

Why contracting for performance in prison and detention management is worth a closer look

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Executive Summary

Contracting for performance is used by most states and the federal government to deliver quality correctional and detention services in a way that is fiscally responsible and highly accountable.

Contracting for performance provides government agencies:

- **Quality services to rehabilitate inmates and effectively transition detained immigrants**
Contracting for performance in corrections spurs innovation to reduce recidivism through effective educational, vocational, substance abuse, and cognitive behavioral programs. In the management of immigrant detention centers, contracting ensures detainees are housed in dedicated facilities with comprehensive medical care, access to legal materials and services, and opportunities for recreation, education, and counseling services
- **A proven way to manage budgets and control costs**
With contracting, governments ensure high-performing correctional and detention facilities at a significant cost savings:
 - Contract prisons save the Federal Bureau of Prisons \$312 million annually
 - Contract detention saves Immigration & Customs Enforcement \$402 million annually
 - The average state could save \$13-15 million annually through corrections contracting
- **Safe and secure correctional and detention facilities**
Contract facilities adhere to the same rigorous safety standards as their publicly run counterparts. Numerous studies comparing contract prisons to government-operated prisons have found that contract facilities provide the same level of safety and security.
- **High performance achieved by holding correctional and detention facilities accountable**
Contract facilities are held accountable through contracts with clear performance outcomes, daily monitoring and frequent audits, penalties for failure to perform, and incentives for exceeding performance.

State legislatures looking for improved outcomes, accountability, and cost savings in prison and detention management should give contracting for performance a closer look.

Introduction

A majority of states and the federal government currently choose to contract for performance in prison and detention management. Why do they do it? For the same reason government agencies contract for any other service: to provide the public with high-quality services in a way that is fiscally responsible and highly accountable. Contracting for performance allows government agencies to define the outcomes they want to see in corrections and detention management, select private-sector companies with the experience and expertise to deliver those outcomes, and hold them accountable for performance.

There are many benefits to the state and federal government agencies that contract for correctional and detention services. Contracting provides government agencies:

- Quality services to rehabilitate inmates and effectively transition detained immigrants
- A proven way to manage budgets and control costs
- Safe and secure correctional and detention facilities
- High performance achieved by holding correctional and detention facilities accountable

Not every state chooses to contract for prison and detention management, and a small number of states oppose the practice. The opposition to contracting is premised on a number of false assumptions about the performance of contract correctional and detention centers and the role they currently play in our justice and immigration systems. The purpose of this paper is to provide an assessment of the value of contracting as a tool for effectively managing high-performing correctional and detention facilities. While highlighting the benefits, the paper will also correct some common misperceptions. It's time to set the record straight and take a closer look at the benefits of contracting for performance in prison and detention management.

Background on contracting for performance in prison and detention management

Prison Management

In prison management, 27 state corrections agencies and the federal government use contracting for performance to safely house and rehabilitate incarcerated men and women.¹ Approximately nine percent of all state and federal prison inmates are housed in contract prisons.²

Contracting for performance in prison management began in the 1980s, during a time of rapid growth in state and federal prison populations. Tough-on-crime sentencing policies³ and increases in prosecutions contributed to four decades of sustained prison growth.⁴ Contracting for performance emerged during this time to alleviate overcrowding and the inhumane conditions that resulted, provide a safe and secure environment for inmates, help corrections agencies control their budgets, and provide quality rehabilitative services.

With contracting for performance in prison management, government entities (elected officials, law enforcement, prosecutors, courts, and correctional agencies) retain the responsibility to oversee the criminal justice system. Contractors of prisons do not set criminal justice policies, make arrests, sentence offenders, or determine to which facility a sentenced offender is assigned. Figure 1 shows the key roles and responsibilities within the criminal justice system. The role of contractors in this system is limited to prison operations, with direct, daily oversight from government.

Figure 1. The criminal justice system and the role of contractors of prison facilities

Government Role	Contractor Role
<ul style="list-style-type: none"> • Legislation • Penal code • Arrest • Trial • Conviction 	<ul style="list-style-type: none"> • Sentencing • Classification • Assignment • Prison operation • Release
	<ul style="list-style-type: none"> • Prison operation (with daily government oversight)

Detention Management

In the immigration detention system, approximately 65 percent of immigrant detainees are housed in contract detention facilities, 25 percent are housed in local jails, and just ten percent in government-operated facilities.⁵ The federal government uses contracting for performance in detention because the government lacks the necessary infrastructure to house immigrant detainees in a safe environment that is best suited to their needs. According to a 2016 Homeland Security Advisory Council report:

U.S. Immigration and Customs Enforcement (ICE) estimated that the cost of purchasing, constructing, or leasing enough government-owned and operated detention facilities to meet current needs would “exceed \$1.3 billion and could be as much as \$5-6 billion.”⁶

With contracting, the federal government retains the responsibility to oversee the immigration system. Contractors of detention facilities do not set immigration policies, apprehend immigrants, determine who should be detained, or determine to which facility a detainee is assigned. Figure 2 shows the key roles and responsibilities within the immigration system. Within the system, the role of contractors is limited to facility operations with direct, daily oversight from the government.

Figure 2. The immigration system and the role of contractors of detention facilities

Government Role	Contractor Role
<ul style="list-style-type: none"> • Legislation • Immigration law • Apprehension • Detention 	<ul style="list-style-type: none"> • Classification • Assignment • Facility operation • Release or deportation
	<ul style="list-style-type: none"> • Facility operation (with daily government oversight)

Changes in both immigration patterns and immigration policy over the past 25 years have led to a 500 percent increase in the average daily population of immigrant detainees.⁷ For the 2019 fiscal year, ICE predicts it will need enough detention beds to manage an average daily detention population of 45,000.⁸ While ICE makes predictions on average populations, the actual detainee population can fluctuate dramatically from day to day and is difficult to predict. Because ICE lacks the necessary infrastructure to house immigrant detainees, they have two options: contract with companies to build and operate dedicated detention facilities or contract with local jails, which can be ill-equipped to provide dedicated services to this population. The placement of ICE detainees in local jails makes supervision of the treatment of these detainees extremely difficult to monitor.

ICE prefers to contract with private companies to operate dedicated detention facilities. Why? Because dedicated detention facilities managed by private companies, held to national ICE detention standards, with direct, daily oversight from ICE—simply provide better services to detainees. Individuals held in

dedicated detention facilities have access to around-the-clock medical care, legal resources, and a safe environment that ensures they are not held in the same facilities as general criminal populations.

Contracting for performance in prison and detention management provides quality services to rehabilitate inmates and effectively transition detained immigrants

Prison Management

In prison management, one of the greatest benefits of contracting for performance is the expertise that contractors provide to rehabilitate incarcerated men and women. Contracting for performance promotes the use of evidence-based programs to reduce recidivism and spurs innovations to improve the effectiveness of rehabilitative programs. Contractors compete to provide incarcerated men and women with:

- Educational programs that improve academic skills
- Vocational programs in high-demand industries that result in meaningful employment after release
- Substance abuse programs to overcome addiction
- Cognitive behavioral programs that teach how to change negative thoughts and behaviors and be better prepared to successfully return to society

Contract prison facilities provide quality correctional programs that meet the standards of the American Correctional Association, the Correctional Education Association, and other accrediting bodies.

When contract prison facilities achieve high outcomes in providing rehabilitative programs, their government customers take notice and seek to replicate those outcomes in publicly operated facilities. In 2018, the privately operated Otero County Prison Facility in New Mexico received the highest rating in the state in an audit on the effectiveness of their educational programs. Speaking to Otero County Prison Facility staff in 2018, former New Mexico Corrections Department Secretary David Jablonski praised the facility for their approach and their results: “the programming here is above board. I can’t say enough about this facility. I wish I could duplicate it.”⁹

Detention Management

In detention management, one of the greatest benefits of contracting for performance is the quality of services that contractors provide to meet the unique needs of immigrant detainees. Immigration detention is different from criminal incarceration. ICE uses detention when it determines it necessary to ensure participation in immigration proceedings or to hold non-U.S. citizens for deportation. The majority of immigrant detainees (approximately 58 percent) have no criminal convictions and are held for an average of one to two months.¹⁰ Contracting for performance in detention ensures detainees have access to:

- **Comprehensive and responsive medical care**—Dedicated contract detention facilities provide each detainee a comprehensive medical screening upon arrival and ongoing care for chronic and acute illness on site.
- **Access to legal materials and services**—Dedicated contract detention facilities partner with community organizations to provide legal presentations to detainees. They also provide detainees with access to an on-site law library and full-time library staff to assist them in preparing for immigration proceedings.

- **Opportunities for recreation, education, and counseling services**—While not required to participate, detainees at contract facilities have opportunities to participate in recreation, English classes, trauma counseling, and opportunities to earn a GED or INEA, the Mexican equivalent of a GED.

Contractors often go above and beyond contractual requirements in providing these services, while still managing to save the government money. Government agencies interested in innovative ways to improve programs and services for incarcerated and detained individuals should give contracting for performance a closer look.

Contracting for performance in prison and detention management provides a proven way to manage budgets and control costs

Government agencies that contract for correctional and detention services look to contractors to provide quality services that save taxpayers money. The growth of the U.S. prison population has put an enormous strain on state budgets. From 1990 through 2015, annual state spending on corrections increased from \$16.9 billion to \$57.7 billion—a 241 percent increase.¹¹

Rising corrections costs during the last few decades have affected all 50 states. However, those states that used contracting in their prison systems have had smaller increases in expenditures than those that didn't.

A 2007 study by Vanderbilt University compared the growth in prison expenditures among states that used contract prisons and those that didn't from 1999 to 2004. The study concluded that the average state that did not use contract prisons would have saved between \$13-15 million in corrections costs per year.¹²

Contract prisons and detention centers have also been proven to provide significant savings to the federal government. The Federal Bureau of Prisons' (BOP) own FY 2017 per capita cost reporting shows that contract prisons—which house primarily low-custody federal inmates—operate at a cost of \$25.01 per inmate per day less than publicly operated low-custody facilities.¹³ Based on the BOP population in contract facilities in 2016 (the most recent year for which data is available), that's an estimated annual savings of nearly \$312 million (see figure 3). If the BOP contracted for all of its low-custody facilities, the savings would be much greater.

Figure 3. Contract prisons annual costs savings to the Federal Bureau of Prisons

	34,159	Average population in contract facilities
X	\$25.01	Average daily per person cost savings
X	365	Days per year
=	\$311,825,555.35	Estimated annual cost savings

ICE reported in 2016 that contract detention facilities saved \$40.12 per detainee per day compared to ICE's own facilities (see figure 4).¹⁴ Based on the estimated daily population in contract ICE facilities in the most recent program year, that's an estimated annual savings of nearly \$402 million.

Figure 4. Contract detention annual cost savings to Immigration & Customs Enforcement

	27,422	Average population in contract facilities
X	\$40.12	Average daily per person cost savings
X	365	Days per year
= \$401,565,212.36		Estimated annual cost savings

In many cases, government entities require contractors to save taxpayers money. For example, Mississippi state law requires contract prisons to provide at least a ten percent cost savings to the state, Ohio mandates a five percent savings, and Florida requires contract prisons to save the state seven percent.

How do contractors provide these cost savings? Contractors are able to realize savings on purchasing through negotiated strategic agreements with vendors. They are also able to provide competitive pay, healthcare, and retirement benefits, without the requirement to offer the costly, unsustainable defined benefit pension plans that are straining our state budgets.

Government agencies looking at how to provide high-quality correctional and detention services in a way that is fiscally responsible should give contracting a more thorough look. Contracting can save taxpayers money, while still providing high performance.

Contracting for performance in prison and detention facilities provides safe and secure facilities

Prisons and detention facilities are inherently high-risk environments. As such, the safety and security of staff, inmates, detainees, and the public are *the* top priority for both government-operated and contract facilities. Contract facility operators adhere to the same standards as government-operated facilities to prevent incidents, ensure inmates, detainees, and staff are safe, keep contraband out of facilities, and maintain orderly environments. Additionally, many government agencies require both contract and government-operated facilities to maintain accreditation by the American Correctional Association, which audits facilities to ensure compliance with hundreds of rigorous safety and security standards. Contract facilities are also required to provide the same amount and quality of safety and security training to staff as their government counterparts.

Throughout the years, several studies have compared the safety and security outcomes of contract correctional and detention centers with those of government-operated facilities. In 2007, University of Utah researchers combined the results of five of the most rigorous studies on prison safety. Three of the studies showed contract prisons perform better in prison safety, while two showed higher safety outcomes for the publicly operated prisons. Overall, the authors concluded that contract prisons perform just as well as privately operated prisons in ensuring prison safety.¹⁵

Despite the evidence that contract prisons and detention centers provide the same level of safety and security as their government counterparts, critics continue to falsely claim that safety and security incidents are more prevalent in contract facilities. They often cite as evidence a flawed interpretation of a 2016 Office of Inspector General (OIG) report on contract monitoring in the Federal Bureau of Prisons (BOP). In the report, the OIG compared several safety and security measures at 14 contract prisons with those at 14 BOP-operated prisons. The contract facilities in the report all housed non-U.S. citizens convicted of crimes in the U.S., while the BOP-operated prisons housed a mixed population of U.S.

citizens. The OIG's comparison of safety and security outcomes did not control for the stark differences in inmate populations. Without these controls, it's impossible to say if any differences in safety and security outcomes were a result of the operator or whether they were simply an effect of comparing two dramatically different types of inmates. In its response to the report, the BOP itself "caution[ed] against drawing comparisons of contract prisons to BOP-operated facilities as the different nature of the inmate populations and programs offered in each facility limit such comparisons."¹⁶

Despite BOP's caution against drawing comparisons between safety measures in contracted and BOP-operated facilities, opponents of contract prisons have done just that. Soon after the OIG report was released, the Department of Justice issued a memo to BOP expressing a desire to phase out contract prisons, citing the results of the OIG report as justification.¹⁷

Rigorous studies have shown that contract facilities do in fact provide the same level of safety and security. In some cases, outcomes in contract facilities are better. This is because government agencies select private-sector companies with experience and expertise in delivering strong safety outcomes, and they hold companies accountable for achieving those outcomes.

Contracting for performance in prison and detention management provides government an effective tool to hold facilities accountable for high performance

Government agencies can hold correctional and detention facilities to higher standards of performance and accountability through contracting. Contracts clearly spell out operational, staffing, and programmatic requirements and expectations, including consequences for failure to comply, up to and including contract cancellation. Staff from the offices of each state or federal agency work on-site at contracted facilities daily to monitor performance and ensure compliance with the terms of the contract as well as state and federal laws, rules, and regulations. Governments also conduct comprehensive quarterly and annual safety and security compliance audits.

Contracting can actually *increase* the accountability of a prison or detention facility. How is this possible? Contractors are accountable in ways that public correctional facilities aren't. Contractors must meet or exceed contract requirements and standards in order to win and keep contracts. Failure to do so can result in monetary fines or even the loss of the contract.¹⁸

Government agencies interested in increased accountability in the corrections and detention systems should give contracting for performance a more serious look. With contracting, the government retains the authority to set standards, monitor compliance, incentivize and reward strong performance, and find a new operator if the facility fails to perform. Contracting is an effective tool to increase performance and accountability.

Why state legislators should give contracting for prison and detention management a closer look

As state lawmakers, we have the responsibility to provide our correctional agencies with the resources they need to offer the best rehabilitative outcomes to incarcerated men and women. We need to ensure that our citizens leave prison with all of the educational, vocational, and life skills they need to stay out of prison. Contracting for performance can improve the quality of rehabilitative programs in our prisons.

State lawmakers have the responsibility to balance our state budgets and keep the costs of managing our prison systems from escalating. Contracting for performance in prison management has been proven to save money, without sacrificing quality services. We also have the responsibility to ensure the safety of correctional staff and inmates and to hold prisons accountable for outcomes. Contracting for performance in prison management empowers our state correctional agencies to select contractors that will adhere to the highest standards in safety and to truly hold them accountable for results.

While immigration is a federal issue, state and local governments often bear the consequences of federal immigration policy and enforcement. Currently, thousands of immigrants are detained in local jails, alongside the criminal population, because the federal government lacks adequate detention facilities. Dedicated detention facilities are necessary for the federal government to more effectively manage the population of detainees. Contracting for performance in detention management ensures quality services to detainees, delivers significant cost savings, and ensures high levels of safety and accountability.

Lawmakers interested in taking a closer look at contracting for performance should ask to tour contract facilities in their state or a neighboring state, including federal prisons, state prisons, and immigrant detention facilities. Lawmakers should also interview agency heads and personnel who choose to contract in corrections and detention and ask them about the benefits. It's time for lawmakers to reject false narratives and give contracting for performance in corrections and detention a firsthand look.

A Closer Look at Contracting for Performance in Prison and Detention Management

- Contract prisons provide quality programs to keep people from returning to prison
- Contract detention facilities provide comprehensive services to detainees not found in local jails
- Contract prison management can save states \$13-15 million annually
- Contract prisons save the Federal Bureau of Prisons \$312 million annually
- Contract detention saves Immigration & Customs Enforcement \$402 million annually
- Contracting allows government agencies to hold contractors accountable for delivering high performance

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