



Audit of the Federal Bureau of Prisons
Comprehensive Medical Services Contracts
Awarded to the University of Massachusetts
Medical School

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EXECUTIVE SUMMARY

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Objectives

The Department of Justice Office of the Inspector General conducted an audit of the Federal Bureau of Prisons' (BOP) contracts awarded to the University of Massachusetts Medical School (UMass) to provide comprehensive medical services at the Federal Correctional Complex located in Butner, North Carolina (FCC Butner); Federal Medical Center located in Devens, Massachusetts (FMC Devens); and Federal Correctional Institution located in Ray Brook, New York (FCI Ray Brook). The objectives of this audit were to assess the BOP's award and administration of the contracts, and UMass's compliance with the terms, conditions, laws, and regulations applicable to the contracts.

Results in Brief

We found areas for improvement related to the BOP's acquisition process, contract administration, contract performance oversight, and payment of billings. The acquisition process weaknesses resulted in extended periods of time where the BOP acquired medical services without full and open competition. We also determined that BOP officials lacked sufficient data to effectively monitor the contracts, did not maintain adequate documentation for changes made to contracts, and did not appropriately review billing documentation prior to payment. In addition, BOP contract administration staff did not act within their delegated authority when approving invoices for payment.

Further, the BOP did not have a reliable, consistent process in place to evaluate timeliness or quality of inmate healthcare. We determined that the BOP could improve its contract monitoring to enable it to assess these performance requirements.

Recommendations

Our report contains 15 recommendations to assist the BOP in improving its acquisition process for medical services, contract administration, management of contract performance, and billing process.

Audit Results

Between 2012 and 2014, the BOP awarded three indefinite-delivery/requirements contracts to UMass, which has been providing comprehensive medical care to BOP since 1999. The three contracts, which had an estimated total value of over \$304.4 million, were for UMass to provide comprehensive medical services (CMS) at FCC Butner, FMC Devens, and FCI Ray Brook. Each contract period of performance was 1-year base and four 1-year options. As of March 2020, all three contracts ended, and the facilities were using short-term contracting methods to acquire medical services from UMass.

Acquisition Process

We found that the BOP did not always complete its acquisition planning and awarding of follow-on CMS contracts in a timely manner. We determined the delays in the CMS acquisition process were related to poor collaboration and communication among the facilities and the centralized contracting office, inefficient processes involving the preparation and approval of the Request for Contract Action and the completion of proposal technical evaluations, and a lack of preparing written acquisition plans and establishing milestones.

Contracting without Full and Open Competition

As a result of the BOP's inefficient acquisition process, FCC Butner and FMC Devens purchased medical services for nearly 2 years without full and open competition. In addition, we found that the BOP did not adhere to Federal Acquisition Regulation (FAR) requirements when contracting without full and open competition, such as including adequate documentation to support the Contracting Officer's determination that prices paid for services were fair and reasonable.

Contract Administration

We found the BOP completed contract modifications when adding services to the contract requirements, but contract administration staff did not include sufficient documentation

in the contract file justifying the modifications. We also found that the BOP did not always properly delegate contract administration responsibilities to Contracting Officer's Representatives (COR). In an instance where a COR was delegated at FMC Devens, the COR did not maintain a current COR certification, as required by the FAR.

Contract Performance

Although the BOP told us that it did not identify any significant problems with UMass's performance related to the timely delivery of inmate healthcare and quality of care, we found that BOP did not have a reliable, consistent process in place to evaluate either the timeliness of inmate healthcare or the quality of that care. Specifically, we found that for the contracts we audited, facility staff did not complete required tasks to review and evaluate UMass's performance of the contract requirements. Also, we found that UMass did not provide all required on-site clinics consistently throughout the period of performance of the contracts. In addition, we found that BOP did not have a reliable, consistent process throughout all BOP facilities to monitor and analyze wait times for outside inmate appointments and the causes for cancelled or rescheduled appointments to ensure inmates receive timely healthcare.

Billing

Our review of the BOP's process related to CMS billings identified several areas where the BOP can and should improve. Specifically, we found that the BOP did not have a consistent process to review billings for off-site services to ensure they were billed at Medicare rates and in some instances these charges were not verified at all. Also, we found that the BOP did not always rely on adequate supporting documentation when reviewing billings and that invoices were approved for payment by staff who were not delegated such authority in a COR delegation letter. Additionally, we found that staff, without the proper authority, negotiated pricing not covered by the contract potentially putting the BOP at risk of being subjected to disputes, claims, or overpaying for medical services. Finally, we found that FCC Butner paid UMass \$169,814 in interest during fiscal years 2018 and 2019 because it paid invoices after 30 days, which did not comply with the requirements of the Prompt Payment Act.

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Introduction

The Department of Justice Office of the Inspector General has completed an audit of three Federal Bureau of Prisons' (BOP) contracts awarded to the University of Massachusetts Medical School (UMass) between 2012 and 2014 to provide comprehensive medical services at the Federal Correctional Complex located in Butner, North Carolina (FCC Butner); Federal Medical Center located in Devens, Massachusetts (FMC Devens); and Federal Correctional Institution located in Ray Brook, New York (FCI Ray Brook). The contracts were indefinite-delivery/requirements contracts¹, and each had a 1-year base and four 1-year options. As of March 2020, the comprehensive medical services contracts at all three facilities expired, and each facility used monthly purchase orders to acquire medical care for its inmates. The estimated total values of the contracts are presented in the following table.

Table 1

Comprehensive Medical Services Contracts with UMass

BOP Facility	Estimated Value
FMC Butner	\$175,515,071
FMC Devens	120,742,210
FCI Ray Brook	8,166,684
Total	\$304,423,965

Note: The estimated value at each facility was calculated using the original contract award, any changes made throughout the contract, and amounts from the Justification for Other than Full and Open Competition.

Source: BOP contract documentation and staff interviews

Background

The Federal Bureau of Prisons

The BOP was established in 1930 to provide more progressive and humane care for federal inmates, professionalize the prison service, and ensure consistent and centralized administration. As of December 2020, the BOP was responsible for the custody and care of 152,184 federal inmates. The BOP seeks to protect society by confining offenders in the controlled environments of prisons and community-based facilities that are safe, humane, cost-efficient, and appropriately secure. It also seeks to provide cost-effective health care consistent with community standards by providing essential medical, dental, and mental health services for federal inmates.

When the BOP's internal resources cannot fully meet inmates' health care needs, the BOP awards contracts to supplement its in-house medical services. Comprehensive medical services (CMS) contracts are intended to

¹ FAR 16.503 states that an indefinite-delivery/requirements contract is one that provides for filling all actual purchase requirements of designated Government activities for supplies or services during a specified contract period with deliveries or performance to be scheduled by placing orders with the contractor.

provide necessary professional and facility services for inmates both as inpatients and outpatients. The CMS contractors provide these services at local physician's offices, hospitals, and other healthcare facilities, as well as at medical specialty clinics conducted on-site at individual facilities.

The BOP's Field Acquisition Office (FAO) in Grand Prairie, Texas, is responsible for awarding contracts that exceed the Simplified Acquisition Threshold, rather than the individual facility awarding such contracts.² After contract award, facility contracting staff are responsible for contract administration and management functions, while FAO staff provide facilities assistance and guidance.

FCC Butner

FCC Butner is comprised of five facilities: a low security facility, two medium-security facilities, a minimum-security satellite prison camp, and a Federal Medical Center (FMC). Most of the medical services at the complex are provided at the FMC. The FMC is a full functioning hospital, identified as a Care Level III/IV facility, and provides all specialty areas of medicine, as well as being the primary referral center for all inmates requiring oncology, chemotherapy, or radiation therapy. As of July 2020, FCC Butner housed 4,203 inmates.

FMC Devens

FMC Devens is comprised of a federal medical center and an adjacent minimum-security satellite camp, fulfilling the medical and mental health care needs of male inmates. The FMC, identified as a Care Level IV facility, provides health care to inmates with serious health issues and is the primary center for providing transplant services for inmates. As of July 2020, FMC Devens housed 919 inmates.

FCI Ray Brook

FCI Ray Brook is a medium security facility with a detention center and is identified as a Care Level 1 facility with a generally healthy inmate population. Regardless of this designation, the need for inmate healthcare may arise at any time and in any level of complexity. As of July 2020, FCI Ray Brook housed 561 inmates.

University of Massachusetts Medical School

UMass, a public institution and the Commonwealth of Massachusetts' only public medical school, was founded in 1962 to provide affordable medical education for state residents and to increase the number of primary care physicians in underserved areas. Currently, it is an academic health science center of 6,180 professionals. UMass offers services and expertise to help federal and state agencies and other health care organizations create and apply needed health care solutions. This includes offering innovative options for clinical, financial, and policy challenges in developing and administering entire programs serving vulnerable populations.

The UMass Health and Criminal Justice Program provides comprehensive, innovative health care solutions and is responsible for the performance of BOP's comprehensive medical services contracts awarded to UMass. UMass has been providing comprehensive medical care to BOP since 1999.

² As of February 2020, the Simplified Acquisition Threshold is \$250,000. Prior to December 12, 2017, the threshold was \$100,000.

OIG Audit Approach

The objectives of this audit were to assess the BOP's award and administration of the contracts and UMass's compliance with the terms, conditions, laws, and regulations applicable to the contracts in the areas of: (1) contractor performance; (2) billings and payments; and (3) contract management, oversight, and monitoring.

In conducting our audit, we tested compliance with what we consider to be the most important conditions of the contract award. Unless otherwise stated in our report, the criteria we used to evaluate compliance are contained in the Federal Acquisition Regulation (FAR), and BOP policies and procedures. We interviewed BOP Central Office and FAO officials. We also interviewed FCC Butner, FMC Devens, and FCI Ray Brook staff from the Health Services Unit, Business Office, and Contracting who were involved with the UMass contracts. Additionally, we interviewed key personnel at UMass, including executive management and other officials and staff.

We also tested the BOP's procedures for ensuring adequate contract acquisition, administration, and oversight, and reviewed supporting documentation to ensure compliance with contract requirements. Additionally, we reviewed the BOP's contract files to ensure completeness as required by the FAR. Lastly, we tested invoices billed to the BOP to ensure accuracy and allowability of costs.

Audit Results

We found that delays in the CMS acquisition process caused the BOP to acquire medical services for extended periods of time without full and open competition. We believe these delays can be avoided in the future with improved collaboration, training, and communication, as well as better monitoring of the acquisition process using established milestones. Additionally, we found that the BOP did not comply with requirements under the FAR related to: (1) adequate documentation in the contract file when executing CMS contract modifications, (2) properly delegating contract administration responsibilities to qualified Contracting Officer's Representatives (COR), and (3) delegated CORs maintaining required certifications.

We also determined that improvements can be made to BOP's management of inpatient and outpatient services. The improvements relate to ensuring BOP staff that are delegated performance oversight responsibilities complete their required performance reporting tasks and maintain supporting documentation for the contractor's ratings, and ensuring staff are provided guidance and tools for the steps that can be taken when contract requirements are not fulfilled timely. Further, BOP should implement a reliable, consistent process throughout all BOP facilities to monitor and analyze wait times for outside inmate appointments and the causes for cancelled or rescheduled appointments to ensure inmates receive timely and quality healthcare.

Additionally, we found that the BOP did not ensure that the facilities had a consistent process to review off-site medical services billings for accuracy, that billings for on-site providers had adequate supporting documentation, that appropriate staff approved billings for payment, and that the facilities complied with requirements of the Prompt Payment Act.³

Comprehensive Medical Services Acquisition Process

We found that the BOP has not always been able to complete its acquisition planning and awarding of CMS contracts in a timely manner. As a result, FCC Butner and FMC Devens acquired medical services for nearly 2 years after existing contracts ended without full and open competition. We determined the delays in the CMS acquisition process were related to poor communication and collaboration among the individual facilities and the FAO, inefficient preparation and review of documentation included in the Request for Contract Action (RCA), technical evaluations of proposals that were frequently postponed due to a lack of guidance and policies to assist in completing the evaluations, and a lack of preparing acquisition plans including establishing and monitoring milestones for the acquisition. In addition, we found that a majority of the acquisition process tasks were the responsibility of Health Services staff within the facilities who had other responsibilities that took precedence, and that those priorities resulted in some of the delays in the acquisition process.

Acquisition Process Environment

CMS contracts are used by the BOP to provide medical services to inmates that cannot be fulfilled within the facility using BOP resources such as access to specialists, transplants, and oncology care. CMS contracts are awarded for a 5-year period of performance and steps must be taken to have the next contract awarded timely in accordance with BOP policies and the FAR. The acquisition of medical services at the BOP is a shared responsibility between the FAO and the individual facility where the medical services are necessary. We found that the facility staff we interviewed for this audit were not always familiar with how to complete required

³ FAR Subpart 32.9

acquisition planning tasks. While the FAO staff were continuously engaged in the acquisition of medical services for individual facilities throughout the BOP, staff at an individual facility only work on these tasks once every 5 years. In addition, most of the facility staff that were responsible for these tasks told us they had not received training and did not have written policies and procedures specific to their tasks.

Health Services staff at the facilities responsible for acquisition tasks also told us that completing required documents was difficult due to a lack of understanding in how to prepare the documentation. Also, other responsibilities within the Health Services Unit, such as providing healthcare to inmates, took precedence over these tasks. FAO staff told us that they understood facility staff had other priorities; however, there were significant delays, and the FAO staff rarely elevated such issues to senior management.

Request for Contract Action and Supporting Documentation

The acquisition of CMS begins with the preparation of an RCA that includes documentation required by the BOP, such as an acquisition plan, government estimate for the cost of the services requested, and a description of the necessary services. While the BOP Acquisition Policy is silent regarding how long completing and approving the RCA should take, it does include a minimum adequate acquisition lead time of 1 year to award a CMS contract from the time an RCA is approved by the FAO.

Although it is the responsibility of a facility's staff to complete an RCA, FAO staff told us that, given the complexity of CMS acquisitions, the FAO typically notifies facilities when an RCA is required approximately 18 months prior to the existing CMS contract ending. However, we were told by staff at the three facilities that they were not notified by the FAO, and instead they initiated the process on their own 12-18 months prior to ongoing contracts ending. Given that the BOP estimates the minimum amount of time to award a CMS contract after RCA approval is 1 year, the notification at 18 months would provide 6 months to complete and approve an RCA. However, we found that the most recent RCAs submitted by FCC Butner and FMC Devens took about 18 months to approve – three times longer than anticipated.

In our review of the RCA process, we found that there was a significant amount of time spent on completing an adequate independent government cost estimate, and we believe this was the cause of significant delay. Government cost estimates provide the anticipated quantity and related cost of services in an acquisition, and the estimate is prepared by facility staff with first-hand knowledge of a facility's medical needs. FAO staff told us they provided facility staff general guidance to prepare cost estimates and approved an RCA once it was determined to be adequate.

In our review of the government cost estimates associated with recent CMS acquisitions at FCC Butner and FMC Devens, we found several revisions were made to the estimates, but none of the revisions appeared to be significant. In some instances, we found that these revisions took several months to be completed and submitted back to the FAO, and these revisions could have been avoided with a discussion between the FAO Contracting Officer and facility staff. Additionally, we did not identify specific documented reasons for the revisions. Facility staff told us that there were instances where FAO staff told them revisions were adequate, but then would receive the estimate back months later requiring additional changes. Additionally, facility staff told us they did not have written policies and procedures specific to preparing cost estimates or training to assist them when completing the cost estimates.

Evaluation of Proposals

FAO staff use completed RCAs to solicit proposals from prospective vendors through solicitations that include evaluation criteria. The proposals are to detail how vendors intend to fulfill the requirements established by the BOP in the solicitation. The submitted proposals are evaluated by both the FAO and facility staff. FAO staff are responsible for completing an evaluation of price and past performance for each submitted proposal, while the facility staff complete a technical evaluation of each proposal. FAO works with the facility to convene an evaluation panel consisting of two to three Health Services staff and provides the panel with guidelines for completion of evaluations.

Similar to the completion of RCAs, we found issues with the completion of evaluations for the recent CMS acquisitions at FCC Butner and FMC Devens that contributed to CMS contract award timeliness issues. We found that the technical evaluation process for the FMC Devens proposals, replacing the contract ending in January 2018, was significantly delayed. Although the FAO received potential vendors' proposals in May 2019, we found that the proposals were not provided to the technical evaluation panel until October 2019 and the evaluations were not completed and provided to the FAO until March 2020. We also found no documented communications between FMC Devens staff and the FAO throughout the evaluation process, and no documentation in the file regarding the delays.

For the FCC Butner acquisition, we found that the FAO Comprehensive Medical Service Section Chief and Contracting Officer traveled to the facility to provide in-person guidance for completing the technical evaluations due to the complexity of the requirements. FCC Butner staff told us that this expedited the process and that, without FAO assistance, staff would not have known what to do and would have been unable to complete the evaluations as quickly.

Staff at both facilities responsible for conducting the technical evaluations told us that the evaluation criteria was generic and vague and did not apply to all the requirements in the solicitation, which made it difficult to evaluate the proposals. For example, staff at one facility told us that a requirement in the solicitation was to provide on-site clinics, while the evaluation criteria included determining the distance to and from the service provider. Because the services were to be offered within the facility and were not to include transportation to the provider, the evaluation criteria were not applicable.

In addition, we found that conducting technical evaluations was not routine for facility staff, similar to our finding regarding the completion of RCAs. According to the facility staff, no training specific to completing technical evaluations had been provided, and there were no written policies and procedures on how to conduct the evaluations.

At the conclusion of our audit, we discussed with BOP officials the training, support, and guidance concerns discussed in the above sections and were told that training was in place for those who complete acquisition tasks, and that FAO was available to provide support to facility staff whenever necessary. However, we asked but were not provided any additional documentation demonstrating these actions.

Given the challenges facility staff expressed throughout the audit and the timeliness issues related to CMS acquisitions, we believe the BOP should ensure facility staff are aware of resources available to assist in completing acquisition tasks and more thoroughly document its training provided to facility staff responsible for completing acquisition planning tasks. Additionally, we recommend that BOP should obtain feedback regarding

training currently provided to its facility staff and enhance its training and resources related to preparing adequate RCAs and completing technical evaluations.

Establishing and Managing Milestones Throughout the Acquisition Process

As discussed, awarding CMS contracts is a multi-step process lasting 18 months or longer and requires collaboration between the FAO and the individual facilities. The FAR requires agencies to prepare a written acquisition plan that includes milestones necessary to award the contract in a timely manner, as well as the technical, business, management, and other significant considerations of the acquisition.⁴ BOP officials told us that for the CMS acquisitions, milestones were not established or tracked in a written acquisition plan because the contracts are awarded as firm-fixed and do not require a written acquisition plan in accordance with the BOP Acquisition Policy and FAR. However, the contract documentation we reviewed identified the CMS contracts as indefinite delivery/requirements, which is required by the FAR to have a written acquisition plan. Regardless, due to the timeliness issues identified previously throughout the acquisition process, we believe the BOP should establish and monitor milestones to ensure CMS contracts are awarded prior to the existing contract ending.

Although the BOP does not require written acquisition plans for CMS acquisitions, BOP maintains contract files with documents and information related to CMS acquisitions in its electronic contract file system. In our review of these contract files, we found the files included most of the information required in the written acquisition plan except milestones for key events throughout the acquisition process. We also found that the BOP's electronic system includes a feature to create and monitor milestones, but that this feature was not being utilized.

Because the BOP did not identify and document acquisition milestones, along with planned and actual completion dates – including explanations for significant delays, the contract files were not as useful as they might have been for BOP management to monitor and identify the steps in the process that were prone to delay. As a result, we recommend the BOP ensure that written acquisition plans, including milestones, are completed for CMS acquisitions and that the established milestones are monitored and any delays, and associated causes and steps taken to address the delays, are documented in the contract file.

Contracting without Full and Open Competition

We found that delays in the CMS acquisition process resulted in follow-on contracts not being awarded prior to existing CMS contracts ending at both FCC Butner and FMC Devens. Due to the continuous need to provide medical care for inmates, the BOP bridged these gaps by purchasing medical services using short-term purchase orders. As shown in Table 2, the BOP purchased medical services through short-term purchase orders at FCC Butner and FMC Devens for approximately \$85 million over about 2 years.

⁴ FAR 7.105

Table 2

Short-Term Contracting for Medical Services

BOP Facility	Dollar Amount	Number of Monthly Purchase Orders	Number of JOFOCs
FCC Butner	\$56,466,946	25	6
FMC Devens	28,329,901	20	4
Total	<u>\$84,796,846</u>		

Note: The dollar amount and number of months were calculated from the end of the 6-month extension exercised after the contracts period of performance ended until March 2020.

Source: BOP Justification for Other than Full and Open Competition (JOFOC) documents

Although not prohibited, contracting without full and open competition carries risks, such as overpaying for goods and services, and should only be used under certain conditions. Based on our review, we found the BOP relied on contracting without full and open competition to purchase medical services rather than ensuring follow-on contracts were awarded timely. As such, to mitigate the associated risks with contracting without full and open competition, the BOP should have a well-designed process including sufficient documentation of the Contracting Officer’s determinations and adequate monitoring.

Other than Full and Open Competition Authority and Required Documentation

To authorize the purchase of medical services without full and open competition, contracting staff at FCC Butner and FMC Devens prepared a written document referred to as a Justification for Other than Full and Open Competition (JOFOC).⁵ The purpose of the JOFOC was to serve as part of the contract file detailing why the required services were obtained without competition as required by the FAR.

We found that the BOP prepared 10 JOFOCs, 6 at FCC Butner and 4 at FMC Devens, to justify the purchase of approximately \$85 million in medical services without full and open competition between January 2018 and July 2020. We reviewed 5 of the 10 JOFOCs to determine whether BOP included sufficient facts and rationale in the justification to justify the use of the authority cited.⁶ We found that the BOP used the authority of ‘unusual and compelling urgency’ in all the JOFOCs we reviewed. According to the FAR, this provision should be applied in situations where: (1) an unusual and compelling urgency precludes full and open competition; and (2) delay in award of a contract would result in serious injury, financial or other, to the Government.⁷ Additionally, the FAR notes that agencies cannot use contracting without full and open competition due to a lack of advance planning.⁸

We also found that the contract files did not include sufficient information to justify the use of the selected authority. Specifically, we focused our review on the BOP’s documentation to support the Contracting Officer’s

⁵ FAR 6.303-1(a)

⁶ FAR 6.303-2

⁷ FAR 6.302-2(b)

⁸ FAR 6.301(c)

determination that the anticipated cost was fair and reasonable. We found that, for the JOFOCs reviewed, the JOFOCs indicated that the Contracting Officer determined the anticipated costs were fair and reasonable; however, the contract files did not include any supporting documentation or analysis to support that determination. We found that for some of the JOFOCs reviewed, the anticipated costs were based on the same rates as the expired contracts, while in other JOFOCs reviewed the rates for some services had increased. However, we found that both facilities did not have supporting documentation to justify that the increased rates were fair and reasonable. In one instance, the FMC Devens Contract Specialist requested assistance on rate determinations from a FAO Contracting Officer and was advised that the increased rates were acceptable; but FAO did not provide supporting documentation for this determination. Also, we found at FCC Butner that the Contract Specialist negotiated the increased rates with UMass; however, there was no supporting documentation included in the contract file for how the rates were determined to be fair and reasonable.

The FAR also limits the duration of when 'unusual and compelling urgency' can be used. Specifically, the FAR requires that the period of performance of a contract awarded using this authority: (i) may not exceed the time necessary to meet the unusual and compelling requirements of the work to be performed and for the agency to enter into another contract for the required services using competitive procedures, and (ii) may not exceed 1 year unless the head of the agency determines exceptional circumstances apply.⁹

We reviewed the period of performance for all 10 JOFOCs and found that while each was prepared to cover a period of performance less than 1 year, when added to the previous JOFOC, the period using the authority at each facility exceeded 1 year. For example, FMC Devens prepared four different JOFOCs, each with a period of performance of 6 months, or a combined total of 2 years as shown previously in Table 2.

In addition to documentation requirements, when agencies contract for services without full and open competition, the agency is required to make the justification publicly available with such disclosure being made within 30 days of the contract award and a posting maintained for a minimum of 30 days.¹⁰ We found that none of the justifications for FCC Butner and FMC Devens were posted publicly or for the minimum of 30 days. Contracting staff at FMC Devens told us that they were unaware of this requirement.

As a result of the issues we identified with the contract documentation and authority used by the BOP, we recommend the BOP review its use of JOFOCs for CMS acquisitions to ensure compliance with regulations and ensure staff understand the requirements when contracting without full and open competition.

Monitoring of Contracting without Full and Open Competition

The FAR and BOP Acquisition Policy require that all JOFOCs exceeding the Simplified Acquisition Threshold be approved by the FAO Chief and those that exceed \$650,000 receive an additional level of approval from the BOP Procurement Executive and the BOP Assistant Director for Administration Division who serves as the BOP Competition Advocate.¹¹ We determined that the BOP adhered to its approval process for the JOFOCs we

⁹ FAR 6.302-2(d)

¹⁰ FAR 6.305

¹¹ BOP Acquisition Policy 6.304(c) and FAR 6.304(a)(2)

reviewed. However, we found that the BOP did not have an adequate process in place to monitor its use of contracting without full and open competition.

BOP's Central Office and FAO officials told us that both offices maintained logs of JOFOCs submitted for approval. We reviewed both logs from October 2017 through February 2020 and found that the FAO logged 134 CMS JOFOCs including 52 over \$650,000, while the Central Office log only included 17 CMS JOFOCs. The Central Office's Procurement Executive and Competition Advocate told us that they reviewed each JOFOC when it was submitted, but they only receive those over \$650,000 and were unaware of the total number of JOFOCs prepared related to CMS acquisitions. These officials also told us they were unaware how frequently and for how long the facilities were contracting without full and open competition.

We believe that BOP's senior procurement officials lacked sufficient data on the use of contracting without full and open competition related to medical services. Information providing a more complete picture of this type of contracting would enable senior management to more effectively identify potential underlying problems in the CMS acquisition process and ensure contracting without full and open competition is limited to those circumstances provided by regulation.

As a result of these issues, we recommend the BOP implement a process to properly justify, manage, and monitor all CMS contracting made without full and open competition.

Contract Administration

We found that the BOP did not adhere to the FAR in several areas related to contract administration of the CMS contracts. Specifically, we found that the contracting staff at FCC Butner and FMC Devens did not maintain adequate documentation in the contract files when adding services to the requirements through contract modifications. Additionally, we found that the BOP did not properly delegate contract administration responsibilities to CORs. Lastly, we found that the delegated COR at FMC Devens did not maintain a current certification because the required training was not completed in accordance with DOJ guidelines.

Contract Modifications

In large, complex, multi-year contracts such as CMS contracts, it is not uncommon for requirements to change, making it necessary to add or change services that were not anticipated during acquisition planning. These changes are prepared by the Contracting Officer and called contract modifications. The FAR requires that the Contracting Officer must include sufficient documentation in the contract file when adding or changing services through a contract modification. We found 14 of the 27 contract modifications completed for the CMS contracts at both FCC Butner and FMC Devens were made to add services not originally included in the contract requirements.

One important item that is required for Contracting Officers to document in the contract file is how the price was determined to be fair and reasonable when adding services without using competitive procedures. From our review of the 14 contract modifications that added services, we found that only 2 of the contract modification files included sufficient documentation to support the Contracting Officer's determination that the price for the new services was fair and reasonable. We found that eight of the contract modification files did not include any documentation to support the Contracting Officer's determination regarding price, and the remaining four included insufficient documentation, in our judgement, to adequately support the Contracting

Officer's determination that the prices were fair and reasonable. Specifically, we found that these four contract modification files did not include enough information to allow for any meaningful review and scrutiny, such as comparisons to rates for the same specialty in the facility's locality.

We also found that the BOP added positions and services that, according to BOP officials, the BOP does not usually include as part of CMS contract requirements. In particular, FAO officials told us that the BOP prefers to include only professional medical services as requirements of the CMS contracts, and to award separate contracts for non-professional medical services, such as dental assistants and technicians. We also found that contract modifications were used to include non-emergent medical transportation services to the CMS contract requirements. FAO officials told us that Contracting Officers are expected to exercise professional judgment when completing contract actions and that decisions must be sufficiently documented. FAO officials also told us that, although the preference is to award these services separately, due to the importance of providing timely medical care to inmates, adding these services to the CMS contract would be the best option.

Based on the issues we identified with the documentation provided regarding contract modifications, we recommend the BOP enhance its controls to ensure its contract files comply with regulations for maintaining documentation related to contract modifications.

Contracting Officer Representative

Contracting Officers are responsible for ensuring performance of all necessary contract actions and contractor compliance with the terms and conditions of a contract. To assist with the day-to-day administration of a contract, the Contracting Officer has the authority to designate a COR, and is required to provide a written delegation letter to officially designate the COR. The delegation letter outlines the COR's responsibilities under the contract and the limits of the COR's authority and must be retained in the contract file and updated as necessary. Additionally, the FAR specifies that a COR shall be qualified by training and experience commensurate with the responsibilities delegated, as well as be certified in accordance with the Office of Management and Budget's guidance.¹² Due to the complexity of the CMS contracts, the BOP requires the designee to have a FAC-COR Level II certification.¹³

We reviewed the contract files for the three facilities to determine if the BOP properly delegated COR responsibilities and documented the delegation as required. We found that the BOP did not always properly delegate its COR designations. Specifically, we found that at FCC Butner, the facility staff member most recently designated as the COR was no longer employed at the BOP and that an updated appointment letter had not been issued by the Contracting Officer. Instead, another staff member who previously was appointed as the COR was responsible for fulfilling the delegated COR responsibilities. We found that FCC Butner officials were unaware that the COR delegation letter was not current. Although the facility staff member acting as the COR had previously been appointed as a COR for the CMS contract, without a current and accurate delegation letter there was the risk that the COR may be unaware of any changes to the contract terms and conditions.

¹² FAR 1.602-2(d)

¹³ The Federal Acquisition Institute and the Office of Federal Procurement Policy have established the FAC-COR certification program, which has three levels of certification that allows for appropriate training and experience to manage various contracts from low-risk simple to high-risk complex.

At FCI Ray Brook, we found that the delegated COR retired in October 2019 and a replacement COR had not been selected because the facility did not have a FAC-COR Level II certified staff member in the Health Services unit.

We also found that the COR at FMC Devens did not maintain the FAC-COR Level II certification after June 2019 because continuous learning requirements were not met by the COR. To maintain a FAC-COR Level II, CORs are required to complete 40 continuous learning points (CLP) hours every 2 years. FAC-COR certification is managed at the federal agency level and, as such, DOJ identifies the training courses that may be taken to satisfy the continuous learning requirement. We found that while the COR at FMC Devens had taken the required hours of training, some of the hours were not eligible to be used for continuous learning purposes according to DOJ's policy. We believe that the risk of poor contract administration increases when delegated staff fail to maintain their certifications.

We recommend that the BOP review and enhance its policies and procedures to ensure that those delegated to administer CMS contracts are appropriately certified, and that appropriate delegations are in place.

Contract Performance

The CMS contracts we audited required UMass to establish a network of medical specialists to conduct on-site clinics inside facilities and provide inpatient and outpatient services in a community-based setting, such as at local physician's offices, hospitals, and other healthcare facilities. According to the contracts, UMass must conform to community standards in the delivery of healthcare, which includes providing care in a timely manner.¹⁴ During our interviews, BOP officials told us that they did not identify any significant issues related to UMass's performance of contract requirements. However, we found areas where BOP can improve its oversight of contract performance requirements, including monitoring the timeliness and quality of inmate care, ensuring required specialty on-site clinics are provided, and managing and understanding the causes and effects of appointment cancellations on inmate care.

Inpatient and Outpatient Services

For our audit, we visited FCC Butner, FMC Devens, and FCI Ray Brook and reviewed the contracts awarded to UMass to provide medical services at the facilities. The FMC at FCC Butner and FMC Devens are two of the BOP's six FMCs that are classified as Care Level IV facilities and house inmates with severe health problems and may require daily nursing care. BOP's Care Level IV facilities possess the bureau's most advanced clinical capabilities and resources.

Based on our review of BOP's monitoring records and interviews of BOP's contracting and medical staff, we determined that BOP was generally satisfied with the quality and quantity of services provided under all three contracts. While the healthcare provided to the inmates was continuously monitored throughout their medical evaluations, we found that the BOP did not have a formal process in place to ensure the timeliness of the healthcare inmates received. For the contracts we audited, we found that the BOP did not utilize any mechanisms to consistently review and evaluate UMass's performance of the contract requirements, including the quality and timeliness of healthcare. At the conclusion of our audit, BOP officials told us this is done using

¹⁴ Community standard refers to the level and type of care that a reasonably competent and skilled health professional, with a similar background and in the same medical community, would have provided under the circumstances.

reports generated from the BOP's electronic medical records system and completion of the Quality Assurance Surveillance Plan.¹⁵ However, during our audit, we were not provided evidence that these evaluations were completed for the contracts audited.

We also found that the BOP did not ensure UMass provided all the on-site clinics required by the contracts and it was therefore necessary for BOP to transport inmates outside facilities for treatment, resulting in avoidable security risks and additional expenses. Further, we found that the BOP faced challenges in transporting inmates to off-site appointments which resulted in a frequent need to reschedule appointments that could delay an inmate's healthcare. In addition, the BOP did not have systems in place to track and monitor the causes for rescheduling appointments, including whether the reason for a cancellation was a BOP issue or one that was out of its control, such as the physician cancelling the appointment. BOP also did not have a process in place to monitor how long an inmate waited to receive care after a cancelled appointment. Because the BOP did not have systems to measure or track any of these issues, we believe it is difficult for the BOP to determine whether inmates are receiving care within the required community standard.

Clinics provided by CMS contractors within BOP facilities are critical for BOP efforts to effectively and efficiently address the health care needs of its inmates. These clinics also help BOP manage security risks and cancellations by avoiding transporting inmates to community hospitals and doctors' offices. The CMS contracts we audited identified the clinics UMass was expected to provide according to medical specialty. For example, at both FCC Butner and FMC Devens, the contracts required UMass to provide clinics for specialties such as cardiology, optometry, vascular surgery, and infectious disease. The CMS contract at FCC Butner also required UMass to provide after-hour physicians to ensure inmates had around the clock medical care.

From our discussions with BOP and UMass staff and in reviewing documentation, we found that UMass did not always provide all the medical specialty clinics required by the contracts. Because of this, the BOP was required to transport inmates to off-site facilities for appointments in specialty areas for which there was no on-site clinic. Also, we found that even though some specialty areas were included in the contracts, BOP did not enforce the contract requirements to provide certain on-site clinics because the demand for the specialty area of care was not sufficient to support the clinic. BOP did not revise or modify the contract requirements in these situations because of the changing needs of its inmates at the facilities could change in the future. However, in other circumstances, we found that the BOP identified on-site clinics that were included in the contract requirements, but UMass was unable to provide physicians to conduct the clinics. For example, at FCC Butner, UMass did not continuously provide a vascular surgery physician for the required on-site clinic. From September to October 2019, 17 appointments were required to be scheduled off-site for this specialty even though the contract required an on-site clinic for vascular surgery. When appointments are completed off-site, there is an additional security risk and other appointments cannot be scheduled due to limited BOP resources for off-site appointments. Additionally, we found that when required on-site clinics were not provided, the BOP did not take any further action to promote contract compliance by ensuring that UMass staff the clinics, except to discuss the status of the vacant clinics at the monthly contractor meetings.

We reviewed the issue of vacant clinics with UMass officials who told us that they are sometimes unable to fill certain clinics because it is difficult to recruit qualified professionals willing to treat inmates inside BOP facilities. UMass officials also told us that the BOP includes in its solicitations for CMS contracts certain clinics that are

¹⁵ The Quality Assurance Surveillance Plan is required by FAR Part 46 and includes rating elements such as quality of goods/services, timeliness of deliveries/performance, business relations, and customer satisfaction.

never requested by the facility throughout the life of the contract. We reviewed the recent solicitation for a follow-on contract at FCI Ray Brook that required certain clinics even though these clinics had not been provided by UMass in the preceding 5 years covered by the existing contract. Although this solicitation was beyond the scope of our audit, the BOP stated that it included these on-site clinics in the solicitation in the event that inmate needs change at the facilities.

Due to the variety of inmate medical needs, not all healthcare treatments can be provided within a facility. The CMS contracts contemplate the need for inmates being seen outside the facility in cases where the level of inmate health care needed exceeds the medical care BOP can provide within the facility, or through available on-site clinics provided by UMass. In these circumstances, BOP is responsible for transporting these inmates to area hospitals and doctors' offices. While BOP officials told us they did not have any concerns regarding UMass's scheduling of appointments and the care inmates received outside the facility, they described for us some challenges that can add to the time inmates wait for treatment outside the facility. These challenges included limits on staff available to escort inmates and the limited number of trips leaving facilities on a single day. For example, FCC Butner and FMC Devens officials told us that many off-site appointments were rescheduled due to emergency medical trips out of the facility that required around the clock correctional staff coverage and limited how many other trips could be made out of the facility. UMass and BOP officials also told us that appointments are rescheduled for other unanticipated reasons, such as inmate refusal to attend the appointment, illness of the inmate, or rescheduling required by the medical provider.

UMass officials also told us that there was a significant amount of time spent by its staff cancelling and rescheduling inmate appointments. During our audit, we found that the BOP does not adequately track cancelled or rescheduled inmate appointments, and we were unable to determine what impact these cancellations and rescheduling had on the delivery of timely medical care to inmates. Due to the lack of reliable information, we also were unable to verify information provided by UMass regarding the number of cancelled or rescheduled appointments and the reasons why the appointments were cancelled or rescheduled. The Health Services staff at FCC Butner and FMC Devens told us that they believed most of the cancelled or rescheduled appointments were due to emergency medical trips that took precedence over scheduled, routine appointments, and this resulted in a lack of available BOP correctional officers and vehicles, but we did not identify documentation that supported this explanation.

While we agree the environment for scheduling and transporting inmates for treatment outside the facility is challenging, we found that the BOP does not have a process in place to track cancelled or rescheduled inmate appointments in order to determine wait times, identify causes of cancelling or rescheduling appointments, or demonstrate that UMass was rescheduling inmate appointments in a timely way following a cancellation.

At the conclusion of our audit, we discussed these issues with BOP officials and were told that inmates healthcare is consistently monitored, and the timeliness of outside appointments was determined by the referring physician using community standards. However, as discussed above, we were unable to determine from BOP records whether delays that resulted when appointments were cancelled and rescheduled impacted the delivery of inmate healthcare.

To improve compliance with contract terms related to inpatient and outpatient services, we recommend that BOP ensure that BOP staff delegated performance surveillance responsibilities complete required performance reporting tasks and maintain supporting documentation for the contractor's ratings. BOP should also provide

facility staff guidance and tools for the steps that can be taken when contract requirements are not fulfilled in a timely manner.

Additionally, BOP should implement a reliable, consistent process throughout all BOP facilities to monitor and analyze wait times for outside inmate appointments and the causes for cancelled or rescheduled appointments in order to ensure that inmates receive timely medical care.

Comprehensive Medical Services Costs Billing Process

From our review of the billing process for medical costs at the three facilities, we identified areas for improvement, including ensuring billings for off-site medical services using Medicare rates are adequately reviewed, sufficient documentation is maintained for on-site providers, appropriate delegations for staff who approve billings for payment, and facilities have procedures in place to avoid the payment of interest.

Off-site Medical Services Billings

Off-site physician services, medical procedures, and hospital services billed by UMass, as well as other CMS contractors, use Medicare-based rate structures that are often complex.¹⁶ To address the risks associated with the significant amounts billed by contractors for CMS contracts, and the additional complexities created by the use of the rate structures, the BOP contracted with a third-party claims adjudication vendor to ensure the accuracy of claim information, verify that the BOP is not billed for duplicate claims, and verify the local benchmark Medicare rate structures used in the billings.

In 2017, the OIG issued a report that included a recommendation to the BOP to require CMS contractors to submit electronic claims, ensure those claims are properly analyzed and maintained by the BOP's adjudication vendor, and enforce existing contract language that requires the adjudication vendor to perform fraud analytics and report any indicators of fraud to the BOP. This recommendation was based on the determination that BOP medical care claims were processed primarily through paper based manual methods. In response to the OIG's recommendation, the BOP awarded a medical claims adjudication services contract, but, as of March 2020, the BOP had not begun using the adjudication vendor because of technology issues within the BOP.

During our audit, we found that the three facilities each processed its off-site medical services claims in a different manner. We found that FCC Butner utilized the third-party adjudication vendor until August 2019, but since that time its medical service claims were not processed through the adjudication vendor. In addition, from August 2019 to March 2020, UMass billed over \$20 million for medical services provided to FCC Butner that were not reviewed through an adjudication process. Facility staff told us that the invoices were merely reviewed for mathematical accuracy and to ensure the inmate received the services billed. Based on the volume of medical services claims, we believe the BOP is at risk of overpaying for medical services incurred by the inmates at FCC Butner due to the adjudication vendor not being appropriately utilized and the complexities to review Medicare rates.

¹⁶ The contracts in our audit utilize Medicare Part A or B Benchmark pricing for the specific locality with a premium applied.

We found the Health Services Unit staff at FMC Devens purchased its own adjudication software that allowed it to adjudicate the UMass invoices for medical services billed using Medicare rates. The staff told us they preferred to review invoices rather than using the adjudication vendor.

We found that medical services claims at FCI Ray Brook were only reviewed for mathematical accuracy and that the inmate received the services billed, and that no verification of the use of Medicare rates was performed.

As a result of the inconsistent review process of medical services billings, we recommend that the BOP implement specific policies and procedures for reviewing billings submitted using Medicare-based rates, and that the BOP ensure that facilities utilize the third-party adjudicator vendor.

On-site Medical Services Billings

In a 2007 OIG audit report of the BOP's CMS contract at FCC Butner, the OIG found that FCC Butner did not review, or sign timesheets prepared by on-site providers and did not calculate time spent at the facility by these providers according to the main entrance visitor logs to verify the accuracy of hours billed for on-site providers. The OIG recommended that the BOP implement controls that require on-site providers to record their arrival and departure times within their designated work areas each day, and periodically compare the hours reported in timesheets to the hours recorded on site according to the main entrance logs.

The OIG conducted a follow-up audit in 2013 and reported that in response to the 2007 audit, the BOP implemented a time clock to improve its controls over the review and payment of hours billed for on-site providers. However, that audit found the time clock records were at times unavailable or unreliable. In these instances, the BOP relied on the visitor logs, but stated that the providers did not always record both their arrival and departure times. The OIG recommended that the BOP revise and take additional steps to enforce its policy requiring on-site providers to use the time clock.

During this audit, we reviewed FCC Butner's process to review UMass billings for on-site providers to determine if the BOP strengthened its process to ensure billings were accurate and properly supported. We reviewed a sample of invoices to determine if the BOP relied on adequate supporting documentation to approve payments to UMass.¹⁷ Consistent with the results of the prior audits, we found that the records created using the time clock were not always complete or legible, and the corresponding supporting documentation in the visitor logs were also missing or incomplete.

We recommend that the BOP implement Bureau-wide policies and standards for CMS contract billings, to include appropriate supporting documentation, at all facilities. Also, we recommend that the BOP ensure that FCC Butner enhance its procedures to ensure complete and accurate recording of on-site provider attendance to verify related billings.

Staff Assigned to Approve Billings

During our review of the invoice approval process at the three facilities, we identified invoices that were approved by individuals that were not delegated this authority in the COR delegation letter. We found that at

¹⁷ The sampled invoices were selected from UMass on-site providers invoices submitted to FCC Butner for services provided between January 2017 and December 2019.

FCC Butner and FMC Devens, Health Services staff approved invoices for payment who were not delegated this authority. While these individuals were closely involved with the day-to-day operations of the on-site providers, they either did not have a FAC-COR certification or were not certified at the level required by the BOP. At FCI Ray Brook, after the COR retired in October 2019, we found that the Business Administrator or Clinical Director approved invoices for payment; however, neither were delegated this authority nor had the required FAC-COR certification.

In addition to improper staff approving invoices for payment, we found that other facility staff were negotiating pricing for services not covered by a benchmark Medicare rate. For example, we found air ambulance transportation costs billed to FMC Devens used a rate other than benchmark Medicare because there was not a rate available for these services. FMC Devens staff told us they used Medicare Part B for its locality with the contract's premium applied to agree on an acceptable price with UMass. We were also told that the discussions for the air ambulance pricing were done between Health Services staff and UMass, and the Contracting Officer was not involved. The FAR states that only Contracting Officers have the authority to make commitments or changes that effect price or other terms and conditions of a contract.¹⁸ When staff without the proper authority negotiate pricing outside the contract terms and conditions, it puts the BOP at risk of being subjected to disputes, claims, or overpaying for medical services.

As a result of the facilities' lack of adherence to and understanding of contract administration responsibilities related to billings, we recommend that the BOP develop and implement policies and procedures emphasizing responsibilities and authority of staff involved with CMS contracts.

Prompt Payment Act

FAR Subpart 32.9 requires agencies to establish policies and procedures to ensure compliance with the Prompt Payment Act, which states that the due date for making invoice payments is the later of (1) the 30th day after the designated billing office receives a proper invoice from the contractor; or (2) the 30th day after government acceptance of the services provided.

We requested the amount of interest paid to UMass related to the Prompt Payment Act from FCC Butner and FMC Devens for the contracts we reviewed. We found that in fiscal years 2018 and 2019, FCC Butner paid UMass \$169,814 in interest because FCC Butner took longer than 30 days to pay the related invoices. Specifically, FCC Butner officials told us that more than 90 percent of the interest paid, \$159,148, was related to delays in processing invoices during the federal government shutdown in December 2018 and January 2019.

Although FCC Butner attributed the payment of interest costs to the federal government shutdown, we found that for the same period, FMC Devens paid just \$306 in interest to UMass. FMC Devens officials told us the interest paid was related to payments made after 30 days caused by issues with its accounting system.

We recommend that the BOP develop contingency plans to ensure invoices are paid timely in accordance with the Prompt Payment Act to avoid interest payments during disruptions to normal operations caused by extraordinary circumstances such as a government shutdown.

¹⁸ FAR 1.602-2

Conclusion and Recommendations

As a result of our audit, we determined that the BOP did not adequately monitor and manage its acquisition of follow-on contracts for comprehensive medical services (CMS). Consequently, the BOP relied on contracting for medical services without full and open competition rather than ensuring follow-on contracts were awarded timely. We determined that in order to more effectively manage the potential risks related to contracting without full and open competition, the BOP should focus on improving the efficiency of its process for acquiring CMS. Additionally, BOP senior executives should closely monitor contracting activities at its facilities for the potential of overusing contracting without full and open competition.

We also identified issues with the BOP's administration and management of the CMS contracts. Specifically, we found that the BOP did not comply with requirements under the FAR related to: (1) maintaining adequate documentation in the CMS contract files, (2) properly delegating contract administration responsibilities to qualified Contracting Officer's Representatives (COR), (3) ensuring delegated CORs maintained required certifications, and (4) the Prompt Payment Act. Additionally, the BOP did not have a consistent process in place to ensure billings were adequately supported, reviewed for accuracy, and approved by the appropriate staff. We believe the BOP should enhance its support and management of its staff to improve its contract administration processes to ensure compliance with regulations and contract terms and conditions.

Finally, BOP officials told us that they did not identify any significant issues related to performance of the contract requirements by UMass. However, we determined that BOP could improve its oversight of the quality and timeliness of healthcare provided by ensuring staff delegated performance surveillance responsibilities complete required reporting tasks and maintain supporting documentation for the contractor's ratings. We also determined that BOP should provide staff guidance and tools for the steps that can be taken when contract requirements are not fulfilled in a timely manner. Further, BOP should implement a reliable process throughout all BOP facilities to monitor and analyze the wait times for outside inmate appointments and the causes for cancelled or rescheduled appointments to ensure inmates receive timely healthcare.

We recommend that the BOP:

1. Ensure facility staff are aware of resources available to assist in the acquisition process and more thoroughly document its training provided to facility staff responsible for completing acquisition planning tasks.
2. Obtain feedback regarding training currently provided to its facility staff and enhance its training and resources related to preparing adequate RCAs and completing technical evaluations.
3. Ensure that written acquisition plans, including milestones, are completed for CMS acquisitions and ensure that the established milestones are monitored and any delays, and associated causes and steps taken to address the delays, are documented in the contract file.
4. Review its use of JOFOCs for CMS acquisitions to ensure compliance with regulations and ensure staff understand the requirements when contracting without full and open competition.

5. Implement a process to properly justify, manage, and monitor all CMS contracting made without full and open competition.
6. Enhance its controls to ensure its contract files comply with regulations for maintaining documentation related to contract modifications.
7. Review and enhance its policies and procedures to ensure that those delegated to administer CMS contracts are appropriately certified, and that appropriate delegations are in place.
8. Ensure that BOP staff delegated performance surveillance responsibilities complete required performance reporting tasks and maintain supporting documentation for the contractor's ratings.
9. Provide facility staff guidance and tools for the steps that can be taken when contract requirements are not fulfilled in a timely manner.
10. Implement a reliable, consistent process throughout all BOP facilities to monitor and analyze wait times for outside inmate appointments and the causes for cancelled or rescheduled appointments in order to ensure that inmates receive timely medical care.
11. Implement specific policies and procedures for reviewing billings submitted using Medicare-based rates, and that the BOP ensure that facilities utilize the third-party adjudicator vendor.
12. Implement Bureau-wide policies and standards for CMS contract billings, to include appropriate supporting documentation, at all facilities.
13. Ensure that FCC Butner enhance its procedures to ensure complete and accurate recording of on-site provider attendance to verify related billings.
14. Develop and implement policies and procedures emphasizing responsibilities and authority of staff involved with CMS contracts.
15. Develop contingency plans to ensure invoices are paid timely in accordance with the Prompt Payment Act to avoid interest payments during disruptions to normal operations caused by extraordinary circumstances such as a government shutdown.

APPENDIX 1: Objectives, Scope, and Methodology

Objectives

The objectives of this audit were to assess the BOP's award and administration of the contracts, and UMass' compliance with the terms, conditions, laws, and regulations applicable to the contracts in the areas of: (1) contractor performance; (2) billings and payments; and (3) contract management, oversight, and monitoring.

Scope and Methodology

The scope of our audit focused on comprehensive medical services provided at FCC Butner, FMC Devens, and FCI Ray Brook by UMass. In 2012, the BOP awarded Contract Numbers DJBP010600000057 and DJBP010600000061 with a total value of almost \$106.5 million to provide comprehensive medical services at FCC Butner. As of March 2020, FCC Butner's estimated contract value increased to approximately \$175.5 million. In 2013, the BOP awarded Contract Number DJBP020500000016 with a value a little over \$85 million to provide comprehensive medical services at FMC Devens and as of July 2020 the estimated value was almost \$121 million. In 2014, the BOP awarded Contract Number DJBP021200000035 with a value of almost \$8 million to provide comprehensive medical services at FCI Ray Brook and this increased slightly to an estimated value of almost \$8.2 million.

To accomplish the audit objectives, we interviewed BOP employees, including senior officials from the BOP's Central Office and the Field Acquisition Office, as well as Contract Specialists at the Field Acquisition Office and staff from the Business Office, Contracting, and Health Services at FCC Butner, FMC Devens, and FCI Ray Brook. We also interviewed UMass senior officials, financial, and program staff with BOP contract responsibilities. Additionally, we reviewed BOP's contract documentation and relevant policies, procedures, and guidance related to contracting and inmate medical care, including the BOP Acquisition Policy. Further, we conducted fieldwork at the FAO, FCC Butner, FMC Devens, and FCI Ray Brook.

Statement on Compliance with Generally Accepted Government Auditing Standards

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Internal Controls

In this audit, we performed testing of internal controls significant within the context of our audit objectives. We did not evaluate the internal controls of the BOP and UMass to provide assurance on its internal control structure as a whole. BOP and UMass management is responsible for the establishment and maintenance of internal controls in accordance with OMB Circular A-123. Because we do not express an opinion on the BOP's and UMass' internal control structure as a whole, we offer this statement solely for the information and use of the BOP and UMass.¹⁹

¹⁹ This restriction is not intended to limit the distribution of this report, which is a matter of public record.

In planning and performing our audit, we identified the following internal control components and underlying internal control principles as significant to the audit objectives:

Internal Control Components & Principles Significant to the Audit Objectives	
Control Environment Principles	
	The oversight body and management should demonstrate a commitment to integrity and ethical values.
	The oversight body should oversee the entity's internal control system.
	Management should establish an organizational structure, assign responsibility, and delegate authority to achieve the entity's objectives.
	Management should demonstrate a commitment to recruit, develop, and retain competent individuals.
	Management should evaluate performance and hold individuals accountable for their internal control responsibilities.
Risk Assessment Principles	
	Management should identify, analyze, and respond to risks related to achieving the defined objectives.
	Management should consider the potential for fraud when identifying, analyzing, and responding to risks.
Control Activity Principles	
	Management should design control activities to achieve objectives and respond to risks.
	Management should design the entity's information system and related control activities to achieve objectives and respond to risks.
	Management should implement control activities through policies.
Information & Communication Principles	
	Management should use quality information to achieve the entity's objectives.
Monitoring Principles	
	Management should establish and operate monitoring activities to monitor the internal control system and evaluate the results.

We assessed the design, implementation, and operating effectiveness of these internal controls and identified deficiencies that we believe could affect the BOP's ability to effectively and efficiently operate, to correctly state financial and performance information, and to ensure compliance with laws and regulations. The internal control deficiencies we found are discussed in the Audit Results section of this report. However, because our review was limited to aspects of these internal control components and underlying principles, it may not have disclosed all internal control deficiencies that may have existed at the time of this audit.

Compliance with Laws and Regulations

In this audit we also tested, as appropriate given our audit objectives and scope, selected transactions, records, procedures, and practices, to obtain reasonable assurance that BOP's and UMass' management complied with federal laws and regulations for which non-compliance, in our judgment, could have a material effect on the results of our audit. Our audit included examining, on a test basis, the BOP's and UMass' compliance with the following laws and regulations that could have a material effect on BOP's or UMass's operations:

- FAR Subpart 1.602 - *Responsibilities*

- FAR Subpart 6.3 – *Other than Full and Open Competition*
- FAR Subpart 7.1 – *Acquisition Plans*
- FAR Subpart 32.9 – *Prompt Payment*

This testing included interviewing BOP and UMass personnel, analyzing contract files and data, and reviewing invoices and supporting documentation. As noted in the Audit Results section of this report, we found the BOP did not comply with federal regulations related to acquisition and procurement, contract administration, and billings and payments.

Sample-Based Testing

To accomplish our audit objectives, we performed sample-based testing for invoices and contract documentation. In this effort, we employed a judgmental sampling design to obtain broad exposure to numerous facets of the areas we reviewed. This non-statistical sample design did not allow projection of the test results to the universe from which the samples were selected.

Computer-Processed Data

During our audit, we obtained information from the BOP's Bureau Electronic Medical Records System, CPARs, and UMass' HealthAxis system. We did not test the reliability of those systems as a whole, therefore any findings identified involving information from those systems were verified with documentation from other sources.

APPENDIX 2: The Federal Bureau of Prisons Response to the Draft Audit Report



U.S. Department of Justice

Federal Bureau of Prisons

Office of the Director

Washington, D.C. 20534

January 19, 2022

MEMORANDUM FOR JASON R. MALMSTROM
ASSISTANT INSPECTOR GENERAL
AUDIT

FROM: M.D. Carvajal
Director

SUBJECT: Response to the Office of Inspector General's (OIG)
Draft Report: Audit of the Federal Bureau of
Prisons' Comprehensive Medical Services Contracts
Awarded to the University of Massachusetts Medical
School

The Bureau of Prisons (BOP) appreciates the opportunity to provide a formal response to the Office of the Inspector General's above referenced report. The BOP has completed our review, and offer the following comments regarding the recommendations. As a general comment, the BOP notes that while it concurs with the recommendations as indicated below, it already has systems and mechanisms in place to address many of the identified concerns. These are described in further detail below.

Recommendation One: Ensure facility staff are aware of resources available to assist in the acquisition process and more thoroughly documented its training provided to facility staff responsible for completing acquisition planning tasks.

BOP's Response: The BOP concurs with this recommendation. Procurement professionals are required to complete acquisition related training which includes available resources externally and within the BOP to assist with the acquisition process. Training is recorded and included in the procurement staff electronic training file. The National Acquisition Branch provides Acquisition Training for Program Offices. Additionally, the Health Services Division hosts biennial leadership training with the procurement

training provided by the Field Acquisitions Office (FAO) and the Commercial Law Branch (CLB) within the Office of General Counsel (OGC). All training is documented within the individual staff training records maintained by the Human Resources Management Division (HRMD).

Recommendation Two: Obtain feedback regarding training currently provided to its facility staff and enhance its training and resources related to preparing adequate RCAs and completing technical evaluations.

BOP's Response: The BOP concurs with this recommendation with regards to institution staff. With the aforementioned training in recommendation one, the Health Services Division obtains training evaluations from each staff member attending leadership training and utilizes this information to enhance future training and resource needs, specifically those involving RCAs and technical evaluations. The BOP plans to continue this evaluation feedback loop process for the purpose of enhancing future training needs within the procurement, RCA, and technical evaluation areas.

Recommendation Three: Ensure that written acquisition plans, including milestones, are completed for CMS acquisitions and ensure that the established milestones are monitored and any delays, and associated causes and steps taken to address delays, are documented in the contract file.

BOP's Response: The BOP concurs with this recommendation. Acquisition plans/procurement history and milestones documents are included in all Comprehensive Medical Section (CMS) procurement files. Additionally, milestones are captured in Content Manager. All procurement actions are monitored any delays are noted according in the milestones.

Recommendation Four: Review its use of JOFOCS for CMS acquisitions to ensure compliance with regulations and ensure staff understand the requirements when contracting without full and open competition.

BOP's Response: The BOP concurs with this recommendation. We will review the use of JOFOCS and ensure staff understand compliance with regulations.

Recommendation Five: Implement a process to properly justify, manage, and monitor all CMS contracting made without full and open competition.

BOP's Response: The BOP concurs with this recommendation. In accordance with FAR 13.104, Promoting Competition, procurement staff must promote competition to the maximum. The BOP will continue to review and monitor CMS contract files to ensure procurement action includes documentation of full and open competition.

Recommendation Six: Enhance its controls to ensure its contract files comply with regulations for maintaining documentation related to contract modifications.

BOP's Response: The BOP concurs with this recommendation. Controls are established by regulation and policy. All Federal Acquisition Certification in Contracting (FAC-C) Certified/Warranted Contracting staff are required to comply the requirements of the Federal Acquisition Regulation, Justice Acquisition Regulation and the Bureau of Prisons Acquisition Policy, which states Contracting staff shall documents the file related to contract modifications.

Recommendation Seven: Review and enhance its policies and procedures to ensure that those delegated to administer CMS contracts are appropriately certified, and that appropriate delegations are in place.

BOP's Response: The BOP concurs with this recommendation. Policies and procedures exist requiring that all Administrative Contracting Officers (ACO) delegated the authority to administer CMS contracts are properly certified and maintain active FAC-C Certification and BOP Warrants. Contracting professionals are certified in accordance with the FAC-C standards. All award notices identify the ACO.

Recommendation Eight: Ensure that BOP staff delegated performance surveillance responsibilities complete required performance reporting tasks and maintain supporting documentation for the contractor's ratings.

BOP's Response: The BOP concurs with this recommendation. In accordance FAR 42.1502 Policy (Past Performance) and the Contactor Performance Assessment Reporting (CPAR) System, programming staff and procurement staff shall prepare at least annually a past performance evaluation at the time the work under a contract is complete. The evaluation for contractors remains indefinitely on file in the CPAR automated platform. Staff designated as contracting officer representatives (CORs) for technical report on contractor's performance work closely with procurement staff to

ensure all reporting is complete and submitted timely through the CPAR System.

Recommendation Nine: Provide facility staff guidance and tools for steps that can be taken when contract requirements are not fulfilled in a timely manner.

BOP's Response: The BOP concurs with this recommendation. Procurement professionals are required to complete acquisition related training which includes available resources externally and within the Agency to assist with the acquisition process. Training is recorded and included in the procurement staff electronic training file. The National Acquisition Branch provides Acquisition Training for Program Offices. Additionally, the Health Services Division hosts biennial leadership training with the procurement training provided by the FAO and the CLB within the Office of General Counsel. All training is documented within the individual staff training records maintained by the Human Resources Management Division.

Recommendation Ten: Implement a reliable, consistent process throughout all BOP facilities to monitor wait times outside inmate appointments and the causes for cancelled or rescheduled appointments in order to ensure that inmates receive timely medical care.

BOP's Response: The BOP concurs with this recommendation. The BOP monitors wait times for outside medical appointments through the electronic health record (EHR), specifically through the consultation queue of the EHR. The consultation queue of the EHR, identifies that time frame clinically indicated for the consultation to be scheduled, the actual date the consultation is scheduled through the comprehensive medical provider, and a verification of when results are received/recorded from the completed consultation. Health Services Administrators review this consultation queue frequently and specifically during each utilization review committee (URC). Identified discrepancies for canceled or rescheduled appointments are documented within the EHR with updates to applicable consultations as appropriate.

Recommendation Eleven: Implement specific policies and procedures for reviewing billing submitted using Medicare-based rates, and that the BOP ensure that facilities utilize the third-party adjudication vendor.

BOP's Response: The BOP concurs with this recommendation. The BOP has a third-party bill adjudicator platform. All active CMS

contracts will be modified as vendors complete their test trials with the Bill Adjudicator. All new CMS requirements include the Bill Adjudicator language in the solicitation once awarded the execution of bill adjudication is immediately implemented.

Recommendation Twelve: Implement Bureau-wide policies and standards for CMS contract billings, to include appropriate supporting documentation, at all facilities.

BOP's Response: The BOP concurs with this recommendation. All CMS contracts include FAR 52.212-4(g) which provides a detailed outline of the information required on all invoices. Additionally, the CMS performance work statement **Output #3 "Submit Properly Priced invoices for services rendered"** identifies in detail the information required when submitting invoices/medical claims.

Recommendation Thirteen: Ensure that FCC Butner enhance its procedures to ensure complete and accurate recording of on-site provider attendance to verify related billings.

BOP's Response: The BOP concurs with this recommendation. Butner will enhance its procedures to ensure complete and accurate recording of on-site provider attendance to verify related billings by re-educating contractor staff regarding the requirement to complete and sign the Contractor/Visitor Log Book at the entrance of each institution when entering and exiting the respective institution. They will also be reminded of the requirement to punch in and out using the time clock at each institution. In the event the time clock is malfunctioning, the contractor will write in his/her time, which will be verified using the sign in/sign out time from the Contractor/Visitor Log Book. When the time cards are copied for billing purposes, staff will ensure the copies are legible and re-copy/adjust the copier settings if necessary.

Recommendation Fourteen: Develop and implement policies and procedures emphasizing responsibilities and authority of staff involved with CMS contracts.

BOP's Response: The BOP concurs with this recommendation. Procurement staff are aware of the policies, procedures and responsibilities involving CMS contracts. Health Services Administrators work closely with procurement staff and participate in training for CMS specific policies, procedures, and responsibilities.

Recommendation Fifteen: Develop contingency plans to ensure invoices are paid timely in accordance with the Prompt Payment Act

to avoid interest payments during disruptions to normal operations caused by extraordinary circumstances such as a government shutdown.

BOP's Response: The BOP does not concur with this recommendation to the extent that it could create a conflict with the Anti-deficiency Act. All applicable contracts executed by the BOP include FAR Clause 52.232-19 Availability of Funds for Next Fiscal Year, and the Government's obligation for performance of the contract beyond the date is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. Additionally, the Anti-deficiency Act restricts the Federal Government's ability to obligate funds in advance of an appropriation or beyond appropriation levels.

APPENDIX 3: Office of the Inspector General Analysis and Summary of Actions Necessary to Close the Audit Report

The OIG provided a draft of this audit report to the Federal Bureau of Prisons (BOP) and the University of Massachusetts Medical School (UMass) for review and official comment. The BOP's response is incorporated in Appendix 2 of this final report. UMass elected not to provide a written response to the draft audit report. In response to our draft audit report, the BOP concurred with our recommendations and discussed the actions it will implement in response to our findings. As a result, the status of the audit report is resolved. The following provides the OIG analysis of the response and summary of actions necessary to close the report.

Recommendations for the BOP:

- 1. Ensure facility staff are aware of resources available to assist in the acquisition process and more thoroughly document its training provided to facility staff responsible for completing acquisition planning tasks.**

Resolved. The BOP concurred with our recommendation. The BOP stated in its response that procurement professionals are required to complete acquisition related training which includes available resources externally and within the BOP to assist with the acquisition process, and that training is recorded in the staff's electronic training file maintained by the Human Resources Management Division. The BOP further stated that its National Acquisition Branch provides acquisition training to its program offices as well as the Field Acquisition Office and the Commercial Law Branch for the Health Services Division.

This recommendation can be closed when we receive evidence that facility staff responsible for acquisition tasks have received training and are aware of resources available related to the acquisition process.

- 2. Obtain feedback regarding training currently provided to its facility staff and enhance its training and resources related to preparing adequate RCAs and completing technical evaluations.**

Resolved. The BOP concurred with our recommendation. The BOP stated in its response that the Health Services Division obtains training evaluations for the training referenced in the above recommendation and utilizes this information to enhance future training and resource needs, specifically those involving RCAs and technical evaluations. In addition, the BOP stated it will continue the evaluation feedback process to enhance future training needs within procurement, RCA, and technical evaluation areas.

This recommendation can be closed when we receive evidence that staff feedback was solicited and considered when making enhancements to the training program to address issues identified in our audit related to the acquisition process, RCAs, and technical evaluations.

- 3. Ensure that written acquisition plans, including milestones, are completed for CMS acquisitions and ensure that the established milestones are monitored and any delays, and associated causes and steps taken to address delays, are documented in the contract file.**

Resolved. The BOP concurred with our recommendation. The BOP stated in its response that acquisitions plans (procurement history) and milestones documents are included in the procurement files and the milestones are captured in its electronic contract file system. The BOP further stated that all procurement actions are monitored, and any delays are noted according in the milestones.

This recommendation can be closed when we receive evidence that written acquisition plans, including milestones, are completed for CMS acquisitions and that sufficient documentation is maintained in the procurement files for any delays.

- 4. Review its use of JOFOCs for CMS acquisitions to ensure compliance with regulations and ensure staff understand the requirements when contracting without full and open competition.**

Resolved. The BOP concurred with our recommendation. The BOP stated in its response that it will review the use of JOFOCs and ensure its staff understands regulations associated with contracting without full and open competition.

This recommendation can be closed when we receive a description of the JOFOC review process and the results of the BOP's review of its use of JOFOCs for CMS acquisitions to ensure compliance with regulations, and that staff understand requirements when contracting without full and open competition.

- 5. Implement a process to properly justify, manage, and monitor all CMS contracting made without full and open competition.**

Resolved. The BOP concurred with our recommendation. The BOP stated in its response that it will continue to review and monitor CMS contract files to ensure procurement action includes documentation of full and open competition.

This recommendation can be closed when we receive evidence that BOP implemented a process to ensure all CMS contracting made without full and open competition is properly justified, managed, and monitored.

- 6. Enhance its controls to ensure its contract files comply with regulations for maintaining documentation related to contract modifications.**

Resolved. The BOP concurred with our recommendation. The BOP stated in its response that all warranted contracting staff are required to comply with the requirements of FAR, Justice Acquisition Regulation, and the Bureau of Prisons Acquisition Policy, which states Contracting staff shall document the file related to contract modifications.

This recommendation can be closed when we receive evidence that the BOP enhanced its controls to ensure its contract files comply with regulations for maintaining documentation related to contract modifications.

- 7. Review and enhance its policies and procedures to ensure that those delegated to administer CMS contracts are appropriately certified, and that appropriate delegations are in place.**

Resolved. The BOP concurred with our recommendation. The BOP stated in its response that policies and procedures exist requiring that all Administrative Contracting Officers delegated the authority to administer CMS contracts are properly certified and maintain active certifications and warrants. The BOP further stated that Contracting professionals are certified in accordance with FAC-C standards and that all award notices identify the Administrative Contracting Officer.

This recommendation can be closed when we receive evidence that the BOP reviewed and enhanced its policies and procedures to ensure staff are properly delegated CMS contract administration responsibilities and staff are appropriately certified.

- 8. Ensure that BOP staff delegated performance surveillance responsibilities complete required performance reporting tasks and maintain supporting documentation for the contractor's ratings.**

Resolved. The BOP concurred with our recommendation. The BOP stated in its response that program and procurement staff shall prepare, at least annually, a past performance evaluation at the time work under a contract is complete, and this is to be maintained in the Contractor Performance Assessment Reporting system. Further, the BOP stated that staff designated as Contracting Officer Representatives work closely with procurement staff to ensure all reporting is complete and submitted timely through the electronic system.

This recommendation can be closed when we receive evidence that the BOP completed all required performance monitoring and reporting tasks and maintain supporting documentation for the contractor's ratings.

- 9. Provide facility staff guidance and tools for steps that can be taken when contract requirements are not fulfilled in a timely manner.**

Resolved. The BOP concurred with our recommendation. The BOP stated in its response that procurement professionals are required to complete acquisition-related training, which includes resources available externally and internally, and the training is recorded in its staff's electronic training record. The BOP further stated that the Health Services Division hosts biennial leadership training with the procurement training provided by the FAO and the Commercial Law Branch within the Office of General Counsel.

This recommendation can be closed when we receive evidence that the BOP provided facility staff guidance and tools for steps that can be taken when contract requirements are not fulfilled in a timely manner.

- 10. Implement a reliable, consistent process throughout all BOP facilities to monitor wait times outside inmate appointments and the causes for cancelled or rescheduled appointments in order to ensure that inmates receive timely medical care.**

Resolved. The BOP concurred with our recommendation. The BOP stated in its response that it monitors wait times for outside medical appointments through the consultation queue in the electronic health record which identifies the timeframe clinically indicated for the consultation to be scheduled, the actual date consultation is scheduled through the comprehensive medical provider, and a verification of when results are received/recorded from the completed consultation. The BOP further states that Health Services Administrators review this consultation queue frequently and specifically during each utilization review committee. The BOP also stated that discrepancies for cancelled or rescheduled appointments are documented within the electronic health record.

This recommendation can be closed when we receive evidence that the BOP implemented a reliable, consistent process BOP-wide to monitor wait times and the causes for cancelled or rescheduled appointments.

- 11. Implement specific policies and procedures for reviewing billing submitted using Medicare-based rates, and that the BOP ensure that facilities utilize the third-party adjudication vendor.**

Resolved. The BOP concurred with our recommendation. The BOP stated in its response that it has a third-party bill adjudicator platform, and that all CMS contracts will be modified as vendors complete testing with the third party. Further, the BOP stated that all new CMS solicitations include the bill adjudicator language and, once the contract is awarded, the execution of bill adjudication is implemented.

This recommendation can be closed when we receive evidence that the BOP implemented policies and procedures, BOP-wide, for reviewing billing submitted using Medicare-based rates, and that all facilities are using the third-party bill adjudicator.

- 12. Implement Bureau-wide policies and standards for CMS contract billings, to include appropriate supporting documentation, at all facilities.**

Resolved. The BOP concurred with our recommendation. The BOP stated in its response that all CMS contracts include FAR 52.212-4(g), which provides a detailed outline of the information required on all invoices, and the performance work statement identifies, in detail, the information required when submitting invoices/medical claims.

This recommendation can be closed when we receive evidence that the BOP implemented policies and standards BOP-wide for CMS contract billings to ensure appropriate supporting documentation is received and maintained with the invoices.

13. Ensure that FCC Butner enhance its procedures to ensure complete and accurate recording of on-site provider attendance to verify related billings.

Resolved. The BOP concurred with our recommendation. The BOP stated in its response that FCC Butner will enhance its procedures to ensure complete and accurate recording of on-site provider attendance to verify billings and re-educate contractor staff on the requirements to complete the Contractor/Visitor Log at the entrance. Also, the BOP stated that it will remind contractor staff of the requirement to punch in and out using the timeclock and of procedures if the timeclock is not functioning properly. Additionally, if the timeclock is malfunctioning, the contractor will write their time on the timecard to be verified to the Contractor/Visitor Log. Further, the BOP stated that staff will ensure that when timecards are copied for billing purposes that the copies are legible and re-copy if necessary.

This recommendation can be closed when we receive evidence that the BOP enhanced its procedures to ensure complete and accurate recording of on-site provider attendance at FCC Butner.

14. Develop and implement policies and procedures emphasizing responsibilities and authority of staff involved with CMS contracts.

Resolved. The BOP concurred with our recommendation. The BOP stated in its response that procurement staff are aware of policies, procedures, and responsibilities involving CMS contracts and that Health Services staff work closely with procurement staff and participate in CMS specific policies, procedures, and responsibilities.

This recommendation can be closed when we receive evidence that the BOP developed and implemented policies and procedures emphasizing responsibilities and authority of staff involved with CMS contracts.

15. Develop contingency plans to ensure invoices are paid timely in accordance with the Prompt Payment Act to avoid interest payments during disruptions to normal operations caused by extraordinary circumstances such as a government shutdown.

Resolved. In its response, the BOP stated it did not concur with our recommendation to the extent that it could create a conflict with the Anti-Deficiency Act. The OIG agrees that the BOP should not violate the Anti-Deficiency Act, and our recommendation does not suggest that. We discussed this with BOP officials who stated that the BOP concurs with the recommendation notwithstanding the potential conflict that could be created with the Anti-Deficiency Act. Specifically, the BOP stated in its response that the Anti-Deficiency Act restricts the BOP's ability to obligate funds in advance of an appropriation. Outside of this potential conflict, BOP officials stated that they agreed that BOP should pay its invoices and would work to develop contingency plans as outlined in the recommendation.

This recommendation can be closed when we receive evidence that the BOP developed contingency plans to ensure invoices are paid timely in accordance with the Prompt Payment Act during disruptions to normal operations caused by extraordinary circumstances, and that the BOP provide clarification regarding circumstances when a payment should not occur due to a conflict with the Anti-Deficiency Act.