# AUDITOR GENERAL

WILLIAM O. MONROE, CPA

## DEPARTMENT OF CORRECTIONS
## OUTSOURCING OF CANTEEN OPERATIONS

Operational Audit

### SUMMARY

**In a contract dated October 9, 2003, the Department of Corrections outsourced Statewide canteen operations to a private contractor (Keefe Commissary Network). The contract is expected to generate annual revenues of approximately $21 million for the Department. As part of our operational audit of the Department for the period July 2002 through February 2004 and selected actions taken through July 25, 2004, we reviewed the process for outsourcing canteen operations (including needs assessment, contractor selection, negotiation, and contract implementation). Our audit disclosed the following:**

**Finding No. 1: Florida Statutes do not contain competitive procurement guidelines for revenue-generating contracts. As the Statewide canteen operations contract is revenue generating, the Department concluded that it was not a purchase contemplated by law and, consequently, did not provide notice of the contract opportunity to all interested parties. The Legislature should consider revising the Statutes to include provisions for the competitive procurement of revenue-generating contracts. Such provisions should require advertisement and proper notice of the contract opportunity to all interested parties.**

**Finding No. 2: Prior to selecting a provider for Statewide canteen operations, the Department requested a best and final offer from three vendors. Along with the request, the Department provided analyses of net earnings from Department canteen operations for the 2002-03 fiscal year. The Department analyses were generally supported by Department accounting records and estimates of projected data were reasonable. However, certain revenue and expenditure items included in the Department analyses (such as vending machine commissions; canteen operating salaries; and some materials, supplies, and equipment costs) were not reflected in the contract with Keefe Commissary Network.**

**Finding No. 3: Since the effective date of the Statewide canteen operations contract, the Department has executed three amendments. Although some of these amendments may potentially increase Department costs for canteen operations (thereby reducing the net proceeds from the original Statewide canteen operations contract), a cost analysis or other written justification for each contract change was not prepared by Department staff prior to the execution of each amendment.**

**Finding No. 4: An amendment to the Statewide canteen operations contract provides that all hardware and proprietary software installed in the canteens at Department facilities remains the exclusive property of Keefe Commissary Network. However, as there is no provision for a period of transition from the Keefe Commissary Network system, canteen operations may be disrupted in the event Keefe Commissary Network discontinues canteen operations.**

**Finding No. 5: Department records did not document that criminal history records checks of all Keefe Commissary Network employees assigned to the contract were appropriately conducted prior to those employees beginning work in the canteens.**

## BACKGROUND

Historically, the Department operated canteens to provide convenience items (soft drinks, snack foods, and other items to supplement what the Department supplies for the inmates' basic needs) to inmates within Department institutions, annexes, road prisons, forestry camps, and work camps. Department employees were responsible for canteen operations and inmate labor was routinely utilized. According to Department records, for the fiscal year ended June 30, 2003, the annual net proceeds from Department canteen operations totaled approximately $15 million.

Department records indicate that the Department expected that canteen revenues would be maximized by outsourcing operations. Accordingly, the Department entered into a three-year contract (with an optional two-year renewal period) on October 9, 2003, with Keefe Commissary Network (part of the Centric Group, LLC) for the Statewide operation of Department canteens. Under the terms of the contract, Keefe Commissary Network is to provide one full-time employee at each major institution (regardless of the number of canteens operating at the institution) to oversee canteen operations. The Department is to select and provide inmates for use in canteen operations and will continue to pay inmates working in the canteens or performing canteen support functions.

Each inmate with a sufficient account balance in the Department's Inmate Bank (and who is not otherwise restricted) is allowed to make canteen purchases up to a set purchase limit, exclusive of any items obtained through mail order from Department-approved catalogs.[1] The purchase limit is set by the Department Secretary but, pursuant to law, cannot exceed $100 per week.[2] The canteens operate on a cashless system whereby inmates use photo identification cards in the same manner as bank debit cards to make canteen purchases.

Items to be sold in the canteens and any additions or deletions of canteens are subject to Department review and approval. Item prices may only be increased by up to 10 percent every six months until the statutory limit (fair market price) is reached.[3]

According to the contract, canteen operations were to be transferred to Keefe Commissary Network over a 150-day period in accordance with an agreed-upon Implementation Plan and Transition Schedule. Beginning on the date Keefe Commissary Network assumed responsibility for the operation of each facility's canteens, the Department was entitled to receive $.82 per inmate per day based on the Department's official midnight count of inmates in that facility. According to Department records, the average daily inmate population for the fiscal year ended June 30, 2003, was 68,491. The transition of canteen operations to Keefe Commissary Network was completed the week of February 23, 2004. At that time, there were 238 canteens in operation Statewide. Two canteens have been added since the contract was executed. Revenue generated for the Department by the Keefe Commissary Network contract totaled $10.9 million for the 2003-04 fiscal year.

## FINDINGS AND RECOMMENDATIONS

### Finding No. 1: Revenue-Generating Contract

To ensure that State agencies procure commodities and contractual services in accordance with legislative intent,[4] competitive procurement guidelines (including purchasing categories and threshold amounts above which State agencies must utilize competitive procurement procedures) are established in law.[5] However, these guidelines do not address the procurement of contracts for which the State agency does not intend to expend State funds.

In the contract with Keefe Commissary Network, the Department states that the contract is for commodities purchased for resale which may be procured without

[1] Department of Corrections Rule 33-203.101, Florida Administrative Code.
[2] Section 945.215, Florida Statutes.
[3] Section 945.215(1)(e), Florida Statutes.
[4] Section 287.001, Florida Statutes, *Legislative Intent*.
[5] Chapter 287, Florida Statutes.

receipt of competitive bids or proposals. Although the law[6] exempts commodities purchased for resale from competitive procurement procedures, the scope of the work described in the Keefe Commissary Network contract is the operation of Department canteens—an activity formerly performed by the Department. By outsourcing canteen operations, the Department will no longer purchase canteen items for resale and all canteen sales will be conducted by the vendor. As such, it appears that the primary purpose of the contract is the procurement of a contractual service, not a purchase of commodities for resale.

In the contract with Keefe Commissary Network, the Department also states that the contract is "revenue generating and is not a purchase contemplated by Chapter 287, Florida Statutes." The law requires that competitive procurement procedures be employed for contractual services and commodity procurements that are in excess of purchasing categories and threshold amounts. By utilizing purchasing categories and threshold amounts as the basis for requiring competitive procurement, the law does not address other value or consideration provided to a contractor in exchange for commodities or contractual services. Such value or consideration could include the authority for a contractor to receive revenue generated by a contractual agreement.

The legislative intent for procurement describes a process whereby contracts are awarded equitably and economically. Similarly, it is in the State's best interest that revenue-generating contracts be awarded to the highest responsive and responsible vendor. Without a competitive procurement process, the Department cannot demonstrate that contracts are awarded equitably or that the greatest amount of revenue for the best available services will be provided.

**Recommendation: The Legislature should consider revising current law to include provisions for the competitive procurement of revenue-generating contracts. To ensure that contracts are awarded equitably and to the highest responsive and responsible vendor, such provisions should require advertisement and proper notice of the contract opportunity to all interested parties. Notwithstanding the current absence of a statutory requirement to competitively procure revenue-generating contracts, as a matter of good business practice the Department should competitively procure these services.**

***In response to Finding No. 1, the Department stated that "it is clearly speculation that the department could have obtained a higher rate through the use of one of the statutorily defined competitive procurement processes." The point of our finding was not to speculate whether a higher rate could have been obtained, but to emphasize that fair procurement methods should be utilized to ensure that revenue-generating contracts are equitably awarded and provide the greatest amount of revenue for the best available services. We continue to recommend that the Department utilize procurement procedures that ensure all eligible contractors are notified of the prospective State procurement and are given a reasonable opportunity to compete for the contract.***

## Finding No. 2: Department Analyses of Canteen Net Earnings

Notwithstanding the Department's determination that competitive procurement procedures were not applicable for the outsourcing of canteen operations, the Department contacted three vendors (by letter dated August 22, 2003) and requested a best and final offer for the operation of the canteens.

Each of the three vendors contacted by the Department submitted a best and final offer. The three vendors and the respective offers are shown in the following table:

| Vendor | Offer Per Inmate Per Day |
|---|---|
| Aramark Corporation | $ 0.7408 |
| Trinity Services Group, Inc., and Canteen Correctional Services | $ 0.7500 |
| Keefe Commissary Network | $ 0.8200 |

[6] Section 287.012(5), Florida Statutes.

After reviewing the offers, the Department selected the vendor with the highest offer, Keefe Commissary Network. Subsequent to the selection of Keefe Commissary Network, two vendors filed formal written protests. One of these protests was subsequently withdrawn by the vendor,[7] while the second protest (asserting that the Department had not followed statutory procurement requirements) was dismissed by the Department.[8]

For vendor reference in preparing an offer, the Department included an overview of Statewide canteen operations including revenue and profit amounts for the 2002-03 fiscal year and the minimum operational requirements (e.g., hours of operation, staffing levels, etc.) in Attachment 1 to the letter requesting best and final offers. In the Attachment, the Department indicated that the Department's net earnings from canteen operations were $.602 per inmate per day.

We reviewed the financial information used in the Department's canteen revenue and profit analyses that were provided in Attachment 1 to the letter soliciting best and final offers from three vendors. This financial information is shown in the following table:

**Canteen Operations for the 2002-03 Fiscal Year[(1)]**

| | |
|---|---|
| **Estimated Revenues:** | |
| Merchandise Sales[(2)] | $ 45,634,774 |
| Vending Machine Commissions | 625,968 |
| **Total Estimated Operating Revenues:** | 46,260,742 |
| **Estimated Direct Expenditures:** | |
| Cost of Sales[(2)(3)] | 28,293,560 |
| **Estimated Gross Profit:** | **17,967,182** |
| **Estimated Other Operating Expenditures:** | |
| Store Manager Costs | 1,935,936 |
| Canteen Accounting Salaries | 412,992 |
| Canteen Operating Salaries (Inmates) | 254,849 |
| Materials, Supplies, and Equipment | 308,274 |
| **Total Estimated Other Operating Expenditures:** | **2,912,051** |
| **Estimated Net Earnings from Department Canteen Operations** | **$ 15,055,131** |
| **Average Daily Inmate Population[(4)]** | 68,491 |
| **Number of Days in a Year** | 365 |
| **Total Inmate Days in a Year[(5)]** | 24,999,215 |
| **Net Earnings Per Inmate Per Day[(6)]** | **$ 0.602** |

**Notes:**

(1) This is a compilation of analyses prepared by Department staff using available revenue, expenditure, and inmate population data. In some instances, Department staff annualized partial-year data to estimate the 2002-03 fiscal year net earnings from Department canteen operations.

(2) Merchandise Sales and Cost of Sales do not include amounts related to mail-order catalog sales.

(3) The Department computed Cost of Sales as 62 percent of Merchandise Sales based upon historical data.

(4) Average Daily Inmate Population is for the 2002-03 fiscal year and excludes inmates at work release centers and contracted facilities.

(5) Total Inmate Days in a Year was calculated by multiplying the Average Daily Inmate Population by the Number of Days in a Year.

(6) Net Earnings Per Inmate Per Day was calculated by dividing the Estimated Net Earnings from Department Canteen Operations by the Total Inmate Days in a Year.

Our review of the Department's calculations disclosed that the amounts included in the Department analyses were generally supported by Department accounting records and estimates of projected data were reasonable. However, we noted that the estimated gross profit was overstated by approximately 3 percent due to the inclusion of sales tax collections (for taxable items) in merchandise sales.

We also noted that certain revenue and expenditure items included in the Department's canteen revenue and profit analyses were not reflected in the resulting

[7] According to Department personnel, Trinity Services Group, Inc., subsequently withdrew the protest because the vendor "just wanted to make sure that the contract with Keefe reflected the terms of the offer made by Keefe."

[8] The Department dismissed the protest (made by a vendor who had not been requested to submit an offer) because "there is no statutory requirement that the contract for statewide canteen operations be secured through competitive bid."

contract with Keefe Commissary Network. Specifically:

- Vending machine commissions were not transferred to Keefe Commissary Network.
- Canteen operating salaries (inmates) and some materials, supplies, and equipment costs will continue to be paid by the Department.

As these items were not reflected in the contract, the usefulness of the analyses as a meaningful tool to evaluate the potential canteen revenues due to the Department under the contract with Keefe Commissary Network is limited. Also, as noted in Finding No. 3, subsequent contract amendments further dissociate the resulting contract from the analyses. For example, increasing inmate spending limits potentially increases canteen operation revenues; however, the Department analyses of net earnings did not consider the effect of increasing inmate spending limits on earnings from Department operation of the canteens.

**Recommendation: Prior to signing a contract, the Department should ensure that the contract provisions reflect the elements included in Department analyses that accompany or support requests for offers, proposals, or bids. In addition, we recommend that the Department take more care when preparing analyses for distribution to vendors and other users.**

***In response to Finding No. 2, the Department indicated that the differences between the initial analyses and the October 9, 2003, contract with Keefe Commissary Network were the result of a dynamic process. However, the Department failed to provide documentation of management's consideration of the effect of those differences on net contract earnings. While the Department has concluded in its response that such dynamic changes actually resulted in an increase in the value of the contract to the Department, it is not apparent that the increase was the result of a careful management evaluation of contract terms.***

## Finding No. 3: Contract Amendments

As of July 25, 2004, the contract had been amended three times since the effective date of the contract (October 9, 2003). The contract changes that resulted from the three amendments are shown in the following table:

| Amendment Number and Effective Date | Significant Changes to the Contract |
|---|---|
| Amendment No. 1 (Effective 02/25/04) | Increases inmates' weekly spending limit from $65 to $90. |
| | Adds a provision that if Keefe staff are not available to receive canteen commodities, Department warehouse staff will receive and sign for the boxes and pallets. Keefe is responsible for accountability of all commodities received by Department staff on Keefe's behalf. |
| Amendment No. 2 (Effective 05/03/04) | Reduces the types of canteen supplies that Keefe is required to provide (thereby increasing the canteen supplies that will be provided by the Department). |
| | Adds a provision recognizing the proprietary nature of Keefe's software and hardware installed in the canteens and that such software and hardware remains the exclusive property of Keefe. |
| | Adds a provision that Keefe is responsible for claiming exemption from the public records law (Chapter 119, Florida Statutes) for any pertinent materials (e.g., computer software). |
| Amendment No. 3 (Effective 07/25/04) | Acknowledges that the rights and responsibilities of the Access Catalog contract (No. C1656) have been assigned to Keefe and prohibits price increases for catalog items. |
| | Allows moneys to be recouped from an inmate's salary for inventory shortages directly related to the inmate. |
| | Increases the amount of compensation that Keefe will provide the Department from $.82 to $.827 per inmate per day based on the Department's official midnight count. |

In addition to the three amendments referred to in the table above, at the conclusion of audit field work, according to Department records, the Department was considering a fourth amendment increasing the inmates' weekly canteen spending limit to the statutory maximum of $100 (which would result in a cumulative increase in the spending limit of $35 since Keefe Commissary Network assumed canteen operations).

Although some of the contract changes in the amendments may potentially increase Department costs related to canteen operations, Department staff did not prepare a cost analysis or otherwise document the justification for each contract change prior to execution of the amendments. In response to audit inquiry, Department staff indicated that "although additional written justification may not have been separately generated, this does not in any way mean that an amendment is generated and processed on a whim. Each issue being considered as an amendment is carefully weighed as to the potential impact on public safety and additional expense/revenue to the department."

**Recommendation: Absent documentation of Department decisions that justify the contract amendments, the Department cannot readily demonstrate that the amendments are in the best interest of the State and do not diminish the benefits expected when the Department outsourced Statewide canteen operations. Accordingly, to demonstrate that Department costs associated with canteens are minimized while Statewide canteen operations contract revenue is maximized, we recommend that the Department prepare written justification of the advantage to the Department (e.g., through preparation of a cost-benefit analysis) prior to executing any future contract amendments.**

***In response to Finding No. 3, the Department indicated that a cost-benefit analysis had been prepared during the evaluation of amendment No. 3. During audit field work we requested documentation justifying amendment No. 3 and the Department provided calculations in an August 19, 2004, memorandum that purported to demonstrate that the amendment, which increases the amount due from Keefe Commissary Network by $.007 per inmate per day, will effectively maintain the canteen revenue stream after the assignment of the Access Catalog contract. However, the Department did not provide any documentation prepared prior to the date of the amendment (July 25, 2004) to support the calculations and we noted that the calculations appeared flawed. For example, the purported net revenue amount considered cost savings for staff time for canteen accounting positions that had already been eliminated when the canteen operations were first outsourced. (As shown in the table in Finding No. 2, the Department considered the Canteen Accounting Salaries related to these positions as cost savings in the initial computation of Net Earnings Per Inmate Per Day.)***

***The Department also stated that amendments Nos. 1 and 2 did not impact the per diem structure. We disagree as each of these amendments contain a provision that requires the Department to incur costs related to canteen operations which impact the per inmate per day amount.***

***The finding did not imply that the amendments were generated on a whim or were not approved by appropriate personnel. However, there is no documentation to clearly establish that, prior to amending the contract, the Department considered the financial effect of these amendments or whether other alternatives would have been more advantageous.***

## Finding No. 4: Transition of Operations

To facilitate canteen operations, the contract requires Keefe Commissary Network to implement its own technology system. Due to the size and complexity of the anticipated system, the contract allows Keefe Commissary Network an 18-month transition period after the execution of the contract to implement the system. During the transition period, the Department's cashless canteen computer system (hardware and software) is available for Keefe Commissary Network's use and the Department is responsible for maintenance and support of the system. After transition, existing Department canteen point-of-sale, file server, and other computer equipment will be retired from service and will not be available for Keefe Commissary Network's use.

At the end of the transition period, Keefe Commissary Network is required to provide, in each canteen operated under the contract, a turnkey point-of-sale system, including all software and equipment for transactions, receipt printing, and inventory control. The system must interface with the Department's Inmate Bank System that maintains account data for each inmate.

On May 3, 2004, the Department executed Amendment No. 2 to the contract. This Amendment states that "the Department acknowledges the proprietary nature of the Contractor's software and hereby agrees not to reproduce or transfer the software without written permission of the Contractor." In addition, the Amendment provides that all hardware and Keefe Commissary Network proprietary software installed in Department facilities remains the exclusive property of Keefe Commissary Network. However, the amendment does not provide for a transition period from the Keefe Commissary Network system in the event Keefe Commissary Network discontinues Statewide canteen operations.

As there is no provision for a period of transition from the Keefe Commissary Network system, canteen operations may be disrupted if the Department elects to resume canteen operations, the Department selects another vendor, or Keefe Commissary Network elects to discontinue providing Statewide canteen operations. Although, under the contract terms, the Department will retain the canteen computer system the Department currently owns, given the relatively short useful life of information technology equipment, the current system may no longer be useful after the contract term expires. In fact, Department staff indicated that the Department's current canteen system is already outdated.

In addition, the analyses of net earnings prepared by the Department prior to contracting with Keefe Commissary Network did not consider the costs of maintaining, supporting, or replacing the canteen computer system. These costs may negate any cost-savings or revenue enhancements realized by the Department from the current contract.

Florida Statutes do not currently require that State agencies contractually provide for a transition or phase-out period in the event of contract termination. Such a provision may reduce disruptions in operations or activities.

**Recommendation: We recommend that the Department amend the contract to provide for a period of transition from the Keefe Commissary Network canteen computer system in the event Keefe Commissary Network discontinues Statewide canteen operations. In addition, to ensure that operations or activities performed by contractors are undisrupted in the event of contract termination, we recommend that the Legislature consider adding statutory language to require that State agencies contractually provide for a transition or phase-out period that includes consideration of information technology systems.**

## Finding No. 5: Criminal History Records Checks

Pursuant to the contract, Keefe Commissary Network shall not offer employment to any individual or assign any individual to work under the contract who has not had a Florida Crime Information Center/National Crime Information Center background (criminal history records) check conducted. In order to carry out the criminal history records check, upon request, Keefe Commissary Network staff are required to provide personal data (name, race, date of birth, social security number, driver's license number, etc.) and to submit to fingerprinting. In addition, prior to any new contractor staff being hired or assigned to work under the contract, Keefe Commissary Network is to provide the information needed to conduct a criminal history records check.

Although Department records indicated that all of the Keefe Commissary Network employees assigned to Department canteens as of April 5, 2004, had been subject to criminal history records checks, the dates the checks were conducted were not documented. Absent notation of the date the check was conducted, the Department cannot demonstrate that the criminal history checks of all assigned Keefe Commissary Network employees were appropriately conducted prior to those employees beginning work in the canteens.

**Recommendation: To demonstrate that criminal history records checks are conducted prior to Keefe Commissary Network employees beginning work in the canteens, Department staff should note the date each records check was conducted and maintain that information with the results of the records check for each Keefe Commissary Network employee assigned to the contract.**

## OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of our operational audit of the Department and the outsourcing of canteen operations were:

- To evaluate the effectiveness of established internal controls in achieving management's control objectives in the categories of compliance with controlling laws, administrative rules, and other guidelines; the economic, efficient, and effective operation of State government; the validity and reliability of records and reports; and the safeguarding of assets.
- To evaluate management's performance in achieving compliance with controlling laws, administrative rules, and other guidelines; the economic, efficient, and effective operation of State government; the validity and reliability of records and reports; and the safeguarding of assets.
- To determine whether the Department had adequate documentation to justify the need for or benefits of the outsourcing of canteen operations and to determine whether the contract was administered and services and contractor payments were provided in accordance with contract terms.
- To evaluate the Department process for monitoring compliance with the canteen operations contract.
- To follow-up on audit reports Nos. 03-022 and 2004-050 and determine whether the Department has timely completed appropriate reconciliations of the Inmate Trust Fund; disposed of any unidentified differences; and timely assigned security profiles for Inmate Bank users.
- To review the controls over Keefe Commissary Network's access to and use of the Inmate Bank System.

The scope of our audit included various aspects related to the outsourcing of canteen operations, including: projected revenues and cost savings, the negotiation and contracting processes, contractor responsibilities and contract deliverables, compensation, and monitoring. In conducting our audit, we interviewed Department personnel, tested selected Department records, and completed various analyses and other procedures. Our audit included examinations of various documents (as well as events and conditions) applicable to the period July 2002 through February 2004 and selected actions taken through July 25, 2004.

## AUTHORITY

Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.

William O. Monroe

William O. Monroe, CPA
Auditor General

## AUDITEE RESPONSE

In a response letter dated September 30, 2004, the Secretary of the Department provided responses to our findings and recommendations. This letter is included in its entirety at the end of this report

To promote accountability in government and improvement in government operations, the Auditor General makes operational audits of selected programs, activities, and functions of State agencies. This operational audit was made in accordance with applicable ***Government Auditing Standards*** issued by the Comptroller General of the United States. This audit was conducted by Stanley E. Mitchell, CPA, and supervised by Sherrill F. Norman, CPA. Please address inquiries regarding this report to Dorothy R. Gilbert, CPA, Audit Manager, via E-mail (dorothygilbert@aud.state.fl.us) or by telephone (850-488-5444).

This report and other audit reports prepared by the Auditor General can be obtained on our Web site (http://www.state.fl.us/audgen); by telephone (850-487-9024); or by mail (G74 Claude Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1450).

FLORIDA
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September 30, 2004

The Honorable William O. Monroe, CPA
Auditor General
Office of the Auditor General
G74 Claude Pepper Building
111 West Madison Street
Tallahassee, FL 32399-1450

RE: Outsourcing of Canteen Operations

Dear Mr. Monroe:

We have reviewed the preliminary and tentative findings and recommendations included with your letter dated August 31, 2004. As required by Section 11.45(4)(d), Florida Statutes, our response is attached and corrective action will be taken as indicated.

We appreciate the recommendations and constructive comments provided by your staff. If further information is needed, please contact Mr. Gerald H. Abdul-Wasi, our Inspector General, at **(850) 410-4302**.

Sincerely,

for JVC

James V. Crosby, Jr.
Secretary

JVC/RP/cw
Attachment
cc: C. George Denman, Deputy Secretary
Gerald H. Abdul-Wasi, Inspector General
Dave Mecusker, Chief, Internal Auditor

**Finding No. 1: Florida Statutes do not contain competitive procurement guidelines for revenue-generating contracts. As the statewide canteen operations contract is revenue generating, the department concluded that it was not a purchase contemplated by law and, consequently, did not provide notice of the contract opportunity to all interested parties. The Legislature should consider revising the Statutes to include provisions for the competitive procurement of revenue-generating contracts. Such provisions should require advertisement and proper notice of the contract opportunity to all interested parties.**

Recommendation: The Legislature should consider revising current law to include provisions for the competitive procurement of revenue-generating contracts. To ensure that contracts are awarded equitably and to the highest responsive and responsible vendor, such provisions should require advertisement and proper notice of the contract opportunity to all interested parties. Notwithstanding the current absence of a statutory requirement to competitively procure revenue-generating contracts, as a matter of good business practice the department should competitively procure these services.

Agency Response: The department agrees that Chapter 287 does not apply to revenue generating contracts however this contract was issued within the bounds of Florida law. The department does take issue with several statements made by the audit, most particularly, that "Without a competitive procurement process, the department cannot demonstrate that contracts are awarded equitably or that the greatest amount of revenue for the best available services will be provided." This statement is not supported by the facts occurring in this procurement and also should not be adopted as a general mantra when procuring goods or services. Each procurement initiative has unique facts and circumstances and should be taken into consideration accordingly before deciding on the most appropriate procurement option.

The department had received several inquiries regarding its canteen operations from companies who had a demonstrated history of similar large-scale operations in other states. The department contacted all companies who had expressed written interest in assuming statewide operations and requested submission of a guaranteed per inmate per day rate from each company, to be paid to the department for statewide operations, regardless of sales. The rate would be compared to a minimum per diem rate per inmate the department had established that represented the amount of revenue the department would have to obtain in order to ensure no loss to the state and efficient canteen operations. The selected offer was nearly 22 cents over the rate established by the department. Such a high rate was not anticipated. It is clearly only speculation that the department could have obtained a higher rate through use of one of the statutorily defined competitive procurement processes.

The department has no response to the recommendation that the Legislature "[C]onsider revising the Statutes to include provisions for the competitive procurement of revenue-generating contracts." Competitive procurements are not always the best method of protecting the state's procurement interests: they are time consuming and often result in protests that affect start-of-service dates and result in significant monetary outlay. This can, and often does, leave the agency in a negatively impacted position. Agencies should retain the discretion to employ other fair procurement methods.

**Finding No. 2: Prior to selecting a provider for statewide canteen operations, the department requested a best and final offer from three vendors. Along with the request, the department provided analyses of net earnings from department canteen operations for the 2002-03 fiscal year. The department analyses were generally supported by department accounting records and estimates of projected data were reasonable.**

**However, certain revenue and expenditure items included in the department analyses (such as vending machine commissions; canteen operating salaries; and some materials, supplies, and equipment costs) were not reflected in the contract with Keefe Commissary Network.**

Recommendation: Prior to signing a contract, the department should ensure that the contract provisions reflect the elements included in department analyses that accompany or support requests for offers, proposals or bids. In addition, we recommend that the department take more care when preparing analyses for distribution to vendors and other users.

Agency Response: The procurement of commodities, supplies and services is a dynamic process. Issues and items of both a revenue and expenditure nature contemplated at the beginning of the process may turn out to be excluded from any resultant contract for a number of reasons. We do not agree that the omission of such revenues and expenditures from the Keefe contract limits the usefulness of the cost-benefit analysis as a meaningful tool to evaluate the potential canteen revenues due to the department. For example, it should be noted that removing the vending commissions from the original analysis effectively reduces the Net Earnings per Inmate per Day to $0.577 from $0.602 and retaining the inmate canteen operator costs effectively reduces the $0.82 proposed revenue to $0.81. This brief revised analysis demonstrates the <u>increase</u> in value of the contract to the department.

**Finding No. 3: Since the effective date of the statewide canteen operations contract, the department has executed three amendments. Although some of these amendments may potentially increase department costs for canteen operations (thereby reducing the net proceeds from the original statewide canteen operations contract), a cost analysis or other written justification for each contract change was not prepared by department staff prior to the execution of each amendment.**

Recommendation: Absent documentation of department decisions that justify the contract amendments, the department cannot readily demonstrate that the amendments are in the best interest of the State and do not diminish the benefits expected when the department outsourced statewide canteen operations. Accordingly, to demonstrate that department costs associated with canteens are minimized while statewide canteen operations contract revenue is maximized, we recommend that the department prepare written justification of the advantage to the department (e.g., through preparation of a cost—benefit analysis) prior to executing any future contract amendments.

Agency Response: The department disagrees with this recommendation. Although the audit report indicates the response from the department on this issue, an important sentence was left out, namely – *"It should be noted that prior to amendment of a contract, the proposed change is subjected to analysis and scrutiny by all levels of management with final approval being signified via sign-off from each."*

This carries more weight and meaning when added to the following acknowledged response *"Although additional written justification may not have been separately generated, this does not in any way mean that an amendment is generated and processed on a whim. Each issue being considered as an amendment is carefully weighed as to the potential impact on public safety and additional expense/revenue to the department."*

When an amendment is proposed, it is considered, discussed and approved by different ascending levels of the agency culminating in the signature of the Secretary before implementation. The impact on both the department and the vendor is carefully considered and evaluated at each level before signature authority is exercised. The presence of a signature indicates that in the opinion of the signer, the amendment is in the best interest of the department and the state of Florida.

With regard to amendment #3, this evaluation did include a cost-benefit analysis which resulted in an increase in the per diem payable to the department. Such analyses were not conducted on amendments #1 and #2 because those amendments did not impact the per diem structure of the contract and as such would have been irrelevant. However, as stated above, each amendment went through the detailed review and consideration process and resulted in a smoother, more defined canteen operation.

**Finding No. 4: An amendment to the statewide canteen operations contract provides that all hardware and proprietary software installed in the canteens at department facilities remains the exclusive property of Keefe Commissary Network. However, as there is no provision for a period of transition from the Keefe Commissary Network system, canteen operations may be disrupted in the event Keefe Commissary Network discontinues canteen operations.**

Recommendation: We recommend that the department amend the contract to provide for a period of transition from the Keefe Commissary Network canteen computer system in the event Keefe Commissary Network discontinues statewide canteen operations. In addition, to ensure that operations or activities performed by contractors are undisrupted in the event of contract termination, we recommend that the Legislature consider adding statutory language to require that State agencies contractually provide for a transition or phase-out period that includes consideration of information technology systems.

Agency Response: The department will consider amending the contract to provide for a period of transition if the program area determines that this is necessary.

**Finding No. 5: department records did not document that criminal history records checks of all Keefe Commissary Network employees assigned to the contract were appropriately conducted prior to those employees beginning work in the canteens.**

Recommendation: To demonstrate that criminal history records checks are conducted prior to Keefe Commissary Network employees beginning work in the canteens, department staff should note the date each records check was conducted and maintain that information with the results of the records check for each Keefe Commissary Network employee assigned to the contract.

Agency Response: The department conducted a criminal history check on every employee before the employee received an ID card and was allowed entry into the institution. In the future, the program area will be reminded to note the date of records check and maintain such in the employee file.