

Pitfalls and Promises

The Real Risks to Residents and
Taxpayers of Privatizing Prisons and Prison Services in Michigan

**Twenty Questions to Ask
in Evaluating a Privatization Proposal**



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Twenty Questions to Ask in Evaluating a Privatization Proposal

Privatizing multi-million dollar public functions with large numbers of employees isn't easy – and determining whether Michigan taxpayers are getting a good deal requires answers to hard questions.

Calculating Costs

Other states' experience shows has proven that simply requiring a 10 percent savings under statute and receiving a contractor proposal that promises that is no guarantee. Lawmakers need to consider how the calculation was made and what the 10 percent baseline refers to.

1. Does 10 percent refer to the average per diem cost in the contract facility compared to the average per diem in the full Michigan system (with its elderly, ailing, extremely violent and generally more expensive individuals)– or does the 10 percent refer to other similar facilities? How is the comparison made; how often; by whom?
2. Do the 10 percent savings include some fair share of the overhead cost of central administration? If so, how much? Or does 10 percent refer only to the operation of one particular facility?
3. Is the private facility 10 percent cheaper than a public facility because it is chronically understaffed and uses considerable overtime?

New and Hidden Costs

Contracting prison functions often leads to new, unexpected public costs: sewer and water, for example. Who pays for them?

4. Who pays for the local police time spent on the compound during a riot or searching for escapees after an escape?
5. Who pays for time the local prosecutor spends prosecuting crimes committed on the inside?
6. Who pays for hidden costs and unforeseen consequences? When the Lorton prison closed in Virginia, the environmental cleanup of the former prison site cost \$15 million.⁵⁵ Contamination was caused by an unlicensed landfill, a diesel fuel spill and bullets in the firing range. It's hard to foresee every variable beforehand and hard to negotiate unknown costs into a contract.

Transitional Costs

Changing from one system to another raises immediate transitional costs.

7. Does the cost calculus include paying accrued leave to staff who lose jobs? Not until far into efforts to privatize state prisons in Florida did lawmakers discover that personnel turnover costs might reach \$25 million.⁵⁶
8. Have costs associated with moving equipment or data from the office presently performing the service to the contractor been accounted for? Items like medical records and institutional histories require sensitive archival transitions.

Contract Management Costs

Privatization doesn't mean writing a check and washing your hands. Contracted systems still require management to start, monitor and maintain.

9. What about the cost of the entire bidding process: holding hearings, performing studies, drafting the request for proposals, and selecting the bidder? In a truly competitive process, many of these costs will need to be incurred again at time of renewal.

10. Who covers the cost of enforcement and monitoring, as well as documenting and publishing results? For functions like prisons and prison services, enforcement likely includes unscheduled visits on evenings and weekends. After six escapes, the City of Youngstown, Ohio actually joined the inmate plaintiffs in a landmark lawsuit against CCA to ensure that its local interests be taken into consideration.⁵⁷ The settlement agreement required CCA to pay the costs of an on-site monitor.
11. How much is the cost of public staff collaboration with private vendors: answering questions, training contractor staff, ensuring continuity?
12. Have decision makers considered the cost of defending lawsuits that can result from alleged contractor failures or procurement problems, and insurance to cover risks?

Community Costs

Prisons play a role in the economy in many Michigan communities. When facilities are privatized or closed, the impact on residents and small businesses must be assessed.

13. How many jobs are lost in the community compared to jobs created in the community? What is the type and quality of jobs lost compared to jobs gained: full time versus part time or temporary; with or without benefits?

Non-Monetary Costs

Contracting for prisons is not just another procurement. The commodity is liberty, which raises troubling questions about the division between public and private responsibility, including...

14. What kind of transparency and accountability can taxpayers expect? Private prison contractors are often exempt or only partly subject to state open records laws. Yet transparency is important in government, and for contractors such as private prison vendors as well. The federal Private Prison Information Act would have made private correctional facilities operating under federal contracts subject to the same open records laws as public facilities. CCA spent over \$3 million to kill the bill in 2010.⁵⁸
15. How might privatizing specific functions affect other ones? The mere presence of outside actors on the inside of a secure facility affects the safety, security and smooth operation of the facility. Whether it is nurses or food service workers, they need to be trained and familiar with work inside a correctional facility. Prison staff and inmates understand the rules, and understand each other; they can interact without unnecessary friction. In 2007, MDOC found that when outside food service staff were used, at least one additional state corrections officer needed to be assigned during operations – even though the time shows up as MDOC costs not vendor costs.⁵⁹
16. How much force can private actors use? How? When? Police officers are issued guns and authorized to shoot to kill, with many rules, restrictions and special training. What about private corrections officers and taser guns? Batons? On the compound? Off the compound? In pursuit after an escape? Hard questions need to be answered in advance and trained in advance – questions that do not even arise in the context of public prisons and purely public responsibility.
17. What are the rules of engagement? If there's a riot in a private prison, can the local public police force enter the compound? Do they need to be searched? Can they bring their weapons? Most prison operators don't want weapons on the compound because weapons ultimately can be used against anybody. When is this negotiated? Hopefully not at midnight on the night of the riot ... but it's far harder when different decision-makers answer to different people, some of whom live in different parts of the country.

Failure Costs

Success is never guaranteed. What is the cost of failure – and who bears that risk?

18. Are savings guaranteed? What if expectations are not met?
19. What is the long term impact of the state losing control over or our ability to perform this function internally?
20. What is the cost of returning the function to the public if contracting proves to be a failure? As a matter of market competition, continuation of the contract cannot be guaranteed in advance.

Prepared for the Michigan Corrections Organization (MCO) as well as AFSCME, MSEA, SEIU, and the UAW. For a full version of Pitfalls and Promises: The Real Risks to Residents and Taxpayers of Privatizing Prisons and Prison Services in Michigan go to

<http://www.mco-seiu.org/2012/02/14/prison-privatization-report/>

End Notes

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