



DEPARTMENT OF JUSTICE | OFFICE OF THE INSPECTOR GENERAL

MANAGEMENT ADVISORY MEMORANDUM
22-040

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Notification of Concerns Identified in the
Federal Bureau of Prisons' Acquisition and
Administration of Procurements Awarded to
NaphCare, Inc. for Medical Services Provided
to Community Corrections Management
Inmates

AUDIT DIVISION



February 22, 2022

Management Advisory Memorandum

To: Michael Carvajal
Director
Federal Bureau of Prisons

A handwritten signature in blue ink that reads "Michael E. Horowitz".

From: Michael E. Horowitz
Inspector General

Subject: Notification of Concerns Identified in the Federal Bureau of Prisons' Acquisition and Administration of Procurements Awarded to NaphCare, Inc. for Medical Services Provided to Community Corrections Management Inmates

The purpose of this memorandum is to advise you of concerns we identified during the course of our ongoing audit of the Federal Bureau of Prisons' (BOP) procurements awarded to NaphCare, Inc. (NaphCare) for medical services provided to Community Corrections Management (CCM) inmates, which includes inmates in residential reentry centers (RRCs) and under home confinement. The procurements awarded to NaphCare since October 2016 exceed \$91 million. We began our audit in September 2021 to assess BOP and contractor compliance with applicable guidance in the areas of acquisition planning and procurement; contract management, oversight, and monitoring; billing and payments; and contractor performance. Since that time, we identified significant concerns related to acquisition planning and administration of the procurements awarded to NaphCare for medical services.

We understand that the BOP has begun planning for a new, long-term procurement for medical services provided to CCM inmates. Although our audit has not concluded, this memorandum provides early notification of our concerns that we believe are significant enough to warrant BOP's immediate attention and consideration for future procurement planning.

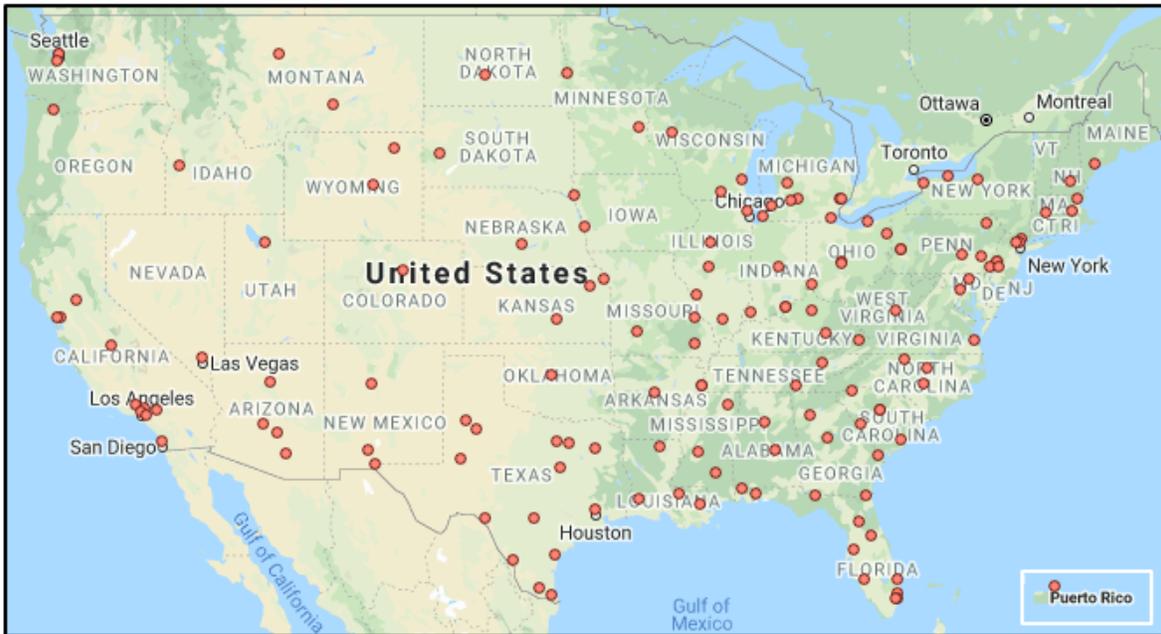
Specifically, we identified the following deficiencies: (1) inadequate acquisition planning and minimal coordination between key BOP divisions for medical services provided to CCM inmates; (2) improper use of the Federal Acquisition Regulation's (FAR) Simplified Acquisition Procedures related to the BOP's use of a Blanket Purchase Agreement (BPA); (3) improper use of the FAR's exception for unusual and compelling urgency justifications for other than full and open competition for the procurements made after the BPA performance period expired; and (4) inadequate oversight of contract costs billed and paid, including insufficient review of invoices submitted by NaphCare for medical expenses.

CCM Inmate Medical Services Overview

The medical services procurements we reviewed were for CCM inmates, which includes residents in residential reentry centers, and under home confinement. There are currently 158 RRC contract locations across the United States and Puerto Rico, as shown in Figure 1 below.

Figure 1

Residential Reentry Center Locations in the United States



As of January 2022, there were approximately 15,056 CCM inmates eligible to receive medical services under the procurement awards we reviewed. A breakdown of CCM inmates is identified in Table 1 below. The reported totals do not take into account the total number of inmates placed in home confinement since the start of the COVID-19 pandemic, including inmates who have completed service of their sentence, which is 33,367.

Table 1

CCM Inmates at the BOP¹

Facility Type	Total Inmates as of January 2022
Home Confinement	7,789
RRCs	7,267
Total:	15,056

Source: BOP

NaphCare’s responsibility under these procurements includes the oversight of inpatient and outpatient facility services, including managing scheduling, claims processing, and invoicing with approximately 160 hospital partners located in 6 BOP regions across the country. Prior to 2016, individual RRC contractors submitted invoices to the BOP for medical services provided to CCM inmates, which resulted in different RRCs billing the BOP for medical services and numerous modifications to the applicable contracts. The BOP Business Practices Subcommittee established an RRC Healthcare Initiative in which the BOP’s Field Acquisition Office (FAO) procured a national BPA for medical services for CCM inmates in order to streamline the billing process. FAO typically manages comprehensive medical services contracts for services

¹ The most recent sole source award made by the BOP also requires that NaphCare act as a payor only for inmates housed in state and local jails and short-term confinement facilities. NaphCare does not have any liability for services or care rendered to these inmates.

provided in BOP-owned facilities. According to the BOP, the BPA used for this procurement was a unique contracting vehicle in comparison to the broad medical services contracting portfolio the BOP manages for BOP-owned facilities. Consequently, FAO was initially responsible for awarding medical services procurements for CCM inmates but transferred the responsibility to the BOP's Residential Reentry Contracting Section. Staff within the BOP's Residential Reentry Management Branch (RRMB), which is primarily responsible for overseeing the BOP's agreements with RRC facilities to house BOP residents, were designated as the Contracting Officer's Representatives to oversee these awards. The RRMB is a component of the BOP's Reentry Services Division, which focuses on reentry programming and community resource transition for BOP inmates. The BOP also refers to CCM inmates as RRMB inmates. We outline the awards we reviewed in Table 2.

Table 2

Summary of Procurements Awarded to NaphCare, Inc. for Medical Services for CCM Inmates

Type	Start	End	Initial Award	Approx. Obligation
Initial BPA	10/6/2016	9/30/2019	\$3,750,000	\$51,937,751
Sole-Source Award #1	10/1/2019	9/30/2020	\$24,017,748	\$35,250,000
Sole-Source Award #2	10/1/2020	9/30/2021	\$28,983,998	\$28,983,998
Sole-Source Award #3	10/1/2021	9/30/2022	\$35,000,000	Ongoing
Total:			\$91,751,746	\$116,171,749

Source: BOP

As shown, the value of the initial BPA grew substantially from the initial award period. However, we found that the BOP did not take the appropriate steps to ensure these expenses were incurred in compliance with the FAR, the terms and conditions outlined in the agreements, and BOP policies and procedures. Additionally, we identified concerns with the sole-source awards made after the initial BPA expired. In the following sections, we further assess the risks associated with these awards and some of the deficiencies we identified thus far during our audit.

The BOP Should Ensure that Proper Acquisition Planning Occurs with all Stakeholders to Ensure Compliance with the FAR and the BOP's Acquisition Policy

We found that RRMB officials have limited expertise in medical services or medical billing. In fact, RRMB officials told us that to assist them in the administration of the BOP's procurements with NaphCare, they frequently rely on FAO and the Health Services Division (HSD), which is responsible for the provision of medical services to inmates in BOP-owned facilities. RRMB officials stated that they believe the FAO and HSD are more qualified to manage medical services awards. RRMB officials also stated that they have experienced difficulties in getting all stakeholders together (i.e., RRMB, HSD, and FAO) to discuss the proper procurement approach for the next award. We believe this lack of coordination is the primary cause for our preliminary findings described below. As a result, it is imperative that the BOP address the issues related to managing medical services for CCM inmates immediately as preliminary planning for the next procurement has already begun. We believe that future procurements for medical services for CCM inmates requires significant coordination between several BOP divisions.

BOP's Improper Use of the Original 3-Year Blanket Purchase Agreement

We found that the BOP issued a 3-year BPA to provide medical services to CCM inmates, which included a ceiling amount of \$3.75 million for the 3-year period. We found that the BOP's RRMB was unsuccessful in obtaining input from important BOP stakeholders and was unable to complete adequate market research before awarding the BPA. Ultimately, we found that the BOP grossly underestimated the amount of the

total BPA cost during acquisition planning. For example, 1 month after awarding the BPA, BOP issued a modification to increase the total dollar amount available under the BPA by an additional \$3.75 million, and later issued an additional modification increasing the ceiling to \$12.7 million. While the BOP issued no other cost modifications, we determined that, over the 3-year period, the BOP issued 104 BPA calls, or funding obligations under the agreement, for a total cost of approximately \$51.9 million. Therefore, BOP exceeded the ceiling by approximately \$39.2 million. BOP officials acknowledged that the ceiling amount was significantly underestimated and likely in an effort to use Simplified Acquisition Procedures in accordance with FAR Subpart 13.303-5(b)(2), which states that the BPA cannot exceed \$7.5 million versus following Contracting by Negotiation in accordance with FAR Part 15. In retrospect, BOP officials acknowledged that the acquisition was not done in compliance with the appropriate guidance and stated in subsequent sole-source award documentation that awarding a BPA for medical services under simplified acquisition procedures is not possible.

BOP's Improper Use of Firm-Fixed Price Sole-Source Procurements

When the original 3-year BPA period expired, BOP subsequently issued three sole-source awards as shown in Table 2 above. FAR Subpart 7.104 states that acquisition planning should begin as soon as the agency identifies a need and preferably well in advance of the fiscal year in which the contract award is necessary, and that agencies should avoid issuing requirements on an urgent basis. Further, the BOP's Procurement Acquisition Policy states that the minimum days required for approval of a contract action for medical contracts exceeding the simplified acquisition threshold of \$250,000 is 365 days. Despite these requirements, BOP officials stated that they used the three large non-competitive contracts as "band-aids" because they did not have time to plan and award a competitive vehicle. In the initial justification for the use of other than full and open competition, the BOP stated that a new BPA had not been awarded due to a series of market research failures, indicating that the BOP had not secured adequate lead time to prepare for the next acquisition. Further, when asked why there was such significant increases in the subsequent sole-source awards compared to the initial BPA ceiling, BOP officials stated that the initial BPA cost estimates did not include funding for new RRC locations or services for residents in home confinement.

In each justification for the use of other than full and open competition, the BOP cited an 'unusual and compelling urgency' due to the initial BPA period not providing adequate time to award a new procurement vehicle. However, according to FAR Subpart 6.302-2(b), this authority should be applied in situations where: (1) an unusual and compelling urgency precludes full and open competition; and (2) delay in award of a contract would result in serious injury, financial or other, to the government. Additionally, FAR Subpart 6.301(c)(1) states that lack of advance planning cannot be used as a justification for contracting without full and open competition. FAR Subpart 6.302-2(d) also states that the period of performance of a contract awarded using the unusual and compelling justification: (1) may not exceed the time necessary to meet the unusual and compelling requirements of the work to be performed and for the agency to enter into another contract for the required services using competitive procedures; and (2) may not exceed 1 year unless the head of the agency determines exceptional circumstances apply. Therefore, inadequate acquisition planning is not a justification for using sole-source procurements for 3 consecutive years.²

Further, we found that the BOP stated in award documentation that the three sole-source procurements were awarded as firm-fixed-price contracts. A firm-fixed price contract is defined by FAR Subpart 16.202-1 as a contract that is not subject to any price adjustment on the basis of the contractor's cost experience. It

² The OIG previously highlighted systemic issues related to inadequate contract solicitation, award, administration and oversight in the U.S. Department of Justice (DOJ) OIG [Management Advisory Memorandum Concerning the Department of Justice's Administration and Oversight of Contracts](https://oig.justice.gov/reports/management-advisory-memorandum-concerning-department-justices-administration-and-oversight), Audit Report 20-082 (July 2020), <https://oig.justice.gov/reports/management-advisory-memorandum-concerning-department-justices-administration-and-oversight>.

provides maximum incentive for the contractor to control costs and perform effectively. Further, FAR Subpart 16.202-2 states that a firm-fixed price contract is suitable when the contracting officer can establish fair and reasonable prices at the outset, such as when there is adequate price competition, realistic estimates of probable costs, or the contractor is willing to accept the cost associated with risks of performance uncertainties.

In our judgment, the three sole-source procurements made after the initial BPA do not fit the definition of a firm-fixed price contract. First, rather than identifying a total contract price, the BOP included estimated contract ceilings in each of these awards. Subsequently, BOP obligated significant amounts of additional contract funds using task orders on an as needed basis. We believe what more accurately describes the BOP's administration of these awards is an indefinite-delivery indefinite-quantity contract because the BOP did not know the precise quantity of services it will require during the contract period.

Overall, we determined that the BOP did not comply with the FAR, the terms and conditions outlined in the agreements, and BOP policy related to its use of a BPA and three subsequent sole-source contracts awarded to NaphCare, thereby limiting BOP's ability to effectively control contract costs and manage contract implementation. We believe, in part, that the discrepancies described above are a result the BOP FAO's lack of involvement in the acquisition process at a level necessary to ensure compliance with the FAR and BOP policies. In our judgment, the BOP should procure medical services for CCM inmates with full coordination from all relevant stakeholders to ensure medical services are acquired in the best interest of the government.

The BOP Should Ensure that Qualified Officials are Reviewing and Approving Payments to the Contractor in Compliance with the Blanket Purchase Agreement and the Center for Medicare and Medicaid Services

The BOP's BPA with NaphCare included rates that are comprised of a premium added to the Center for Medicare and Medicaid Services' (CMS) inpatient and outpatient benchmark rates, such as Medicare Part A and Medicare Part B. The BPA also included pharmaceutical expenses based on average wholesale pricing. Additionally, each sole-source award included references to the terms and conditions from the initial BPA. We found that NaphCare adjudicates the claims it submits to the BOP for reimbursement. BOP officials stated that it does not review the claims. RRMB officials who manage the medical services procurements stated that because they lack the technical knowledge to review medical billings, they simply pay invoices without comparing rates billed to the rates in the award document or to Medicare benchmark rates. RRMB officials stated that if NaphCare wanted to bill for services that were not provided, they could easily do so without being scrutinized by an independent check of invoice accuracy related to medical claims. Previous concerns related to the oversight of billings have been identified by the OIG. In June 2021, as a result of an OIG investigation, NaphCare agreed to pay \$694,593 to resolve allegations that NaphCare violated the False Claims Act by knowingly submitting false claims to the BOP in connection with health care services provided to BOP inmates.³ Further, in other audit work, the OIG has found that the BOP has had limited oversight of contract costs billed and paid related to medical billings by contractors responsible for the provision of medical services at BOP facilities.⁴ Given the concerns highlighted above, we believe that BOP needs to take

³ [Prison Health Care Provider Naphcare Agrees to Settle False Claims Act Allegations | OPA | Department of Justice](https://www.justice.gov/opa/pr/prison-health-care-provider-naphcare-agrees-to-settle-false-claims-act-allegations), <https://www.justice.gov/opa/pr/prison-health-care-provider-naphcare-agrees-to-settle-false-claims-act-allegations>

⁴ The OIG previously identified similar issues related to medical billings in the DOJ OIG [Audit of the BOP's Contract Awarded to Correct Care Solutions, LLC \(CCS\) for the Federal Correctional Complex in Coleman, Florida](https://oig.justice.gov/reports/audit-federal-bureau-prisons-contract-awarded-correct-care-solutions-llc-federal) <https://oig.justice.gov/reports/audit-federal-bureau-prisons-contract-awarded-correct-care-solutions-llc-federal>. The OIG reported that it identified weaknesses in the BOP's contract with CCS related to the establishment of contract pricing methodology, as well as non-compliances with contract terms, resulting in BOP paying CCS \$827,013 for out-of-network services and services not covered by Medicare pricing without proper approval of the prices billed.

immediate action to implement adequate monitoring and review procedures of NaphCare contract costs billed and paid.

Conclusion

Although our audit of the BOP's recent procurements to NaphCare is ongoing, we are providing this memorandum to the BOP at this time because the BOP has begun planning for a new, long-term procurement for medical services provided to CCM inmates and, to date, our audit has identified significant concerns related to the BOP's administration and oversight of its NaphCare procurements. We believe the findings described above increase the risk for the waste and misuse of federal funds. Further, we believe these concerns require the immediate attention of BOP management as it plans for a new long-term procurement for medical services and because the new procurement will require significant coordination between multiple BOP divisions.

Recommendations

We recommend that the BOP:

1. Enhance its procurement process for acquiring medical services provided to CCM inmates to ensure compliance with the FAR and BOP policy and procedures. This includes: (1) coordinating with all relevant divisions within the BOP to ensure sufficient timeframes for acquisition planning that incorporates proper requirements into procurement awards; and (2) ensuring that adequate competition is used for medical services procurements, unless a sole-source procurement is adequately justified in compliance with the FAR.
2. Enhance policies and procedures to ensure that qualified contracting officials review and approve contractor invoices submitted and paid for medical services provided to CCM inmates.

The BOP provided a response to the draft advisory memorandum, which can be found in Appendix 1. Our analysis of that response is included in Appendix 2. If you have any questions regarding the information in this memorandum, please contact me at (202) 514-3435, or Jason R. Malmstrom, Assistant Inspector General for Audit, at (202) 616-4633.

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APPENDIX 1: THE BUREAU OF PRISONS' RESPONSE TO THE DRAFT MANAGEMENT ADVISORY MEMORANDUM



U.S. Department of Justice

Federal Bureau of Prisons

Office of the Director

Washington, DC 20534

February 10, 2022

MEMORANDUM FOR JASON MALMSTROM
ASSISTANT INSPECTOR GENERAL
AUDITS

FROM: M.D. Carvaja
Director

SUBJECT: Response to the Office of Inspector General's (OIG)
February 1, 2022, Formal Draft of a Management
Advisory Memorandum: BOP's Acquisition and
Administration of Procurement Awarded to NaphCare
Inc.

The Bureau of Prisons (BOP) appreciates the opportunity to provide a formal response to the Office of the Inspector General's above referenced memorandum provided on February 1, 2022. The BOP has completed our review of the memorandum and we offer the following comments regarding the Memorandum and its recommendations.

Recommendation One: Enhance its procurement process for acquisition of medical services provided to CCM inmates to ensure compliance with the FAR and BOP policy and procedures. This includes: (1) coordinating with all relevant divisions within the BOP to ensure sufficient timeframes for acquisition planning that incorporates proper requirements into procurement awards; and (2) ensuring that adequate competition is used for medical services procurements, unless a sole-source procurement is adequately justified in compliance with the FAR.

BOP's Response: The BOP agrees with this recommendation. The BOP agrees to enhance its procurement process for medical services provided to Residential Reentry Management (RRM) inmates to ensure compliance with the FAR and BOP policy and procedures. This activity includes: (1) acquisition planning where all relevant divisions coordinate to ensure the

requirement is sufficiently defined into procurement awards; and (2) ensuring that adequate competition is used for medical services procurements, unless a sole-source procurement is adequately justified in compliance with the FAR. The BOP will be issuing a competitive solicitation this year, with the intent to make an award that will commence service on October 1, 2022.

Recommendation Two: Enhance policies and procedures to ensure that qualified contracting officials review and approve contractor invoices submitted and paid for medical services provided to CCM inmates.

BOP's Response: The BOP agrees with this recommendation but notes there are already several policies and procedures established regarding the review and approval of contractors' requests for payment which can be enhanced. The BOP concurs that staff need to be reminded of the appropriate procedures for reviewing and approving invoices submitted by the contractor for medical services provided to RRM inmates.

The BOP interprets the term "qualified contracting officials" to include non-contracting officers such as contracting officer representatives or third party claim adjudicators; therefore, the BOP will provide guidance to Program Officials, Contracting Officer Representatives, Contracting Officers, and their designees, that would remind these individuals of the appropriate procedures for reviewing and approving invoices submitted by the contractor for medical services provided to RRM inmates. The BOP intends to complete this activity by the end of February 2022.

APPENDIX 2: OFFICE OF THE INSPECTOR GENERAL ANALYSIS AND SUMMARY OF ACTIONS NECESSARY TO CLOSE THE RECOMMENDATIONS

The OIG provided a draft of this management advisory memorandum to the Federal Bureau of Prisons (BOP). The BOP's response is incorporated in Appendix 1 of this final memorandum. The BOP agreed with our recommendations and stated that it is taking steps to achieve the recommended results. As a result, the status of the advisory memorandum is resolved. The following discussion provides the OIG analysis of the BOP's response and summary of actions necessary to close the advisory memorandum.

Recommendations to the BOP:

- 1. Enhance its procurement process for acquiring medical services provided to CCM inmates to ensure compliance with the FAR and BOP policy and procedures. This includes: (1) coordinating with all relevant divisions within the BOP to ensure sufficient timeframes for acquisition planning that incorporates proper requirements into procurement awards; and (2) ensuring that adequate competition is used for medical services procurements, unless a sole-source procurement is adequately justified in compliance with the FAR.**

Resolved. The BOP agreed with this recommendation. The BOP stated in its response that it will enhance its procurement process for medical services provided to RRM inmates to ensure compliance with the FAR and BOP policy and procedures. This enhancement includes: (1) acquisition planning where all relevant divisions coordinate to ensure the requirement is sufficiently defined into procurement awards; and (2) ensuring that adequate competition is used for medical services procurements, unless a sole-source procurement is adequately justified in compliance with the FAR. The BOP stated that it will be issuing a competitive solicitation this year, with the intent to make an award that will commence service on October 1, 2022.

This recommendation can be closed when we receive evidence that the BOP has enhanced its procurement process for acquiring medical services provided to CCM inmates to ensure compliance with the FAR and BOP policy and procedures. This includes: (1) coordinating with all relevant divisions within the BOP to ensure sufficient timeframes for acquisition planning that incorporates proper requirements into procurement awards; and (2) ensuring that adequate competition is used for medical services procurements, unless a sole-source procurement is adequately justified in compliance with the FAR.

- 2. Enhance policies and procedures to ensure that qualified contracting officials review and approve contractor invoices submitted and paid for medical services provided to CCM inmates.**

Resolved. The BOP agreed with this recommendation. The BOP stated in its response that while there are several policies and procedures established regarding the review and approval of contractors' requests for payment, the BOP concurs that staff need to be advised of the appropriate procedures for reviewing and approving invoices submitted by the contractor for medical services provided to RRM inmates. The BOP stated that it will provide guidance to Program Officials, Contracting Officer's Representatives, Contracting Officers, and their designees emphasizing the appropriate procedures for reviewing and approving invoices submitted by the contractor for medical services provided to CCM inmates. These actions, once appropriately implemented, will address this recommendation. The BOP intends to complete this activity by the end of February 2022.

This recommendation can be closed when we receive evidence that the BOP has enhanced its policies and procedures to ensure that qualified contracting officials review and approve contractor invoices submitted and paid for medical services provided to CCM inmates.