



**FOLLOW-UP AUDIT OF MEDICAL  
DEVELOPMENT INTERNATIONAL'S  
PERFORMANCE UNDER THE FEDERAL  
CORRECTIONAL COMPLEX BUTNER  
MEDICAL SERVICES CONTRACT  
BUTNER, NORTH CAROLINA**

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

Audit Report 14-02  
November 2013

# **FOLLOW-UP AUDIT OF MEDICAL DEVELOPMENT INTERNATIONAL'S PERFORMANCE UNDER THE FEDERAL CORRECTIONAL COMPLEX BUTNER MEDICAL SERVICES CONTRACT BUTNER, NORTH CAROLINA**

## **EXECUTIVE SUMMARY**

The Office of the Inspector General (OIG), Audit Division, has completed a follow-up audit of the Federal Bureau of Prisons' (BOP) administration of medical contracts awarded to Medical Development International (MDI). MDI was originally awarded a 5-year contract on August 8, 2001, to act as an intermediary and develop provider networks that, in turn, provide medical services for approximately 3,700 inmates housed at the Federal Correctional Complex (FCC) in Butner, North Carolina.

In March 2007, an OIG audit of MDI's performance under this 5-year contract found that the BOP had not properly administered the contract to prevent payment of erroneous bills and found numerous deficiencies in billings under the contract, including billing the BOP for \$1,514,981 in unsupported costs. We made a statistical projection based on the identified unsupported costs and found that MDI had billed BOP a total of \$2,428,345 in unsupported costs.

To evaluate the actions taken by the BOP to address the recommendations from our previous audit, we performed this follow-up audit on the BOP's management of the successor contract (Contract No. DJB10611026), which was awarded to MDI for the period April 18, 2007, through April 17, 2012.<sup>1</sup> The contract was initially awarded for \$104,174,846 and was subsequently increased through contract modifications to \$107,271,650.

### **The BOP's Actions to Implement Our 2007 Recommendations**

We found that the BOP took corrective actions on the recommendations from the 2007 audit but did not ensure that those

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<sup>1</sup> The end date for the contract was extended to July 17, 2012, to allow time to award successor contracts. Between June and August 2012, the BOP awarded six contracts to four different contractors to replace the MDI medical services contract. MDI did not receive any of the six successor contracts.

corrective actions were fully implemented. As a result, the BOP's corrective actions were not fully effective in improving the deficiencies reported in the prior audit.

- The BOP provided supporting documentation for \$219,520 of the questioned costs identified in the 2007 audit and recovered the remaining \$1,295,461 by withholding payment for invoices owed to MDI.
- BOP implemented the use of a time clock to improve controls over the review and payment of hours billed by on-site providers. While the use of a time clock has improved the accuracy of billings by providers, the BOP has not consistently enforced the use of the time clock. As a result, we identified \$140,819 paid to MDI for hours of services for which we could not determine the accuracy of the billing.
- To improve contract administration, a BOP Supervisory Contract Specialist (SCS) was maintaining and updating the contract administration plan. However, we found that the BOP did not take action to ensure MDI was making a good faith effort to achieve its subcontracting goals, using the standards set forth in Federal Acquisition Regulation (FAR) 19.705-7(c) and (d).
- To improve the review of MDI billings, the BOP retained contractors to review medical claims submitted by MDI and to follow up on any issues. We found that the review and follow-up processes have been effective at correcting the coding and pricing deficiencies noted in our prior audit.

## **MDI Practices for Managing Subcontractor Payments**

During our audit, we confirmed information provided to us by members of Congress that MDI had received payments from the BOP for health care services provided to inmates by the Duke University Health System (DUHS), but had not reimbursed DUHS for all the services provided. DUHS claimed that it had not been paid for about \$16.2 million in services provided, including penalties. After the court appointed a Receiver, the Receiver and DUHS agreed to a judgment in the amount of \$13,916,622.<sup>2</sup>

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<sup>2</sup> In September 2012, in an unrelated lawsuit by MDI's only secured creditor, the court appointed a Receiver over MDI. The Receiver is liquidating MDI's assets to pay its secured creditor, Wells Fargo. Neither the Receiver nor DUHS expect that DUHS will receive any proceeds from the judgment because of DUHS' status as an unsecured creditor.

We found the BOP became aware of MDI's failure to pay DUHS in November 2010, and that another BOP institution made a determination in May 2011 that MDI was a non-responsible contractor based primarily on MDI's failure to pay its subcontractors for FCC Butner and six other BOP institutions. Despite this information, BOP did not take prompt action to address the non-payment dispute between MDI and DUHS. In total, the other six subcontractors claimed that MDI owed them more than \$6 million.

Moreover, the BOP did not inform other BOP institutions of MDI's financial problems through an agency-wide announcement to procurement officials until approximately 9 months later, in February 2012. While we did not find evidence of an actual adverse impact to BOP from this delay, in general delays such as this increase the risk of BOP institutions unknowingly making awards to companies that are having financial difficulties.

In addition, despite having what we believe to be a reasonable justification to do so, the BOP never recommended MDI for suspension or debarment from future government contracts, which would have helped to protect other federal agencies. Further, the BOP did not report the non-responsibility determination made for MDI in the Federal Awardee Performance and Integrity Information System, which would have alerted other government contracting officers of MDI's performance problems. In our judgment, the BOP's failure to share information both internally and with other agencies increased the risk that relevant contract administration staff would not have adequate information to make cost effective decisions when procuring medical services and to avoid doing business with a non-responsible contractor.

This audit report makes seven recommendations to help the BOP further improve its oversight and administration of medical services contracts at FCC Butner.

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## INTRODUCTION

The Office of the Inspector General (OIG) has completed a follow-up audit of the Federal Bureau of Prisons (BOP) administration of the medical services Contract No. DJB10611026 awarded to Medical Development International (MDI). In March 2007, the OIG completed an audit of MDI's performance under BOP's Contract No. DJB10611-00 for medical services for inmates at the Federal Correctional Complex (FCC) in Butner, North Carolina.<sup>1</sup> Our 2007 audit found significant internal control weaknesses in the BOP's contract administration practices as the BOP paid bills submitted by MDI without proper review. Consequently, MDI's billings were not free of material misstatements or errors, and there was inadequate support for contract costs billed. As a result of these weaknesses, the OIG questioned \$2,428,345 for erroneous billings and unsupported costs.<sup>2</sup>

To evaluate the actions taken by the BOP to address the recommendations from our 2007 audit, we reviewed and performed tests of the BOP's management of the successor medical services contract (Contract No. DJB10611026) awarded to MDI on April 17, 2007, as shown in Exhibit 1.

### EXHIBIT 1: MDI CONTRACT PERIOD AND AWARD AMOUNT

Contract Period	From	To	Award Amount
Base Year	04/18/07	04/17/08	\$19,204,234
Option Year 1	04/18/08	04/17/09	\$19,939,631
Option Year 2	04/18/09	04/17/10	\$20,715,160
Option Year 3	04/18/10	04/17/11	\$21,510,782
Option Year 4	04/18/11	04/17/12 <sup>3</sup>	\$22,805,039
<b>Total</b>			<b>\$104,174,846<sup>4</sup></b>

**Source:** FCC Butner Finance Administration

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<sup>1</sup> U.S. Department of Justice Office of the Inspector General, *The Bureau of Prisons' Management of the Medical Services Contract with Medical Development International, Butner, North Carolina, Contract No. DJB10611-00*, Audit Report GR-40-07-003 (March 2007).

<sup>2</sup> The 2007 audit made a statistical projection that, based on \$1,514,981 in actual unsupported costs, MDI had billed the BOP a total of \$2,428,345 in unsupported costs.

<sup>3</sup> The contract was extended to July 17, 2012, to allow time to award successor contracts. Between June and August 2012, BOP awarded six contracts to four different contractors to replace the MDI medical services contract. MDI did not receive any of the six successor contracts.

<sup>4</sup> The contract was initially awarded for \$104,174,846 but was increased through contract modifications to \$107,271,650.

## **Background**

The mission of the BOP is to protect society by confining offenders in a safe, humane, and appropriately secure facility that provides work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens. The health care mission of the BOP is to provide necessary medical, dental, and mental health services to inmates by professional staff, consistent with acceptable community standards and as authorized by the BOP.

In furtherance of this mission, in August 2001 the BOP awarded MDI a 5-year contract (Contract No. DJB10611-00) to provide comprehensive medical services for approximately 3,700 inmates housed at FCC Butner. FCC Butner is located near Raleigh/Durham, North Carolina, and consists of several facilities for the housing of medium, low, and minimum security level inmates. The complex includes a medical facility that houses male inmates of all security levels.

For FCC Butner inmates, MDI provided on-site staffing, management of specific departments, and inmate medical services at local patient and outpatient facilities. MDI did not directly employ medical professionals to provide inmate care. Rather, it served as the intermediary between the BOP and medical providers by subcontracting for medical professionals to provide inmate care, and by providing administrative and operational support for healthcare services at FCC Butner.

## **The 2007 OIG Audit**

During our 2007 audit, we found significant discrepancies in the contractor's billings and concluded that the BOP's controls over the review and payment of billed costs did not provide adequate assurance as to the accuracy of those billings. Specifically, we found that the BOP did not perform a detailed review of MDI's invoices prior to the approval for payment and did not monitor the subcontracted medical providers to prevent the submission and payment of erroneous billings. The OIG also found that significant internal control weaknesses existed in the BOP's contract administration. In particular, the contract's language did not address specific billing requirements to ensure that proper support was provided for personnel services, and BOP personnel involved in the approval and payment of MDI's invoices did not adequately communicate with each other on the procedures performed during the review and payment of invoices submitted for payment by MDI, resulting in payments without supporting documentation.



As a result of these weaknesses, our 2007 audit report contained one recommendation to remedy \$2,428,345 in questioned costs for unsupported hours billed by MDI, three recommendations to address weaknesses in controls over the accuracy of billing for hours of services provided by on-site providers, three recommendations to improve the administration of the contract, and three recommendations to improve BOP's controls over the review of and payments for medical procedures.<sup>5</sup>

## **Current Audit Objectives and Approach**

The objectives of the audit were to: (1) determine if the BOP took appropriate actions to implement the recommendations from our 2007 audit, (2) determine if the corrective actions implemented improved the BOP's oversight of the contract and MDI's compliance with the terms and conditions of the contract, and (3) evaluate MDI's practices for managing billings from and payments to its subcontractors.<sup>6</sup>

To determine if the BOP took appropriate actions to implement the recommendations from the 2007 audit, we reviewed the plan of action submitted by the BOP and interviewed personnel responsible for implementing the recommendations.

To determine if the corrective actions implemented improved the BOP's oversight of the contract and MDI's compliance with the terms and conditions of the contract, we performed audit work at FCC Butner and interviewed BOP personnel responsible for administering health services, performing contractual and financial administrative duties, and reviewing medical procedure billings. We also performed reviews of billings submitted by MDI for on-site services.

To evaluate MDI's practices for managing billings from and payments to its subcontractors, we interviewed contract administration staff, BOP acquisition staff, personnel from the BOP's Headquarters, officials from MDI, and personnel from the MDI's primary subcontractor, the Duke University Health System (DUHS). We also reviewed documents provided by the BOP, MDI, and DUHS. Additional details about our objectives, scope, and methodology are included in Appendix I.

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<sup>5</sup> The audit found that MDI had billed the BOP for \$1,514,981 in unsupported costs, and we made a statistical projection based on the identified unsupported costs that MDI had billed the BOP a total of \$2,428,345 in unsupported costs.

<sup>6</sup> The third objective was included based in part on concerns expressed to the OIG by members of Congress that MDI was not paying one of its subcontractors.

## **FINDINGS AND RECOMMENDATIONS**

The BOP took corrective actions to implement the recommendations we made in our 2007 audit report, but did not ensure that those corrective actions were fully implemented. Therefore, the BOP's corrective actions were not fully effective in improving the deficiencies reported in the initial audit. Specifically, the BOP installed a time clock for use at FCC Butner to improve the accuracy of hours billed for on-site provider services, but we found that the BOP did not consistently enforce its use. As a result, we identified billings totaling \$140,819 paid to MDI by the BOP for which we could not determine the accuracy of the hours billed. We also found that MDI billed the BOP and received payment for services provided by its subcontractors, but did not reimburse subcontractors for some of those services. We believe that the BOP did not take prompt action to protect itself or the federal government from awarding additional contracts to MDI after BOP learned of MDI's failure to pay its subcontractors. While we did not find evidence of an actual adverse impact from this delay, in general delays such as this increase the risk of BOP institutions unknowingly making awards to companies that are having financial difficulties. This report makes seven recommendations for improvements to the BOP's contract administration practices.

### **The BOP's Actions to Implement the Recommendations from Our 2007 Audit and the Effectiveness of Those Actions**

In 2007 the OIG made 10 recommendations to the BOP to remedy \$2,428,345 in questioned costs for unsupported hours billed by MDI, address weaknesses in controls over the accuracy of billings for hours of services provided by on-site providers, improve the administration of the contract, and improve controls over the review of and payments for medical procedures. The \$2,428,345 in questioned costs was a statistical projection based on actual unsupported costs of \$1,514,981 identified during the 2007 audit. Subsequent to issuance of the 2007 audit report, we adjusted the amount that we suggested the BOP should remedy to the actual questioned costs of \$1,514,981. In the following sections, we discuss the BOP's actions to address the 2007 audit recommendations and the effectiveness of those actions.

### *Actions to Remedy Questioned Costs from the OIG's 2007 Audit*

In August 2013, the BOP provided documentation to remedy the remainder of the questioned costs identified during the OIG's 2007 audit and we closed the recommendation.<sup>7</sup>

### *Actions to Strengthen Controls over Hours Billed for On-site Providers*

Adequate controls over the accuracy of hours billed for on-site provider services are an essential aspect of BOP's oversight of federal funds paid for medical services at FCC Butner. As of September 30, 2012, the BOP had paid MDI more than \$35.7 million for hours billed for provider services. MDI submitted bi-weekly billings, supported by timesheets, to the BOP for total hours worked by its providers and physicians in specialty clinics throughout FCC Butner. Because providers work in various capacities and in different areas throughout the correctional complex, adequate controls and oversight of the hours worked and billed were necessary to ensure that federal funds were paid only for services actually received.

Our 2007 audit found that the BOP paid invoices that were not always reviewed by the BOP's contract administration staff, which resulted in billing errors and unsupported contract costs. Specifically, we found that the BOP paid invoices that: (1) contained unallowable billing rates and positions; (2) included unsupported, miscalculated, and unapproved timesheets; and (3) did not always support providers' actual arrival and departure times to confirm whether the providers worked the hours billed.

The initial audit identified discrepancies in the hours billed as compared to the hours supported by the sign-in/sign-out logs used by on-site providers and specialty physicians upon their arrival and departure at each FCC Butner facility. We recommended that the BOP implement controls requiring providers to record their arrival and departure times within their designated work areas each day, as better controls for recording arrival and departure times increase the BOP's ability to cross-check hours billed. We also recommended that the BOP compare the providers' timesheets, which are included in the invoices, to the sign-in/sign-out logs used by the providers to record their arrival and departure time each day as an additional verification of the accuracy of provider hours billed.

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<sup>7</sup> The BOP provided documentation to support \$219,520 and recovered the remaining \$1,295,461 by withholding payment for invoices owed to MDI.

## Implementation of a Time Clock

To address our recommendations in this area, the BOP installed a time clock to capture the providers' arrival and departure times within FCC Butner's Federal Medical Center (FMC). The timecards generated by the time clock were used to verify the accuracy of the providers' hours billed by MDI.

To determine if these corrective actions improved the controls over the billing review process, we selected 31 invoices submitted by MDI and paid by the BOP between October 2009 and April 2012. Each of these invoices contained the bi-weekly hours billed for time worked by the on-site providers. From these invoices, we selected 125 transactions containing 3,634 hours billed and totaling \$539,753. We reviewed and tested support documentation submitted with the invoices by MDI to determine if the hours billed were supported by timecards obtained from the time clock.

We found that while accuracy of the billings improved with the implementation of the time clock, MDI continued to bill and be paid for hours for which there was no adequate assurance of accuracy. Specifically, we determined that 106 of the 125 transactions totaling \$352,083 were not supported by timecards. We found inconsistencies in the use of the time clock by some on-site providers. In some instances, the on-site providers registered the time of arrival, but did not register the time of departure. Also, according to health services administration staff, some providers refused to use the time clocks, and we did not find evidence that BOP had made efforts to ensure that MDI requested all on-site providers use the time clock. When asked about BOP's efforts to enforce provider use of the time clock, BOP's contract administration staff, which is responsible for implementing the time clock on behalf of BOP, told us that MDI should have done more to ensure that providers complied with BOP directions to use the time clock.

We asked the BOP how they verified hours billed when the timecards were not reliable or unavailable. The BOP staff told us they relied on the sign-in/sign-out logs. However, the BOP staff also told us that the accuracy of the time billed is more difficult to verify when the only support is the sign-in/sign-out logs because the providers did not always record both their arrival and departure time.

Because of the providers' inconsistent use of the time clocks and the BOP's lack of enforcement of the time clock usage, we reviewed the sign-in/sign-out logs to determine the accuracy of the hours billed for the 106 transactions for which complete and reliable timecards were not available.

As shown in the following exhibit, the accuracy of the billings for 956 of the 1,860 hours that MDI billed for these 106 transactions could not be verified by the sign-in/sign-out logs. The 956 unsupported hours billed totaled \$140,819.<sup>8</sup>

**EXHIBIT 2: RESULTS OF TEST PERFORMED TO EVALUATE  
CORRECTIVE ACTIONS IMPLEMENTED BY THE BOP**

	<b>HOURS</b>	<b>AMOUNT PAID TO MDI</b>
<b>Hours Billed for Transactions Tested</b>	<b>3,634</b>	<b>\$539,753</b>
Number of Hours Validated by Time Clock	1,774	\$187,670
<b>Hours Not Verified by Timecards</b>	<b>1,860</b>	<b>\$352,083</b>
Hours Verified by Logs	904	\$211,264
<b>Hours Paid without Support of Accuracy</b>	<b>956</b>	<b>\$140,819</b>

Source: OIG analysis of FCC Butner records

During our review of sign-in/sign-out logs, we also confirmed that the sign-in/sign-out logs are not always reliable for determining the accuracy of hours billed by on-site providers because the actual arrival and departure times are often recorded inconsistently. For example, we found instances when providers signed in but did not sign out, which made it impossible to determine if the hours billed were accurate. In another example where a provider billed more than 24 hours of continuous services, the sign-in/sign-out log showed the arrival time, but the departure time did not specify whether the departure was for morning or evening, making it difficult to determine the accurate departure time.

Based on these findings, we remain concerned about the BOP's efforts to ensure that billings for all medical provider hours are accurate and properly supported. Therefore, we recommend that BOP revise and take additional steps necessary to enforce its policy requiring all on-site providers to use the time clock.

Implementation of Timesheet Reviews

In the 2007 audit, we found that the BOP did not review provider timesheets prior to making payments. Instead, timesheets were reviewed and approved by MDI's on-site contract manager. Our timesheet review

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<sup>8</sup> Because MDI's assets are being liquidated by a court-appointed Receiver, we are not recommending that the BOP remedy the \$140,819 in unsupported costs. However, we do make recommendations to the BOP for improvements to minimize such unsupported costs in the future.

during the initial audit showed that the BOP paid billings for which: (1) providers' timesheets contained calculation errors, (2) timesheets showing the hours billed did not match the hours worked, and (3) timesheets were not provided. We recommended that the BOP ensure providers' timesheets are reviewed and approved by BOP personnel prior to payment.

The BOP addressed this recommendation by requiring MDI to submit timesheets directly to the Contracting Officer's Technical Representatives (COTR) for review. The COTR compared the timesheets to a computer-generated report, documented any discrepancies, and resolved those discrepancies with an MDI on-site coordinator.

During our follow-up audit, we confirmed that the timesheets were no longer reviewed and approved by MDI personnel. Instead, during our period of review, a third party contractor and BOP staff performed the reviews.<sup>9</sup> We found the timesheets were calculated properly, the hours billed matched the hours recorded on the timesheets, and timesheets were included in the billings reviewed.

#### *Other Actions to Improve Administration of the Contract*

In the 2007 audit, the OIG made three additional recommendations to improve the administration of the contract by: (1) implementing controls to ensure that personnel services are consistently provided within the terms and conditions of the contract, (2) including specific terms and requirements for the billing of personnel services in the pricing and billing sections for future medical services contracts, and (3) ensuring the contractor adheres to all terms of the contract.

To address these recommendations, the BOP told us that the supervisory contract specialist would maintain and update the contract administration plan for the successor contract, and that the contract administration plan would be updated as necessary to reflect current information. The BOP also told us that a COTR would be assigned to each contract deliverable area in order to improve the monitoring of the contractor's performance.

During this follow-up audit, we confirmed that the BOP had adequately implemented our recommendations in this area. Specifically, we found that:

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<sup>9</sup> In January 2013, the BOP discontinued the use of a third-party contractor and assigned the task of reviewing and approving the timesheets to a BOP employee.

(1) a Supervisory Contract Specialist maintains the contract administration plan and updates the plan as necessary; (2) the contract administration staff participates in bi-weekly meetings with the health service administration staff to improve contract administration; (3) the BOP assigned four COTRs to work on the administration of the contract; and (4) and the BOP added language to the contract to define specific terms and requirements for the billing of personnel.

However, we also found during this follow-up audit that MDI did not comply with all of the requirements in the subcontracting plan it filed pursuant to the Federal Acquisition Regulation Subpart 52.219-9, Small Business Subcontracting Plan. Specifically, MDI's subcontracting plan indicated that 18 percent of its subcontracts would be made to small businesses, yet MDI awarded only 4 percent of the subcontracts to small businesses.<sup>10</sup> According to BOP officials, MDI's lack of compliance with the subcontracting plan was known and documented in reports submitted to BOP by MDI. However, the BOP did not take action to ensure MDI was making a good faith effort to achieve its subcontracting goals, using the standards set forth in FAR 19.705-7(c) and (d). Accordingly, we recommend that the BOP ensure contracting administration staff are adequately trained to ensure that contractors make a good faith effort to comply with their subcontracting plans and take appropriate action when BOP learns that a contractor is at risk of not fulfilling a material aspect of its contract.

#### *Actions to Improve Controls over the Review and Payment of Medical Claims*

In the 2007 audit, we found weaknesses in the BOP's processes for reviewing medical claims submitted for payment. We recommended that the BOP: (1) develop controls to independently verify billing claims in accordance with Medicare allowable payments for hospital services, (2) direct the contract administration and financial management officers to develop internal controls that establish the duties and responsibilities of each individual assigned to review and approve the contractor's billings prior to payment, and (3) review a sample of inpatient medical claims billed prior to October 2004 and ensure that no other excess billings were made and paid for medical claims.

In response to our prior audit, the BOP provided documentation to show that it had reviewed a sample of medical claims prior to October 2004

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<sup>10</sup> Federal Acquisition Regulation Subpart 52.219-9(k) states that failure of a contractor to comply in good faith with the subcontracting plan shall be considered a material breach of the contract.

and found no further excess billings. The BOP also contracted with an adjudication contractor to review medical claims to ensure proper coding and pricing.<sup>11</sup> The BOP also contracted with a third-party contractor to work at FCC Butner to review and follow up on the adjudication contractor's results. The BOP developed internal controls to establish the duties and responsibilities of each individual assigned to review and approve the contractor's billings prior to payment. We found that the adjudication process and third-party review process to be effective at correcting the coding and pricing deficiencies identified in our prior audit.

### **MDI's Practices for Managing Billings and Payments to its Subcontractors and the BOP's Actions to Address Deficiencies in MDI's Practices**

Based in part on concerns expressed to the OIG by members of Congress, we evaluated MDI's practices for managing billings from and payments to its subcontractors. As previously discussed, MDI acted as an intermediary between providers and the BOP and developed provider networks to provide medical care to inmates. MDI submitted billings to the BOP for the provider services bi-weekly, and the BOP remitted payment to MDI within about 30 days.

During this follow-up audit, MDI was involved in a payment dispute with its largest subcontractor, the Duke University Health System (DUHS). DUHS claimed that MDI owed it more than \$16 million, including penalties, for inpatient medical services DUHS provided to FCC Butner inmates. Our follow-up audit also identified six additional MDI subcontractors who claimed that they were owed outstanding payments for services provided to inmates at other BOP institutions. In total, the other six subcontractors claimed that MDI owed them more than \$6 million.

The circumstances surrounding MDI's non-payment practices created significant challenges for the contractor that succeeded MDI as the primary medical services contractor for FCC Butner. The new contractor immediately received negative feedback from medical providers who had difficulty receiving payments from MDI. The providers were reluctant to finalize their agreements for the new contract and did not want to risk facing similar non-payment issues. The new contractor also experienced difficulties obtaining agreements from community providers to manage on-site and off-site

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<sup>11</sup> Adjudication is the process of paying or denying claims after comparing the claims to the benefit or coverage requirements.



medical care for FCC Butner. As a result, the difficulties arising from MDI's non-payment practices not only affected MDI's subcontractors, they also jeopardized the availability of inmate medical care at FCC Butner and highlighted the importance of BOP establishing appropriate and effective mechanisms for responding to contractors who encounter repeated payment disputes with subcontractors.

### *MDI's Billing Dispute with DUHS*

In November 2010, the BOP received notice from DUHS that it had not been paid by MDI. In January 2011, DUHS terminated its agreement with MDI because of MDI's failure to pay. In February 2011, DUHS notified the BOP of its terminated contract with MDI and advised the BOP that services provided to FCC Butner inmates after the contract termination date of January 10, 2011, would be billed directly to the BOP with payment expected within 30 days.

In early March 2011, DUHS submitted a letter to MDI and the BOP informing them that, because of MDI's non-payment for services previously provided and the BOP's refusal to provide assurance of payment, effective April 1, 2011, DUHS would no longer accept FCC Butner inmates for medical services other than when emergency medical care was required. Later in March 2011, BOP responded to DUHS in a letter stating that the BOP's contractual relationship for providing outpatient and inpatient inmate medical services was with MDI, and that any unpaid balances incurred by MDI are the sole responsibility of MDI. In contrast, in an April 2011 letter, DUHS took the position that the BOP is responsible for payments relating to services provided after the termination of its agreement with MDI, and jointly liable with MDI for the unpaid balances relating to services rendered prior to the termination of the agreement. In the April 2011 letter, DUHS advised the BOP that it intended to take legal action against the BOP to recover these payments, and also requested that the BOP take action to encourage MDI to pay the amounts DUHS believed it was owed.

In April 2011, based on the terms of its contract with MDI, DUHS also initiated arbitration proceedings with the American Arbitration Association in North Carolina.<sup>12</sup> A binding arbitration hearing was scheduled in October 2012 to settle the dispute.

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<sup>12</sup> The American Arbitration Association is a not-for-profit organization with offices throughout the U.S. It provides alternative dispute resolution services to organizations who wish to resolve conflicts out of court.

Prior to the hearing, however, Wells Fargo sued MDI for failure to repay a \$30 million loan, and in September 2012, a judge ruled in favor of Wells Fargo and appointed a Receiver to perform any and all acts necessary for the proper and lawful conduct of MDI's affairs.<sup>13</sup> Subsequently, the court-appointed Receiver and DUHS agreed to a judgment in favor of DUHS in the amount of \$13,916,622, and the arbitration case was dismissed. Neither the Receiver nor DUHS expect that DUHS will receive any proceeds from the judgment because of DUHS' status as an unsecured creditor.

#### *MDI's Accounting for Payments Received from the BOP and Made to Subcontractors*

During our audit, we attempted to determine how MDI accounted for the payments made by the BOP under the contract. According to MDI's records, as of July 2012, MDI had received \$113,501,581 from BOP, which included claims submitted by DUHS. During the same period, MDI disbursed \$68,478,513 to subcontractors performing services under the contract, including about \$26 million specifically disbursed to DUHS. We could not determine how MDI used the difference of \$45,023,068 because of the process MDI used to reimburse its subcontractors. When MDI disbursed money received from BOP to its subcontractors, it did not do so on a reimbursement basis, meaning that it did not disburse money received from BOP based on particular subcontractor invoices to the subcontractors that submitted those invoices. Instead, MDI paid its subcontractors based on its cash flow and MDI's legal counsel told us that, as a result, money received from the BOP based on one subcontractor's invoices was sometimes used to pay other providers and subcontractors. MDI's legal counsel also told us that MDI did not pay to DUHS the amounts DUHS believes it is owed because MDI did not agree with the amount and penalties that DUHS believed MDI owed.<sup>14</sup>

#### *BOP's Efforts to Address MDI's Non-payment to DUHS Prior to Extending MDI's Contract in April 2011*

We found that in January 2011, prior to exercising its option to extend MDI's contract into Option Year 4 in April 2011, the BOP contacted MDI to discuss the unpaid bills, and MDI provided assurances that it intended to pay DUHS. In addition, in January 2011, BOP contract officials considered

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<sup>13</sup> MDI consented to the receivership as part of its settlement with Wells Fargo.

<sup>14</sup> In this paragraph, "MDI's legal counsel" refers to MDI's counsel prior to MDI's operation under the court-appointed Receiver.

making a determination of non-responsibility, which could have resulted in termination of MDI's contract at FCC Butner.<sup>15</sup> However, according to contemporaneous BOP documentation provided to the OIG, BOP officials were not sure whether a determination of non-responsibility could be made prior to exercising a contract option because they perceived that Federal Acquisition Regulation (FAR) Subparts 9.103 and 17.207, which address determinations of non-responsibility and exercise of contract options, were not clear about making such determinations when deciding to exercise contract options. A BOP Field Acquisition Office official researched FAR Parts 9 and 17 for FCC Butner contracting officials and concluded that neither section addresses conducting a determination of responsibility in conjunction with exercising a contract option.<sup>16</sup> The Field Acquisition Office official indicated that FAR 17.207 discusses the exercise of contract options but is silent on not exercising an option due to a lack of responsibility. The official indicated that FAR 9.103 states that no purchase or award shall be made unless the contracting officer makes an affirmative determination of responsibility. The Field Acquisition Office official concluded that BOP could make the argument that the exercise of an option constitutes an award, and therefore the BOP could support performing a responsibility determination. However, the Field Acquisition Office official told FCC Butner contracting officials that strong consideration should be given to contingency plans for how the necessary medical services would be obtained for FCC Butner if they decided to not exercise Option Year 4 of the MDI contract.

FCC Butner contracting officials ultimately decided to exercise Option Year 4 of the contract in April 2011, instead of making a determination of non-responsibility because doing so would have resulted in termination of the MDI contract and BOP would not have sufficient time to advertise and award a new contract before Option Year 3 expired.

#### *BOP's May 2011 Determination that MDI was a Non-responsible Party*

In May 2011, shortly after BOP exercised Option Year 4 of MDI's contract to provide medical services at FCC Butner, the BOP's Field Acquisition Office made a determination with respect to a proposed contract

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<sup>15</sup> A contracting officer may determine a contractor to be non-responsible when a contractor does not have a satisfactory record of performance or record of integrity and business ethics.

<sup>16</sup> The Field Acquisition Office is a Headquarters-level activity under the BOP's Administrative Division, but is located in Grand Prairie, Texas. The office is responsible for pre-award procurement actions of proposed contracts exceeding \$100,000.

for medical services at another BOP facility that MDI was a non-responsible contractor in accordance with the Federal Acquisition Regulation.

The Federal Acquisition Regulation states that contracts shall be awarded to responsible, prospective contractors only. No purchase or award shall be made unless the contracting officer makes an affirmative determination of responsibility. In the absence of information clearly indicating that the prospective contractor is responsible, the contracting officer shall make a determination of non-responsibility. As discussed below, the BOP based its determination of non-responsibility on MDI's failure to meet four of seven general standards used to determine contractor responsibility.<sup>17</sup> Notably, the BOP determined that MDI had complied with the remaining three general standards: satisfactory record of performance, satisfactory record of integrity and business ethics, and qualification and eligibility to receive an award under applicable laws and regulations.

Federal Acquisition Regulation 9.104-1(a) states that to be determined responsible, a prospective contractor must have adequate financial resources to perform the contract, or the ability to obtain them. In the May 2011 determination, the BOP determined that MDI had not displayed the ability to have adequate financial resources to perform under a medical services contract for the other BOP facility or the ability to obtain such resources. During the process to determine if MDI was a responsible contractor, the BOP identified seven of its facilities that received some type of communication from service providers regarding MDI's lack of payment. These provider claims for payments owed by MDI amounted to more than \$13 million. The BOP's determination noted that based on MDI's financial struggles, which BOP contended were demonstrated by MDI's inability to make timely payment to its subcontractors, the government had no current data on which to conclude that MDI was financially stable or had the ability to obtain additional funding. Therefore, the BOP determined that MDI could not satisfy this responsibility standard.

Federal Acquisition Regulation 9.104-1(b) states that to be determined responsible, a prospective contractor must be able to comply with the required or proposed delivery or performance schedule, taking

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<sup>17</sup> To be considered responsible, a contractor must: (1) have adequate financial resources to perform the contract, (2) comply with the delivery or performance schedule, (3) have a satisfactory performance record, (4) have a satisfactory record of integrity and business ethics, (5) have the necessary organizational resources, (6) have the necessary equipment and facilities, and (7) be qualified and eligible to receive an award under applicable laws and regulations.

into consideration all existing commercial and government commitments. In the May 2011 determination, the BOP determined that based on MDI's financial instability, it was uncertain whether MDI could perform under the contract for the other BOP facility to provide health care to inmates. The BOP noted that because of MDI's inability to make timely payments, seven additional MDI sub-contracted medical providers at other BOP facilities had refused to treat inmates, threatened to discontinue medical care to the inmates, and terminated their agreements with MDI. For example, at the BOP's Metropolitan Detention Center in Guaynabo, Puerto Rico, an MDI-subcontracted hospital refused to take BOP patients because of MDI's lack of payments to the hospital. In another example, at the BOP's Federal Correctional Complex in Allenwood, Pennsylvania, an MDI-subcontracted provider determined that MDI was past due on payments for several months of medical services provided to BOP inmates and terminated its contracts with MDI. Accordingly, the BOP concluded that it did not have confidence that MDI would be able to maintain a network of medical providers capable of meeting performance schedules at the other BOP facility. Therefore, the BOP determined that MDI could not satisfy this responsibility standard.

Federal Acquisition Regulation 9.104-1(e) states that to be determined responsible, a prospective contractor must have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them. In the May 2011 determination, the BOP concluded that MDI did not have the necessary accounting and operational controls in place to perform under the contract for medical services at the other BOP facility based on the same financial and operational concerns detailed above for Federal Acquisition Regulation 9.104-1(a) and 9.104-1(b). The BOP therefore determined that MDI could not satisfy this responsibility standard.

Federal Acquisition Regulation 9.104-1(f) states that to be determined responsible, a prospective contractor must have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them. In the May 2011 determination, the BOP expressed uncertainty about whether MDI possessed the necessary facilities to continue providing medical care to BOP inmates since several of MDI's sub-contracted medical providers terminated their agreements due to lack of payment by MDI. The BOP noted that several other MDI sub-contracted medical providers had either terminated or established a date for termination of their agreements with MDI. The BOP also noted that it had received correspondence from MDI subcontractors regarding legal actions seeking payment from MDI. Further, the BOP concluded that, based on MDI's current financial condition, it was failing to maintain the necessary medical facilities to fulfill its contractual

obligations, and that MDI had not presented the BOP with any confirmation that MDI had the ability to establish agreements with local medical providers that would allow it to continue to meet its financial obligations. Therefore, the BOP determined that MDI could not satisfy this responsibility standard.<sup>18</sup>

*BOP's Actions to Communicate its Determination of MDI to be a Non-responsible Contractor to Other BOP Facilities*

Although the determination of non-responsibility was made in May 2011, the BOP did not send an agency-wide announcement to procurement officials until February 2012. According to the BOP, the decision to communicate the determination and reasons for it to the procurement officials was made after it became clear that payment problems with MDI had escalated over time and that, despite MDI's repeated assurances, MDI was not going to be able to solve its cash flow problems. The announcement advised procurement officials not to award any new contracts or contract modifications to MDI without first consulting with the BOP's Field Acquisition Office.

In our judgment, the BOP took too long to address the issue internally. While we did not find where the BOP awarded any new work to MDI after becoming aware of MDI's non-payment issues, the BOP's failure to share information internally in a more timely manner risked preventing contract administration staff from having adequate information to make cost effective decisions to procure contracted medical services and reduce the risk of doing business with a non-responsible contractor.

*BOP's Failure to Communicate with the Federal Contracting Community*

The BOP also failed to take adequate actions to protect other federal agencies that may have considered or were considering doing business with MDI.

The Federal Awardee Performance and Integrity Information System (FAPIIS) is a database established to track contractor misconduct and performance. The database contains federal contractor criminal, civil, and administrative proceedings in connection with federal awards, suspensions and debarments, administrative agreements issued in lieu of suspension or

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<sup>18</sup> Around the same time, BOP also referred two issues relating to MDI to the OIG. The first referral, which the OIG received on April 27, 2011, related to MDI's failures to pay subcontractors. The second referral, which the OIG received on May 26, 2011, related to issues with certain contract proposals submitted to BOP in late 2010, one of which involved MDI.

debarment, non-responsibility determinations, contracts terminated for fault, defective pricing determinations, and past performance evaluations.

According to Federal Acquisition Regulation Subpart 9.105-2, the contracting officer shall document the determination of non-responsibility in FAPIIS if the determination is based on lack of satisfactory performance record or satisfactory record of integrity and business ethics standards. We found when the BOP considered its decision for MDI's non-responsibility determination, the BOP determined that MDI demonstrated a satisfactory performance record and record of integrity and business ethics. Because the BOP considered MDI's performance and record of integrity and business ethics to be satisfactory, the BOP was not required to report MDI's non-responsibility into FAPIIS.

However, we disagree with the BOP's judgment that MDI had complied with the standards for integrity and business ethics. MDI received payments from the BOP for services performed by its subcontractors and then failed to pay the subcontractors for all of the services. Not paying subcontractors for the services performed was strong evidence that MDI lacked integrity and business ethics. As such, we believe that the BOP inappropriately reported in its determination of non-responsibility that MDI had a satisfactory record of business ethics and integrity. Such actions by the BOP weaken the controls established to provide contractor oversight and transparency within the federal contracting community.

In addition, we believe that the BOP could have also requested that MDI be suspended from government contracts to protect other federal agencies from contracting with MDI. Federal Acquisition Regulation Subpart 9.407-2 provides that the suspending official may upon adequate evidence suspend a contractor for any cause of so serious or compelling a nature that it affects the present responsibility of a government contractor or subcontractor. We believe that the BOP had evidence that confirmed MDI and its officers were not responsible, and that the BOP should have requested MDI's suspension from future federal business until MDI adequately addressed its financial difficulties. Yet the BOP never recommended MDI's suspension, not even when it made its explicit determination in May 2011 that MDI was a non-responsible contractor.<sup>19</sup>

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<sup>19</sup> The OIG has not recommended the suspension and debarment of MDI during this follow-up audit because MDI is no longer operational.

## *BOP's Actions to Minimize the Risk of Future Non-payment of Subcontractors*

To minimize the risk of future non-payment to subcontractors, we assessed whether the BOP has begun incorporating appropriate clauses into medical services contracts regarding prime contractor payment of subcontractors. To do so, we reviewed six contracts awarded between June and August 2012 to four contractors for the comprehensive medical services at FCC Butner. These six contracts replaced the MDI contract. Our review found that the BOP did not incorporate any clauses into the contracts to make prime contractors responsible for non-payments to its subcontractors.

We discussed this issue with FCC Butner officials and they agreed such clauses incorporated into the contract would help the BOP take action when a prime contractor fails to pay its subcontractors. However, the BOP officials stated that no such subcontractor payment clauses exist in the Federal Acquisition Regulation for commercial-item type contracts, such as the contract awarded for FCC Butner. The BOP officials also stated that adding such a clause to the contracts would require requesting that the Federal Acquisition Regulation Council make changes to the Federal Acquisition Regulation.

In our judgment, it would be appropriate for BOP to explore all alternatives available to ensure that subcontractors who appropriately provide services receive payment. This effort should specifically address circumstances where a subcontractor is compelled by either medical ethics or law to provide medical services even when the subcontractor reasonably believes it will not receive payment from a BOP contractor. For example, the BOP could ask the Acquisition Regulation Council to add language to the FAR to address this problem.

### **Conclusion**

The BOP took corrective actions to implement the recommendations we made in our 2007 audit, but did not ensure that those corrective actions were fully implemented. Consequently, the BOP's corrective actions were not fully effective in improving the deficiencies reported in the initial audit. In August 2013, the BOP provided documentation we deemed sufficient to remedy the remainder of the questioned costs identified during the OIG's 2007 audit and we closed the recommendation.<sup>20</sup> However, in this follow-up

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<sup>20</sup> Actual unsupported costs identified in the 2007 audit were \$1,514,981. The BOP provided documentation to support \$219,520 and recovered the remaining \$1,295,461 by withholding payment for invoices owed to MDI.



audit, we identified an additional \$140,819 for hours of services paid to MDI without proper support. We also found that the BOP did not take prompt action to protect the BOP and other federal agencies from MDI's failure to pay its subcontractors. As a result, we make seven recommendations to improve the BOP's contract management practices.

## **Recommendations**

We recommend that the BOP:

1. Ensure that all contracted on-site providers use the time clock to record their time of arrival and departure.
2. Ensure that contract administration staff are adequately trained to monitor contractors to ensure they comply with their subcontracting plans.
3. Obtain clarification about and promulgate any necessary training and guidance with respect to the application of Federal Acquisition Regulation Subpart 9.103 and contractor non-responsibility determinations in the context of exercising a contract option year.
4. Establish procedures to ensure that all BOP procurement personnel are promptly informed of determinations of non-responsibility made at other BOP institutions and are instructed not to award any new work to the non-responsible contractor unless the circumstances causing the non-responsibility have been corrected.
5. Ensure that contract administration staff are adequately trained to emphasize the requirements of reporting determinations of non-responsibility to the Federal Awardee Performance and Integrity Information System in accordance with FAR Subpart 9.105-2.
6. Ensure that contract administration staff are adequately trained to promulgate the federal regulation and BOP policy for recommending contractors for suspension and debarment.
7. Consider incorporating into all medical services contracts appropriate language defining the consequences for the prime contractor if subcontractors who appropriately provide services do not receive payments to which they are entitled.

## STATEMENT ON INTERNAL CONTROLS

As required by the *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 timely prevent or detect: (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 BOP's internal controls was not made for the purpose of providing assurance on its internal control structure as a whole. BOP management is responsible for the establishment and maintenance of internal controls.

Through our audit testing, we did not identify deficiencies in the BOP's internal controls that were significant within the context of the audit objectives and that, based upon the audit work performed, we believe would adversely affect BOP's ability to effectively and efficiently operate, to correctly state financial information, and to ensure compliance with laws and regulations.

Because we are not expressing an opinion on the BOP's internal control structure as a whole, this statement is intended solely for the information and use of the BOP. 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 the *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 management complied with federal laws and regulations, for which noncompliance, in our judgment, could have a material effect on the results of our audit. BOP's management is responsible for ensuring compliance with applicable 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

Our audit included examining, on a test basis, BOP's compliance with the aforementioned regulation that could have a material effect on BOP's operations, through interviews with BOP personnel, and analyzing documents provided by BOP. Other than the issues specifically noted in this report, no other matters came to our attention that caused us to believe that the BOP was not in compliance with the aforementioned regulation.

## APPENDIX I

### OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of our audit were to: (1) determine if the BOP took appropriate actions to implement the recommendations from our 2007 audit, (2) determine if the corrective actions implemented improved the BOP's oversight of the contract and MDI's compliance with the terms and conditions of the contract, and (3) evaluate MDI's practices for managing billings from and payments to its subcontractors.

We conducted our performance audit in accordance with Government Auditing Standards and included such tests as were considered necessary to accomplish our objectives. Our audit concentrated on the inception of the contract on April 18, 2007, through December 31, 2012.

To determine the status of the BOP's implementation of the 2007 audit recommendations, we performed audit work at FCC Butner, where we interviewed key officials including the BOP Medical Director, the Supervisor Contracting Specialist, the Business Administrator, finance staff, a contract representative that reviewed medical claims for FCC Butner, and the Contracting Officer's Technical Representatives. We reviewed supporting documentation for the corrective actions implemented by the BOP. We also verified the corrective actions to the BOP's contract administration practices.

To determine if the corrective actions implemented improved the BOP's oversight of the contract and MDI's compliance with the terms and conditions of the contract, we selected a judgmental sample of billings from MDI and performed analyses of billings from and payment to MDI. This non-statistical sample design does not allow for projection of the test results to the universe from which the sample was selected. We obtained an understanding of the contract requirements and contractor's controls and processes. However, we did not test the reliability of the financial management system as a whole. We determined that the contractor's records were sufficiently reliable to meet the objectives of this audit.

To evaluate MDI's practices for managing billings from and payments to its subcontractors, we interviewed contract administration staff, Field Acquisition Office staff, personnel from the BOP's Headquarters, officials from MDI, and personnel from the MDI's primary subcontractor, DUHS. We also reviewed documentation related to MDI's billing and payment practices.

## APPENDIX II

# THE BUREAU OF PRISON'S RESPONSE TO THE DRAFT REPORT



U.S. Department of Justice

Federal Bureau of Prisons

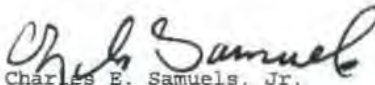
Office of the Director

Washington, DC 20534

September 23, 2013

MEMORANDUM FOR RAYMOND J. BEAUDET  
ASSISTANT INSPECTOR GENERAL  
FOR AUDIT  
OFFICE OF THE INSPECTOR GENERAL

FROM:

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

SUBJECT:

Response to the Office of Inspector General's (OIG)  
DRAFT Report: Follow-up Audit of Medical  
Development International's Performance Under the  
Federal Correctional Complex Medical Services  
Contract, Butner, North Carolina

The Bureau of Prisons (BOP) appreciates the opportunity to respond to the open recommendations from OIG's draft report entitled Follow-up Audit of Medical Development International's Performance Under the Federal Correctional Complex Medical Services Contract, Butner, North Carolina.

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

**Recommendation 1:** Ensure that all contracted on-site providers use the time clock to record their time of arrival and departure.

**BOP's Response:** The Bureau agrees with this recommendation. As of Monday, July 22, 2013, all FCC Butner contract staff were issued a

key fob which is utilized in conjunction with the current Facility Command System. This system automatically logs the contract staff in and out of the control center's sallyport. The Health Services Assistants generate bi-weekly reports to be placed with each contract staff time sheet. When a discrepancy is noted between reports generated from the Facility Command System and the contract staff's time sheet, the Health Services Assistants contact the contractor for correction. Attachment #1 contains various reports printed from the Facility Command System. Having completed the required action, we request this recommendation be closed.

**Recommendation 2:** Ensure that contract administration staff are adequately trained to monitor contractors to ensure they comply with their subcontracting plans.

**BOP's Response:** The Bureau agrees with this recommendation. A training session will be provided to the FCC Butner contracting staff regarding the FAR requirements for assessing, documenting, and if necessary, remedying a contractor's efforts with regard to subcontracting achievements. This training session will be provided by staff from the Procurement Executive's Office and the Field Acquisition Office and will be completed by November 1, 2013.

**Recommendation 3:** Obtain clarification about and promulgate any necessary training and guidance with respect to the application of Federal Acquisition Regulation Subpart 9.103 and contractor non-responsibility determinations in the context of exercising a contract option year.

**BOP's Response:** The Bureau agrees with this recommendation. While FAR 17.207(c) does not specifically require a determination of responsibility prior to exercising an option, we agree that it is a prudent exercise of discretion to initiate such a review in addition to the FAR requirements where known problems with an incumbent contractor exist. The Bureau will address this topic with contracting staff at a nationwide training session to be held in FY-2014. We anticipate this action will be completed by July 1, 2014.

**Recommendation 4:** Establish procedures to ensure that all BOP procurement personnel are promptly informed of determinations of non-responsibility made at other BOP institutions and are instructed not to award any new work to the non-responsible contractor unless the circumstances causing the non-responsibility have been corrected.

**BOP's Response:** The Bureau agrees with this recommendation, and will establish procedures to improve communication regarding non-responsible contractors and to set forth guidance when contracting staff must consider award to contractors who have previously been found to be non-responsible. These procedures will be finalized by February 1, 2014.

**Recommendation 5:** Ensure that contract administration staff are adequately trained to emphasize the requirements of reporting determinations of non-responsibility to the Federal Awardee Performance and Integrity Information System in accordance with FAR Subpart 9.105-2.

**BOP's Response:** The Bureau agrees with this recommendation. The Bureau will address this topic with contracting staff at a nationwide training session to be held in FY-2014. We anticipate this action will be completed by July 1, 2014.

**Recommendation 6:** Ensure that contract administration staff are adequately trained to promulgate the federal regulation and BOP policy for recommending contractors for suspension and debarment.

**BOP's Response:** The Bureau agrees with this recommendation. The Bureau will address this topic with contracting staff at a nationwide training session to be held in FY-2014. We anticipate this action will be completed by July 1, 2014.

**Recommendation 7:** Consider incorporating into all medical services contracts appropriate language defining the consequences for the prime contractor if subcontractors who appropriately provide services do not receive payments to which they are entitled.

**BOP's Response:** The Bureau agrees to implement this recommendation. Strategies to enforce a prime contractor's payment to subcontractors will be outlined and submitted for a formal legal review by the Bureau's Office of General Counsel. Once legally-viable strategies have been identified, an appropriate course of action will be defined and implemented. We anticipate corrective action will be completed by April 1, 2014.

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

## APPENDIX III

# MEDICAL DEVELOPMENT INTERNATIONAL'S RESPONSE TO THE DRAFT REPORT



Jeffrey I. Snyder  
Tel: 305-375-6148  
Fax: 305-351-2241  
jsnyder@bilzin.com

October 30, 2013

**Via U.S. Mail and Email: Larry E Napp@usdoj.gov**

U.S. Department of Justice  
Office of the Inspector General  
Atlanta Regional Audit Office  
75 Spring Street, Suite 1130  
Atlanta, Georgia 30303  
ATTN: Larry Napp, Acting Regional Audit Manager

**Re: Follow-up Audit of Medical Development International's Performance Under  
the FCC Butner Medical Services Contract**

Dear Mr. Napp:

My firm represents Ronald Winters in his capacity as Receiver for Medical Development International Ltd., Inc. and its affiliates ("MDI") pursuant to the order of the Delaware Court of Chancery. Enclosed, for your reference, is a copy of the order appointing Mr. Winters as Receiver for MDI.

The purpose of this letter is to respond to the draft report on the Follow-up Audit of MDI's Performance Under the Federal Correctional Complex Butner Medical Services Contract, Butner, North Carolina (the "Draft Report"), which was provided to the Receiver on September 26, 2013 and to provide the result of the sensitivity review requested by the Office of the Inspector General ("OIG.")

Mr. Winters was appointed as Receiver for MDI as of September 10, 2012. As the Draft Report relates to an initial 5-year contract and successor contract that ended on July 17, 2012, substantially all of the events described in the Draft Report occurred prior to the commencement of the receivership for MDI and the Receiver's appointment. Accordingly, because the Receiver lacks personal knowledge of events that may have occurred prior to his appointment, the Receiver is not in a position to evaluate the accuracy or substance of the Draft Report with respect to such events. The Receiver's failure to dispute the accuracy of the depiction of events set forth in the Draft Report does not signify agreement by the Receiver or by MDI with the contents of the Report.

The Draft Report does, however, address certain events that occurred during the MDI receivership, to which the Receiver provides the following clarifications:

BILZIN SUMBERG BAENA PRICE & AXELROD LLP

1450 Brickell Avenue, 23rd Floor, Miami, FL 33131-3456 Tel: 305.374.7580 Fax: 305.374.7593



1. In two consecutive sentences on page 13, the Draft Report indicates that certain information was provided to OIG by "MDI's legal counsel." To the extent that this or any other portion of the Draft Report refers to information provided to OIG by this law firm, please be advised that we are not counsel to MDI, but rather are counsel to Mr. Winters in his capacity as Receiver for MDI.
2. In at least three instances in the Draft Report (pp. ii-iii and twice on p. 13,) the Draft Report indicates that MDI agreed to pay DUHS \$13,916,622. In fact, the Receiver settled MDI's billing dispute with DUHS by, among other things, agreeing to entry of a judgment in favor of DUHS in the amount of \$13,916,622. Although the Receiver, on behalf of MDI, consented to entry of judgment in the foregoing amount, MDI did not agree to pay DUHS and, at the time that the settlement was entered into, the Receiver advised DUHS that it was unlikely that there would be sufficient funds available for a distribution from the receivership to unsecured creditors of MDI, including DUHS.
3. At p. 13, the Draft Report indicates that, "in September 2012, a judge ruled in favor of Wells Fargo and appointed a Receiver to perform any and all acts necessary for the proper and lawful conduct of MDI's affairs." Although it is correct that a Vice-Chancellor of the Delaware Chancery Court did enter judgment in favor of Wells Fargo and appointed the Receiver in accordance with the enclosed order, this occurred as part of a settlement agreement between MDI and Wells Fargo that included among its provisions MDI's consent to the appointment of the Receiver.

Finally, as set forth in the enclosed order, the Receiver has been appointed to wind down and liquidate MDI. As MDI no longer has ongoing business operations, no information contained in the Draft Report is sensitive such that its public dissemination would "impair the operations" of MDI. Accordingly, enclosed please find the "Record of Sensitivity Review" reflecting this conclusion.

Please do not hesitate to contact me should you have any questions or concerns regarding this response.

Very truly yours,



Jeffrey I. Snyder

JIS:la  
Enclosures

cc: Sean M. Relay, OIG ([Sean.M.Relay@usdoj.gov](mailto:Sean.M.Relay@usdoj.gov))  
Barbara R. Williams, OIG ([Barbara.R.Williams@usdoj.gov](mailto:Barbara.R.Williams@usdoj.gov))  
Gerardo Cartagena, OIG ([Gerardo.Cartagena@usdoj.gov](mailto:Gerardo.Cartagena@usdoj.gov)) Ronald  
Winters, Court-Appointed Receiver ([rwinters@alvarezandmarsal.com](mailto:rwinters@alvarezandmarsal.com))  
Scott L. Baena, Esq. ([sbaena@bilzin.com](mailto:sbaena@bilzin.com))

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## APPENDIX IV

# DUKE UNIVERSITY HEALTH SYSTEM'S RESPONSE TO THE DRAFT REPORT

**Response of Duke University Health System, Inc. to Draft Audit Report of the United States  
Department of Justice, Office of the Inspector General - Audit Division  
Entitled "Follow-Up Audit of Medical Development International's Performance Under the  
Federal Correctional Complex Butner Medical Services Contract, Butner, North Carolina"**

Thank you for your communication of September 26, 2013 transmitting the draft audit report of the Office of the Inspector General relating to the administration of medical contracts awarded by the Federal Bureau of Prisons ("BOP") to Medical Development International ("MDI") at the Federal Correctional Complex in Butner, North Carolina. Duke University Health System, Inc. ("DUHS") appreciates the opportunity to review and comment on the draft report.

DUHS's principal interest relates to the section of the draft report entitled "MDI's Practices for Managing Billings and Payments to its Subcontractors and the BOP's Actions to Address Deficiencies in MDI's Practices." Circumstances described in that section of the draft report relating to the BOP's actions and failures to act with regard to MDI speak for themselves, were not previously known to DUHS, and require no further comment from DUHS in the context of this audit.

DUHS does feel that certain technical descriptions of DUHS's position as a judgment creditor of MDI should be clarified. First, at the top of page iii in the Executive Summary it is stated that DUHS and MDI settled their dispute (which had taken the form of arbitration proceedings instituted by DUHS) "with MDI agreeing to pay DUHS \$13,916,622." It is more accurate to state that the settlement resulted in "MDI confessing liability to DUHS" in the noted amount. Similarly, in the first full paragraph on page 13, the last sentence would more accurately describe the settlement if it is revised by replacing the phrase "MDI would pay DUHS" with the phrase "MDI confessed liability to DUHS in the amount of...." Finally, footnote 2 at the bottom of page iii of the Executive Summary states that DUHS "is concerned that it may not receive any monies" from the settlement with MDI. It would be more accurate to state that DUHS "does not expect to" receive any proceeds from the settlement, as the Receiver appointed for the purpose of liquidating MDI's assets has indicated to DUHS that recovery of any money by a creditor in DUHS's position is extremely remote.

Thank you once again for the opportunity to comment. Please contact Mark Gustafson, Health System Counsel, at (919) 684-3955 if you have questions about these comments or require additional information.

Submitted by: Mark Gustafson  
Health System Counsel  
Duke University Health System, Inc.

Date: October 3, 2013

## APPENDIX V

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

The OIG provided a draft of this audit report to the Federal Bureau of Prisons (BOP), the court appointed Receiver for Medical Development International (MDI), and Duke University Health Systems (DUHS). The BOP's response is incorporated in Appendix II. MDI's response is incorporated in Appendix III. DUHS' response is incorporated in Appendix IV. Based on comments provided by the BOP, MDI, and DUHS, we made minor technical edits where appropriate in the body of this final report.<sup>21</sup> The following provides the OIG analysis of the respective responses and summary of BOP actions necessary to close the report.

#### Recommendation Number:

1. **Closed.** We recommended that the BOP ensure that all contracted on-site providers use the time clock to record their time of arrival and departure. In its response to the draft report, the BOP concurred with this recommendation and explained that it had provided contract staff with wireless "key fob" devices that electronically track arrival and departure times from the facility. Along with its response, the BOP provided documentation showing the tracking system is operational. Therefore, this recommendation is closed.
2. **Resolved.** We recommended that the BOP ensure that contract administration staff are adequately trained to monitor contractors to ensure they comply with their subcontracting plans. The BOP concurred with this recommendation and stated that by November 1, 2013, it will provide training to FCC Butner contract administration staff on the Federal Acquisition Regulation (FAR) requirements for overseeing contractors to ensure they comply with their subcontracting plans.

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<sup>21</sup> In its response to the Draft Report, DUHS indicated that it would be more accurate for the OIG to state in certain sections of the report that the settlement resulted in "MDI confessing liability to DUHS" in the noted amount. While we do not necessarily question the accuracy of DUHS' response on this point, we did not receive evidence during the audit that liability was indeed confessed by MDI. We only received evidence that an agreed upon judgment was entered in the amount noted in the report. Accordingly, this DUHS requested edit was not made to this final report.

This recommendation can be closed when we receive documentation showing the BOP provided the required training. The documentation for the training session should include the necessary Federal Acquisition Regulation requirements to ensure contracting staff are adequately trained to assess, document, and if necessary, remedy a contractor's efforts with regard to subcontracting achievements.

3. **Resolved.** We recommended that the BOP obtain clarification about and promulgate any necessary training and guidance with respect to the application of Federal Acquisition Regulation Subpart 9.103 and contractor non-responsibility determinations in the context of exercising a contract option year. The BOP concurred with this recommendation and stated that while the FAR 17.207(c) does not specifically require a determination of responsibility prior to exercising an option, it would be prudent for the BOP to do so when it is aware of problems with an incumbent contractor. The BOP stated that it would address this topic with contracting staff at a nationwide training event in fiscal year 2014 and complete corrective actions by July 1, 2014.

This recommendation can be closed when we receive documentation showing the BOP completed the corrective action by addressing the application of FAR Subpart 9.103 for contractor non-responsibility determination in the context of exercising a contract option year.

4. **Resolved.** We recommended that the BOP establish procedures to ensure that all BOP procurement personnel are promptly informed of determinations of non-responsibility made at other BOP institutions and are instructed not to award any new work to the non-responsibility contractor unless the circumstances causing the non-responsibility have been corrected. The BOP concurred with this recommendation and stated that it would establish procedures to improve communication regarding non-responsible contractors and to set forth guidance for awarding contracts to non-responsible contractors. The BOP plans to finalize these procedures by February 1, 2014.

This recommendation can be closed when we receive documentation showing the BOP has implemented procedures to improve communication about non-responsible contractors and guidance that addresses making awards to non-responsible contractors.

5. **Resolved.** We recommended that the BOP ensure contract staff are adequately trained to emphasize the requirements of reporting determinations of non-responsibility to the Federal Awardee Performance and Integrity Information System in accordance with

Federal Acquisition Regulation, Subpart 9.105-2. The BOP concurred with this recommendation and stated that it would address this topic with contracting staff at a nationwide training event in fiscal year 2014 and complete corrective actions by July 1, 2014.

This recommendation can be closed when we receive documentation showing the BOP provided nationwide training that addressed the requirements for reporting determinations of non-responsibility to the Federal Awardee Performance and Integrity Information System in accordance with the FAR, Subpart 9.105-2.

6. **Resolved.** We recommended that the BOP ensure contract administration staff are adequately trained to promulgate the federal regulation and BOP policy for recommending contractors for suspension and debarment. The BOP concurred with this recommendation and stated that it would address this topic with contracting staff at a nationwide training event in fiscal year 2014 and complete corrective actions by July 1, 2014.

This recommendation can be closed when we receive documentation showing the BOP provided the required training that addressed the federal regulation and BOP policy for recommending contractors for suspension and debarment.

7. **Resolved.** We recommended that the BOP consider incorporating into all medical services contracts appropriate language defining the consequences for the prime contractor if subcontractors who appropriately provide services do not receive payments to which they are entitled. The BOP concurred with this recommendation and stated that it would coordinate with its Office of General Counsel to identify legally-viable strategies to enforce prime contractors' payments to subcontractors and implement the appropriate corrective actions by April 1, 2014.

This recommendation can be closed when we receive documentation showing the BOP has considered implementing corrective actions that address legally-viable strategies to enforce prime contractor payments to subcontractors.