



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

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**Management Advisory
Memorandum of Concerns
Identified with the Federal Bureau
of Prisons' Procurement of Food
Products**



June 8, 2020¹

REISSUED MANAGEMENT ADVISORY MEMORANDUM FOR:

MICHAEL CARVAJAL
DIRECTOR
FEDERAL BUREAU OF PRISONS

A handwritten signature in blue ink, appearing to read "Michael E. Horowitz".

FROM: MICHAEL E. HOROWITZ
INSPECTOR GENERAL

SUBJECT: Notification of Concerns Identified with the Federal
Bureau of Prisons' Procurement of Food Products

The purpose of this memorandum is to advise you of concerns the Department of Justice Office of the Inspector General (OIG) has identified in connection with the Federal Bureau of Prisons' (BOP) procurement of food products. During the course of recent OIG investigative activity, we have learned that the BOP does not have a quality assurance plan to ensure that food products procured by the BOP meet the specifications outlined in BOP contracts, the standards set forth in BOP's national menu, industry standards, and legal requirements. We also have learned that individual BOP institutions do not always document or share information about vendors that provide substandard food products to the BOP. Failing to proactively ensure that the BOP's food supply is safe and consistent with contract specifications and other standards and requirements and failing to document and communicate vendor performance issues potentially endanger the health and well-being of both BOP inmates and staff. These shortcomings also reduce the government's ability to deter, prevent, and detect fraud, waste and abuse. In this memorandum, the OIG makes three recommendations to address these concerns.

Background

¹ This Management Advisory Memorandum (MAM) was originally issued to then-Director Kathleen Sawyer, and posted on March 2, 2020. Consistent with the OIG's usual practices, the Federal Bureau of Prisons (BOP) was provided the opportunity to review the MAM for factual and legal accuracy before the March issuance, and it raised no concerns to the OIG at that time. After the March issuance, the BOP notified the OIG of concerns, primarily about language in the MAM relating to the applicability of certain provisions of the Federal Acquisition Regulation (FAR) to contracts below a threshold amount. After considering those concerns, the OIG modified the MAM and is reissuing it as modified and removing the original MAM from our website. The modifications do not substantially affect the OIG's recommendations.

In fiscal year 2019, the BOP allocated 5.7% or approximately \$401 million of its budget to food products and food services for the roughly 180,000 inmates housed in 122 BOP institutions.² In the same year, the BOP estimated it served approximately 175 million meals, which is nearly 479,000 meals per day.

BOP institutions independently procure the vast majority of food items, including produce, dairy, poultry and beef, through quarterly and ad-hoc procurement award processes. These procurements result in weekly and sometimes daily deliveries, in accordance with the BOP's national menu. Many BOP food vendors sell to multiple BOP institutions.

Relevant Authorities

The Federal Acquisition Regulation (FAR) requires agencies to report contractor performance and integrity information in the Contractor Performance Assessment Reporting System (CPARS) for all contracts above the Simplified Acquisition Threshold (SAT).³ The FAR also requires contracting officers to review the performance and integrity information available in the Federal Awardee Performance and Integrity System (FAPIS), which is a database that includes past performance information from CPARS and exclusion information from the System for Award Management (SAM), before awarding contracts over the SAT.⁴ For contracts at or below the SAT, contracting officers may consider past performance information in CPARS before awarding the contract.⁵

BOP policy is consistent with these requirements. Specifically, BOP's Acquisition Policy 2852.242-71 – Evaluation of Contractor Performance Utilizing CPARS (APR 2011) states, “The services, although not directly supervised, shall be reviewed by Federal Bureau of Prisons (Bureau) staff to

² United States Department of Justice, Federal Prison System. *FY 2019 Performance Budget, Congressional Submission, Salaries and Expenses*, located at <https://www.justice.gov/jmd/page/file/1034421/download>.

³ See 48 CFR § 42.1500, et seq. CPARS is a web-enabled application, located at <https://cpars.gov>, that collects and manages the library of automated Contractor Performance Assessment Reports (CPARs). A CPAR assesses a contractor's performance and provides a record, both positive and negative, on a given contractor during a specific period of time. Each assessment is based on objective facts and supported by program and contract management data, such as cost performance reports, customer comments, quality reviews, technical interchange meetings, financial solvency assessments, construction/production management reviews, contractor operations reviews, functional performance evaluations, and earned contract incentives.

⁴ See 48 CFR § 9.104-6.

⁵ See 48 CFR § 13.106-2(b). The FAR also states, “Past performance should be an important element of every evaluation and contract award for commercial items. Contracting officers should consider past performance data from a wide variety of sources both inside and outside the Federal Government.” 48 CFR § 12.206.

ensure contract compliance. The contractor's performance will be evaluated in accordance with FAR 42.15 [42 C.F.R. § 42.1500, et seq.]. Contract monitoring reports will be prepared by the Contracting Officer's Representative (COR) and maintained in the contract file. In accordance with FAR 42.1502 and 42.1503, agencies shall prepare an evaluation of contractor performance and submit it to the Past Performance Information Retrieval System (PPIRS)."⁶

The Problem

Multiple OIG investigations have identified instances in which vendors have provided the BOP with substandard products.

For example, in 2014, the United States Attorney's Office for the District of Colorado reached an \$80,000 civil settlement with a BOP food vendor, related to ground beef that allegedly contained excess fat content in violation of contract specifications.

In 2018, the United States Attorney's Office for the District of South Carolina indicted the owner of Flavor Pros of Allentown, Pennsylvania (Flavor Pros), a BOP food vendor that allegedly provided adulterated spices to the BOP. According to the Indictment, the spices were "diluted with undeclared filler ingredients." In 2019, the government filed a False Claims Act lawsuit against Flavor Pros related to similar conduct.

In 2019, in the Northern District of Texas, two individuals affiliated with West Texas Provisions, Inc., of Amarillo, Texas, pleaded guilty to charges related to providing \$1 million of adulterated meat, including whole cow hearts labeled as "ground beef," to 32 BOP institutions. The scheme involved more than 775,000 pounds of uninspected, misbranded, or adulterated meat. On February 13, 2020, the president and operations manager for West Texas Provisions were sentenced to 46 and 42 months of imprisonment, respectively, for their roles in this scheme.⁷

During these and other OIG investigations, we found that the BOP does not have a protocol in place to ensure its food supply is safe and meets contractual requirements. We further have found that the BOP does minimal and inconsistent quality assurance inspections of food items and instead relies almost exclusively on vendors' claims regarding the composition, quality, freshness, and weight of their products. In addition, we have found that the BOP requests laboratory testing of food items or requests the assistance of the United States Department of Agriculture's (USDA) Food Safety and Inspection

⁶ https://www.bop.gov/policy/progstat/4100_005.pdf

⁷ <https://www.justice.gov/usao-ndtx/pr/meat-packing-plant-execs-plead-guilty-selling-1-million-adulterated-ground-beef-federal>

Service only when staff observes a particular issue that causes staff to suspect that the food item does not meet contract specifications. This is a potentially problematic practice as some quality issues are not easily identified without scientific testing. We also have found that the BOP does not require vendors to certify upon delivery or submission of a claim for payment that their products meet the contractual specifications and that they were processed or produced in accordance with all applicable government regulations.

Additionally, BOP does not always document or communicate food vendor quality issues. In several investigations, we found that a number of BOP institutions were aware that a particular vendor was providing substandard food, but the information was not documented, did not appear in FAPIIS, and was not otherwise communicated to other BOP institutions or the BOP Central Office.

BOP's decentralized food procurement process and high volume of food procurements make documentation and communication of quality concerns particularly important. If one BOP institution becomes aware of a food vendor performance issue, that institution should ensure that this information is expeditiously documented and shared throughout the BOP to inform pre-award market research by other institutions and government officials. This pre-award research ultimately forms the basis for determining a contractor's qualification and suitability for an award.

As one example of the consequences of failing to document and communicate quality issues, the OIG has learned of instances where BOP food vendors attempted to ship food products to BOP institutions after the products had been rejected by other BOP institutions.

Recommendations

The OIG recommends that the BOP take the following three measures to help ensure that food products meet contract specifications and do not endanger the health of inmates and staff.

1. The BOP should develop a quality assurance plan applicable to all institutions to mitigate the risk that a vendor could deliver a substandard product to the BOP. The BOP should consider including within this plan the following three-pronged approach:
 - a. consistent on-site visual, weight, and other types of inspections before acceptance of delivery;
 - b. a structured system of random laboratory testing of food products to ensure they meet USDA, U.S. Food and Drug Administration (FDA), contractual, or other applicable standards; and

- c. a requirement that with every food delivery and/or related claim, vendors submit a written certification that the products meet the contract specifications and have been processed or produced in accordance with USDA, FDA, or other regulatory standards, as applicable.
2. The BOP should take measures to enforce the requirement that its procurement officials report contractor performance and quality issues through the Federal Awardee Performance and Integrity System (FAPIIS) and the Contractor Performance Assessment Reporting System (CPARS) for any contracts over the Simplified Acquisition Threshold (SAT) and consider reporting contractor performance and quality issues through FAPIIS and CPARS for contracts that are at or below the SAT.
3. The BOP should take measures to enforce the requirement that procurement officials' pre-award due diligence includes consulting FAPIIS, CPARS, and any other appropriate contractor performance databases for relevant information about vendor responsibility for any contracts over the SAT and consider requiring procurement officials to consult FAPIIS, CPARS, and any other appropriate contractor performance databases for contracts that are at or below the SAT.

Please advise us within 60 days of the date of this memorandum on what actions the BOP has taken or intends to take with regard to these issues. If you have any questions or would like to discuss the information in this memorandum, please contact Sarah E. Lake, Assistant Inspector General for Investigations, at (202) 616-4730.

cc: Bradley Weinsheimer
Associate Deputy Attorney General Department of Justice

David Metcalf
Counsel to the Deputy Attorney General Department of Justice



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