated	Total Expenditures (before cost allocation)	Total, Expenditures and General Admin. Costs
In-state	3,482	60.1%	\$8,129,859	\$161,237,232	\$169,367,091.00
Mainland	2,014	34.7%	4,702,337	55,524,915	60,227,261.60
FDC	300	5.2%	700,447	7,873,335	8,573,782.40
Total	5,796	100%	\$13,532,643	\$224,635,482	\$238,168,125.00

Source: Department of Public Safety

One possible way to identify responsibility segments could be to mirror program budget identification numbers utilized by the Legislature. The department's accounting system tracks revenues and expenditures using the program identification numbers. If the department provided cost per inmate day amounts on a per facility basis, a comparison of actual expenditures against appropriations across cost categories could be useful. Other states that apply these practices are able to report their inmate costs in greater detail. For example, the Mississippi Department of Corrections reports costs per inmate classification (minimum, medium, maximum). The Florida Department of Corrections produces costs per inmate data by type of facility. By reporting inmate costs by jail or prison facility, the differences in facility requirements may be better captured and available for further analysis, planning, and decision making. For example, the department could use the costing calculation discussed previously, and for a given time period allocate the total amount expended to the number of inmates housed, and apply to the different facilities, population, or security classification, as necessary.

Although it is feasible for the department to report inmate costs by facility, management chooses not to do so. According to the director, producing such a report is not useful because various cost factors cannot be compared. He cited such reasons as a facility's physical location, the building itself, and movement of inmates. While the deputy director for administration stated that it is difficult to break down shared expenditures such as corrections programs and health care at the facility level, the fiscal officer asserted it could be done. By segregating and allocating this cost data, the department would be able to determine costs on a per facility basis. Even though differences between Hälawa and Saguaro cannot be compared, the cost data would be useful to compare a facility against its own historical performance or compare specific cost components at a facility for best practices. Both the director and deputy director failed to comprehend the utility of applying these best practices for accurate cost data.

We also found costs were incorrectly classified. For example, out-of-state expenditures for interstate corrections compacts authorized under Chapter 353B, HRS, are recorded as in-state costs. The department has 24 inmates housed in seven out-of-state prisons through interstate corrections compact agreements. In exchange, Hawai‘i houses ten inmates of other states at CCA facilities on the mainland. Most of the agreements provide for an exchange of services, and neither state is billed. The only exception is in the case of two inmates housed in Virginia. The department is billed for those costs—\$62,986 in FY07, \$84,429 in FY08, and \$49,887 in FY09—and reflects them as in-state costs classified as a general administration expenditure by the deputy director for corrections. Over the three fiscal years these amounts were minimal, averaging less than 1 percent of total out-of-state costs annually. Nevertheless, this contributed to the inaccuracy of the department’s report to the Legislature on in-state and out-of-state incarceration costs.

Management fails to utilize available tools for accurate data collection

Management does not utilize available tools for accurately tracking, collecting, and reporting inmate data. Offendertrak, a state-of-the-art correctional information system, was installed in 1999 to replace an outmoded inmate database system. In justifying the purchase of the system, the department explained that, “Accurate and timely information for the administrators [was] critical in planning for the direction of the correctional facilities and in handling overcrowding.” The Legislature concurred, stating, “an effective information system is needed to track inmates within the correctional facilities and to improve planning and decision making with regards to public safety.”

According to the Offendertrak representative, the system can track the number of inmate days by custody level (community, minimum, medium, close, maximum) or facility over a fiscal year. Other standard features include tracking inmate program participation and completion, initial medical assessments and medical conditions, visitations, work release or work furloughs, commissary purchases, and inmate trust account balances. However, the department has not taken advantage of these capabilities nor has it been able to input or maintain reliable inmate data.

We reviewed an Offendertrak prison inmate roster report for the Hālawā Correctional Facility dated August 9, 2010, and found examples of incorrect or missing data, values outside valid time periods, and values outside a designated range. Exhibit 2.3 summarizes the errors we found in the department’s report.

The term “release date” is defined by the department’s policy COR.23.01 as “the date an offender is administratively released from a facility

Exhibit 2.3
Errors Found in Review of Offendertrak Report Generated by
the Department

Error Description	No. of Errors	Total Record	Percentage of Total Record
List as having scheduled a release date that has already passed	280	985	28.4%
Minimum security classification with no scheduled release date recorded	28	985	2.8%
Unclassified over a year; no reclassification	4	985	0.4%

Source: Office of the Auditor analysis based on Department of Public safety inmate report

operated by the [d]epartment. The offender will not be returning to the facility, nor will he/she be moved to another facility.” Based on this definition, the scheduled release date recorded should not be one that has already elapsed. We found 280 out of 985 release date errors in our report review.

In another example, department policy requires that inmates classified as minimum security should have scheduled release dates because they are to be released within 48 months, and a formal reassessment of the inmate’s custody designation is supposed to be conducted at least every six months after the last classification action. We found 28 out of 985 instances of no updates recorded. In addition, we found four inmates with an unclassified security status even though they had been at Hālawā Correctional Facility for over a year.

Offendertrak data and the reports generated are only useful to support costing purposes if the data contained in it is sufficiently reliable. This information, if accurate, can be used in making decisions about allocating resources, authorizing and modifying programs, and evaluating program performance. Staff interviewed stated that the Offendertrak data are not reliable. One staff stated that another report is needed to verify the Offendertrak data because transfer data are sometimes missing from Offendertrak, another admitted that the data were not up-to-date, and another stated that the data in Offendertrak are “not as accurate as it should be.”

However, the deputy director for administration was unaware of the system’s features and capabilities and admitted that he did not know if utilizing Offendertrak properly would result in a more accurate inmate cost calculation. Management has failed to embrace a useful and comprehensive inmate management tool that could support sound management decisions. Without the use of such a tool, the number of

inmates, the driver of incarceration costs, is not accurately recorded, thereby limiting the accuracy of the cost-per-day calculation.

Management indifferent to the needs of policymakers and the public

Department management does not provide useful cost information to the detriment of public accountability. Cost information is essential for decision making, specifically to monitor expected results and to alert managers to waste and inefficiencies. While the department reports annually to the Legislature its costs per inmate day for the inmate population housed in-state, at mainland facilities, and at the Federal Detention Center, the department director and deputy director for administration admitted the department does not utilize the information to drive management decision making. Moreover, as we discuss above, department management did not understand the need to either utilize or provide this information in a more detailed or accurate manner. Department management needs to ensure accurate reporting of incarceration costs is in place, based on improved methodologies for compiling and calculating these costs. This would reassure policymakers and the public of the department's accountability in carrying out program objectives with the public resources entrusted to them.

Much of the department's decision making is based on the fact that prisons are overcrowded. Years of budget testimony note that funds are needed to house inmates in non-state facilities to assist with the overcrowding problem. The department provides cost data, which as we discuss above, is misleading. Relying on the information provided, the Legislature has appropriated increasing amounts of funds to house inmates in non-state facilities. With the Legislature providing funding without a proper review, there is no incentive for the department to identify cost savings or inefficiencies or areas for improvement within in-state facilities.

Department fails to use cost information for management decisions

The department reports annually to the Legislature the cost per inmate day for in-state and non-state facilities. These calculations are of limited use and performed solely to fulfill requests from the Legislature. The director stated, "other than for information purposes, the [inmate day cost] data is not used to drive other [management] decisions." The director's perspective is contrary to commonly accepted principles on cost data.

The deputy director for administration admitted that the department calculates and compares in-state and out-of-state inmate costs per day solely to fulfill annual legislative requests. He explained that the in-state and non-state inmate cost information is a more simplified "quick and

dirty” approach used to answer the Legislature’s queries. The deputy did not know why and admitted he never asked why the Legislature would need the in-state and out-of-state cost information.

We find this response curious considering that, at different junctures during the course of this audit, the deputy director of administration himself questioned why we wanted access to certain information, his rationale being, in order to best provide a response. It would stand to reason that the department would take a similar approach to legislative inquiries—in order to best provide needed information to legislators. Cost information is essential for decision making, specifically to monitor expected results and to alert managers of waste and inefficiencies. Accountability for the use of public resources is key to our State’s governing processes.

As policymakers, the Legislature relies on the inmate day cost information for department budget and decision making matters. For example, during the 2010 legislative session, the Senate Ways and Means Committee chairperson relied on information that it costs more to keep a prisoner in-state versus out-of-state to justify budget cuts made to the Hālawā Correctional Facility. The lack of complete and accurate inmate cost data compromises the Legislature’s decision making ability concerning the department’s in-state and out-of-state facility matters. We urge that the department consult with legislators to develop cost reporting that would be useful for both the department’s and the Legislature’s purposes.

Funding is ensured by State policy on prison overcrowding

The department operates under the assumption that funding will be available for the continued use of Corrections Corporation of America facilities to alleviate overcrowding. For example, the current CCA facility utilized by the department, the Saguaro Correctional Center, is nearing operational capacity. According to the Mainland/FDC Branch administrator, if the department needs more space, it could move the inmates to another CCA facility.

For the period of July 1, 2005 through June 30, 2009, the Mainland/FDC Branch was appropriated a combined \$237 million for the inmates held in non-state facilities. In its 2006, 2007, and 2008 budget testimony, the department repeatedly noted that resources were required to house additional inmates in out-of-state prison facilities and the Federal Detention Center to address overcrowding. Specifically, in 2006, the rationale for sending inmates off-island was until a “permanent solution to the problem of overcrowding can be addressed” and in 2008 “until other secure facilities are built.” This resulted in \$47 million appropriated in FY06, \$60 million in FY07, \$65 million in FY08, and \$66 million in FY09.

While it has been the policy of the State to handle overcrowding by sending inmates off-island, legislators, and families of the incarcerated have stated that they would like the inmates to be returned to Hawai‘i. However, before the Legislature can even address this policy issue, the department must provide better costing data to properly evaluate the specific performance of facilities and compare alternatives. The Legislature needs to hold the department’s management accountable for the funds appropriated. Moreover, the Legislature cannot continue to allow management to hide behind the issue of prison overcrowding as justification for not providing better cost data.

**Procurement
Process
Circumvented,
Oversight
Responsibility
Ignored**

The department circumvented the competitive procurement process and ignored its responsibility to oversee the contracting for out-of-state prison beds by blindly treating CCA as a government agent, instead of a private vendor operating for a profit. We found the department directors, past and present, misused their procurement authority and manipulated the procurement practices to secure CCA as the vendor of choice, freeing it from the open competition that the Hawai‘i Public Procurement Code was created to ensure.

Moreover, the department director has ignored his responsibilities to oversee and administer contracts for the care and custody of inmates housed in out-of-state facilities. As a result, the operational staff is ill-prepared to contract for private prison beds beyond June 30, 2011, the date when the current contract expires. The director leaves for the next management team a department with no policies and procedures aligned with the Hawai‘i Public Procurement Code, no objective evaluation to measure CCA’s performance, and no plan for contracting for private prison beds to reasonably ensure fiscal responsibility in obtaining the best value at prices the State can afford.

***Department’s
contracting efforts
manipulated to favor
vendor’s interests***

Instead of ensuring that safeguards in its contracts were in place to protect the State’s interests, the department directors, past and present, misused their procurement authority to secure CCA as the vendor of choice. By treating CCA as a government agent under the guise of contract administrator for the City of Eloy, the department circumvented the competitive procurement process. As a result, the corporation assumed few risks in contracting for Hawai‘i’s prisoners’ care, built a \$95 million prison designed for Hawai‘i inmates, and received over \$111.5 million from FY08 to FY09 for housing about one-third of the State’s total inmate population.

Safeguards in contracts fail to protect State's interests

The contract most relevant to our audit is the department's inter-governmental agreement (IGA) with the City of Eloy, Arizona, and CCA, for prison beds and services at Florence Correctional Center (Florence), Red Rock Correctional Center (Red Rock), and Saguaro Correctional Center (Saguaro). In June 2006, while Saguaro was under construction, the State entered into the IGA with the City of Eloy and CCA in order to move and consolidate inmates to Arizona at the three correctional centers. The department's partnership with CCA culminated in the development, planning, and construction of Saguaro Correctional Center. The facility was included in the terms and conditions of the IGA and completed in June 2007, with a bed capacity of 1,896, one year after the IGA with the City of Eloy and CCA took effect. This agreement is set to expire on June 30, 2011. Exterior and interior photographs of Saguaro Correctional Center are shown in Appendix A.

Based on expenditures reported in PSD's annual reports, over a four-year period from FY06 to FY09, the department has paid CCA a total of \$202,706,429 to provide housing and services for Hawai'i's prison inmates in its out-of-state facilities as shown in Exhibit 2.4.

Exhibit 2.4 Payments to CCA FY06 to FY09

FACILITY	FY06 Exp	FY07 Exp	FY08 Exp	FY09 Exp	Total
OK: Diamondback (male)	\$17,916,512	\$15,687,449	\$1,336,746		\$34,940,707
MS: Tallahatchie (male)	15,455,514	16,776,043	1,312,202		33,543,760
AR: Florence/Red Rock/ Saguaro (male)	5,579,391	14,009,861	48,519,607	53,136,066	121,244,925
Subtotal, males	\$38,951,418	\$46,473,353	\$51,168,555	\$53,136,066	\$189,729,392
KY: Otter Creek (female)	2,276,033	3,480,225	3,616,529	3,604,250	12,977,037
Total paid to CCA	\$41,227,451	\$49,953,578	\$54,785,084	\$56,740,316	\$202,706,429
Number of inmates (year-end)	1,844	2,010	2,014	2,077	

Source: Department of Public Safety

The Hawai'i Public Procurement Code was enacted in 1994 and codified in Chapters 103D, HRS, relating to the purchase of goods and services, and 103F, HRS, relating to the purchase of health and human services. The code intends to ensure that all persons dealing with the State's procurement system should be afforded fair and equitable treatment to compete to do business with state government. The code is intended to foster broad-based competition among vendors while ensuring accountability, fiscal responsibility, efficiency in the procurement process, and increased confidence in the integrity of the system.

Chapter 103F, HRS, applies to contracts entered into after July 1, 1998, by state agencies to solicit providers for health or human services. The State's chief procurement officer administers the provisions of this chapter. The purpose of Chapter 103F, HRS, is to provide uniform practices and procedures for drafting, monitoring, and evaluating contracts awarded by purchasing agencies. The uniform practices provide certain safeguards to protect the State's interests. For example, contracts awarded pursuant to Chapter 103F, HRS, must, at all times, be subject to legislative appropriation. In addition, all contracts may be terminated without liability to either the purchasing agency or the provider in the event that funds are not appropriated or available. More importantly, under Section 103F-504, HRS, the law limits the remedies available for aggrieved parties to the procedures and mechanisms for resolving disputes according to the rules adopted by the State Procurement Policy Board.

Based on our review of the terms and conditions of the IGA, we found these safeguards, designed to protect the State's interests, were missing from the agreement, the compensation and payment schedule, and the general conditions. For example, the compensation and payment schedule shows that payment is "subject to legislative appropriation;" however, there is no provision between the State and CCA to terminate without liability in the event that funds are not appropriated by the Legislature, or if appropriated, not available. A review of the standardized "General Conditions" identifies the City of Eloy as the responsible party for fulfilling the terms and conditions of the contract as the "Provider." Thus, the State and the City of Eloy, but not CCA, may terminate without liability in the event that funds are not appropriated or available.

Moreover, it appears that CCA is not subject to the exclusive remedies provision for resolving contractual disputes with the State as provided under Section 103F-504, HRS. These omissions are significant, because we found no evidence that the City of Eloy obtained written permission from the State to subcontract with CCA as provided for under subsection 3.2, entitled *Subcontracts and Assignments*. Further, as we discuss below, despite representations in the IGA, a contract assigning provider responsibility from the City of Eloy to CCA as its administrator for all its inter-governmental service agreements does not exist.

Misuse of procurement exemption benefits vendor

Procurement authority for contracting services under Chapter 103F, HRS, has resided solely with the department director, and has not been re-delegated to any departmental personnel such as the procurement specialist or the Mainland/FDC Branch administrator. As such, the discretion to apply a procurement exemption for government-to-

government transactions under Section 103F-101(a)(2), HRS, rests with the department director. Inter-governmental agreements are exempt from the competitive purchase of services method that state agencies must generally employ when soliciting proposals for services with funds appropriated by the Legislature. According to the State Procurement Office, there are no administrative rules or procedures for applying the exemption or defining government-to-government transactions.

We found that department directors, past and present, misused their procurement authority through the use of inter-governmental agreements to secure CCA's services and facilities. The State's chief procurement officer concurs with our conclusion. In his opinion, "Section 103F-101(a)(2) is an exemption that may be utilized to enter into an agreement limited to governmental entities, and does not include a private entity, in this case CCA."

Unlike the department's lease agreement with the U.S. Bureau of Prisons for bed space at the Federal Detention Center, the IGA with the City of Eloy and CCA does not meet the plain statutory language of government-to-government transactions. Inter-governmental service contracts have been defined as:

"... [A] formal means by which governments undertake mutual obligations to one another (usually voluntarily) to purchase a particular service. It is a simple business transaction between or among government units which enables one unit of government to contract with another for specific services."

The department should have known not to use an IGA in contracting with the City of Eloy and CCA, given problems encountered in 2004 with Brush County in an effort to transfer 63 female inmates to its correctional facility operated by a private correctional management company. Negotiations came to a standstill because the City of Brush was not authorized to execute a contract with the State of Hawai'i. At the time, the department director through the former supervising deputy attorney general sought and obtained an exemption from the procurement requirements. To support the exemption request, the department notified the State's chief procurement officer that it planned "to seek services to house female inmates on the mainland through the Chapter 103F procurement process" but, as the supervising deputy attorney general explained, approximately one year was needed "to develop the first such proposal and the most complex attempted to date."

Based on the State chief procurement officer's written approval, the department was able to contract directly with the GRW Corporation for approximately one year. From July 2004 to August 2005, the department used the time to develop an RFP competitive procurement process under Chapter 103F, HRS. As the only responsive bidder, CCA was

awarded the contracts in October 2005 and October 2008 to house female inmates at the Otter Creek Correctional Center. In September 2009, the department terminated the contract with CCA and returned the female inmates to Hawai'i.

By June 2006, the department should have been using the RFP process already developed for housing female inmates for male inmates as well. Instead, the past department director signed an IGA exempt from the procurement requirements with the City of Eloy and CCA after learning that Pinal County, Arizona, had no authority to execute an inter-governmental services agreement.

For five years, from July 1, 2001 to June 30, 2006, the department had an IGA with Pinal County and CCA to provide housing to its male inmates at the Florence facility. In June 2006, according to Eloy City Council special meeting minutes obtained from the city clerk's office, the Pinal County Attorneys' Office raised questions about the county's legal authority to enter into an IGA to house inmates in facilities owned by CCA. On June 28, 2006, two days before the Florence contract was set to expire, the Eloy city attorney submitted a request for formal council action and explained that CCA was asking for an IGA to house Hawai'i's inmates at its Eloy facilities. Based on the dates the agreement was signed, it appears that CCA assumed the Eloy City Council would act favorably on its request. The CCA vice president of state customer relations signed the IGA on June 21, 2006, more than a week *before* submitting the request for council action. Then, on behalf of the City of Eloy, the vice-mayor signed the agreement the same day the city council approved CCA's request, June 29, 2006, and the department's then acting director signed it the next day.

According to the Eloy City Council executive session meeting minutes, the city attorney had informed the mayor and city council members that the city had earlier approved an inter-governmental agreement in February 2006 with CCA and U.S. Immigration and Customs Enforcement (ICE) in which the city is "paid an administrative fee of \$.25 per day, per inmate." He clarified, however, that in the IGA with CCA and the State of Hawai'i under consideration, "the payment is less than the ICE inter-governmental agreement." The city attorney also "pointed out that the city [would] only serve as a pass through for funds for CCA and that the citizens would not be taxed." As discussed below, unlike the federal ICE agreement, the City of Eloy receives no payments to pass to CCA because no contract exists between the City of Eloy and CCA to act as its contract administrator.

Based on the department's past problems in contracting with Brush County, the department should have notified the State's chief procurement officer to request an exemption for time to develop an

RFP to house the male inmate population in facilities owned by CCA. Instead, in partnership with the CCA, the past department director, who approved and signed the agreement, misused his procurement authority to secure CCA's facilities and services, which then assured CCA of inmates to fill its Saguaro facility when it was built.

Vendor as agent is a fiction

Contrary to a provision in the IGA that describes the scope of services to be provided, no contract exists that establishes CCA as the City of Eloy's administrator for its inter-governmental agreements with the State. The State's chief procurement officer opined that:

... if the contract between the PSD and the City of Eloy is such where the City of Eloy is not contributing to the performance of the contract, and is a pass-through mechanism to contract with CCA, this would be considered a circumvention of the statutes and an inappropriate use of the inter-governmental exemption HRS §103F-101(a)(2).

We found that although it was understood by the Eloy City Council that the city would serve as a pass through for funds to CCA, the city performs no role as the "Provider" other than as a signatory to the IGA. Instead, the department has been blindly treating CCA as the "Provider's administrator" even though no contract establishing such a relationship exists. By doing so, the department has circumvented the procurement process.

In effect, the City of Eloy has no role in the agreement except the vice mayor signed the IGA, and the mayor, who is also a CCA employee at Red Rock, signed the compensation and payment schedule. The Eloy City Council authorized the mayor and vice mayor to sign the IGA. An examination of CCA's financial records to determine whether the mayor personally benefitted as a CCA employee was beyond the scope of this audit.

The Mainland/FDC Branch administrator acknowledged that the government entities have played no role in providing for inmate housing services in CCA facilities. We verified this based on interviews and our review of the department's contracts with CCA. In eight IGAs in the department's files, the government entities named as the providers or contractors performed no role in receiving payments from the State and in compensating CCA. Instead, the department received invoices from CCA, which in turn was directly compensated via wire transfers to its corporate account.

The City of Eloy as the “Provider” receives no compensation despite the following compensation clause provision:

The PROVIDER shall be compensated . . . based upon referrals to the PROVIDER from the STATE, payment for each such referral shall be made according to Exhibit “B” to this Agreement, which is attached, and made a part of this Agreement. . . .

Under the terms of the IGA, instead of the City of Eloy, only CCA is directly compensated based on a per inmate per bed day rate. Exhibit B is the “Compensation and Payment Schedule” agreed to in October 2006, approximately four months after the IGA of which it is a part. It was approved by the deputy attorney general and signed by the acting public safety director for the State, the City of Eloy mayor as the “Provider,” and CCA’s vice president for state relations as the “Provider’s Administrator” as shown in Appendix B.

Unlike as provided by the ICE agreement for the federal Eloy Detention Center, the City of Eloy does not receive funds from the State of Hawai‘i to pay CCA. In our search of the contract files at the City of Eloy’s clerk’s office, we located an IGA executed in February 2006 between the City of Eloy, and U.S. Immigration and Customs Enforcement for the care of federal detainees at the Eloy Detention Center owned and operated by CCA. Under this agreement the federal government pays the City of Eloy a per diem fee. The IGA was attached as Exhibit A to the agreement between the City of Eloy and CCA shown in Appendix C. The City of Eloy agreed to transmit to CCA the per diem payments within ten working days of the city’s receipt of the federal funds. On a monthly basis, CCA must in turn pay the city an administrative fee of \$0.25 per day per inmate at the detention center. In addition, CCA indemnifies the city, its officers and employees from liability, claims, judgments, and damages arising as a result of CCA’s acts or omissions in performing the agreement to provide detention services at the Eloy Detention Center.

In Hawai‘i’s case, we found no similar agreement between CCA and the City of Eloy that establishes CCA’s role as the “Provider’s Administrator” or as the City of Eloy’s subcontractor. The department’s scope of services section of the IGA specifically states: “City of Eloy has contracted with the Corrections Corporation of America to administer all of its inter-governmental service agreements relating to the Florence Correctional Center, the Red Rock Correctional Center and the Saguaro Correctional Facility.”

Our exhaustive search of the records at the City of Eloy County Clerk’s office proved futile. In fact, according to CCA’s vice president of contracts, the City of Eloy did not execute a separate agreement with

CCA to administer its inter-governmental agreements. Moreover, CCA's officer did not "think a separate agreement was necessary."

The public safety director could not provide a reasonable explanation as to why no such contract exists. The Mainland/FDC Branch administrator had not seen such an agreement, did not verify the existence of a contract that established CCA as the agent of the City of Eloy, and did not think it was her responsibility to do so. Instead, she deferred responsibility for validating the existence of the contract to the department's procurement and supply specialist. Although she did not insert the provision in the scope of services agreement, she acknowledged it has been included in all of the IGAs ever since she started working with the contracts. Based on our review of the eight IGAs with CCA, we verified the identical provision is in every contract. Ultimately, responsibility rests with the head of the purchasing agency with the procurement authority for contracting services under Chapter 103F, HRS; that is, the department director.

The department's weak control environment leaves the operational staff ill-prepared to contract for private prison beds and services

The department's weak control environment leaves the operational staff ill-prepared to contract for private prison beds and services beyond June 30, 2011. The control environment of an organization encompasses the integrity, ethical values, and competence of an organization's people. It also includes the way management assigns authority and responsibility. Part of the assignment of the authority includes the creation of policies and procedures. We found no policies and procedures aligned with the Hawai'i Public Procurement Code, no objective evaluation to measure CCA's performance, and no plan for contracting for private prison beds to reasonably ensure fiscal responsibility in obtaining the best value at prices the State can afford. The department director has ignored his responsibility by failing to ensure policies and procedures were created to guide and direct the activities of the staff for procurement and contract administration.

Management's lack of policies and procedures hampers effective contract administration

Management's role is to ensure that department-specific guidance is in place over initial planning for goods and services, over monitoring during the contract, and through final receipt of goods and services. Without such guidance, there is a greater likelihood of error. We found the lack of policies and procedures created numerous delays in contracting and allowed errors to go uncorrected.

The department has had ample time, since the Mainland/FDC Branch was established in 2004, to update its procurement policies and procedures for contracting for prison beds and services. Fifteen years

after the Hawai‘i Public Procurement Code took effect in 1994, the department has one procurement-specific policy and procedure applicable to this audit period. The policy was written in 1986 and updated in 1993, pre-dating the procurement requirements the department must follow when contracting for prison beds and services. Without adequate policies and procedures in place, management cannot ensure directives are carried out and necessary actions are taken to address risks to achieve the organization’s objectives. Despite the fact the agreement for out-of-state prison beds ends within a year, and knowing the State does not have the capacity to house all inmates in the islands, as of October 2010, management had not decided how to proceed.

The department’s lack of policies and procedures has led to problems in procurement planning and execution. Specific to planning for services, the National State Auditors Association’s (NSAA) best practice document *Contracting for Services* states that proper planning provides the foundation for contract awarding and monitoring. Planning identifies what services are needed and when, how they should be provided, and what provisions should be in the contract. Planning also helps ensure proper information is collected to effectively structure a request for proposal. Timely planning is crucial in all procurements, but especially in procurements like RFPs that can take a lot of time to execute.

We discovered that it took more than a year for the department to develop its RFP competitive procurement process after the procurement exemption was approved by the State’s chief procurement officer to contract directly with the GRW Corporation for housing female inmates at Brush County. The Mainland/FDC Branch administrator acknowledged the department waited too long to start the RFP competitive procurement process it needed to develop. The delay necessitated a two-month extension with the GRW Corporation to September 30, 2005. Because of the department’s failure to plan in a timely manner, prepare, and develop the RFP procurement process, the supplemental agreement with CCA for housing female inmates at Otter Creek was signed one month *after* the female inmates had been transferred from Brush County to Otter Creek Correctional Center. In other words, CCA accepted custody of 80 female inmates from Brush County before it had a signed contract in place to pay for the housing services provided to the State.

In another example, because the department delayed executing the last two-year extension (July 1, 2009 up to June 30, 2011) with the City of Eloy and CCA, the State incurred late fees. Instead of executing the extension by or before June 1, 2009, the department did not execute Supplemental Contract No. 6 until August 14, 2009. According to the State of Hawai‘i Accounting Manual, invoices for contracts cannot be paid until the certification of availability of funds has occurred. That

certification in turn requires that copies of the current contract be submitted to the comptroller for review, approval, and assignment of a contract number. Because the department could not pay CCA's June housing invoice on time, the department paid \$1,975 in interest charges to CCA in August 2009.

The department director is responsible for setting the tone at the top within the Department of Public Safety. The deputy director of administration admitted that the lack of written policies and procedures was likely due to a lack of oversight; ultimately, the responsibility lies with the department's director. The director has failed to provide the leadership necessary by stressing the importance of written policies and procedures to establish the control environment.

The Committee of Sponsoring Organizations of the Treadway Commission (COSO), in its Internal Control-Integrated Framework, emphasized the importance of management's use of internal controls to provide assurance of the effectiveness and efficiency of an organization's operations. Internal controls are processes used by an organization's management to provide assurance regarding the achievement of the organization's objectives. According to COSO, internal controls as a whole consist of five components. A control environment is the foundation for the other internal control components and sets the regulatory tone of an organization.

Control activities, another one of the elements of internal controls, are the policies and procedures that help ensure management directives are carried out and that necessary actions are taken to address risks to achievement of the entity's objectives. Control activities usually involve two elements; a policy establishing what should be done and, serving as a basis for the second element, procedures to effect the policy. A policy must be implemented thoughtfully, conscientiously, and consistently. A procedure will not be useful if performed mechanically without a sharp continuing focus on conditions to which the policy is directed.

Department officials have not decided how to execute new agreement by end of year

As of October 7, 2010, the department had not decided how it will pursue contracting for prison beds and services. Allowing the contract to expire without a plan in place is not an option. The deputy director of administration admitted that the department has no room to bring back the approximately 2,000 inmates housed in mainland prisons. The director, the deputy director for corrections, the Institutions Division administrator and the Mainland/FDC Branch administrator had not determined if they should execute a new agreement by December 2010 before the change in administration or begin the procurement planning process and leave the decision making to the new administration.

In this situation, timing is critical. The department's procurement and supply specialist stated that there are two options: pursue another inter-governmental agreement, which would take approximately four to six months to execute, or conduct competitive sealed proposals, which would take approximately eight to nine months to complete. But, as we noted above, the use of an inter-governmental agreement is no longer a viable option. Without a plan to address the incarceration of approximately 2,000 inmates housed on the mainland, the department is shirking its responsibility to provide for the safety of the public through correctional management and leaves the operational staff ill-prepared to contract for private prison beds and services.

The department should create operating policies and procedures to govern procurement and contract administration to ensure consistency in operational oversight. This is one way the department can ensure that the State is receiving the best value for its money. The department should require that staff responsible for overseeing the private prisons is trained in the new operating policies and procedures.

Contract administrator lacks objectivity when monitoring private vendor

Oversight responsibilities belong primarily to the Mainland/FDC Branch administrator as the department's primary enforcement officer for the non-state prison contracts. According to her position description, the administrator is responsible for contract development, implementation, ongoing administration, and statutorily required monitoring of contracts. The contract administrator is responsible for ensuring compliance with all of the terms of the contract by managing oversight on a day-to-day basis. However, we found that the department's "partnership" with CCA has resulted in an over-reliance by the administrator and department staff on CCA's representations of contract performance.

For instance, a team from the Mainland/FDC Branch and branch-identified "subject-matter experts" visit mainland facilities quarterly to ensure CCA's compliance with contract terms. The branch administrator provides team members with a compliance checklist that lists specific provisions within the contract's scope of work section, a copy of the relevant portion of the contract, notes from prior site visit, communication between the branch and the facility for the specific subject matter, and additional blank pages for notes.

During the June 29-July 1, 2010 site visit to Saguaro, we observed the contract monitoring team take the testimony of the contractor's staff without verifying their statements against documentary evidence. These unverified claims comprised a large body of evidence, and led the department's site visit team to conclude that the CCA was in full compliance with contract requirements.

The failure to test the reliability of testimony and documentation received raises concern because the process in place over site visits, while not fully documented, is the primary internal control used for validating that services are being received. Interviews with inmates and staff are usually the least effective means of monitoring a facility, and caution should be used in weighing staff responses. If record reviews focus only on whether the report was completed properly, for instance, instead of validating the information contained therein, little is revealed about the facility's operation. Reports should be reviewed, not as isolated documents, but as part of a whole. The audit team would benefit from having specific guidance as to what to test or how to validate, such as an independent sample of items to substantiate testimony, to show greater evidence of compliance. For example, an inspection of the housing units might include a determination that all security posts are manned and a review of log books to determine whether they are being kept properly. And as needed, the monitor should utilize checklists pertinent to the walkthrough areas.

Although the Mainland/FDC Branch has informal processes over contractor monitoring, there are no written policies and procedures for the contract administration of the contracts related to the care, custody, and confinement of Hawai'i inmates in non-state facilities to ensure consistency of oversight. Moreover, since 2006, neither the Mainland/FDC Branch administrator, nor the branch supervisor had attended a training workshop on contract administration sponsored by the State Procurement Office. The branch administrator had attended only one workshop for small purchases.

In addition, the Mainland/FDC Branch administrator admitted to relying on the current vendor to provide pricing information on competitors. While the branch administrator could not provide documentation to support her claims that she continually compares prices quoted/charged with other states, she said she is careful to compare prices for the same level of service, such as ensuring the prisons are American Correctional Association certified. In the past, she relied on CCA to provide the department with the rates being quoted by their competitors whenever a contract with CCA was up for renewal. Seeking competitors' rates from CCA raises concerns on the objectivity of the renewal process.

The department's multi-year contract with the City of Eloy and CCA includes a proviso for annual price adjustments. Unlike the Bureau of Prison's IGA where the per diem rate is not negotiated but is set annually by the bureau and based on the cost per inmate per day, CCA's initial per diem rate is increased annually by 2.5 percent or by the previous year's Consumer Price Index for All Urban Consumers as is shown in Exhibit 2.5. CCA's initial per diem rate is not based on its cost but rather on a rate established by CCA. As a result, it is difficult to ensure that the State is receiving the best value for its money.

Exhibit 2.5
Rate of Contract Adjustment for IGA with City of Eloy and CCA

FACILITY	FY07 Exp	FY08 Exp	FY09 Exp	FY10 Exp
Initial per diem rate	\$57.00			
Adjusted per diem rate charges		\$58.43	\$60.18	\$61.68
% increase over prior year		2.51%	3.00%	2.49%

Source: Department of Public Safety

Performance evaluation is another component of effective contract administration. The department should evaluate the contractor’s performance against a set of pre-established, standard criteria and retain this record of contract performance for future use. Monitoring should provide a basis for renewing contracts, imposing financial sanctions, or terminating contracts. Assessing a contractor’s performance following the completion of a contract can be useful in instances where a contractor’s past performance plays a role in decision making for future contracting. This aids the ultimate goal of selecting the most qualified vendor at the best prices.

The department also has no policies or procedures regarding the systematic and formal evaluation of contractors. Though the department spent approximately \$57 million in FY09 to house Hawai’i inmates in mainland facilities, the branch administrator has not conducted any formal performance evaluations prior to extending contracts or at completion of the contract period. Instead, the administrator relies on the quarterly inspections, and also assembles the team who assisted with reviewing contract compliance to determine what has or has not worked in the current contract. We were unable to verify this process because the branch administrator could not provide documentation that this had occurred.

We also found deficiencies in fiscal monitoring, which includes a review of the contractor’s invoices and supporting documentation. The contract administrator should verify the accuracy of the contractor’s invoices and documentation before authorizing payment, whether the contractor has satisfactorily delivered the contracted services, whether billings are consistent with contract requirements, and whether total payments are within the limits set by the contract. Without review and verification, the branch administrator has no way of knowing that the individuals listed on the invoice are in fact housed at the facility and that CCA is billing for the correct number of days.

For example, some invoices had no documentation to validate reviews or evidence of payment approval. In one instance, an invoice from the

private prison contractor was modified in writing by the vendor, and the department paid the invoice without any confirmation that the revisions were accurate. The same invoice had other errors that had not been caught or corrected by either the vendor or the Mainland/FDC Branch staff.

The department's invoice processing is missing a key component for validating accuracy. We found that neither the account clerk nor the branch administrator validates that the individuals listed on the invoice are in fact housed at the facility. Both stated that they rely on the other to validate the information, which results in neither performing the task.

The branch administrator fails to understand the full extent of her responsibilities as the contract administrator. From the branch administrator's perspective, her role, as it relates to contracts, is limited to preparing the contract's scope of services. She deferred to the department's procurement and supply specialist to take care of all the other contract issues. The branch administrator needs to properly fulfill her role as contract administrator in order to ensure that the State is receiving best value for its money. Moreover, the department should ensure that key individuals in the Mainland/FDC Branch also attend SPO training workshops related to contract administration and procurement of health and human services under Chapter 103F, HRS.

Conclusion

The Legislature must hold the Department of Public Safety accountable for its inadequate cost reporting. Without clarified guidance by policymakers, the department has no incentive to perform better and will continue to evade accountability by providing unreliable and inaccurate reporting of incarceration costs. Moreover, the Legislature will continue to receive this insufficient cost information and be unable to address the larger problem of prison overcrowding. To address these issues, the department must first improve the methodology employed to calculate comparable inmate per day costs for the department's use in decision making and reporting to the Legislature. In addition, management should be more diligent and improve the compilation of its incarceration costs data by utilizing available tools such as Offendertrak.

In addition, the department has misused its procurement authority to circumvent the process designed with safeguards to protect the State's interests. By focusing efforts on quarterly site visits, the department effectively ignored oversight for all other provisions of contracts for out-of-state prison beds. The department cannot ensure it has been fiscally responsible in obtaining the best value for housing Hawai'i's male inmate population out-of-state. The department must comply with the governing procurement practices and procedures if it intends to

continue its “partnership” with the Corrections Corporation of America to purchase out-of-state prison beds and housing services to address prison overcrowding. Because the department failed to comply with the procurement process, we recommend that the State’s chief procurement officer assume a more active role specific to procuring prison beds and services for the State. Moreover, the department needs to strengthen oversight of its contracts to ensure that the private vendor is adequately meeting the contract requirements.

Recommendations

1. To improve the compilation of its incarceration cost data, the Department of Public Safety should:
 - a. Consider developing a useful calculation to be applied at regular intervals to more easily use cost accounting for cost savings or accounting for performance;
 - b. Utilize a more systematic process for cost comparisons, taking into consideration a need for a cost-accounting methodology.
 - c. Rather than provide data simply because it is requested, communicate with the Legislature to gain an understanding as to why information is requested in order to provide pertinent information in return;
 - d. Compile useful, reliable, and complete data, utilizing available tools such as Offendertrak, for both the Legislature and its own use.
2. To improve its processes for monitoring the operations of private prisons, the department should:
 - a. Enhance processes used to test compliance with contract requirements to include what to test and how to validate compliance. This should include developing standardized tools that can be used by staff to measure compliance with all areas of the contract on a regular basis;
 - b. Develop a quality review program to ensure that the monitoring records and reports accurately and thoroughly document inspection results;
 - c. Establish policies and procedures related to documenting contract compliance issues and the retention of monitoring records; and

- d. Update its operating policies and procedures for fiscal monitoring and the approval and processing of invoices to ensure that the State is receiving the programs and services that it contracted for.
3. To improve contracting for private prison beds in out-of-state facilities, the State chief procurement officer should:
 - a. Suspend procurement authority delegated to the department for out-of-state prison contracts with private vendors until:
 - 1) The department's practices are reviewed and policies and procedures are in place to ensure compliance with Chapter 103F, HRS;
 - 2) The Mainland/FDC Branch administrator and key staff have completed procurement training workshops related to contract administration and procurement of health and human services under Chapter 103F, HRS.
 - b. Provide guidance and oversee the procurement process, including final approval over the next contract to replace the contract for housing the male prison population at Red Rock Correctional Center and Saguardo Correctional Center that expires on June 30, 2011.

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Facility Tour: Saguardo Correctional Center, Eloy, Arizona



Opened: 2007
Bed Capacity: 1,898

Recreational Areas



Classroom



Facility Tour: Saguaro Correctional Center, Eloy, Arizona (cont.)

Living quarters, common area



Facility Tour: Hālawā Correctional Facility



Year Opened: 1962 (Special Needs)
1987 (Medium Security)

Operational Bed Capacity:

Special Needs	132
Medium Security	<u>992</u>
Total	1,124

Recreational Areas



Classroom



Facility Tour: Hālawā Correctional Facility (cont.)

Living quarters, common area

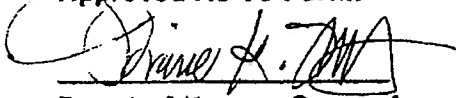



ACCEPTANCE AND ACKNOWLEDGMENT

Effective June 30, 2006, the undersigned have reviewed the attached clarifications to Exhibit B and hereby acknowledge and accept said clarifications.

STATE OF HAWAII


Approved As To Form:


**Deputy Attorney General
State of Hawaii**

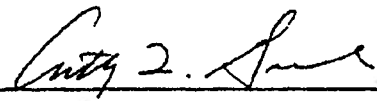
By: 
**Iwalani D. White
Acting Director**

Date: October 12, 2006

PROVIDER: CITY OF ELOY

By: 
Print Name: Byron K. Jackson
Title: Mayor
Date: September 25, 2006

**PROVIDER'S ADMINISTRATOR:
CORRECTIONS CORPORATION OF AMERICA**

By: 
Print Name: ANTHONY L. GRANDE
Title: Vice President, State Relations
Date: 10-02-06

This acknowledgment may be executed with counterpart signatures. This means that parties are not required to sign on the same page and may sign on different pages. All required original signature pages may then be reassembled together to constitute the complete, fully executed agreement and will be treated as such.

COMPENSATION AND PAYMENT SCHEDULE

A. COMPENSATION

1. Payment to the Provider's Administrator (PA) shall be made on the, per inmate per bed day cost, using the per diem schedule below.

1st-Tier Per Diem Structure:

Effective July 1, 2006 to June 30, 2007, price per day per inmate for the FCC shall be \$49.55. SCF is anticipated for completion by July 2007. Upon completion and readiness for occupancy, the daily bed rate for the services offered shall be under the 2nd -Tier Per Diem Structure.

2nd -Tier Per Diem Structure:

Effective July 1, 2006 to June 30, 2007, price per day per inmate for the RRCC shall be \$57.00. SCF is anticipated for completion by July 2007. Upon completion and readiness for occupancy, the daily bed rate for the services offered shall be under this 2nd -Tier Per Diem Structure.

Subject to legislative appropriations, on July 1 of each contract year, beginning July 1, 2007, the basic daily fee shall increase by 2.5% or by the previous year's Consumer Price Index for all Urban Consumers, West Region (CPI-U West Region) as prepared by the United States Bureau of Labor Statistics (available at <http://data.bls.gov/cgi-bin/surveymost?cu>), whichever is greater, but not to exceed 3%.

Funding for the first fiscal year of this agreement is based on the following estimated calculations:

FCC:	estimated 60 inmates x \$49.55 per diem/inmate x 365 days	= \$1,085,145.00
RRCC:	estimated 154 inmates x \$57.00 per diem/inmate x 365 days	= \$3,203,970.00
	estimated 1 inmate x \$57.00 per diem/inmate x 190 days	= \$ 10,830.00
Total Funding Estimated for 7/01/06 through 6/30/07		\$4,299,945.00

This agreement shall be effective from July 1, 2006 up to June 30, 2009, subject to the availability of funds beyond June 30, 2007. Unless terminated, the contract may be extended for not more than one (1) additional two-year period or parts thereof, upon mutual agreement in writing.

2. The daily per diem rates shall include all costs associated with the carrying out of the terms of this Contract, including treatment services. Treatment services shall include personal counseling, educational services, substance abuse treatment, vocational programming and all inmate services as specified in this Agreement.

Exhibit B

Page 1

3. The PA shall provide all health, dental and vision care to inmates at no additional cost to the State except for the following reimbursable expenses: services requiring hospitalization that includes physician reimbursement, services/procedures requiring anesthetics other than Novocain or similar local anesthetics or nitrous oxide that includes physician or anesthetist reimbursement, major surgical and other invasive procedures that includes physician reimbursement and any procedure requiring the use of special limited-use equipment not available at the facility. Of these reimbursable expenses, the PA shall pay one hundred percent (100%) of the reimbursable expenses up to two thousand dollars (\$2,000) per incident. The State shall pay one hundred percent (100%) of the reimbursable expenses in excess of that amount for any single incident, except as provided in paragraph below.

The State shall not be responsible for health care, any illness or injuries, or any cost incurred while an Inmate is on escape status or resulting from the negligence or fault of the PA or the PA's employees or agents.

4. The State shall be responsible for medication or regimens specifically aimed at the treatment of conditions associated with AIDS/HIV and Hepatitis C, provided that the PA follows State protocols for treatment. Routine medical care for inmates who have Hepatitis C or AIDS or are HIV positive are the responsibility of the PA.
5. If the PA charges any other entity a per diem for the provision of the exact same services set out herein at the Facility that is lower than specified in this Exhibit, the PA agrees to notify the State of Hawaii of such, and will, upon request of the State of Hawaii, agree to amend this Contract to reduce the State of Hawaii's per diem to the lower per diem amount on the same day the lower fee becomes effective for the other entity under similar terms and conditions contained in the other entity's contract.

B. INVOICING & PAYMENT

1. The PA shall submit an advance copy of the following monthly invoices via facsimile (808) 837-8026 for accuracy and verification of information:
 - 1) Housing Per Diem Invoice
 - 2) Medical Services and HIV/HEP C Invoices
 - 3) Workline Wages Invoice
 - 4) Miscellaneous Invoice (i.e. telephone charges for video visits, etc.)
2. Original invoices shall be mailed to:

State of Hawaii
Department of Public Safety
Mainland & FDC Branch
919 Ala Moana Boulevard, 4th Floor
Honolulu, HI 96814

Attn: Mainland Branch Administrator

Exhibit B

Page 2

All invoices shall reference the contract number and solicitation number. If any invoices are sent via Federal Express, please call the PSD Mainland Branch Administrator.

3. Pursuant to Section 103-10, Hawaii Revised Statutes, the State of Hawaii shall have up to 30 calendar days after receipt of the original invoice to make payment. A facsimile copy shall not serve as the original copy. The State will take all reasonable steps to effect payment to the PA by wire transfer. All payments shall be made in accordance with and subject to Chapter 40, Hawaii Revised Statutes.
4. The PA shall not be responsible for paying workline wages of the Hawaii female inmates.
5. Final Payment Requirements. The PA is required to submit a tax clearance certificate for final payment on the contract. A tax clearance certificate, not over two months old, with an original green certified copy stamp, must accompany the invoice for final payment on the contract.

Exhibit B
Page 3

INTER-GOVERNMENTAL SERVICE AGREEMENT

CITY OF ELOY, ARIZONA

This Inter-Governmental Service Agreement (IGSA) is for Detention Services to be provided to United States Immigration and Customs Enforcement, hereinafter referred to as "ICE", for the detention and care of aliens (thereafter referred to as "DETAINEES").

FACILITY LOCATION:

The PROVIDER shall provide detention services for detainees at the following institution:

**Eloy Detention Center
1705 East Hanna Road
Eloy, Arizona 85231**

PERFORMANCE:

The PROVIDER is required to house ICE detainees, to perform in accordance with the most current editions of **ICE Detention Requirements, American Correctional Association (ACA) Standards for Adult Local Detention Facilities (ALDF), and Standards Supplement, Standards for Health Services in Jails, latest edition, National Commission on Correctional Health Care (NCCHC)**. Some ACA standards are augmented by ICE policy and/or procedure. In cases where other standards conflict with DHS/ICE Policy or Standards, DHS/ICE Policy and Standards prevail. ICE Inspectors will conduct periodic inspections of the facility to assure compliance of the aforementioned standards.

The PROVIDER shall maintain continual compliance with ACA accreditation standards during performance of this agreement.

The PROVIDER shall be responsible for all costs associated with obtaining and maintaining full accreditation by ACA.

PERIOD OF PERFORMANCE:

This Agreement shall become effective upon the date of final signature by ICE and the PROVIDER and shall remain in effect indefinitely unless terminated in writing, by either party. Either party must provide written intentions to terminate the agreement, 120 days in advance of the effective date of formal termination.

PAYMENT RATE

Per Diem Rate \$68.45

In consideration for the **PROVIDER'S** performance under the Terms and Conditions of this Agreement, ICE shall make payment to the **PROVIDER** for each detainee accepted and housed by the **PROVIDER**. The rate is the per diem rate for the support of one Detainee per day and shall include the day of arrival but not the day of departure.

The **PROVIDER** shall not charge for costs, which are not directly related to the housing and detention of detainees. Such costs include, but are not limited to:

- A) Salaries of elected officials.
- B) Salaries of employees not directly engaged in the housing and detention of detainees.
- C) Indirect costs in which a percentage of all local government costs are pro-rated and applied to individual departments.
- D) Detainee services which are not provided to, or cannot be used by detainees.
- E) Operating costs of facilities not utilized by detainees.
- F) Interest on borrowing (however represented), bond discounts, cost(s) of financing/refinancing, and legal or professional fees.

This agreement in no way obligates Immigration and Customs Enforcement to any minimum population guarantee.

MODIFICATION:

This Agreement, or any of its specific provisions, may be revised or modified by signatory concurrence of the undersigned parties, or their respective official successors.

TRANSPORTATION SERVICES:

1. The **PROVIDER** shall provide all ground transportation services as may be required to transport detainees securely, in a timely manner, to off-site medical providers. Transportation mileage reimbursable rates will be commensurate with current applicable federal travel allowance rates. When officers are not providing transportation services the **PROVIDER** shall assign the employees to supplement security duties within the facility or on-call duties to assist ICE as directed by the COTR or designated ICE official. However, the primary function of these officers is transportation. On-call duties as directed by the COTR utilizing these officers shall not incur any additional expense to the government.
2. The **PROVIDER** personnel provided for the above services shall be of the same qualifications, receive the same training, complete the same security clearances, and wear the same uniforms as those **PROVIDER** personnel are provided for in

the other areas of this agreement.

3. During all transportation activities, at least one officer shall be the same sex as the detainee(s). Questions concerning guard assignments shall be directed to the COTR for final determination.
4. The **PROVIDER** shall, upon order of the COTR, or upon his own decision in an urgent medical situation, transport a detainee to a hospital location. An officer, or officers, shall keep the detainee under constant supervision 24 hours per day until the detainee is ordered released from the hospital, or at the order of the COTR. The **PROVIDER** shall then transport the detainee to the detention site.
5. When the COTR provides documents to the **PROVIDER** concerning the detainee(s) to be transported and/or escorted, the **PROVIDER** shall deliver these documents only to the named authorized recipients. The **PROVIDER** shall ensure the material is kept confidential and not viewed by any person other than the authorized recipient.
6. The **PROVIDER** shall establish a communications system that has direct and immediate contact with all transportation vehicles and post assignments. Upon demand, the COTR shall be provided with current status of all vehicles and post assignment employees.

GUARD SERVICES:

The **PROVIDER** agrees to provide stationary guard services as requested or required for detainees who are committed to, or require, medical services beyond the secure perimeter of the facility. Qualified law enforcement or correctional officer personnel employed by the **PROVIDER** under their policies, procedure and practices will perform such services. The **PROVIDER** agrees to augment such practices as may be requested by ICE to enhance specific requirements for security, detainee monitoring, visitation, and contraband control. Reimbursement for these stationary guard services is not separately priced and is included in the per diem rate.

MEDICAL SERVICES:

In the event of an emergency, the **PROVIDER** shall proceed immediately with necessary medical treatment. In such event, the **PROVIDER** shall notify ICE immediately regarding the nature of the transferred detainee's illness or injury and type of treatment provided.

The **PROVIDER** agrees to accept and provide for the secure custody, care, and safekeeping of detainees in accordance with the State, and local laws, standards, policies, procedures, or court orders applicable to the operations of the facility.

The **PROVIDER** agrees to provide ICE detainees with the level of medical care and services as appropriate as part of the per diem rate. This rate includes but is not limited to:

- On-site sick call, medical appointments/services;
- Medication (over the counter/non-legend and routine drugs and medical supplies);
- Escort/security services for transport to/from emergency or non-emergency health care services as either an in-patient or outpatient.

When specifically requested by ICE, the **PROVIDER** agrees to arrange for and/or provide non-emergency ambulance transportation service to transport detainees from one off-site medical care facility to another. ICE agrees to provide reimbursement, over and above the per diem rate, to the **PROVIDER** for such ambulance transportation services when the costs are included with the regular monthly billing for detention services.

The **PROVIDER** agrees to cover all outside medical costs up to **\$3,000.00** per event associated with hospital or health care services specifically provided to any detainee.

The **PROVIDER** shall also notify the designated contact person at the local ICE office, when any reimbursable medical care is provided to a detainee, in accordance with procedures to be established and mutually agreed upon. Notification must be made in advance of treatment other than in emergency situations.

RECEIPT AND DISCHARGE OF FEDERAL DETAINEES:

The **PROVIDER** agrees to receive and discharge Federal detainees only from and to properly identified law enforcement officers and with prior authorization. Admission and discharge of Federal detainees shall be fully consistent with **PROVIDER** policies and procedures.

ICE detainees shall not be released from the facility into the custody of other Federal, state, or local officials for any reason, except for medical or emergency situations, without express authorization of ICE.

INSPECTION:

The **PROVIDER** agrees to allow periodic inspections of the facility by ICE inspectors. Findings will be shared with facility administrators in order to promote improvements to facility operations or conditions of detainment.

PER DIEM RATE AND ECONOMIC PRICE ADJUSTMENT

The per diem rate shall be **\$68.45** and may not be adjusted prior to September 30, 2007. Thereafter, the per diem rate shall be subject to adjustment based on the actual and allowable costs associated with the operation of the facility. When a rate increase is desired, the Local Government shall submit a written request to Immigration and Customs Enforcement at least sixty (60) days prior to the desired effective date of the rate adjustment. All such requests must contain a detailed cost proposal to substantiate the desired rate increase. The Local Government agrees to provide additional cost information to support the requested rate increase and to permit an audit of accounting records upon request by Immigration and Customs

Enforcement. The rate may be renegotiated not more than once per year.

Criteria used to evaluate the increase or decrease in the per diem rate shall be those specified in the Office of Management and Budget (OMB) Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments.

The effective date of the rate modification will be negotiated and specified in a modification to this IGSA, which is approved by the ICE Contracting Officer. The effective date will be established on the first day of the month for accounting purposes. Payments at the modified rate will be paid upon the return of the signed modification by the authorized Local Government official to ICE.

BILLING PROCEDURE:

(A) Invoices - Invoices shall itemize each detainee by name, register number, dates of stay, and appropriate detainee-day rate. Billing shall be based upon the actual number of detainee days used.

(B) Invoices Submission

U.S. Immigration and Customs Enforcement
Phoenix Field District Office
2035 North Central Ave
Phoenix, Arizona 85004
(602) 379-3426

(C) Payment - Payments will be made to the **PROVIDER** after receipt of a complete invoice, which shall contain a remittance address. All transfer(s) will be accomplished through Electronic Funds Transfer (EFT) on a monthly basis. The Prompt Payment Act shall apply.

IN WITNESS WHEREOF, the undersigned, duly authorized officers, have subscribed their names on behalf of the City of Eloy, Arizona and U.S. Immigration and Customs Enforcement.

ACCEPTED:

U.S. Immigration and Customs Enforcement

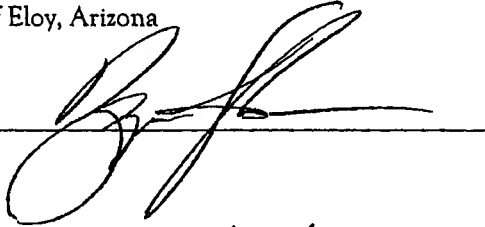
By: J. K. Wisor

JAN K. WISOR

Date: 2/17/02 Contracting Officer

City of Eloy, Arizona

By: _____

A handwritten signature in black ink, appearing to be 'B. J.', written over a horizontal line.

Date: _____

02/13/06

Agreement
Between
Eloy, Arizona
And
Corrections Corporation of America

THIS Agreement is made and entered into by and between the City of Eloy, Arizona (the City), a political subdivision of the State of Arizona and Corrections Corporation of America (CCA), a Maryland corporation with its principal offices located at 10 Burton Hills Boulevard, Nashville, Tennessee 37215.

WHEREAS, the City intends to enter into an Intergovernmental Service Agreement (IGA) with the United States Immigration and Customs Enforcement (ICE), a copy of which will be attached hereto as Exhibit A;

WHEREAS, CCA owns the Eloy Detention Facility in Eloy, Arizona (Facility) and desires to house federal inmates at the Facility;

WHEREAS, the federal government has a need for beds at the Facility; and

WHEREAS, the City will benefit from CCA's housing of the government's inmates at the Facility through the creation of jobs and the payment of applicable property taxes:

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, CCA and the City hereby agree as follows:

1. The City shall enter into the IGA with ICE, subject to CCA's advance approval.
2. The City shall place federal inmates at the Facility as directed by the applicable federal entity pursuant to the IGA.
3. For every federal inmate accepted into custody at the Facility, CCA shall provide services in compliance with the terms of the IGA.
4. The City will not amend, terminate or otherwise change the terms of the IGA without the advance written approval of CCA.
5. CCA is not obligated to house federal inmates at the Facility if space is not available or if the IGA is changed without CCA's approval or if the acceptance of inmates would be financially impractical for CCA as determined by CCA.
6. Should CCA desire to seek an increase in per diem from the federal government under the IGA, CCA shall provide all documentation necessary and appropriate to that effort, and the City shall provide all necessary and reasonable cooperation in the pursuit of the increase.
7. CCA shall indemnify, defend and hold harmless the City and its officers and employees from liability and any claims suits, judgments and damages to the extent such claims, suits, judgments and damages arise as a result of CCA's

acts and/or omissions in the performance of this Agreement. Nothing herein shall be construed to require CCA to defend or indemnify any party for any claims, lawsuits, damages, expenses, costs or losses arising from the acts or omissions of the City, its departments, its officers, agents or employees or allegations regarding the City's authority to enter into this Agreement. Neither shall anything herein be construed to require CCA to defend or indemnify any party for any claims, lawsuits, damages, expenses, costs or losses arising from any Habeas Corpus action or other action challenging the validity of a conviction or sentence.

8. The City shall pay CCA the per diem fee paid to the City pursuant to the IGA within 10 working days of the City's receipt of the funds from the government. CCA agrees to submit the necessary documentation for payment as set forth in the IGA. To the extent allowed under the IGA, CCA will be the designated Payee and funds due pursuant to the IGA will be paid directly to CCA.
9. On a monthly basis, CCA shall pay the City an administrative fee of \$.25 per day per inmate held at the Facility pursuant to this Agreement and the IGA.
10. The term of this Agreement shall commence on March 1, 2006 and remain in effect thereafter so long as the IGA remains in place unless otherwise terminated.
11. Either party may terminate this Agreement if a breach of the Agreement by the other party remains uncured for sixty (60) days after the date of written notice of the breach.
12. The failure of performance of any of the terms and conditions of the Agreement resulting from acts of God, war, civil insurrection or riot shall not be a breach.
13. The provisions of this Agreement are for the sole benefit of the parties hereto and shall not be construed as conferring any rights on any other person or entity, including but not limited to, inmates held pursuant to the IGA.
14. This Agreement shall be interpreted under the laws of the State of Arizona.
15. This Agreement shall not be altered, changed or amended except in writing signed by both parties.
16. This Agreement incorporates all the agreements, covenants and understandings between the parties. No prior contract or understandings, verbal or otherwise, of the parties and/or their agents shall be valid or enforceable unless embodied in this Agreement.
17. All notices sent pursuant to this Agreement shall be sent certified mail, return receipt requested to:

City:

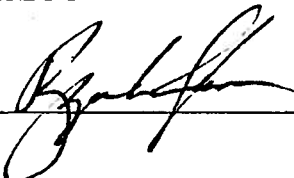
CCA: G.A. Puryear, IV
General Counsel
Corrections Corporation of America

10 Burton Hills Boulevard
Nashville, TN 37215

And Warden
Eloy Detention Center
1705 East Hanna Road
Eloy, Arizona 85231


18. No waiver of any breach of the terms or conditions of this Agreement shall be a waiver of any other or subsequent breach, nor shall any waiver be valid or binding unless the same shall be in writing signed by the party charged.

CITY OF ELOY

By:  _____

Date: 02/14/06

CORRECTIONS CORPORATION OF AMERICA

By:  _____
Damon T. Hininger, CCA Vice President
Federal Customer Relations

Date: 2/17/06

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Responses of the Affected Agencies

Comments on Agency Responses

We transmitted a draft of this report to the Department of Public Safety (PSD) and the State Procurement Office (SPO) on December 14, 2010. A copy of the transmittal letter to the interim director is included as Attachment 1. A similar letter was sent to the SPO administrator who opted not to respond. The interim director's response is included as Attachment 2.

To her credit the interim director is open to reviewing our audit findings and recommendations to improve the department's core function as a whole and the deficiencies in the Mainland and Federal Detention Center Branch. However, in her response the interim director misses the point in several key areas.

- With respect to our finding regarding misleading cost data, the interim director goes to great lengths to explain that the department took an average of its entire operational capacity in totality rather than breaking down each facility's actual population or a "snapshot of a particular day" because of the complexity in calculating all costs incurred per inmate per day. She asserts the department knows it is cheaper to house inmates on the mainland. But auditors are trained to ask: how do you know? We found the department does not know the true incarceration costs because it calculates in-state costs on the basis of total operational bed *capacity*. In comparison, the out-of-state costs are based on *actual use*, that is, actual head count. Lost in the director's discussion is a basic understanding of what the data is used for. For example, if the department provided cost per inmate day amounts on a per facility basis, a comparison of actual expenditures against appropriations across cost categories could be useful. By reporting inmate costs by jail or prison facility, the differences in facility requirements may be better captured and available for further analysis, planning, and decision making. Even though differences between Hālawā Correctional Center and Saguaro Correctional Center (SCC) in Arizona cannot be compared, the cost data would be useful to compare a facility against its own historical performance or compare specific cost components at a facility for best practices.
- The interim director reports that the department is working with the City of Eloy and the Corrections Corporation of America (CCA) to establish a separate agreement that will specify and

document the working relationship between the two parties. We see no point in doing so when the existing contract does not allow for further extensions and expires on June 30, 2011. Moreover, the SPO administrator has opined that using the City of Eloy as a pass through mechanism to contract with CCA circumvents the Hawai'i Public Procurement Code and is an inappropriate use of the inter-governmental exemption used by the department in the first place to avoid the competitive procurement process for its preferred prison vendor. Instead, the department should focus its attention on the request for proposal process similar to the competitive contracting process it properly followed to secure housing for its female inmates in Kentucky. More importantly, the director should seek guidance from the SPO administrator to better understand her responsibility when exercising her procurement authority because ultimately she is accountable for the spending of taxpayer dollars.

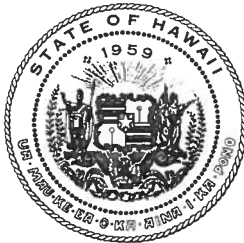
- Contrary to the interim director's statement that our audit team chose not to review the working files containing the contract monitoring team's written documentation, we did review those files on August 18, 2010 and in fact copied documents for analysis. We found that the contract monitors had performed very limited independent reviews of contractor testimony and documents, if they did any at all. The department has learned the importance of having an audit checklist in its contract monitoring in order to comply with the American Correctional Association auditing standards. The fact that we use different standards appropriate to our audit work does not excuse the failure of the monitoring team to test the reliability of testimony and documentation received from CCA during the site visit in July 2010. As the interim director pointed out, the department has yet to create policies and procedures to guide staff in their contract monitoring activities. Until the department does so, a checklist, no matter what its affiliation or certifying organization, will be of little value. As noted in our report, one of those contract monitoring procedures is the verification of contractor staff statements and assertions against documentary evidence.
- The interim director asserts that the Mainland and Federal Detention Center Branch administrator clearly understands the role of the position and is not a procurement specialist, which is the function of the purchasing and contracts office. If the branch administrator had received the SPO training for contract administrators, she would have learned that planning, procurement and contracting is a team process that involves the contract administrator from the beginning. The SPO's training handout on contract administration defines the role of the

contract administrator as the one who: manages the day to day oversight; is the expert regarding contract requirements; is the point of contact for correspondence; provides technical guidance to contractor and users; maintains the file and documentation; ensures the goods/services are received; and is responsible for ensuring other team members are informed of significant events, issues/problems. According to the SPO, good contract administration ensures that the procurement process results in the organization getting what it pays for and is one of the biggest areas that could be improved for most government agencies. Due to her lack of training, the branch administrator blindly treated CCA as a government agent for the City of Eloy instead of seeking guidance from the SPO when problems arose.

Finally, we corrected on page 19 of our report the total number of uniformed staff (including correctional officers) at SCC from 96 to 226 on clarification of definitions in CCA documents. Subsequent to our fieldwork, we learned that one correctional officer was hired after an incident in July to increase the uniformed staff to 227. The correction does not change our finding that a true cost comparison of inmate per day costs for male medium security prison inmates could not be performed because of differences in the building design that drive staffing needs, the program offerings specifically needed at each location, and the level of medical and other services provided.

We share the interim director's bewilderment over the lack of cooperation our audit team received from the department throughout the audit process, and we, too, look forward to an improved relationship.

STATE OF HAWAI'I
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawai'i 96813-2917



MARION M. HIGA
State Auditor

(808) 587-0800
FAX: (808) 587-0830

December 14, 2010

COPY

The Honorable Jodie Maesaka-Hirata
Interim Director of Public Safety
919 Ala Moana Boulevard
Honolulu, Hawai'i 96814

Dear Ms. Hirata

Enclosed for your information are three copies, numbered 6 to 8, of our confidential draft report, *Management Audit of the Department of Public Safety's Contracting for Prison Beds and Services*. We ask that you telephone us by Thursday, December 16, 2010, on whether or not you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Tuesday, December 21, 2010.

The State Procurement Office, Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this confidential draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marion M. Higa".

Marion M. Higa
State Auditor

Enclosures

NEIL ABERCROMBIE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

ATTACHMENT 2

JODIE F. MAESAKA-HIRATA
INTERIM DIRECTOR

Deputy Director
Administration

Deputy Director
Corrections

Deputy Director
Law Enforcement

No. 2010-2334

December 21, 2010

Ms. Marion Higa, State Auditor
Office of the Auditor
465 S. King Street, Room 500
Honolulu, Hawaii 96813

RECEIVED

2010 DEC 21 PM 3: 22

OFC. OF THE AUDITOR
STATE OF HAWAII

Dear Ms. Higa:

Thank you for the opportunity to respond to the audit conducted by your Office on *the Department of Public Safety's Contracting for Prison Beds and Services*. I would also like to thank your staff, Ms. Kathleen Racuya-Markrich and Ms. Tricia Oftana for providing the Department and I a second exit meeting as the new Interim Director.

As the new Interim Director of the Department of Public Safety (PSD), I will be reviewing the cited *Prior audits* to utilize as additional information to address as I review the Department's management, budgetary, security, operational, programmatic and overall health and safety needs. To begin with, I am currently reviewing the financial accounting and internal controls practices of the Department to determine how best to address the financial crisis that we are in. The *unusual patterns of sick leave and overtime costs* are currently being reviewed with the implementation of the New Attendance Program for the Adult Corrections Officers (ACOs), which began on September 1, 2010. We will be meeting shortly with all the Wardens for their first three-month review to determine the program's impact on lowering the sick leave of the ACOs as it relates to costs of overtime (OT). If it is determined that this Memorandum of Understanding (MOU) with the United Public Workers (UPW) has created a significant amount in saving of OT costs and/or has reduced sick leave, the Department will seek to continue this program.

Second, the Department is diligently working towards collecting the overpayments made to staff. The current problems for collection are related to staff that are no longer employed by the Department (e.g. separation from service which includes discharge, retirement, death, no forwarding address, etc.). Please note that employees who are currently employed by the Department have been contacted and are processed for repayment as soon as we are informed about the situation.

Third, the Department has recently implemented a new Inmate Classification System that we are confident will address the classification issues for offenders. The goal of this new classification instruments will assist the Facilities' in determining the offenders' proper placement not only based on scheduled release dates, but on programmatic needs as well. Although it may have appeared that many of the offenders' have been previously misclassified, exceptions to their custody may have been granted due to exemplary behavior and need for community reintegration services.

Fourth, due to the volume of offender grievances and the lack of appropriate staffing based on budgetary constraints, the Department is be working on re-establishing abolished positions to address this matter. We will also be looking to determine if pooling of resources can address the matter on a temporary basis. We will need the Legislature's assistance in re-establishing positions and funding to adequately address these matters.

The Department is working diligently to address the Health Care/Mental Health and Dental needs of the offenders. We will be seeking the Legislature's assistance in funding to fill already established positions. Due to the State's financial crisis and limited financial resources the Department does not have sufficient funds to recruit Doctors and/or Mental Health Specialists such as Psychiatrists, Psychologists, Psychiatric Social Workers, Physical Therapist, Occupational Therapists, Nurses, Health Aides, etc., competitively in the employment world.

In response to the Scope of Methodology in relation to the auditor's report in which your Office utilizes the Manual of Guides, the Department would like to acknowledge for the record that the Mainland and Federal Detention Center Branch (MFDCB) utilizes the National operational standards of the American Correctional Association (ACA) standards when conducting its audits of the Mainland Facilities. Thus, this may have caused the disparity in both findings.

Again, I am unclear as to the rationale why the Auditor's Office was unable to speak to PSD's Management Information System (MIS) Administrator regarding the use of Offendertrak. Note that this program and software was in existence before the last administration, thus, making the MIS Administrator and his staff the experts on the matter.

I am a little perplexed by the lack of cooperation your Team received. The Department will take this process as a measure of where the PSD's MFDCB deficiencies are and use it as a tool to improve upon. As such, I will be utilizing this Audit Report as a means to improve the PSD's standing with your office, the Legislature and more importantly with the community.

In reviewing **Chapter 2: Management Evades Accountability for Prison Costs and Contracts**, it was found that the Supplemental Contract No.6 to Contract 55331, dated, June 16, 2009, which was also reviewed and signed by the Attorney General (AG) was with the City of Eloy (COE) and noted the Corrections Corporation of America (CCA) as the Provider's Administrator. Contract NO. 55331 (dated, June 30, 2006) clearly denotes that CCA, *its administrator of inter-governmental services agreement* of COE. Pages 5 and 6 of this signed and notarized contract (by PSD, COE, CCA and the AG) shows that COE has acknowledged that CCA as its Provider's Administrator. Moreover, this contract has been provided to the State's Procurement Office (SPO) without any complaint about circumvention of the procurement process. As such, PSD will be reviewing its practice on contract implementation to ensure such violations do not occur. At present time, the MFDCB Administrator is working with the City of Eloy to address the Auditor's concern to ensure that PSD meets the requirement of SPO and the Auditor's **Manual of Guides**.

In addition, PSD will be reviewing all administrative rules, practices, and existing policies as it relates to the MFDCB to ensure that we are in alignment with Hawaii's Public Procurement Code and formulate clear objective performance evaluations for correctional services based on National operational standards from the American Correctional Association.

Although I am unable to directly answer for the past administration on *ignored oversight responsibility to administer contract for the care and custody of inmates housed in out-of-state facilities*, PSD is now working towards properly preparing and educating operational staff to address private prison beds beyond June 30, 2011 (if needed). This includes but is not limited: training on procurement process by SPO, working directly with the Attorney General's Office on clear contract language, addressing PSD policies and practices on the use of private prison contractors, creating objective performance measures and evaluation system by aligning PSD with the standards of ACA for operational purposes and the Auditor's *Manual of Guides* for financial and procurement purposes.

RESPONSE TO THE DRAFT MANAGEMENT AUDIT OF THE DEPARTMENT OF PUBLIC SAFETY'S CONTRACTING FOR PRISON BEDS AND SERVICES

Prison Overcrowding Cannot Be Addressed Since True Incarceration Costs Are Unknown:

Upon reviewing total expenditures for fiscal year 2010, it was found the Auditor's report stated PSD purposefully skews reporting of in-state costs. It does not clearly explain the Department took an average of its entire operational capacity's average rather than a snapshot of a particular day to meet the requirements of the Auditors' report. As one may imagine, a snapshot of one day may not be reflective of the next as the jail population is very transient making it difficult to determine the cost per inmate per day as releases may occur at anytime of the day or night. Thus making a difference in cost per inmate (e.g. # of actual meals served, healthcare costs, program

costs, etc.) rapidly changing the Department's average. A clear example would be the Oahu Community Correctional Center (OCCC). An offender may have received medical care, medication, breakfast, attended a program, etc., before heading to court on any given day. This same offender is fed lunch at the Sheriff's Cellblock for arraignment, trial, etc., and then is released by the Court during the last hearing session. Now, his/her day's costs incurred an additional meal, ACO transport and supervision and needed medication because s/he maybe homeless and is entitled to a ten-day supply of medication to ensure that s/he is able to obtain needed mental health services, once again driving up costs. Below is a snapshot of one day and the difference in costs from the Operational Bed Capacity versus the costs based on Total Population based on FY 2010 total expenditure of \$167,539,688.

Population as captured on November 8, 2010

Facility	Operational Bed Capacity	Total Population	Male	Female
Hawaii CCC	226	330	288	42
HCF-SNF	132	114	114	
HMSF	992	861	861	
KCCC	128	137	109	28
KCF	160			
MCCC	301	371	314	57
OCCC	954	1086	975	111
WCCC	260	299	299	
WCF	334	220	220	
Total	3487	3418		

Total Expenditure for FY 2010: \$167,539,688/ 3487 inmates = \$ 48,046 per year
 \$48,046 per year/ 365 days= *\$131.63 per day per inmate average

* Denotes costs before closure of Kulani Correctional Facility on September 17, 2010

Still utilizing FY 2010 Expenditures:

Total Expenditure for FY 2010: \$167,539,688/ 3418 inmates = \$ 49,017 per year
 \$ 49,017 per year/ 365 days= *\$134.29 per day per inmate average

- Denotes costs before closure of Kulani Correctional Facility on September 17, 2010 and includes Administrative and Program Services Costs

- *Please note that I utilized the date of November 8, 2010, as it is the date in which I presented Governor Neil Abercrombie with on November 27, 2010 as snapshot of the Department's population by Operational Beds and actual population count.*

Cost per inmate day calculation methods lack comparability:

The Department did not utilize the number of inmates in the costs reported because there are costs (e.g. staffing, food, healthcare, dental, mental health, programs, operations, maintenance, etc.) that changes daily by the number of offenders housed and the costs encumbered to operate a facility on a daily and monthly basis. As stated earlier, the difficulty in this is the four Community Correctional Centers (Oahu, Kauai, Maui, Women's). Their populations change on a daily, sometimes hourly basis due to the jail populations (e.g. those who get bailed out soon after arraignment, those who get released on their own recognizant, those who come in for the weekends, etc.) as the dynamics of each individual's case is unpredictable. At present time, PSD would not be able to provide an accurate cost per day per inmate for November 8, 2010, as not all actual encumbrances would have been paid for by December 8, 2010. In short, vendors often provide bills months after a delivery, food prices change constantly (e.g. fresh vegetables, delivery, stable items such as paper products, etc.), water, sewage and electric bills fluctuate based on use and may also vary based on how the product is obtained, cost of medically caring for an offender (e.g. one who is healthy and needs little medical maintenance versus one who has a terminal condition versus someone who has high mental health needs), the list can go on. The Department provided a simple calculation to both the Auditor's Office and State Legislature, as it could not articulate the complexity of calculating a given day.

I believe that the Department could have provided the Auditor's Office and Legislature a closer breakdown by Facility of costs per inmate based expenditures for FY 2010 in relation to both Operational Beds and Total Population for a date such as June 30, 2010 or in April 2010 when this process began. Comparatively speaking, the Halawa Correctional Facility's expenditure of \$29,672,225 (Note this includes only personnel and operating budget and does not include Administrative costs, such as that for personnel who process hires for HCF, training of recruits and/or staff, fiscal processing, etc. and/or Program Services, such as Corrections Program and/or Healthcare costs. Based on operational beds HCF cost per inmate would be: \$72.20 per day (based on the Operational Beds of 1,124 offenders) with an additional \$35 for Program Services and an additional \$7 per day for Administrative costs totaling \$114.20 a day for an offender at HCF. This would be the most reasonable comparison of cost by Facility to the Mainland Facilities as Arizona secures the majority of Hawaii's medium custody offenders. Although they also secure minimum and community custody offenders, it is reasonable to compare this to HCF as there are individuals housed at HCF who are minimum and/or maybe qualified for community custody that are unable to participate in transitional minimum and/or community program due to health, mental health, behavioral and/or safety restrictions (e.g. Offender has requested Protective Custody, high profile cases in which the Department may have received actual threats of harm against the person, etc.).

The use of the Total Population of 975 offenders on November 8, 2010 with the calculation from FY 2010 for HCF's total expenditure of \$29,672,225 would result in the following cost per offender per day: \$83.23 with an additional \$35 for Program

Services and an additional \$7 for Administrative Services resulting in a cost of \$125.23.

Hence, the comparison between a Mainland bed and a HCF bed would be as follows:

MB:	\$62.73	HCF (Operational Bed 1124):	\$114.20	State Saving	\$51.52 a day
MB:	\$62.73	HCF (Total Population 975):	\$125.23	State Saving	\$62.50 a day
FDC:	\$89.18	HCF (Operational Bed 1124):	\$114.20	State Saving	\$25.02 a day
FDC:	\$89.18	HCF (Total Population 365):	\$125.23	State Saving	\$36.07 a day

I am unclear what information was requested to the past administration by the Auditor's Office and/or the Legislature in terms of cost breakdown, however, the Department is willing to provide a breakdown of total Fiscal Year expenditure by institutions and can provide an average cost of Program and Administrative Services that would be additional to the per day cost per offender as each institution does not control those costs (e.g. personnel costs for program and/or health care staff, contracts, administrative, operational, maintenance, food, treatment services, etc.). Please note PSD would need additional time to collect and process this information with the understanding it would be related to the past Fiscal Year based on the inability to take a current day's cost due to possible delays from vendors in processing their billing statements and the limited amount of Administrative staff (due to Legislative cuts and State budgetary restrictions) available to process the information immediately. Given the calculations above, the State of Hawaii would save approximately \$2,224,187.50 per year if the 975 offenders incarcerated at HCF were placed in Arizona.

It is also noted that FDC's costs can be compared to both the OCCC's and Women's Community Correctional Center's (WCCC) costs per day as the Department has utilized it for the overflow of both men and women who fall in the realm of the jail population.

The average cost for OCCC (Operational Beds) per offender per day in FY 2010 was \$104.36 plus the \$35 a day Program cost and the additional \$7 a day for Administrative costs, yielding a total of \$146.36 a day with an overall cost saving to the State of \$57.18 per day. Based on the Total population on November 8, 2010 utilizing the FY 2010 expenditure the average per day for OCCC would be \$91.67 a day, the \$35 a day Program cost and the additional \$7 a day for Administrative costs, yielding a total of \$133.67 a day with an overall cost saving to the State of \$44.19 per day. This costs out to \$4,403,312.55 per year for the 273 male offenders.

The average cost for OCCC (Operational Beds) per offender per day in FY 2010 was \$90.81 plus the \$35 a day Program cost and the additional \$7 a day for Administrative costs, yielding a total of \$132.81 a day with an overall cost saving to the State of \$43.63 per day. This costs out to \$4,347,511.35 for the male offenders. Based on the Total population on November 8, 2010 utilizing the FY 2010 expenditure the average per day for WCCC would be \$79.97 a day, the \$35 a day Program cost and the additional \$7 a day for Administrative costs, yielding a total of \$120.97 a day with an

overall cost saving to the State of \$31.19 per day. This costs out to \$1,047,360.20 savings for female offenders per year.

Although it appears that PSD's calculations are flawed, the estimated costs savings for the State of Hawaii to utilize Mainland and Federal Detention Center Beds equates to the following:

1906 Male offenders (as of November 8, 2010) in Arizona X 365 days a year X \$62.50 Cost Savings per offender by Total Population= \$43,366,562.50 per year. For FY 2010, the State of Hawaii paid \$44,752,651 to CCA. The amount would have nearly doubled had the 1906 male offenders been in Hawaii in FY 2010.

On a final note within this section, the Auditor's report should be corrected on page 19, paragraph 4 as Saguaro Correctional Center (SCC) has a total of 227 Corrections Officers. The report reflects *96 operational security staff*. This oversight maybe due to the Corrections Officer staffing levels that were built into the Unit Management Section at SCC.

Flawed methodology results in artificial cost reporting:

On page 18 the audit states, "the department ignores the fact that the actual number of inmates is the driver of costs." From the outside looking in one would see this as true, however, due to the complexity in calculating all costs involved in the actual cost per day per offender, the Department utilized a simplistic calculating measure by utilizing its Operational Bed Capacity in totality rather than by breaking down each Facility's actual total population to derive its computation. PSD took the average of its Operational Bed costs and factored in the average Program Services and Administrative costs for each inmate. Program Services were broken down by Facility as well; however, this may not be an accurate account due to the budget constraints throughout the State. A clear example would be the pooling of resources from allotments made for food service per facility or education staff being utilized in multi-Facilities to ensure services are rendered, etc. This would include healthcare costs as well. Many of the doctors service more than one Facility, however, their personnel cost maybe assigned through the Healthcare Division to one site. Thus, making it clear that PSD must review its numbers and calculations by Facility to provide a clearer view of what methodology is utilized and how the calculations are derived.

On page 19 the Audit states, "there is no share of administrative expenditures allocated to the mainland or FDC calculations." PSD will be reviewing this methodology to determine an accurate amount to be added to the cost of the Mainland and/or FDC bed amounts. There are, administrative costs added into the Mainland contract, such as health care, program services, and budget, etc.

It is also noted that the past Director indicated that the Auditor used comparability calculations from Florida versus a smaller State like Rhode Island or Delaware with similar populations sizes. This will also be reviewed by the Department for comparability purposes.

Management fails to utilize available tools for accurate data collection:

When the Offendertrak management program was initially purchased in 1999, it purchased modules that would identify an inmate, the inmates' sentencing structure, intake/booking dates, confinement and release dates, classification, sentence computation, movement/ facility transfer and tracking and offender picture uploads. Shortly thereafter, the Department purchased Incident/Grievance modules, role-based security, enhanced line-up capabilities and interactive documents (used for staff ID's). Most recently, the Department has upgraded Offendertrak's inmate's classification module. Additional modules added to the Offendertrak program are additional costs. The recent upgrade for the classification module cost the Department approximately \$600,000 to implement. To date, this is not the final cost as glitches in the system are still being identified and corrected with the vendor. Moreover, the Department's current computer system being utilized by staff is old, outdated, and unable to process the full data capacity of the new upgrade. The cost of this recent upgrade requires the Department to spend an additional estimated \$300,000 to purchase new hardware (computers); the additional cost of software to support this new module is not included in this estimate.

The Department acknowledges that Offendertrak has the capability of performing many functions such as inmate program participation tracking, health care assessments and medical conditions, visitations, work release or work furloughs, commissary purchases and inmate trust account balance information. However, the Department will need additional funds from the Legislature to: purchase additional features/modules for Offendertrak from Motorola, hire administrative and operational staff to assist with the implementation of the new features, input data, update data, and maintain this management system. Until we are completely automated, manual: inmate records, healthcare records, case management reports, etc., are still being utilized in our Correctional Institutions.

Department fails to use cost information for management decisions:

The responses that were given by the past PSD Administration, as a "quick and dirty approach" does not represent the New Administration's methodology. The Department knows it is less expensive to house inmates on the Mainland and that has driven several decisions because of the lack of sufficient resources here. This includes the overall cost of living in which the Missouri Economic Research and Information Center ranked Hawaii as number 51 (all States inclusive of the District of Columbia) being the State with the highest cost of living. It was noted that Arizona was ranked 36th in this study (www.missourieconomy.org/indicators/cost_of_living/index.stm).

The Department supports the newly elected Governor in returning all the offenders back to Hawaii as soon as possible. However, the Department's biggest obstacle still remains a lack of appropriate bed spaces in our existing Institutions, community, and other related programs. It is our hope that the Hawaii State Legislature will authorize the funding for additional prison and community beds in Hawaii. It is clear many of our

Institutions are in very poor condition based on old infrastructure; poor design and flawed conceptions that the State does not need a new prison. This may not be environmentally sound to many, however, by State and Federal Laws we are still bound to incarcerate those who violate the law and are sentenced to jail or prison time. It is the goal of the Department to ensure that the offenders are incarcerated humanely with the least restrictive means conducive to learning, growing, changing to become productive citizens of Hawaii.

Funding is ensured by State policy on prison overcrowding:

The Department does not operate under the assumption that funding from the Legislature will be available for the continued use of CCA facilities to alleviate overcrowding. The Department realizes if funds become unavailable, its only alternative is to return all 2,000 inmates back to Hawaii and place them in existing facilities thereby; risking a Federally imposed Consent Decree in which the Department worked tirelessly to be free from. The Consent Decree created many new positions, added additional funds to programs, bed space, however, due to the State's decline in the economy the State Legislature has not been able to assist the Department in providing adequate funding to accommodate the offenders in Hawaii. Governor Abercrombie could impose an Emergency Release by orders from his Office with specific criteria of the type of offenders to be released, however, this becomes a no-win situation as many of the offenders identified by the Department for emergency release based on time left on their Court imposed sentence maybe in the midst of completing needed treatment and/or educational programs that would assist in their ability to successfully transition back into the community.

The Department acknowledges that sending inmates out-of-state was the rationale until a permanent solution to the problem of overcrowding can be addressed or until other secure facilities were built. In 1998, under the former Governor Benjamin Cayetano and former Director Keith Kaneshiro, there was strong support to build a prison in Ka'u on the Big Island. However, it was cancelled when the Ka'u community voiced their concerns over having a medium-security facility built in their community. Unfortunately, that was the last serious attempt to build a secure correctional facility for the return of the out-of-state population. Currently, the Department is in the design and planning phase of the Maui Regional Public Safety Complex with the Department of Accounting and General Services (DAGS) and other contracted agencies as well as community groups. According to DAGS, the cost of the project is estimated at \$235,000,000. DAGS is currently working on a Request for Information (RIF) for private funding, however, it would not preclude the State Legislature from supporting this project. This estimated cost is just for the build and not for the cost of staffing, programming, operational and/or administrative line items. It is hoped that both the Governor's Office and PSD can partner in submitting a Concurrent Resolution for the upcoming 2011 Legislative Session to document the Legislature's commitment to funding this project in addition to its six-year plan and request for appropriations.

Safeguards in contracts fail to protect State's interests:

As documented on page 28, the Department is clear in its general conditions that payment is "...subject to the appropriation of state funds, and may be terminated without liability to either the Provider or the State in the event that state funds are not appropriated or available." It is also clearly stated that the Provider (City of Eloy) has appointed Corrections Corporation of America as its Provider's Administrator as noted in Contract 55331. All parties have agreed to the State's termination without liability clause in the event that funds are not appropriated or available.

Written permission from the State of Hawaii with the County of Eloy to subcontract with CCA is currently under review by the Department. Once again, it is noted that in the signed Contract 55331, there is clear documentation that the County of Eloy has named CCA as its Administrative Provider for the PSD. Moreover, the Department is in the process of having the County of Eloy address the Auditor's concern by clearly documenting and spelling out its subcontract with CCA to oversee the Hawaii inmates.

Misuse of procurement exemption benefits vendor:

It was never the intent of the Department to maliciously or intentionally misuse and/or circumvent the procurement exemption. As stated in the report, the State's Procurement Office does not have administrative rules or procedures for applying the exemption or defining government-to-government transactions. The Directors' of the PSD, both past and present, have the discretion to apply a procurement exemption for government-to-government transactions under Section 103F-101(a)(2), HRS. The use of inter-governmental agreements to secure out-of-state facilities services have been used for the past 15 years and each agreement has gone through legal reviews by both the State's Attorney General's Office and Provider's legal division to ensure that there are no County, State, and Federal law violations.

While the Department acknowledges the Request for Proposals (RFP) is its other option, the Department has not received any documented issues of concern from the State's Chief Procurement Officer regarding the inter-governmental agreement established with the County of Eloy prior to this audit. Although the State's Chief Procurement Office concurred with the Auditors' conclusion in this matter, the State Procurement Office was aware that the Department was utilizing the intergovernmental agreement process as it had been doing for the past 15 years.

The Department's Procurement Officer who was recruited from the State Procurement Office has been instrumental in reviewing and processing the inter-governmental agreements and has obtained advisement on several different issues that have come up in the past from SPO and the Attorney General. All contracts and agreements must be processed through this office prior to final execution by the Department, the Attorney General and its vendors.

Vendor as agent is a fiction:

The Department is unclear of what the title of this section means. The Department acknowledges that there is no separate agreement between the City of Eloy and the Corrections Corporation of America, however the Provider's Acknowledgment and the Provider's Administrator's Acknowledgment was viewed as a binding agreement between the two entities. At the time of executing the agreement, as in executing agreements in the past, both parties did not believe a separate agreement was necessary since it is clearly stated in the inter-governmental agreement that the City of Eloy is the "Provider" and it has selected Corrections Corporation of America as it's "Provider's Administrator". This practice is currently being addressed and corrected by the County of Eloy and CCA. In light of this concern, the Department is working with the City of Eloy and the Corrections Corporation of America to establish a separate agreement.

The Department will also review the recommendations of the Auditor to create policies and procedures for the Purchasing and Contracts Office and the Mainland/FDC Branch.

Managements' lack of policies and procedures hampers effective contract administration:

The Department will review the recommendations of the Auditor to create policies and procedures for the Purchasing and Contracts office and the Mainland/FDC Branch as well as for future establishment of other contracts.

It has been openly discussed that the Department needs additional procurement specialist positions to assist in the overwhelming workload of processing contracts in a timely basis. We agree that proper planning is crucial in all procurements especially in RFPs that can take a lot of time to process. As the Department has only two positions (Procurement & Supply Specialist IV and I) in its Purchasing and Contracts Office that handles all contracts, intergovernmental agreements, and RFPs, for the entire Department, it is our hope the Legislature will allow the establishment of four additional positions. It is noted that currently the Department's Procurement Specialist oversees over 230 contracts.

Department officials have not decided how to execute new agreement by end of year:

Prior to the former Administration leaving office in November 2010, former Director Clayton Frank directed the Institutions Division Administrator and the Mainland/FDC Branch Administrator to move forward with the RFP process. The Department is currently working on an RFP for out-of-state prison services. In addition, in effort to address identified procurement concerns by the Auditor's Office, the MFDCB is working with the County of Eloy and CCA to establish a solidified written agreement between the two entities.

Contract administrator lacks objectivity when monitoring private vendor:

The Department's Mainland Branch was created utilizing the State of Oklahoma's Department of Corrections Private Prison Administration as its model since the idea of "contract monitoring of private prisons" was new to the State. Oklahoma's Private Prison Administration created a contract monitoring manual and a compliance checklist based on its contract with its private prison vendors. Due to the positive relationship the Department's former Director Ted Sakai had with the Private Prison's Administrator through the American Correctional Association (ACA), the Department was allowed to hire one of Oklahoma's contract monitor as PSD's on-site monitor for male and female inmates housed in private prisons in Oklahoma.

During this time, the Department learned the importance of having an objective monitoring audit checklist based on scope of services in its contracts and being in compliance with the American Correctional Association (ACA) national auditing standards as the State's contracted facilities are nationally accredited. Although the Department changed its previous practices of monitoring its private prisons based on national correctional auditing standards, we have yet to create policies and procedures in this area.

The branch administrator has been instrumental in assisting other states such as California and Arizona in the creation of their contract monitoring services branch. In addition to receiving administrative guidance from the State of Oklahoma, the branch administrator has received administrative guidance from the State of Alaska in contract monitoring of correctional standards. The branch administrator has also made contact with the Department's Inter-State Compact State representatives and the Bureau of Prisons on the ever-changing correctional trends on the national level to ensure that our offenders receive the best care and programs for the money that the State spends annually. The branch administrator confers with correctional peers in comparing contractual agreements, contract language, and per diem prices. Other states often contact the MFDCB Administrator for the same type of information to ensure that a level decency is kept in pricing.

Oklahoma's Private Prison Administrator used to query all the States for per diem rates of its private prison vendors, however, since he retired, the report no longer exists as the branch administrator shared with the auditor.

The Mainland Branch audit members conduct performance-based audits on the facility's operations based on the scope of services in its agreements that are identical to the way the American Correctional Association (ACA) conducts its national accreditation audits. Formerly assigned as the Halawa Correctional Facility's ACA accreditation officer for the Residency Section, the branch administrator ensures that the team of subject-matter experts are advised to review the State's agreement, the facility's policies, then obtain written documentation to show that the facility is in compliance or non-compliance. Although the auditors observed and reported otherwise, the audit team members returned from their audit with written documentation to support their compliance findings that is held in our working files.

We fully understand that interviews with inmates and staff are usually the least effective means of monitoring a facility. Thus, it is crucial to review written documentation to support their claims and statements. Interestingly, the auditor was given access to these working files for review and did not do so.

The Department acknowledges that the auditing standards of the State Auditor and of the Department's Mainland Branch are entirely different which was the primary concern of the former Director during the initial audit meeting. While the State Auditor based its findings on the Office of the Auditor's Manual of Guides and generally accepted government auditing standards including the best practices of the State's Procurement Office, the Department audits are based on the American Correctional Association (ACA) national auditing standards which covers every aspect of correctional facility operations and is considered the national benchmark for correctional facilities in the United States. The U.S. Courts refer to these national correctional standards for guidance.

Conclusion:

The branch administrator's position is to ensure compliance in the State's contracted services such as health care, programs, food service, etc. The branch administrator is responsible for developing the contract's scope of services and for ensuring that the inmates are receiving the services that the State is paying for. The branch administrator clearly understands the role of the position and is not a procurement specialist, which is the function of the Department's Purchasing and Contracts Office.

The MFDCB administrator has made changes to the branch's practice of verifying invoices with daily inmate head counts as recommended by the auditor. Further, the Department will work on creating policies and procedures, appropriate training, and intends to request Legislative support for additional positions for its Purchasing and Contracts office, and for additional institutional prison bed space and for program bed space in the community.

The PSD plans to work progressively to address the Auditor's concerns in effort to improve its overall functioning as a whole.

Thank you again for allowing the PSD to respond to the Auditor's report and findings. Should there be any further questions and/or concerns, please feel free to contact me at (808) 587-1350.

Sincerely,



Jodie F. Maesaka-Hirata
Interim Director