



**REPORT OF
THE
STATE AUDITOR**

**Private Prison Procurement
Department of Corrections**

**Performance Audit
November 2006**

**LEGISLATIVE AUDIT COMMITTEE
2006 MEMBERS**

Senator Jack Taylor
Chair

Senator Stephanie Takis
Vice-Chair

Representative Fran Coleman
Senator Jim Isgar
Representative James Kerr
Senator Nancy Spence
Representative Val Vigil
Representative Al White

Office of the State Auditor Staff

Sally Symanski
State Auditor

Cindi Stetson
Deputy State Auditor

Julie Kennedy
Jonathan Trull
Anna Weisheit
Legislative Auditors



STATE OF COLORADO

OFFICE OF THE STATE AUDITOR
303.869.2800
FAX 303.869.3060

Sally Symanski, CPA
State Auditor

Legislative Services Building
200 East 14th Avenue
Denver, Colorado 80203-2211

November 30, 2006

Members of the Legislative Audit Committee:

This report contains the results of a performance audit of private prison procurement. The audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government. The report presents our findings, conclusions, and recommendations, and the responses of the Department of Corrections.

TABLE OF CONTENTS

	PAGE
Report Summary	1
Recommendation Locator	5
FINDINGS AND RECOMMENDATIONS	
Private Prison Procurement	7
Employee Conduct	13
Prison Construction	18
Appendix A: Capital Construction Request History	A-1
Appendix B: Adult Inmate Population Projections	B-1



**Private Prison Procurement
Department of Corrections
Performance Audit, November 2006**

Authority, Purpose, and Scope

This performance audit was conducted under the authority of Section 2-3-103, C.R.S., which authorizes the Office of the State Auditor to conduct performance audits of all departments, institutions, and agencies of state government. The audit work was conducted between August and October 2006 in accordance with generally accepted government auditing standards.

This audit was conducted in response to a legislative request. We reviewed the Department of Corrections' (the Department's) processes for procuring private prison beds. We also investigated an allegation regarding possible misconduct by a former Department employee with respect to an RFP issued by the Department in December 2005 for male, medium-security prison beds. Finally, we reviewed the Department's program controls for addressing potential conflicts of interest and for promoting ethical behavior. We gratefully acknowledge the assistance and cooperation extended by staff from the Department of Corrections.

Background

According to the statutes, the Department is responsible for managing, supervising, and controlling the correctional institutions operated and supported by the State, including monitoring the activities of private prisons. Since the 1980s, Colorado's inmate population has exceeded the physical capacity of prisons operated by the Department, and as a result, the Department has housed inmates in county jails, prisons operated by other states, and private prisons. As of October 31, 2006 (most recent data available), the Department's inmate population was about 22,300, of which 4,700 (21 percent) were housed in six private prisons located in Colorado. The Department paid about \$70 million to incarcerate inmates in private prisons in Fiscal Year 2006.

Because of growth in Colorado's inmate population and the lack of beds available in state-owned and -operated prisons, the Department continues to rely upon private prisons to house its inmate backlog and reports that it will need to procure additional private prison beds in the future. Since 2001 the Department has issued the following three requests for proposals (RFPs) for private prison services in Colorado:

For further information on this report, contact the Office of the State Auditor at 303.869.2800.

SUMMARY

2

Private Prison Procurement, Department of Corrections Performance Audit - November 2006

Construction of a Level III, Pre-Parole and Parole Revocation Facility (2001). In 2003 the Department selected Community Education Centers, Inc. (CEC) and The GEO Group (formerly Wackenhut) to each construct and manage a 500-bed pre-parole and parole revocation facility. CEC's Cheyenne Mountain Re-Entry Center, located in Colorado Springs, has been constructed and accepted its first residents in August 2005. As of our audit, The GEO Group had not begun construction of its proposed facility due to zoning problems and lack of agreement with the city of Pueblo and the Department regarding facility design, financing, and contract terms.

Construction of up to 2,250 private prison beds for male inmates (December 2005). The Department received proposals from five private companies and in June 2006 selected two companies to construct the prison beds: Corrections Corporation of America (CCA) and The GEO Group. CCA plans to expand two of its existing private prisons by 720 beds each. The GEO Group proposes to construct a new 1,500-bed facility in Ault, Colorado, located in Weld County. Since issuing the awards for this RFP, the Department has established an agreement with CCA for construction of private prison beds but is still negotiating contract terms with The GEO Group.

Construction of up to 750 private prison beds for female inmates (January 2006). The Department received proposals from two private companies and in June 2006 selected Cornell Companies, Inc. to construct the prison beds. Cornell Companies, Inc. plans to build a new 832-bed prison in Hudson, Colorado, located in Weld County.

Summary of Audit Findings

Our audit did not identify any evidence indicating that the Department did not comply with statutes and procurement rules related to the issuance of the requests for proposals (RFPs) and the selection of proposals for award. We identified areas for improvement related to the Department's oversight of employee conduct and conflicts of interest. We also discuss options and challenges related to addressing the shortage of prison beds in the future.

Employee Conduct

We were asked to determine whether a former senior-level employee at the Department used or disclosed confidential information acquired in the course of his official duties to prepare a proposal for a private company that received an award as part of an RFP issued by the Department in December 2005. Nothing came to our attention indicating that the former employee used or disclosed confidential information to assist prospective bidders in responding to the Department's 2005 RFP. However, we found:

- **There is no evidence that the former employee requested or the Department approved the former employee's outside employment, which is required by State Personnel Board Rules and Department regulations.** In August 2005 the former senior-level employee, while employed by the Department, filed articles of organization with the

Colorado Secretary of State for a prison consulting business. Public records and interviews indicate that the former employee began actively working on behalf of his prison consulting business as of November 2005, while the former employee was still employed by the Department.

- **The former employee's private business activities arguably present a conflict of interest and result in a breach of his fiduciary duty and the public trust.** Statute prohibits a state employee from assisting any person for a fee or other compensation in obtaining any contract, claim, license, or other economic benefit from his agency. We found that this former employee, while still employed by the Department, began working on behalf of his prison consulting business to assist prospective bidders in developing a proposal for the Department's December 2005 RFP related to private prison services. One of the companies that the former employee helped develop a proposal ultimately received one of the awards issued by the Department in June 2006. The former employee reports that his business could receive a fee as high as \$1 million if the company for which he provided services constructs the private prison under the award.
- **The former employee's use of paid sick leave valued at \$14,000 is in question.** According to timesheets, the former employee used a combination of annual, sick, and holiday leave between November 2005 and January 2006. As mentioned earlier, public records indicate that this employee began working on behalf of his business as early as November 2005, while still employed by the Department. Neither the Department nor the former employee provided evidence that the employee received the express consent from his attending physician or appointing authority to engage in outside work activities.

Additionally, we identified weaknesses in the Department's controls related to ensuring that employees uphold high ethical standards. For example, the Department does not require employees to annually provide the Department with signed certificates attesting that they have read, understand, and will abide by the Governor's executive order on code of ethics.

Prison Construction

The Department is anticipating that over the next five years it will have a shortage of approximately 8,500 prison beds physically located in Colorado. Some of the options for addressing the shortages and the challenges faced by the Department include:

- **Constructing new prisons and/or expanding existing facilities using state capital construction funds.** This is the Department's preferred method for increasing its prison bed inventory, primarily because the Department maintains direct control over the design, construction, and operation of state prisons. However, although the Department has submitted several requests for capital construction funds since Fiscal Year 2000, it has

SUMMARY

received limited funding for constructing additional prison beds, mainly due to the State's revenue shortfalls and competing demands for capital construction monies.

- **Using private prisons to house inmates.** One of the main advantages to using private prison companies to house state inmates is that the private sector, rather than the State, finances the design and construction of the prisons, which allows the State to retain its capital construction monies for other priorities. A major drawback is that the State relinquishes some control over the design, construction, and operation of the prisons.
- **Implementing other options to provide relief to the Colorado prison system.** Other options include converting one-person prison cells into two-person cells and increasing the percentage of the inmate population placed in community corrections.

To prevent the State from reaching a crisis situation with housing its inmate population, the Department will need to continue to work closely with the Governor's Office and the General Assembly to identify short- and long-term solutions to addressing shortages in prison beds.

Our recommendations and the responses of the Department of Corrections can be found in the Recommendation Locator and in the body of the report.

RECOMMENDATION LOCATOR
Agency Addressed: Department of Corrections

Rec. No.	Page No.	Recommendation Summary	Agency Response	Implementation Date
1	17	Investigate the activities of the former senior-level employee regarding compliance with ethical and legal requirements related to his employment with the State and the appropriateness of leave benefits used prior to his retirement, seek reimbursement from the former employee for all misused paid leave, and refer the case to the local district attorney, as appropriate.	Agree	December 2006
2	17	Require all employees to annually provide signed certificates attesting that they have read, understand, and will abide by the Governor's executive order on code of ethics, and revise the Department's training policy to require all management staff to receive refresher training on the State's codes of ethics and conduct at least every two years.	Agree	January 2007
3	28	Continue working with the Governor's Office and the General Assembly to identify short- and long-term solutions to addressing the shortage of prison beds for Colorado inmates.	Agree	Ongoing

Private Prison Procurement

Background

According to statute (Section 17-1-103(1)(a), C.R.S), the Department of Corrections (the Department) is responsible for managing, supervising, and controlling the correctional institutions operated and supported by the State, including monitoring and supervising the activities of private prisons. The Department is also responsible for providing work and self-improvement opportunities to those inmates in its custody and for establishing an environment within its correctional institutions that promotes rehabilitation for successful reentry into society. The Department must also develop a systematic building program providing for the projected, long-range correctional needs of the State. The Department is also charged with supervising inmates in community corrections facilities and on parole, and developing and operating the Colorado Youthful Offender System. As of October 31, 2006 (most recent data available), the Department's inmate population was about 22,300 inmates, of which 4,700 (21 percent) were in private prisons. The Department spent approximately \$618 million in Fiscal Year 2006, of which \$70 million was for housing inmates in private prisons, and had about 5,900 FTE.

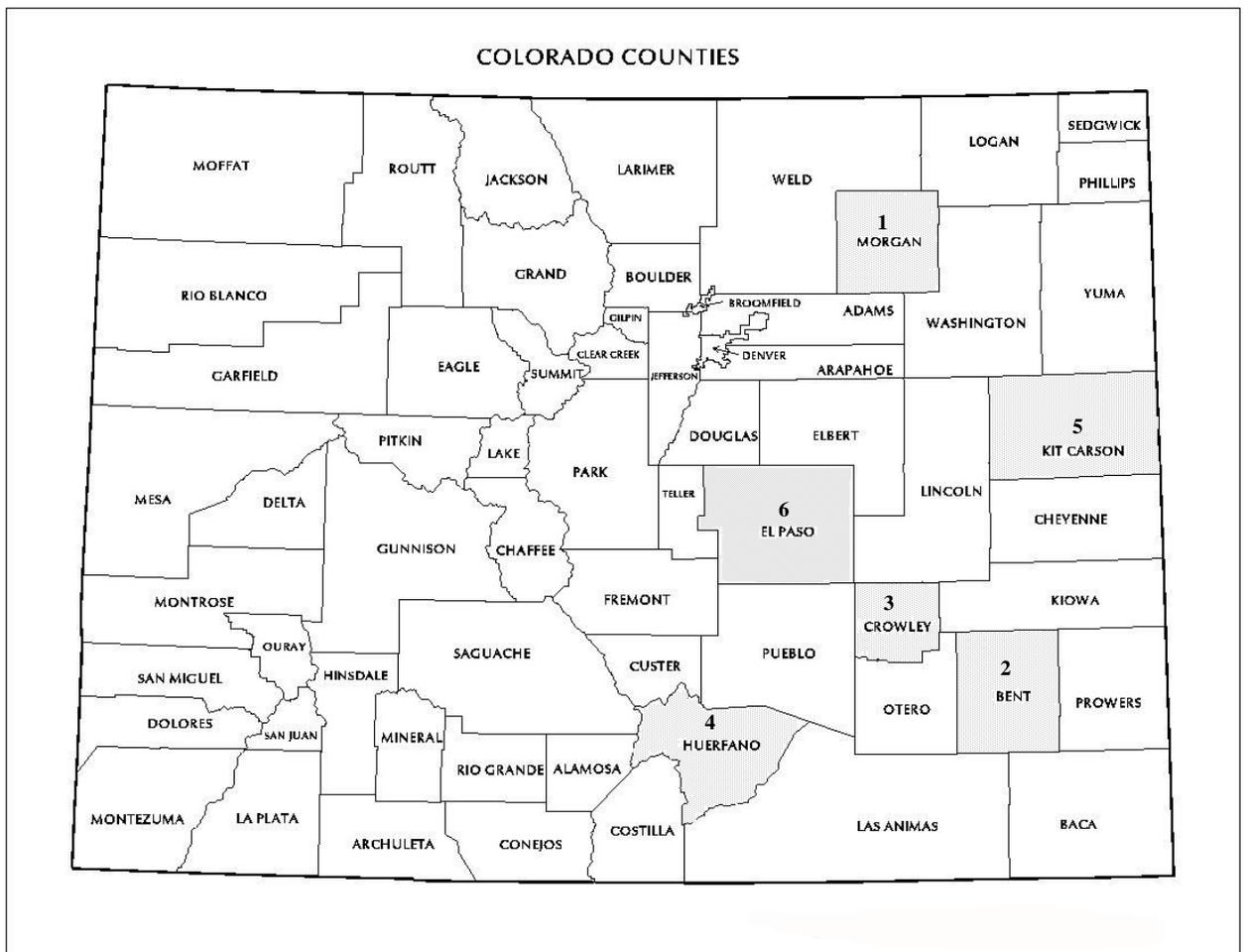
Colorado's inmate population has exceeded the physical capacity of the Department's prisons since the 1980s. For several years, the Department used county jails to house its inmate backlog. However, in the late 1980s, 25 counties sued the Department to reduce inmate populations in their jails and to receive compensation for services rendered for housing state inmates. In response, the Department began contracting with other state departments of corrections and out-of-state county jails to house Colorado's inmate backlog. In 1993, placement shifted, almost exclusively, to private prisons in other states. Placement of Colorado offenders in out-of-state prisons resulted in some inmates' families filing lawsuits against the Department, citing the hardships of traveling to visit their relatives in these facilities.

In 1994 the Bent County Correctional Facility (the State's first private prison) opened in southeastern Colorado. The Department moved some of its inmates housed in out-of-state facilities to this private prison. By December 1998, three additional private prisons operated in Colorado, and all inmates in out-of-state facilities were returned to Colorado. The first private female facility in Colorado opened for operation in 2003. The Department did not issue requests for proposals (RFPs) for construction of these five private prisons and was not involved in selecting the prisons' locations, developing the design specifications, or monitoring

the construction of the facilities.

Since 2001 the Department has issued three RFPs for private prison services to be provided in facilities located in Colorado. As discussed in greater detail later, state statutes required the Department to issue an RFP for the construction of a Level III (medium security), Pre-Parole and Parole Revocation facility by December 1, 2001. In an effort to solicit competition in the private prison market in Colorado, the Department issued two additional RFPs in December 2005 and January 2006 for male and female private prison beds, respectively.

Currently six private prisons operate in the State, including (1) Brush Correctional Facility, (2) Bent County Correctional Facility, (3) Crowley County Correctional Facility, (4) Huerfano County Correctional Center, (5) Kit Carson Correctional Center, and (6) Cheyenne Mountain Re-Entry Center. Brush Correctional Facility houses female offenders, and the other five house males. The map below shows where these prisons are located.



The table below shows the number of Colorado inmates housed in each type of facility used by the Department, including state prisons, private prisons, county jails, and community corrections programs.

Department of Corrections		
Number of Colorado Inmates by Facility Type as of October 31, 2006		
Type of Facility	Number of Inmates	Percent of Total
State Prisons	14,100	63%
Private Prisons	4,700	21%
Community Corrections Facilities & County Jails	3,000	14%
Off-Grounds ¹	500	2%
TOTALS	22,300	100%
Source: Department of Corrections October 31, 2006, Monthly Population and Capacity Report.		
¹ Off-grounds includes escapes, walkaways, and those inmates temporarily off-grounds for court or medical treatment.		

In Fiscal Year 2006 the Department spent about \$618 million to house and provide services to inmates in its custody. Of this amount, the Department spent \$531 million (86 percent) on inmates housed in state-operated prisons and paid approximately \$70 million (11 percent) to private prisons, \$14 million (2 percent) to county jails, and \$3 million (1 percent) to community corrections facilities to house state inmates. As of October 31, 2006, state-owned and -operated prisons were at 99 percent capacity and private prisons at 97 percent capacity. The State's current prison population is growing by about 100 inmates per month.

Request for Proposals

Construction of new state-owned and -operated prisons has been limited in Colorado in recent years (see Appendix A). The only construction projects currently authorized by the General Assembly are the Colorado State Penitentiary II, which is still under construction and should open in August 2009, and the renovation and expansion of the Denver Reception and Diagnostic Center (DRDC). Inmate population projections prepared by Legislative Council staff indicate that the prison population will increase by about 7,300 inmates, or 33 percent, over the next five years (see Appendix B). Because of the growth in Colorado's inmate population and the lack of beds available in state prisons, the Department continues to rely upon private prisons to house its inmate backlog and reports that it will need to procure additional private prison beds in the future.

Several statutory provisions direct the Department's procurement of private prison beds. In particular, statute (Section 17-1-105(1)(f), C.R.S.) gives the Department the authority to enter into contracts for the confinement and maintenance of inmates in

its custody. Furthermore, statute (Section 17-1-104.9, C.R.S.) authorizes the Department “to permanently place state inmates classified as medium custody and below in private contract prisons.” The Department classifies inmates, using a custody range from minimum (not a management problem or threat) to administrative segregation (severe management problem and high threat level), with medium-custody inmates falling in the middle. Statutes prohibit the permanent placement of high-custody inmates (close and administrative segregation classifications) in private prisons. Therefore, to house Colorado inmates in a private prison, the private prison must be designed and constructed to house inmates classified as medium custody and below.

Statutes also provide specific guidance and requirements for the use of requests for proposals for procuring private prison beds. Specifically, statute (Section 17-1-202, C.R.S.) states that before the Department enters into any contract for designing, financing, acquiring, constructing, and/or operating a private contract prison, the Department may issue a request for competitive proposals. If competitive proposals are requested, the Department must award the contract to the company found by the Department to be “the most qualified and most competitive under the circumstances,” and the company selected must demonstrate that it has (1) the qualifications, experience, and management personnel necessary to carry out the terms of the contract; (2) the ability to expedite the location, design, and construction of a private correctional facility; and (3) the ability to comply with applicable laws, court orders, and national correctional standards.

Additionally, statute (Section 17-1-202.5(2)(b), C.R.S.) requires the Department to adequately inform prospective contractors that the Department will give priority to proposals that satisfy the requirements of Section 17-1-202, C.R.S. (see above), and are competitive to the extent that they contain terms most favorable to the Department. This section also requires the Department to take steps, to the extent possible, to create a competitive market and to avoid decreased competition and creation of a monopoly in the market. Furthermore, once the decision is made to issue RFPs, the Department must comply with the State of Colorado Procurement Rules, which implement the provisions of the Colorado Procurement Code (Section 24-101-101, et seq., C.R.S.) and the Construction Bidding for Public Projects Act (Section 24-92-101, et seq., C.R.S.).

Since 2001 the Department has issued three requests for proposals (RFPs) for private prison services in Colorado to address the current and anticipated growth in its inmate population. These RFPs are described below.

Pre-Parole and Parole Revocation Facility: As required by statute (Section 17-1-206.5, C.R.S.), the Department issued an RFP for the construction of a Level III, Pre-Parole and Parole Revocation Facility in 2001. The purpose of this facility is to

provide assessment, programming, reintegration, and treatment services in a medium-security correctional setting to Colorado offenders who are either near parole eligibility or whose parole has been revoked. Statute defines the types of offenders that may be placed in this type of facility, which include:

- Inmates who have not been convicted of a crime of violence (as defined in Section 18-1.3-406, C.R.S) and who have no more than 19 months remaining until their parole eligibility date.
- Inmates who have been convicted of a crime of violence and who have no more than 9 months remaining until their parole eligibility date.
- Offenders whose parole has been revoked and who will not be incarcerated in the facility more than 180 days.

This facility must meet the requirements of a Level III facility as set forth in statute (Section 17-1-104.3 (1)(a)(III), C.R.S.).

In 2003 the Department selected Community Education Centers, Inc. (CEC) and The GEO Group (formerly Wackenhut) to each construct and manage a 500-bed pre-parole and parole revocation facility. CEC's Cheyenne Mountain Re-Entry Center, located in Colorado Springs, has been constructed and accepted its first residents in August 2005. As of our audit, The GEO Group has not begun construction of its proposed facility due to local zoning problems and lack of agreement with the city of Pueblo and the Department regarding facility design, financing, and contract terms. According to Department management, the Department is considering canceling The GEO Group's award if the company does not propose satisfactory solutions to these issues by November 30, 2006.

Private Prison Beds and Services for Male Inmates: In December 2005 the Department issued an RFP for the construction of up to 2,250 private prison beds for male inmates classified as medium custody or below. The Department received proposals from five private companies and in June 2006 selected two companies to construct the prison beds: Corrections Corporation of America (CCA) and The GEO Group. CCA plans to expand two of its existing private prisons – the Bent County Correctional Facility and Kit Carson Correctional Center – by 720 beds each. The GEO Group proposes to construct a new 1,500-bed facility in Ault, Colorado, located in Weld County.

Since issuing the awards for this RFP, the Department has established an agreement with CCA for construction of private prison beds but is still negotiating contract terms with The GEO Group. Specifically, the Department entered into a nonfiscal implementation agreement with CCA in November 2006 for 1,440 prison beds to be

constructed by the private company over the next three years. With a nonfiscal implementation agreement, the Department will not pay any funds to the private company until after the prison beds are constructed and inmates are placed at the facility. This means that CCA will not receive payment for the additional prison beds until at least March 2008. Further, the agreement includes specific deadlines for the design and construction of the facility and requires the company to pay for a Department project liaison, who will be hired and employed by the Department and will provide contract management services for the Department.

The Department has not established a nonfiscal implementation agreement with The GEO Group due to the company's request for an inmate bed guarantee. The Department has not historically made any guarantees to private prison companies that it will place a specific number of inmates in private prisons operating in Colorado. According to Department management, the Department does not plan to establish an agreement with The GEO Group until a decision is made by the Governor's Office, in consultation with the General Assembly, regarding the use of bed guarantees.

Upon completion of the new private prison beds, the Department plans to use the same method it has used in the past to procure ongoing private prison correctional services at the new private facilities. Historically, the Department has entered into intergovernmental agreements with the local governments (city or county where the prison is located) for the confinement of state inmates in private prisons in their jurisdictions. The local governments subcontract with private companies, which own, operate, and manage the facilities. The Department pays the local governments, which in turn pay the private companies.

Private Prison Beds and Services for Female Inmates: In January 2006 the Department issued an RFP for the construction of up to 750 private prison beds for female inmates classified as medium custody or below. The Department received proposals from two private companies and in June 2006 selected Cornell Companies, Inc. to construct the prison beds. Cornell Companies, Inc. plans to build a new 832-bed prison in Hudson, Colorado, located in Weld County.

The Department expects to enter into a nonfiscal implementation agreement, similar to the one established with CCA, with Cornell Companies, Inc. The agreement will cover the construction of the new private prison, scheduled for completion in May 2008. As mentioned above, the Department plans to enter into an intergovernmental agreement with the city government where the prison is located prior to placing inmates in the facility.

Audit Scope

This audit was conducted in response to a legislative request. The audit reviewed the Department of Corrections' (the Department's) processes for procuring private prison beds since 2001, including the Department's compliance with applicable statutes and procurement rules. Overall, we did not identify evidence indicating that the Department did not comply with statutes and procurement rules related to the issuance of the RFPs and the selection of proposals for award. We also investigated an allegation regarding possible misconduct by a former Department employee with respect to the 2005 RFP for male, medium-security prison beds and reviewed the Department's program controls for addressing potential conflicts of interest and promoting ethical behavior. We identified two areas for improvement and discuss each below.

Employee Conduct

State statutes, rules, regulations, and executive orders provide guidance and set forth a range of requirements related to the conduct of state employees. For example, Article 18 of Title 24 of the Colorado Revised Statutes requires state employees to carry out their duties impartially and to avoid real or perceived conflicts of interest. Further, an executive order issued in January 1999 by Governor Owens specifies that state employees should serve the people of the state "with integrity and honesty and should discharge their duties in an independent and impartial manner."

We were asked to determine whether a former senior-level employee at the Department used or disclosed confidential information acquired in the course of his official duties to prepare a proposal for a private company that received an award as part of the Department's procurement of 2,250 male, medium-security private prison beds. As we described previously, the RFP for this procurement was released in December 2005 and the award was made in June 2006. We reviewed documentation related to this RFP, including draft and final RFP documents, internal and external Department communications, proposals submitted in response to the RFP, and documentation related to the scoring and selection of proposals. We also interviewed current and former Department employees, representatives from companies submitting proposals in response to the RFP, and members of the committee that scored and selected the winning proposals. Nothing came to our attention indicating that the former employee used or disclosed confidential information to assist prospective bidders in responding to the Department's 2005 RFP. However, we found that prior to this employee's retirement in January 2006, the former employee may have violated state statutes, personnel rules, and Department regulations regarding outside employment and failed to observe rules of conduct for state employees. We describe these issues below.

Outside Employment: According to statute (Section 24-50-117, C.R.S.), “no employee shall engage in any employment or activity which creates a conflict of interest with his duties as a state employee.” This statute requires the State Personnel Board to promulgate rules on incompatible activities, conflicts of interest, and outside employment. Personnel Board Rules allow state employees to engage in outside employment only if they receive advance written approval from their appointing authority. The rules state that this approval should be based on whether “the outside employment interferes with the performance of the state job or is inconsistent with the interests of the state, including raising criticism or appearance of a conflict.” Department regulations stipulate that employees, prior to engaging in outside employment, must complete and submit an outside work request to their supervisor for review and approval.

In August 2005 the former senior-level employee, while employed by the Department, filed articles of organization with the Colorado Secretary of State for a prison consulting business. Public records and interviews indicate that the former employee began actively working on behalf of his prison consulting business as of November 2005. Neither the Department nor the former employee provided documentation showing that the employee requested or the Department approved the former employee’s outside employment.

We also found that the former employee’s private business activities arguably present a conflict of interest and result in a breach of his fiduciary duty and the public trust. In particular, statute (Section 24-18-108 (2)(b), C.R.S.) prohibits a state employee from assisting any person for a fee or other compensation in obtaining any contract, claim, license, or other economic benefit from the employee’s agency. Statutes state that an employee violating this provision, if proven beyond a reasonable doubt, has breached his fiduciary duty and the public trust. As noted above, we found that this former employee, while still employed by the Department, began working on behalf of his prison consulting business to assist prospective bidders in developing a proposal for the Department’s December 2005 RFP related to private prison services. One of the companies for which this former employee helped develop a proposal ultimately received one of the awards issued by the Department in June 2006. As of the date of our audit, the Department had not entered into any agreement, including a nonfiscal implementation agreement, with this company related to this award, and the Department will not pay the company any state funds until the prison is constructed and inmates are placed in the facility.

The former employee reports that if the company for which he provided consulting services constructs the new private prison under the award, the former employee’s business could receive a fee as high as 1 percent of total construction costs. The former employee estimates that the facility will cost approximately \$100 million to

build, and his fee would be about \$1 million. At the time of our audit, the Department had not investigated the activities of the former employee.

Leave Benefits: According to Personnel Board Rules and Department regulations, sick leave is provided to state employees in the event time off is needed for health reasons (e.g., medical examinations and treatment). Department regulations prohibit employees on approved sick leave from engaging in any type of employment, vocation, avocation, or recreational activity, either paid or unpaid, without the express consent of their attending physician and the appointing authority. Unauthorized use of leave can result in the denial of the paid leave and/or corrective or disciplinary action.

Between November 2005 and January 2006, the former employee was on extended paid leave from the Department. According to the former employee's timesheets, he used a combination of annual, sick, and holiday leave during this time. As noted earlier, public records indicate that the former employee began working on behalf of his prison consulting business as early as November 22, 2005. Neither the Department nor the former employee provided evidence that the former employee received the express consent of his attending physician or appointing authority to engage in outside work activities. As a result, we question the former employee's use of about 240 hours of paid sick leave benefits valued at about \$14,000 from November 22, 2005, until his retirement on January 31, 2006.

Ethical Standards

The Department has established some controls to ensure that its employees uphold high ethical standards. For example, the Department has developed regulations that describe appropriate and inappropriate employee conduct. These regulations require employees to sign a certificate of review and compliance attesting that they have read, understand, and will abide by the Governor's executive order on the code of ethics, and the certificates are to be placed in each employee's personnel file.

We identified weaknesses in the Department's controls over employee conduct and found that the Department could improve in three areas. First, we reviewed the personnel files for 28 current and former Department employees, most of whom were senior-level employees, and found that more than one-half (15) of the files did not contain a signed certificate, including the file for the former senior-level employee discussed earlier. The Department does not require employees to sign these certificates on an annual basis, which is the requirement of some state agencies. Requiring that employees sign such a statement annually is important because it communicates to staff that all employees are required to comply with the State's codes of ethics and conduct and provides confirmation that employees are aware of the standards by which they will be held accountable.

Additionally, we found the Department does not require employees to take refresher training on the State's codes of ethics and conduct, unless prescribed as part of an employee's disciplinary action. All newly hired employees and volunteers must attend the Department's basic training program, which provides an overview of the Department and a basic level of knowledge, skills, and performance-based training. One of the courses included in the basic training program is Professionalism - Code of Conduct, which is designed to teach new employees about the Department's expectations of ethical and professional behavior. We reviewed the training files for the same 28 current and former employees and found that more than one-half (15) had not attended the Department's Professionalism - Code of Conduct training since at least 1995 (11 years), including the former senior-level employee discussed earlier.

Finally, we found that the Department's Professionalism - Code of Conduct training does not provide sufficient guidance to senior-level employees. The majority of the training focuses on prohibitions related to staff sexual misconduct and inappropriate behavior between staff and inmates. The training only briefly discusses an employee's responsibilities regarding outside work and business ownership. The training does not specifically address several key statutory provisions, including those pertaining to ethical principles for public officers, local government officers, and employees (Section 24-18-105, C.R.S.); rules of conduct for public officers and state employees (Section 24-18-108, C.R.S.); and interests in contracts (Section 24-18-201, C.R.S.). Training on these statutory provisions is important for all employees and, in particular, management staff who can have substantial information on Department operations and who often hold positions of influence and authority.

The Department should investigate the concerns identified in this audit related to the activities of the former senior-level employee regarding compliance with ethical and legal requirements related to his employment with the State and the use of leave benefits and take appropriate actions. These actions should include requiring the former employee to repay any misused sick leave and referring the matter to the local district attorney, as appropriate.

In addition, the Department needs to strengthen its practices for overseeing the conduct of its employees. To accomplish this, the Department should ensure that all employees annually submit a signed certificate of review and compliance related to the State's codes of ethics and conduct. The Department should also strengthen its training policies to require, at a minimum, that all management staff receive refresher training on the State's codes of ethics and conduct at least every two years. The training should discuss ethical issues that management staff may encounter, including state employees' responsibilities with regard to Sections 24-18-105, 24-18-108, and 24-18-201, C.R.S, which relate to ethical principles and rules of conduct for state employees and interest in contracts.

The holding of state employment is a public trust. State employees serve the people of the state of Colorado and should act in the State's interest. Furthermore, employees should act with integrity and honesty and carry out their duties in an independent and impartial manner. Inappropriate behavior by state employees degrades citizens' trust in state government, weakens the credibility of state departments, and raises questions about the basis of decisions made by agency officials.

Recommendation No. 1:

The Department of Corrections should investigate the activities of the former senior-level employee described in this report regarding compliance with ethical and legal requirements related to his employment with the State and the appropriateness of leave benefits used prior to his retirement. On the basis of the results of the investigation, the Department should take actions, which should include seeking reimbursement from the former employee for all misused paid leave and referring the case to the local district attorney, as appropriate.

Department of Corrections Response:

Agree. Implementation date: December 31, 2006. The CDOC Inspector General is actively pursuing the investigation. We anticipate the investigation being completed by December 31, 2006 and, if warranted, will be presented to the District Attorney.

Recommendation No. 2:

The Department of Corrections should strengthen safeguards for ensuring compliance with codes of ethics and conduct and for preventing conflicts of interest by:

- a. Requiring all employees to annually provide the Department with signed certificates of review and compliance attesting that they have read, understand, and will abide by the Governor's executive order on the code of ethics.

- b. Revising the Department's training policy to require all management staff to receive refresher training on the State's codes of ethics and conduct at least every two years.

Department of Corrections Response:

Agree. Implementation date: January 1, 2007.

- a. This is currently in progress. The Department has implemented an electronic signature for the Code of Ethics. The Department's Administrative Regulation on the Code of Ethics is currently being rewritten to reflect the use of electronic signatures on an annual basis. As of November 29, 2006, 4,785 of the Department's employees have utilized the electronic signature process. The remainder will be completed by December 31, 2006.
- b. The current DOC training programming offers in-service, advanced, and refresher training on an ongoing, voluntary basis. The program will be revised by January 1, 2007 to require mid-level supervisors and above to complete the Department's advanced training on the Code of Ethics every two years. The implementation of this recommendation will have a fiscal impact of approximately \$50,000 per year.

Prison Construction

The Department of Corrections' mission is to protect the public through the efficient and effective management of inmates in its custody. To achieve this mission, the Department must build, manage, operate, and oversee prisons with enough beds to safely house the inmates in its custody. As discussed earlier, Colorado's inmate population has exceeded the physical capacity of the Department's prisons since the 1980s, and the Department has used a combination of state prisons, private prisons, and county jails to house its inmates. During this time, Colorado has experienced an increase of almost 340 percent in its inmate population, with the population growing from 5,100 inmates in June 1988 to 22,300 in October 2006. In comparison, Colorado's resident population has increased 42 percent, from approximately 3.3 million residents in 1990 to about 4.7 million in 2005 (1988 population data are not available).

The Department, along with other states and the United States Department of Justice, measures prison capacity in two different ways:

- **Design capacity**, which is the number of inmates that planners and/or architects originally intend for a facility.
- **Operational capacity**, which is the number of inmates that can be accommodated based on a facility's staff, existing programs, and services. The operational capacity for a facility will typically be greater than the design capacity. Operational capacity will generally include temporary beds and bunks added to cells after construction (i.e., double-bunking).

Currently the Department is close to filling its available inventory of prison beds physically located in Colorado. As of October 31, 2006 (most recent data available), state prisons were at 99 percent, and private prisons located in Colorado were at 97 percent, of their operational capacities. Current data comparing design capacities for state- and privately-run prisons are not available. Additionally, the Department has backlogged more than 400 inmates in county jails throughout the State as of October 31, 2006. Legislative Council staff project that the inmate population will continue to grow over the next five years, with an increase of about 7,300 inmates (33 percent) from June 2006 to June 2011 (see Appendix B). This means that, on average, the prison population will increase by about 1,500 inmates per year.

Colorado is not the only state experiencing prison overcrowding. The United States Bureau of Justice Statistics reported that 24 states (including Colorado) and the federal prison system operated at 100 percent or more of their prisons' capacities in 2004 (most recent data available). California, in particular, has experienced severe overcrowding in its prison system and operated at more than 200 percent of its design capacity in 2004 (housing 167,000 inmates in facilities designed for only 81,000 inmates). Other state prison systems that operated substantially above 100 percent of their design capacity in 2004 included Illinois (161 percent), Delaware (160 percent), Hawaii (159 percent), Florida (132 percent), Nevada (132 percent), and Nebraska (130 percent). Colorado was operating at 131 percent of its design capacity in this year.

The Department is anticipating that over the next five years it will have a shortage of approximately 8,500 prison beds physically located in Colorado. In an effort to address current and future bed needs, the Department recently requested and received authorization from the Joint Budget Committee (JBC) to transfer up to 720 inmates to a private prison located in Oklahoma. The Department expects that it will need to place a portion of its inmates in private prisons located in other states until at least 2009. This is not a preferred method for housing inmates because of higher per diem and transportation costs, reduced opportunities for inmate-family visitation, limited ability for the Department to regularly monitor and oversee the prisons, and poor past performance by the out-of-state private prisons, particularly in complying with contract provisions and appropriately managing inmates.

The Department is currently facing a number of challenges in addressing its shortage of prison beds. In the sections below, we discuss these challenges and the Department's options for securing additional prison beds in the future.

Publicly Funded Prisons

The Department's preferred method for increasing its prison bed inventory is to construct new prisons and/or expand existing facilities using state capital construction funds. This is because the Department maintains direct control over the design, construction, and operation of state prisons. Although the Department has submitted several requests for capital construction funds since Fiscal Year 2000, the Department has received limited funding for constructing additional prison beds, primarily due to the State's revenue shortfalls and competing demands for capital construction monies. Specifically, since Fiscal Year 2000, the Department has requested capital construction funds to expand state prisons by about 3,500 beds. However, more than 2,000 of these beds (57 percent) were either withdrawn, not approved for funding, or were approved but had funding canceled prior to project completion (see Appendix A).

In addition, the Department has encountered delays in constructing the Colorado State Penitentiary II (CSP II), a 948-bed high-custody prison to be located in Cañon City, Colorado. House Bill 03-1256 authorized the Department to execute a lease-purchase agreement not to exceed \$102.8 million for up to 15 years to finance the construction of CSP II. Before construction of the facility could begin, a citizens' group sued the Department and the State, claiming that House Bill 03-1256 violates the Taxpayer's Bill of Rights (TABOR) by entering the State into a multiyear debt without first receiving voter approval. The lawsuit has been resolved in favor of the State. However, due to delays caused by litigation, CSP II is not scheduled to become operational until August 2009, about two and a half years later than originally planned, and it is estimated that the cost will increase by about \$42 million due to inflation. JBC staff estimate that by Fiscal Year 2009 the Department will have a shortage of about 1,230 high-custody beds. This means that CSP II will be filled to capacity once it is operational in 2009, and the Department will need to identify alternatives for housing an additional 280 high-custody inmates. Under current law (Section 17-1-104.9(2)(a), C.R.S.), the Department can house high-custody inmates in private prisons, located in Colorado or other states, only upon a declared correctional emergency by the Governor. However, statute (Section 17-1-104.9(2)(c), C.R.S.) specifically states that a correctional emergency "does not include inmate overcrowding." As such, the Department cannot rely on private prisons to house high-custody inmates when state-operated prisons are overcrowded.

One of the primary benefits of using state funds to finance prisons is that the Department maintains direct control over the design, construction, and operation of the prisons. As we will discuss later, the Department relinquishes some control when it uses private prisons to house its inmates. Using state funds to construct prisons allows the Department to more easily ensure that the physical plant design appropriately addresses the security and programming needs of inmates incarcerated in state prisons. Additionally, the Department maintains direct oversight of the construction schedule and is in a position to better ensure that construction is completed on time. Unlike private prisons, the Department is not required to obtain approval from local governments to construct, expand, or renovate state prisons, which can help reduce the amount of time needed by the Department to design and construct a prison.

The Department also has more control over the number and types of staff hired to operate state prisons. Our April 2005 performance audit of *Private Prisons* found that the Department had identified ongoing concerns with staffing patterns at private prisons. The audit reported that staffing ratios at private prisons were about 80 percent of staffing ratios at state-run prisons. Staffing levels at prisons are one of the primary ways to ensure the security and safety of facilities. The 2005 audit also found that salaries at state prisons are about 50 percent higher than salaries at private prisons, which can affect employee turnover rates and the quality of staff hired.

The main problem with using public funds to finance prisons is the high cost involved in constructing the facilities and the competing needs for state general funds. We estimate that it could cost the State as much as \$510 million over the next five years, or nearly \$100 million annually, to build a sufficient number of state-operated prisons to safely house the growing inmate population. As discussed earlier, capital construction funds have been limited in recent years due to the State's revenue shortfalls. Investing such a large amount of capital construction monies into prison construction could affect funding availability for other projects and needs in the State, such as completion of life safety and controlled maintenance projects at state buildings, construction of and renovations to higher education facilities, advanced technology investments, highway improvements, and healthcare services.

Privately Financed and Operated Prisons

As mentioned earlier, the Department has used private prisons to incarcerate a portion of its inmate population since 1993. As of October 31, 2006, about 21 percent of the State's 22,300 inmates were housed in private prisons. The Department plans to continue using private prisons to house a portion of its inmates, particularly because projections indicate that the inmate population will increase by 33 percent over the next five years and limited expansion in the state prison bed inventory is expected.

One of the main advantages to using private prison companies to house state inmates is that the private sector, rather than the State, finances the design and construction of the prisons. As previously discussed, these costs can be substantial. By relying on private companies, the State is able to retain its capital construction monies for other priorities. Additionally, Department data indicate that housing inmates in private prisons may cost less than housing inmates in state prisons. The Department reports that in Fiscal Year 2005 (most recent year data on actual costs are available) the average annual cost, including Department overhead costs, for a medium-security (Level III) private prison bed was approximately \$20,300. As shown in the table below, the Department's average annual cost for a state-operated medium-security (Level III) prison bed was \$25,200 or about 24 percent higher than the cost for a private prison bed.

Department of Corrections Average Annual Bed Costs in Fiscal Year 2005	
Private Prisons	Annual Bed Cost
Authorized Per Diem	\$18,100
Total Cost of Level III Prison (includes DOC overhead) ¹	\$20,300
State-Operated Prisons	Annual Bed Cost
Level I Facilities	\$21,200
Level II Facilities	\$22,700
Level III Facilities ¹	\$25,200
Level IV Facilities	\$28,700
Level V Facilities	\$30,700
Source: Joint Budget Committee Fiscal Year 2007 Staff Budget Briefing.	
¹ Private prisons in Colorado are most comparable to Level III state-operated facilities. However, there are differences in the types of inmates housed in Level III state prisons and those in private prisons, which include (1) the Department typically places inmates with special needs, such as those with extensive disabilities, severe mental health illnesses, and chronic medical issues, in Level III state prisons and not in private prisons, and (2) statutes allow Level III state prisons to house close custody inmates (i.e., inmates that are higher custody than medium custody), while private prisons can generally only house inmates classified as medium custody and below.	

Although private prisons in Colorado are most comparable to Level III state-operated facilities, it should be noted that the Department does not place inmates with special needs in private prisons. Inmates with extensive disabilities, severe mental health illness, and chronic medical needs are more costly to manage and are primarily housed in state-operated prisons. Also, statutes allow Level III state-operated facilities to house close custody inmates (i.e., inmates that are higher custody than medium custody), while private prisons can generally only house inmates classified as medium custody and below. High custody inmates are typically more costly to manage.

As previously discussed, a major drawback to using private prisons is that the State relinquishes some control over the design, construction, and operation of the prisons. During our current audit, we identified several issues related to the construction of private prisons procured through the issuance of RFPs that raise questions concerning whether 2,000 of the 4,800 beds included in the RFPs, or 42 percent, will actually be built and become operational. Issues related to the construction and operation of private prisons are described below.

Bed Guarantees: Historically, private sector companies built prisons in Colorado as speculative investments. Speculative construction meant that companies would build prisons in anticipation that the Department or another government entity would need the beds in the future. However, many of these companies experienced financial difficulties in the 1990s because their prisons were not filled to capacity, and as a result, many private prison companies are no longer willing to build prisons on speculation. Instead, these companies are seeking guarantees from governments that the companies will receive payment for a certain portion of newly constructed prison beds, regardless of whether the beds are actually filled by inmates. Furthermore, private prison companies report that bed guarantees, along with the use of tax-exempt revenue bonds, provide the most affordable means for the private companies to finance the construction of new prisons because this approach substantially lowers the interest rate on borrowed funds.

To date, the Department has not offered bed guarantees to companies operating in Colorado. However, representatives from The GEO Group, which was selected by the Department to build a 500-bed pre-parole and parole revocation facility and a 1,500-bed medium-security prison, have informed the Department that construction will not proceed on either of these facilities unless bed guarantees are provided. The GEO Group is currently seeking guaranteed payment from the State for revenue equivalent to 90 percent occupancy of the beds in both facilities (about \$34 million per year using current rates) for the next 30 years or a total state financial commitment of \$1 billion. It should also be noted that The GEO Group's original proposal for the 500-bed pre-parole and parole revocation facility did not include a bed guarantee requirement. As such, neither the Department's evaluation of The GEO Group's proposal nor the subsequent award was based on a bed guarantee requirement. The Department reports that construction for these facilities is currently on hold until a decision regarding bed guarantees is made by the Governor's Office, in consultation with the General Assembly. The Department expects a decision on bed guarantees by early 2007.

Financing Plans: The GEO Group plans to finance the construction of its two facilities through tax-exempt revenue bonds issued by local governments in the communities where the prisons are located. A portion of the Department's payments for housing state inmates in the private prisons will be used to fund the revenue

bonds. The GEO Group is asking for bed guarantees to ensure the Department continues making payments at levels sufficient to repay the revenue bonds. The GEO Group is working with each local government to create a political subdivision with the authority to issue bonds, and the proceeds from the bonds would be used to pay prison construction costs. Prior to placement of inmates in the private prisons, the Department would enter into an intergovernmental agreement with the local government and pay the local government for each inmate housed in the prison. The Department's payments would then be used by the political subdivision for debt repayment and for covering the costs of operating the prison. This financial arrangement is new to Colorado and requires the agreement and coordination of multiple government agencies. The complexity of this financing method could result in construction delays and possible project cancellation.

Local Planning Laws: Private companies wanting to build and operate prisons in Colorado must comply with local zoning and planning laws. Companies must typically select a location for the proposed prison, purchase the necessary land, and then seek local government approval. The GEO Group, which is proposing to build a 500-bed pre-parole and parole revocation facility in Pueblo, has experienced delays in constructing the facility due to compliance issues with local and federal zoning and planning laws. Three years after being selected to build this facility, The GEO Group has not yet begun construction.

Prison Design: As previously mentioned, because the Department does not finance the construction of the private facilities, the Department relinquishes some control over the final design of a prison that is privately financed and operated. For example, the Department awarded Community Education Centers, Inc. (CEC, Inc.) a contract to build and operate a 500-bed pre-parole and parole revocation facility in Colorado Springs, Colorado. CEC's Cheyenne Mountain Re-Entry Center was completed and began accepting Colorado inmates in August 2005. Department staff has expressed concerns with the design of this facility, indicating that poor design and construction of the facility has resulted in problems in managing the inmate population.

Past Performance: The Department has historically identified a number of contract compliance issues related to services provided by private prisons, as discussed in our 2005 performance audit of *Private Prisons*. For example, the audit found that inmates with serious mental illnesses were not being seen by mental health staff at the private prisons within required time frames, and private prisons were not consistently following the Department's master menu as required by contracts. The 2005 audit also noted that the Department had documented continued contract violations by the private prisons, yet had failed to take action to enforce the terms of the contracts. In June 2006 the Department reported to the Legislative Audit

Committee that it had implemented all but one of our 15 recommendations in the 2005 audit.

Other Options

While construction and expansion of state and private prisons are the primary ways for adding prison beds to the Department's inventory, other options exist that can provide some relief to Colorado's prison system. These options include:

Double-Bunking: One option for increasing the number of beds in facilities is to convert one-person prison cells into two-person cells, which is known as double-bunking. The Department typically places high-custody inmates in one-person cells as a way to manage inmates that present a security threat to the facility. During the 2006 Legislative Session, the Department requested and received a one-time appropriation of almost \$346,000 to modify state facilities to add 540 medium-custody beds through double-bunking. The Joint Budget Committee (JBC) also recommended and the General Assembly approved a \$3.5 million appropriation and 43.6 FTE for the Department to provide the appropriate staff and services to begin filling 400 beds in 2007.

The Department recently reported to the JBC that it intends to fill about 290 of these beds in February 2007 but will intentionally leave the remaining 250 beds vacant for future emergencies and for handling disruptive inmates. The JBC has advised the Department that it will revisit the Fiscal Year 2007 double bunking appropriation during the regular supplemental process. Although converting additional prison cells at state-operated facilities to double bunk inmates is an option, the Department reports that double-bunking can increase security risks related to managing inmates.

Expansion of Community Corrections: According to Section 18-1.3-301(3), C.R.S., Department inmates are eligible for referral for placement in community corrections programs when they have served a specified portion of their sentences. These programs are an alternative to prison and are intended to help reintegrate offenders into their communities. In Fiscal Year 1998 the Department established a goal of placing 10 percent of its prison population in community corrections programs. The General Assembly has raised the goal, with the target for Fiscal Year 2007, set at 11.25 percent.

As part of our 2004 performance audit of *Residential Community Corrections Programs*, we noted that expansion of community corrections is an option for addressing overcrowded prisons and generating cost savings for the State because community corrections is less expensive than incarceration in prison. For Fiscal Year 2007 the average annual reimbursement rate for a standard community corrections bed is \$13,800 compared with \$18,900 per year for a private prison bed. Neither of

these figures includes the Department's overhead costs. Our 2004 audit recommended an annual evaluation of "the feasibility of increasing the percentage of prison inmates who are placed in community corrections." Currently about 10.5 percent of the Department's inmate population are in community corrections programs. Further expansion of the community corrections population is an option for adding prison beds to the Department's inventory without constructing additional state-owned or private prisons. However, as we discussed in our 2004 audit, the Department may face various challenges in expanding the percentage of inmates placed in community corrections. For example, local community corrections boards and programs are given discretion as to which offenders to accept and reject for placement. In some cases, the criteria used by local boards and programs to screen referrals can restrict the number and types of inmates accepted. As recommended in the 2004 audit, the Department will need to work with the Department of Public Safety and community corrections stakeholders to address these issues.

Options Used by Other States: We reviewed the practices of other states addressing prison overcrowding issues and found that many alternatives being explored by other states are similar to those being pursued by Colorado. In particular, we found that most other states with severe prison overcrowding are using a combination of options to increase the number of available prison beds, which include (1) building, renovating, and/or expanding state prisons; (2) procuring additional private prison beds within their states and in other states; (3) converting prison cells to house two or more inmates; (4) housing inmates in gymnasiums, auditoriums, or other open prison areas not originally designed for housing inmates; and (5) seeking alternatives to prison incarceration (e.g., moving great numbers of inmates to community corrections and/or parole revocation facilities).

Strategic Plan

With almost 22,300 inmates, Colorado's prison population is at a historic high. Barring changes to the State's sentencing laws, Colorado's prison population is expected to grow by about 7,300 inmates over the next five years to 29,300 inmates as of June 2011. As previously mentioned, state-operated facilities and private prisons located in Colorado are at or near capacity. As such, new prison beds will need to be added to the Department's current inventory to house the additional inmates. We estimate it could cost the State as much as \$510 million over the next five years, or nearly \$100 million annually, to build a sufficient number of state-operated prisons to safely house the growing inmate population. The Department also reports that it costs, on average, \$26,800 per year to incarcerate a person in a state-operated facility. Based on this data, the Department's annual operating costs could increase by almost \$196 million over the next five years.

To date, the Department's plans for acquiring sufficient prison beds to house the State's inmate population in Colorado have been unsuccessful. As a result, the Department is planning on transferring 240 inmates to a private prison in Oklahoma in December 2006. In recent years the Department has worked with the Governor's Office and the General Assembly to acquire new prison beds by requesting capital construction funds from the Capital Development Committee and issuing RFPs for private companies to construct prisons in Colorado. However, due to a number of circumstances, some of which have been outside of the Department's control, the Department has not been able to obtain a sufficient number of prison beds physically located in Colorado to address its shortage.

There are no easy solutions to Colorado's current situation. However, to prevent the State from reaching a crisis situation with housing its inmate population, the Department will need to continue to work closely with the Governor's Office and the General Assembly to identify short- and long-term solutions to addressing shortages in prison beds. In the short term, the Department should determine whether the 4,300 private prison beds awarded as part of RFPs issued since 2001, but not yet constructed, will actually be constructed and operational, as scheduled. The Department should also work with the Governor's Office, in consultation with the General Assembly, to make a decision regarding whether the State will provide bed guarantees to private prison companies. If the planned private prison beds are not built, the Department will need to identify alternatives for housing its inmate backlog in the near future, which may include transferring more inmates to out-of-state private prisons, double bunking inmates, and other emergency housing options, such as housing inmates in gymnasiums, auditoriums, or other open prison areas not originally designed for housing inmates.

In the long term, the Department will need to continue working with the Governor's Office and the General Assembly to:

- **Determine the right mix of inmates housed in state versus private prisons.** As mentioned earlier, 21 percent of the State's inmates were housed in private prisons as of October 31, 2006. The Department reports that its policy has been to place no more than 30 percent of the inmate population in private prisons. Based on available data, we estimate that 32 percent of Colorado's inmate population could be incarcerated in private prisons by June 2011. If the Department, the Governor's Office, and the General Assembly agree that no more than 30 percent of the inmate population should be placed in private prisons, additional capital construction funds will be needed to construct new state prisons or expand existing facilities to house additional inmates by 2011.

- **Identify options for housing high-custody inmates.** As discussed previously, it is estimated that CSP II will be filled to capacity when it becomes operational in 2009, and at that time the Department will have a shortage of 280 beds for high-custody inmates. State statute allows the Department to house high-custody inmates in private prisons, located in Colorado or other states, only upon a declared correctional emergency by the Governor. The statute specifically states that a correctional emergency “does not include inmate overcrowding.” Barring changes to current law, the Department will need to work with the Governor’s Office and the General Assembly to obtain capital construction funding to construct additional state prison beds for high-custody inmates.
- **Assess ways to increase the number of inmates placed in community corrections.** The Department reports that about 450 inmates are currently awaiting placement in residential community corrections programs but beds are unavailable. The Department should work with the Department of Public Safety, which administers Colorado’s community corrections system, and with local community corrections boards and programs to identify ways to increase the number of inmates in the prison system that are placed in community corrections, while still ensuring the public’s safety.

The Department should document the short- and long-term solutions and any contingencies identified in a strategic plan. The plan should include target dates and supporting data on costs of each solution and be updated on an ongoing basis, as necessary.

Recommendation No. 3:

The Department of Corrections should continue working with the Governor’s Office and the General Assembly to identify short- and long-term solutions to addressing the shortage of prison beds for Colorado inmates. As part of this process, the Department should document solutions and contingencies in a strategic plan with target dates and supporting detail on costs of each solution, and the plan should be updated on an ongoing basis, as needed.

Department of Corrections Response:

Agree. Implementation date: Ongoing. The Department will continue to coordinate with the Governor's Office to address the shortage of prison beds and will continue implementing strategic plans. The Department will continue to provide strategic plans to the General Assembly.

Appendix A
Capital Construction Request History for the Department of Corrections for Fiscal Years 2000 - 2007

Capital Construction Request History for Additional Prison Beds in the Department of Corrections								
Fiscal Year	Project	Amount Requested	Amount Funded	Requested Beds	Built Beds	Security Level	Legislation ¹	Status
2000	TCF Phase II	\$77,889,000	\$0	710	0	V	n/a	Withdrawn
	DRDC Renovation / Expansion Design ²	\$1,019,000	\$0	0	0	V	n/a	Withdrawn
	SCCF Phase II Design ²	\$2,084,000	\$0	0	0	V	n/a	Withdrawn
2001	SCCF Phase II Design	\$2,089,000	\$2,089,000	0	0	V	HB 00-1451	Complete
	DRDC Renovation / Expansion Design	\$1,093,000	\$1,093,000	0	0	V	HB 00-4551	Complete
	CWCF Expansion / Renovation Planning	\$411,000	\$0	0	0	IV	n/a	Not Approved
2002	SCCF Phase II Construction (70%) ²	\$18,805,000	\$105,000 ³	250	0	V	SB 01-212	Negative Appropriation
	AVCF High Custody Expansion (50%) ²	\$19,791,000	\$17,000 ³	384	0	V	SB 01-212	Negative Appropriation
	DRDC Renovation / Expansion Construction ²	\$15,395,000	\$747,000 ³	62	0	V	SB 01-212	Negative Appropriation
	CWCF Renovation Design	\$2,450,000	\$0	285	0	IV	n/a	Not Approved
	Fort Lyon Phases I and II	\$12,312,000	\$12,312,000	500	500	III	SB 01-212	Built and Occupied
2003	AVCF High Custody Expansion (50%)	\$18,912,000	\$0	384	0	V	n/a	Not Approved
	DRDC Renovation / Expansion Construction ²	\$12,912,000	\$0	62	0	V	n/a	Not Approved
	SCCF Phase II Construction (70%)	\$18,371,000	\$0	250	0	V	n/a	Not Approved
	CCF High Custody Expansion (40%)	\$18,241,000	\$0	384	0	V	n/a	Not Approved
2004	CSP II/ CCF High Custody Expansion	\$102,800,000	\$102,800,000	948	0	V	HB 03-1256	Under Construction To Be Completed by August 2009
2005	None - Due To Statewide Budget Crisis	\$0	\$0	0	0	n/a	n/a	n/a
2006	None - Due To Statewide Budget Crisis ⁴	\$0	\$0	0	0	n/a	n/a	n/a
2007	DRDC Renovation / Expansion Construction	\$18,542,000	\$9,000,000	62	0	V	HB 06-1385	Under Construction To Be Completed by Spring 2009
8-YEAR TOTAL¹		\$273,110,000	\$127,294,000	3,523	500	n/a	n/a	

Source: Office of the State Auditor's analysis of the Colorado Joint Budget Committee's *FY 2006-07 Staff Budget Briefing Department of Corrections*.

¹Legislation is only listed for projects that were funded by the General Assembly.

²Several projects were requested more than once. For the 8-year total, we only included the most recently requested project for amount requested, amount funded, and requested beds.

³These capital construction projects were initially approved for funding by the General Assembly. The funding, however, was withdrawn by the General Assembly with SB 01S2-023. Before funding was withdrawn, the Department had expended about \$869,000.

⁴The Department received non-capital funding to add 540 beds by double bunking existing cells.

Key: TCF = Trinidad Correctional Facility, DRDC = Denver Reception & Diagnostic Center, SCCF = San Carlos Correctional Facility, CWCF = Colorado Women's Correctional Facility, AVCF = Arkansas Valley Correctional Facility, CCF = Centennial Correctional Facility, CSP II = Colorado State Penitentiary II

Appendix B Adult Inmate Population Projections

Colorado Legislative Council Staff Adult Inmate Population Projections Fiscal Years Ended 2007 to 2011							
Inmate Type	Actual Population as of 06/30/06	Population Projections for Fiscal Year Ended					Change from 2006 to 2011
		2007	2008	2009	2010	2011	
Male	19,800	20,700	21,800	23,000	24,300	25,800	6,000 (30%)
Female	2,200	2,500	2,700	3,000	3,300	3,500	1,300 (59%)
TOTALS	22,000	23,200	24,500	26,000	27,600	29,300	7,300 (33%)
Source: Legislative Council Staff December 2005 prison population projection and monthly population statistics prepared by the Department of Corrections.							

The electronic version of this report is available on the Web site of the
Office of the State Auditor
www.state.co.us/auditor

A bound report may be obtained by calling the
Office of the State Auditor
303.869.2800

Please refer to the Report Control Number below when requesting this report.

Report Control Number 1819