

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION OUT  
OF STATE PRISON PROGRAM  
BACKGROUND**

Governor Schwarzenegger declared a state of emergency in the prison system on October 24, 2006, citing severe overcrowding as a threat to health and safety in 29 of the state's 33 prisons. The declaration allowed the California Department of Corrections and Rehabilitation (CDCR) to contract for out-of-state prison facilities without complying with Government Code and Public Contract Code requirements for competitive bidding. The emergency declaration remains in effect.

CDCR began the out-of-state prison program by transferring inmates who agreed to be shipped to facilities outside California. State law prohibited the department from sending inmates out of state without their consent. AB 900, which was approved by the Legislature and signed by the Governor in 2007, authorized CDCR to transfer inmates to out-of-state facilities without their consent, however. The legislation gave CDCR the authority to conduct involuntary transfers until July 2011.

In discussions with the Legislature and in press releases, CDCR stated it would seek to transfer up to 8,000 inmates to out-of-state facilities. The Department now has a contract in place to send 10,468 inmates to out-of-state facilities by 2011.

CDCR developed emergency regulations that were adopted in March 2009 – three years after they began transferring inmates - outlining the inmate transfer process. Inmates eligible for transfer are those that have not less than six months but no more than 30 years of remaining time in prison and are minimum or medium security level inmates. Most inmates are sent for a three-year period.

Inmates with serious medical, dental or mental health conditions are not eligible for transfer, and all of CDCR's decisions on which inmates to transfer are reviewed by the Federal Health Care Receiver, which has the authority to deny the transfer of any inmate.

This year, the Schwarzenegger Administration will seek authorization to continue the involuntary transfer of inmates to out-of-state facilities beyond 2011, as called for in AB 900. The Administration also plans to expand the program to meet the demands placed on it by the panel of federal judges that has ordered the state to reduce its prison population. In its filing in U.S. District Court in November 2009, the Department of Corrections and Rehabilitation states that it will seek at least 1,500 more out-of-state placements beyond what it is currently contracted to send. On January 12, 2010, the three-judge panel accepted the Administration's proposal for inmate reduction, although the plan will not go into effect until the U.S. Supreme Court has determined whether it will review the overcrowding case. That decision is anticipated in the next few months.

Attachments:

- CDCR press release stating its plan to send 8,000 inmates out of state.
- Administration filing with the three-judge panel stating it will seek at least 1,500 more out-of-state beds.

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION OUT-OF-STATE PRISON PROGRAM  
PROCUREMENT PROCESS**

Under the authority of the Governor's declaration of emergency, the Department of Corrections and Rehabilitation has never conducted a formal competitive bidding process to procure out-of-state prison beds. Instead, the Department has entered into multiple agreements with one provider, Corrections Corporation of America (CCA), which have grown from an initial \$22.9 million contract in October 2006 to an amendment signed in October 2009 that increased the value of the contract to approximately \$700 million. CDCR's agreements with CCA mean it will pay the company at least \$196 million annually.

The Department has conducted four informal, Request-for-Information (RFI) processes, which allow entities to submit information, including costs, to the Department for consideration. Through this process, the Department has received numerous responses from local and state governments and private companies. In 2006, the Department signed contracts with both CCA and another company, Geo Group, to house California inmates, but Geo Group instead chose to transfer inmates from another state to their Indiana facility. Geo Group has subsequently submitted responses to the state to house inmates in other facilities.

Below is a summary of the Department's contracts and amended contracts with CCA, information regarding the Request-for-Information process and the some of the responses the Department received, and potential concerns the Committee has with conducting informal Request-for-Information processes instead of a formal competitive bidding process. This information is based on documents provided to the Committee by the Department and interviews the Committee conducted with Department officials.

**CCA Contracts**

- October, 2006: The Department entered into a contract with CCA valued at a maximum of \$22.9 million that called for transferring about 1,000 inmates to CCA facilities. CCA earns \$63 per day per inmate.
- January, 2007: The contract is amended to transfer inmates from one facility to another for a total of 1,008 inmates, and the contract's value is increased to a maximum of \$90 million. CCA continues to earn \$63 per day per inmate.
- January 2008: The Department signs a new contract with CCA that supercedes all other contracts and amendments. The contract, through 2011, is valued at a maximum of \$605 million for 7,772 inmates. CCA's costs are \$63 per day per offender at four facilities through November 2009, and then rise to \$65 per day per offender from November 2009 through June 2011. At one other facility in Arizona, CCA is charging \$72.38 per day per offender.
- January 2008: The contract is expanded to include one more facility and 360 more inmates, for a total of 8,132 inmates and a maximum value of \$632 million. Rates remain the same as agreed to in the previous contract.
- October 2009: The contract is amended to include the transfer of more than 10,468 inmates. CCA's costs at three facilities will remain at \$63 per day per offender, instead of rising to \$65 as previously negotiated. Costs at one facility will fall to \$61, while costs at the facility with the most inmates remains at \$72.38. Approximate value of CCA's contract is

\$700 million through 2011. *Note: The final amendment does not include a total value of the contract, so the Committee estimated the total value.*

It should be noted that the above costs do not include transporting inmates from California to out-of-state facilities. CDCR's contracts with CCA call for the company to arrange transportation for inmates and then bill the Department. CCA uses a subsidiary company, TransCor, to transfer inmates. The Committee has asked the Department to provide information about how much CCA and its subsidiary earn in transportation costs.

### **Request-for-Information process**

The Department has conducted four RFIs since 2006 regarding out-of-state prison facilities: one in July 2006, one in October 2007, one in August 2008, and one that was just completed. Each RFI has differed slightly, but typically the Department has asked for information such as cost, number of beds available and when they are available, security level of the facility, and proximity to metropolitan areas.

Responses have come from various entities, including cities, counties, states, and both small companies and larger, publicly-traded companies. Costs have ranged dramatically. Below are sample responses from each of the first three RFIs, followed by the action taken by CDCR:

<b>2006 Responses</b>					
<b>Entity</b>	<b>Beds available</b>	<b>Cost</b>	<b>Location</b>	<b>Security Level</b>	<b>When Available</b>
Lowndes County	16	Not Requested	Alabama	Minimum/Medium	Not Requested
Civigenics	450	Not Requested	Arizona	Minimum	Not Requested
Alameda County	375	Not Requested	California	Minimum/Maximum	Not Requested
Park County	250	Not Requested	Colorado	Minimum/Maximum	Not Requested
Geo Group	1360	Not Requested	Indiana	Medium	Not Requested
LCS Corrections, Inc.	1000	Not Requested	Lousiana	Minimum/Medium	Not Requested
Cornell	800	Not Requested	Oklahoma	Minimum/Medium	Not Requested
CCA	700	Not Requested	Oklahoma	Minimum/Medium	Not Requested
Johnson County	484	Not Requested	Texas	Minimum/Medium	Not Requested

*CDCR signed contracts with CCA and Geo Group in October 2006. Geo Group later backed out of its contract. CDCR amended and expanded its contract with CCA in January 2007; the value of the contract at that point was \$90 million. CCA earned \$63 per day per inmate, based on the original contracts.*

2007 Responses					
Entity	Beds available	Cost	Location	Security Level	When Available
CCA	2592	\$63	Mississippi	Medium	Aug-07
CCA	640	\$63	Arizona	Medium	Sep-07
CCA	1440	\$63	Oklahoma	Medium	Dec-07
CCA	3060	\$72.38	Arizona	Medium	Jul-08
Geo Group	770	\$65	Texas	Medium	4th Quarter 2007
Geo Group	632	\$65	Texas	Medium	3rd Quarter 2008
CCA	720	\$71	Tennessee	Medium	18 mos. after contract
Cornell	1140	Not disclosed	Colorado	Medium	2009
Cornell	922	Not disclosed	Texas	Medium	Immediately

*CDCR signed a new contract with CCA in January 2008 worth a maximum of \$605 million. CDCR agreed to pay CCA \$63 per day per offender at four facilities through November 2009, with costs then rising to \$65 per day per offender from November 2009 through June 2011. In addition, CDCR agreed to pay CCA \$72.38 per day per offender for a newly-constructed facility in Arizona. CDCR amended the contract with CCA that same month, increasing its worth to a maximum of \$632 million.*

2008 Responses					
Entity	Beds available	Cost	Location	Security Level	When Available
CCA	720	\$72	Oklahoma	Medium	Oct-08
CCA	600	\$79	Oklahoma	Medium	Oct-08
PRIDE Industries	140	\$160	California	Minimum	Sep-09
Southwestern Correctional LLC	815	\$55.00	Texas	Medium	Sep-08
Washington County	28	\$35	Kansas	Medium	Aug-08
Virginia Dept. of Corrections	1000	\$70-\$80	Virginia	Min/Med/Max	Did not indicate
Eagle Companies	Did not say	\$10-\$12	Illinois	Min/Med	4 mos. after contract
Geo Group	2400	\$70	Oklahoma	Medium	Jan-10
Cornell	1312	\$67.45	Colorado	Medium	Nov-09

*Fifteen months after this RFI, CDCR amended its contract with CCA in October 2009. CCA's costs at three facilities remained at \$63 per day per offender, instead of rising to \$65 per day per offender as agreed to in the previous contract. Costs at one facility dropped from \$63 to \$61 per day per offender.*

The Department states that the RFI processes indicate that it did its due diligence in searching for the most appropriate facilities at the best price for taxpayers, and that their ongoing negotiations with CCA continually got the state the best deal. They note that many of the responses they received were from providers who did not have proper facilities to house medium security, state-level inmates. In addition, health care concerns for out-of-state inmates are subject to oversight by the federal Health Care Receiver, requiring that facilities have adequate health care on site and appropriate access to major off-site health care providers. The potential providers most likely to have adequate facilities are states and the larger, publicly-traded companies.

However, more than three years after Governor Schwarzenegger declared the emergency that allowed the Department to act swiftly, the Department's RFI process raises several concerns:

- ***It is difficult for the Legislature or taxpayers to determine if the state got the best deal.*** In a competitive bidding process, the state would provide a detailed depiction of what it was seeking from potential contractors and then allow for bids targeted to the specific request. (An RFI process is typically conducted before competitive bidding to determine qualified bidders and eliminate unqualified bidders.) In this process, the state provided questionnaires but has never stated clearly what it was seeking. Thus, the responses from various providers are difficult to compare.

For example, based on documents CDCR supplied the Committee, it appears that the Department did not seek information about costs when it conducted its first RFI process in 2006, so it is impossible to determine what the best price for out-of-state beds would have been.

Additionally, different responses included different proposals for transporting inmates. Geo Group's responses indicate it would provide free transportation for inmates as they were transferred from California to their proposed facility; while CCA utilizes its own transportation company and passes the costs on to CDCR. While it appears CDCR did compare transportation costs in the 2007 RFI, it does not appear CDCR compared those costs in the same way in other RFI processes. Based on both per diem and transportation cost included in the 2007 RFI, it appears at least two of Geo Group's offers were less expensive than the price CDCR agreed to pay CCA at its Arizona facility.

- ***A formal, competitive bidding process is more transparent, structured and understandable.*** The informal process used by the Department requires more behind-the-scenes negotiations, as the responses it received varied widely and required follow-up from the Department. This caused some confusion.

For example, officials with the Michigan Department of Corrections held preliminary discussions with CDCR to determine if space in Michigan state facilities could be used by California. While Michigan officials provided a description of facilities and potential prices to CDCR in a 2008 e-mail, they assumed a formal bidding process would occur at a later date that would allow them to develop a more competitive bidding price. Instead, CDCR sent Michigan a letter rejecting their offer. In an interview with Committee staff and in Michigan newspapers, Michigan corrections officials stated they had never made a formal offer and were surprised that California cut off talks. Michigan recently entered into a contract with the state of Pennsylvania and is charging Pennsylvania \$62 per day per inmate, a cheaper rate than California is now paying CCA in all but one facility.

Unlike the formal rejection letter sent to the state of Michigan, CDCR did not send rejection letters to other potential providers, making it difficult for providers to understand what the Department was looking for and how they could improve their responses. For example, based on documents provided to the Committee by CDCR, the Department did not consider responses in 2008 for companies proposing to build new facilities for California, even though the per diem rates offered were cheaper than what CDCR was paying CCA at one Arizona facility. Nothing in the questionnaire CDCR sent to potential providers stated it would not consider new facilities.

- ***The informal, RFI process may favor entities with more access to CDCR.*** Due to its informality, CDCR can use RFI responses and then negotiate with companies it chooses. For example, internal documents provided by CDCR to the Committee indicate that it was negotiating with CCA in 2007 while conducting a RFI process. Additionally, CCA's responses in the 2008 RFI for more bed space were more expensive than those offered by other companies and states. Yet CDCR negotiated with the company and signed a 2009 amendment to its existing contract that was for lower prices than its 2008 RFI responses. It is unclear whether other potential providers had the same opportunity to negotiate with the Department.

Attachments:

- A CDCR document describing the facilities used to house out-of-state inmates and costs associated with each facility.
- An August 19, 2009 article from the *Detroit News*.

The California Out-of-State Correctional Facility (COCF) is a unit within the Division of Adult Institutions whose mission is to transfer inmates out of state for the purpose of alleviating overcrowding within existing institutions. The COCF is currently comprised of five (5) facilities. These facilities span between Arizona, Oklahoma, and Mississippi, with three of the facilities located in Arizona.

**COCF Main Office**

**California Out-of-State Correctional Facility**

**M. Lea, Chief Deputy Administrator**

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(916) 464-4001

*All facilities currently utilized by CDCR/COCF are contracted with Corrections Corporation of America.*

*The five (5) facilities COCF oversees that currently house CDCR inmates are as followed:*

- *Florence Correctional Center (FCC), Arizona*
- *La Palma Correctional Center (LPCC), Arizona*
- *Red Rock Correctional Center (RRCC), Arizona*
- *Tallahatchie County Correctional Facility (TCCF), Mississippi*
- *North Fork Correctional Facility (NFCF), Oklahoma*

**Current COCF Population: 8039**

**Total Current COCF Budgeted Capacity: 8060**  
**Total Projected COCF Budgeted Capacity: 10468**

## ***FACILITY INFORMATION***

### ***Florence Correctional Center (FCC)***

1100 Bowling Road

Florence, Arizona 85132

COCF Activation date: 12/22/2006

Type of Inmates:

- Sensitive Needs Yard (SNY)

**Current Capacity: 960**

**Projected Capacity: 880 (Decrease projected late December 2009 as part of conversion with RRCC)**

**Current Population as of 12/14/09: 957**

**Housing Costs:** approximately (approx.) \$63.00 per day, per inmate

**Transportation Costs:** approx. \$200 per inmate

### ***La Palma Correctional Center (LPCC)***

5501 North La Palma Road

Eloy, Arizona 85153

COCF Activation date: 07/12/2008

Type of Inmates and Population:

- Sensitive Needs Yard (SNY) Projected 1020 (December 2009)
- General Population (GP) Currently / Projected 2040 (December 2009)

**Current Capacity: 3060**

**Projected Capacity: 3060**

**Current Population as of 12/14/09: 3059**

**Housing Costs:** approx. \$72.38 per day, per inmate

**Transportation Costs:** approx. \$200 per inmate

### ***Red Rock Correctional Center (RRCC)***

1750 East Arica Road

Eloy, Arizona 85153

COCF Activation date: 03/14/2008

Type of Inmates:

- Sensitive Needs Yard (SNY) Currently
- General Population (GP) Projected conversion (Late December 2009)

**Current Capacity: 360**

**Projected Capacity: 1015 (Increase in population projected to begin March 2010)**

**Current Population as of 12/14/09: 357**

**Housing Costs:** approx. \$63.00 per day, per inmate

**Transportation Costs:** approx. \$200 per inmate

### **Tallahatchie County Correctional Facility (TCCF)**

295 U. S. Highway 49 South

Tutwiler, Mississippi 38963

COCF Activation Date: 08/06/2007

Type of Inmates:

- General Population (GP)

**Current Capacity: 2592**

**Projected Capacity: 2592**

**Current Population as of 12/14/09: 2589**

**Housing Costs:** approx. \$63.00 per day, per inmate

**Transportation Costs:** approx. \$1482 per inmate

### **North Fork Correctional Facility (NFCF)**

1605 East Main

Sayre, Oklahoma 73662

COCF Activation date: 02/07/2008

Type of Inmates:

- General Population (GP)

**Current Capacity: 1080**

**Projected Capacity: 2400 (Increase Projected to begin increase January 2010)**

**Current Population as of 12/14/09: 1077**

**Housing Costs:** Current rate is approx. \$63.00 but reduces to approx. \$61.00 per day, per inmate after CDCR expands the contract capacity of the facility

**Transportation Costs:** approx. \$1482 per inmate

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION OUT-  
OF-STATE PRISON PROGRAM  
ADMINISTRATIVE STAFFING**

The Department of Corrections and Rehabilitation has 171.8 positions within CDCR administration to oversee the out-of-state prison program, and is requesting an additional 37.5 positions in Fiscal Year 2010/11. These are positions not associated with day-to-day operations of the facilities; those employees are hired and managed by the company that owns the facilities.

More than half of the current positions are Correctional Counselors and Case Record Technicians, who perform functions such as identifying eligible inmates for transfer, processing transfers, reviewing inmate appeals and handling paperwork involving inmate disciplinary proceedings. These positions are based on a ratio developed by CDCR for non-CDCR facilities that requires, for example, one Correctional Counselor for every 160 inmates.

The Department also utilizes field teams, comprised of one Captain, two Lieutenants, one Correctional Counselor Supervisor, five Correctional Counselors and a Correctional Sergeant, that visit the out-of-state facilities on a regular basis. Field teams visit each facility at least twice per month and stay for at least five days at a time. CDCR currently has five field teams and proposes to add two more field teams in FY 2010/11.

CDCR has decided to permanently station CDCR personnel at the facility in Mississippi due to several incidents there, including the death of an asthmatic prisoner in 2007 and an incident in October 2009 that left two correctional officers hospitalized, including one with 22 stab wounds.

In addition, eleven employees work on health care issues for out-of-state inmates. This background paper was printed before the Department could answer a Committee question about whether these employees work for the Department or the Receiver, and whether the Receiver has additional staff to oversee the out-of-state prison program.

The Budget Change Proposal for Fiscal Year 2010/11 states that the Department needs more personnel as the out-of-state program grows from 8,000 to more than 10,000 inmates. The request includes six more positions for medical and court compliance and 15.5 more positions to develop more traveling field teams, two lieutenants to monitor gang activities in the out-of-state prisons and other clerical staff. Committee staff noted that while the Budget Change Proposal requests 37.5 new positions, it only includes justification for 33.5 positions.

Attachment:

- A CDCR press release describing an incident at a Mississippi facility in October 2009.