



Office of the Inspector General  
U.S. Department of Justice



**Audit of the Federal Bureau of Prisons  
Contract No. DJB1PC007 Awarded to  
Reeves County, Texas to Operate the  
Reeves County Detention Center I/II  
Pecos, Texas**

**AUDIT OF THE FEDERAL BUREAU OF PRISONS  
CONTRACT NO. DJB1PC007 AWARDED TO  
REEVES COUNTY, TEXAS  
TO OPERATE THE REEVES COUNTY DETENTION CENTER I/II  
PECOS, TEXAS**

**EXECUTIVE SUMMARY**

In January 2007, the Federal Bureau of Prisons (BOP) awarded Contract No. DJB1PC007 to Reeves County, Texas (Reeves County) to operate the Reeves County Detention Center compounds R1 and R2 (RCDC I/II). The purpose of this service contract is to house up to 2,407 low-security, non-U.S. citizen adult males. The contract has a 4-year base period with three 2-year option periods, an estimated value of \$493 million, and is the Department's second largest contract in terms of total dollars obligated since fiscal year 2014, according to the Federal Procurement Data System. In early 2015, the BOP exercised the contract's third and final option period to extend performance through January 2017.

Reeves County subcontracted management of RCDC I/II to The GEO Group, Inc. (the GEO Group), a Florida-based corporation. Reeves County also subcontracted with Correct Care Solutions, LLC (CCS), a Tennessee-based company, to provide comprehensive healthcare services to RCDC I/II inmates.<sup>1</sup> The BOP conducts monitoring and oversight of RCDC I/II operations and is responsible for examining all areas of the contract including health services, education, recreation, food service, correctional services, correctional programs, safety, inmate services, and any other area in which inmates voice concerns during interactions with BOP staff. In January 2009, there was an inmate riot at RCDC I/II.<sup>2</sup>

The Office of the Inspector General (OIG) conducted this audit to assess BOP and RCDC I/II compliance with contract terms and conditions in the areas of billings and payments, staffing requirements, and contract oversight and monitoring. We found that Reeves County and CCS failed to comply with provisions of the Service Contract Act of 1965 (Service Contract Act). As a result, we identified almost \$3 million that we either questioned as unallowable or unsupported, or believe should be put to better use.<sup>3</sup> Specifically, we found that Reeves County improperly requested and the BOP improperly paid \$1.95 million in fringe benefits it was not entitled to receive, including \$175,436 in payroll taxes and workers' compensation

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<sup>1</sup> For the purpose of this audit, we will generally refer to all healthcare providers as CCS.

<sup>2</sup> In December 2008, there also was a riot at Reeves County Detention Center compound R3.

<sup>3</sup> The Service Contract Act requires employees working on federal service contracts in excess of \$2,500 not be paid less than the monetary wages and fringe benefits required by law, and prevents contractors from underbidding each other by reducing wages or fringe benefits for employees.

insurance that were incorrectly calculated. Additionally, CCS requested and the BOP paid \$74,765 in fringe benefits that were not properly supported with payroll documentation. Also, we identified and CCS acknowledged fringe benefit underpayments covering 12 current and former CCS employees totaling \$22,628. Upon learning about our finding and quantifying these errors, CCS sent reimbursement checks to the 12 current and former CCS employees for the fringe benefit underpayments. Some of the aforementioned unallowable reimbursements have a compounding effect over time because they are incorporated into each monthly invoice until the contract ends. We therefore found that, in addition to remedying the unallowable reimbursements it has already made, the BOP should reduce the contract's monthly price by \$41,088 to ensure the contractor will not improperly charge BOP an additional \$945,024 should the contract continue through its final month in January 2017. We concluded that these errors were not identified previously because the BOP and the contractors did not have an accurate understanding of certain fundamental requirements of the Service Contract Act.

We further found that, between February 2007 and December 2014, RCDC I/II was rated "deficient" or "unsatisfactory" in 6 of 12 award fee evaluation periods.<sup>4</sup> BOP's award fee rating reports reflected that RCDC I/II consistently struggled to meet or exceed baseline contractual standards, received an unacceptable number of deficiencies and notices of concern; was unresponsive to BOP inquiries; struggled with staffing issues in health services and correctional services; and frequently submitted inaccurate routine paperwork, including erroneous disciplinary hearing records and monthly invoices. In addition, the BOP reports repeatedly described RCDC I/II's quality control program as minimally or marginally effective. BOP reports indicate that performance improved over time, particularly in 2013 when the contractor received a "good" rating and its first award fee, and in 2014 when the contractor received a "very good" rating and its second award fee.

Regarding staffing, we found that during this contract's solicitation process, the BOP requested contractors to submit two offers, one of which eliminated minimum staffing requirements, such as maintaining staffing levels up to 90 percent for correctional services, 85 percent for health services, and 85 percent for all other departments of the BOP approved staffing plan. BOP officials told us they removed these staffing requirements to achieve cost savings and grant the contractor flexibility and discretion to manage the staffing of the facility. As a result, from the start of the contract to March 2009 there were no minimum staffing requirements for the facility. During that time, we found that the number of Correctional Officers was significantly below the 90 percent threshold that was later reincorporated into the contract after the inmate riot in January 2009. Using

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<sup>4</sup> Award fee ratings were based on BOP "Performance Rating Tables" that changed throughout the life of the contract. From fiscal years (FY) 2007 through 2011, there were five rating tiers and "deficient" was the second lowest rating. From FYs 2012 through 2013, there were six rating tiers; "unsatisfactory" was lowest rating and "good" was the fourth highest rating. We were not provided the BOP Performance Rating Table for FY 2014.

Staffing Report and Wage Determination information, we found that from April 2007 to March 2009, Reeves County would have spent an additional \$4.67 million in order to fill enough Correctional Officer positions to meet the Staffing Plan thresholds that were later reincorporated in the contract after the January 2009 riot. According to an After-Action Report prepared by BOP officials following the January 2009 riot, the BOP noted that while low staffing levels alone were not the direct cause of the disturbances, they directly affected Security and Health Services functions.

Following the inmate riot, the BOP reinstated the minimum staffing requirements into the contract, resulting in significantly increased staff at RCDC I/II, including Correctional Officer staffing that has typically been above the 90 percent threshold since the contract change.

We found that RCDC I/II has also had significant issues staffing its health services unit. In December 2010, the BOP added to all contracts with privately managed correctional facilities a requirement that the contractor staff its health services unit so that staffing levels equaled or exceeded 85 percent of the contract requirement. However, from December 2010 through December 2013, a period spanning 37 months, RCDC I/II failed to meet the 85 percent threshold in 34 of the 37 months. After we expressed our concerns with these staffing issues, CCS began a concerted effort to adequately staff RCDC I/II and has exceeded the 85 percent threshold from September 2014 through February 2015.

Because RCDC I/II consistently failed to achieve the 85 percent staffing requirement from December 2010 through December 2013, its vacant health services positions became subject to invoice deductions. Specifically, the Federal Acquisition Regulation authorizes the BOP to address non-compliant staffing by reducing the contract price to reflect the "reduced value of the services performed." However, the BOP calculated the reduced value of the services performed based on the minimum pay rates required by Department of Labor (DOL) issued wage determinations instead of the higher market value salaries that CCS had been paying its health services personnel, resulting in smaller invoice deductions. For one personnel category, licensed vocational nurses, we estimated that CCS would have had to pay \$314,856 more in total compensation from 2011-2013, had the BOP continued to use actual rates as the basis for deductions instead of the lesser DOL rate. Given RCDC I/II's past issues with staffing its health services unit and the differences between the aforementioned deduction methods, we believe that BOP's use of the DOL rate as a deduction basis creates a potential financial incentive for CCS to accept less costly monthly vacancy deductions rather than filling costlier positions at market rates.

Our audit also assessed RCDC I/II's quality control program. We found that this program, which had been minimally or marginally effective, improved over time and BOP onsite staff generally provided comprehensive monitoring and oversight. However, we identified areas for continued improvement. Specifically, RCDC I/II needs to retain original quality control-related documentation as required by the

contract, fully document monitoring activities, and complete corrective action plans for significant deficiencies.

Finally, we found that RCDC I/II officials had converted a general population housing unit into a “modified monitoring unit” referred to as the “J-Unit.” The purpose of the J-Unit was to isolate from the rest of the compound’s population inmates found to be coercing other inmates to join demonstrations, and whose behavior was creating institutional security problems capable of jeopardizing the safety of RCDC I/II staff and inmates. J-Unit inmates have more restricted movement and less access to institutional services than general population inmates. The OIG’s review of the J-Unit determined that RCDC I/II lacked specific policies and procedures that addressed important aspects of the J-Unit’s operations, such as (1) guidance on what evidence is necessary to place an inmate into the J-Unit; (2) procedures to ensure inmates receive due process with respect to placement in J-Unit, including the ability to challenge their placement in the J-Unit and the steps necessary to re-designate inmates to an unrestricted general population unit; (3) monitoring or oversight mechanisms to ensure the J-Unit is used as intended; and (4) safeguards to ensure inmate rights are consistent, to the maximum extent possible in light of security concerns, with inmates in other general population housing.

This report makes 18 recommendations to assist BOP in improving contractor and subcontractor operations and BOP monitoring and oversight at RCDC I/II under Contract No. DJB1PC007, and in addressing the almost \$3 million identified as questioned costs and funds that should be put to better use.

**AUDIT OF THE FEDERAL BUREAU OF PRISONS  
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## INTRODUCTION

The Department of Justice Office of the Inspector General (OIG) audited the Federal Bureau of Prisons (BOP) Contract No. DJB1PC007, awarded to Reeves County, Texas (Reeves County). The purpose of this service contract is to house 2,407 low-security, non-U.S. citizen inmates at the Reeves County Detention Center I/II (RCDC I/II) in Pecos, Texas. The contract, effective February 2007, has a 4-year base period with three 2-year option periods, an estimated value of \$493 million, and is the Department's second largest contract in terms of total dollars obligated since FY 2014, according to the Federal Procurement Data System. As of February 2014, actual costs were approximately \$320 million, and in early 2015, the BOP exercised the contract's third and final option period to extend performance through January 2017.

**Table 1**  
**Reeves County Detention Center Contract Costs**  
**Contract No. DJB1PC007<sup>5</sup>**

CONTRACT PERIOD	FROM	TO	ESTIMATED COST	ACTUAL COST
Base Period	2/01/2007	1/17/2011	\$ 186,989,688	\$ 166,441,280
Option Period 1	1/18/2011	1/17/2013	98,530,910	98,515,439
Option Period 2*	1/18/2013	1/17/2015	101,811,622	55,416,620
Option Period 3**	1/18/2015	1/17/2017	105,320,461	0
<b>TOTAL</b>			<b>\$492,652,681</b>	<b>\$320,373,340</b>
* Includes actual cost data through February 2014				
** Cost data was not available				

Source: BOP

### Background

The BOP's mission is 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, and that provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens. The BOP operates 121 prisons, with administrative oversight and support provided by its central and regional offices. As of February 2015, the BOP was responsible for the custody and care of 210,227 inmates.

As a strategy to help control prison overcrowding, the BOP has placed an increasing number of low security, criminal aliens serving sentences for 90 months or less in contracted facilities. The BOP's fiscal year (FY) 2014 budget for contract confinement was \$1.08 billion, a 71 percent increase over the past decade, and according to the BOP's FY 2015 Performance Budget it is the largest user of

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<sup>5</sup> Differences in the total amounts in the tables in the report are due to rounding. The sum of individual numbers prior to rounding may differ from the sum of the individual numbers rounded.

contract confinement among all correctional jurisdictions in the United States. As of February 2015, BOP housed 26,801 inmates in privately-managed facilities, accounting for nearly 13 percent of the total BOP inmate population.

### *Criminal Alien Requirement*

Criminal Alien Requirement (CAR) contracts are fixed price, performance-based service contracts, for the management and operation of correctional facilities housing low-security, non-U.S. citizen male inmates in BOP custody. The BOP views contract facilities as a viable option for special populations, such as criminal aliens and its use of CAR contracts stems from a governmental movement toward privatization that began in the late 1980's and early 1990's. President Clinton's budget for FY 1996 included a proposal to privatize the management and operations of future minimum and low-security federal prisons, and in 1996, Congress directed the BOP to begin a 5-year prison privatization demonstration project at a federal prison in Taft, California. The Taft Prison Facility became the first fully-privatized federal correctional institution wherein an outside contractor would assume primary responsibility for facility operations.

The BOP issued its first CAR-related solicitation in 1999. As of February 2015, the BOP had issued its 16<sup>th</sup> CAR solicitation, and housed 26,801 BOP inmates in 14 privately-managed CAR facilities located throughout the United States, as shown in Table 2.

**Table 2**  
**Criminal Alien Requirement Privately-Managed Contract Facilities**  
**As of February 19, 2015**

FACILITY NAME	LOCATION	CONTRACTOR <sup>6</sup>	SECURITY LEVEL	POPULATION
Adams County Correctional Facility	Natchez, MS	CCA	Low	2,164
Big Spring Correctional Facility	Big Spring, TX	GEO	Low	3,392
Cibola Correctional Facility	Milan, NM	CCA	Low	1,111
D. Ray James Correctional Facility	Folkston, GA	GEO	Low	2,303
Giles W. Dalby Correctional Facility	Post, TX	MTC	Low	1,840
Eden Detention Center	Eden, TX	CCA	Low	1,297
McRae Correctional Facility	McRae, GA	CCA	Low	1,910
Moshannon Valley Correctional Center	Philipsburg, PA	GEO	Low	1,788
Northeast Ohio Correctional Facility	Youngstown, OH	CCA	Low	1,025
<b>Reeves County Detention Center I/II</b>	<b>Pecos, TX</b>	<b>Reeves Co.</b>	<b>Low</b>	<b>2,272</b>
Reeves County Detention Center III	Pecos, TX	Reeves Co.	Low	1,271
Rivers Correctional Institution	Winton, NC	GEO	Low	1,292
Taft Correctional Institution	Taft, CA	MTC	Low & Minimum	2,255
Willacy County Correctional Center	Raymondville, TX	MTC	Low	2,881
<b>TOTAL INMATE POPULATION</b>				<b>26,801</b>

Source: BOP

In January 2007, the BOP awarded Contract No. DJB1PC007 to Reeves County, Texas, to operate RCDC I/II under CAR No. 6. The purpose of CAR No. 6 was to procure 7,000 contract beds for a low-security, adult male population consisting primarily of criminal aliens.<sup>7</sup>

*Reeves County Detention Complex*

The Reeves County Detention Complex (Complex) is a 400,000 square foot correctional institution located in Pecos, Texas. The Complex consists of three centers (R1 through R3) that house criminal aliens for the BOP.<sup>8</sup> Centers R1 and R2 (RCDC I/II) contain multiple housing units, indoor and outdoor recreation areas, food services, warehousing, and an immigration courtroom. Center R3 is a separate facility consisting of three housing units with support buildings for centralized programs. The Complex was opened in 1986 to relieve overcrowding of contract federal inmates within the county jail, and housed federal inmates from 1988 through 2006 through intergovernmental agreements (IGAs) with the BOP. The CAR No. 6 contract required additional services not contained in the preceding

<sup>6</sup> In addition to Reeves County, CAR contracts were also awarded to Corrections Corporation of America (CCA), the GEO Group, Inc. (GEO), and Management & Training Corporation (MTC).

<sup>7</sup> BOP awarded five contracts under CAR No. 6, including Contract No. DJB1PC007 to Reeves County.

<sup>8</sup> The BOP awarded a separate contract (No. DJB1PC003) to Reeves County in May 2006 under CAR No. 5, to house federal criminal aliens in compound R3, which has a bed capacity of 1,356. Center R3 was not included in the scope of this audit.

IGAs, including the provision of comprehensive medical services and a new medical care unit, American Correctional Association (ACA) and The Joint Commission accreditations, office space for BOP onsite monitors, and sentence computation responsibilities.

The RCDC I/II's mission under the CAR No. 6 contract is to ensure that the BOP receives high quality, cost effective, and comprehensive privately managed prison services. The majority of the 330 staff at RCDC I/II are Reeves County employees. Reeves County is governed by a 4-member elected Commissioners' Court and an elected County Judge. The County Judge submitted the formal response to the BOP solicitation and is the signing official for contract modifications and administrative changes.

### *The GEO Group*

In November 2006, Reeves County entered into an agreement with The GEO Group, Inc. (the GEO Group) to provide management services contingent upon RCDC I/II being awarded a CAR No. 6 contract. The GEO Group is a Florida-based corporation that specializes in the ownership, leasing, and management of correctional, detention, and re-entry facilities and the provision of community-based services and youth services in the United States, Australia, South Africa, and the United Kingdom. The GEO Group's U.S. Corrections and Detention Division administers the operation and management of approximately 66,500 beds in 58 correctional and detention facilities. In 2013, the GEO Group earned \$1.52 billion in total revenue, of which 16 percent was earned from the BOP.

When the BOP awarded Reeves County the CAR No. 6 contract and began housing BOP inmates, its management services subcontract with the GEO Group became effective. The initial term of the subcontract was 10 years with the option of mutually exercising additional 10-year terms. The GEO Group's responsibilities under the subcontract are to manage all aspects of RCDC I/II in accordance with the contract and applicable standards. Requirements include creating and implementing RCDC I/II policies and procedures, establishing the facility staffing levels, managing the operational aspects of the contract, and developing and maintaining financial management records. The GEO Group's RCDC I/II management team includes the Warden, Assistant Wardens, various department heads, and management or fiduciary positions.

### Correct Care Solutions

In March 2007, the Reeves County Commissioners' Court entered into a subcontract with Physicians Network Association (PNA) to provide comprehensive healthcare services at RCDC I/II. In 2010, PNA was acquired by Correctional Healthcare Companies (CHC), and in the summer of 2014, CHC merged with

Correct Care Solutions, LLC (CCS).<sup>9</sup> The contract is for 4 years with three additional 2-year option periods and requires that CCS provide health services, including but not limited to routine health care; nursing care; emergency care; medical, mental health and dental care; treatment of acute and chronic conditions; intake health screenings; tuberculosis testing; identification and treatment of communicable disease; physical examinations; and other services outlined in the contract.

#### *Federal Bureau of Prisons Contract Administration*

BOP's administration, monitoring, and oversight of its 14 privately operated adult correctional facilities are shared by its Privatized Corrections Contracting (PCC) section, Privatization Management Branch (PMB), and Contract Facility Monitoring (CFM) section. PCC is a component of BOP's Administrative Division and is responsible for contract procurement and administration, and the assignment and supervision of Contracting Officers assigned to each contract. The Contracting Officer appoints an Administrative Contracting Officer (ACO) to each facility and the ACO's role is to monitor contract performance on a daily basis to ensure that the contractor is adhering to the terms and conditions of the contract.<sup>10</sup>

The PMB is located within BOP's Correctional Programs Division and its responsibilities include managing and overseeing the operation of secure contract facilities. The PMB maintains at least two full-time staff at each private facility including the Senior Secure Institution Manager (SSIM) and Secure Oversight Manager (SOM).<sup>11</sup> The SSIM and SOM are Contracting Officer Representatives (COR), whose functions include conducting routine reviews of critical performance areas in various departments of the facility which assist them in identifying possible deficiencies or concerns.<sup>12</sup> They are responsible for examining all areas of the contract including health services, education, recreation, food service, correctional services, correctional programs, safety, inmate services, and any other area in which inmates voice concerns during interactions with BOP staff.

Lastly, the CFM section within the BOP's Program Review Division consists of a team of subject matter experts who annually (at a minimum) monitor the contract facilities and review specific disciplines for contract compliance.

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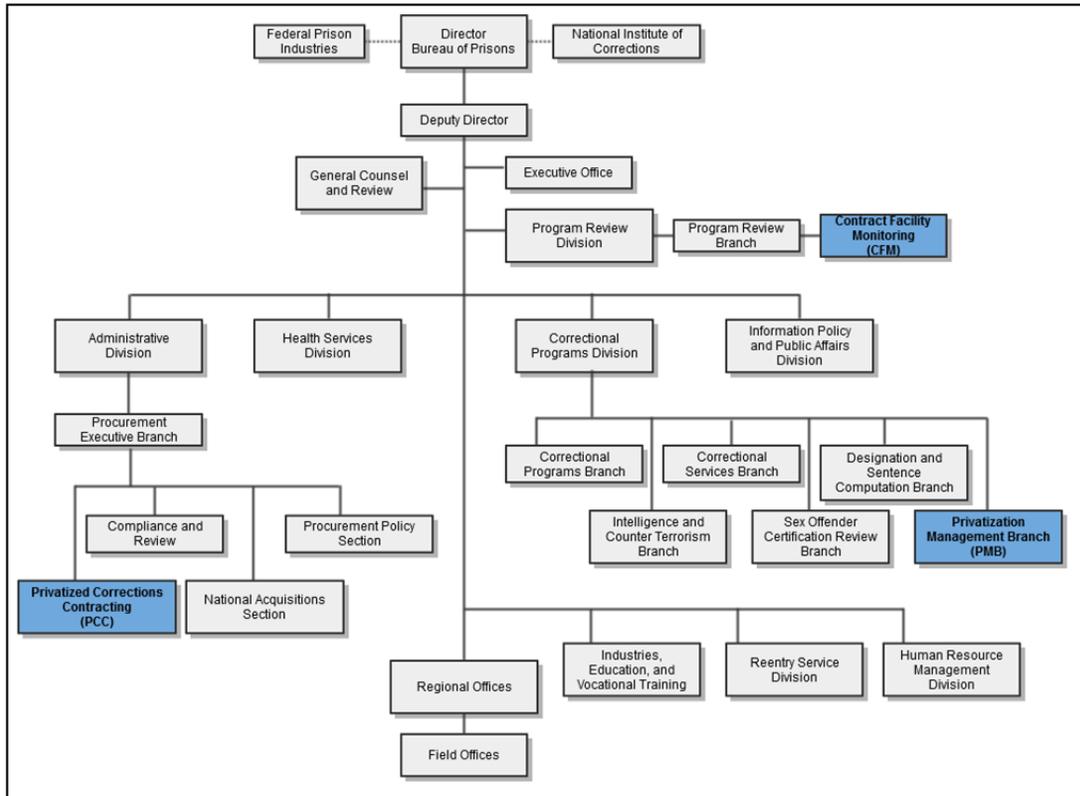
<sup>9</sup> For the purpose of this audit, we will generally refer to all healthcare providers as CCS. CCS is based in Nashville, Tennessee and offers comprehensive medical, dental, and behavioral health services for inmates.

<sup>10</sup> The ACO position at RCDC I/II was vacant throughout most of our audit. However, we interviewed the former ACO on several occasions.

<sup>11</sup> Because the Reeves County Detention Complex has two separate contracts, it has two SOM positions.

<sup>12</sup> A Contracting Officer Representative (COR) is an individual appointed by the contracting officer to assist in the technical monitoring or administration of a contract.

**Figure 1**  
**BOP Organizational Chart<sup>13</sup>**



Source: BOP

**OIG Audit Approach**

The objective of our audit was to assess BOP and RCDC I/II compliance with contract terms and conditions in the areas of: (1) billings and payments, (2) staffing requirements, and (3) contract oversight and monitoring. The scope of this audit, unless otherwise stated, focused on contract performance from October 1, 2008 through December 31, 2013.

To ensure compliance with contract requirements regarding billings and payments, we assessed the adequacy of BOP payments for monthly invoices and award-fees to Reeves County, reviewed the accuracy and completeness of contract modifications resulting in a net increase or decrease of funds, reviewed BOP and RCDC I/II compliance with Federal Acquisition Regulation (FAR) requirements related to the payment of prevailing wages and benefits to staff based on locality, and BOP’s compliance with the Prompt Payment Act.

<sup>13</sup> This organizational chart does not provide a comprehensive view of all BOP subcomponents.

To determine if RCDC I/II complied with contractual staffing requirements, we reviewed contract provisions related to the facility's staffing, compared facility staffing information to timekeeping and payroll records, assessed whether RCDC I/II filled vacant positions in a timely manner as required in the contract, reviewed and determined how staffing shortcomings were handled, and assessed RCDC I/II's methodology for calculating staffing-related invoice deductions.

To assess BOP and contractor compliance with contract oversight and monitoring requirements, we reviewed the contractor's quality control program (QCP) to determine if RCDC I/II provided and maintained an inspection system that allows it to demonstrate positive performance and identify areas of non-compliance before the level of performance becomes unsatisfactory. We also reviewed the BOP's Quality Assurance Plan (QAP) to ensure BOP monitored the quality of the contractor's services and that the contract requirements are defined and satisfactorily met.

## FINDINGS AND RECOMMENDATIONS

We determined that Reeves County and CCS did not adequately comply with all provisions of the Service Contract Act of 1965 (Service Contract Act). As a result, we identified almost \$3 million in total dollar-related findings, including \$945,024 in future improper charges that will occur should the contract continue through January 2017, without adjustment. RCDC I/II has also encountered significant challenges staffing its health services unit, resulting in vacancy-related invoice deductions. However, we believe that the method the BOP has used to calculate the deductions creates a potential financial incentive for CCS to accept less costly monthly vacancy deductions rather than fill vacant positions at the costlier market rates. With regard to contract oversight and monitoring, RCDC I/II's quality control program improved over time and BOP onsite staff generally provided comprehensive monitoring and oversight. However, we identified areas for improvement. Specifically, RCDC I/II needs to retain original quality control-related documentation as required by the contract, fully document monitoring activities, and complete corrective action plans for significant deficiencies. Finally, we observed that RCDC I/II officials converted a general population housing unit into a "modified monitoring unit," referred to as the "J-Unit," where inmates are confined under more restrictive conditions than other general population inmates. However, RCDC I/II officials had not developed specific policies and procedures that addressed the intended purpose or unique operations of J-Unit, or that ensured inmates due process with regard to their placement in J-Unit.

### Billings and Payments

The BOP's contract with Reeves County is a fixed-price, incentive contract. According to the FAR, this type of contract is preferred when contract costs and performance requirements are reasonably certain, the government wishes to motivate a contractor to enhance performance, and other incentives cannot be used because contractor performance cannot be measured objectively. BOP monthly payments to Reeves County are primarily based on the Monthly Operating Price (MOP) and the Fixed Incremental Unit Price (FIUP). The MOP ensures that the contractor receives a minimum payment, regardless of the facility's actual population, and was negotiated with the understanding that BOP inmates would occupy at least 90 percent of the accepted number of "contract beds."<sup>14</sup> A BOP procurement official told us that the 90 percent rate provides the contractor a

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<sup>14</sup> The number of "contract beds" is synonymous with the number of federal inmates incarcerated in the facility.

guaranteed revenue stream to mitigate risk so the contractor can staff the facility appropriately and have enough funds to pay its expenses.

The FIUP pricing component is a separate unit price per inmate that only applies when the daily population of inmates exceeds 90 percent of contract beds in a payment period, up to 115 percent of contract beds. Although this 115 percent rate creates the impression that BOP is overpopulating the institution, at RCDC I/II it is the maximum number of contract beds (2,407 inmates) allowed at the institution.<sup>15</sup> In Table 3, we provide examples of this contract’s monthly price for January 2015 based on two different contract bed amounts.

**Table 3**  
**Examples of the RCDC I/II Contract’s Monthly Pricing Structure**

NO. OF CONTRACT BEDS	PERCENT OF CONTRACT BEDS	MONTHLY OPERATING PRICE (MOP)	FIXED INCREMENTAL UNIT PRICE (FIUP)	TOTAL MONTHLY PRICE
		<i>\$4,009,234 Per month</i>	<i>\$16.87 Per inmate day</i>	<i>MOP + FIUP</i>
1,884	90%	\$4,009,234	Not Applicable	\$4,009,234
2,407	115%	\$4,009,234	\$273,513 <sup>16</sup>	\$4,282,747

Source: BOP

For any given month, if BOP inmates occupied 1,884 of RCDC I/II contract beds, or was 90 percent full, the contractor bills the BOP the MOP amount of approximately \$4 million. For the same month, if BOP inmates occupied the maximum capacity of 2,407 RCDC I/II contract beds, in addition to receiving the MOP of approximately \$4 million, the FIUP rate would be applied to the number of inmates above 90 percent occupancy (2,407 – 1,884), which would total \$273,513. Reeves County would then bill BOP for about \$4.28 million.

### *Transaction Testing*

To ensure that the contractor’s billings were accurate and complete, we selected a sample of 16 invoices submitted by Reeves County to the BOP for payment with a value totaling \$57,574,429. We reviewed these invoices using the policies and procedures established by BOP and RCDC I/II officials for submission and payment of invoices. We found that contractor invoices were paid promptly and that contractor billings were generally calculated accurately, invoiced, authorized, and supported by proper documentation. While we did identify discrepancies relating to the price adjustments affecting monthly invoices and compliance with the Service Contract Act, these discrepancies did not affect our

<sup>15</sup> BOP officials told us that due to misunderstandings about the CAR contracts’ “115 percent” rate, they plan to amend the language in future contracts.

<sup>16</sup> For inmate occupancy at 115 percent, the FIUP amount is the difference between the 90 percent and 115 percent inmate occupancy, multiplied by the 31 days for January and the \$16.87 FIUP rate.

transaction testing since this testing was performed in relation to BOP and RCDC I/II officials' policies and procedures for submission and payment of invoices. Of particular interest to us was how the contractor calculated its vacancy deductions. According to the personnel section of the contract:

Each month, the contractor shall submit to the [Contracting Officer] the current average monthly vacancy rate, and indicate any individual positions that have been vacant more than 120 days. Failure to fill any individual position within 120 days of the vacancy may result in a deduction from the monthly invoice. The BOP may calculate the deduction retroactive to day one of the vacancy, excluding the days for the BOP's conditional approval process, starting on the day of receipt and concluding on the day conditional approval is granted.

Our analysis did not note any material discrepancies with the calculations or accuracy of vacancy deductions, but we identified concerns with the methodology used to value RCDC I/II's vacant medical positions. See the *Vacancy Deductions* section of this report for further detail.

#### *Award Fee*

Award-fee contracts are a type of incentive contract suitable for use when predetermined, objective incentive targets for cost, schedule, and technical performance are not feasible or effective to determine at the onset of the contract. The RCDC I/II contract stipulates that Reeves County can earn a maximum award of 5 percent of the total payments received for the period rated.<sup>17</sup> The OIG reviewed the BOP's compliance with FAR and contract requirements related to the use of award fee contracts and found that the BOP properly documented its justification for selecting a fixed price award-fee contract in a Determination and Findings Report, and had established an Award-Fee Plan and an evaluation board.

As illustrated in Table 4, from 2007 through 2014, a period spanning 12 evaluation periods, RCDC I/II received only two award fees totaling \$1,520,102; or 9.1 percent of the \$16.8 million maximum award fee. RCDC I/II was rated "deficient" or "unsatisfactory" in 6 out of 12 evaluation periods.<sup>18</sup> We reviewed BOP's rating reports from October 2008 through December 2014 which indicated that RCDC I/II consistently struggled to meet or exceed baseline contractual standards, received an unacceptable number of deficiencies and notices of concern; was unresponsive to BOP inquiries; struggled with staffing issues in health services and correctional services; and frequently submitted inaccurate routine paperwork,

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<sup>17</sup> The period of performance for the award fee is currently on an annual basis.

<sup>18</sup> Award fee ratings were based on BOP "Performance Rating Tables" that changed throughout the life of the contract. From FYs 2007 through 2011, there were five rating tiers and "deficient" was the second lowest rating. From FYs 2012 through 2013, there were six rating tiers; "unsatisfactory" was lowest rating and "good" was the fourth highest rating. We were not provided the BOP Performance Rating Table for FY 2014.

including erroneous disciplinary hearing records and monthly invoices. In addition, the BOP rating reports repeatedly described the RCDC I/II's quality control program as minimally or marginally effective, highlighting its lack of quality controls and sporadic approach to identifying and correcting deficiencies to ensure non-recurrence of problematic areas. However, the rating reports did indicate that contractor performance improved over time, particularly in 2013 when the contractor received a "good" rating and its first award fee and in 2014 received a "very good" rating and its second award fee.

**Table 4**  
**RCDC I/II Award Fees for 2007 Through 2014**

EVALUATION PERIOD	AWARD FEE PERIOD	MAXIMUM AMOUNT	EARNED AMOUNT	PERCENTAGE	AWARD FEE RATING <sup>19</sup>
1	02/01/2007 – 9/30/2007	\$1,120,616	\$0.00	0%	-
2	10/01/2007 – 3/31/2008	\$1,120,616	\$0.00	0%	-
3	04/01/2008 – 9/30/2008	\$1,127,465	\$0.00	0%	-
4	10/01/2008 - 03/31/2009	\$1,086,953	\$0.00	0%	Deficient
5	04/01/2009 - 09/30/2009	\$884,773	\$0.00	0%	Deficient
6	10/01/2009 - 03/31/2010	\$881,928	\$0.00	0%	Deficient
7	04/01/2010 - 09/30/2010	\$996,451	\$0.00	0%	Deficient
8	10/01/2010 - 12/31/2010	\$594,839	\$0.00	0%	Deficient
9	01/01/2011 - 12/31/2011	\$2,446,738	\$0.00	0%	Marginally Satisfactory
10	01/01/2012 - 12/31/2012	\$2,502,065	\$0.00	0%	Unsatisfactory
11	01/01/2013 - 12/31/2013	\$1,449,733	\$246,455	17%	Good
12	01/01/2014 – 12/31/2014	\$2,547,294	1,273,647	50%	Very Good
<b>ALL EVALUATION PERIODS</b>	<b>02/01/2007-12/31/2014</b>	<b>\$16,759,469</b>	<b>\$1,520,102</b>	<b>9.1%</b>	

Source: BOP

A Senior BOP procurement official told us that RCDC I/II's small award fee earned was not typical of award fees normally earned on other BOP CAR contracts and that the poor results were primarily attributed to its inability to adequately staff the facility, the January 2009 riot, and the recovery from the riot. Overall, we found that BOP's award fee decisions were reasonably justified. They were supported by a comprehensive assessment of the contractor's performance consisting of detailed documentation, based on input from several different BOP officials, and in accordance with the contract's Award Fee Determination Plan.

<sup>19</sup> We did not review the BOP Performance Rating Reports from the first three evaluation periods because they were outside the scope of our review.

*Non-compliance with the Service Contract Act of 1965*

The Service Contract Act of 1965 (Service Contract Act) requires that employees working on federal service contracts in excess of \$2,500 not be paid less than the monetary wages and fringe benefits required by law, and serves to prevent contractors from being able to underbid each other by reducing wages or fringe benefits for service employees.<sup>20</sup> Since the RCDC I/II contract exceeds the minimum award threshold, Reeves County and its subcontractors must provide their respective employees the minimum amounts of wages and fringe benefits stipulated within the applicable wage determination schedules (wage determination) issued by the Department of Labor (DOL).<sup>21</sup> Wage determinations list the minimum wage and fringe benefit rates for different classes of laborers, which are often adjusted over the term of a service contract. If an adjustment results in additional compensation owed to contractor employees, the contractor and subcontractors are entitled to request a price adjustment, i.e., request for compensation from the BOP. Table 5 is an example of wage and fringe benefit rates for three occupational codes from the DOL-issued wage determination used by Reeves County, the GEO Group, and CCS. In the wage determination, fringe benefits such as health insurance, life insurance, sick leave, and retirement are referred to as “Health & Welfare benefits.” The Health & Welfare benefits rate is the amount employers must provide as fringe benefits to its employees and is based on data from the Bureau of Labor Statistics. As shown in Table 5, this particular DOL wage determination requires that contractors provide employees with Health and Welfare benefits costing no less than \$3.81 per hour.

**Table 5**  
**DOL Wage Determination<sup>22</sup>**

OCCUPATION CODE	TITLE	WAGE RATE PER HOUR	HEALTH & WELFARE PER HOUR *
01011	Accounting Clerk	\$12.71	\$3.81
27008	Corrections Officer	\$16.49	
01261	Payroll Clerk (Personnel Assistant)	\$14.21	
*The Health & Welfare benefits rate of \$3.81 per hour is equivalent to \$152.40 per week or \$660.40 per month			

Source: Department of Labor, Wage Determination No. 2005-2517, Revision No. 17.

<sup>20</sup> Effective May 2014, the Service Contract Act of 1965 was renamed the “Service Contract Labor Standards statute.” Because our audit scope was generally through December 2013, we use the former title throughout our report.

<sup>21</sup> RCDC I/II contract’s wage determination applicable rates are shown in “SCA No. 05-2517.” Rate changes go into effect at the beginning of each contract year, which for RCDC I/II is February 1.

<sup>22</sup> For presentation purposes, this figure lists three occupation codes, titles, and wage rates. The actual wage determination would contain hundreds of occupational codes that span several pages.

In this example, RCDC I/II would be required to pay its Accounting Clerks at least \$12.71 per hour and provide a fringe benefits package, cash-in-lieu of fringe benefits, or a combination of both (hereafter referred to as Health & Welfare benefits) that cost the contractor \$3.81 per hour.

Generally, upon DOL issuance of a new wage determination, RCDC I/II's offices of Business Human Resources (managed by onsite GEO Group personnel) obtained payroll records from Reeves County, the GEO Group, and CCS, and compared all positions and actual pay rates with rates shown in the new DOL wage determination. If the wage determination listed a higher rate for a position than what a contractor was currently providing, they increased the pay rate for that position to comply with the wage determination, and were subsequently entitled to reimbursement from the BOP. For example, if Reeves County paid its RCDC I/II Corrections Officer (see Table 5) \$16.30 per hour and the new wage determination required \$16.49 per hour, Reeves County would need to provide each Corrections Officer a \$0.19 per hour wage increase, effective as of the beginning of the contract year. Next, they calculate the annual cost of the wage increase, including the accompanying federal payroll taxes (FICA) and workers' compensation, and request reimbursement from the BOP via a contract modification.<sup>23</sup>

During our audit, we assessed Reeves County's, the GEO Group's, and CCS' compliance with rules and regulations related to the Service Contract Act to determine if they properly accounted for and paid the requisite amount of wages and Health & Welfare benefits to their employees; to ensure that the requests for price adjustment were accurate and justified; and to assess whether the BOP properly reviewed, approved, and monitored Reeves County's requests for reimbursement. To accomplish this, we obtained: (1) payroll records containing service employees' actual wages, (2) information on the cost of Health & Welfare benefits offered to employees, (3) the DOL wage determinations containing the minimum wages and benefits, and (4) the RCDC I/II's request for reimbursement sent to the BOP.<sup>24</sup> For wages, we compared new rates from the wage determination to payroll records; if employees were entitled to a wage increase, we verified that they began receiving additional pay effective as of the beginning of the contract year, that the contractor accurately calculated its reimbursement from the BOP, and that the request for reimbursement was justified. For Health & Welfare benefits, we aggregated the cost of employees' fringe benefits, which consisted of the cost of life insurance, sick leave, health insurance, retirement, health club membership, and two extra holidays. We then compared the cost of these fringe benefits documented in the payroll records to the new Health & Welfare benefits rate contained in the wage determination. We then used the same method to evaluate Health & Welfare benefits that we used to evaluate wages.

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<sup>23</sup> These reimbursements are incorporated into the contract's Monthly Operating Price.

<sup>24</sup> On an annual basis, Reeves County, the GEO Group, and CCS consolidated its wage and benefit information into a single request for reimbursement from the BOP.

Based on our analysis of a judgmental sample of contractor positions, we determined that Reeves County, the GEO Group, and CCS properly identified RCDC I/II positions that were entitled to a wage increase, paid the new salary rate to the employee, and properly requested and received a price adjustment from the BOP. However, we identified several compliance issues related to Health & Welfare benefits as described in the following sections.

#### Subcontractor Underpayment of Fringe Benefits

For the subcontractor CCS, we initially reviewed a sample of 31 transactions involving employees subject to the Service Contract Act from 2013 through 2014. Our review identified several CCS employees for whom we had concerns about underpayment of their Health & Welfare benefits. CCS informed the OIG that there had been two instances of underpayment and one instance of overpayment. Specifically, there was a \$1,014 underpayment to a licensed vocational nurse in 2013 and a \$1,636 underpayment to a different licensed vocational nurse in 2014.<sup>25</sup> A CCS official said the reason for the \$1,014 underpayment was unknown and that for the \$1,636 underpayment, CCS failed to provide cash-in-lieu of benefits to make up for the difference between the wage determination's requirement and the cost of benefits being provided. Upon quantifying these errors, CCS sent checks to the affected individuals, and therefore we do not have a recommendation for this matter.<sup>26</sup>

The OIG expanded its testing and requested employee benefit records from 2007 through 2012. CCS located records from 2010 through 2012, in addition to its records from 2013 through 2014 and performed a detailed assessment of fringe benefits, concluding that from 2010 through 2014, it had underpaid fringe benefits to 12 employees totaling \$22,628.<sup>27</sup> CCS said this occurred because they were working under an "either-or procedure" where if an employee elected company-provided benefits, the employee would not receive cash-in-lieu of benefits because the employer contributions for benefits would meet or exceed the Health & Welfare requirement. CCS also said that employer contributions for some levels of company-provided benefits were not enough to satisfy all Health & Welfare requirements. CCS told us that now that this issue was identified, it had established controls to ensure this would not occur in the future and that CCS would conduct quarterly audits to guarantee continued compliance. Upon quantifying these errors, CCS sent reimbursement checks to the 12 current and former CCS employees for fringe benefit underpayments.

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<sup>25</sup> Regarding the overpayment, in response to OIG inquiries, CCS determined it had overpaid a licensed vocational nurse approximately \$300 in cash-in-lieu of benefits, for a month in which this employee worked zero hours.

<sup>26</sup> For our 2013 and 2014 samples, the three errors identified were out of all 31 total transactions reviewed, representing an approximately 10 percent rate of error.

<sup>27</sup> The OIG reviewed the supporting documents CCS provided to reach this conclusion.

Our assessment of CCS compliance with the Service Contract Act was limited to 2010 through 2014 because at the time of this report's issuance, CCS had not yet provided the records of its cost of providing benefits to employees from 2007 through 2009. Therefore, the OIG could not determine if other CCS employees were underpaid benefits during that timeframe. Furthermore, CCS informed us that the staff responsible for calculating employee fringe benefits at RCDC I/II also administered fringe benefits at RCDC III, under Contract No. DJB1PC003. Therefore, CCS may have also underpaid benefits to its employees at RCDC III. We recommend that the BOP ensures that CCS performs detailed fringe benefit assessments for RCDC I/II employees from 2007 through 2009 and for RCDC III employees during the life of Contract No. DJB1PC003, and remedies any underpayments.

#### Non-compliance with Health & Welfare Benefits Requirements

Reeves County did not account for Health & Welfare benefits using the same method it used to account for wages. Instead of comparing the actual costs of providing benefits to the increased Health & Welfare benefits rate contained in a new wage determination and requesting a price adjustment for the difference, Reeves County requested a price adjustment for all increases to the Health & Welfare benefits rate, regardless of whether or not it was already providing a compliant benefits package. For example, in June 2013, the DOL issued a wage determination that increased the Health & Welfare benefits rate from \$3.71 per hour to \$3.81 per hour. Our analysis indicates that Reeves County incorrectly requested this 10-cent increase for almost all employees across all labor classes. This request was unallowable because, as GEO Group onsite staff and the former BOP Administrative Contracting Officer told us, Reeves County historically provided benefits that already *exceeded* the wage determination Health & Welfare benefits rates. Since Reeves County was providing fringe benefits that exceeded the Health & Welfare benefits requirement, it was not entitled to price adjustments from the BOP.

Table 6 shows our analysis of Reeves County's Payroll Clerk position. We combined all of Reeves County's costs for this position's Health & Welfare benefits into a single Actual Monthly Benefit Cost and compared it to the monthly requirement contained in the wage determination. As illustrated in Table 6, from FYs 2008 through 2014, the Actual Monthly Benefit Cost for the Payroll Clerk exceeded the wage determination's Health & Welfare benefits requirement, and shows that Reeves County was not entitled to reimbursement from the BOP.

**Table 6**

**Payroll Clerk Monthly Benefits, From 2008 through 2014**

YEAR	WAGE DETERMINATION HEALTH & WELFARE REQUIREMENT	ACTUAL MONTHLY BENEFIT COST	ELIGIBLE FOR PRICE ADJUSTMENT?
2008	\$547.73	\$821.00	No
2009	\$561.50	\$867.60	No
2010	\$580.67	\$1,032.92	No
2011	\$606.67	\$910.51	No
2012	\$622.27	\$907.99	No
2013	\$643.07	\$817.24	No
2014	\$660.40	\$817.24	No

Source: OIG analysis of Reeves County data

GEO Group Corporate officials disagreed with the OIG's assessment and believed that Health & Welfare benefits should be treated differently than wages. They told us that their position was based on past research and case law, but when we asked them to provide the information so we could review and consider their position, they could not provide any documentation to support their assertion. The OIG's assessment is based on FAR 52.222-43(d), commonly referred to as the "Price Adjustment Clause," which does not differentiate treatment of wages and Health & Welfare benefits (referred to as "fringe benefits" in the FAR citation) as stated below:

The contract price . . . will be adjusted to reflect the Contractor's actual increase . . . in applicable wages and fringe benefits to the extent that the increase is made to comply with . . . the Department of Labor wage determination applicable on the anniversary date of a multiple year contract or at the beginning of a renewal period.

For Reeves County to claim reimbursement for Health & Welfare benefits, it was required to provide its employees additional Health & Welfare benefits to comply with the terms of the new wage determination. Reeves County did not increase its cost of compliance, and therefore did not trigger the Price Adjustment Clause. The application of this FAR provision is best illustrated by an example contained in the "Price Adjustment Calculation Tool" (PACT). PACT is a collaborative effort between the DOL, Office of Management and Budget, Department of Defense, General Services Administration, and other federal agencies to accurately calculate Service Contract Act price adjustments.

*[If the] old [Service Contract Act] minimum "[Health & Welfare]" rate [was] \$3.16 per hour and the new Service Contract Act minimum "Health & Welfare" rate was \$3.24 per hour and the contractor was providing a health insurance plan to workers in the prior period of performance that costs, \$4.00 per hour per employee. In this scenario, no price adjustment would be owed.*

We performed this analysis on all wage determinations effective from 2008 through 2014 that applied to Reeves County's approximately 280 full-time equivalent positions, across 40 different position types. We found that for all positions, the Actual Monthly Benefit Cost exceeded the wage determination's Health & Welfare benefits requirement. Despite this, in all instances Reeves County requested and was granted price adjustments from the BOP that it was not entitled to receive. We commend Reeves County for providing its employees a fringe benefits package that is above and beyond the wage determination's minimum requirements, but the intent of the Service Contract Act is not to sanction the use of government funds to provide fringe benefits beyond what is required by law.

Erroneous price adjustments can have a compounding effect over time because they are often incorporated into the contract's Monthly Operating Price (MOP) and therefore added to each monthly invoice until the contract ends. While our analysis determined that over a span of 7 years, all of Reeves County's wage determinations resulted in improper price adjustments totaling \$526,239, this figure was just the sum of each individual discrepancy's cost for a *single* year. To identify the cumulative costs, we multiplied each wage determination's annual improper costs by the amount of proceeding years in which the costs repeated, ending at our cutoff date of January 2015.<sup>28</sup> For example, if there was an annual price adjustment of \$10 incorporated into the MOP in February 2008, this \$10 cost would be repeated in every subsequent year throughout the life of the contract. Therefore, by the end of January 2015, the cumulative cost of this price adjustment would be \$70 (\$10 annual cost times 7 years). After aggregating these costs, we are questioning \$1.95 million in cumulative costs paid by the BOP to Reeves County from FYs 2008 through 2014 that Reeves County was not entitled to receive, comprised of \$1.78 million in unallowable Health & Welfare benefits increases, \$136,167 in unallowable payroll taxes, and \$39,269 in unallowable workers' compensation insurance.

Reeves County's basis for calculating the \$136,167 in payroll taxes and \$39,269 workers' compensation was also incorrect. A contractor's entitlement to FICA and workers' compensation is *only* applicable to wage increases and fringe benefits paid as cash. Reeves County's benefits were not provided directly to employees in the form of wages or cash-in-lieu of fringe benefits, but were provided to a third party or placed into a County fund, and therefore are not considered taxable income that is subject to FICA and workers' compensation insurance. Therefore, we recommend that BOP remedy the \$175,436 in unallowable costs that Reeves County has incorrectly claimed in price adjustments for payroll taxes and workers' compensation insurance that did not result from wages or cash-in-lieu of fringe benefits.

For CCS, its 2010 through 2014 requests for price adjustments were justified. However, as described in the previous section, the OIG could not assess

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<sup>28</sup> Our cutoff date of January 2015 was the end of Option 2, Year 2.

the adequacy of CCS' requests for price adjustments from 2007 through 2009 because CCS had not provided these records. Therefore, following the same process of converting annual costs to cumulative costs as described for Reeves County, we questioned as unsupported \$74,765 in cumulative costs paid by the BOP to CCS (through Reeves County, the prime contractor) based on the wage determinations that were in effect from 2008 through 2009, which included \$67,188 in unsupported Health & Welfare benefit increases, \$5,140 in unsupported payroll taxes, and \$2,487 in unallowable workers' compensation for Health and Welfare. Table 7 displays the \$2.03 million in total questioned costs for Reeves County and CCS. Therefore, we recommend that BOP remedy the \$1,954,082 in unallowable costs that Reeves County has incorrectly claimed for Health & Welfare benefit-related price adjustments, FICA, and workers' compensation insurance. We also recommend that BOP remedy the \$74,765 in unsupported costs for which CCS was unable to provide records supporting the cost of providing benefits to employees from 2007 through 2009.

**Table 7**  
**Questioned Costs Related to Non-compliance**  
**with the Service Contract Act**

BENEFIT TYPE	REEVES COUNTY	CORRECT CARE SERVICES	TOTAL QUESTIONED COSTS
	<i>UNALLOWABLE</i>	<i>UNSUPPORTED</i>	
Health and Welfare (H&W)	\$1,779,954	\$67,188	\$1,847,143
Payroll Taxes (FICA)	\$136,167	\$5,140	\$141,306
Workers' Compensation	\$39,269	\$2,487	\$41,756
Adjustments <sup>29</sup>	(\$1,308)	(\$50)	(\$1,358)
<b>TOTAL QUESTIONED COSTS</b>	<b>\$1,954,082</b>	<b>\$74,765</b>	<b>\$2,028,847<sup>30</sup></b>

Source: OIG analysis of Reeves County data

As previously mentioned, because these unallowable and unsupported price adjustments were incorporated into the contract's MOP, the improper costs are reflected in each monthly invoice. Unless the MOP is reduced, the aforementioned errors will continue to be included in each month's invoice. To determine the necessary MOP reduction, the OIG identified the annual improper costs from the eight wage determinations that were incorporated into the MOP (our methodology to calculate the MOP and the questioned costs are contained in Appendix 1). This MOP amount came out to \$41,088.<sup>31</sup> Reducing future invoices by \$41,088 per

<sup>29</sup> The "Adjustments" row contains \$1,358 in costs from one of RCDC I/II's requests for price adjustment that the OIG was unable to reconcile to supporting documents. Because this was an immaterial amount for which allowability was uncertain, we deducted Reeves County's and CCS' share of the amount from their questioned costs.

<sup>30</sup> The Total Questioned Costs were calculated through January 2015, which is to the end of Option Period 2, Year 2.

<sup>31</sup> For two of the wage determinations, price adjustments totaling \$46,987 were invoiced only once and not incorporated into the Monthly Operating Price. Therefore, they are not included in the \$41,088 Monthly Operating Price.

month will ensure that the BOP does not improperly provide an additional \$945,024 in price adjustments to the contractor should the contract continue from March 2015 through its final month in January 2017, an additional 23 months. Therefore, we recommend that, beginning with its March 2015 invoice, the BOP reduce its MOP by \$41,088 to remedy the \$945,024 in funds to be put to better use in order to account for the unallowable and unsupported costs previously identified.

#### Inadequate Monitoring and Oversight of Service Contract Act Compliance

Officials from the BOP, Reeves County, and the GEO Group could not adequately explain why Reeves County and CCS had requested price adjustments for all Health and Welfare benefit increases. Because this matter represented a systemic problem that occurred for several years, we interviewed officials from the BOP, Reeves County, and the GEO Group to determine how this matter was approved and proceeded to go undetected by the responsible officials.

At Reeves County, both the Judge and County Auditor had limited familiarity with the Service Contract Act requirements. Although the County Judge was not heavily involved in the process, he was the signatory on the contract modification document that approved these unallowable price adjustments. The Reeves County Auditor told us he was not aware of the wage determination requirements until OIG submitted inquiries on the matter. Furthermore, the Reeves County Auditor believed compliance with the Service Contract Act was the responsibility of the GEO Group because they were subcontracted to handle RCDC management services.<sup>32</sup>

The GEO Group's former onsite Human Resource Manager told us that she did not realize that RCDC I/II was not entitled to claim a price adjustment and noted that her work was under the direction of the GEO Group's Corporate office and the Administrative Contracting Officer. Officials from the GEO Group were responsible for reviewing and approving the requests for price adjustments. They could not provide an adequate explanation as to why their review had not identified Reeves County's compliance matters, including the lack of documentation to support the requests for price adjustment. They noted that the GEO Group did not have access to Reeves County payroll and therefore never verified the County's benefits package. However, the subcontract between Reeves County and the GEO Group indicated otherwise, authorizing the GEO Group to "manage all aspects of RCDC I/II" including enforcement of "policies and procedures with respect to all RCDC I/II County employees."

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<sup>32</sup> According to federal regulations, Reeves County, in its role as the government prime contractor, is ultimately liable for compliance with the Service Contract Act. Specifically, 29 C.F.R. 4.114(b) states that "*when a contractor undertakes a contract subject to the Act, the contractor agrees to assume the obligation that the Act's labor standards will be observed in furnishing the required services. This obligation may not be relieved by shifting all or part of the work to another. . . .*"

The BOP's former Administrative Contracting Officer at RCDC I/II was responsible for approving and signing the Contract Modification associated with the price adjustment.<sup>33</sup> Her understanding was that the County historically provided fringe benefits that exceeded the minimum Health & Welfare benefits rate contained in the wage determination. BOP Headquarters procurement officials informed the OIG that BOP offers an Advanced Procurement Training class that was developed and provided by the BOP for its acquisition staff. They provided copies of the training handouts and told us that while the handouts broadly referenced Health & Welfare benefit requirements, there were no specific examples of applying the requirements. In our judgment, while BOP, the GEO Group, and Reeves County onsite officials were aware of the need to provide employees the minimum Health & Welfare benefits prescribed by the wage determination, there was a widespread lack of comprehension of Service Contract Act requirements - especially the FAR provisions for requesting a price adjustment for Health & Welfare benefits.

In addition, the Reeves County Auditor told us that the process used at RCDC I/II to request all Health & Welfare-related price adjustments was also used under Contract No. DJB1PC003 to operate RCDC III. Therefore, to ensure that the discrepancies identified at RCDC I/II are also corrected at RCDC III, we recommend that the BOP identify unallowable questioned costs related to price adjustments that Reeves County was not entitled to receive for RCDC III.

Lastly, the BOP must enhance its monitoring and oversight efforts of contractor implementation of the Service Contract Act's Health & Welfare benefit requirements, not only at the Reeves County Detention Center, but across other BOP contract facilities. Senior BOP procurement officials told the OIG that across-the-board requests for Health & Welfare benefit increases based on wage determinations were not necessarily limited to the Reeves County contracts, but was common practice for contractors receiving Privatized Corrections Contracting (PCC) contracts or Residential Re-entry Center (RRC) contracts. Because there are 14 private contract facilities (including RCDC I/II and RCDC III) and 193 RRCs, similar errors could account for millions of dollars in improper BOP reimbursements to contractors. To ensure future compliance with the Service Contract Act, we recommend that BOP create and implement policies and procedures that strengthen responsible officials' understanding of Service Contract Act rules and regulations, and enable Reeves County to produce, maintain, and share with the GEO Group or any future management services provider, summary accounting records containing the actual cost of fringe benefits for each employee. In addition, we recommend that BOP ensure that before a service provider requests a price adjustment, the service provider must first compare the actual cost of fringe benefits provided to each employee to the Health and Welfare benefits rate contained in the wage determination. A best practice we identified is the use of the Price Adjustment Calculation Tool (PACT), a publicly available tool developed by several federal agencies including the Department of Labor, to help contracting officers more

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<sup>33</sup> Throughout most of our audit, RCDC I/II did not have a permanent Administrative Contracting Officer. This position was filled in late 2014.

accurately and more efficiently determine the correct and proper amount of a contractor's entitlement under federal regulations.<sup>34</sup>

## Staffing Requirements

BOP-issued CAR contracts typically contain a section that includes basic requirements for staffing its contract facilities, including requirements that a contractor create and maintain a Staffing Plan that lists the number, type, and distribution of staff throughout the contract, and that certain essential personnel (e.g. Warden, Associate Warden, Medical Services Administrator, and department heads) positions are staffed throughout the life of the contract. The BOP must approve the contractor's initial and subsequent Staffing Plans to ensure that the proposed staffing is realistic in fulfilling contract requirements. There are three staffing requirements that if not met, result in the contractor being subject to invoice deductions. First, the contract stipulates that staffing levels shall not fall below a monthly average, which is 90 percent for correctional services, 85 percent for health services, and 85 percent for all other departments of the BOP approved staffing plan. If the contractor falls under this minimum threshold for a particular month, the cost of all vacant positions may be deducted from that month's invoice. Second, the contract states that the contractor must fill any individual position within 120 days of vacancy, or receive an invoice deduction equal to the cost of the position for each day the vacancy remains open beyond 120 days.<sup>35</sup> Third, if any essential personnel positions become vacant, their cost may be deducted from the invoice immediately after the position becomes vacant until filled.

However, before performance on the contract began, the BOP eliminated the first and second staffing-related provisions from RCDC I/II's contract (and all other CAR No. 6 contracts). According to BOP officials, the two provisions were not reincorporated into the contract until more than 2.5 years into the contract's performance. When the CAR No. 6 solicitation was issued on May 26, 2006, the pricing schedules required potential contractors to submit two offers - one standard price (Standard Option) with all staffing requirements intact, and the other offer to be priced without the previously mentioned first and second staffing requirements (Option A). BOP officials explained that by waiving some of the staffing requirements, the contractors could submit lower-priced proposals and the BOP would achieve cost savings. The contractor would be granted the flexibility and discretion to manage the staffing of the facility, as long as it fulfilled the contract's requirements. When we asked how BOP determined whether the cost savings gained justified elimination of staffing requirements, BOP officials told us that other contracts with removed staffing requirements had been successful, and the use of Option A pricing in CAR No. 6 contracts advanced the cost savings initiative, and for

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<sup>34</sup> The PACT is located at <http://www.wdol.gov/pact/intro.aspx>

<sup>35</sup> If the contractor falls below its required overall staffing threshold percentage and has positions that have been vacant for more than 120 days, only one invoice deduction is applied to each affected position.

RCDC I/II was estimated to save the BOP approximately \$10 million over the life of the contract.

GEO Corporate officials told us that a new Staffing Plan was not necessary and that they were not changing the staffing plan but covering vacant positions with overtime. The document provided showed that it removed 19 Correctional Officers noting that each position was a vacancy. This was clearly a change in the contractor's staffing plan and decreased the number of correctional officers in the document from 198 FTE to 179 FTE and decreased the overall FTE from 330 to 311. A modification to the contract in June 2007 required that the contractor provide the Contracting Officer with a staffing plan and subsequent changes to the staffing plan for information purposes only.

During the time that the Staffing Plan requirements were removed (from the start of contract to March 2009), the actual number of Correctional Officers was significantly below the authorized number of officers as well as the 90 percent threshold that was later enforced after the Staffing Plan was reincorporated into the contract. Using Staffing Report and Wage Determination information, we noted that from April 2007 to March 2009, Reeves County would have spent an additional \$4.67 million in order to fill enough Correctional Officer positions to meet the Staffing Plan thresholds that were later reincorporated in the contract.<sup>36</sup> According to an After-Action Report prepared by BOP officials following the riot at RCDC I/II during January 2009, the BOP noted that while low staffing levels alone were not the direct cause for the disturbance, they directly affected Security and Health Services functions.

When asked about staffing, Reeves County, the GEO Group, and BOP officials explained that the oil industry in the area provided wages which Reeves County could not compete with. We noted that shortly after the Staffing Plan was reinstated, the staffing levels met or exceeded the 90 percent threshold required and that Reeves County has maintained these levels since the Staffing Plan was reinstated. Therefore, we do not make any recommendation relating to the overall staffing of the facility.

#### *Medical Staffing Requirements*

In December 2010, the BOP added to all contracts with privately managed correctional facilities a requirement that the contractor staff its health services unit so that staffing levels equaled or exceeded 85 percent of the contract requirement. Yet from December 2010 through December 2013, a period spanning 37 months, RCDC I/II failed to meet the 85 percent threshold in 34 of the 37 months. The BOP responded by issuing Notices of Concern (NOCs) documenting these instances of non-compliance and requested RCDC I/II provide a written response. In its response to these staffing-related NOCs, RCDC I/II stated that hiring is difficult because of RCDC I/II's remote location, potential new hire credit issues, and other

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<sup>36</sup> The staffing plan was not in place during the time period mentioned.

reasons. RCDC I/II officials also told us that it enhanced its recruiting and advertising efforts. Despite these efforts, the staffing issues persisted and throughout 2012 and 2013, the BOP continually issued NOCs stating that “the facility’s efforts to resolve the issue have proved ineffective.” CCS employees told the OIG that the tasks of vacant positions are assumed by the other staff, which makes it difficult for employees to accomplish their own work. After we expressed our concerns with these staffing issues, CCS began a concerted effort to adequately staff RCDC I/II and exceeded the 85 percent threshold from September 2014 through February 2015. CCS’ Vice President of Private Prisons told us that this improvement was achieved by redesigning CCS’ recruiting system; hiring additional staffing managers; renting apartments in Pecos, Texas for new employees; and maintaining a presence at RCDC I/II to monitor CCS’ staffing progress.

### *Vacancy Deductions*

According to FAR 52.246-4(e), if any services do not conform with contract requirements, the government may require the contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by re-performance, the government may reduce the contract price to reflect the reduced value of the services performed. As previously described, one of the contract’s staffing requirements stipulates that staffing levels shall not fall below a monthly percentage threshold. We identified several instances where all medical vacancies (not just vacancies over 120 day or more) were deducted because the overall medical staffing levels were below the 85 percent threshold requirement that was added to the contract.

From December 2010 through December 2013, the BOP issued vacancy-related invoice deductions to RCDC I/II totaling \$1.34 million. A large proportion of these deductions were due to RCDC I/II’s inadequate staffing of its health services unit. Because RCDC I/II consistently failed to achieve the 85 percent staffing requirement during this timeframe, all vacant health services positions became subject to invoice deductions. The BOP was authorized to apply these invoice deductions in accordance with FAR 52.246-4 and therefore “reduce[d] the contract price to reflect the reduced value of the services performed.”

We found that the BOP calculated the value of health services vacancies based on the minimum pay rates required by DOL-issued wage determinations (DOL rate).<sup>37</sup> This was noteworthy because CCS has throughout this contract paid much of its RCDC I/II workforce (especially its licensed vocational nurses (LVNs)) wages greater than DOL minimum levels.<sup>38</sup> The BOP’s use of the DOL rate for

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<sup>37</sup> Vacancy deductions for positions that were exempt from the SCA were calculated using the base salary of the position listed in the contract’s technical proposal as well as an escalator based on how much the Monthly Operating Price had increased for each year of the contract.

<sup>38</sup> For example, in February 2013, CCS provided wages greater than the wage determination requirement for approximately 19 of 28 FTE positions subject to the Service Contract Act. In

deductions meant that CCS invoice deductions cost less than the higher market value salaries it had been paying its health services personnel prior to their departure. For example, in a May 2012 invoice, the BOP applied invoice deductions for four LVN positions. Prior to their departure, these LVNs were earning hourly wages of \$24.00, \$27.73, \$27.58, and \$28.78. However, the invoice deductions for all four LVN positions would only be \$15.86 per hour, which is the minimum DOL rate. In this example, invoice deductions for LVNs were 34 to 45 percent less costly than had these positions been filled.

BOP's former Chief of Privatized Corrections Contracting told us he did not believe that using the DOL rate was the best deduction basis to use, but believed it was the most allowed by FAR. However, FAR 52.246-4 does not indicate the basis for calculating a position's "value of the services performed" and there is no indication that it must be based on the DOL rate. On the contrary, we obtained information indicating that the BOP had in the past calculated invoice deductions using actual wages. During a February 2011 partnering meeting, BOP and GEO Group officials disagreed on whether invoice deductions should be calculated based on the DOL rate, the amounts used to price the contract's offer amount, or the current employee's actual salary. According to the minutes of this meeting, GEO Corporate officials stated that "When we pay above DOL rates to recruit medical staff at remote locations, e.g., dentist at Reeves, and then take a vacancy reduction at that same pay rate rather than the DOL rate if we lose the staff, then we are dis-incented [sic] to do what we have to do salary-wise to initially recruit that person." The BOP responded that it was "neither trying to punish for vacancies nor encourage windfall profits from vacancies. [The] BOP is seeking the value of the service and sees market rates as the truest valuing of the service, e.g., actual salary paid rather than DOL rates." Despite the BOP's stance in February 2011, future vacancy-related invoice deductions at RCDC I/II would be based on the lower DOL rates. We also noted that BOP officials were unable to provide any further documentation relating to this matter.

In an effort to quantify the financial impact of the different deduction methods, we compared the LVN compensation (salaries, fringe benefits, and the employers' share for taxes) using the average cost per working hour based on actual pay rates to LVN compensation using the average cost per vacant hour based on DOL rates. This comparison, from 2011 through 2013, was based on CCS payroll records; RCDC I/II Staffing Strength Reports, which contains information on LVN vacancies; and the prevailing wages and benefits for LVNs in Reeves County. Further information on the methodology used for this analysis is detailed in Appendix 1.

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February 2014, CCS provided higher wages than what was required in that year's wage determination for 14 of 28 FTE positions.

**Table 8**  
**Cost Differences between Deduction Methods**  
**For LVN Positions from 2011 through 2013**

YEAR	AVG. COST PER WORKING HOUR	AVG. COST PER VACANT HOUR	DIFFERENCE	NUMBER OF VACANCIES	AVERAGE LENGTH OF VACANCY (IN HOURS)	ANNUAL COST DIFFERENCE FOR EACH VACANCY	ANNUAL COST DIFFERENCE FOR ALL VACANCIES
	ACTUAL RATE	DOL RATE					
2011	\$38.31	\$21.10	\$17.21	7	767	\$13,209	\$ 92,466
2012	\$37.05	\$21.18	\$15.87	9	728	\$11,560	\$104,043
2013	\$35.68	\$21.29	\$14.39	10	822	\$11,835	\$118,347

Source: CCS Payroll Documentation and the GEO Group Monthly Staffing Reports

As shown in Table 8, in 2011 the difference between the actual and DOL hourly rates was \$17.21 per hour. Using the average length of an LVN vacancy (which in 2011 was 767 hours) we can surmise that had the BOP used actual pay rates as a basis for its deductions, CCS would have had to pay \$13,209 more in total compensation per LVN position than had it used the DOL rate. Given that there were 7 LVN vacancies during 2011, we concluded that CCS would have had to pay \$92,466 more in total compensation for 2011 had the BOP continued to use actual rates as the basis for deductions.

We believe that market rates provide the best valuation of the services offered and we do not believe that BOP's current use of the DOL rate to calculate invoice deductions at RCDC I/II reflects the reduced value of the services performed. As stated in the FAR, fixed price incentive contracts are to the government's advantage because the contractor has to "assume substantial cost responsibility and an appropriate share of the cost risk." The BOP's use of the lower DOL rate as its basis for deductions, instead of actual pay, essentially shifts some of the contractor's costs for failure to meet contractual staffing requirements to the government. BOP's Procurement Executive disagreed with the OIG's conclusion and responded that the FAR provides contracting officers the discretion to issue invoice deductions. He also provided several decisions of the Armed Services Board of Contract Appeals (ASBCA). The OIG agrees that the contracting officer has the discretion to issue invoice deductions and is not limited to using actual rates to calculate invoice deductions as long as he or she can demonstrate the reasonableness of the amount deducted. In addition, while the ASBCA decisions contain pertinent criteria applicable to this contract, they do not refute the OIG's conclusion that market rates provide the best valuation of the services offered.<sup>39</sup> Lastly, given CCS' consistent staffing shortcomings since the 85 percent

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<sup>39</sup> The most pertinent ASBCA decision that the BOP referenced was titled, *Appeal of Tamp Corp.*, ASBCA No. 25766, 84-2 B.C.A. (1984), where the ASBCA concluded that the government's rate for invoice deductions "had not shown any relationship . . . [to] the actual cost of the unperformed services, or their market value." Unlike this ASBCA decision, the OIG is stating that the actual cost or market value is the best valuation method.

health services staffing threshold became effective in December 2010 as well as the significant differences between the aforementioned deduction methods, we believe there is the appearance of a potential financial incentive for CCS to accept less costly monthly vacancy deductions rather than filling costlier positions at market rates. Therefore, we recommend that the BOP review its vacancy deduction methodology and consider the use of actual payroll information as a basis for applying staffing-related reductions that reflect the reduced value of the services performed in accordance with FAR 52.246-4(e).

### **Reeves County Contract Oversight and Monitoring**

The OIG determined that RCDC I/II's quality control program improved over time and BOP onsite staff generally provided comprehensive monitoring and oversight. However, we identified areas for improvement. Specifically, RCDC I/II needs to retain original quality control-related documentation as required by the contract; fully document monitoring activities and complete corrective action plans for significant deficiencies.

The BOP contract states that the contractor shall provide and maintain an inspection system acceptable to the government covering the services under the contract and that complete records of all inspection work performed shall be maintained and made available to the government. In addition, FAR 52.246-4, "Inspection of Services--Fixed Price" required that the contractor establish and maintain a complete Quality Control Program (QCP) acceptable to the Contracting Officer to ensure the requirements of this contract are provided as specified. The QCP is intended to identify deficiencies in the quality of services and implement corrective action before the level of performance becomes unsatisfactory.

The BOP's Quality Assurance Program (QAP) was developed to monitor the quality of the contractor's services, and is based on the premise that the contractor is responsible for management and quality control actions to meet the terms of the contract. The BOP adopted the American Correctional Association standards (ACA) and further augmented with BOP policy.<sup>40</sup>

The ACA conducted three audits during the scope of this audit. Reeves County received ACA accreditation in January 2009, reaccreditation in January 2012, and was recently audited in October 2014 for reaccreditation. The Joint Commission conducted evaluations of Reeves County's compliance with Ambulatory Health Care standards and provided the County accreditation in January 2009 and reaccreditation in December 2011. The Joint Commission recently reviewed the contractor for reaccreditation in December 2014.<sup>41</sup>

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<sup>40</sup> The ACA develops national standards and an accreditation process that address services, programs, and operations essential to effective correctional management.

<sup>41</sup> The Joint Commission was previously known as The Joint Commission on Accreditation of Healthcare Organizations.

## *BOP Oversight and Monitoring Responsibilities*

The BOP's oversight and monitoring responsibilities are performed primarily by staff within the BOP's Program Review Division (PRD) and Correctional Programs Division (CPD). The PRD conducts reviews of all BOP programs to examine compliance with laws, rules, regulations and policy. In addition, PRD examines the adequacy of controls, efficiency of operations, and effectiveness in achieving program results. The CPD provides daily operational oversight of institution correctional services. CPD staff conducts daily on-site monitoring and oversight of contractor operations to ensure compliance. In practice, both divisions collaborate to ensure consistent and sound practices are applied in the management and oversight of BOP contracts. Further detail on the specific PRD and CPD components involved in this contract are described below.

### Contract Facility Monitoring Branch

The Contract Facility Monitoring (CFM) Branch within the PRD consists of a team of subject matter experts (SME) responsible for conducting routine and ad-hoc on-site monitoring at secure adult correctional contract facilities to ensure the government receives high quality, competent services. The CFM Branch staff also serves as a SME for issues related to the contractor's policy and procedures. To assess contractor compliance with the contract's performance requirements, the CFM Branch staff conducts program reviews by inspecting performance, testing the adequacy of the internal controls, and assessing the risks for program and administrative areas. The CFM Branch staff's review guidelines are based on specific contract requirements and professional guidelines referenced in the contract, applicable BOP policy, and other appropriate criteria within the contract's scope of work.

The CFM Branch staff conducted 9 reviews of the RCDC I/II's operations from January 2009 through November 2014 and reported 119 instances of non-compliance. We reviewed each report and determined that the reviews identified 100 deficiencies, 13 repeat deficiencies, 4 repeat-repeat deficiencies, 1 repeat-repeat-repeat deficiency, and 1 significant finding.<sup>42</sup> Additional information concerning the CFM Branch staff's reported findings can be viewed in Table 9.

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<sup>42</sup> Deficiencies generally reflect a deviation from policy, a weakness in internal controls, or non-compliance with an ACA standard. Repeat deficiencies are the result of failed internal controls that were developed to correct a noted deficiency. Significant Findings are generally comprised of a series of related deficiencies that, taken together, constitute a failure of the program component. It can also be caused by a single event that results in a program failure.

**Table 9**  
**CFM Review and Results**

DATE CFM REVIEW CONDUCTED	DEFICIENCIES	REPEAT DEFICIENCIES	2X REPEAT DEFICIENCIES	3X REPEAT DEFICIENCIES	SIGNIFICANT FINDINGS
JANUARY 2009	16	2	1	0	0
JULY 2009	13	3	1	0	0
JANUARY 2010	19	1	0	0	0
JULY 2010	10	2	0	0	0
DECEMBER 2010	4	4	1	0	1
NOVEMBER 2011	10	0	1	0	0
NOVEMBER 2012	15	0	0	1	0
NOVEMBER 2013	9	0	0	0	0
NOVEMBER 2014	4	1	0	0	0
<b>TOTALS</b>	<b>100</b>	<b>13</b>	<b>4</b>	<b>1</b>	<b>1</b>

Source: BOP

The significant finding reported in December 2010 was the most serious non-compliance, and was related to the delivery of quality medical care within the RCDC I/II infectious disease clinics. We determined that based on a follow up review in April 2011, the BOP did conduct adequate monitoring and oversight for this issue. The follow up report identified no deficiencies and stated improvement was noted in the medical management of the areas reviewed.

As presented in Table 9 above, CFM reviews for 2013 and 2014 show a reduction in the number of reported deficiencies in RCDC I/II's operations. Improvements made in the contractor's QCP beginning in 2012 and 2013 appear to coincide with the reduction in the CFM Branch staff's reported weaknesses. Additional information concerning the contractor's QCP can be viewed in the *Contractor's Internal Audits and Corrective Actions* section of the report.

#### Privatization Management Branch

The Privatization Management Branch (PMB) is a component of the CPD that provides oversight of privately operated adult correctional facilities to ensure appropriate and professional management and treatment of Federal offenders housed in contract facilities. The PMB is organizationally located within Central Office in Washington, D.C., and in privatization field offices and contracted correctional facilities located throughout the United States. PMB staff at each contract facility generally includes a Senior Secure Institution Manager (SSIM), a Secure Oversight Monitor (SOM), and an Inmate Systems Specialist (ISS) at some facilities, and are collectively referred to as PMB-Field staff. PMB-Field staff is responsible for all programmatic aspects of their respective contracts. The SSIM, under the direction of a Privatization Field Administrator (PFA), is responsible for the general oversight and liaison activities on specific contracts.<sup>43</sup> The SOM reports

<sup>43</sup> The Privatization Field Administrator provides general guidance for all oversight activities under his/her respective sectors and is a Contracting Officer Representative.

to the SSIM and also oversees contract facility operations through general oversight and liaison functions. The ISS also reports to the SSIM and has oversight of numerous inmate system functions, including review of contractor-generated sentence computations. Specific PMB responsibilities included:

- Performing routine inspections utilizing monitoring checklists and through daily observations;
- Reviewing the contractor's QCP findings, and documenting and addressing identified deficiencies and areas of concern; and
- Completing written evaluations of the contractor's quality of performance and responsiveness, and issuing technical direction to the contractor.

### *PMB Oversight Tools*

PMB-Field staff conducts daily monitoring and oversight in accordance with the PMB Operating Procedures. PMB Operating Procedures are based on BOP Program Statements which provide consistent guidance for PMB staff involved in the management of contract facilities. The PMB Operating Procedures require PMB-Field staff conduct periodic reviews of contract compliance and the contractor's performance through various methods and tools including the use of: (1) monitoring checklists, (2) monitoring logs, (3) written evaluations, and (4) performance meetings. We determined that PMB-Field staff at the RCDC I/II generally used the stated methods and tools in assessing the contractor's compliance with the contract's terms and conditions; however, we identified several weaknesses concerning PMB-Field staffs' use of Oversight Monthly Checklists and Monitoring Logs.

### *Oversight Checklist*

The Large Secure Adult Contract Oversight Checklist (Oversight Checklist) is a tool used by PMB-Field staff to evaluate specific performance areas and determine whether Reeves County was compliant. We reviewed 72 PMB-Field staff Oversight Checklists from 2008 through 2013 and determined they generally provided detailed quantitative and qualitative information sufficient for us to gain an understanding of each month's operations and the contractor's compliance with the BOP award terms and conditions. However, we identified deficiencies with the Oversight Checklists for 2012 and 2013. Specifically, the Oversight Checklist contains a quality control observation step to select a sample of the contractor's QCP steps to validate the stated results. Depending on the contractor's audit schedule for a particular month, its QCP could be reviewing dozens of steps. We reviewed 24 Oversight Checklists and determined that in all 24 of them, PMB-Field staff only reviewed one of the contractor's QCP steps for validation purposes. Furthermore, over 10 consecutive months spanning from March through December 2013, PMB-Field staff selected the same step, albeit an important step because it was related to a Cure Notice (see the section titled *2012 Cure Notice*). PMB Headquarters officials told us they do not provide guidance to PMB-Field staff

on the minimum sample size to review each month and that onsite staff are responsible for determining the appropriate sample size to review, which is based on their observations, the contractor's QCP schedule, and their knowledge of the contract facility. We do not believe that PMB-Field staff's selection of a single and sometimes repetitive step, each month met the Oversight Checklist's requirement to review a sampling of the contractor's QCP, and we believe that additional sampling is necessary to validate the results. The PMB-Field SSIM for RCDC I/II agreed that reviewing a single step of the contractor's QCP was insufficient. As a result, we recommend BOP PMB officials provide PMB-Field staff guidance on the minimum number of contractor QCP results to be validated on a monthly basis for RCDC I/II.

During our review of the 2012 and 2013 Oversight Checklists we also identified a quality control observation step that required the identification and review of internal and external audits during each month to determine whether corrective action had been implemented by the contractor. In several instances, PMB-Field staff did not properly complete this step, omitting from the checklist several contractor-performed internal audits and not addressing whether corrective action had been implemented by the contractor as reported. In addition, information provided for the first step was duplicative of a second observation step also related to internal and external audits and not properly completed either.<sup>44</sup> For example, PMB-Field staff listed the same incomplete information within both checklist observation steps for 10 consecutive months. The failure to accurately and completely document the contractor's current audit results and corrective actions means that the checklists provided to the PFA for review may not accurately and completely reflect the current status of the contractor's QCP.

When asked why PMB-Field staff was not accurately and completely documenting the contractor's audit results within the checklists as stated within the two observation steps, the PFA told us that the two separate but duplicative observation steps were confusing to PMB-Field staff and that consolidation of the two observation steps would make sense. Therefore, we recommend the BOP consider consolidating the two observation steps into a single observation step and consider reviewing and updating its guidance provided to PMB-Field staff to ensure staff provide accurate and complete information in their monthly checklists. The BOP should also ensure that PMB-Field staff documents the contractor's corrective actions for audits conducted during the period.

#### *Monitoring and Notice of Concern Logs*

During our review of PMB-Field staff's RCDC I/II oversight efforts, we reviewed several of their monitoring and tracking logs. We determined that some

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<sup>44</sup> The duplicative steps were to "Review the results of internal/external audits conducted this period. Determine if corrective action has been implemented as reported by contractor. This includes a sampling of corrective actions to the CFM, ACA, and corporate audits," and within the second observation step to "List all internal/external audits conducted this period."

of the logs, including a Contractor Policy Review log used to track the status of contractor requested changes to policies and an SME Review log used for tracking contractor policy requests that are beyond the technical expertise of the PMB staff and require an SME review of the policy, were generally complete and provided sufficient information. However, we identified deficiencies with PMB-Field staff's monitoring and Notice of Concern logs, as detailed below.

### PMB-Field Staff Logs

PMB Operating Procedures require PMB-Field staff to keep a log to track and review the completion and results of internal and external audits required by the contract. We reviewed PMB-Field staff monitoring logs for RCDC I/II from May 2012 through April 2014, and found they did not always identify the completed audits, but when they did they failed to document the results of audits in the monitoring logs required by the contract.<sup>45</sup> For example, one type of internal audit whose completion and results must be tracked in the monitoring log is the CFM Branch staff review (described in the section *BOP Oversight and Monitoring Responsibilities*). Months after the CFM Branch staff completes these reviews, PMB-Field staff conducts follow-up reviews to ensure the CFM-identified deficiencies have been addressed and resolved by contractor corrective actions. From March 2010 through June 2014, PMB-Field staff conducted six of these reviews and concluded that in five, CFM-identified deficiencies had not been corrected by the contractor or their status was unresolved. However, PMB-Field staff did not track this pertinent information within its monitoring log and was unable to provide evidence that PMB-Field staff continually monitored the contractor's uncorrected or unresolved deficiencies. The PMB-SSIM agreed that this could have been avoided had PMB-Field staff included this follow-up information in its monitoring log.

When asked why the monitoring logs were incomplete, the PMB-SSIM told us that they had been following the same process used by their predecessors. The SSIM provided the auditors copies of updated monitoring logs for August through November 2014 that contained fields for the audit name and date it was conducted, audit results, comments, and the plan of action for ACA audits. While this was an improvement over past logs, the updated log still did not contain sufficient detail to meaningfully track internal and external audits. For example, under audit results, the updated log provides the number of findings and the general area affected (i.e., health services, food services, safety) but contains no detail on individual deficiencies. Furthermore, the log includes a section that tracks corrective action plans for ACA audits, but not for other audits such as from the CFM Branch staff and the contractor's internal quality control audits. The comments section does provide broad information on corrective actions (i.e., "corrective action is initiated or ongoing) but not enough specificity to track the contractor's substantive progress addressing individual deficiencies. Therefore, further improvements to the log are necessary and we recommend that the BOP ensure PMB-Field staff at RCDC I/II

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<sup>45</sup> Audits required by the contract include the CFM, ACA, The Joint Commission, The Prison Rape Elimination Act, and the contractor's internal quality control audits.

continue to update and ensure their monitoring logs provide greater detail on the audit results (including an individualized accounting of deficiencies), corrective actions, status, follow-up dates, and resolutions. Additionally, to achieve greater PMB-Field staff familiarization with, and consistent use of the monitoring log, we recommend that BOP ensure that PMB Operating Procedures are updated to include an example or attachment of a properly completed Monitoring Log.

Notice of Concern

The PMB Operating Procedures also require PMB-Field staff maintain a chronological Notice of Concern log to track issues until they are closed. A Notice of Concern (NOC) is a memorandum submitted from PMB-Field staff to a contractor when the contractor is performing below a satisfactory level and the issue(s) are more than a minor or repetitive deviation. For the years 2007 through 2013 PMB-Field staff provided the contractor 94 NOCs for unacceptable performance and 49 percent of those NOCs concerned three performance categories - Security (19 percent), Health Services (17 percent), and the Records Office (13 percent).<sup>46</sup> As illustrated in Table 10, PMB-Field staff submitted fewer NOCs to the contractor in 2013 than in past years, and this reduction coincides with improvements made in the contractor’s QCP in 2012 and 2013. Improvements in the contractor’s QCP are described further in the *Contractor’s Internal Audits* section of this report.

**Table 10**

**NOCs Issued to Contractor for Unsatisfactory Performance**

<b>YEAR NOC ISSUED</b>	<b>NUMBER OF NOCs ISSUED</b>	<b>SECURITY</b>	<b>HEALTH SERVICES</b>	<b>RECORDS OFFICE</b>
<b>2007</b>	12	2	0	1
<b>2008</b>	19	4	1	6
<b>2009</b>	13	4	1	3
<b>2010</b>	13	5	1	1
<b>2011</b>	16	1	3	0
<b>2012</b>	17	2	6	1
<b>2013</b>	4	0	4	0
<b>TOTAL</b>	<b>94</b>	<b>18</b>	<b>16</b>	<b>12</b>

Source: BOP

The purpose of PMB-Field staff’s chronological NOC log is to inventory all of the 94 NOCs, including information on the specific area of concern and describe whether the BOP accepted or rejected the contractor’s plan of action, and also tracks key dates including the date the NOC was submitted to RCDC I/II officials, the date of acceptance or rejection, and a follow-up date. We reviewed 50 NOC log entries from 2010 through 2013 and determined that while most of the log was completed, follow-up information (specifically the due date for follow-up and initials of the individual conducting follow-up) was provided in only 6 of the 50 NOC log

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<sup>46</sup> For our analysis NOCs were categorized based on BOP’s title descriptions for each NOC issued to the contractor.

entries. For example, one NOC related to the inmate disciplinary process addressed a 45 percent error rate for disciplinary hearing officer cases submitted for certification. The NOC included a handwritten statement that the area would be reviewed for compliance. However, the NOC log did not contain any documented follow up efforts PMB-Field staff may have performed to provide oversight for this issue.<sup>47</sup> The RCDC I/II PMB-Field-SSIM agreed that this aspect of the NOC log was deficient and that PMB-Field staff should be properly and completely filling out the entire log.

In our judgment, documenting PMB-Field staff follow-up to the contractor's corrective actions, when necessary, is essential to providing proper oversight. As a result, we recommend that BOP take steps to ensure that PMB-Field staff at RCDC I/II document their follow-up efforts to ensure that the contractor's corrective actions are monitored and addressed in a timely manner.

### *Written Evaluations and Performance Meetings*

According to the PMB Operating Procedures, PMB-Field staff provide written evaluations of contract performance as required by the FAR, the CO, or by PMB's internal procedures. One type of written evaluation is the Contractor Performance Assessment Reporting System (CPARS), which assesses a contractor's performance and provides a record, both positive and negative, on a given contractor during a specific period of time. We reviewed the CPARS reports for the periods February 1, 2010 through January 31, 2014 and determined PMB-Field staff had provided detailed and comprehensive assessments of the contractor's performance.

Another written evaluation prepared by PMB-Field staff is the Oversight Facility Summary Report, which provides a management level assessment of the contractor's performance and primarily focuses on the contractor's quality of work and responsiveness to the BOP. We reviewed seven Oversight Facility Summary Reports from October 2010 through December 2013 and judgmentally selected and verified several statements in the reports to assess their accuracy. We concluded that the reports adequately addressed the contractor's quality of work and responsiveness to the BOP and that the statements selected for verification were accurate and fairly presented.

According to the PMB Operating Procedures, the SSIM is to conduct performance meetings with the contractor, at least monthly. These meetings are intended to provide a management-level review and assessment of the contractor's quality of work, responsiveness and to discuss operational issues and oversight findings. We reviewed the BOP Monthly Performance Meeting Minutes for the period encompassing December 2009 through June 2014 and found PMB-Field staff did conduct monthly performance meetings with the contractor and also found the

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<sup>47</sup> Notice of Concern 12-15. "Inmate Disciplinary Process – Failure to Follow Policy/Quality of Control of Documents," dated December 20, 2012.

performance meeting minute documents to be very detailed and specific concerning the facility operations during those months.

## **Contractor and Subcontractor Monitoring Responsibilities**

The BOP award to Reeves County incorporated FAR requirements that the contractor maintain a complete quality control program (QCP). RCDC I/II policy states that the QCP serves to identify deficiencies in the quality of services throughout the entire scope of the contract and implement corrective action before the level of performance becomes unsatisfactory. RCDC I/II's QCP is managed by a Quality Control Specialist (QCS), who is a GEO Group employee that is responsible for its implementation, which includes collecting, organizing, updating, and interpreting all QCP audits, schedules, and reports.

### *Contractor's Internal Audits and Corrective Actions*

The contractor uses Quality Control Audit Tools (Audit Tools), which are instruments that describe the work required to meet policy and contractual standards. Specifically, the Audit Tools outline the work to be performed during the review, the specific documents to examine, sampling techniques, the span of time for review, the process to observe, persons to be interviewed, and the desired outcomes. RCDC I/II utilizes two types of Audit Tools: (1) "BOP Audit Tools" that are based on the BOP's Quality Assurance Plan, BOP policies, and contract requirements; and (2) the GEO Group's "Core Audit Tools" that are based on ACA and GEO Group requirements. The QCS and her team of facility compliance staff use the BOP Audit Tools and the Core Audit Tools to conduct audits of selected portions of RCDC I/II's QCP and input the audit results into the contractor's compliance database system for dissemination to the BOP, the Warden, and the GEO Group Compliance section.

The OIG judgmentally selected seven audits from 2010 through 2013, which comprised approximately 14 percent (66 out of 480) of the identified deficiencies reported by the contractor. Our objective was to review the audit results to determine whether the auditor's conclusions appeared accurate, complete, and supported by original documentation. Upon completion of the audits, the results were entered into the electronic database. However, the original audit documentation had not been retained for any of the seven audits we reviewed. Without the original audit work papers, the OIG was unable to review or re-perform the work conducted by the compliance staff to verify their accuracy and completeness. The QCS explained that the prior compliance team had disposed of the original documentation, and GEO Group Corporate Compliance officials told us that GEO Group policies and procedures had not required the retention of such original documentation. This lack of record retention was a violation of the contract which contained recordkeeping requirements that "a file of all inspections, inspection results, and any corrective action required shall be maintained by the contractor through the term of the contract." As a result, we recommend the BOP ensure that Reeves County updates its quality assurance policies and procedures to

require the retention of all records related to contract performance which includes all original supporting documentation related to the contractor's QCP.

#### Quality Control Program Results not Communicated to the BOP

According to the contract, contractor audit results must be maintained in a file that "shall be the property of the government and be made available to the CO upon request." During our analysis of the contractor's internal audit program, the SSIM told us that from 2010 through 2011, the BOP did not request and therefore the GEO Group did not provide the results of its internal audits. GEO Group officials told us they were not required to provide audit results to the BOP but said they verbally communicated the results to Reeves County representatives. As a result, the BOP may not have adequately monitored and followed up on contractor-identified deficiencies from 2010 and 2011. However, beginning in 2012, the BOP began requesting and receiving the contractor's internal audit results, and therefore we do not provide a recommendation.

Using the Audit Tools, if the contractor identifies a deficiency, GEO Group compliance staff must generate a corrective action plan (CAP) to monitor and resolve areas of non-compliance. We reviewed CAPs from 2010 through 2013 to determine whether the contractor properly monitored and addressed all significant deficiencies. We reviewed 246 monthly and annual CAPS and identified the following significant weaknesses within the CAPS in 2010 and 2011:

- 75 instances where no corrective action was documented;
- 65 instances in which the CAP stated plans to perform future corrective actions however, there was no additional documentation to support the ongoing status, and any monitoring or follow-up conducted, including whether the stated future action took place and resolved the deficiency;
- 132 instances of no comments by GEO Group Regional/Corporate compliance officials assessing the status and effectiveness of the CAP;
- 52 instances of no dates of completion for the corrective action;
- 7 instances of corrective action plans that are not measurable; and
- 5 instances in which an identified deficiency is identified again in the next periods audit indicating an ineffective corrective action.

We provided GEO Group officials examples of the weaknesses discussed above to gain an understanding for why there were pervasive issues concerning the contractor's QCP in 2010 and 2011. GEO Group officials agreed that the quality control program in 2010 and 2011 contained significant weaknesses. GEO Group officials attributed improvements to their QCP, beginning in 2012, to a greater emphasis on quality control by the GEO Group's Corporate Compliance Division, as well as enhanced training and resource development for their compliance staff.

We also reviewed the 2012 and 2013 monthly and annual CAPs and although we continued to identify some deficiencies in the quality of the information provided in the CAPs as well as with documenting their monitoring and follow-up efforts, we identified a significant improvement, especially in 2013, in the quality of the information provided including detailed information concerning the deficiency, actions taken to ensure the deficiency was resolved, and monitoring. We found that Regional/Corporate compliance staff provided more detailed comments, status updates, and CAPs were closed in a timelier manner. We believe the improvements in the contractor's QCP coincide with a reduction in the number of areas deemed to be non-compliant by external audits of RCDC I/II operations. For example, the number of CFM identified non-compliance issues declined from 16 in 2012 to 5 in the 2014 CFM review. However, in 2012 and 2013 we continued to identify instances in which the contractor did not fully complete CAPs and did not actively monitor and follow-up on identified deficiencies as required. During the 2012 through 2013 period, we identified 31 of the 197 CAPs we reviewed contained some form of weakness. Therefore, we recommend the BOP ensure that Reeves County's compliance staff complete a CAP for each significant deficiency and document their monitoring and follow-up efforts for each CAP created to resolve deficiencies identified during internal audits.

#### *Medical Services Subcontractor Internal Audits*

As part of our review of the contractor's QCP we reviewed six internal audits conducted by CCS, the medical services subcontractor, from June 2011 through November 2013 to ensure compliance with the terms and conditions of the contract. We determined that the reports detailed identified deficiencies but did not prescribe any corrective action. CCS officials stated that they did not track identified issues unless they were considered to be a significant finding, did not retain documentation to support their monitoring and oversight efforts and did not report their internal audit results and corrective actions to Reeves County or the BOP.

As previously stated, the contract states that the contractor's QCP shall include, at a minimum, a file of all inspections, inspection results, and any corrective action required shall be maintained by the contractor through the term of the contract. When brought to the BOP's attention, BOP officials agreed that both the contractor and the BOP should have been provided all internal/external audit results conducted by sub-contractors so that corrective actions could be monitored and become an official part of the contract file. We recommend the BOP ensure Reeves County's subcontractors provide all internal and external audit results and corrective actions to Reeves County and the BOP.

#### *2012 Cure Notice*

On August 29, 2012, the contractor reported to the BOP serious staff deficiencies within the RCDC I/II Special Housing Unit (SHU) that resulted in the BOP issuing a Cure Notice On September 25, 2012, for failure to perform in the

areas of inmate accountability and supervision.<sup>48</sup> Specifically, the Cure Notice stated that based on a review of the SHU video feed from July 27, 2012 through August 8, 2012 there were numerous, significant security failures at the RCDC I/II. The video revealed official inmate counts were not conducted in the SHU in accordance with RCDC I/II policy for 47 of the 70 required counts, and that 30-minute irregular rounds were not consistently or completely conducted. Also, SHU orderlies were not properly supervised as required by RCDC I/II policy. Due to the seriousness of the Cure Notice we performed a review of the contractor's CAP and the BOP's oversight and monitoring efforts for this issue.

First we reviewed whether the contractor provided a response and a CAP to the Cure Notice within 10 days, as required. We verified that the contractor provided its response to the BOP within the 10 day period. The contractor's CAP consisted of four components to include: (1) Physical Plant and Equipment Enhancements, (2) Policy and Post Orders, (3) Supervisory Staff Additions and Enhanced Training, and (4) Increased Oversight by facility Administration through Increased Technological Resources.

1. **Physical Plant and Equipment** – The contractor's CAP repositioned the SHU Officer Duty Posts to provide consistent sight and sound observation of the inmates, installed additional closed circuit television cameras and upgraded the capacity of the DVR recording equipment. In addition, they purchased and installed a timekeeping product called Guard Plus, commonly known as the "Pipe." The Pipe electronically records the time and location (cell number) of the SHU Officer's counts, routine cell side interactions with SHU inmates, as well as required irregular 30-minute security checks. We determined that the contractor's physical plant and equipment upgrades enabled enhanced oversight capabilities for RCDC I/II SHU operations. In addition, PMB-Field staff conducted additional reviews of the contractor's documentation including reviewing the SHU Pipe Report for 10 consecutive months to ensure the contractor was conducting 30-minute irregular checks. We concluded that the BOP's actions were appropriate to provide continued oversight over the contractor's SHU operations.
2. **Policy and Post Orders** – The contractor modified and the BOP approved new SHU policies and post orders to reflect changes in RCDC I/II SHU operations. We performed a review of RCDC I/II's updated policies and post orders and determined that the RCDC I/II was not in compliance with its own policies and procedures related to RCDC I/II Post Order 23, which required the SHU Lieutenant (SHU Lt.) ensure all logs are properly documented by SHU staff prior to their departure for the day and to review the video recording of the SHU activities to ensure (30) minute irregular security

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<sup>48</sup> A Cure Notice provides notice to the contractor that the government considers a failure by the contractor to be a condition that is endangering contract performance and unless the condition is cured within a specified timeframe the government may terminate the contract for default. The BOP lifted the Cure Notice in February 2013.

checks are being conducted. Although the contractor maintained a log book to document the daily SHU video reviews, the SHU Lt. did not perform the daily SHU video reviews as required by RCDC I/II Post Order 23, and instead the reviews were performed by other RCDC I/II staff. Therefore, we recommend the BOP ensure that Reeves County complies with RCDC I/II Post Order 23, which requires the SHU Lt. to perform the daily SHU video review.

From a quality control perspective, GEO Group compliance staff did not verify that the SHU Lt. was performing the daily SHU video review and that the review was properly documented in the SHU video log. GEO Group Corporate Compliance officials agreed that adding audit review steps to their Core Audit Tools would improve its QCP. Accordingly, we recommend the BOP ensure that the contractor incorporate into its Core Audit Tools, review steps that ensure that the SHU Lt. performed the daily SHU video reviews and documented it in the SHU video log.

3. **Supervisory Staff Additions and Enhanced Training** – The Reeves County CAP added additional supervisory staffing and enhanced training to its SHU officers to ensure its correctional staff complied with sound correctional practices. We verified that the contractor added an additional SHU Lt. position so that 2 SHU Lt.'s provided daily supervision over SHU operations. We also verified that the contractor's training materials provided to the BOP appeared to address the most serious issues identified in the Cure Notice and that the contractor continued to provide quarterly SHU officer training classes throughout 2014.
4. **Increased Oversight By Facility Management** - The Reeves County CAP stated they would enhance their observation efforts and Core Audit Tools to evaluate and document compliance for SHU operations. Specifically, in one instance, their CAP required a review of random SHU video recordings of night shift activities and future audits would specifically require the auditor to observe SHU activities during the night shift. We conducted a review of the contractor's Core Audit Tools and determined that the contractor incorporated the stated review steps as a part of its QCP.

In addition to the increased oversight by the contractor the BOP also increased their oversight responsibilities for RCDC I/II operations. Specifically, on September 19, 2012, PMB officials advised PMB staff the Monthly Oversight Checklist had been updated to include observation steps that required oversight staff to utilize video review as a monitoring technique to ensure counts were being conducted properly throughout the facility, 30-minute irregular rounds in SHU were being conducted, and sound correctional practices were in place throughout the facility.

## J-Unit Inmate Housing

The J-Unit building consists of four 24-bed dormitories with dayrooms included in each dormitory. Through September 2013, the J-Unit was being used for general population housing. However, in early October 2013, the inmates conducted a facility-wide demonstration, during which they refused to comply with RCDC I/II staffs' orders and would not work or leave their dorms. The inmates created a list of demands that included additional movement in the recreation yard, "full respect from the officers," better food on the menu, reduced commissary prices and provision of up-to-date products, better pay for facility work and they wanted RCDC I/II officials to "stop trying to find ways to reduce their hours and pay."<sup>49</sup> The RCDC I/II Warden told us that this demonstration was spearheaded by inmate "representatives" or leaders proclaiming to represent one of Mexico's 32 federal entities in an attempt to exert control over other RCDC I/II inmates. The Warden said that inmate representatives, who in some instances wielded influence through cartel connections, coerced other inmates to join the demonstration and that such behavior created institutional security problems that could jeopardize the safety of RCDC I/II staff and inmates.

RCDC I/II officials initiated an effort to remove the suspected leaders, instigators, or participants of the demonstration from the general population. According to a May 2014 RCDC I/II Investigative Memorandum, 364 inmates were removed from general population and placed in the SHU. Because RCDC I/II's SHU units were only intended to house a maximum of 210 inmates, overcrowding became an issue and on October 9, 2013, RCDC I/II officials began using the J-Unit for SHU overflow purposes.

In the aftermath, RCDC I/II officials obtained evidence of 71 inmates' participation in the incident. These inmates remained in the SHU until they could be transferred out of the facility. RCDC I/II officials decided that in an effort to mitigate the risk of recurrence, it would repurpose the J-Unit from a standard general housing unit to what RCDC I/II officials called a "modified general population unit" or a "modified monitoring unit." The new purpose of the J-Unit would be to isolate the "representatives" or leaders and their associates from the rest of the compound's population, to prevent them from exerting control over other RCDC I/II inmates.

The OIG learned of J-Unit during interviews with 10 judgmentally selected RCDC I/II inmates. We asked these inmates several questions about the overall facility, medical care, the Special Housing Unit (SHU), inmate safety, and if there were any matters they would like to discuss. Some inmates expressed concern that the "J-Unit," was almost as restrictive as the SHU. One inmate housed in the J-Unit at the time told us that he had been placed there without any explanation and had since lost privileges to work and attend classes. Another inmate formerly housed in the J-Unit told us that he had been there approximately 8 months and had also

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<sup>49</sup> Our audit did not assess the legitimacy of these inmate's demands.

never received an explanation of why he was transferred there. Other inmates reiterated the overall perception that the J-Unit was very restricted. BOP and RCDC I/II officials strongly denied these claims. The RCDC I/II Warden told us that the J-Unit inmates were treated like inmates in any other RCDC I/II general housing unit, aside from restricted movement, which is necessary to prevent inmate representatives and their associates from commingling with and forcing their influence upon general population inmates. One inmate we interviewed shared his appreciation for RCDC I/II's efforts, noting that by moving representatives out of the facility or to the J-Unit, they could not control and intimidate other inmates, which led to a much safer environment.

We found that J-Unit did not have restrictions that were similar to the SHU. J-Unit inmates had access to the same categories of services offered to other general population inmates, but they faced additional restrictions and fewer choices. For example, J-Unit inmates had access to job opportunities, but were limited to job assignments that did not involve interaction with inmates from other general population housing units. For example, J-Unit inmates could not receive job assignments in the areas of food service, education, or at the leisure and law libraries. At the time of the OIG's July 2014 visit to RCDC I/II, J-Unit inmates did not have access to educational and vocational classes and were limited to receiving course materials. After bringing this matter to the attention of RCDC I/II officials, in late August they began offering classroom-based courses, including basic wiring and English as a second language.

Because BOP and RCDC I/II officials consider the J-Unit unique and inmates placed in the J-Unit are isolated from the rest of the general population and face additional restrictions and fewer choices than their general population counterparts, it is important that RCDC I/II officials establish a policy to operate the J-Unit in accordance with BOP policies and procedures, and ensure that the J-Unit meets its intended purpose. However, RCDC I/II officials had not established formal guidance on the J-Unit's purpose and functions, nor were there procedures detailing its operational use, including but not limited to: (1) providing the necessary evidence to place an inmate into the J-Unit; (2) ensuring inmates receive due process, including the ability to challenge their placement in the J-Unit and describing the steps necessary to re-designate inmates to an unrestricted general population unit; (3) monitoring or oversight steps to ensure the J-Unit was used as intended; and (4) establishing safeguards to ensure inmate rights were consistent - to the maximum extent possible considering security concerns - with inmates in other general population housing. We believe, given the unique nature of the J-Unit, the development of institutional guidance is necessary to formalize the J-Unit's purpose and ensure there are criteria to evaluate its operation.

Despite the lack of documented procedures, we analyzed J-Unit records, observed daily operations, and interviewed RCDC I/II officials. According to RCDC I/II officials, the criterion for an inmate to be placed in J-Unit is that:

*[he] must have exercised authority over other inmates, or have attempted to extort or manipulate them through intimidation, threat or coercion.*

As previously stated, RCDC I/II officials removed 364 inmates from general population, placed them in the SHU, and used the J-Unit for overflow purposes. RCDC I/II's Warden explained that at this time, it was clear that some inmates were responsible for the demonstration because correctional officers observed prisoners directing inmates not to leave their housing units. But in other instances, proving inmate involvement was difficult and further investigation was necessary. In May 2014, RCDC I/II's Special Investigative Supervisor (SIS) concluded its investigation into the October 2013 lockdown and issued an Investigative Memorandum (May 2014 RCDC I/II Investigative Memorandum) stating that RCDC I/II utilized staff observations, video recordings, and mass interviews of inmates to narrow its list of suspected leaders, instigators, and participants down to 149 inmates.<sup>50</sup> The May 2014 RCDC I/II Investigative Memorandum concluded that it had adequate evidence to conclude that 71 of these inmates were leaders, instigators, or participants in the demonstration, and these inmates would remain in the SHU until they could be transferred to another facility. However, it also concluded that for 66 other inmates, RCDC I/II officials "did not have enough evidence to support [allegations of these inmates] being involved in the group demonstration" and that they be released to the general population. These 66 inmates were transferred to the J-Unit. RCDC I/II official's justification for placing these 66 inmates into the J-Unit differs from the criterion RCDC I/II officials stated as justification for placing an inmate in the J-Unit.

To further evaluate the justification for inmate placement into the J-Unit, we selected 10 inmates (to maintain confidentiality, these inmates are referred to as Inmates 1 through 10) placed in the J-Unit from November 2013 through July 2014. We included in our sample the two inmates interviewed that stated they were placed in the J-Unit without receiving any explanation (Inmates 1 and 6). We analyzed the evidence and supporting documentation that led to each inmate's placement into the J-Unit, and compared this information to the May 2014 RCDC I/II Investigative Memorandum that described the overall investigative results of the October 2013 incident.

The OIG identified concerns with 9 of the 10 J-Unit inmates selected. Only one inmate's placement in the J-Unit (Inmate 5) met RCDC I/II official's criterion for designation and was also supported by evidence. Of the other 9 inmates, one inmate had been erroneously placed in the J-Unit (Inmate 1), another inmate was placed in the J-Unit for an infraction unrelated to the J-Unit's intended purpose (Inmate 4), and the rest of the inmates were placed in the J-Unit without documenting the evidence obtained or obtaining adequate evidence. The detailed results are as follows:

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<sup>50</sup> The RCDC I/II Investigative Memorandum identified 151 inmates but contained two duplicates so 149 inmates was the correct count.

- Inmate 1 was placed in J-Unit on June 4, 2014. During an interview, he shared his belief that he had been placed in the J-Unit by mistake and that his Case Manager did not know the reason for his placement. RCDC I/II officials acknowledged that this placement was a mistake. RCDC I/II officials told us that one of the J-Unit cell's air conditioning units malfunctioned and due to hot temperatures and a lack of ventilation, inmates in this cell were moved temporarily to an empty H-Unit cell. Inmate 1 had also been placed in this H-Unit cell and when the air conditioning problem was fixed and inmates returned to the J-Unit, Inmate 1 was transferred as well.
- Inmate 4 was placed in the J-Unit on July 18, 2014. According to a memorandum dated July 18, 2014, Inmate 4 had been disruptive, aggressive, and verbally abusive to two female correctional officers. The memorandum noted that an RCDC I/II official authorized this inmate's transfer from the F-Unit to the J-Unit. When asked about this inmate's placement, RCDC I/II officials responded that this inmate's offense did not meet the criteria to be placed in the SHU, nor did Inmate 4 have any good conduct time that could be taken away. Therefore, he was placed in the J-Unit, which would allow him to "be monitored further for any other outburst or aggressive behavior in a less populated unit where he could [not] influence others to act out with him." Inmate 4's misbehavior had no relationship to exercising authority over other inmates, nor did it represent an attempt to extort or manipulate inmates through intimidation, threat or coercion.
- Inmate 5 was placed in J-Unit on July 9, 2014. An RCDC I/II Investigative Memorandum dated July 2014 determined that Inmate 5, a Mexican national, had been involved in an altercation with a Columbian inmate and in retaliation, influenced other Mexican national inmates to assault the Columbian inmate. Because Inmate 5 instigated an assault, he was placed in the J-Unit. The OIG determined that this instance was properly documented and met RCDC I/II official's criterion for J-Unit designation.
- Inmate 6 had been placed in the J-Unit on June 3, 2014. He told the OIG that he believed that the J-Unit was a seclusion area and that he had not received an explanation of why he was transferred there. RCDC I/II officials provided an SIS memorandum dated August 22, 2014 (a month after his placement in the J-Unit and pursuant to the OIG's request for additional information) stating that following the lockdown, inmates from random housing units were re-interviewed and Inmate 6 was identified as being the "spokesman" for the Mexican State of Michoacán." However, RCDC I/II officials did not provide any evidence to support their explanation.
- Inmates 2, 8, 9, and 10 were placed in the J-Unit on November 9, 2013; Inmate 3 was placed in the J-Unit on January 22, 2014; and Inmate 7 was placed in the J-Unit on April 25, 2014. RCDC I/II officials told us that all six inmates participated in the October 2013 lockdown, had been placed in the

SHU, and subsequently transferred to the J-Unit. According to the May 2014 RCDC I/II Investigative Memorandum, mass interviews identified these six inmates as instigators, participants or leaders.<sup>51</sup> However, after RCDC I/II officials conducted further investigation, they determined there was not enough evidence to support any of these six inmates' involvement in the group demonstration. Therefore, based on information provided by RCDC I/II officials, Inmates 2, 3, 7, 8, 9, and 10 had been placed in the J-Unit based on unsubstantiated suspicion of being instigators, participants or leaders.

The OIG understands RCDC I/II officials' concerns that homogenous population demographics can create unique security and management problems, and that the removal or isolation of instigators, participants, and leaders from the general population is critical to ensure safe and secure operation of the contract facility. However, as our analysis demonstrates, in several instances inmates were not being placed in the J-Unit based on appropriate evidence. This substantiates our concerns that, similar to Inmate 1, other inmates incorrectly placed in the J-Unit and unnecessarily isolated from the rest of the general population will have fewer inmate services available to them compared to other general population inmates. Furthermore, according to minutes of a December 2013 meeting, when the SSIM asked for a status update on the J-Unit, the RCDC I/II Warden replied that "It's not a life sentence once [inmates are placed in the J-Unit]. They have to prove they are not one of the leaders." Because RCDC I/II has no formalized operational policy, J-Unit inmates have no means to challenge their placement, prove they were not leaders, instigators, or participants, and return to unrestricted general population.

Therefore, the OIG recommends that operational policies and procedures should be established to formalize the J-Unit's purpose and operations. The policy should include at a minimum, guidance on the type of evidence and approvals necessary to place an inmate in the J-Unit; an opportunity for inmates to challenge their placement in the J-Unit; and a requirement that Reeves County and GEO Group onsite monitors incorporate the new J-Unit policies and procedures into the Quality Control Program.

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<sup>51</sup> During the October 2013 lockdown, inmates identified Inmate 7 as not allowing other inmates to work. An anonymous inmate note claimed that Inmate 3 was threatening other inmates that did not follow his lead; and RCDC I/II officials said after relocating Inmate 2 to the J-Unit, inmates in his former unit began cooperating. For all three of these instances, the May 2014 RCDC I/II Investigative Memorandum concluded that there was not enough evidence to support their involvement in group demonstrations.

## Recommendations

We recommend that the Bureau of Prisons:

1. Ensure that Reeves County and CCS perform detailed fringe benefit assessments for CCS employees located at RCDC I/II from 2007 through 2009 and for CCS employees at RCDC III during the life of Contract No. DJB1PC003, and remedies any underpayments.
2. Remedy the \$1,954,082 in net unallowable costs associated with the following issues:<sup>52</sup>
  - a. Remedy the \$175,436 in unallowable costs that Reeves County has incorrectly claimed in price adjustments for payroll taxes and workers' compensation insurance that did not result from wages or cash-in-lieu of fringe benefits.
  - b. Remedy the \$1,954,082 that Reeves County incorrectly claimed for Health & Welfare benefit-related price adjustments, FICA, and workers' compensation insurance.
3. Remedy the \$74,765 in unsupported costs for which CCS was unable to provide records supporting the cost of providing benefits to employees from 2007 through 2009.
4. Remove the \$41,088 in unallowable and unsupported costs from the MOP, beginning with its March 2015 invoice, in order to remedy the \$945,024 in funds to be put to better use.
5. Identify unallowable questioned costs related to price adjustments that Reeves County was not entitled to receive for RCDC III (Contract No. DJB1PC003).
6. Create and implement policies and procedures that strengthen responsible officials' understanding of Service Contract Act rules and regulations, and enable Reeves County to produce, maintain, and share with the GEO Group or any future management services provider, summary accounting records containing the actual cost of fringe benefits for each employee. In addition, ensure that before a service provider requests a price adjustment, the service provider must first compare the actual cost of benefits provided to each employee to the Health and Welfare benefits rate contained in the wage determination.

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<sup>52</sup> Some costs were questioned for more than one reason. Net questioned costs exclude the duplicate amount. Specifically, we found that Reeves County, included \$175,436 in payroll taxes and workers' compensation insurance that were incorrectly calculated in the price adjustments that we already questioned as a portion of the \$1,954,082.

7. Review the current vacancy deduction methodology and consider the use of actual payroll information as a basis for applying staffing-related reductions that reflect the reduced value of the services performed in accordance with FAR 52.246-4(e).
8. Ensure that BOP PMB officials provide PMB-Field staff guidance on the minimum number of contractor QCP results to be validated on a monthly basis for RCDC I/II.
9. Consider consolidating the two quality control observation steps in the Oversight Checklist into a single observation step. In addition, consider reviewing and updating its guidance provided to PMB-Field staff to ensure staff provide accurate and complete information in their monthly checklists. Finally, ensure that PMB-Field staff documents the contractor's corrective actions for audits conducted during the period.
10. Ensure that PMB-Field staff at RCDC I/II continue to update and ensure their monitoring logs provide greater detail on the audit results (including an individualized accounting of deficiencies), corrective actions, status, follow-up dates, and resolutions.
11. Ensure that PMB Operating Procedures are updated to include an example or attachment of a properly completed Monitoring Log.
12. Take steps to ensure that PMB-Field staff at RCDC I/II document their follow-up efforts to ensure that the contractor's corrective actions are monitored and addressed in a timely manner.
13. Ensure that Reeves County updates its quality assurance policies and procedures to require the retention of all records related to contract performance, including all original supporting documentation related to the contractor's QCP.
14. Ensure that Reeves County's compliance staff completes a CAP for each significant deficiency and document their monitoring and follow-up efforts for each CAP created to resolve deficiencies identified during internal audits.
15. Ensure that Reeves County's subcontractors provide all internal and external audit results and corrective actions to Reeves County and the BOP.
16. Ensure that Reeves County complies with RCDC I/II Post Order 23, which requires the SHU Lieutenant to perform the daily SHU video review.
17. Ensure that the contractor incorporate into its Core Audit Tools, review steps that ensure that the SHU Lieutenant performed the daily SHU video reviews and documented it in the SHU video log.

18. Ensure that operational policies and procedures are established to formalize the J-Unit's purpose and operations. The policy should include at a minimum, guidance on the type of evidence and approvals necessary to place an inmate in the J-Unit; opportunities for inmates to challenge their placement in the J-Unit; and a requirement that Reeves County and GEO Group onsite monitors incorporate the new J-Unit policies and procedures into its Quality Control Program.

## STATEMENT ON INTERNAL CONTROLS

As required by *Government Auditing Standards*, we tested, as appropriate, internal controls significant within the context of our audit objectives. A deficiency in an internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect in a timely manner: (1) impairments to the effectiveness and efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations. Our evaluation of the Federal Bureau of Prison's (BOP) administration of Contract No. DJB1PC007 awarded to Reeves County, Texas, to operate the Reeves County Detention Center I/II was not made for the purpose of providing assurance on their internal control structures as a whole. BOP's, Reeves County's, and GEO Group's management is responsible for the establishment and maintenance of internal controls.

As discussed in our report, the BOP needs to improve its internal controls to ensure compliance with all rules, regulations, and guidelines related to the administration of Contract No. DJB1PC007 awarded to Reeves County, Texas, to operate the Reeves County Detention Center I/II. Specifically, the BOP needs to: (1) ensure that Reeves County and its subcontractors implement policies and procedures to retain the benefit records required by federal law and regulations, (2) ensure that Reeves County creates and implements policies and procedures that strengthen responsible officials understanding of Service Contract Act rules and regulations and enable Reeves County to produce, maintain, and share with the GEO Group or any future management services provider, summary accounting records containing the actual cost of fringe benefits for each employee, (3) ensure that before a service provider requests a price adjustment, the service provider must first compare the actual cost of benefits provided for each employee to the Health and Welfare benefits rate contained in the wage determination, and (4) consider reviewing the current vacancy deduction methodology to ensure that any reductions applied to the contract price reflect the reduced value of the services performed in accordance with FAR 52.246-4(e). The internal control deficiencies noted in the report prevent the BOP from ensuring that price adjustments and vacancy deductions are in compliance with the Service Contract Act and FAR 52.246-4(e), respectively. As a result, the government ultimately pays more for services than what is required by law.

Because we are not expressing an opinion on the internal control structure of the BOP as a whole, this statement is intended solely for the information and use by the BOP, Reeves County, and the GEO Group. This restriction is not intended to limit the distribution of this report, which is a matter of public record.

## **STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS**

As required by *Government Auditing Standards* we tested, as appropriate given our audit scope and objectives, selected transactions, records, procedures, and practices to obtain reasonable assurance that BOP's, Reeves County's, and GEO Group's 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. BOP's, Reeves County's, and GEO Group's management is responsible for ensuring compliance with federal laws and regulations. In planning our audit, we identified the following laws and regulations that concerned the operations of the auditee and that were significant within the context of the audit objectives:

- Federal Acquisition Regulation (FAR)
- FAR Subpart 15.4
- FAR 52.222-43(d)
- FAR 52.246-4(e)
- 29 C.F.R. § 4.6(g)
- 29 C.F.R. §4.114(b)

Our audit included examining, on a test basis, BOP's, Reeves County's, and the GEO Group's compliance with the aforementioned laws and regulations that could have a material effect on BOP's, Reeves County's, and the GEO Group's operations. We interviewed auditee personnel, assessed internal control procedures, and examined accounting records and performance reports. As noted in the Findings and Recommendations section of this report, we found instances where the BOP did not have controls in place to ensure compliance with the FAR and C.F.R. relating to the Service Contract Act. Specifically, we noted that Reeves County improperly requested price adjustments based on Health and Welfare benefits rate increases although they were already providing employees with benefits that exceeded the Health and Welfare benefits rate.

### OBJECTIVES, SCOPE, AND METHODOLOGY

#### Audit Objectives

The primary objective of our audit was to assess the Federal Bureau of Prisons' (BOP) and contractor's compliance with contract terms and conditions in the areas of (1) billings and payments, (2) staffing requirements, and (3) contract oversight and monitoring.

#### Scope and Methodology

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.

This was an audit of BOP Contract No. DJB1PC007, awarded to Reeves County, Texas (Reeves County). Our audit generally covered, but was not limited to, October 1, 2008, through December 31, 2013; and included four entities: (1) the Federal Bureau of Prisons (BOP); (2) Reeves County; (3) The GEO Group, Inc.; and (4) Correct Care Solutions, LLC (CCS), the medical contractor.<sup>53</sup>

To ensure compliance with contract requirements regarding billings and payments, we assessed the adequacy of BOP payments for monthly invoices and award-fees to Reeves County, reviewed the accuracy and completeness of contract modifications resulting in a net increase or decrease of funds, reviewed BOP and RCDC I/II compliance with Federal Acquisition Regulation (FAR) requirements related to the payment of prevailing wages and benefits to staff based on locality, reviewed BOP's compliance with the Prompt Payment Act, and reviewed compliance with contract required fringe benefit amounts due to RCDC I/II personnel.

To determine if RCDC I/II complied with contractual staffing requirements, we reviewed contract provisions related to the facility's staffing, compared facility staffing information to timekeeping and payroll records, assessed whether RCDC I/II filled vacant positions in a timely manner as required in the contract, reviewed and compared staffing ratios, determined how staffing shortfalls were

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<sup>53</sup> In March 2007, the Reeves County Commissioners' Court entered into a subcontract with Physicians Network Association (PNA) to provide comprehensive healthcare services at RCDC I/II. In 2010, PNA was acquired by Correctional Healthcare Companies (CHC), and in the summer of 2014, CHC merged with Correct Care Solutions, LLC (CCS).

handled, and assessed RCDC I/II's methodology for calculating staffing-related invoice deductions.

To assess BOP and contractor compliance with contract oversight and monitoring requirements, we reviewed the contractor's quality control program (QCP) to determine if RCDC I/II provided and maintained an inspection system that allows it to demonstrate positive performance and identify areas of non-compliance before the level of performance becomes unsatisfactory. We also reviewed the BOP's Quality Assurance Plan (QAP) to ensure BOP monitored the quality of the contractor's services to ensure that the contract requirements are defined and satisfactorily met.

### *Transaction Testing*

During our audit, we noted that from February 2007 through February 2014, Reeves County submitted 85 invoices to the BOP, totaling over \$320 million. We selected a sample of 16 invoices totaling \$57.6 million. Three of the 16 invoices selected had the highest dollar value of the invoices in our sample, 3 invoices had the lowest dollar value, and the remaining 10 invoices were selected using auditor judgment. We employed this judgmental sampling design to obtain a broad exposure to numerous facets of the contract reviewed, such as dollar amounts, invoice or deduction category, or risk. However, this non-statistical sample design does not allow a projection of the test results for all invoices or internal controls and procedures.

### *Service Contract Act Calculations and Analysis*

We assessed Reeves County's, the GEO Group's, and CCS' compliance with rules and regulations related to the Service Contract Act to determine if they properly accounted for and paid the requisite amount of wages and Health & Welfare benefits to their employees; to ensure that the requests for price adjustment were accurate and justified; and to assess whether the BOP properly reviewed, approved, and monitored Reeves County's requests for reimbursement. To accomplish this, we obtained: (1) payroll records containing service employees' actual wages, (2) information on the cost of Health & Welfare benefits offered to employees, (3) the DOL wage determinations containing the minimum wages and benefits, and (4) the RCDC I/II's request for reimbursement sent to the BOP.<sup>54</sup> For wages, we compared new rates from the wage determination to payroll records; if employees were entitled to a wage increase, we verified that they began receiving additional pay effective as of the beginning of the contract year, that the contractor accurately calculated its reimbursement from the BOP, and that the request for reimbursement was justified. For Health & Welfare benefits, we aggregated the cost of employees' fringe benefits, which consisted of the cost of life insurance, sick leave, health insurance, retirement, health club membership, and two extra

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<sup>54</sup> On an annual basis, Reeves County, the GEO Group, and CCS consolidated its wage and benefit information into a single request for reimbursement from the BOP.

holidays. We then compared the cost of these fringe benefits documented in the payroll records to the new Health & Welfare benefits rate contained in the wage determination. We then used the same method to evaluate Health & Welfare benefits that we used to evaluate wages.

In our analysis we determined that over a span of 7 years, all of Reeves County's wage determinations resulted in improper price adjustments. To identify the cumulative costs, we multiplied each wage determination's annual improper costs by the amount of proceeding years in which the costs repeated, ending at our cutoff date of January 2015.<sup>55</sup> For example, if there was an annual price adjustment of \$10 incorporated into the MOP in February 2008, this \$10 cost would be repeated in every subsequent year throughout the life of the contract. Therefore, by the end of January 2015, the cumulative cost of this price adjustment would be \$70 (\$10 annual cost times 7 years).

For the subcontractor CCS, we reviewed a sample of 31 transactions involving employees subject to the Service Contract Act from 2013 through 2014. This was a judgmental sample selected to ensure that at least one of each of the CCS positions subject to the Service Contract act were selected. We employed this judgmental sampling design to obtain a broad exposure to CCS' management of employee compensation in regards to the Service Contract Act. However, this non-statistical sample design does not allow a projection of the test results for all expenditures or internal controls and procedures. It is also important to note that our assessment of CCS' compliance with Service Contract Act benefit was limited to 2013 and 2014 because CCS could not locate records containing its cost of providing benefits to employees from 2007 through 2012.

#### *Medical Staffing Requirements and Vacancy Analysis*

In order to properly compare the deductions made for vacant positions to active filled positions, we first summarized the payroll register information provided by CCS officials for each calendar year (CY) in the contract, starting with January 2009 through December 2013, for each position title (e.g. Licensed Vocational Nurse, Administrative Assistant, etc.). We did this using both the payroll register information provided by CCS officials as well as the Staffing Strength Reports maintained by GEO Group personnel. It is also important to note that there were instances where an employee listed in the payroll registers was not listed in the Staffing Strength Reports and vice versa. When we asked GEO Group officials about this, they told us that the monthly Staffing Strength Reports are maintained by using the past report and updating it when new information is presented from CCS like notifications of hiring, resignation, and termination. We did not include these instances in our review and focused on the personnel that were included in both the payroll register and Staffing Strength Reports. We also determined that these instances did not have a material effect on our analysis.

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<sup>55</sup> Our cutoff date of January 2015 was the end of Option 2, Year 2.

Using the information mentioned previously, we were able to sum the total hours worked, overtime hours, salary compensation, and Fringe Benefit compensation (FICA, Unemployment, Workers Compensation, and Health and Welfare) for each position title. Also, for each calendar year, we calculated the average amount of FTEs listed for each position title by first calculating the average FTEs listed in each calendar month (some months had more than 2 pay periods that ended in that month) and then taking an annual average using those monthly averages.<sup>56</sup> Using this, we divided the amounts totals listed previously by the average FTE amounts in each calendar year. This calculation provided the average annual amounts for total hours worked, overtime hours, salary compensation and fringe benefit compensation for any single position. Then, using this set of average single position information for each calendar year, we were then able to calculate the average hourly compensation rate for filled positions for each position title listed in the Staffing Strength Reports.

During our transaction testing, we noted the methodology used to calculate vacant positions used in the invoices sampled. Using the Staffing Strength Reports, we were able to identify the vacancies that were deductible from monthly invoices per the contract (or modification of the contract) requirements. We then calculated the vacancy deductions for each of these vacancies using the same methodology used by contractor officials. First, we took the length of each vacancy in work hours (assuming a 40-hour work week) multiplied this length by the hourly wage of the position (based on Wage Determination information) in order to determine the wages portion of the deduction.<sup>57</sup> Second, we used the wages portion to calculate the employer's share of FICA, Workers Compensation, Unemployment, and Health and Welfare costs (used the H&W rate multiplied by the vacancy length in hours). Third, using these calculations we calculated the sum of the wages, employer's share of FICA, Workers Compensation, Unemployment, and Health and Welfare to determine the cost of each vacancy for each calendar year from 2009 through 2013. We were also able to calculate a cost per vacant hour, which shows the amount that was deducted with each position for each hour that position remained vacant.

Using the summary information mentioned previously for both compensation and vacancies, we calculated the difference between the compensation rate and the cost per vacant hour, for each position for each calendar year. We did this to show the difference between the hourly rate (including fringe benefits) provided to employees and the hourly rate of deductions made per vacant positions. In order to better quantify the difference in costs, we multiplied the difference in rates by the average length of a vacancy in that position (for each calendar year) in order to evaluate the difference in costs for a filled position versus a vacant position. It also

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<sup>56</sup> CCS employees were paid on a biweekly basis.

<sup>57</sup> In instances where a vacancy was for a position that was exempt from Wage Determinations, we again followed the same methodology used by the CCS for this portion of the vacancy deduction calculation by using the base salary of the position as well as an escalator based on how much the Monthly Operating Price had increased for each year of the contract.

helps us quantify how much on average that CCS did not have to pay by having a position vacant instead of filled. Further, to better quantify these differences, we multiplied the annual cost difference by the total number of vacancies so that we can see for any given position, how much the medical contractor did not have to pay by having a given position vacant on an annual basis.

**SCHEDULE OF DOLLAR-RELATED FINDINGS**

DESCRIPTION	AMOUNT	PAGE
<b>Questioned Costs<sup>58</sup></b>		
Reeves County Unallowable Price Adjustments	\$1,954,082	17
Reeves County Incorrect Payroll and Benefit Costs	\$175,436	17
<b>Total Unallowable:</b>	<b>\$2,129,518</b>	
Correct Care Services Unsupported Payroll and Benefit Costs	\$74,765	18
<b>Total Unsupported:</b>	<b>\$74,765</b>	
<b>Gross Questioned Costs:</b>	<b>\$2,204,283</b>	
<b>Less Duplication<sup>59</sup></b>	<b>(\$175,436)</b>	17
<b>Net Questioned Costs:</b>	<b>\$2,028,847</b>	
<b>Funds Put to Better Use<sup>60</sup></b>		
Adjustment to Monthly Operating Price	\$945,024	18
<b>Total Dollar-Related Findings</b>	<b>\$2,973,871</b>	

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<sup>58</sup> **Questioned Costs** are expenditures that do not comply with legal, regulatory, or contractual requirements, or are not supported by adequate documentation at the time of the audit, or are unnecessary or unreasonable. Questioned costs may be remedied by offset, waiver, recovery of funds, or the provision of supporting documentation.

<sup>59</sup> Some costs were questioned for more than one reason. Net questioned costs exclude the duplicate amount. Specifically, we found that Reeves County, included \$175,436 in payroll taxes and workers' compensation insurance that were incorrectly calculated in the price adjustments that we already questioned as a portion of the \$1,954,082.

<sup>60</sup> **Funds to Better Use** are future funds that could be used more efficiently if management took actions to implement and complete audit recommendations. This definition is based on provisions within the Inspector General Act of 1978, as amended, codified as [5 USC 3 § 5\(f\)\(4\)](#).

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, DC 20534

April 21, 2015

MEMORANDUM FOR JASON R. MALMSTROM  
ASSISTANT INSPECTOR GENERAL  
FOR AUDIT

A handwritten signature in black ink that reads "Charles E. Samuels, Jr." in a cursive script.

FROM: Charles E. Samuels, Jr.  
Director  
Federal Bureau of Prisons

SUBJECT: Response to the Office of Inspector General's (OIG)  
Draft Audit Report: The Federal Bureau of Prisons  
Contract No. DJB1PC007 Awarded to Reeves County,  
Texas to Operate the Reeves County Detention Center  
I/II, Pecos, Texas

The Bureau of Prisons (Bureau) appreciates the opportunity to respond to the open recommendations from the draft report entitled, The Federal Bureau of Prisons Contract No. DJB1PC007 Awarded to Reeves County, Texas to Operate the Reeves County Detention Center I/II, Pecos, Texas.

In addition to responding to each recommendation below, we would like to note our concern with the suggestion in the report that the Bureau's overall assessment of the Contractor's Performance is reflected in the Award Fee Plan, referenced on page 10. The actual performance rating is entered in the Contractor Performance Assessment Reporting System (CPARS). The information entered into the CPARS system is a realistic assessment of the contractors' ability to conform to the contract requirements. An Award Fee is a contract incentive that provides motivation to perform excellent work. The standards that are used in the CPARS to evaluate performance are not the same standards that are defined in the Award Fee plan, in which a contractor earns an award fee.

It is recommended the OIG report clearly reflect the Award Fee ratings are not a reflection of the contractor's overall performance and the standards for the Award Fee far exceed those rating definitions in CPARS.

Please find the Bureau's response to the recommendations below:

**Recommendation #1:** Ensure that Reeves County and CCS perform detailed fringe benefit assessments for CCS employees located at RCDC I/II from 2007 through 2009 and for CCS employees at RCDC III during the life of Contract No. DJB1PC003, and remedies any underpayments.

**Initial Response:** The Bureau agrees with the recommendation in principle. The Bureau will address this matter with CCS to ensure the accuracy of the total value owed to the CCS employees is correct and remedy the costs, if any.

**Recommendation #2:** Remedy the \$1,954,082 in net unallowable costs associated with the following issues:

a. Remedy the \$175,436 in unallowable costs that Reeves County has incorrectly claimed in price adjustments for payroll taxes and workers' compensation insurance that did not result from wages or cash-in-lieu of fringe benefits.

b. Remedy the \$1,954,082 that Reeves County's incorrectly claimed for Health & Welfare benefit-related price adjustments, FICA, and workers' compensation insurance.

**Initial Response:** The Bureau agrees with the recommendation in principle. The Bureau plans to verify the unallowable costs that were paid to Reeves County. The Bureau will also work with Reeves County to develop a better and more accurate understanding of certain fundamental requirements of the Service Contract Act as mentioned in the OIG report.

**Recommendation #3:** Remedy the \$74,765 in unsupported costs for which CCS was unable to provide records supporting the cost of providing benefits to employees from 2007 through 2009.

**Initial Response:** The Bureau agrees with the recommendation in principle. The Bureau will address this matter with CCS to remedy the unsupported costs, if any.

**Recommendation #4:** Remove the \$41,088 in unallowable and unsupported costs from the MOP, beginning with its March 2015 invoice, in order to remedy the \$945,024 in funds to be put to better use.

**Initial Response:** The Bureau agrees with the recommendation in principle. Once the other Service Contract Act (SCA) issues are resolved and verified, the Bureau will remedy all costs to ensure that the contract is correct and will remain correct.

**Recommendation #5:** Identify unallowable questioned costs related to price adjustments that Reeves County was not entitled to receive for RCDC III (Contract No. DJB1PC003).

**Initial Response:** The Bureau agrees with the recommendation in principle. The Bureau will look further into the costs questioned by OIG. The Bureau will seek to verify why the costs were paid and if they were unallowable, then the Bureau will remedy the issue as needed, and seek reimbursement for all unallowable costs, paid under Contract No. DJBPC003.

**Recommendation #6:** Create and implement policies and procedures that strengthen responsible officials' understanding of Service Contract Act rules and regulations, and enable Reeves County to produce, maintain, and share with the GEO Group or any future management services provider, summary accounting records containing the actual cost of fringe benefits for each employee. In addition, ensure that before a service provider requests a price adjustment, the service provider must first compare the actual cost of benefits provided to each employee to the Health and Welfare benefits rate contained in the wage determination.

**Initial Response:** The Bureau agrees with the recommendation. The Privatized Corrections Contracting (PCC) Section is currently reviewing their standard operating procedures in regards to the Department of Labor's (DOL) SCA. PCC will also reach out to the DOL to seek additional training in this area so they can disseminate this information to the key components that are involved in the wage increases process. Anticipated completion date: August 1, 2015.

**Recommendation #7:** Review the current vacancy deduction methodology and consider the use of actual payroll information as a basis for applying staffing-related reductions that reflect the reduced value of the services performed in accordance with FAR § 52.246-4(e).

**Initial Response:** The Bureau agrees to consider using actual payroll information for staff vacancies. We appreciate the opportunity to consider an alternative methodology for staff vacancy deductions. We believe the following information is important to consider in responding to this issue:

- Deductions taken under FAR 52.246-4(e) are at the discretion of the contracting officer. FAR 52.246-4(e) states, the Contracting Officer "may" reduce the contract price to reflect the reduced value of the services performed. FAR 2.101 states that "may" denotes the permissive, as compared with "shall" means the imperative.
- The Inspection of Services Clause may be used to reduce the contract price to the extent a contractor fails to provide minimum manning levels in performance of a contract. Sterling Services, Inc., 94-2 BCA para. 26912, ASBCA No. 46824 (1992). To demonstrate and prove the hourly rate component of the reduced value of services beyond "direct labor, payroll taxes, and fringe benefits," *the government must demonstrate how such a higher rate would represent the actual cost of the unperformed services or their market value.* So, for example, in Appeal of Tamp Corp., 84-2 BCA para. 17398 (1984), the government failed to demonstrate that a contractually agreed upon rate of 9.24 an hour for services accurately reflected the reduced value of services where the rate was negotiated with appellant on a sole source basis following award and only applied to unforeseen requirements requiring extraordinary management attention.
- Case law in this area reflects: where the government issues deductions under the Inspection of Services Clause at FAR 52.246-4(e), the government bears the burden of proving that the deductions for deficient work were justified, including the extent of the asserted deficiencies and the correctness of the amount deducted. See, e.g., Job Options, Inc., 10-1 BCA para. 34444, ASBCA No. 56698 (2010); Teltara, Inc., 9-1 BCA para. 26485 (1993). The deductions must reasonably reflect the reduction in the value of the services performed. Id.
- Although the Contracting Officer has discretion in exercising the government's ability to take deductions under FAR 52.246-4(e), it ultimately bears the burden of demonstrating that those deductions are reasonable.

According to FAR 16.202-1, a firm-fixed-price contract provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. Since the price of the contract was negotiated, the contractor does not have the ability to change that price due to a voluntary increase in wages. Therefore, the government should reduce the value of the contract, due to staff vacancies, in accordance with the contract, not market value, since the value to the government is the price negotiated.

**Recommendation #8:** Ensure that BOP PMB officials provide PMB-Field staff guidance on the minimum number of contractor QCP results to be validated on a monthly basis for RCDC I/II.

**Initial Response:** The Bureau agrees with the recommendation. Guidance regarding the minimum number of contractor QCP results to review will be provided to on-site staff.

**Recommendation #9:** Consider consolidating the two quality control observation steps in the Oversight Checklist into a single observation step. In addition, consider reviewing and updating its guidance provided to PMB-Field staff to ensure staff provide accurate and complete information in their monthly checklists. Finally, ensure that PMB-Field staff documents the contractor's corrective actions for audits conducted during the period.

**Initial Response:** The Bureau agrees with the recommendation. The Oversight Checklist will be updated to consolidate the two quality control steps into a single observation step. Guidance will be disseminated to on-site staff regarding the completeness and accuracy of the checklist. Privatization Field Administrators will review these documents to ensure adherence.

**Recommendation #10:** Ensure that PMB-Field staff at RCDC I/II continue to update and ensure their monitoring logs provide greater detail on the audit results (including an individualized accounting of deficiencies), corrective actions, status, follow-up dates, and resolutions.

**Initial Response:** The Bureau agrees with the recommendation. Guidance and examples regarding the content to be included in the monitoring logs will be provided to all on-site staff.

**Recommendation #11:** Ensure that PMB Operating Procedures are updated to include an example or attachment of a properly completed Monitoring Log.

**Initial Response:** The Bureau agrees with the recommendation. The PMB Operating Procedures will be updated to include an example of a properly completed monitoring log.

**Recommendation #12:** Take steps to ensure that PMB-Field staff at RCDC I/II document their follow-up efforts to ensure that the contractor's corrective actions are monitored and addressed in a timely manner.

**Initial Response:** The Bureau agrees with the recommendation. Guidance will be established to ensure on-site staff document follow-up efforts to Notice of Concerns, to ensure the contractor has implemented effective corrective actions.

**Recommendation #13:** Ensure that Reeves County updates its quality assurance policies and procedures to require the retention of all records related to contract performance, including all original supporting documentation related to the contractor's QCP.

**Initial Response:** The Bureau agrees with the recommendation. The Statement of Work (SOW) already requires the contractor to maintain all records related to contract performance in a retrievable format for the duration of the contract. We will ensure Reeves County updates its quality control policies and procedures to ensure all required documentation regarding the contract is retained.

**Recommendation #14:** Ensure that Reeves County's compliance staff completes a CAP for each significant deficiency and document their monitoring and follow-up efforts for each CAP created to resolve deficiencies identified during internal audits.

**Initial Response:** The Bureau agrees with the recommendation. Bureau on-site staff will ensure the contractor completes CAP's for all significant deficiencies. This will be monitored monthly in conjunction with review of their QCP.

**Recommendation #15:** Ensure that Reeves County's subcontractors provide all internal and external audit results and corrective actions to Reeves County and the BOP.

**Initial Response:** The Bureau agrees with the recommendation. The Statement of Work (SOW) states, "Except as otherwise expressly provided in this SOW, the contractor shall, upon completion or termination of the resulting contract, or upon request, transmit to the government any records related to performance of the contract." The Bureau on-site staff will ensure all internal and external audit results and appropriate corrective action plans are provided. This will be added as an agenda item for the monthly performance meeting to ensure compliance.

**Recommendation #16:** Ensure that Reeves County complies with RCDC I/II Post Order 23, which requires the SHU Lieutenant to perform the daily SHU video review.

**Initial Response:** The Bureau agrees with the intent of this recommendation. The responsibility to review daily SHU video no longer rests with the SHU Lieutenant and the contractor removed this requirement from the Post Order in December 2014. The daily SHU video review is now performed by the warden or his designee. See *attached SHU Video Review Logs for January 2015*. The Bureau requests this recommendation be closed.

**Recommendation #17:** Ensure that the contractor incorporate into its Core Audit Tools, review steps that ensure that the SHU Lieutenant performed the daily SHU video reviews and documented it in the SHU video log.

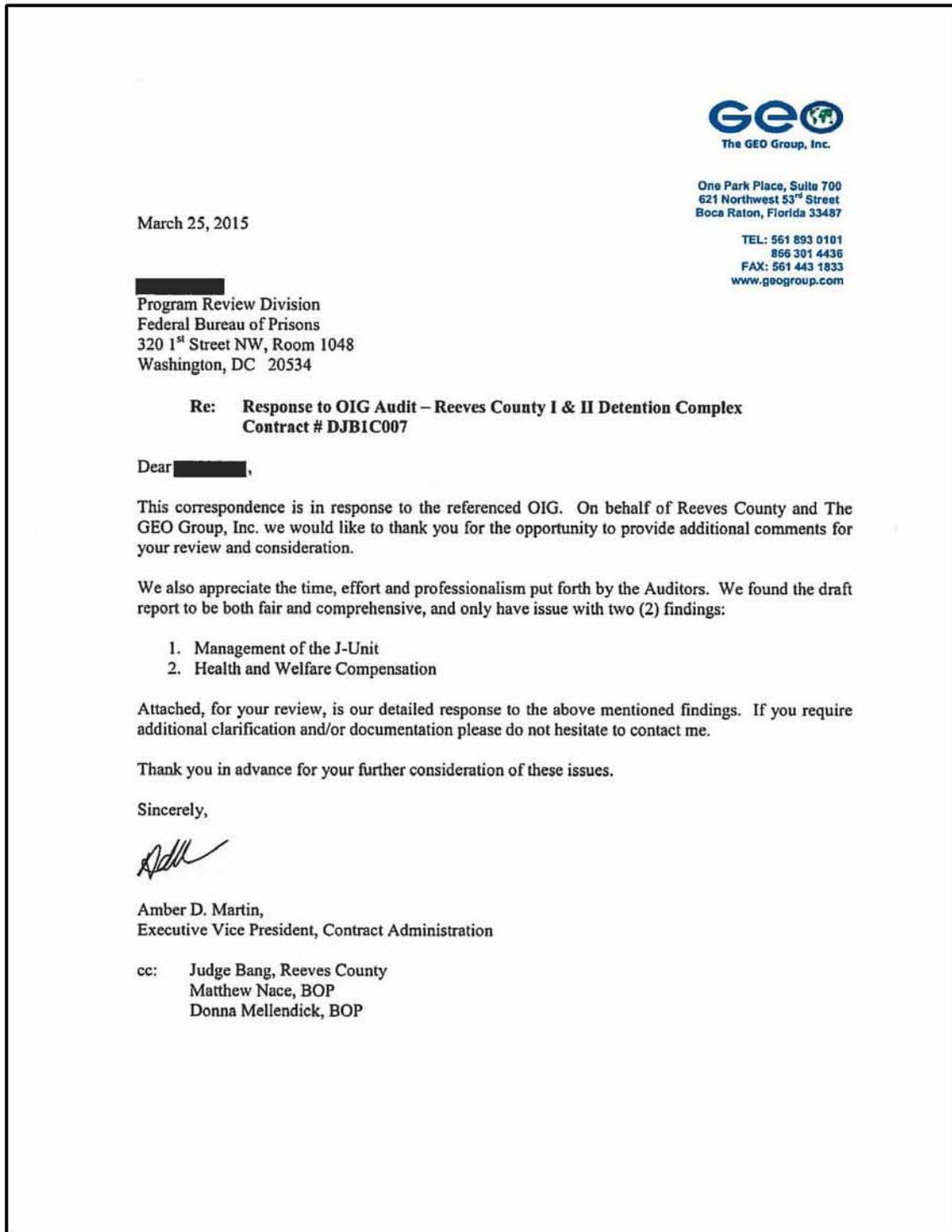
**Initial Response:** The Bureau agrees with the intent of this recommendation. As noted in our response to Recommendation #16, the responsibility to review SHU video no longer lies with the SHU Lieutenant, and is completed by the warden or his designee. The contractor's Core Audit Tool has been updated to incorporate review steps that ensure staff are performing daily SHU reviews. See *attached GEO Audit Tool - SHU Component*. The Bureau requests this recommendation be closed.

**Recommendation #18:** Ensure that operational policies and procedures are established to formalize the J-Unit's purpose and operations. The policy should include at a minimum, guidance on the type of evidence and approvals necessary to place an inmate in the J-Unit; opportunities for inmates to challenge their placement in the J-Unit; and a requirement that Reeves County and GEO Group onsite monitors incorporate the new J-Unit policies and procedures are incorporated into its Quality Control Program.

**Initial Response:** The Bureau does not concur with this recommendation. This report does not accurately portray the role of J-Unit. While we acknowledge during the initial activation of J-Unit's there were restrictions in place, the restrictions have since been removed. Inmates in J-Unit receive identical services (i.e., health care, meals, laundry services) afforded to all other inmates. Programs to include education are provided. Housing unit assignments are made to ensure the orderly running of the institution. As with any assignment, such as housing or work, inmates can utilize the Administrative Remedy process to challenge their placement. Therefore, the Bureau does not believe there is a need to develop additional policies and procedures for J-Unit. The Bureau requests this recommendation be closed.

If you have any questions regarding this response, please contact Sara M. Revell, Assistant Director, Program Review Division, at (202) 353-2302.

THE GEO GROUP'S RESPONSE TO THE DRAFT AUDIT REPORT<sup>61</sup>



<sup>61</sup> The GEO Group responded on behalf of itself and Reeves County.



*Re: Audit of Reeves County I/II*

**Department of Justice**

**Office of the Inspector General's Office**

**Audit of Reeves County I/II**

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Reeves County (the County) and its Management Subcontractor, The GEO Group Inc. (GEO), request a review of the following to two (2) issues:

**Issue #1 - Management of the J-Unit Inmate Housing Area**

The County and GEO request the removal of pages 39 through 43 of the report (and any recommendations drawn from this section) which discusses and comments on the existence and management of the J-Unit offender housing area.

First and foremost, it is believed that the inclusion and review of J-Unit operations fell outside the scope of the audit itself. Secondly, and as important, Reeves County and its Management subcontractor are responsible for the safe, secure and orderly running of the Reeves County complex in accordance with contract requirements and American Correctional Association (ACA) standards. Inmates assigned to any BOP facility or contracted facility does not have the right to "choose" or decide their housing assignment. Management has total authority to assign inmates to housing units based on classification, offense categories, institutional conduct histories, program participation, and other factors considered critical to the safe and secure operation of the prison facility.

We fully understand inmate comments made during OIG team member interviews were a catalyst of this recommendation, but believe the J-Unit housing assignment is a general population assignment fully in line with Bureau of Prisons policy requirements for general population units. It is also noted inmates housed in J-Unit, or any other general population unit, have the ability to use the administrative remedy process to question any concern they have regarding conditions of confinement.

- J-Unit is a general population unit and not a restricted housing unit by definition and purpose. Restricted Housing and Special Housing Unit placement are governed by BOP policy and federal statute. J-Unit does not reach the threshold of the restrictive measures articulated within BOP definition or policy.
- J-Unit fully meets the definition of what the Bureau defines as general population placement and does not require "necessary evidence for placement" or "due process" requirements for removal when management elects to place an inmate into J-Unit.
  - Because J-Unit is a general population unit, we strongly believe it is not a requirement to have formalized procedures and policy for inmates to "challenge their placement" in the unit, nor should there be a requirement by Reeves County or the GEO group to incorporate specialized procedures within our QCP for reviewing inmates housed in this unit.



- Reeves County and the GEO Group, as contractors for the Bureau of Prisons, have the authority to assign, manage, and house inmates in housing unit we deem appropriate to maintain the safety and security of our facilities. Our placement and management of inmates in J-Unit is in line with Bureau of Prisons policies and the current statement of work with the BOP.

GEO strongly believes, as long as general population conditions are met, we have the authority to house and manage specific federal offenders in the matter we believe best supports a safe and orderly running facility. During the review, OIG auditors made comment on where services could be bolstered in J Unit to better meet services provided in other general housing units. GEO staff were appreciative of the recommendations and have incorporated those recommendations to satisfy concerns that were voiced.

#### **Issue #2 – Non-Compliance with Health & Welfare Benefits Requirements**

The County and GEO respectfully request a second review of this issue. We do not believe the OIG’s review considered different interpretations of the FAR and SCA. Primarily, we feel both the inclusivity of the County’s retirement contributions as well as the separate handling of fringe benefits versus hourly wage rates should again be considered.

- GEO supplied documentation to the OIG which indicated that at the time of the RFP and the County’s Bid Proposal the County’s retirement contributions were not submitted as part of the Health and Welfare package and were to be supported solely by the County. The justification for this separation was the fact that the 7% retirement contribution was for all County employees and not just for the Reeves facility. This pricing proposal was subsequently reviewed and accepted by the BOP, which we believe was an accurate determination.
- Even if the above scenario was proven to be incorrect it is the County and GEO’s position that hourly wage increases and fringe benefits should be treated separately with regard to methodologies in their calculations. This is underlined by the fact they are defined individually within the FAR and SCA. Further, the evolving change in any health benefits package on a yearly basis is not as straightforward as an increase in hourly wages.

The County and GEO appreciate the opportunity to provide comments and would like to thank the OIG for their further review of the above issues.

Amber D. Martin  
Executive Vice President Contract Administration  
The GEO Group, Inc.

## OFFICE OF THE INSPECTOR GENERAL ANALYSIS AND SUMMARY OF ACTIONS NECESSARY TO RESOLVE THE REPORT

The Department of Justice, Office of the Inspector General (OIG) provided a draft of this audit report to the Federal Bureau of Prisons (BOP); Reeves County, Texas (Reeves County); The GEO Group, Inc. (the GEO Group); and Correct Care Solutions, LLC (CCS). BOP responses are incorporated into Appendix 3 of this final report and the GEO Group's response, on behalf of itself and Reeves County is incorporated into Appendix 4. CCS elected not to provide a formal response. The following provides the OIG analysis of the responses and summary of actions necessary to resolve the report.

### Analysis of the BOP and GEO Group Responses

The BOP, prior to addressing each of the OIG's recommendations, stated in its response to this report its "concern with the suggestion in the report that the Bureau's overall assessment of the Contractor's Performance is reflected in the Award Fee Plan, referenced on page 10." The OIG disagrees with this statement. We did not suggest that award fee ratings represented a definitive contractor assessment, and on page 33 of this report, we describe that the Contractor Performance Assessment Reporting System (CPARS) is a type of written evaluation that assesses a contractor's performance and provides a record on a given contractor during a specific period of time.

In addition, the BOP concurred, in principle, with respect to the OIG recommendations 1 through 6, related to the Service Contract Act of 1965 (Service Contract Act), requesting only that it receive additional time to verify how the OIG calculated the questioned costs. In contrast, the GEO Group and Reeves County (hereafter referred to as "the contractors") disagreed with the OIG's Service Contract Act-related analysis. On page 65 of this report, the contractors requested that a second review of this issue be performed and that they "do not believe the OIG's review considered different interpretations of the [Federal Acquisition Regulation (FAR)] and the Service Contract Act." We disagree with the contractors' response and do not believe a second review is warranted. Throughout the course of this audit, the OIG has on several occasions requested the GEO Group provide documentation on its interpretation so we could review and consider its position, but GEO Group officials did not provide us with documentation. Nor does the contractors' response to this report provide any alternative interpretation(s) based on the Service Contract Act or any applicable laws, regulations, guidance, administrative decisions, or case law.

Instead, the contractors stated that "hourly wage increases and fringe benefits should be treated separately with regard to methodologies in their calculations," and this is "underlined by the fact [that wage increases and fringe benefits] are defined individually within the FAR and [Service Contract Act]." Just

because wage and fringe benefit requirements are described separately in the FAR and Service Contract Act does not mean that different methodologies are used to calculate price adjustments to the contract. On the contrary, FAR 52.222-43 explicitly applies the price adjustment clause to *both* wages and Health & Welfare benefits (referred to as “fringe benefits” in the FAR citation), with the OIG’s emphasis in bold:

The contract price . . . will be adjusted to reflect the Contractor’s actual increase . . . in applicable **wages and fringe benefits** to the extent that the increase is made to comply with . . . the Department of Labor wage determination applicable on the anniversary date of a multiple year contract or at the beginning of a renewal period.

Furthermore, the application of this FAR clause is demonstrated within the Price Adjustment Calculation Tool (PACT). PACT is an automated method of calculating Service Contract Act-related price adjustments and was created as part of a collaborative effort between the Office of Management and Budget, Department of Labor, Department of Defense, General Services Administration, Department of Energy, and Department of Commerce. We described the specific PACT language on page 16 of this report.

The contractors further stated that they supplied documentation to the OIG indicating that during this contract’s solicitation process, “[Reeves] County’s retirement contributions were not submitted as part of the Health and Welfare package and were to be supported solely by the County” and that “the justification for this separation was the fact that the 7 percent retirement contribution was for all County employees and not just for the Reeves facility.” The OIG agrees that the contractors provided an internal pricing document indicating that Reeves County intended to provide employees a benefits package whose cost was based on both the DOL-issued Health and Welfare rate and a 7 percent retirement contribution. However, the contents of the contractor’s internal pricing document were, and continue to be, irrelevant in assessing contractor compliance with the Service Contract Act. As described on page 12 of this report, the primary purpose of the Service Contract Act is to ensure that eligible service employees not be paid less than the monetary wages and fringe benefits required by law. Regardless of how the contractor organized its pricing document, what was pertinent to the OIG’s analysis was the *actual cost of benefits* provided for each employee, including the retirement fringe benefit.<sup>62</sup>

Lastly, the contractors disagreed with the OIG’s assessment of J-Unit. We address these comments (related to Recommendation No. 18) on pages 75-78.

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<sup>62</sup> A retirement contribution is considered a fringe benefit in accordance with 29 C.F.R. § 4.170(b), which states that “A contractor may dispose of certain of the fringe benefit obligations which may be required by an applicable fringe benefit determination, such as pension, **retirement**, or health insurance . . .”

## Recommendations to the BOP:

1. **Ensure that Reeves County and CCS perform detailed fringe benefit assessments for CCS employees located at RCDC I/II from 2007 through 2009 and for CCS employees at RCDC III during the life of Contract No. DJB1PC003, and remedies any underpayments.**

Resolved. In its response to our report, the BOP agreed with our recommendation in principle. The BOP stated that it will address this matter with CCS to ensure the accuracy of the total value owed to the CCS employees and remedy the costs, if any.

This recommendation can be closed when we receive documentation indicating that a detailed fringe benefit assessment has been conducted for CCS employees located at RCDC I/II from 2007 through 2009 and for CCS employees at RCDC III during the life of Contract No. DJB1PC003, as well as documentation showing the remedy of any underpayments that are identified during these assessments.

2. **Remedy the \$1,954,082 in net unallowable costs associated with the following issues:**

- a. **Remedy the \$175,436 in unallowable costs that Reeves County has incorrectly claimed in price adjustments for payroll taxes and workers' compensation insurance that did not result from wages or cash-in-lieu of fringe benefits.**
- b. **Remedy the \$1,954,082 that Reeves County incorrectly claimed for Health & Welfare benefit-related price adjustments, FICA, and workers' compensation insurance.**

Resolved. In its response to our report, the BOP agreed with our recommendation in principle. The BOP stated that it plans to verify the unallowable costs that were paid to Reeves County. The BOP also stated that it will work with Reeves County to develop a better and more accurate understanding of certain fundamental requirements of the Service Contract Act as mentioned in the OIG report. The OIG plans to continue communications with the BOP regarding our methodology to calculate these questioned costs.

This recommendation can be closed when we receive documentation indicating that BOP has remedied the \$1,954,082 in net unallowable costs associated with the \$175,436 in incorrectly claimed price adjustments for payroll taxes and workers' compensation and the \$1,954,082 that Reeves County incorrectly claimed for Health & Welfare benefit-related price adjustments.

- 3. Remedy the \$74,765 in unsupported costs for which CCS was unable to provide records supporting the cost of providing benefits to employees from 2007 through 2009.**

Resolved. In its response to our report, the BOP agreed with our recommendation in principle. The BOP stated that it will address this matter with CCS to remedy the unsupported costs, if any. The OIG plans to continue communications with the BOP regarding our methodology to calculate these questioned costs.

This recommendation can be closed when we receive documentation indicating that BOP has remedied the \$74,765 in unsupported costs for which CCS was unable to provide records supporting the cost of providing benefits to employees from 2007 through 2009.

- 4. Remove the \$41,088 in unallowable and unsupported costs from the Monthly Operating Plan (MOP), beginning with its March 2015 invoice, in order to remedy the \$945,024 in funds to be put to better use.**

Resolved. In its response to our report, the BOP agreed with our recommendation in principle. The BOP stated that once the Service Contract Act issues are resolved and verified, it will remedy all costs to ensure that the contract is correct and will remain correct. The OIG plans to continue communications with the BOP regarding our methodology to calculate the amount to be removed from the MOP and the funds to be put to better use.

This recommendation can be closed when we receive documentation indicating that BOP has removed the \$41,088 in unallowable and unsupported costs from the MOP, beginning with its March 2015 invoice, in order to remedy the \$954,024 in funds to be put to better use.

- 5. Identify unallowable questioned costs related to price adjustments that Reeves County was not entitled to receive for RCDC III (Contract No. DJB1PC003).**

Resolved. In its response to our report, the BOP agreed with our recommendation in principle. The BOP stated that it will look further into the costs questioned by the OIG. The BOP also stated that it will seek to verify why the costs were paid and if they were unallowable, the BOP will remedy the issue as needed, and seek reimbursement for all unallowable costs, paid under Contract No. DJB1PC003. The OIG plans to continue communications with the BOP regarding our methodology to calculate the questioned costs because, as stated on page 20 of this report, Reeves County stated that it used the same methodology to calculate the price adjustments it received for RCDC III (Contract No. DJB1PC003).

This recommendation can be closed when we receive documentation indicating that BOP has performed a review to identify unallowable questioned costs related to price adjustments that Reeves County was not entitled to receive for RCDC III (Contract No. DJB1PC003).

6. **Create and implement policies and procedures that strengthen responsible officials' understanding of Service Contract Act rules and regulations, and enable Reeves County to produce, maintain, and share with the GEO Group or any future management services provider, summary accounting records containing the actual cost of fringe benefits for each employee. In addition, ensure that before a service provider requests a price adjustment, the service provider must first compare the actual cost of benefits provided to each employee to the Health and Welfare benefits rate contained in the wage determination.**

Resolved. In its response to our report, the BOP agreed with our recommendation. The BOP stated that the Privatized Corrections Contracting (PCC) Section is currently reviewing their standard operating procedures in regards to the Department of Labor's (DOL) Service Contract Act requirements. The BOP further stated that the PCC will also reach out to the DOL to seek additional training in this area so they can disseminate this information to the key components that are involved in the wage increase process.

This recommendation can be closed when we receive evidence showing that BOP has created and implemented policies and procedures that strengthen responsible officials' understanding of Service Contract Act rules and regulations. These policies and procedures should ensure that before a service provider requests a price adjustment, the service provider must first compare the actual cost of benefits provided to each employee to the Health and Welfare benefits rate contained in the wage determination.

7. **Review the current vacancy deduction methodology and consider the use of actual payroll information as a basis for applying staffing-related reductions that reflect the reduced value of the services performed in accordance with FAR 52.246-4(e).**

Closed. In its response to our report, the BOP agreed with our recommendation to consider using actual payroll information for vacancies, but stated its belief that it was important to consider several matters when selecting the deduction basis, including that "deductions taken under FAR 52.246-4(e) are at the discretion of the contracting officer" and that the decision to reduce the contract price is "permissive, as compared with . . . the imperative." The BOP also provided several decisions of the Armed Services Board of Contract Appeals (ASBCA).

As stated on page 25 of this report, while the ASBCA decisions contain pertinent criteria applicable to this contract, they do not refute the OIG's conclusion that market rates provide the best valuation of the services offered.<sup>63</sup> However, the OIG agrees that the contracting officer has the discretion to issue invoice deductions and is not limited to using actual rates to calculate invoice deductions as long as he or she can demonstrate the reasonableness of the amount deducted. Therefore, in light of the BOP's consideration of using actual payroll information for vacancies, we consider this recommendation closed.

8. **Ensure that BOP Privatization Management Branch (PMB) officials provide PMB-Field staff guidance on the minimum number of contractor QCP results to be validated on a monthly basis for RCDC I/II.**

Resolved. In its response to our report, the BOP agreed with our recommendation. The BOP stated that guidance will be provided to PMB-Field RCDC I/II staff addressing the minimum number of contractor QCP results that should be validated on a monthly basis.

This recommendation can be closed when we receive documentation that PMB-Field staff at RCDC I/II received guidance for the minimum number of monthly contractor QCP results to be validated.

9. **Consider consolidating the two quality control observation steps in the Oversight Checklist into a single observation step. In addition, consider reviewing and updating its guidance provided to PMB-Field staff to ensure staff provide accurate and complete information in their monthly checklists. Finally, ensure that PMB-Field staff documents the contractor's corrective actions for audits conducted during the period.**

Resolved. In its response to our report, the BOP agreed with our recommendation. The BOP stated that the Oversight Checklist will be updated to consolidate the two quality control steps into a single observation step. The BOP also stated it will provide guidance to on-site staff regarding the completeness and accuracy of the checklist and that Privatization Field Administrators will review these documents and ensure adherence.

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<sup>63</sup> The most pertinent ASBCA decision that the BOP referenced was titled, *Appeal of Tamp Corp.*, ASBCA No. 25766, 84-2 B.C.A. (1984), where the ASBCA concluded that the government's rate for invoice deductions "had not shown any relationship . . . [to] the actual cost of the unperformed services, or their market value." Unlike this ASBCA decision, the OIG is stating that the actual cost or market value is the best valuation method.

This recommendation can be closed when we receive documentation that the BOP updated its Oversight Checklist and provided guidance to staff to ensure the completeness and accuracy of Oversight Checklists.

10. **Ensure that PMB-Field staff at RCDC I/II continue to update and ensure their monitoring logs provide greater detail on the audit results (including an individualized accounting of deficiencies), corrective actions, status, follow-up dates, and resolutions.**

Resolved. In its response to our report, the BOP agreed with our recommendation. The BOP stated that guidance and examples regarding the content to be included in the monitoring logs will be provided to all on-site staff.

This recommendation can be closed when we receive documentation of a properly completed monitoring log by PMB-Field staff at RCDC I/II based on the guidance and examples provided to them.

11. **Ensure that PMB Operating Procedures are updated to include an example or attachment of a properly completed Monitoring Log.**

Resolved. In its response to our report, the BOP agreed with our recommendation. The BOP stated that PMB Operating Procedures will be updated to include an example of a properly completed monitoring log.

This recommendation can be closed when we receive documentation that an example of a properly completed monitoring log has been incorporated into the PMB Operating Procedures.

12. **Take steps to ensure that PMB-Field staff at RCDC I/II document their follow-up efforts to ensure that the contractor's corrective actions are monitored and addressed in a timely manner.**

Resolved. In its response to our report, the BOP agreed with our recommendation. The BOP stated that guidance will be established to ensure that on-site staff document follow-up efforts to Notice of Concerns, to ensure the contractor has implemented effective corrective actions.

This recommendation can be closed when we receive documentation that guidance was established and provided to on-site staff documenting their follow-up efforts.

13. **Ensure that Reeves County updates its quality assurance policies and procedures to require the retention of all records related to contract performance, including all original supporting documentation related to the contractor's Quality Control Program (QCP).**

Resolved. In its response to our report, the BOP agreed with our recommendation. The BOP stated that it will ensure Reeves County updates its quality control policies and procedures to require documentation related to the contract are retained.

This recommendation can be closed when we receive documentation that Reeves County updated its quality control policies and procedures requiring the retention of all records related to the contract.

14. **Ensure that Reeves County's compliance staff completes a Corrective Action Plan (CAP) for each significant deficiency and document their monitoring and follow-up efforts for each CAP created to resolve deficiencies identified during internal audits.**

Resolved. In its response to our report, the BOP agreed with our recommendation. The BOP stated that Bureau on-site staff will ensure the contractor completes CAPs for all significant deficiencies. This will be monitored monthly in conjunction with the review of the contractor's QCP.

This recommendation can be closed when we receive documentation addressing measures taken by BOP on-site staff to ensure the contractor's compliance staff fully complete corrective action plans.

15. **Ensure that Reeves County's subcontractors provide all internal and external audit results and corrective actions to Reeves County and the BOP.**

Resolved. In its response to our report, the BOP agreed with our recommendation. The BOP stated that BOP on-site staff will ensure all subcontractor audit results and corrective actions are provided. The BOP also stated it plans to add an agenda item to the monthly performance meeting to ensure compliance.

This recommendation can be closed when we receive documentation that an agenda item was added to the monthly performance meeting discussing compliance with this recommendation.

16. **Ensure that Reeves County complies with RCDC I/II Post Order 23, which requires the Special Housing Unit (SHU) Lieutenant to perform the daily SHU video review.**

Resolved. In its response to our report, the BOP stated it agreed with the intent of our recommendation. The BOP stated that Post Order 23 was revised by the contractor and that the SHU Lieutenant was no longer responsible for the review of the daily SHU video. The BOP further stated the daily SHU video review is now being performed by the Warden or his designee.

The OIG recently received an updated RCDC I/II Post Order 23, approved by the BOP on December 19, 2014, which removed the requirement for the SHU Lieutenant to perform the daily SHU video review. In addition, the OIG was provided supporting documentation for January 2015 demonstrating that the Warden or his designee performed the daily SHU video reviews.

This recommendation can be closed when we receive documentation that sufficient controls have been established regarding the daily SHU video review process.

**17. Ensure that the contractor incorporate into its Core Audit Tools, review steps that ensure that the SHU Lieutenant performed the daily SHU video reviews and documented it in the SHU video log.**

Resolved. In its response to our report, the BOP stated it agreed with the intent of our recommendation. The BOP stated that as discussed in recommendation 16, Post Order 23 no longer requires the SHU Lieutenant to perform a review of the daily SHU video and that the responsibility is now assigned to the Warden or his designee. In addition, the BOP provided the OIG an updated version of the contractor's Core Audit Tool related to the review of the contractor's SHU operations. We reviewed the Core Audit Tool provided and did not identify any significant changes in comparison to an earlier version we were provided in May 2014. The Core Audit Tool provided requires GEO Group compliance staff perform a review of the SHU night videos (2 different dates within the prior 2 weeks), and to "physically observe the review video footage of counts, rounds, use of the Pipe, and inmate management (to include orderlies and inmates assigned to the SHU) to verify compliance with the Post Order." We agree that the Core Audit Tool includes observation steps for the GEO Group compliance staff to perform a review of SHU video; however, the observation steps, as written, do not review whether the Warden or his designee are performing a review of the daily SHU video and documenting their review in the SHU video log.

This recommendation can be closed when we receive documentation that the contractor has incorporated review steps into the Core Audit Tool that ensures the daily SHU video reviews are being performed daily by the Warden or his authorized designee, and that the reviews are being documented in the SHU video log.

18. **Ensure that operational policies and procedures are established to formalize the J-Unit's purpose and operations. The policy should include at a minimum, guidance on the type of evidence and approvals necessary to place an inmate in the J-Unit; opportunities for inmates to challenge their placement in the J-Unit; and a requirement that Reeves County and GEO Group onsite monitors incorporate the new J-Unit policies and procedures into its Quality Control Program.**

Unresolved. In its response to our report, the BOP did not concur with our recommendation. The BOP stated that "this report does not accurately portray the role of J-Unit" and acknowledged that "during the initial activation of J-Unit's there were restrictions in place, the restrictions have since been removed." The OIG disagrees with the BOP's determination that we did not accurately portray the role of J-Unit. As detailed on page 40 of this report, the OIG distinguished between the restrictive conditions in July 2014 (which was not "during the initial activation of J-Unit" but 9 months later) and subsequent changes to remedy some of those conditions. Furthermore, restrictions still exist, as evidenced by J-Unit inmates' inability to access the institution's Craft Shop, and their access to fewer job assignments and educational and vocational programs than general population inmates.

The BOP also points out that "inmates can utilize the Administrative Remedy process to challenge their placement." The OIG's interviews with RCDC I/II inmates cast doubt on this claim. As described on page 42, Inmates Nos. 1 and 6 told the OIG they had been placed in J-Unit but had not been provided an explanation as to why they were transferred. After further review, the OIG determined that Inmate No. 1 had been placed in J-Unit by mistake and that Inmate No. 6 was transferred to J-Unit without any evidence to support RCDC I/II officials' decision. Moreover, Inmate No. 1 had informed the OIG that he had brought this matter to the attention of his Case Manager, but to no avail.

Since the BOP did not elaborate on what its "Administrative Remedy process" consists of, the OIG presumes it refers to Inmate Request Forms, commonly referred to as "copouts." Inmates use copouts to briefly document their questions or concerns, which are routed to the appropriate official. The receiving official responds by completing the disposition form, then signing and dating the document. The OIG requested all J-Unit inmate copouts for the entire months of November 2013, June 2014, and July 2014, but RCDC I/II officials responded that "unfortunately the dispositions were not recorded, copied or placed in the inmate file as mandated, and no records of their dispositions can be recovered."<sup>64</sup>

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<sup>64</sup> RCDC I/II officials have since informed the OIG that they updated their process for tracking inmate copouts and the resultant dispositions.

Therefore, the OIG could not determine if inmate concerns had been considered and addressed.

The BOP indicates that because J-Unit's restrictions have (in part) been corrected, that the development of a policy framework is not necessary. However, these corrective actions may not have been necessary or could have been remedied sooner had RCDC I/II established operational policies and procedures for J-Unit. While J-Unit may now be more similar to general population units in terms of services offered than in July 2014, the establishment of a policy framework would help ensure that it remains that way.

The GEO Group and Reeves County (hereafter referred to as "the contractors") also disagreed with this recommendation and requested the OIG remove from its final report the section on J-Unit (pages 39-43) and the associated recommendation (Recommendation No. 18). Based on the following information, the OIG denied this request.

First, the contractors shared their belief that "the inclusion and review of J-Unit operations fell outside the scope of the audit itself." The OIG disagrees with this assertion. The OIG's J-Unit analysis falls within our audit objective to assess BOP and RCDC I/II compliance with contract terms and conditions in the area of *oversight and monitoring*. We determined that RCDC I/II's repurposing of J-Unit in late 2013 represented a unique operational change whose use should be formalized via policy and subject to additional *oversight and monitoring*.<sup>65</sup>

Next, the contractors said that Reeves County and the GEO Group are responsible for the safe, secure, and orderly operation of RCDC I/II and that "management has total authority to assign inmates to housing units based on classification, offense categories, institutional conduct, histories, program participation, and other factors considered critical to the safe and secure operation of the prison facility." The OIG does not dispute RCDC I/II's authority to assign inmates to housing units. Our concern is that RCDC I/II is transferring inmates to a J-Unit, a unit that is more restrictive than general population housing, based on inadequate evidence and for reasons different from the criterion that RCDC I/II officials stated was the justification for placing an inmate in J-Unit.

In addition, the contractors stated its belief that [the OIG's emphasis in italics] "J-Unit housing assignment is a *general population assignment* fully in line with Bureau of Prisons policy requirements for general population units" and therefore "does not require 'necessary evidence for placement'

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<sup>65</sup> RCDC I/II's Warden also spoke of J-Unit's unique nature when he told the OIG in July 2014 that RCDC I/II was the tenth correctional facility he had worked at but the first for which a J-Unit type of arrangement was necessary.

or 'due process' requirements for removal when management elects to place an inmate into J-Unit" and does not need to have "formalized procedures and policy for inmates to 'challenge their placement' in the unit, nor should there be a requirement by Reeves County or the GEO Group to incorporate specialized procedures within our [Quality Control Program] for reviewing inmates housed in this unit."

The OIG disagrees with the contractors' characterization of J-Unit as a mere "general population" housing unit. When the OIG first discussed J-Unit with RCDC I/II officials, they described it as a "modified monitoring unit," a term that to our knowledge is not included in the contract, RCDC I/II institutional policy, or BOP policies and procedures. However, this was an apt description because while J-Unit was not as restrictive as the Special Housing Unit, it was more restrictive than the rest of the general population. For example, in July 2014, J-Unit inmates were restricted from commingling with the general population; had significantly less recreation time than the general population; and did not have direct access to programs available to the general population, including the Craft Shop, classroom-based educational and vocational courses, and the facility libraries. To its credit, RCDC I/II responded to these issues by increasing J-Unit inmates' recreation time and obtaining Reeves County's approval for the establishment of a new recreation yard for J-Unit; offering classroom-based educational and vocational courses to J-Unit inmates; and better documenting the provision of services to J-Unit inmates (J-Unit inmates still are separated from the general population and do not have access to the Craft Shop).

Lastly, the contractors stated in their response that "we fully understand inmate comments made during OIG team member interviews were a catalyst of this recommendation . . ." While J-Unit was indeed brought to the OIG's attention based on inmate interviews, those interviews were not a catalyst for our recommendation. The primary catalyst is described on pages 41-42 of the report. Of the 10 inmates judgmentally selected by the OIG, only one inmate's placement in J-Unit met RCDC I/II official's criterion for designation and was also supported by evidence. Of the other 9 inmates, one inmate had been erroneously placed in the J-Unit, another inmate was placed in the J-Unit for an infraction unrelated to the J-Unit's intended purpose, and the rest of the inmates were placed in the J-Unit without obtaining adequate evidence.

This recommendation can be resolved when the BOP agrees to establish operational policies and procedures to formalize the J-Unit's purpose and operations. The policies and procedures should include at a minimum, guidance on the type of evidence and approvals necessary to place an inmate in the J-Unit; opportunities for inmates to challenge their placement in the J-Unit; and a requirement that Reeves County and GEO Group onsite monitors incorporate the new J-Unit policies and procedures into its Quality Control Program.

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