



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



**Audit of the United States  
Marshals Service Contract  
No. DJJODT7C0002 with  
CoreCivic, Inc., to Operate the  
Leavenworth Detention Center  
Leavenworth, Kansas**

**AUDIT OF THE UNITED STATES MARSHALS SERVICE  
CONTRACT NO. DJJODT7C0002 WITH  
CORECIVIC, INC., TO OPERATE THE  
LEAVENWORTH DETENTION CENTER  
LEAVENWORTH, KANSAS**

**EXECUTIVE SUMMARY**

In January 2007, the Office of the Federal Detention Trustee (OFDT) awarded, on behalf of the U.S. Marshals Service (USMS), contract no. DJJODT7C0002 to Corrections Corporation of America, now known as CoreCivic, Inc. (CoreCivic), to provide comprehensive detention services at the Leavenworth Detention Center (LDC) in Leavenworth, Kansas.<sup>1</sup> This contract is a sole-source acquisition that includes a 5-year base period with three 5-year option periods and has a total estimated value of \$697 million. Actual contract costs through January 2017 were \$252 million.

The Department of Justice Office of the Inspector General (OIG) conducted this audit to assess USMS's and CoreCivic's administration of, and compliance with, contract terms and conditions in the areas of: (1) contract management, oversight, and monitoring; (2) staffing requirements; and (3) billings and payments. The audit time frame focused on, but was not limited to, October 2010 through May 2015.

As an initial matter, we determined that the OFDT's justification for issuing a sole source contract did not include all of the language and supporting documentation required by the Federal Acquisition Regulation (FAR).<sup>2</sup> Additionally, the USMS was unable to provide evidence, as required by the FAR, that the OFDT obtained competition to the maximum extent practicable and ensured the best overall value to the government. Specifically, the OFDT restricted contract performance to the city of Leavenworth, thus potentially limiting the pool of offerors, but it could not provide the required evidence that it had a sufficient justification for this restriction.

We also concluded that the USMS failed to provide sufficient oversight of the LDC and that this failure resulted in several significant issues with LDC operations going unaddressed for extended periods of time. In our judgment, the USMS was inherently reactive: instead of actively monitoring LDC operations to identify

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<sup>1</sup> CoreCivic was previously named Corrections Corporation of America, or CCA. CoreCivic announced its renaming decision in October 2016.

<sup>2</sup> Prior to its merger with the USMS in October 2012, the OFDT was a separate Department of Justice component responsible for, among other things, acquiring housing for federal detainees in USMS custody. Therefore, the OFDT solicited and awarded the LDC contract on behalf of the USMS. Due to the merger, OIG recommendations pertaining to past OFDT processes are directed to the USMS.

discrepancies and thwart potential incidents, the USMS often became aware of incidents after they occurred. Of particular concern, the USMS Contracting Officer's Representative (COR), who was responsible for monitoring CoreCivic's performance at the LDC on a day-to-day basis, was located offsite, had no previous contract oversight experience, and received no formal guidance and negligible detention-related training. The COR maintained an infrequent onsite presence at the LDC, did not document the inspection activities performed, and did not develop an inspection program or monitoring procedures. Furthermore, in our judgment, the USMS's lack of effective continuous monitoring at the LDC presents risks that may extend throughout all its other contract detention facilities. Upon learning of these potentially systemic weaknesses in the USMS's contract oversight, the OIG issued a Management Advisory Memorandum to the USMS so it could take immediate action to address them. In response, USMS officials stated that their goal was to improve contract monitoring by establishing an onsite detention contract monitoring program at all private detention facilities. This program would be staffed by full-time professional Contract Administrators under the supervision of the USMS's Prisoner Operations Division. The OIG Memorandum and the USMS's responses to it are detailed in the body of this report and attached as appendices.

Insufficient oversight by the USMS allowed several problems at the LDC to persist over a significant period of time. Among the issues affecting the safety and security of the LDC that we identified was its periodic understaffing. We found that from October 2012 through September 2014, the LDC's staffing was generally consistent with the facility-wide staffing plan thresholds. However, from October 2014 through September 2015, the LDC's staffing levels deteriorated and the facility-wide average vacancy rate more than doubled to 11 percent. This was primarily driven by correctional officer vacancies, which reached as high as 23 percent. These correctional officer vacancies led to several problems in 2015, including the LDC's long-term use of mandatory overtime, which LDC personnel said led to lower morale, security concerns, and fewer correctional officers available to escort medical staff and detainees to and from the health services unit.

LDC's vacancies led to the closure of security posts and reassignment of personnel, sometimes to the detriment of detainee services. Many of the closures occurred at posts that had been designated by CoreCivic as "mandatory," meaning they were required to be filled on each shift in order to run the facility in a safe and secure manner. The problem of post closures was especially acute from February 1 through March 31, 2015. During this period, the LDC closed at least one security post in all 118 shifts and closed an average of 7 posts per shift. LDC's vacancies also led to Unit Management personnel being assigned to security posts instead of performing their normal job duties, which included assisting detainees with casework and transitional services, developing individual detainee program plans, and delivering services and programs to detainees, among other duties.

Rather than take steps to address understaffing, both USMS and CoreCivic took actions that exacerbated the problem. For example, CoreCivic did not utilize all available staffing options to remedy the understaffing problem, such as by requesting temporary staff from other CoreCivic facilities. In fact, during a period

when the LDC was understaffed, CoreCivic temporarily transferred LDC personnel to other CoreCivic facilities, which in one instance led to a significant reduction in the size of the LDC's already shorthanded Special Operations Response Team, weakening its ability to operate effectively and fulfill its mission in the event of a significant incident. We also found that the USMS allowed CoreCivic to contract with a local government to house non-federal detainees at the LDC – at a rate below that being paid by the USMS – without considering the staffing implications of the arrangement.

We also learned during our audit that, unbeknownst to the USMS, LDC officials had uninstalled beds prior to an American Correctional Association (ACA) inspection in 2011 in order to conceal from ACA that the LDC was triple bunking detainees. Following the OIG's discovery of this issue, CoreCivic conducted an internal investigation, which revealed that similar conduct may have occurred prior to the 2005 and 2008 ACA audits and that a former CoreCivic divisional Managing Director was aware of these efforts. CoreCivic told the OIG that in response to this finding, its Ethics & Compliance office instituted an ethics liaison program and completed training at LDC on employees' duty to report misconduct, options for reporting misconduct, and CoreCivic's non-retaliation policy for employees who report misconduct. We were informed by ACA that it had decided not to take any action against CoreCivic, in part because the senior officials involved were no longer with CoreCivic. Our audit further determined that the USMS has issued conflicting guidance on the allowability of triple bunking by its contractors, and that it should clearly specify in its new and existing contracts the rules and procedures governing this practice.

Additionally, we found that the USMS did not detect several weaknesses in CoreCivic's contractually-required quality control program at the LDC, which our review determined had significant shortcomings. For example, the LDC Quality Assurance Manager received minimal instruction and guidance on how to conduct facility reviews; there was insufficient evidence proving that the LDC inspection review steps were conducted; the LDC's plans of action did not properly address deficiencies and did not provide viable long term correction; and the LDC had insufficient evidence proving that plans of action were implemented.

Despite the LDC's staffing deficiencies and the other instances of non-compliance with contract requirements, we determined that the USMS had not used available contractual mechanisms to hold CoreCivic accountable. According to the contract and USMS policy, the USMS may issue contract price reductions for contractors' significant or repeat deficiencies, failure to fill essential staff positions, and having an unacceptable number of vacancies. Yet we found that, from March 2006 through January 2017, the USMS had not proposed or issued any contract price reductions for any of its 15 contract detention facilities, including the LDC. We further found that the COR for the LDC contract had never seen the USMS's price reduction guidance, and USMS officials were unable to provide us with evidence that such guidance was sent to any of the current USMS District CORs responsible for the other 14 USMS contract detention facilities. Additionally, the USMS was not entering contractor past performance evaluations into the

government-wide electronic evaluation reporting system, as required by the FAR, or conducting Performance Evaluation Meetings as required by the contract.

Finally, the OIG determined that one of CoreCivic's employee fringe benefits called the "sick account" contained excess funds that could be interpreted as "cash equivalents" that should have been paid to employees on a regular basis. Because CoreCivic's benefits administrator withheld these funds for months or years before disbursement to employees, it is questionable whether the sick account is compliant with applicable labor standards for federal service contracts. We believe the USMS should work with the Department of Labor, and as necessary CoreCivic, to address the issue. CoreCivic also improperly requested – and the USMS improperly paid – \$103,271 in salaries and benefits for commissary positions not funded through the LDC contract. These unallowable payments have a compounding effect over time because they are incorporated into each monthly invoice until the contract ends. In March 2017, the USMS issued a contract modification to CoreCivic to recover the unallowable price adjustments and to modify the Monthly Operating Price to reflect the proper monthly price.

This report makes 24 recommendations to assist the USMS in improving contractor operations and enhancing the USMS's monitoring and oversight at the LDC.

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LEAVENWORTH DETENTION CENTER  
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**INTRODUCTION**

The Department of Justice (Department) Office of the Inspector General (OIG) audited the U.S. Marshals Service (USMS) Contract No. DJJODT7C0002 awarded to Corrections Corporation of America, which is now known as CoreCivic, Inc. (CoreCivic), to provide comprehensive detention services at the Leavenworth Detention Center (LDC) in Leavenworth, Kansas.<sup>1</sup> This sole-source acquisition, effective January 2007, has a 5-year base period and three 5-year option periods. If the USMS exercised all three options, the contract would be effective through 2026 and have an estimated cost of nearly \$697 million. As of January 2017, costs incurred were approximately \$252 million. Table 1 contains the LDC contract's estimated and actual costs.

**Table 1  
LDC Contract Costs  
Contract No. DJJODT7C0002**

CONTRACT PERIOD	FROM	TO	ESTIMATED COST	ACTUAL COST
Base Period	1/01/2007	12/31/2011	\$ 143,965,195	\$ 115,536,848
Option Period 1*	1/01/2012	12/31/2016	552,617,714	134,334,026
Option Period 2	1/01/2017	12/31/2021		2,190,840
Option Period 3	1/01/2022	12/31/2026		N/A
Total			<b>\$696,582,909<sup>2</sup></b>	<b>\$252,061,714</b>
*Includes actual cost data through January 2017				

Source: USMS

**Background**

USMS's core mission is to safeguard the federal judicial process by protecting federal judges, prosecutors, and court personnel; providing physical security in courthouses; protecting witnesses; transporting and producing prisoners for trial; executing court orders and arrest warrants; apprehending fugitives; and managing and disposing of seized property. In addition to its core mission, the USMS

<sup>1</sup> The contract number is also referred to as ODT-7-C-0002. Throughout the report this contract is referred to as the "LDC contract."

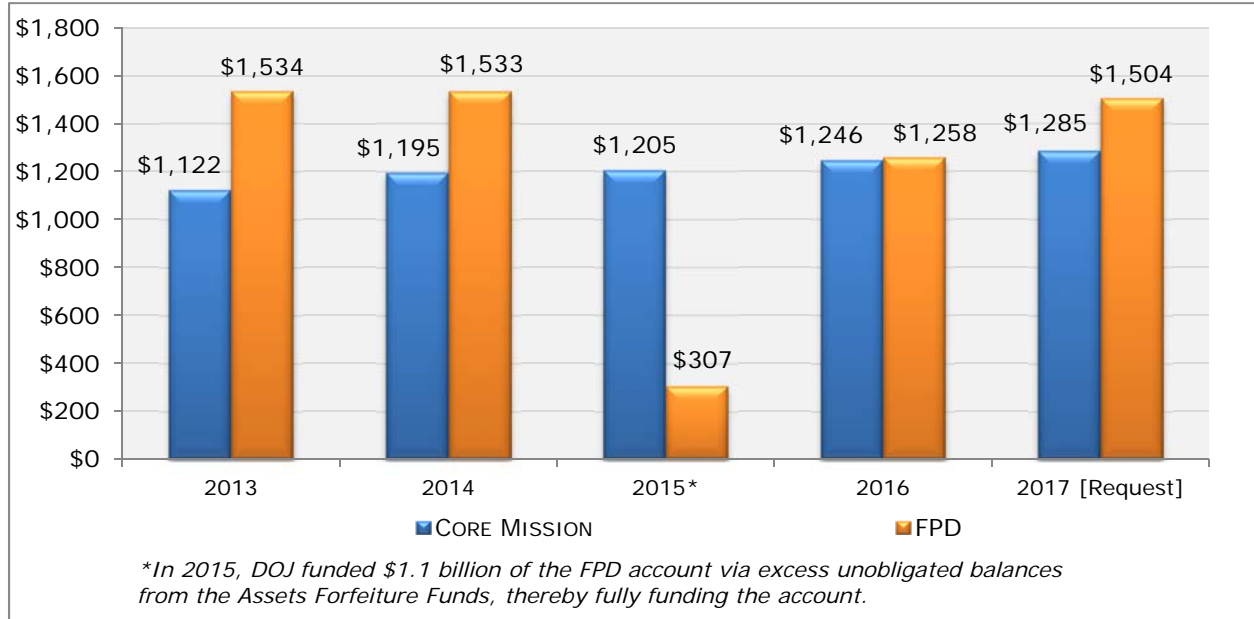
<sup>2</sup> Table 1's estimated costs for the Base Period and Total differ from cost estimates that the Office of the Federal Detention Trustee was required to report to the publicly accessible Federal Procurement Data System (FPDS), which were overstated in FPDS due to a calculation error.

manages the housing, transportation, and care of federal detainees in 15 privately managed detention facilities, including the LDC.

The Department's Office of the Federal Detention Trustee (OFDT) awarded the LDC contract to CoreCivic in early 2007. At the time, the OFDT was responsible for acquiring the housing and care of federal detainees in USMS custody, and managing and monitoring federal detention programs and services. OFDT was established in September 2001 in response to growing concerns about federal detention and to centralize the management of detention activities within the Department. OFDT acquired detention bed space through several different methods including: (1) federal detention facilities owned and operated by the federal government, such as Federal Bureau of Prisons (BOP) institutions; (2) intergovernmental agreements (IGA) with state and local jurisdictions with available bed space; and (3) privately managed detention facilities. From 1994 through 2011, the USMS's average daily detention population grew from 18,282 to 61,719. The increased demand for bed space, coupled with fewer available federal and IGA beds, led to the OFDT's increasing reliance on privately managed detention facilities.

In February 2012, the Department proposed the merger of the OFDT into the USMS, stating that it would align the accountability of resources with the responsibility of operations, eliminate unnecessary bureaucratic layers to the financial process, achieve cost savings, and allow OFDT personnel to continue their mission under a single command and control structure within the USMS hierarchy. The merger was completed in October 2012, effectively transferring the OFDT's detention resources into the USMS's Federal Prisoner Detention (FPD) appropriation and shifting OFDT's detention services and oversight responsibilities to the USMS's Prisoner Operations Division (POD). The FPD appropriation was a significant addition to the USMS's overall budget and in fiscal year (FY) 2017 the USMS sought more funds for its FPD account than for its core mission, as shown in Figure 1.

**Figure 1**  
**USMS Budget**  
**FYs 2013 through 2017**  
**(In millions)**



Source: USMS Budget Records

*USMS Contract Administration, Monitoring, and Oversight*

USMS’s administration, monitoring, and oversight of detention programs and operations are shared by the POD and the USMS District Office responsible for each of the 15 privately managed detention facilities.<sup>3</sup> POD’s mission is to preserve the integrity of the federal judicial process by establishing national detention policy, national strategies, and programs that provide for processing, housing, transportation, and care of federal detainees in a safe, secure, and cost effective manner. In FY 2015, POD managed an average daily detention population of 51,862 detainees of which over 10,000 were housed in the 15 privately managed detention facilities.<sup>4</sup> USMS District Offices are organized around the operational programs of judicial security, prisoner services, fugitive investigations, execution of court orders, asset seizure and forfeiture, and administrative functions. They are also responsible for ensuring that all non-federal detention facilities in their jurisdictions are inspected annually and that contractual agreements are being met.

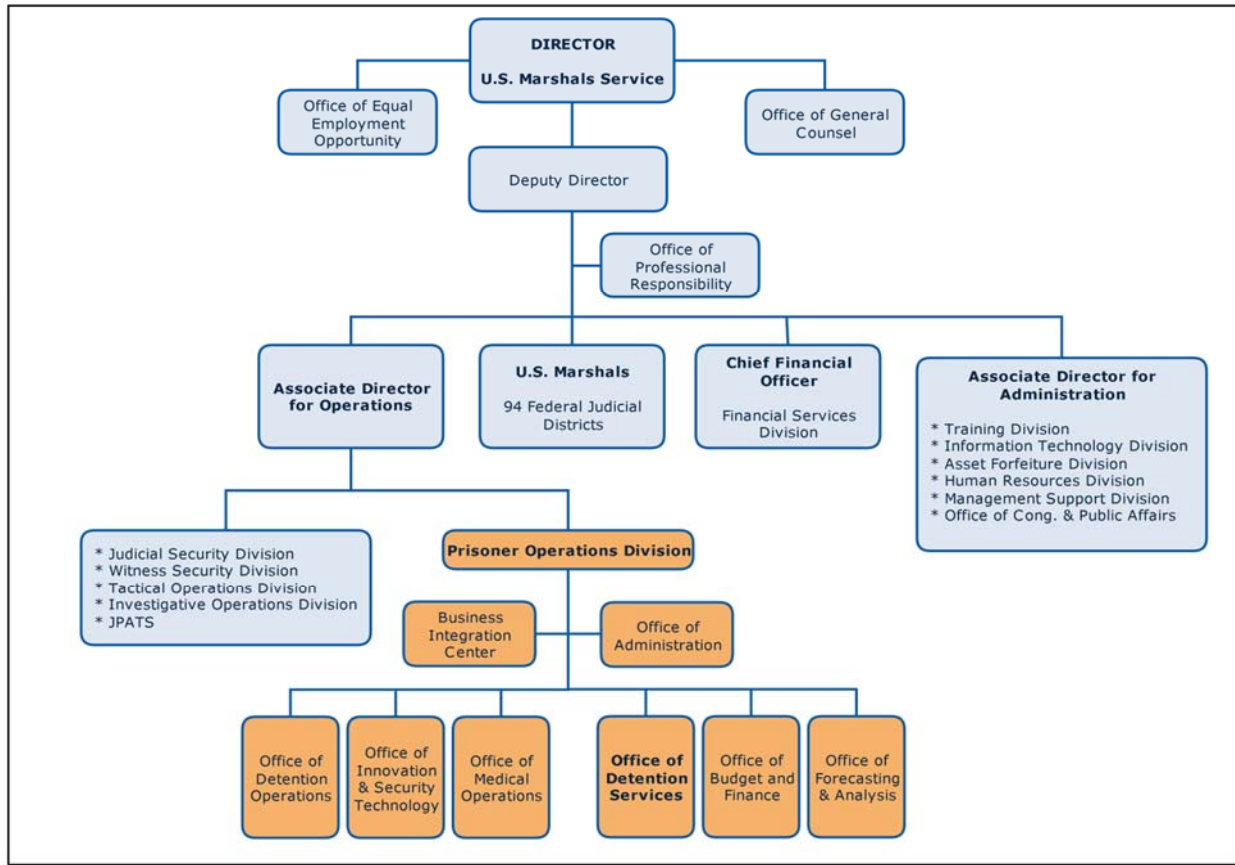
<sup>3</sup> See Appendix 1 for a list of the USMS’s 15 privately managed detention facilities.

<sup>4</sup> Of the 51,862 detainees, 31,603 were in state and local facilities (operated under USMS’s approximately 1,800 intergovernmental agreements); 10,248 were in private contract facilities, 9,774 were in BOP facilities, and 237 were in non-paid medical facilities.

The LDC contract is administered by a Contracting Officer located in Arlington, Virginia, who is responsible for directing or negotiating any changes in contract terms, and whose authorities include increasing or decreasing the contract amount, modifying or extending the period of performance, authorizing payment under the contract, and taking formal action for unsatisfactory contractor performance. Two Contracting Officer's Representatives (COR) were designated to assist the Contracting Officer with technical monitoring and administration. One COR is a Detention Facilities Program Manager within POD, located in Arlington, Virginia. This individual oversees contractual compliance, contractor quality of work, and ensures that a Quality Assurance Review (QAR) is conducted at least annually. The second COR is a Contract Oversight Specialist located in the USMS District of Kansas and is responsible for the continuous, day-to-day monitoring of the contractor.

During this audit we primarily interacted with POD's Office of Detention Services, which is responsible for administering POD's acquisition process; monitoring compliance with federal detention standards; and evaluating detention facilities to ensure they operate in a safe, secure, and humane fashion.

**Figure 2**  
**USMS Organizational Chart<sup>5</sup>**



Source: USMS

*CoreCivic, Inc.*

CoreCivic is a Maryland corporation that was founded in 1983 and headquartered in Nashville, Tennessee.<sup>6</sup> CoreCivic specializes in owning, operating, and managing prisons and other correctional facilities and providing residential, community re-entry and prisoner transportation services for governmental agencies. As of December 2015, CoreCivic had the capacity to house approximately 88,500 offenders and detainees in 77 facilities. According to CoreCivic, it is the fifth largest corrections system in the nation, behind only the federal government and three states, and in 2015 earned approximately \$1.8 billion in revenue and \$222 million in net income. According to the Federal Procurement Data System, CoreCivic was the Department's No. 1 contractor in terms of dollars obligated for 7 of the last 10 years, spanning FYs 2006 through 2015.

<sup>5</sup> This organizational chart does not provide a comprehensive view of all USMS subcomponents.

<sup>6</sup> CoreCivic was previously named Corrections Corporation of America, or CCA. CoreCivic announced its renaming in October 2016.

CoreCivic derives a significant amount of its revenues from the federal government. According to CoreCivic financial statements, contracts with the USMS alone accounted for approximately \$283 million, or 16 percent, of CoreCivic's revenue in 2015, while overall payments by federal correctional and detention authorities – the USMS, BOP, and the U.S. Immigration and Customs Enforcement – accounted for \$912 million, or 51 percent, of CoreCivic's total revenue in 2015.

### *Leavenworth Detention Center*

CoreCivic owns and operates the LDC, which was opened in 1992 and declared by CoreCivic to be the first maximum-security facility managed by a corrections company under direct contract with a federal agency. LDC is a maximum security facility with a 1,120 bed capacity that houses both male and female detainees. Detainees stay at the facility on average for less than 1 year and the detainee population primarily consists of individuals charged with federal offenses that are detained while awaiting a hearing, trial, or sentencing. LDC is led by a Warden and Assistant Warden and operated by approximately 270 employees. LDC's mission is to maintain and manage the facility in accordance with applicable federal and state laws, court orders, and American Correctional Association (ACA) standards.<sup>7</sup>

USMS's current contract is its third award to CoreCivic to operate the LDC. The first two contracts were awarded in 1990 and 1998; the latter had a 5-year base term, followed by the USMS's exercise of several extensions including a bridge contract in 2005 to continue services for 24 months while the current contract was negotiated.<sup>8</sup> LDC's current contract was awarded in January 2007 and is a sole source acquisition that allows Department components, including the USMS Districts of Kansas, Nebraska, Eastern Missouri, Western Missouri, South Dakota, and Iowa; the BOP; and non-Department entities such as the U.S. Immigration and Customs Enforcement to house detainees at the facility.<sup>9</sup> USMS requested the LDC contract because the District of Kansas needed additional support from private entities for the housing, care, and security of detainees because the number of detainees in the district exceeded the available detention space in existing facilities.

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<sup>7</sup> The American Correctional Association (ACA) develops national standards and an accreditation process that address services, programs, and operations essential to effective correctional management.

<sup>8</sup> According to the U.S. Government Accountability Office (GAO), a "bridge contract" is an extension to an existing contract beyond the period of performance (including option years), or a new, short-term contract awarded on a sole-source basis to an incumbent contractor to avoid a lapse in service caused by a delay in awarding a follow-on contract. GAO, [Sole Source Contracting, Defining and Tracking Bridge Contracts Would Help Agencies Manage Their Use](#), GAO-16-15 (October 2015), 4.

<sup>9</sup> A sole source acquisition is a contract for supplies or services that is proposed or entered into by an agency after soliciting and negotiating with only one source.

The LDC contract requires CoreCivic to provide comprehensive detention services including receiving and discharging detainees, facility security, transportation and outside guard services, food service, and healthcare service. In addition to housing federal detainees, CoreCivic entered into a separate contract with the Unified Government of Wyandotte County and Kansas City, Kansas (Wyandotte County) to house up to 220 non-federal detainees at the LDC.

## **OIG Audit Approach**

The objective of this audit was to assess USMS and CoreCivic administration of, and compliance with contract terms and conditions in the areas of: (1) contract management, oversight, and monitoring; (2) staffing requirements; and (3) billings and payments. Our audit timeframe focused on, but was not limited to, October 2010 through May 2015.<sup>10</sup>

To assess USMS and CoreCivic compliance with contract management, oversight, and monitoring, we examined the USMS's Quality Assurance Surveillance Program (QASP) to ensure the USMS monitored the quality of LDC services and that the contract requirements were defined and satisfactorily met. We also reviewed the OFDT's justification for issuing a sole source contract and its determination that the contract price was fair and reasonable. We then reviewed CoreCivic's quality control program (QCP) to determine if CoreCivic provided and maintained an inspection system that enabled it to demonstrate positive performance and identify areas of non-compliance before the level of performance became unsatisfactory. To determine if the USMS and CoreCivic followed staffing requirements, we evaluated the LDC's staffing policies, procedures, budgeted and actual figures, and shift rosters; compared the USMS's contract staffing provisions to the BOP's; and interviewed facility staff to gain an understanding of the facility's staffing levels and conditions. Lastly, to ensure compliance with contract requirements regarding billings and payments, we assessed the accuracy of USMS payments for monthly invoices, and examined CoreCivic compliance with Service Contract Labor Standards (SCLS) and regulations addressing the payment of prevailing wages and benefits to staff based on locality.

## **Prior OIG Reports**

In January 2013, the OIG issued an audit report on the Department's oversight of non-federal detention facility inspections.<sup>11</sup> During this audit, the USMS and OFDT were still separate Department components operating independent

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<sup>10</sup> According to court documents, on August 5, 2016, the Federal Public Defender for the District of Kansas (FPD) learned that meetings between detainees and their attorneys had been video recorded by LDC staff, and at times provided to the government by request. The FPD subsequently alleged that phone calls between LDC detainees and their attorneys had also been recorded. These allegations were all made after we had completed our field work and after we had substantially completed this audit, and as such were not within the audit's scope.

<sup>11</sup> U.S. Department of Justice Office of the Inspector General, [Audit of the U.S. Department of Justice's Oversight of Non-Federal Detention Facility Inspections](#), Audit Report 13-06 (January 2013).

inspection programs. The audit found that while the Department employed basic standards to evaluate the conditions of non-federal detention facilities, the OFDT and USMS applied these standards inconsistently, depending on the type of inspection being conducted. For example, an OFDT review typically took 3 days to complete and was more thorough than a USMS review that took on average only 2 hours to complete. The audit also found that the OFDT and USMS used separate processes to determine which non-federal detention facilities to review during a given fiscal year. Neither process incorporated a risk-based assessment to ensure that the facilities most in need of review were prioritized.<sup>12</sup> Lastly, the report noted a lack of coordination on the resolution of deficiencies identified during inspections.

In August 2016, the OIG issued a review of the BOP's monitoring of contract prisons, which included CoreCivic.<sup>13</sup> It concluded that in comparison to federal facilities, CoreCivic contract prisons had the highest rates of inmate fights and inmate assaults on other inmates.

In December 2016, the OIG issued an audit report on the BOP's contract with CoreCivic to operate the Adams County Correctional Center in Natchez, Mississippi. In May 2012, an inmate riot at the facility resulted in a correctional officer's death and injuries to approximately 20 staff and inmates. A BOP after-action report found deficiencies in staffing levels, staff experience, communication between staff and inmates, and CoreCivic's intelligence systems. The OIG audit found that 4 years after the riot, the facility was plagued by the same significant deficiencies in correctional and health services. In 19 of the 38 months following the riot, CoreCivic staffed correctional services at an even lower level than at the time of the riot in terms of actual post coverage. Moreover, between December 2012 and September 2015, the Adams County facility was staffed with only a single physician for 434 days (43 percent of the time) and a single dentist for 689 days (69 percent of the time).<sup>14</sup>

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<sup>12</sup> OFDT continued to conduct annual inspections of all privately contracted facilities (as opposed to using a risk-based approach that would review some of the private facilities) to comply with the FAR's quality assurance requirements. After the 2012 OFDT merger, USMS continued to conduct these annual reviews at its privately contracted facilities.

<sup>13</sup> U.S. Department of Justice Office of the Inspector General, [Review of the Federal Bureau of Prisons' Monitoring of Contract Prisons](#), Evaluation and Inspections Report 16-06 (August 2016).

<sup>14</sup> U.S. Department of Justice Office of the Inspector General, [Audit of the Federal Bureau of Prisons' Contract with CoreCivic, Inc., to Operate the Adams County Correctional Center in Natchez, Mississippi](#), Audit Report 17-08 (December 2016).



## FINDINGS AND RECOMMENDATIONS

We identified weaknesses in the OFDT's sole source justification for the award of this contract to CoreCivic and determined that the USMS failed to provide sufficient oversight of the LDC and that this failure resulted in several significant issues with LDC operations going unaddressed for extended periods of time. Of particular concern, the USMS Contracting Officer's Representative (COR), who was responsible for monitoring CoreCivic's performance at the LDC on a day-to-day basis, was located offsite, had no previous contract oversight experience, and received no formal guidance and negligible detention-related training. The District COR maintained an infrequent onsite presence at the LDC, did not document the inspection activities performed, and did not develop an inspection program or monitoring procedures. We also found that the USMS did not use available mechanisms to hold CoreCivic and other contractors accountable, such as evaluating past performance and issuing price reductions for contractors' failure to perform required services. USMS's lack of effective continuous monitoring presents risks that may extend beyond the LDC to its 14 other contract detention facilities. In addition to other USMS oversight and monitoring-related discrepancies, we identified weaknesses in CoreCivic's quality control program, and identified a potential improvement to the USMS's detainee mortality reporting process.

In the area of staffing, correctional officer turnover and vacancies led to the LDC's long-term use of mandatory overtime, the closure of security posts, and diversion of Unit Management staff from their regular job duties to filling security posts. We also found that LDC officials concealed the facility's use of triple bunking from the ACA in what appears to be an effort to receive a higher accreditation score, and that the USMS has issued conflicting guidance on contractors' use of triple-bunking for USMS detainees.

Lastly, we found that CoreCivic's administration of its "sick account" benefit was questionable because CoreCivic contributed excess funds that could be interpreted as "cash equivalents." Because CoreCivic withheld these funds for months or years before disbursement to employees, its "sick account" may not be compliant with the applicable labor standards for federal service contracts. CoreCivic also improperly requested and the USMS improperly paid \$103,271 in wages and fringe benefits that CoreCivic was not entitled to receive.

## Sole Source Justification

USMS initially contracted with CoreCivic to design, build, and operate the LDC in 1990 when it issued the first award. In 1998, the USMS awarded CoreCivic a second contract that contained a 5-year base term and was followed by the USMS's exercise of several contract extensions, including a 24-month extension effective in 2005 through 2006 while the OFDT negotiated a new contract. The process culminated in the OFDT's February 2006 decision to award the current sole source contract to CoreCivic, effective January 2007.<sup>15</sup> We reviewed the award process and found that some actions taken by the OFDT for the justification and price reasonableness of this contract award were not in accordance with the Federal Acquisition Regulation (FAR), as described below.

FAR Part 6, *Competition Requirements*, states that Contracting Officers shall not commence negotiations for a sole source contract without justifying such an action in writing, certifying the accuracy and completeness of the justification, and obtaining agency approval of the justification.<sup>16</sup> OFDT completed a Justification for Other Than Full and Open Competition (justification) and fulfilled some FAR requirements such as describing the nature of the services being approved, citing the statutory authority permitting other than full and open competition, and obtaining the appropriate agency approvals. However, the OFDT did not obtain competition to the maximum extent practicable, the justification's narrative did not support its conclusions, and the justification was missing the Contracting Officer's certification that its contents were accurate and complete to the best of the Contracting Officer's knowledge.

OFDT sought to award the LDC contract using other than full and open competition in accordance with a FAR provision stating that an agency may use noncompetitive procedures when the supplies or services needed are available from only one responsible source and no other type of supplies or services will satisfy agency requirements.<sup>17</sup> In January 2006, the OFDT issued a "sources sought notice" to gain knowledge of potentially qualified sources. The notice said the OFDT was "*in search of [an] existing secured detention facility located within the geographic boundaries of Leavenworth, Kansas. . .*" to house persons in USMS custody. Interested offerors were required to respond to this notice and the OFDT received one response from the incumbent contractor, CoreCivic.

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<sup>15</sup> As previously noted, prior to the October 2012 merger with the USMS, the OFDT was a separate DOJ component responsible for acquiring the housing and care of federal detainees in USMS custody. Therefore, the solicitation and award of the LDC contract was performed by OFDT on behalf of the USMS. Due to the merger, OIG recommendations based on past OFDT processes are directed to the USMS.

<sup>16</sup> FAR Subpart 6.3, *Other Than Full and Open Competition*, 6.303, *Justification*, 6.303-1(a), *Requirements*.

<sup>17</sup> FAR Subpart 6.3, *Other Than Full and Open Competition*, 6.302, *Circumstances Permitting More than Full and Open Competition*, 6.302-1, *Only One Responsible Source and no other Supplies or Services will Satisfy Agency Requirements*.

We asked why the OFDT's sources sought notice restricted performance to the city of Leavenworth, thus potentially limiting the pool of offerors, instead of allowing a broader area of performance such as in the District of Kansas (which covers the entire state) or within a reasonable distance from a U.S. District Court. USMS officials responded that the OFDT specified the city of Leavenworth because the LDC was the only available facility in the State of Kansas and the OFDT was prohibited from contracting for the construction of a new facility to address its detention-space needs. USMS officials said OFDT reached this conclusion by contacting CoreCivic's competitors including The GEO Group (GEO), Cornell Corrections (later purchased by GEO), and the Management and Training Corporation, and confirmed that these vendors had no existing facilities in Kansas and were therefore not qualified sources. However, the USMS could not provide evidence of these OFDT communications, and a description of these communications was not included in the justification documents. USMS officials also could not provide FAR-required market research documentation, which also may have contained such information.<sup>18</sup> The justification instead stated that an award to a source other than CoreCivic was likely to result in substantial duplication of cost to the Government that was not expected to be recovered through competition. However, this reasoning was not accompanied by an estimate of the cost of duplication and how that estimate was derived, as required by the FAR.<sup>19</sup>

A senior POD official involved in the acquisition said the OFDT had considered issuing a competitive solicitation but thought it was improper knowing the OFDT would receive only one proposal. This official said he understood how it could appear that the OFDT was limiting competition, but that it was not the intent and had there been an existing facility elsewhere in the District of Kansas, the OFDT would have pursued it to maximize competition. USMS officials also said that one of the impediments to expanding competition was a federal statute that requires the USMS's privately contracted facilities be located in the district of need.<sup>20</sup> Because the USMS's private detention contracts are lengthy (lasting up to 20 years) and costly agreements, we believe it is important that the USMS maximizes competition during the acquisition process to attain the best overall value without compromising its ability to transport detainees to court, medical facilities, or other locations in a timely fashion. USMS should also better document its justifications for awarding any detention-related sole source contracts and maintain such records in the contract file as required by FAR Subpart 4.8, *Government Contract Files*. Therefore, we recommend that the USMS establish acquisition procedures to ensure that future detention pre-solicitation and solicitation notices include the widest place of performance practical, and that sole-source justifications are fully documented, maintained in the contract file, and include all FAR-required language. This language should include the certification that the justification was accurate and complete to the best of the Contracting Officer's knowledge.

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<sup>18</sup> FAR Part 10, *Market Research*, 10.002(e), *Procedures*.

<sup>19</sup> FAR Subpart 6.3, *Other Than Full and Open Competition*, 6.303, *Justification*, 6.303-2, *Content*, 6.303-2(b)(9)(ii).

<sup>20</sup> 18 U.S.C. § 4013 (2017).

### *Inadequate Analysis to Determine Price Reasonableness*

Having completed its justification and fulfilled other FAR requirements, a contracting agency can commence negotiations with the offeror. FAR Subpart 15.4, *Contract Pricing*, prescribes cost and price negotiation policies and procedures that require Contracting Officers purchase supplies and services from responsible sources at “fair and reasonable prices.” For the LDC acquisition, the OFDT was required to use price analysis to determine whether the agreed-to price was fair and reasonable. OFDT made its determination by comparing the offeror’s proposed price to the price of the prior contract. To justify use of this technique, the OFDT had to demonstrate that the services were the “same or similar” and that it considered factors affecting comparability, and that the prior price was a “valid basis for comparison.” OFDT documented its determination of price reasonableness and noted that CoreCivic was providing the same services at the same location as the prior contract.

We compared the previous and current contract statements of work and found that the proposed services generally met the “same or similar” requirement contained in the FAR. However, the OFDT did not assess whether market or economic factors changed during the approximately 8 years between acquisitions. Additionally, the OFDT’s determination of price reasonableness included data on a wide range of BOP and USMS facility per diem rates, but lacked an explanation of their relationship to CoreCivic’s proposed price.

OFDT next compared the previous contract’s annual per diem and rates of increase to those of the current offer and concluded that CoreCivic’s proposal would yield substantial savings over a 20-year period, compared to the previous contract. However, the OFDT’s explanation did not indicate whether the historical price was itself fair and reasonable. The FAR states that “if the reasonableness of the prior price was uncertain, then the prior price may not have been a valid basis for comparison.” USMS officials could not locate or recall whether a price reasonableness analysis of the previous contract had been performed. Although the new contract included a smaller annual rate of increase than its predecessor, if the prior contract’s price was not fair and reasonable, it would not be an adequate basis to assess the fairness and reasonableness of the current contract. Therefore, we recommend that USMS establish policies and procedures to ensure that, when its price analysis is based on a comparison of historical prices paid, it establishes the prior price as a valid basis for comparison.

### **USMS Quality Assurance Program**

Private prison contracts are among the Department’s most expensive and present unique challenges because of the government’s obligation to provide a safe and secure environment for detainees, staff, and the public. Contract quality assurance, or monitoring, is a critical element of federal contracts, as it enables the government to determine whether a contractor has fulfilled contractual obligations pertaining to quality and quantity. FAR Subpart 46.4, *Government Contract Quality Assurance*, requires that federal agencies perform contract quality assurance at

such times and places as may be necessary to determine that the services conform to contract requirements. Federal agencies articulate these requirements through quality assurance surveillance plans (QASP), which specify all work requiring surveillance and the method of surveillance.

USMS's QASP for the LDC contract states that each phase of the services rendered under this contract is subject to USMS inspection during both the contractor's operations and after completion of the tasks. USMS inspection includes two primary activities: (1) the Quality Assurance Review (QAR), which is an annual evaluation conducted at all USMS contracted facilities; and (2) continuous monitoring performed by staff in the USMS District responsible for the detention facility. The QAR is a 3-day review conducted by experienced POD and contracted staff. The purpose of the QAR is to assess contract facility compliance across several functional areas in accordance with the Federal Performance-Based Detention Standards (FPBDS) and concludes with the issuance of a final report and overall facility rating.<sup>21</sup> The QAR is performed at least once annually and on a more frequent basis if facility performance is found to be substandard.

To understand the QAR process, we observed the majority of the 2015 QAR performed at the Aurora Detention Facility in Aurora, Colorado.<sup>22</sup> Based on our observation of the Aurora Detention Facility and analysis of the QAR results at the LDC from FYs 2011 through 2015, we determined that the QAR was well structured, comprehensive, and adequately documented deficiencies in the final reports. We also concluded that POD had maintained supporting documentation to justify its findings, and obtained and approved CoreCivic's plans of action (POA) to remedy the deficiencies.

While the QAR is an important component of the USMS's inspection process, it is inherently limited by its infrequent nature and if used alone could leave a significant monitoring gap between its annual occurrences. USMS can fill this monitoring gap by continually reviewing contractor operations for adherence to contract terms and conditions. FAR 52.246-4, *Inspection of Services – Fixed Price*, provides the USMS with such authority, stating that (the OIG's emphasis in italics) "the government has the right to inspect and test all services called for by the contract, to the extent practicable *at all times and places during the term of the contract.*" However, as detailed below, USMS has not established an adequate continuous monitoring program.

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<sup>21</sup> The Federal Performance Based Detention Standards (FPBDS) are the criteria used by the USMS to assess contractor compliance with contract terms and conditions. It is based on ACA standards and is designed to establish the performance level required by the government to meet the detention contract requirements.

<sup>22</sup> We could not observe the LDC's 2015 QAR because it was conducted in May 2015, before the initiation of our audit.

## USMS Monitoring of the Leavenworth Detention Center

With respect to continuous monitoring, the USMS's QASP requires payment of the contractor's monthly invoice after "services provided for each billing cycle [are] determined, based on performance, to be 'acceptable'." The Contracting Officer's Representative (COR) is responsible for reviewing CoreCivic's monthly performance and verifying compliance with contract requirements which are divided into 6 functional areas (administration and management, healthcare, security and control, food service, safety and sanitation, and services and programs) that collectively contain 46 standards areas derived from the FPBDS. For the USMS to assess the acceptability of monthly contractor services, it needs a robust, well-defined, and organized continuous monitoring program. However, we determined that the USMS's continuous monitoring efforts at the LDC were not adequate to sufficiently monitor contractor performance of a detention services contract valued at nearly \$700 million. We identified several problems, including:

- inadequate District COR experience and detention-related training;
- insufficient continuous monitoring processes at the LDC;
- inadequate monitoring of internal, external, and QAR audit results;
- insufficient quality assurance documentation; and
- insufficient mechanisms to hold contractors accountable.

Furthermore, because several of these problems appear to be inherent in the USMS's overarching continuous monitoring approach, we believe they may also be occurring at the USMS's other 14 contract detention facilities. Given the significance of our concerns, in February 2016 the OIG issued a Management Advisory Memorandum to the USMS, advising it of these matters. In March 2016 USMS responded to our memorandum by proposing several actions. We believe the USMS's suggested actions demonstrate a commitment to improving its contractor oversight. In addition to both memoranda being included in Appendix 3 and Appendix 4 of this report, the following subsections detail information discussed in the memoranda and provide additional OIG analysis and recommendations.

### *Inadequate District COR Experience and Detention-Related Training*

The FAR and Justice Acquisition Regulations require that CORs meet minimum eligibility standards by completing a basic COR course and obtaining ethics training.<sup>23</sup> CORs must receive and maintain certification and be properly designated to a contract. We found that the USMS District of Kansas COR (District COR) met these basic requirements. However, the District COR did not meet the

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<sup>23</sup> The Justice Acquisition Regulations provide procurement regulations that supplement the Federal Acquisition Regulation (FAR).

FAR requirement that CORs be qualified by training and experience commensurate with the responsibilities to be delegated in accordance with agency procedures.<sup>24</sup> The District COR was appointed in March 2011, only 3 weeks after attaining the COR certification. Prior to certification, the District COR had no contracting experience and this almost \$700 million contract was the first assignment received. Furthermore, the District COR did not have experience in detention services, and relied significantly on the expertise of a Deputy U.S. Marshal to conduct LDC inspections. USMS failed to provide training to sufficiently bolster the COR's knowledge of detention services and monitoring and oversight. From this District COR's March 2011 appointment through August 2015, the only formalized detention-related training provided by the USMS was a 60-minute lecture on the roles and responsibilities of the COR during the pre-solicitation and post-award phases of the contract.

USMS officials agreed that COR training was a weakness across all districts responsible for detention facilities and that weakness needed to be addressed. USMS officials said options included obtaining training from organizations specializing in detention operations or coordinating with the BOP on a training exchange program. In response to the Management Advisory Memorandum, USMS officials said they would develop a training program for CORs assigned to detention and transportation contracts. In addition to addressing basic COR training and certification requirements, the training program would cover detention facility inspections, contract monitoring instruments, reporting requirements, and POAs. USMS officials said that each private detention facility contract would have at least one COR with a Federal Acquisition Certification for Contracting Officer's Representative (FAC-COR) Level II certification.<sup>25</sup> We recommend that the USMS continue to develop a training program for CORs monitoring and overseeing its detention-related contracts that ensures CORs receive and maintain a level of training and experience commensurate with their responsibilities.

#### *Insufficient Continuous Monitoring Processes at the LDC*

Maintaining a continuous onsite presence at a detention facility enables a more proactive approach to monitoring because the COR can witness events unfold in real-time instead of being informed of incidents after they occur. The LDC contract indicated that the USMS would have a continuous onsite presence at the facility, stating that "the government anticipates a nominal number of staff will be onsite to monitor contract performance and manage other government interests associated with operation of the facility. The contractor shall provide an onsite enclosed office space for the USMS's staff." This USMS contract language was

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<sup>24</sup> FAR Subpart 1.6, *Career Development, Contracting Authority, and Responsibilities*, 1.602, *Contracting Officers*, 1.602-2, *Responsibilities*, 1.602-2(d)(3).

<sup>25</sup> The purpose of the Federal Acquisition Certification-Contracting Officer's Representative (FAC-COR) is to establish general training, experience, and development for CORs in civilian agencies that reflect the various types of contracts they manage. Level II is the mid-level certification generally appropriate for contracts of moderate to high complexity.

nearly identical to BOP private prison contracts, whose quality assurance staff is permanently located onsite. However, the USMS neither stationed staff at the LDC, nor did the contractor provide USMS staff any dedicated space within the LDC.<sup>26</sup> In fact, USMS did not co-locate staff at any of its contract detention facilities.

The responsibility for continuous monitoring was held by the District COR, located approximately 30 miles southeast of the LDC. The District COR performed onsite inspections at the LDC on a very infrequent basis. From January 2014 through September 2015, a period encompassing 21 months, the District COR visited the facility 17 times for a total of approximately 41 hours. Approximately 37 percent of this time was spent observing the QAR team’s annual reviews. If these QAR-related hours are removed, the District COR spent 26 hours conducting inspections from January 2014 through September 2015, or approximately 1.2 hours per month. USMS officials agreed that this was not a sufficient amount of onsite inspection time, and said there was no standard operating procedure or formal expectation of how much time District CORs should be performing onsite inspections. For context, we compared elements of the USMS’s continuous monitoring program to those of the BOP’s monitoring program.

**Table 2**  
**Comparison of Federal Detention Agencies’**  
**Continuous Monitoring Efforts**

	U.S. MARSHALS SERVICE (USMS)	FEDERAL BUREAU OF PRISONS (BOP)
<b>NO. OF PRIVATE CONTRACT FACILITIES</b>	15	13
<b>NO. OF DETAINEES/INMATES<sup>27</sup></b>	9,296	22,646
<b>MONITORING TEAM LOCATION</b>	Offsite (USMS District Office)	Onsite
<b>NO. OF MONITORING TEAM STAFF PER FACILITY</b>	1	3
<b>TYPICAL COMPOSITION OF MONITORING TEAM</b>	1 COR <sup>28</sup>	2 CORs; 1 Contracting Officer

Source: USMS and BOP

As shown in Table 2, the USMS’s continuous monitoring generally consisted of one COR located offsite for each detention facility. BOP officials told the OIG that its monitoring teams are located onsite at all 13 private contract facilities and that

<sup>26</sup> As of the OIG’s fieldwork in September 2015, the District COR did not have a dedicated workspace at the LDC. However, in early 2016 the District COR requested and was granted an office.

<sup>27</sup> This data was current as of April 2016.

<sup>28</sup> The District COR received periodic assistance from a Deputy U.S. Marshal that was also a COR. USMS also designates a second COR to its private detention contracts, but they are not responsible for continuous monitoring and are therefore not included in this table.



the teams consisted of three staff, including 2 CORs and an administrative Contracting Officer that spend the entire workweek performing contract-related tasks. Prior to 2001 the BOP had been structured similarly to the USMS, when its private facility administration and day-to-day oversight fell under a regional office. However, in an effort to ensure consistency in contract administration on a national basis, the BOP centralized the oversight and monitoring of private facilities under the Privatization Management Branch. When its centralization initiative was approved in 2001, BOP housed approximately 13,000 inmates in private contract facilities.

The District COR was responsible for monitoring CoreCivic's contractual compliance through inspections of the LDC in the areas of security and control, health services, personnel, training, religious services, food services, prisoner transportation, safety and emergency plans, sanitation and hygiene, prisoner rights, and other areas. To accomplish this, the COR was required to develop a project plan to define the scope of the inspection work and develop monitoring instruments. Neither of these duties was performed. Instead, the District COR utilized two USMS instruments to conduct annual inspections: (1) the Detention Facility Review (DFR) and (2) the Field Report.<sup>29</sup> The DFR was not designed for private contract facilities inspections, and the Field Report was not designed for inspections at all. Specifically, USMS Policy Directive 9.7, effective March 2014, stated that the DFR was designed to review jail practices at IGA facilities to verify basic, minimum requirements were met. The Chief of the USMS's Detention Standards and Compliance Branch said POD created the DFRs to provide Deputy U.S. Marshals, who are generally not detention experts, some cursory instructions when inspecting IGAs. This official said the DFRs were much less comprehensive and arduous than the annual QAR. In addition, DFRs were not to be used in lieu of potentially more intense or focused reviews, and according to USMS Policy Directive 9.7, "are not certifications, accreditations, or compliance approvals of any sort. The information obtained during DFRs is for internal USMS use only." USMS Policy Directive 9.7 did not identify Field Reports as a facility review mechanism as they were not inspection tools but generic incident reporting forms intended to document prisoner incidents such as prisoner deaths, sexual assault allegations, tactical equipment failures, vehicle accidents, and significant activities related to courtroom and facility incidents.

We analyzed the USMS District of Kansas's inspection results from FYs 2011 through 2015 to assess the breadth and depth of reviews and to consider the utility of DFRs and Field Reports as compared to the QARs. The District COR completed DFRs in 2011 and 2015 and we found they were broad in nature and primarily contained "yes/no" conclusions with minimal explanation of the work performed. The depth of review for DFRs was substantially less than that of the QAR. In 2015 the DFR was completed in approximately 4 hours by a Deputy U.S. Marshal while

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<sup>29</sup> Detention Facility Reviews (DFR) were conducted using *Form USM-218, Detention Facility Monitoring Report*. Field Reports were conducted using *Form USM-210*.

the QAR took nearly 3 days to complete by a team of 6 staff.<sup>30</sup> The QAR process was significantly more detailed than the DFR; for example, the QAR's review of facility "Administration and Management" consisted of 162 unique review steps, while the DFR focused on only 12 steps.<sup>31</sup> The QAR contained 134 unique reviews steps in "Security and Control" while the DFR covered 14. The QAR included 42 review steps to assess CoreCivic compliance within the Special Housing Unit while the DFR had 1 review step. The DFRs also did not assess CoreCivic compliance with the contract's quality control requirements. When asked about other USMS contract facilities, a senior USMS official explained that other District CORs also used the DFRs to conduct their inspection work, while some developed their own inspection program. Overall, there was no standardized process for districts conducting contract facility inspections.

The District COR completed Field Reports in 2012 through 2014, and we found that they were even less suited for contract facility inspections than the DFRs. Field Reports did not contain any review steps or detail on USMS areas of inspection. Aside from reporting some facility statistics, Field Reports contained at most a single paragraph vaguely describing the results. In 2014, a Deputy U.S. Marshal completed the Field Report-driven inspection in 1 hour.

Based on our review of the DFR and Field Report results, we concluded that the USMS's continuous monitoring of the LDC was insufficient. That these inspections comprised the District's *only* formalized and documented evidence of continuous review of the LDC from FY 2011 through mid-2015 was highly concerning and the primary impetus for the OIG's issuance of a Management Advisory Memorandum to the USMS in February 2016. However, we also believe it was unrealistic for the District COR – who lacked detention experience and proper training, was located offsite, was responsible for performing numerous other duties, and relied on a Deputy U.S. Marshal to perform the formalized inspections - to establish and maintain a comprehensive continuous monitoring program for an almost \$700 million private detention contract without the POD and District of Kansas providing significant guidance and monitoring tools. In fact, the POD did not provide any formal guidance and only a negligible amount of training on how to conduct adequate oversight and monitoring to the District COR and CORs in other districts overseeing USMS's 15 contract facilities, nor had it corrected the District COR's continued use of improper monitoring tools. In contrast, the BOP's Privatization Management Branch, which managed and oversaw the operation of its contract facilities, disseminated operating procedures to all its onsite monitoring teams to "provide consistent guidance for staff involved with the oversight of correctional facilities under contract with the Bureau."

A senior USMS official explained that while there was currently no standard to judge the sufficiency of District COR-led inspections, their thoroughness should

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<sup>30</sup> At the time, the Deputy U.S. Marshal was COR-certified.

<sup>31</sup> In some instances, the QAR and DFR contained similar or identical review steps.

fall somewhere between the DFR and the QAR. USMS officials said they do not have the personnel resources or staff experience to perform reviews similar to the QAR on a continuous basis and that QAR teams were composed of subject matter experts with about 20-plus years of collective detention-related experience and often specialized in areas such as health services, safety and sanitation, or security and control. We agree that District CORs may not have the QAR team's knowledge and expertise, and may require guidance and assistance from subject matter experts to conduct QAR steps such as in the area of healthcare. However, we believe that given appropriate training, District CORs can conduct many QAR review steps and therefore the USMS should ensure its District CORs perform inspections that approximate the rigors of the QAR to the maximum extent possible.

USMS officials agreed with the need to improve its monitoring processes and tools to facilitate its oversight responsibilities. In response to the Management Advisory Memorandum, USMS officials said they would develop standard operating procedures and contract monitoring instruments similar to those used by the BOP. USMS officials also said they would establish an onsite detention contract monitoring program staffed by a full-time professional Contract Administrator (CA) at each private detention facility. The CA would be responsible for continually monitoring the conditions of confinement for USMS detainees to ensure compliance with applicable detention standards. In March 2016, the USMS finalized the position description for the CA positions, which detailed the major duties and requirements of the position, including extensive knowledge of detention-related policies, programs, and procedures. The CA position also requires maintaining a FAC-COR Level III, the highest certification available. We commend the USMS for taking immediate action to enhance its continuous monitoring and recommend that the USMS continue developing and implementing inspection guidance, monitoring tools, and its new onsite contract monitoring initiative for use at all of its privately contracted facilities, and ensure that its continuous monitoring efforts incorporate QAR steps, to the maximum extent practicable.

#### *USMS Did Not Adequately Monitor Internal, External, and QAR Audit Results*

The contract states that when CoreCivic is advised of any unsatisfactory condition, they shall report internal and external audit results to the COR addressing the corrective action taken and the COR must assess CoreCivic's performance and document any non-compliance.<sup>32</sup> Internal audit results are generated via monthly security inspections; informal inspections; quarterly facility self-monitoring audits; corporate operational audits; and the mock ACA audit, which assesses the facility's readiness for the actual ACA accreditation audit. External audit results are from accreditation reviews conducted by the ACA and National Commission on Correctional Health Care (NCCHC). We found that the USMS did not request and review these records. We believe the USMS's tracking of internal and external audit results could help identify areas of risk and determine if

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<sup>32</sup> For the purpose of this discussion, internal audits refer to monitoring conducted by CoreCivic. External audits refer to reviews conducted by outside agencies.

LDC officials succeeded in addressing deficiencies in an effective and timely manner. USMS's Chief of Detention Standards and Compliance Branch agreed, and said tracking such results would help the COR and QAR team better monitor and conduct follow-up work for identified deficiencies. During the OIG's 2015 audit of the Reeves County Detention Center, we identified BOP inspection procedures for monitoring internal and external audit results that the USMS should consider implementing.<sup>33</sup> BOP's Privatization Management Branch required its onsite monitors track the completion and review the results of internal and external audits to determine if corrective action plans to address deficiencies were completed.

One example of the benefit of monitoring a contractor's internal and external audit results occurred in September 2015 when the USMS issued a memorandum to CoreCivic prohibiting the housing of three persons to a cell (hereafter referred to as "triple bunking"), when the physical design, square footage and unencumbered space was constructed for 2-person occupancy. If the USMS had monitored CoreCivic headquarters' mock ACA audit from January 2014, it may have identified and remedied this triple-bunking issue earlier. Specifically, CoreCivic's 2014 mock ACA audit cautioned the LDC that "the ACA auditors may voice a recommendation that the facility utilize [vacant housing pods] to eliminate the triple bunking, given that this practice impacts approximately one third of the facility's inmate population."<sup>34</sup> We recommend that the USMS, as part of its plans to develop contract monitoring instruments, begin requesting and incorporating internal and external audit results and POAs into its quality assurance program to ensure each identified deficiency was adequately resolved.

Next, our audit found weaknesses in the USMS's continuous monitoring of QAR-identified deficiencies. At the conclusion of a QAR, the USMS will request contractors provide POAs to address deficiencies contained in the report. USMS's Detention Standards and Compliance Branch will review the contractor's submitted POAs and if acceptable will consider the QAR report closed. However, the USMS did not have any policies or procedures to ensure that the QAR-identified deficiencies were continuously monitored between closure of the current QAR and the next year's QAR to assess whether the previously deficient processes were operating effectively. To determine if the USMS conducted any such continuous monitoring during the approximately 1-year interim period between QARs, we judgmentally selected 10 QAR-identified deficiencies from 2009 through 2014 and requested the USMS provide evidence that each deficiency was monitored. POD and the District COR could not provide any documentary evidence of such continuous monitoring having occurred for any of the 10 QAR-identified deficiencies.

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<sup>33</sup> U.S. Department of Justice Office of the Inspector General, [Audit of the Federal Bureau of Prisons Contract No. DJB1PC007 Awarded to Reeves County, Texas, to Operate the Reeves County Detention Center I/II, Pecos, Texas](#), Audit Report 15-15 (April 2015)

<sup>34</sup> Further detail on the LDC's triple-bunking and efforts to conceal the facility's use from the ACA is described later in this report.

For example, the 2014 QAR found that during a detainee count, LDC security staff intentionally left some cell doors unsecured to allow detainees to leave their cells to perform orderly duties throughout the housing unit. A senior USMS official said this action was a violation of facility procedures and a potential safety and security issue as it could enable orderlies to distribute contraband. In response to the QAR finding, CoreCivic created a POA to remedy the matter. POD reviewed and deemed this POA acceptable, and closed the QAR. However, subsequent to this closure, the USMS - particularly the District COR - did not document any continuous monitoring of the matter, such as observing counts, reviewing CoreCivic's quality control results in this area, reviewing documents and logs, or viewing surveillance video. Such follow-up could demonstrate whether or not the POA remained effective throughout the year. Instead, the USMS did not formally reevaluate this deficiency until the next year's QAR was conducted in May 2015, nearly 300 days later. Senior POD officials agreed that the USMS needs to conduct better oversight and monitoring of QAR identified deficiencies and to better document those efforts.

We recommend that the USMS create policies and procedures requiring CORs to conduct continuous oversight and monitoring of QAR-identified deficiencies to ensure that the completed POAs are operating effectively and that the CORs document this follow-up work and communicate the results to POD.

#### *Insufficient USMS Continuous Monitoring May Be Widespread*

We believe the USMS's lack of effective continuous monitoring presents risks that may extend throughout all 15 of its contract detention facilities. Systematic deficiencies include insufficient detention-related training; the lack of POD-issued oversight guidance; and the inadequate monitoring of CoreCivic's internal and external audit reviews and QAR results. While the adequacy of other Districts' onsite presence is currently unknown, potential problems likely exist, including insufficient staff at other locations. For example, in Texas, one COR is responsible for the oversight of three contract facilities – the Webb County, Rio Grande, and Willacy detention facilities - which house up to approximately 2,100 USMS detainees and are operated by three different contractors. The latter two facilities are located approximately 165 miles apart.<sup>35</sup> In California, one COR is responsible for the continuous oversight of the Western Region Detention Facility and Otay Mesa Detention Center, which together house up to approximately 1,100 USMS detainees. In Arizona, one COR oversees the Central Arizona Detention Center and Florence Correctional Center, which together house up to 5,100 USMS detainees.<sup>36</sup>

Additionally, in October 2014, a senior district official overseeing a contracted facility in the southwestern U.S. shared concerns with POD about USMS's lack of

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<sup>35</sup> USMS officials said that the COR in Texas receives assistance from Deputy U.S. Marshals in their collateral role as Jail Inspectors, but as previously described, the DFRs performed by Jail Inspectors are not rigorous enough for privately contracted facilities.

<sup>36</sup> The Florence Correctional Complex, while a separate entity than the Central Arizona Detention Center (CADC), is part of the CADC contract.

continuous monitoring. This official said his district needed additional oversight staff and that the current monitoring was severely limited, placing the USMS at risk. In late 2015, following a medical incident at a contract facility in his district, this senior official said the incident further demonstrated the need for additional staff to monitor day-to-day services.

Because of the USMS's decentralized approach to continuous monitoring, the adequacy and consistency of inspections performed across the 15 USMS contract facilities are unknown. The District of Kansas COR told us that she was not aware of how other district CORs operated and that they did not communicate with one another or share best practices. POD officials agreed that there was no standardization for how districts develop and execute their inspection programs and believed this is partly due to district ownership of the COR positions, instead of the positions belonging to the POD. They explained that the districts specialize in law enforcement, not facility management, and are not best positioned to oversee continuous monitoring and manage the COR positions. POD officials also said the POD maintains the organizational knowledge and experience to create, formalize, and implement a continuous monitoring strategy.

In the OIG's February 2016 Management Advisory Memorandum to the USMS, we encouraged the USMS to reassess the organizational placement of the COR positions to determine if the POD is better suited to provide guidance, training, monitoring, and responsibility for the COR positions in a manner that enhances the USMS's continuous monitoring of private detention facilities. In its March 2016 response, USMS officials stated that its goal was to improve its contract monitoring by establishing an onsite detention contract monitoring program staffed by full-time professional Contract Administrators under the supervision of POD at all private detention facilities.<sup>37</sup>

#### *Insufficient Quality Assurance Documentation*

FAR Subpart 4.8, *Government Contract Files* requires the establishment, maintenance, and disposition of contract files, including a contract administration office file containing quality assurance records. The District COR was responsible for developing and maintaining a document control system and ensuring that quality assurance-related documentation was included in the official contract file. However, with the exception of the annual inspections, the District COR did not document her quality assurance-related activities. Also, instead of maintaining an official contract file as required by the FAR, the District COR stored contract records in a manner that did not effectively document contract actions and was not readily accessible to principal users. As a result, the District COR could provide little evidence of conducting monitoring and oversight at the LDC. The USMS Chief of the Detention Standards and Compliance Branch acknowledged that some districts, including the District of Kansas, had not been sufficiently documenting their work

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<sup>37</sup> In October 2016, the USMS announced the deployment of a newly hired Contract Administrator at the LDC.

and the District COR agreed, stating that additional training in this area would be beneficial.

Subsequent to our audit fieldwork, the District COR began documenting inspections and using a monthly log to track contract-related communications and activities. While this represents a process enhancement, we believe further improvements could be made by developing a more formalized document to record identified weaknesses; contractor POAs; and COR monitoring efforts, including the date of work, comments addressing the effectiveness of the contractor's corrective actions, and dates for closing the POA.

In its response to the Management Advisory Memorandum, USMS officials said they would develop standard operating procedures similar to those used by the BOP. We recommend that the USMS include in its new standard operating procedures COR requirements for developing and maintaining a document control system and for retaining quality assurance-related documentation. Standard operating procedures should also include COR guidance on formally documenting inspections that include tracking deficiencies and contractor POAs.

#### *USMS Did Not Use Available Mechanisms to Hold Contractors Accountable*

According to the Congressional Research Service, the federal government has several legal mechanisms it can use to hold contractors accountable without resorting to judicial proceedings.<sup>38</sup> Two of these mechanisms are equitable reductions in price and past performance evaluations. The first mechanism allows contracting agencies to hold contractors accountable for failure to meet contract requirements through a reduction of the contract price. Specifically, FAR 52.246-4, *Inspection of Services – Fixed Price*, states that if any services do not conform to contract requirements, the government may require the contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by re-performance, the government may reduce the contract price to reflect the reduced value of the services performed. The LDC contract broadly described the USMS's right to reduce CoreCivic's invoice for failure to perform required services and POD guidance stated that contract price reductions should be considered for repeat deficiencies and significant findings.

We found that the USMS had not proposed or issued any contract price reductions during the life of the LDC contract, and had not issued reductions for *any* of its other 14 contracted detention facilities from October 2011 through July 2015. In contrast, during this timeframe the BOP issued nearly \$24 million in contract price reductions. The last time the USMS issued a contract price reduction to a private contractor was in March 2006 when it delivered a nearly \$119,000 invoice

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<sup>38</sup> U.S. Congressional Research Service. [Selected Legal Mechanisms Whereby the Government Can Hold Contractors Accountable for Failure to Perform or Other Misconduct](#) (R44202; Sept. 23, 2015), by Kate M. Manuel and Rodney M. Perry.

reduction to The GEO Group due to a detainee escaping from the Western Regional Detention Facility in San Diego, California. Table 3 contains a comparison of the BOP's and USMS's invoice reduction information.

**Table 3**  
**Comparison of Department Detention Agencies' Invoice Reductions**  
**FYs 2011 through July 2015**

	<b>U.S. MARSHALS SERVICE (USMS)</b>	<b>FEDERAL BUREAU OF PRISONS (BOP)</b>
No. of Private Contract Facilities	15	13
No. of Detainees/Inmates <sup>39</sup>	9,296	22,646
Contract Reduction Amount	\$0	\$23.6 million
Justification for Contract Reductions	Not Applicable	Repeat deficiencies, significant findings, vacancies over 120 days, non-compliance with staffing thresholds, failure to fill essential positions, cure notices.

Source: USMS and BOP

A senior USMS official said the LDC had not been issued an invoice reduction because there had never been an incident at the LDC where withholding money was justified.<sup>40</sup> Judging by the LDC's annual QARs from FYs 2011 through 2014, this statement was correct insofar as the QAR team did not identify any repeat deficiencies or significant findings. However, this does not explain the broader disparity in price reduction amounts between the USMS and BOP. Both Department components use the same contractors, offer similar programs and services, and operate facilities in accordance with standards promulgated by the ACA. Our review indicates that the USMS's contract price reduction amount of \$0 through July 2015 may be due to two factors. First, the USMS's insufficient continuous monitoring of the LDC and potentially other privately contracted facilities limited its ability to identify deficiencies that result in contract price reductions. A comprehensive continuous monitoring program would require a greater scope and depth of review that would potentially yield more inspection results and findings. For example, the OIG's 2015 audit of the Reeves County Detention Center (RCDC) found that BOP onsite staff generally provided comprehensive monitoring and oversight. From 2008 through 2013, BOP issued 17 invoice reductions to RCDC, six of which were identified through BOP's continuous monitoring efforts.

<sup>39</sup> This detainee/inmate data was current as of April 2016.

<sup>40</sup> A USMS official provided this explanation in July 2015. In October 2015, the USMS proposed a contract price reduction to the LDC for approximately \$763,000 due to CoreCivic's non-compliance with FPBDS in the areas of correctional supervision, detainee accountability, and control of contraband. In February 2017, the USMS finalized and submitted the \$763,000 contract price reduction to CoreCivic. This was the USMS's first contract price reduction issued to a private contractor since March 2006.



Second, the District of Kansas COR had never seen the USMS's detailed price reduction guidance and POD officials had no evidence that the guidance was sent to any of the current district CORs responsible for the other 14 facilities.<sup>41</sup> USMS's Chief of the Office of Detention Services said that even without the guidance, district CORs were aware of the Contracting Officer's ability to issue contract price reductions for unacceptable contractor performance. While this may be the case, we found that the price reduction guidance, though outdated, provided helpful detail on what constituted unacceptable contractor performance subject to an invoice reduction.

USMS officials also explained that contract price reductions were the option of last resort and that the superior method to encourage contractor accountability was through the assessment of contractor performance, which can affect a contractor's ability to secure future contracts with the federal government. The Contractor Performance Assessment Reporting System (CPARS) is the Government-wide electronic contractor evaluation system used to ensure that current, complete, and accurate contractor performance information is available for use in procurement source selections. The FAR requires that federal agencies collect and submit performance information into CPARS at least annually, which are automatically transmitted to the Past Performance Information Retrieval System, where USMS and other contracting entities can use that information to make informed business decisions when awarding federal contracts.

Despite the USMS's recognition of the importance of evaluating contractor performance, it was not entering performance assessment reports into CPARS for the LDC contract or any other detention contracts, as required by the FAR. Consequently, USMS procurement officials and agencies that also contract for services from private prison operators such as U.S. Immigration and Customs Enforcement and the BOP would not be able to view past performance information on USMS contracts during their source selection processes. This matter was described in the OIG's February 2016 Management Advisory Memorandum. As of February 2017, the USMS had incorporated new CPARS-related language into its request for proposal template and created a draft CPARS template. We recommend that the USMS continue to input performance assessment reports for its active contracts into CPARS, and finalize policies and procedures to ensure that contractor performance data on future detention contracts is entered into CPARS.

Next, the contract required the USMS to conduct Performance Evaluation Meetings on a regular basis as determined necessary by the Contracting Officer. Performance Evaluation Meetings are an element of USMS's contract that aim to assess and discuss with the contractor any performance-related issues and how best to resolve them. USMS adopted this process from BOP private prison contracts. For example, BOP's Reeves County Detention Center in Pecos, Texas, held formalized performance meetings each month that included the BOP's

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<sup>41</sup> After OFDT merged into the USMS in 2012, USMS continued to use OFDT's contract price reduction guidance. However, in 2016 the USMS issued updated price reduction guidance.

Contracting Officer and onsite monitoring team, and contract staff at the prison, including the Warden. During the meeting they discussed general items, areas of concern, POAs, partnering matters, inmate grievances, incident reports, and several other topics. The meetings concluded with the contractor documenting and submitting the meeting minutes to the BOP for inclusion in the contract file.

USMS never conducted Performance Evaluation Meetings at the LDC. USMS officials believed such meetings were intended to be informal, though the contract clearly describes a structured process comprised of detailing the meeting's participants, the purpose of the meetings, and a requirement for a record of the discussion. In light of our previously described findings, we believe it is critical that USMS conduct and document these meetings as stated in the contract, and therefore recommend that the USMS begin conducting Performance Evaluation Meetings, as required by the contract, at the LDC and other detention facilities as applicable.

Lastly, the District COR did not evaluate and report on CoreCivic's performance from October 2010 through October 2015, even though this responsibility was documented in the District COR's position description. The contract also required the LDC's performance be assessed monthly, stating that the USMS pay the contractor's invoice after "services provided for each [monthly] billing cycle [are] determined based on performance to be acceptable." Furthermore, the FAR states that services "shall ordinarily not be accepted before completion of government quality assurance actions."<sup>42</sup> The District COR thought this requirement was unnecessary because the QAR already assessed the LDC's performance. However, the QAR assessed contractor compliance annually while USMS accepted contractor services monthly. We believe that the BOP's invoice review process represents a best practice. Each month upon receipt of the contractor invoice, BOP's Contracting Officer and onsite District COR were required to verify via a jointly signed memorandum that services were satisfactorily performed. This determination was based on its continuous monitoring efforts, including performance evaluation meeting minutes, oversight monitoring checklists, and other written assessments. We recommend that during USMS's development of standard operating procedures and contract monitoring instruments, it ensures that the District COR complies with contract and USMS District requirements to evaluate contractor performance prior to the payment of monthly invoices.

### **CoreCivic Quality Control**

The LDC contract and FAR 52.246-4 require CoreCivic to provide and maintain an inspection system or Quality Control Plan (QCP) to ensure that all contract requirements are met, to identify and prevent defects in the quality of services performed, and to maintain records of inspections and any corrective or preventative actions taken. CoreCivic's QCP consisted of several inspection mechanisms performed by the LDC or CoreCivic headquarters, as shown in Table 4.

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<sup>42</sup> FAR 46.501, *Acceptance - General*.

**Table 4**  
**CoreCivic**  
**QCP Inspection Mechanisms<sup>43</sup>**

INSPECTION MECHANISM	CONDUCTED BY	DESCRIPTION
Informal Inspections	CoreCivic-LDC	Inspection via informal means (facility walkthroughs, individual department inspections, and inspections by local facility staff) that are not conducted on a predetermined schedule.
Quarterly Self-Monitoring Audit	CoreCivic-LDC	Formalized audit conducted quarterly by LDC quality assurance staff using subsets of CoreCivic's comprehensive audit tool.
Monthly Security Inspections	CoreCivic-LDC	Monthly inspection of all physical plant security elements, conducted by the Warden and Chief of Security.
Annual Operational Audit	CoreCivic-HQ	Formalized annual audit performed by an experienced team from CoreCivic's corporate Quality Assurance Division, using CoreCivic's comprehensive audit tool.
Triennial Mock ACA Audit	CoreCivic-HQ	CoreCivic Quality Assurance Division's contracted auditors assess LDC compliance with ACA standards prior to the official ACA audit.

Source: CoreCivic

LDC's Quality Assurance Manager (QAM) administers the facility-level QCP by conducting periodic informal inspections and quarterly self-monitoring audits, and helping the Warden and Chief of Security complete monthly security inspections. The QAM assigns inspection steps to facility staff, documents deficiencies in the quality assurance tracking system, creates and maintains quality assurance files, annually reviews LDC policies and procedures, and coordinates with the CoreCivic Facility Support Center's (FSC) Quality Assurance (QA) Division.<sup>44</sup> The QA Division is led by a Managing Director who reports to the Company's Executive Vice President and General Counsel and is responsible for a team of full-time auditors and staff with corrections experience. The QA Division conducts the annual operational audit and coordinates the triennial mock ACA audit that is performed by consultants. We focused our review of CoreCivic's QCP on the LDC's informal inspections and quarterly self-monitoring audits because they were intended to provide the most persistent facility oversight.

*Inadequate LDC Oversight and Monitoring*

Our goal was to determine if the LDC's periodic informal inspections and quarterly self-monitoring audits were properly completed, supported by documentary evidence, accurately input into the appropriate information system or tracking log, generated appropriate POAs to remedy deficiencies, and monitored the

<sup>43</sup> Other inspection mechanisms include external audits conducted by the ACA and NCCHC.

<sup>44</sup> The Facility Support Center (FSC) is CoreCivic's headquarters, located in Nashville, Tennessee.

POAs to ensure they were implemented and operating effectively. To complete our analysis, we judgmentally selected 51 records from January 2011 to June 2015, comprised of 25 quarterly self-monitoring audit findings and 26 informal inspection findings. We found that the LDC conducted the quarterly self-monitoring audits within the established timeframes and that the results were properly input into the contractor’s quality assurance information system and tracking log. However, the quarterly self-monitoring audits and informal inspections contained several weaknesses, including insufficient evidence that audit steps were conducted and POAs that did not sufficiently address deficiencies and did not provide viable long-term correction of the deficiencies. Also, the LDC often did not request and retain audit and inspection-related results, and had insufficient evidence that POAs were implemented, closed, and subsequently monitored to identify recurrences. A summary of our results is included in Table 5, followed by detail of each weakness.

**Table 5**  
**OIG Analysis of LDC Quarterly Self-Monitoring and Informal Inspection Results<sup>45</sup>**

<b>WEAKNESS</b>	<b>QTR. SELF-MONITORING AUDIT (OUT OF 25 INSTANCES)</b>	<b>INFORMAL INSPECTIONS (OUT OF 26 INSTANCES)</b>	<b>TOTAL (OUT OF 51 INSTANCES)</b>
1. Insufficient evidence that review steps were conducted	8	13	21 (41%)
2. POAs did not sufficiently address deficiencies	5	10	15 (29%)
3. POAs did not provide a viable long-term correction of the deficiency	20	22	42 (82%)
4. Did not retain the original corrective action worksheet	13	17	30 (59%)
5. Insufficient evidence that POAs were implemented	19	24	43 (84%)

Source: CoreCivic

Insufficient Evidence to Support that Review Steps were Conducted

CoreCivic Policy 1-15, *Retention of Records* requires the QAM maintain copies of all audits and documents produced as a part of the audit process. The QAM conducts and coordinates informal inspections and quarterly self-monitoring audits using the Corrections Corporation of America Audit Tool (CCAAT), which is an auditing document containing over 1,600 audit steps across all areas of facility

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<sup>45</sup> Although the OIG did not review POAs generated as a result of CoreCivic’s annual operational audits, we believe weaknesses 2 through 5 are applicable because the annual operational audits are subject to similar POA requirements as the quarterly self-monitoring audits.

operations.<sup>46</sup> As shown in Table 5, item no. 1, for 21 of the 51 audit steps reviewed, the LDC's QAM did not maintain sufficient evidence that quality assurance personnel conducted the requirements within the audit step. The auditors' results often did not describe the work performed, files and records reviewed, or interviews conducted. For example, LDC correctional officers are required to conduct irregular checks of detainees in the special housing unit (SHU). The audit step requires the auditor interview SHU officers on check procedures, observe the facility video security system, and review the daily segregation activity report or logbook for each detainee's checks. While the auditor concluded that SHU officers were not conducting the irregular rounds in a timely manner, there was neither documentation on the frequency of the deficiency, nor was there evidence that SHU officers were interviewed. There was also no information identifying the dates or timeframes for observing video or for reviewing activity reports or logbooks.

We also identified many audit steps that auditors rated "satisfactory" without providing sufficient information to support their conclusions. For example, one audit step was to assess Central Control's inventory of keys; this required the auditor examine the key control log book and daily inventory records, conduct a key inventory, and interview staff.<sup>47</sup> The auditor concluded that Central Control's key inventory was satisfactory, but there was no evidence to support his or her conclusion. The LDC's QAM agreed that there was often insufficient supporting documentation to corroborate audit conclusions, and suspected that facility staff sometimes reported satisfactory ratings without conducting the work. However, the QAM had neither followed up on this suspicion, nor had the QAM ensured that staff began providing evidence to support their conclusions. A consequence of this lack of documentation is that the LDC's QAM may be receiving inaccurate or incomplete results and would not have sufficient information to re-perform and validate the auditor's work. We recommend that the USMS ensure that LDC's QAM request and retain supporting audit documentation to ensure audits are properly conducted and conclusions are supported.

### Insufficient Plans of Action

CoreCivic policy requires that deficiencies identified through both informal inspections and quarterly self-monitoring audits are corrected in an effective manner. Upon identifying a deficiency, the QAM coordinates with the affected department head to formulate a POA containing a description of the noncompliance, and the strategies and action steps that provide a "viable long-term correction of the deficiency." Department heads formulate the POAs using a corrective action worksheet and normally have 10 business days to prepare and provide them to the

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<sup>46</sup> The audit areas cover General Administration, the Prison Rape Elimination Act, Finance, Human Resources, Learning and Development, Health Services, Security and Control, Safety and Sanitation, Vehicle Management, Physical Plant, Food Service, Laundry, Classification and Unit Management, and Inmate Programs and Services.

<sup>47</sup> Central Control is where the LDC's master controls for electronic security systems are located.

QAM, who ensures the corrective action worksheet is adequate and approves the POA. At this stage, the processes for the informal inspections and quarterly self-monitoring audits begin to differ. For the informal inspections, the QAM monitors and updates results within the Log of Informal Findings. For the self-monitoring audits, the QAM enters the POA into the quality assurance tracking system which allows the QAM to generate the Plan of Action Form and monitor corrective action progress. Lastly, the Warden reviews and approves the Plan of Action Form (Warden's approval is not required for POAs identified via informal inspections).

As shown in Table 5, item nos. 2 and 3, the LDC's POAs did not sufficiently address the deficiency in 15 instances (29 percent) and did not provide a viable long-term correction of the deficiency in 42 instances (82 percent). CoreCivic's Quality Assurance Managing Director said the formulation of a viable long-term correction requires identification of the root cause. Although the quality assurance tracking system provides a field to track "root cause(s)" and CoreCivic considers its use a best practice, CoreCivic does not require its use. In practice, the "root cause(s)" field was rarely used. Together, these discrepancies contributed to the LDC's insufficient POAs. For example, one LDC quarterly self-monitoring audit determined that Case Managers were not in every housing unit to address detainees' daily needs. The POA stated that "Case Managers will be in their units daily." This is not a sufficient POA. It merely states the desired outcome without identifying the issue's root cause. In another instance, an LDC informal inspection identified a deficiency with weekly chemical inventory levels; some inventories showed zero when product was in stock. The POA stated that the Safety Manager would speak to the Maintenance Supervisor, who would then speak to his staff about properly filling out inventory information. Only 10 days later this same deficiency was again identified and a new POA generated that prescribed strategies and action steps that were almost identical to the previous POA. This POA was not sufficient, as it failed to prevent recurrence of the deficiency and did not identify the root cause of why the inventory records differed from the actual count of product in stock.

The LDC's QAM and Warden share responsibility for certifying the adequacy and completion of the POAs.<sup>48</sup> The LDC's QAM was dissatisfied with the quality of the POAs submitted from department heads and acknowledged that she sometimes did not require they remedy the insufficient POAs, and she did not offer instruction or guidance to department heads on how to develop a sufficient POA, such as providing copies of the Strategies/Action Steps Worksheet.<sup>49</sup> Furthermore, several senior LDC officials said the LDC's prior warden had not recognized the importance of the facility's quality control process, treating it more as a guideline than a

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<sup>48</sup> As previously noted, CoreCivic policy requires the Warden approve POAs for the quarterly self-monitoring audits but not the informal inspections.

<sup>49</sup> LDC policy contains a Strategies/Action Steps Worksheet (*CoreCivic Appendix 1-22AA*) instructing staff to consider the required resources, expenditures, training, changes to post orders or procedures, and practical timeframes necessary to correct a deficiency.

requirement and not holding department heads accountable for providing insufficient POAs. The LDC's QAM agreed that the LDC needed a more concerted effort to reinforce the requirements for a properly completed POA and to encourage department heads to identify and address the root causes of deficiencies. CoreCivic's Quality Assurance Managing Director told us that the "root cause(s)" field was intended as a best practice tool and potential resource rather than as a requirement.<sup>50</sup> However, we believe that requiring identification of the root cause is a critical step in "formulating a viable long-term correction," as required by CoreCivic policy, and could help department heads formulate POAs that identify and correct the underlying cause to prevent future occurrences, instead of simply addressing symptoms of the deficiency.

Next, as shown in Table 5, item no. 4, the LDC's QAM often did not ensure that department heads provided and retained the corrective action worksheets necessary to prepare the POAs, as required by CoreCivic policy. In 30 instances (59 percent) the LDC's QAM could not provide copies of these corrective action worksheets. For the quarterly self-monitoring audits, the LDC's QAM had previously discarded some corrective action worksheets after they were input into CoreCivic's compliance tracking system. For the informal inspections, the LDC's QAM sometimes did not require department heads complete the required corrective action worksheet, but instead entered corrective actions directly into the informal tracking log. CoreCivic's Quality Assurance Managing Director told us that the informal tracking log was not designed as a replacement for the corrective action worksheet. By not requiring that department heads complete and provide POAs using the required corrective action worksheet, the LDC's QAM may not be adequately reviewing POAs prior to department heads implementing their corrective action.

To remedy the aforementioned issues, we recommend that the USMS ensure that the LDC enforces existing CoreCivic policies and procedures for generating and approving comprehensive POAs, including: (a) drafting POAs that sufficiently address the deficiencies and requiring that department heads identify the deficiencies' root causes; (b) ensuring the LDC's QAM and Warden provide instruction and guidance to department heads on the contents of a sufficient POA, and only approve fully compliant POAs; and (c) ensuring that department heads complete and the LDC's QAM retain the corrective action worksheets.<sup>51</sup>

#### Plans of Action were Inadequately Implemented

As shown in Table 5, item no. 5, the LDC's QAM could not provide documentary evidence that POAs were implemented by LDC staff in 43 instances (84 percent). According to CoreCivic policy, after the QAM and Warden review and

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<sup>50</sup> In March 2017, CoreCivic provided documentation indicating that the QAM has started to incorporate improvements to POAs.

<sup>51</sup> This recommendation applies to both the informal inspections and quarterly self-monitoring audits.

approve the content of the POAs, the QAM is responsible for monitoring implementation by confirming and documenting that the POA's strategies and action steps were completed. The LDC's QAM told us that she would sometimes follow up on an informal basis, such as by email or phone, but failed to retain evidence to document those efforts. Without sufficient evidence supporting the LDC's QAMs efforts to confirm and document that action steps were implemented, there is no assurance that the LDC's QAM monitored the implementation of corrective actions to resolve the deficiency. To remedy the aforementioned issue, we recommend that the USMS ensure that the LDC enforces existing CoreCivic policies and procedures by confirming and documenting that POA strategies and action steps were implemented.

#### *LDC's QAM Needs Additional Quality Assurance Guidance*

CoreCivic policy in the area of quality assurance primarily focuses on processes after the identification of findings, such as the generation, tracking, correction, and closure of POAs.<sup>52</sup> While the CCAAT provides the QAM with detailed criteria and audit steps, we found that the LDC's QAM received minimal instruction and guidance on how to conduct the facility reviews to identify deficiencies and how to continuously monitor closed POAs. CoreCivic policy does not address the frequency and breadth of reviews (e.g., developing an audit schedule); the establishment of a sample size when one is not already specified in the CCAAT; the maintenance of requisite qualifications, technical expertise, and accountability by personnel supporting the QAM's efforts; the appropriate documentary evidence necessary to validate the auditors' conclusions and enable re-performance if necessary; methods for proper retention of documentary evidence; the approval and monitoring of the LDC's inspection and audit methodologies by the FSC; and the establishment of contingency plans for conducting quality assurance-related work should the QAM be unavailable.

CoreCivic policy also does not provide guidance for QAMs to conduct continuous monitoring of a deficiency after the QAM determines that a POA's strategies and action steps are completed. During our analysis of quarterly self-monitoring and informal inspections we requested the LDC's QAM provide documentation to support monitoring efforts after closure of a POA. The LDC's QAM could not provide documented evidence for any of the 48 deficiencies we reviewed.<sup>53</sup> Therefore, the LDC's QAM was not proactively assessing the effectiveness of POAs until the occurrence of the next audit or inspection, which sometimes was several months later. We believe that CoreCivic can address this issue by providing QAMs additional guidance to monitor deficiencies after implementation and closure of a POA. As CoreCivic's Managing Director suggested, continuous monitoring efforts can be driven by a risk-based assessment; for example, POAs for deficiencies that impact facility security and control or detainee

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<sup>52</sup> CoreCivic Policy 1-22, *Plan of Action*.

<sup>53</sup> Three of the 51 instances (2 informal inspections, and 1 quarterly audit) were not applicable since completion consisted of purchasing or repairing an item.



and staff safety should receive additional monitoring to ensure that those actions are effective. Also, intermittent monitoring of previously non-compliant areas would be more effective than repeatedly reviewing areas already deemed compliant.

The LDC's QAM told us the CCAAT and training had provided some helpful instruction on how audits should be conducted, but not the comprehensive guidance (i.e., a procedure manual) necessary to perform day-to-day operational duties. Instead, the LDC's QAM primarily relied on the contents of her position description to describe her roles and responsibilities. We reviewed the position description and found that it was generic and contained little useful information on how to perform her QAM operational duties. This resulted in an unclear, inconsistent, and questionable approach to performing informal inspections. Specifically, the LDC's QAM informed us that when conducting informal inspections, she would sometimes request staff complete the entire CCAAT (i.e., over 1,600 detailed audit steps) in a single month. In our judgment, this was not an efficient and effective use of the CCAAT or personnel resources, and the LDC's QAM agreed it was causing employee burnout. CoreCivic's Managing Director for Quality Assurance said the informal inspections should not attempt to complete the entire CCAAT in a month, but should follow a risk-based approach.

In addition, the LDC's QAM believed she could not conduct many of the healthcare-related quality assurance steps due to Health Insurance Portability and Accountability Act (HIPAA) requirements.<sup>54</sup> However, CoreCivic officials said there are no HIPAA requirements that prevent the LDC's QAM from accessing information to conduct audits or to follow up on findings as a result of those audits. We believe additional guidance provided to the QAM through use of an Audit Procedure Manual or other mechanism could better clarify the QAM's job responsibilities and help ensure that facility audits and inspections are performed in an effective and efficient manner. Therefore, we recommend that the USMS ensure CoreCivic creates an Audit Procedure Manual or some other mechanism or process to provide the LDC's QAM with comprehensive guidance on how to properly conduct facility audits and continuously monitor closed POAs. Such guidance should, at a minimum, address the areas listed on page 32 and receive USMS approval.

### **USMS Detainee Mortality Reporting Processes**

In the event of a detainee death, the LDC contract requires CoreCivic immediately notify the COR and submit a written report to the U.S. Marshal within 24 hours. USMS Policy Directive 9.32, *Death of Federal Prisoners* contains requirements for the USMS district responsible for the detention facility to perform in the event of a detainee death, including notifying POD's Chief of Detention Operations and ascertaining whether the detainee death was from natural causes or

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<sup>54</sup> HIPAA was enacted on August 21, 1996. The HIPAA Privacy Rule aims to define and limit the circumstances in which an individual's protected health information may be used or disclosed by covered entities.

the result of negligence or foul play. Additionally, within one week of the detainee's death the district is required to provide a report to POD's Chief of Detention Operations that includes the circumstances surrounding the detainee's death and relevant medical information, such as treatments provided, dates of visits to the detention facility's health services unit or hospital, and the cause of death. Lastly, the U.S. Marshal must provide to the POD a coroner's report or medical examiner's findings; an autopsy report, if conducted; and a death certificate.

Additionally, the National Commission on Correctional Health Care requires that all detainee deaths be reviewed to determine the appropriateness of clinical care; to ascertain whether changes to policies, procedures, or practices are warranted; and to identify issues that require further study.<sup>55</sup> All deaths are to be reviewed within 30 days; and a death review is to include an administrative review, clinical mortality review, and a psychological autopsy in the event of a suicide.

We determined that the USMS and LDC complied with these requirements for the seven detainee deaths occurring during the period of our review. However, we identified a potential BOP best practice that we suggest the USMS consider implementing. Specifically, the BOP is required to conduct reviews of all inmate deaths at its contract facilities to determine if medical management of the inmates' condition was in accordance with BOP policies and standards of care. According to BOP officials, the BOP uses an independent contract physician to review the contractor mortality reports and provide written recommendations to the contractor. BOP officials said the purpose of this independent review is to identify weaknesses in care provided to inmates at its contract facilities, determine the root cause of any unexpected or sudden death, obtain lessons learned to avoid repeat mistakes, and bolster its internal controls.

In contrast, the USMS does not conduct a review of the contractor-provided mortality reports to independently assess their accuracy and completeness. USMS's Office of General Counsel said USMS policy does not require such a process. POD's Chief of the Detention Standards and Compliance Branch said that while USMS's annual QAR evaluates clinical and chronic care areas, it does not ensure that detainees who died received proper medical treatment prior to their deaths. This official was receptive to the BOP's process and explained that if adopted, the QAR team possesses the technical knowledge and experience necessary to conduct independent reviews of detainee deaths and assess whether contract medical staff followed all medical protocols. We believe that conducting such a review would help USMS ensure that the contractor's medical management of detainee conditions prior to death was in accordance with USMS policies and standards of care. Accordingly, we recommend that the USMS consider implementing policies and procedures similar to those of the BOP that independently evaluate contractor-provided detainee mortality reports.

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<sup>55</sup> NCCHC standard J-A-10, *Procedure in the Event of an Inmate Death*.

## Observation of LDC Video Security Surveillance

We reviewed the LDC's video security footage to determine whether the facility complied with its policies related to facility security, detainee recreation, and irregular checks of detainee cells within the SHU.<sup>56</sup> Our review found that correctional officers in the SHU complied with LDC policy that requires detainees pass through metal detectors on the way to the recreation yards, and conducted irregular checks of SHU detainee cells twice per hour. However, we observed three instances where correctional officers in the SHU did not follow LDC policy requiring detainees walk out of their cells backwards.<sup>57</sup> Not requiring detainees to walk backwards places the correctional officer at increased risk of a detainee assault. In addition, we found that LDC recreation correctional officers were not completing thorough searches of all recreation areas, including all fences, gates, fasteners, walls, windows, bars, storm drains/manholes, locking devices and doors prior to and upon completion of each recreation period as required by CoreCivic policy and post order for outdoor recreation. Specifically, we found that in 10 of the 12 recreation periods the LDC correctional officers had not conducted thorough searches of all recreation areas, thereby increasing the risk that LDC officers would not detect instances of compromised yard security, including the potential introduction or attempted transfer of contraband items.

In early 2016, CoreCivic updated LDC policies and procedures to address these matters and improve the facility's quality assurance processes. First, CoreCivic updated the LDC's post orders to require Shift Supervisors and Assistant Shift Supervisors to observe recreation yard searches and detainee movement in the SHU on a daily basis and to perform a weekly review of the LDC's video security footage. Secondly, CoreCivic updated LDC policy to formally grant the LDC's QAM access to the facility's security system, enabling the LDC's QAM to observe recreation yard searches and detainee movement in the SHU. USMS approved these changes, which became effective in April 2016. We reviewed the changes to LDC policy and post orders and believe the POA should provide LDC officials the necessary oversight to ensure that the identified weaknesses are resolved. However, given the LDC's difficulties implementing POAs, we recommend that the USMS monitor LDC compliance with the new CoreCivic policies and post orders related to recreation yard searches and detainee movement in the SHU, to ensure they are operating effectively.

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<sup>56</sup> Our review of the LDC encompassed judgmentally selected periods between August 3 through September 6, 2015, for the SHU and August 3 through August 13, 2015, for the recreation yard.

<sup>57</sup> CoreCivic-LDC Post Order 23 states that once the SHU cell door is opened, detainees are to be backed out of their cells. At no point are the detainees to exit the cell facing forward. The three instances were identified during a 75 minute review period on August 19, 2015. In total we reviewed approximately 22 hours of SHU video.

## Staffing Requirements and Triple Bunking

According to the Department's National Institute of Corrections (NIC), staff is the most indispensable, important, and expensive resource in corrections.<sup>58</sup> Consistent with that statement, staffing dominates corrections operating budgets at both government and privately operated facilities. The LDC contract requires that CoreCivic maintain a USMS-approved staffing plan (USMS plan) throughout the term of the agreement. The purpose of the USMS plan is to identify all personnel necessary for CoreCivic's performance of the contract and to provide the number, type, and distribution of staff throughout the facility.<sup>59</sup> USMS, however, was not the only government entity using the facility. In July 2009, CoreCivic contracted with Wyandotte County, Kansas to confine and supervise up to 220 detainees. As a result, in addition to the USMS plan, CoreCivic maintained a facility-wide staffing plan (Facility plan). The Facility plan assesses the LDC's overall staffing needs and includes both the USMS's and Wyandotte's detainees. Unless otherwise stated, the following OIG staffing analysis was based on the Facility plan, which had a higher staffing level than the USMS plan. This was done because the USMS and Wyandotte shared personnel resources extensively; specifically, 165 of the Facility Plan's 234 FTEs (71 percent) were shared between USMS and Wyandotte. Furthermore, CoreCivic sometimes updated the Facility plan to include USMS-exclusive positions that were not always contained within the USMS plan.

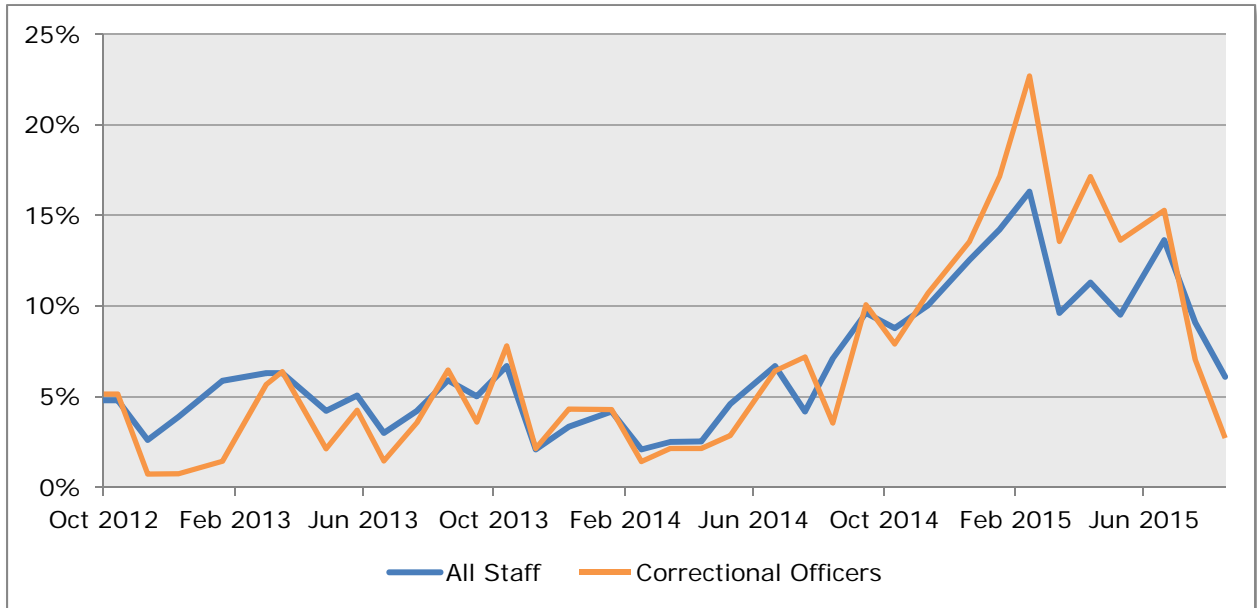
We determined that the LDC's overall staffing levels from October 2012 through September 2014 were generally consistent with the Facility plan thresholds, with the monthly facility-wide vacancy rate averaging 5 percent. However, from October 2014 through September 2015, LDC staffing levels deteriorated and the average monthly facility-wide vacancy rate more than doubled to 11 percent. LDC's increased vacancy rates were primarily driven by turnover in correctional officer positions. Correctional officers are integral to the safe and secure operation of detention facilities. They supervise the activities of detainees, enforce rules and maintain order, inspect facilities, monitor detainee movement, and constantly interact with detainees. While the LDC averaged only a 4 percent monthly vacancy rate for correctional officers from October 2012 to September 2014, that rate more than tripled from October 2014 through September 2015, reaching as high as 23 percent in March 2015, as shown in Figure 3.

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<sup>58</sup> The National Institute of Corrections is a component of the BOP that provides training, technical assistance, information services, and policy/program development assistance to federal, state, and local corrections agencies.

<sup>59</sup> The USMS plan provides the number of positions needed per shift and the number of total staff, measured in full-time equivalents (FTE), necessary to cover posts on a continuous basis. The USMS plan is organized into the following seven sections: (1) management/support, (2) security/operations, (3) unit management, (4) maintenance, (5) programs, (6) services, and (7) health services. If CoreCivic pursues any change to the USMS plan, it must request USMS's approval prior to implementation.

**Figure 3**  
**LDC Monthly Vacancy Rates**  
**October 2012 through September 2015**



Source: CoreCivic

The consensus among LDC staff was that high correctional officer turnover began because of regional job opportunities that offered higher pay and benefits. Our review of LDC exit interviews from January through December 2015 confirmed this, finding that 6 of the 12 respondents sought alternative employment for reasons including compensation and benefits.<sup>60</sup> Furthermore, when the exit interviews asked for common areas of improvement and what they liked least about working at the LDC, 8 of 12 respondents mentioned understaffing. According to NIC, vacancies can dramatically affect the availability of staff to cover posts, and regaining coverage of posts can be delayed by the processes of recruitment, training, and orientation. When problematic turnover becomes a regular occurrence, morale suffers, word spreads, vacancies occur, and recruitment becomes difficult.

In the following sections, we assess CoreCivic compliance with staffing requirements stipulated by the contract and facility policies and procedures, as well as the USMS's efforts to monitor the LDC's staffing. We analyzed the LDC's staffing levels and vacancy rates, evaluated the LDC's staffing policies and procedures, selected a sample of shift rosters to determine if the LDC was filling its security posts, reviewed the USMS's contract staffing provisions and compared them to the BOP's, and interviewed LDC staff to gain an understanding of the facility's staffing levels and conditions. We found that correctional officer turnover led to several

<sup>60</sup> Because exit interviews were optional, participation was limited.

problems in 2015, including the LDC's long-term use of mandatory overtime, the closure of a large number of security posts considered mandatory by CoreCivic, and the diversion of unit management staff from their normal job duties to filling security posts. We also found that CoreCivic was slow to react to the understaffing and did not utilize all available staffing options to remedy the problem. Finally, we found that LDC officials concealed the facility's use of triple bunking from the ACA in what appears to be an effort to receive a higher accreditation score.

CoreCivic's 2015 Annual Report noted that staffing salaries and benefits comprised approximately 59 percent of its operating expenses. As a for-profit corporation, CoreCivic and other private prison operators have a financial incentive to control staffing costs, which creates a critical need for the USMS to provide adequate oversight of the facility's staffing levels and composition. We identified two significant deficiencies concerning USMS oversight of facility staffing. First, the USMS did not conduct sufficient monitoring to ensure that the LDC maintained appropriate staffing levels. Secondly, the USMS failed to hold CoreCivic accountable for its significant understaffing throughout 2015. In fact, the USMS contributed to staffing deficiencies by authorizing CoreCivic to transfer a small contingent of its contracted LDC staff to open a U.S. Immigration and Customs Enforcement facility in Texas during a time of significant understaffing at the LDC. Additionally, the USMS allowed CoreCivic to enter into a separate contract with Wyandotte County, Kansas to house non-federal detainees at LDC at a discounted rate without first considering the impact on USMS's contracted staffing resources and the LDC contract price. As a result, staffing resources originally dedicated to the USMS detainees became shared with Wyandotte County, and Wyandotte County housed its inmates at a significantly lesser contract per diem rate than the USMS. Ultimately, USMS received little or no discernible benefit - financial or otherwise - from this arrangement.

#### *LDC Understaffing Led to Security Post Closures*

According to CoreCivic's technical proposal, the USMS plan ensures that a sufficient number of officers will be posted within all housing units for prompt response to emergencies or inquiries from all detainees and to ensure accountability. LDC must generate and maintain daily correctional staff assignment rosters (shift rosters) that reflect the facility's coverage needs and list the scheduled and actual assignments by shift and post. Shift rosters are essential to the security of an institution and the posts listed in the shift roster should mirror the facility's staffing plan. For example, if the staffing plan requires three correctional officers per day to address detainee recreation, the daily shift roster should contain three recreation posts. LDC's shift rosters assign various personnel across multiple 12-hour and 8-hour shifts per day. On weekdays, the LDC typically has 64 posts on the first shift (AM shift) and 29 posts on the second shift (PM shift). Weekends require fewer posts because certain functions, such as transportation, are only performed on weekdays.

We selected a sample of shift rosters to determine if the LDC had filled its security posts. If not, we counted the number of and length of post closures,

counted the posts most often closed, and described any other discrepancies. For our limited review, we chose shift rosters during two periods which we refer to as the Winter and Summer Timeframes. The Winter Timeframe was from February 1 through March 31, 2015, and consisted of 59 days and 118 shifts. The Summer Timeframe was from July 1 through August 15, 2015, and consisted of 46 days and 92 shifts.

We found that during the Winter Timeframe, the LDC closed at least one security post in all 118 shifts (100 percent) and closed approximately 7 posts per shift, which accounted for nearly 65 hours of correctional officer work that went unperformed per shift. During the Summer Timeframe, the LDC closed at least one security post in 85 of 92 shifts (92 percent) and closed approximately 7 posts per shift, which accounted for nearly 55 hours of correctional officer work that went unperformed per shift. Many of the post closures occurred at “mandatory” posts. According to CoreCivic, facility managers typically identify “mandatory” posts within their institution as those that must be filled on each shift in order to run the facility in a safe and secure manner. Mandatory posts are identified within LDC shift rosters and it is the responsibility of LDC’s Shift Supervisors and Assistant Shift Supervisors to ensure that all mandatory posts are staffed. LDC’s most frequently closed mandatory posts included Central Control, Pod Control 5, Housing Unit Y, Outdoor Recreation, and Utility/Search and Escort, each of which is described below.<sup>61</sup>

- **Central Control** – Central Control is where the LDC’s master controls for electronic security systems are located. Central Control officers are tasked with controlling access in and out of the facility; tracking internal movement within the facility; monitoring the general safety and welfare of individuals and areas of the facility via video camera; responding to emergencies; handling the issuance, receipt, and inventory of key rings and equipment; and performing several other duties. According to the LDC contract, Central Control has a critical impact on the institution's orderly and secure operation. The facility-wide staffing plan requires four posts, two on both shifts, which are generally denoted as “mandatory” posts on the LDC shift rosters.

The closures were most prevalent during the Winter Timeframe when the LDC closed at least one of four posts on 52 days (88 percent) for a total of 619 hours, or a 22 percent vacancy rate. During the Summer Timeframe, the LDC closed at least one of the four posts on 19 days (41 percent) for a total of 215 hours, or a 10 percent vacancy rate. Furthermore, the LDC closed at least one Central Control post for an entire 12-hour shift on 42 of 58 days during the Winter Timeframe and 9 of 46 days during the Summer Timeframe.

One Central Control officer we interviewed said it was necessary to have two

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<sup>61</sup> The USMS contract and staffing plan do not differentiate between mandatory and non-mandatory posts. USMS does not play any role in identifying mandatory posts.

correctional officers in Central Control at all times due to the large number of responsibilities. By closing one of the Central Control posts, the remaining Central Control officer's responsibilities double. Furthermore, if Pod Control posts are closed throughout the facility, those post's duties are typically transferred to Central Control, further increasing Central Control's workload. As described below, this did occur with the closure of certain Pod Control posts.

- **Pod Control 5** – Pod Control maintains the internal security of the detainee housing units by continually monitoring the housing area and housing officers.<sup>62</sup> LDC has seven pod control posts throughout the facility, each located adjacent to two or more housing units.<sup>63</sup> Pod Control officers observe detainees, visitors, and staff on the premises to guard against escape, injury, theft, and damage to property.

During the Winter Timeframe, the LDC filled the seven Pod Control posts 93 percent of the time, as measured in hours, and during the Summer Timeframe filled those posts 96 percent of the time. When closures did occur, it was most often in Pod Control 5, which was vacant 23 percent of the time during the Winter Timeframe and 10 percent of the time during the Summer Timeframe. On August 9, 2015 - one of the most understaffed days we reviewed - the LDC closed five of seven Pod Control posts in both the A.M. and P.M. shifts, which accounted for 72 hours of closure out of the 168 hours (43 percent) required for correctional officers to cover all seven Pod Control posts that day. Pod Control posts were denoted as "mandatory" on LDC shift rosters.

LDC's former Warden said the LDC closed Pod Control 5 because it monitored detainees with a lower security level than the other Pod Control posts. When Pod Control posts close, monitoring responsibilities are typically transferred to Central Control, which as described above, was also frequently understaffed. Two LDC staff we interviewed said the closure of Pod Control posts was unnerving to Housing Unit officers. Specifically, staff expressed concerns that, were an incident to occur on the floor, Central Control officers may take longer to react than a Pod Control officer because they had assumed Pod Control duties in addition to their existing responsibilities, and also do not have the continuous direct line of sight into the housing units that Pod Control officers have.

- **Housing Unit Y** – LDC detainees are housed in multiple-occupancy cells within the facility's 22 housing units, or "pods." Housing Unit officers monitor activities within the pods, report any suspicious behavior, perform random cell searches and security checks, conduct counts, and perform other

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<sup>62</sup> Pod Control units are also referred to as Housing Control or a "Bubble."

<sup>63</sup> Of the LDC's seven Pod Control posts, six are exclusive to USMS detainees and one is exclusive to Wyandotte County detainees.



duties. There are 23 daily Housing Unit officer posts located throughout the facility, and most were continuously manned. The exception was Housing Unit Y, which consisted of five Housing Unit officer posts in segregation and general housing pods.

During the Winter Timeframe, the LDC closed at least 1 of 5 Housing Unit Y posts on 46 days (78 percent) for a total of 476 hours, or a 13 percent vacancy rate. During the Summer Timeframe, the LDC closed at least one post on 43 days (94 percent) for a total of 819 hours, or a 30 percent vacancy rate. All Housing Unit posts were denoted as “mandatory” on LDC shift rosters.

A senior LDC official said LDC closed posts in Housing Unit Y because of declining detainee populations throughout 2015. These declines resulted in the LDC not needing space in Housing Unit Y’s general housing pod. However, as described later in the report, the LDC was also able to close these posts in part because CoreCivic officials were triple-bunking detainees elsewhere throughout the facility.

- **Outdoor Recreation** – CoreCivic policy and ACA standards require detainees receive access to exercise opportunities, including at least 1 hour daily of physical exercise outdoors when weather permits.<sup>64</sup> The facility-wide staffing plan and shift roster require three security posts during the A.M. shift to administer detainee recreation.

During the Winter Timeframe, the LDC closed at least 1 of the 3 recreation posts on 55 days (93 percent), and the posts were vacant for a total of 1,401 hours, or a 66 percent vacancy rate. During the Summer Timeframe, the LDC closed at least 1 of the 3 recreation posts on 41 days (89 percent), and posts were vacant for a total of 706 hours, or a 43 percent vacancy rate. Recreation posts were denoted as “mandatory” on LDC shift rosters.

Nearly half of the post closures during the Winter Timeframe occurred due to inclement weather and facility shakedowns, which are physical or visual searches of a specific area of the facility.<sup>65</sup> LDC’s former Warden said that during the most significant understaffing in 2015, LDC staff felt relief when inclement weather arose, as they could justify closing all three recreation posts for the entire day, even if the bad weather soon subsided, and did not have to vacate other facility posts to run the recreation yard. During the Summer Timeframe, LDC began to start recreation 3 hours later than usual because, as a senior LDC official explained, they had insufficient staff early in

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<sup>64</sup> CoreCivic Policy 20-100, *Inmate/Resident Services and Programs*; and ACA Standard 4-ALDF-5C-01.

<sup>65</sup> CoreCivic policy states that all outdoor recreation areas will be closed whenever the outside temperature falls below zero degrees Fahrenheit or if there is lightning, snow, ice, freezing rain, or other conditions that create an increased risk of injury to staff or detainees.

the morning and had to wait for more personnel to come onboard. Our review of shift rosters found that of 29 instances where recreation started late (excluding instances where recreation was closed entirely), in only 5 instances were recreation schedules extended to compensate for the delay. As a result, detainees began receiving less recreation time. Eight of the nine detainees we interviewed said they received less than one hour of outdoor recreation per day, and that it often lasted only 30 minutes. During our review of LDC security video surveillance, we noted that detainees only received an average of 37 minutes of recreation on August 13, 2015. Conversely, one correctional officer expressed frustration with detainees being granted outdoor recreation during a period of chronic understaffing, and wondered why a Housing Unit officer should risk his or her safety to accommodate detainee recreation. For example, a Housing Unit officer might lose his or her respective Pod Control Officer, who could be forced to vacate the Pod Control post to fill a recreation post.

- **Utility/Search and Escort** – Utility/Search and Escort posts temporarily assume or assist in the general supervision of security posts within the facility. They may provide relief to correctional officers, provide backup support during any detainee disturbance, respond to any detainees in distress or being harmed, escort detainees throughout the facility, and provide additional assistance throughout the facility.

During the Winter Timeframe, the Facility plan required four Utility/Search and Escort posts per day and during the Summer Timeframe, the Facility plan required five Utility/Search and Escort posts per day. For both timeframes, these posts provide coverage 24 hours per day, 7 days per week. In the Winter Timeframe, LDC closed at least one of the 4 Utility/Search and Escort posts on all 59 days (100 percent) for a total of 1,704 hours, or 60 percent of the time. In the Summer Timeframe, the LDC closed at least one of the five Utility/Search and Escort posts on 41 days (89 percent) for a total of 1,203 hours, or 44 percent of the time. Utility/Search and Escort posts were generally denoted as “mandatory” on LDC shift rosters.

CoreCivic officials explained that these Utility/Search and Escort posts are buffers to address the very understaffing that occurred at the LDC. During a time of need, they would expect this post to close first, as the Shift Supervisor would need to transfer correctional officers to a different post.

LDC’s persistent closure of security posts meant that CoreCivic could not provide all of the personnel deemed necessary for the performance of the LDC contract. Furthermore, because many of these posts were considered “mandatory,” or required continuous staffing, the LDC’s failure to consistently fill these posts compromised its ability to run the facility in a safe and secure manner. In the following sections we describe how LDC did not promptly address the facility’s understaffing problems which led to the post closures, and how the USMS did not adequately monitor and hold CoreCivic accountable for the understaffing.

### *LDC Did Not Promptly Address Facility Understaffing*

CoreCivic facilities can address chronic understaffing through several means including use of overtime, use of temporary personnel from other CoreCivic facilities or a security service company, and adjustment to its recruiting and hiring practices. FSC officials explained that the first management strategy for addressing understaffing is the use of voluntary and mandatory overtime, and that facilities must balance their overtime use to ensure it is not leading to staff burnout, underperformance, and low morale. According to these officials, if a Warden and his or her management team begin to encounter such indicators, they can submit a request to FSC for temporary personnel from other CoreCivic facilities. FSC officials also said CoreCivic has begun hiring temporary correctional officers from a security service company. This could be a future option for the USMS to consider when addressing understaffing, though CoreCivic officials said this choice was limited by a scarcity of hireable staff with correctional officer experience.

Another strategy to address understaffing is to adjust recruitment and hiring practices, such as providing increased pay and benefits. FSC officials said this was not necessary because the LDC historically had few problems hiring staff, had maintained low turnover, and offered among the highest correctional officer wages of CoreCivic's institutions. They said that the LDC's understaffing in 2015 was an isolated incident. LDC could also bolster its hiring and recruitment by requesting CoreCivic authorization to hire more correctional officers than its staffing plan allowed. Specifically, the LDC requested and obtained an additional two correctional officer FTEs in June 2015 and four more correctional officer FTEs in September 2015. FSC officials said this was intended as a temporary option to allow the LDC to hire a larger class of correctional officers than would be necessary under stable staffing conditions, in order to compensate for any further correctional officer turnover occurring between the hiring and deployment of staff. However, this action was taken after several months of LDC understaffing and had a less immediate impact than obtaining temporary personnel from other CoreCivic facilities that could be deployed quickly. As the former Warden noted, the recruitment, training, and deployment of correctional officers is a lengthy process. Despite the LDC's efforts, understaffing and post closures continued.

In our judgment, LDC was too slow and reactive in addressing facility understaffing, which began in late 2014 and continued for most of 2015. We determined that the LDC did not utilize the staffing options available to help mitigate the understaffing, such as requesting temporary personnel from other CoreCivic facilities. While the LDC had temporarily transferred its staff to other CoreCivic facilities in Texas and Louisiana (as described later in this report), it had not requested such assistance to address its own understaffing in 2015. FSC officials believed that the LDC's former Warden did not request such help because the former Warden "believed he and his management team were managing post coverage appropriately with the staffing resources at [their] disposal, including utilization of voluntary and mandatory overtime...." An FSC official said that had the LDC requested temporary staff, FSC would have considered it. LDC's former Warden strongly disagreed, saying that while he could ask FSC for temporary staff,

it was unrealistic that he would receive it. However, the LDC's former Warden could not provide any evidence to validate this assertion such as documentation showing he had requested temporary staff or that FSC officials rejected or were dismissive of such requests.

Furthermore, the LDC's former Warden said that a request for temporary staff should not have been necessary because FSC knew of the LDC's understaffing. Our interviews of FSC staff and review of CoreCivic documents and reports confirmed this. These interviews and documentation indicated that FSC officials reviewed facility statistics on overtime and turnover, inquired about the existence of understaffing at the LDC and its causes, and were made aware of the LDC's understaffing. However, FSC officials said they had not reviewed the LDC's completed shift rosters, which would have shown that the LDC was consistently vacating its security posts, and we did not encounter any evidence indicating otherwise. Regardless, nothing precluded FSC from requesting and viewing the LDC's completed shift rosters.

LDC's former Warden and his management team were ultimately responsible for ensuring that their facility was adequately staffed, as they had the greatest visibility of the extent of the understaffing and its repercussions. We believe the LDC should have requested FSC assistance when its correctional officer staffing levels deteriorated and led to continuous post closures. However, we believe that FSC also bears responsibility for independently monitoring the LDC's staffing situation, and that this is best accomplished through the review of completed shift rosters. A properly completed shift roster provides important detail on how the LDC is managing and allocating its personnel to fill its posts. Therefore, we recommend that the USMS ensure that CoreCivic establishes policies and procedures that prevent the closure of mandatory posts at CoreCivic's USMS contracted facilities and require FSC to assess completed shift rosters to determine if facilities are adequately filling their security-related posts.

#### *USMS Did Not Adequately Monitor and Hold CoreCivic Accountable for Understaffing*

USMS's District COR and QAR team were responsible for monitoring CoreCivic compliance with the contract's staffing requirements. The District COR was required to collect vacancy and staffing complement reports on a quarterly basis and to ensure that the LDC generated POAs to address personnel vacancies.<sup>66</sup> The District COR had collected quarterly vacancy reports, which broadly depicted the LDC's increasing correctional officer vacancies during 2015. Vacancy reports alone, however, were not sufficient to fully assess the LDC's staffing and post coverage. Other than touring the facility, the District COR's best means to determine if the LDC had adequate personnel to fill its security posts was through reviews of shift rosters. However, the District COR could neither provide any evidence that she

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<sup>66</sup> QAR team responsibilities included ensuring that the LDC conducted an annual comprehensive staffing analysis. We did not identify any discrepancies in the QAR team's annual staffing analysis.

reviewed shift rosters, nor did she maintain a log of when such reviews were conducted.<sup>67</sup>

The first documented evidence that the District COR became aware of the LDC's post closures was after an April 2015 visit by a Deputy U.S. Marshal who observed vacant control pods. By the time the USMS identified this matter, understaffing and security post closures had already been occurring for months, with correctional officer vacancies increasing in each of the preceding 4 months and peaking in March 2015 at 23 percent. In response, the District COR sought corrective action from the LDC and referred the matter to the QAR team. In May 2015 during its annual review, the QAR team reviewed the LDC's housing plan, shift rosters, and vacancy reports and concluded that LDC staffing was deficient, stating that:

*"[CoreCivic] LDC has attempted to compensate for the shortage of correctional officers by mandating correctional officer[s] report to work on their regularly scheduled days off; however, a review of actual shift roster records reveals [CoreCivic] LDC still has to routinely vacate correctional posts which are identified in their 2015 staffing analysis due to a shortage of correctional officers."*

The report also noted that "an overtly confrontational prisoner spirit suggest[s] [that] the ongoing shortage of correctional officers is having an impact on the facility's operational climate." We found that when responding to the USMS's staffing-related findings, the former Warden said that the LDC was in the process of recruiting and deploying new correctional officers. However, the LDC's POAs failed to provide immediate relief and the understaffing and post closures resumed. In one instance, the LDC failed to fulfill a component of its POA that may have provided immediate relief. Specifically, in a July 2015 memorandum, the LDC's former Warden said that if overtime was insufficient to ensure that all posts were filled, the LDC would "temporarily deploy staff from other [CoreCivic] facilities until new hires are able to assume posts." LDC continued to close security posts into September 2015, yet did not request temporary staff from other CoreCivic facilities to cover posts. USMS did not hold CoreCivic accountable for its failure to comply with this provision of the corrective action plan.

In October 2015, the LDC's Contracting Officer proposed an invoice reduction to CoreCivic for approximately \$763,000 due to CoreCivic's non-compliance with FPBDS in the areas of correctional supervision, detainee accountability, and control of contraband. USMS determined that the LDC's significant staffing shortages during 2015 had contributed to the non-compliance. Before finalizing the invoice reduction, CoreCivic was provided the opportunity to respond, to which it disagreed and requested the USMS reconsider the reduction amount. USMS formally issued

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<sup>67</sup> The accuracy and completeness of the shift rosters can be assessed by comparing them to timekeeping records and observing whether or not personnel on the shift roster are on the required posts.

the \$763,000 price reduction in February 2017, or 16 months later. A senior USMS official involved in the invoice reduction process said that the longer the USMS takes to decide on whether to apply a reduction, the more it harms the USMS's credibility in administering its contracts and holding contractors accountable. USMS officials said they could shorten the processing period by incorporating milestones into its price reduction guidance to ensure more efficient and expedient submission of its final price reductions decision to its contractors.

In response to the February 2016 OIG Management Advisory Memorandum, USMS said it will improve contract monitoring by establishing an onsite detention contract monitoring program and developing standard operating procedures and contract monitoring instruments. We recommend that USMS's contract monitoring program include staffing-related procedure steps that help District CORs assess facility staffing trends and determine if post closures are occurring. We also recommend that USMS incorporate milestones into its price reduction guidance. Lastly, we recommend that the USMS ensure that during periods of chronic understaffing, contractors utilize all available options, including the provision of temporary staff.

LDC's closure of posts also represents a loss of contracted value to the USMS. Using Wage Determination information, we calculated the value of security post closures based on the minimum wage and benefit rates for a correctional officer.<sup>68</sup> For the Winter Timeframe, the post closures amounted to \$171,817 in services not received by the USMS. For the Summer Timeframe, this figure amounted to \$113,308.

### *Impact of LDC Understaffing*

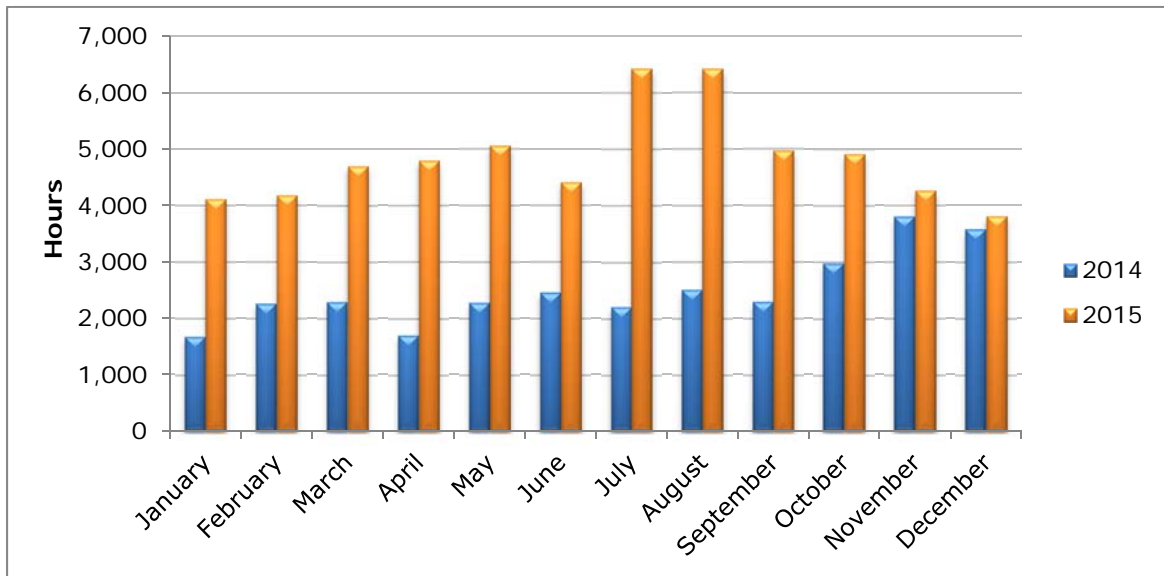
CoreCivic officials explained that when staffing declines, the LDC requests volunteers to work overtime by posting a sign-up sheet. If there are not enough volunteers, the LDC uses mandatory overtime. In September 2014, the LDC began "drafting," or requiring employees work overtime to cover posts. Facility management could give no less than a 2-hour advance notice of the need to draft the employee and once the employee worked their draft shift, they would be rotated to the bottom of the draft list. In February 2015 the LDC switched to using a "mandate list." Under the mandate list, all security employees were scheduled to work a maximum of 12 hours of mandatory overtime on one of their days off, which was scheduled approximately a month in advance to provide employees earlier notice. LDC used the mandate list from February 2015 through June 2016, but the extent of the overtime worked varied. For example, in June 2015, each correctional officer worked an average of three mandate shifts (each shift was for 12 hours) that month. By July 2016, facility staffing had improved and each correctional officer averaged less than 1 mandate shift for the month.

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<sup>68</sup> These calculations exclude the posts that were meant exclusively for Wyandotte County inmates.

Understaffing throughout 2015 had a significant impact on the LDC’s use of overtime. LDC’s use of overtime increased 93 percent from 2014 to 2015 and nearly tripled in April 2015 and July 2015 as compared to the prior year, as shown in Figure 4. In both years, security personnel accounted for at least 94 percent of facility overtime use, primarily by correctional officers.

**Figure 4**  
**LDC Overtime Utilization**  
**January 2014 to December 2015**



Source: CoreCivic

LDC personnel shared several examples of the impact of understaffing, including: (1) lower morale, due in part to frustration with understaffing; (2) security concerns; (3) fewer correctional officers available to escort medical staff and detainees to and from the health services unit; (4) fewer staff available to assist the LDC’s QAM in conducting quality assurance audits, and (5) not being able to perform regular job duties while placed on security posts.

Correctional officer understaffing led the LDC to utilize members of its Unit Management Teams (Unit Team) to cover security posts instead of, or in addition to, performing their regular job duties. Unit Teams are responsible for familiarizing and communicating with detainees, which enables them to address and resolve detainee concerns and reduce the likelihood of incidents or disputes. They also streamline the delivery of services and programs to detainees in their assigned units. The Facility plan includes three Unit Teams, each consisting of one Unit Manager, two Case Managers, and two Correctional Counselors.<sup>69</sup> Unit Managers

<sup>69</sup> In other words, the Facility plan includes three Unit Managers, six Case Managers, and six Correctional Counselors. However, the USMS plan only includes two Unit Managers, five Case Managers, and five Correctional Counselors.

supervise the Correctional Counselors and Case Managers and ensure staff members are performing their duties. Case Managers provide case management, classification, and transitional services to detainees; develop individual detainee program plans; and help detainees adjust socially to their environment. Correctional Counselors are uniformed, security-trained staff responsible for resolving daily detainee issues before they become significant matters, incidents, or grievances. They are responsible for making daily rounds through assigned units, ensuring that services and programs are delivered to detainees, and conducting 1-on-1 meetings with detainees. Case Managers and Correctional Counselors must be accessible to detainees every day.

To determine the amount of time that Unit Team members (specifically Case Managers and Correctional Counselors) were assigned to security posts instead of their intended job duties, we selected a judgmental sample of shift rosters and timekeeping data over 33 days between July 20 and September 6, 2015. During this timeframe, Unit Team members were unable to exclusively perform their intended duties for an average of 29 hours per day, or 37 percent of their time, because they were occupying a security post. When measured in dollars over the 33-day period, the LDC's customers (primarily the USMS but also Wyandotte County) lost 832 hours of Unit Management-dedicated work worth approximately \$19,972.<sup>70</sup>

LDC staff said that assigning Case Managers and Correctional Counselors to security posts meant that Unit Managers assumed their subordinates' responsibilities to prevent work-related backlogs. On some days, Unit Managers would lose most of their team, and one Unit Manager commented that when this occurred, she would have to perform the work of five individuals. On July 20, 2015 - one of the worse days encountered - 9 of 11 Case Managers and Correctional Counselors working that day were assigned to security posts. Their normal job duties were assumed by their respective Unit Managers. These duties included a variety of detainee management and program functions including counseling services, handling detainee requests, and the development of individual program plans and life skills for successful re-entry into the community. We also found that some Unit Team staff were assigned to security posts on a lengthy full-time basis. In early July 2015, we observed a Correctional Counselor that was assigned to the A.M. front lobby security post on a full-time basis and this individual anticipated remaining there until the end of August 2015. Another Correctional Counselor was consistently covering the P.M. front lobby security post from July through August 2015.

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<sup>70</sup> Calculated as the sum of: (1) Case Managers' 266 hours on security posts multiplied by the \$24.46 wage and benefits rate, and (2) Correctional Counselors' 565 hours on security posts multiplied by the \$23.80 wage and benefits rate. The difference is due to rounding.



### *Personnel-Related Decisions Increased LDC Understaffing*

Despite the LDC's staffing struggles throughout 2015, CoreCivic temporarily transferred LDC personnel to other CoreCivic facilities in two instances, thereby increasing the facility's understaffing. First, in late 2014 CoreCivic requested USMS approval to temporarily transfer staff from LDC and USMS's other contracted facilities to the South Texas Family Residential Center in Dilley, Texas, a U.S. Immigration and Customs Enforcement contracted facility. CoreCivic needed temporary staff to operate the facility until it could hire permanent employees. CoreCivic told the USMS that this initiative would not adversely affect LDC's operations or required staffing levels and that transferees' assignments and responsibilities would be backfilled by existing personnel, using overtime as necessary.<sup>71</sup>

USMS approved CoreCivic's request on the conditions that no more than 5 percent of each CoreCivic-managed facility's total staff were transferred at any given time and that the required security posts be staffed throughout the period. From December 2014 through July 2015, LDC transferred seven staff, consisting of six correctional officers and one shift supervisor. The start dates, end dates, and length of assignment varied, but lasted on average four months per person. Because the initiative included a small proportion of LDC's total staff, the number of LDC transferees never exceeded 5 percent. However, the arrangement occurred during an 8-month period when LDC correctional officer vacancy rates ranged from 11 to 23 percent, and LDC was consistently closing mandatory operational posts, as previously described in this report. LDC personnel told the OIG they were frustrated by CoreCivic's decision to transfer staff because they were already shorthanded and working mandatory overtime. LDC's former Warden, when asked why he transferred staff despite facility understaffing, said that he did not have a choice because FSC did not request his input or approval on the matter. He also suggested that there was immense pressure to comply because the U.S. Immigration and Customs Enforcement contract was highly lucrative.<sup>72</sup> A senior FSC official acknowledged that CoreCivic did not explicitly ask Wardens for approval, but told us that its expectation was that Wardens would provide staff unless unable to satisfy the request. Ultimately, the LDC's former Warden could not provide evidence that he objected and by sending staff, FSC considered this an implicit agreement.

Despite the USMS's general awareness of the LDC's understaffing and having witnessed routine post vacancies during the initiative, the USMS did not hold CoreCivic accountable for failing to staff security posts, in violation of the agreement. The LDC continued to vacate security posts and the transfer

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<sup>71</sup> The BOP and U.S. Immigration and Customs Enforcement also temporarily transferred personnel to the South Texas Family Residential Center.

<sup>72</sup> According to CoreCivic's 2015 Annual Report, the South Texas Family Residential Center accounted for nearly \$245 million in revenue or approximately 14 percent of CoreCivic's total revenue in 2015.

arrangement continued unchanged. This is likely because the Contracting Officer and District COR - who were best suited to monitor and address non-compliance with this agreement's conditions - said they were unaware that the agreement even existed.

In the second instance of personnel transfers, CoreCivic temporarily transferred five LDC staff to the Winn Correctional Center in Winnfield, Louisiana from March 6 through March 31, 2015.<sup>73</sup> The purpose of this transfer was to "provide an enhanced security response ... due to immediate concerns regarding population unrest [at the Winn Correctional Center] and threat of potential violence." These five staff members were selected because they were members of the LDC's Special Operations Response Team (SORT). According to CoreCivic guidance, SORT is an integral part of an institution's structure and the main response force in the event of a major disturbance that cannot be resolved by on-duty staff. CoreCivic transferred these five staff during March 2015, a month when the LDC had a 20 percent vacancy rate in correctional services. This was the highest monthly vacancy rate from January to August 2015.

Unlike the assignment to the South Texas Family Residential Center, CoreCivic failed to request USMS approval for transferring staff to the Winn Correctional Center. CoreCivic officials said this was because of the emergency nature and short duration of the assignment. USMS's Chief of the Office of Detention Services said CoreCivic should have notified the USMS, which would have wanted to ensure that the LDC's SORT was sufficiently staffed. CoreCivic had authorized the LDC to maintain a 15-member SORT, in part due to its isolated geographical location and lack of other CoreCivic facilities in close proximity. CoreCivic officials told us that this 15-member allotment was not a requirement. Instead, the LDC's Monthly Security Inspection document indicated that the facility's SORT be "at least 80 percent of the established allotment," or a minimum of 12 SORT members.<sup>74</sup> Prior to transferring LDC staff to the Winn Correctional Center, the LDC had nine SORT members and after the transfer only four SORT members remained.

A fully staffed 15-member SORT is generally comprised of a commander, an assistant commander, 2 squad leaders, and 11 team members. It may not always be necessary to deploy the full SORT as the strength of the deployment will depend on the nature and scope of the incident. From March 6 through March 31, 2015, the LDC's four SORT members consisted of the SORT commander, a squad leader and two team members. CoreCivic's technical proposal stated that SORT's mission is to "take prompt and decisive action to ensure public safety, protect life and property, and preserve order and control of the facility"; that it is "ready to be quickly mobilized for any emergency situation"; and that it "provide a quick

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<sup>73</sup> The five staff were two Senior Correctional Officers, one Case Manager, one Correctional Officer, and one Maintenance Worker.

<sup>74</sup> Monthly Security Inspections – which are internal audits described in CoreCivic's technical proposal - provide monthly inspections of all physical plant security elements.

reaction force.” We believe that by transferring the majority of the LDC’s existing SORT to the Winn Correctional Center, CoreCivic not only further understaffed the LDC and failed to maintain the requisite size of the SORT, but compromised the SORT’s ability to operate effectively and fulfill its mission in the event of a significant incident.

To address the issues within this section, we recommend that the USMS establish policies and procedures for assessing and approving contractor requests to transfer staff out of USMS contracted facilities, and: (1) obtain reasonable assurance from the facility Warden and FSC officials that such a transfer will not compromise the facility’s ability to comply with contract requirements and CoreCivic policy; (2) independently assess whether the proposed transfers may jeopardize facility staffing requirements and operational readiness; and (3) ensure that the Contracting Officer and COR approve and continuously monitor the arrangement, respectively.

#### *LDC Officials Concealed Use of Triple Bunking from the American Correctional Association*

CoreCivic must operate the LDC in accordance with the ACA’s Performance-Based Detention Standards for Adult Local Detention Facilities (ALDF). The ALDF contains standards, practices, and outcome measures that enable administrators and practitioners to monitor facility activities and measure the outcomes of their efforts. As part of the ACA’s accreditation process, the LDC undergoes standards compliance audits performed every 3 years by ACA auditors. The facility must attain 100 percent compliance with the 60 mandatory standards and at least 90 percent compliance with 325 non-mandatory standards, if applicable. Several of the standards address the facility’s conditions of confinement, including usable space and living environment. Compliance with these standards is dependent in part on the physical design of cells; for example, LDC detainees are housed in multiple occupancy cells – designed for 2, 8, or 10 beds. However, from at least 2005 through late 2015, LDC staff often affixed a third bed to the floor of many cells that were designed for two (hereafter referred to as “triple bunking”). Figure 5 is a USMS simulation of a triple-bunk configuration at a non-CoreCivic contract facility.

**Figure 5**  
**Triple-Bunk Configuration at Leavenworth Detention Center**



Source: CoreCivic

During our audit, we received information from an LDC official indicating that LDC staff intentionally concealed their use of triple bunking from ACA auditors in what appears to be an effort to avoid non-compliance with three ALDF non-mandatory standards related to usable space in multi-occupancy cells, usable space in the dayroom, and sufficient ventilation within the cells.<sup>75</sup> Upon further review, several other LDC officials corroborated this account, telling the OIG that in advance of an ACA accreditation audit, LDC staff uninstalled the third beds bolted to the floor of several cells designed for two and removed them from the facility. Doing so was intended to increase the amount of usable space and improve air circulation, thereby averting the associated ACA findings. Thus, ACA auditors were unaware of the LDC's use of triple-bunking. After the ACA auditors completed their work and departed the facility, LDC staff would reinstall the beds. The OIG referred this matter to its Investigations Division and to CoreCivic's General Counsel. In April 2016, CoreCivic's internal investigation concluded that:

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<sup>75</sup> The three ACA standards are: (1) 4-ALDF-1A-10, Multiple-Occupancy Rooms/Cells; (2) 4-ALDF-1A-12, Dayrooms; and (3) 4 ALDF-1A-19, Environmental Conditions. They state that multi-occupancy cells and dayrooms should provide a specific amount of usable space per occupant and that the facility's ventilation system should supply adequate air circulation throughout each cell, per occupant.

*"Third bunks were removed from cells originally designed for two inmates prior to the 2011 ACA Audit, intentionally to conceal the practice of triple-bunking from the ACA Audit Team in order to meet the unencumbered space requirements in general population cells."*

The CoreCivic investigation revealed that this may have also occurred prior to the 2005 and 2008 ACA audits. Interviewees stated that the LDC's Warden at the time directed LDC staff to utilize detainee labor to assist the LDC staff in the removal of approximately 100 beds from the LDC and store them at a rental facility or in a shipping container.<sup>76</sup> Furthermore, one of CoreCivic's former divisional Managing Directors, who was assigned oversight of the LDC and other facilities in multiple states from 2002 through 2014, was aware of this effort. Interviewees said that even though the three ALDF standards were non-mandatory, they wanted to attain the highest possible ACA score. We reviewed the LDC's ACA results for 2008 and 2011 (2005 was unavailable) and determined that had the ACA found the LDC non-compliant with the three non-mandatory standards, it still would have easily surpassed the 90 percent compliance threshold.<sup>77</sup> However, ACA accreditation rules state that an "intentional misrepresentation of facts [and] lack of good faith" could have subjected the LDC to a revocation hearing before its Commission on Accreditation for Corrections. CoreCivic said it was extremely disappointed to learn this had occurred and reported the results of its investigation to CoreCivic's executive staff and Board of Directors. CoreCivic said its Ethics and Compliance office completed training at the LDC on employees' duty to report misconduct, options for reporting misconduct, and CoreCivic's non-retaliation policy for employees who report misconduct. CoreCivic did not take disciplinary action against the former Wardens and Managing Director involved because they were no longer employed by CoreCivic. Officials from both CoreCivic and OIG Investigations discussed this matter with the ACA's Deputy Executive Director who decided not to take action against CoreCivic in part because the individuals involved were no longer at the LDC.

#### *USMS Contracts Do Not Contain Clear Guidance on the Use of Triple Bunking*

Triple bunking is not uncommon throughout the federal prison system and is often associated with addressing overcrowding. BOP said that its private prison contractors are allowed to triple bunk as long as the area utilized meets the applicable ACA standards for inmate space requirements. USMS's Chief of the Office of Detention Services said that triple bunking is acceptable to address an operational necessity on a temporary basis. This official said the operational necessity could arise from a sudden influx of detainees to a facility or if there was a disturbance that led to the closure of some housing units. What is not acceptable to the USMS, he noted, is when triple bunking is used for cost reduction purposes.

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<sup>76</sup> LDC had two different Wardens from 2005 through 2011.

<sup>77</sup> For the 2014 ACA audit, the LDC attained a score of 100 percent compliance, despite its use of triple bunking throughout the facility.

This happened at the CoreCivic-operated Northeast Ohio Correctional Center (NEOCC) in Youngstown, Ohio. Specifically, in 2015 the QAR team determined that NEOCC was triple bunking USMS detainees despite the availability of 1,500 empty beds elsewhere in the facility. USMS determined that CoreCivic had done this for cost-reduction purposes. By triple bunking USMS detainees, CoreCivic had avoided opening and staffing another unit.<sup>78</sup> This instance contributed to the USMS's issuance of a September 2015 memorandum to all its private prisoner operators that prohibited triple bunking.

CoreCivic's investigation of LDC triple bunking stated that there was "no evidence to definitively conclude that inmates were moved to housing units opened specifically to facilitate the concealment of triple bunking practices from the ACA audit team." This statement alludes to the question of why the LDC had triple-bunked detainees in the first place and whether triple bunking had allowed the LDC to close and not staff other housing units within the facility. LDC's use of triple bunking was not temporary. Instead it had generally been a permanent measure, as the third beds were regularly bolted to the floor, from at least 2005 until September 2015, with infrequent exceptions. CoreCivic officials told the OIG that triple bunking at the LDC was necessary to meet its customer's needs in a highly stratified environment where detainees are separated by one or more of the following: security level, adjudication status, customer (i.e., USMS detainees are separate from Wyandotte County detainees), and gender. Some detainees, such as material witnesses, must also be kept separate. CoreCivic officials further said that triple bunking offers flexibility during times of high fluctuation in the detainee population, noting that triple bunking allows the LDC the capability to accommodate its customer needs if the demand for beds suddenly increases.

However, senior LDC officials also said triple bunking provided staffing flexibility and cost-savings. One senior LDC official told us that by using triple bunking it could consolidate detainee living space to specific locations throughout the facility and LDC officials could then close remaining detainee housing locations, thereby eliminating the need to staff the closed locations. While CoreCivic's investigation may not have "definitively" determined that this happened in 2005, 2008, and 2011, a senior LDC official told us that when the USMS prohibited triple bunking in September 2015, the LDC had to reopen and staff Y-Pod, a multi-purpose unit that had previously been closed intermittently. We analyzed LDC housing and detainee transfer records and confirmed that on September 10, 2015, the LDC responded to the USMS prohibition on triple bunking by relocating 107 detainees from a third bunk to other locations throughout the facility. During this relocation process, 52 detainees were transferred to the recently reopened Y-Pod. LDC's former Warden said that after the USMS prohibited triple bunking, there was less overall tension in the affected units, that detainee incidents decreased and staff was calmer.

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<sup>78</sup> In response to the 2015 QAR, the Northeast Ohio Correctional Center (NEOCC) ceased triple bunking. However, a year later (during the 2016 QAR) the USMS found that the NEOCC had resumed its use, again for cost reduction purposes.

The OIG's review of the LDC contract found that it contained no specific language on contractor use of triple bunking that fell outside of ACA standards. Furthermore, in late 2015 the USMS issued separate memoranda on triple bunking that conflict with one another. Specifically, the September 2015 memorandum prohibited all triple bunking. However, approximately 3 months later, the USMS issued a memorandum approving the Central Arizona Detention Center's use of triple-bunking in limited circumstances. Because of the conflicting nature of these memoranda, we believe it is important that the USMS clarify its position on the allowability of triple bunking. Therefore, we recommend that USMS clearly specify in its new and existing contracts the circumstances under which triple bunking is allowed, and what rules, procedures, and ACA standards apply to the practice.

*USMS Did Not Evaluate the Implications of Wyandotte County's Use of the LDC*

When USMS entered into the contract with CoreCivic Leavenworth, the LDC's design capacity was 767 beds. In May 2008, the LDC underwent a facility expansion that increased the design capacity to 1,033 beds. Design capacity measures the number of beds (and therefore detainees) each facility is designed to accommodate. CoreCivic allows facilities housing detainees on a short-term basis to exceed the original design capacity; at the time of our audit, the LDC had a 1,120 total bed capacity. Because the USMS's contract with CoreCivic was not to exceed 922 beds, except in emergency situations, the expansion left CoreCivic with approximately 200 non-contracted beds throughout the facility. To fill these extra beds and gain additional revenue, in July 2009 CoreCivic entered into a 3-year contract with Wyandotte County, Kansas to confine and supervise up to 220 adult minimum to medium security male detainees at the LDC.<sup>79</sup> USMS's Chief of the Office of Detention Services said that sharing its contracted facilities with another entity was common because the USMS does not always contract for the maximum number of beds in the facility.

USMS did not assess the staffing implications of the CoreCivic-Wyandotte arrangement. While the USMS-approved staffing plan (USMS plan) specified the number of personnel resources (measured in FTEs) necessary to fulfill contract requirements, the CoreCivic-Wyandotte contract did not establish Wyandotte County's respective staffing needs. Instead, pursuant to the Wyandotte contract, LDC staffing resources that previously worked exclusively with USMS detainees were now characterized as "shared staff" that addressed both USMS's and Wyandotte's detainees. CoreCivic created a facility-wide staffing plan (Facility plan) to account for both the USMS and Wyandotte, as shown in Table 6.

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<sup>79</sup> In 2012 this arrangement was extended through August 2017.

**Table 6**  
**Leavenworth Detention Center Staffing Plans**  
**as of June 22, 2015**

CORECIVIC POSITION GROUPS	FACILITY PLAN (FTEs) <sup>80</sup>	USMS PLAN (FTEs)	DIFFERENCE
Management/Support	18.00	18.00	0.00
Security Operations	81.70	79.00	2.70
Unit Management	105.00	84.00	21.00
Maintenance	5.00	4.00	1.00
Services	4.00	4.00	0.00
Health Services	17.95	16.68	1.27
Programs	2.00	2.00	0.00
<b>TOTAL</b>	<b>233.65</b>	<b>207.68</b>	<b>25.97</b>
SUBCONTRACTED HEALTH SERVICES STAFF	FACILITY PLAN (HOURS)	USMS PLAN (HOURS)	DIFFERENCE
Physician	16 hours/week	16 hours/week	0
Dentist	27 hours/week	27 hours/week	0
Psychologist	32 hours/week	32 hours/week	0
<b>TOTAL</b>	<b>75 hours/week</b>	<b>75 hours/week</b>	<b>0</b>

Source: CoreCivic

As shown in Table 6, the Facility plan had approximately 26 more FTEs than the USMS contract. This did not mean that CoreCivic added 26 FTEs to accommodate the Wyandotte County contract. Of the 26 FTEs, approximately 9 FTEs were Wyandotte-specific correctional officers, 9 FTEs were USMS-specific correctional officers, and approximately 8 FTEs were designated as “shared.”<sup>81</sup> This meant that while the Wyandotte contract accounted for up to 220 beds, or 20 percent of the LDC’s rated capacity, Wyandotte’s exclusive positions accounted for only 4 percent of overall facility positions. The number of FTEs across the areas of Management/Support, Services, and Programs were unchanged, and other areas such as Security/Operations, Maintenance, and Health Services received marginal FTE increases.<sup>82</sup> In June 2015, the number of facility-wide Health Services personnel was approximately 1.3 FTEs greater (8 percent) than the amount required in the USMS plan. A senior LDC Health Services official recalled receiving no additional resources when the Wyandotte detainees entered the facility and noted that Wyandotte’s detainees have a lesser length of stay on average than USMS detainees. Wyandotte’s highly transient population, coupled with the LDC requirement to evaluate all detainees admitted to the facility means that Wyandotte detainees require a large share of health services resources. For example, in 2015

<sup>80</sup> The Facility plan assesses the LDC’s overall staffing needs and includes both the USMS’s and Wyandotte’s detainees.

<sup>81</sup> CoreCivic officials said they excluded the nine USMS-specific FTEs from the USMS plan because these FTEs were not required by the USMS contract and added to the facility’s staffing at CoreCivic’s own expense.

<sup>82</sup> Management/Support includes the Warden, Assistant Warden, Safety Manager, Investigator, and Mailroom Clerk; Services consists of Warehouse and Laundry Staff; and Programs consists of a Program Facilitator (USMS-exclusive) and Chaplain.



Wyandotte's detainees accounted for 1,285 of the facility's 3,887 admissions, or 33 percent. Moreover, as also shown in Table 6, the LDC subcontracted its physician, dentist, and psychologist, in accordance with the USMS plan. The execution of the CoreCivic-Wyandotte contract did not result in an increase in hours for these subcontracted staff, who assumed the care of Wyandotte's detainees, potentially diminishing the availability and value of these positions to the USMS, which funded the positions.

We also found that USMS had not assessed the cost implications of the CoreCivic-Wyandotte arrangement and therefore did not ensure it received the best possible value. While the USMS's contracted per diem ranged from \$85 to \$98 per detainee per day from 2009 through 2015, Wyandotte's contracted per diem ranged from \$50 to \$58 during the same timeframe. Both Wyandotte and the USMS followed the same ACA and Federal Performance Based Detention Standards and provided detainees the same recreation, work programs, transportation, programming, disciplinary action, rights, and commissary. CoreCivic officials said that Wyandotte County received a lower per diem rate because CoreCivic based its calculation on the incremental (variable) cost of adding detainees to the LDC. Therefore, its per diem rate did not include salaries and benefits, electricity, gas, overhead, and several other fixed costs that were included in USMS's per diem rate. In our judgment, the USMS contract subsidized Wyandotte County's lesser per diem rate.

Ultimately, while the CoreCivic-Wyandotte agreement provided favorable outcomes to both CoreCivic and Wyandotte County, the USMS received little or no discernible benefit, financial or otherwise. USMS allowed another facility user to share its contracted positions without obtaining reimbursement or a change to its negotiated per diem rate in return. POD's Chief of the Office of Detention Services said this type of arrangement was a common business practice and that USMS's primary concern was that CoreCivic covered the necessary security posts and provided quality care.<sup>83</sup> However, he agreed that the USMS should have pursued a reduced per diem rate. In addition, POD's Chief of the Detention Standards and Compliance Branch said that USMS's contracts do not contain language on how to apportion shared services. The USMS-CoreCivic contract allows other federal agencies such as BOP and the U.S. Immigration and Customs Enforcement to use the facility, but does not describe facility use by non-federal customers. We recommend that the USMS specify for its contractors, in their contracts or in some other appropriate manner, the use of multi-user arrangements at its existing and future contract facilities to ensure the USMS maximizes its value and assesses the impact, if any, on the USMS's contracted staffing, facility safety and security, and other institutional matters.

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<sup>83</sup> POD's Chief of the Office of Detention Services said it is not unusual for state and local governments to obtain cost savings and buying efficiencies through federal contracts, referring to the General Services Administration's (GSA) Cooperative Purchasing Program. However, GSA's Cooperative Purchasing Program specifically applies to the purchase of information technology and law enforcement products and services, not detention services.

## *Comparison of USMS and BOP Contract Staffing Requirements*

USMS and BOP private detention performance work statements share many of the same or similar staffing-related contract provisions and requirements. Both require that contractors hire and retain key personnel necessary for performance of the contract; maintain and update staffing plans that convey the personnel necessary for the performance of the contract; and require that contractors provide periodic reports on the facility's actual staffing levels and vacancies. However, we found that USMS's contracts contain less specific and less actionable staffing-related language than the BOP's, resulting in fewer contractual options for the USMS to hold its contractors accountable for failures to adequately staff facilities. Specifically, BOP may issue staffing-related invoice reductions to its contractors under three conditions: (1) staffing levels fall below a specific percentage for 2 months in any 3 month period; (2) any individual position is not filled within 120 days of vacancy; or (3) any essential positions become vacant. We consider the BOP's staffing requirements a best practice because it establishes facility staffing expectations and enables the BOP to hold contractors accountable for non-compliance.

For the first condition, BOP private prison contracts contain language requiring that staffing levels "not fall below a monthly average of 90 percent for Correctional Services, 85 percent for Health Services, and 85 percent for all other departments of the BOP approved staffing plan." If a contracted prison facility failed to meet these thresholds, the BOP could levy monetary reductions through the contractor's monthly invoice. Conversely, USMS's LDC contract does not include staffing percentage thresholds. A senior POD official said this was because incorporating a threshold could reduce the contractor's incentive to staff a facility above that threshold. This official said the USMS's expectation is that contractors attain 100 percent post coverage; he explained that when vacancies arise, the contractor needs to fulfill the responsibilities of those positions, even if it requires temporarily assigning staff from one of a contractor's other facilities or entering into local contracts until a replacement can be brought onboard. However, this expectation was not reflected in the LDC contract or definitively stated in USMS's other private detention contracts. This expectation was also not reflected in the LDC's actual staffing conditions, especially during 2015.

Because of the need to adequately cover posts, it is critical that vacancies be kept to a minimum and addressed in a timely fashion. The LDC contract required that CoreCivic submit quarterly vacancy reports to the USMS that listed the vacant positions, a POA to address each vacancy, and target fulfillment dates. However, unlike BOP contracts which stipulated that invoice reductions may be assessed if essential vacancies are not filled immediately and if non-essential vacancies are not filled within 120 days, the LDC contract did not define an acceptable timeframe to fill essential and non-essential vacant positions. Instead, the contract's language on contractor non-compliance was ambiguous and unrelated to staffing conditions at the facility. Specifically, the contract states that "*the contractor's failure to submit to the COR their [quarterly] vacancy status report ... may result in a*

*deduction on the invoice.*” This language only enabled the USMS to issue an invoice reduction due to the contractor’s failure to submit the vacancy report. This was an arbitrary and inadequate basis for assessing an invoice reduction because it was contingent on an administrative task (i.e., submission of a report) instead of on qualitative or quantitative metrics that are representative of a facility’s actual staffing conditions.

Furthermore, we identified several USMS contracts with different and often more specific and quantifiable vacancy-related requirements than what is contained in the LDC contract. USMS officials agreed that its LDC contract contained unclear staffing-related language and that there was a need to standardize the language across all facilities. In May 2016, the USMS issued a contract modification for the LDC and all other contract facilities that incorporated staffing thresholds and vacancy requirements similar to those of the BOP. Because this action addresses our concerns, we are not issuing a recommendation.

## **Billings and Payments**

USMS’s contract with CoreCivic is a fixed-price contract. According to the FAR, this type of contract places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss and provides maximum incentive for the contractor to control costs and perform effectively. USMS’s monthly payments to CoreCivic are primarily based on the Monthly Operating Price (MOP) and the Fixed Incremental Unit Price (FIUP). The MOP ensures that the contractor receives a minimum payment, regardless of the facility’s actual population, and was negotiated with the understanding that USMS detainees would occupy at least 75 percent of the accepted number of contract beds.<sup>84</sup> The MOP provides contractors a guaranteed revenue stream, and USMS officials said it is also critical to ensure facilities maintain a consistent level of staff during periods of fluctuating detainee population.

The FIUP pricing component is a separate unit price per detainee that only applies when the daily detainee population exceeds 75 percent of contract beds in a payment period, up to 115 percent of contract beds. Although this 115 percent rate may create the impression that USMS is overpopulating the institution, at the LDC it represents the maximum number of beds allowed under the contract (922 detainees) barring an emergency, and not the LDC’s total 1,120 bed capacity. Table 7 provides examples of the LDC contract’s pricing scheme for January 2015 based on three different contract bed numbers.

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<sup>84</sup> The number of “contract beds” is synonymous with the number of federal detainees housed in the facility.

**Table 7**  
**Examples of the LDC Contract**  
**Monthly Pricing Structure for January 2015<sup>85</sup>**

NO. OF CONTRACT BEDS	PERCENT OF CONTRACT BEDS	MONTHLY OPERATING PRICE (MOP)	FIXED INCREMENTAL UNIT PRICE (FIUP)	TOTAL MONTHLY PRICE
		<i>\$1,868,767 Per Month</i>	<i>\$97.60 Per detainee day</i>	<i>MOP + FIUP</i>
602	75%	\$1,868,767	Not applicable	\$1,868,767
802	100%	\$1,868,767	\$605,120	\$2,473,887
922	115%	\$1,868,767	\$968,192	\$2,836,959
1,033 <sup>86</sup>	N/A	\$1,868,767	\$1,304,034	\$3,172,800

Source: USMS

If USMS detainees occupied 602 contract beds, CoreCivic would bill the USMS the MOP amount of \$1.9 million. However, if USMS detainees instead occupied 922 contract beds, in addition to receiving the MOP of approximately \$1.9 million, the FIUP rate would be applied to the number of detainees above 75 percent occupancy (922 – 602), which would total \$968,192.<sup>87</sup> CoreCivic would then bill USMS for about \$2.8 million.

*Service Contract Labor Standards Statute*

The Service Contract Labor Standards statute, formerly known as “the Service Contract Act of 1965” or “SCA,” requires that employees working on federal service contracts in excess of \$2,500 not be paid less than the monetary wages and fringe benefits required by law, and serves to prevent contractors from being able to underbid each other by reducing wages or fringe benefits for service employees.

Since the LDC contract exceeds the minimum award threshold, CoreCivic must provide its employees the minimum wages and fringe benefits stipulated within the applicable wage determination schedules (wage determination) issued by the Department of Labor (DOL).<sup>88</sup> Wage determinations list the minimum wage and fringe benefit rates for different classes of laborers, which are often adjusted over the term of a service contract. If an adjustment results in additional compensation owed to contractor employees, the contractor is entitled to request a price adjustment, that is, a request for compensation from the USMS.

<sup>85</sup> Differences in the total amounts in the tables in the report are due to rounding. The sum of individual numbers prior to rounding may differ from the sum of the individual numbers rounded.

<sup>86</sup> USMS’s use of more than 922 beds would be allowable in an emergency situation as declared by the USMS.

<sup>87</sup> For detainee occupancy at 115 percent, the FIUP amount is the difference between the 75 percent and 115 percent detainee occupancy, multiplied by 31 days in January and the FIUP of \$97.60.

<sup>88</sup> The LDC contract’s wage determination rates are shown in “SCA No. 05-2307.” Rate changes become effective at the beginning of each contract year, which for the LDC is January 1.

Table 8 is an example of wage and fringe benefit rates for three occupational codes from the DOL-issued wage determination used by CoreCivic. In the wage determination, fringe benefits such as health insurance, life insurance, sick leave, and retirement are referred to as “Health & Welfare benefits.” The Health & Welfare benefits rate is the amount employers must provide as fringe benefits to their employees and is based on data from the Bureau of Labor Statistics. As shown in Table 8, this particular DOL wage determination requires that CoreCivic provides its employees Health & Welfare benefits costing no less than \$4.02 per hour.

**Table 8**  
**DOL Wage Determination<sup>89</sup>**

OCCUPATION CODE	TITLE	WAGE RATE PER HOUR	HEALTH & WELFARE PER HOUR*
01011	Accounting Clerk I	\$13.97	\$4.02
27008	Corrections Officer	\$18.89	
12312	Registered Nurse II	\$27.27	
<i>*The Health &amp; Welfare benefits rate of \$4.02 per hour is equivalent to \$160.80 per week or \$696.79 per month.</i>			

Source: DOL, Wage Determination No. 2005-2307, Revision No. 15.

CoreCivic officials, upon receipt of a new wage determination, ensure compliance with the SCLS wage rates by comparing all positions and actual pay rates with rates shown in the new DOL wage determination. CoreCivic makes these comparisons in order to determine which positions require wage and fringe benefit increases, the amount of additional compensation to provide eligible employees, and the appropriate increase to the MOP to recompense CoreCivic for the required increases to employee wages and fringe benefits. CoreCivic compliance with Service Contract Labor Standards fringe benefit requirements is administered by the Boon Group, a full service employee benefits company which allocates and tracks CoreCivic employees’ fringe benefit contributions. Boon Group officials said these contributions are held in an irrevocable trust for the benefit of the employees.

In order to verify that the Boon Group and CoreCivic correctly calculated salary and fringe benefit costs and made adjustments in accordance with DOL-issued wage determinations, we selected a judgmental sample of 10 CoreCivic LDC positions. For each position we reviewed Boon Group fringe benefit reports and CoreCivic employee payroll records to verify that employees under each position type were paid salaries and benefits that met or exceeded the rates prescribed in the DOL wage determinations. We determined that CoreCivic employees were generally provided salaries and fringe benefits that met or exceeded wage determination requirements. However, we determined that CoreCivic may not have complied with Service Contract Labor Standards that

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<sup>89</sup> For presentation purposes, this figure lists three occupation codes, titles, and wage rates. The actual wage determination would contain hundreds of occupational codes that span several pages.

require payment of any cash in lieu of fringe benefits in a timely manner. In addition, during our commissary transaction testing, we learned that CoreCivic had requested and the USMS paid \$103,271 in unallowable price adjustments for Commissary Worker positions and needed to correct future invoices to ensure that it did not pay CoreCivic any unnecessary additional funds should the contract continue through December 2026. These matters are described below.

#### *CoreCivic's "Sick Account" May Be Non-Compliant with Federal Labor Standards*

CoreCivic's Health and Welfare benefits for Service Contract Labor Standards non-exempt employees include health insurance, life insurance, a 401(k) retirement account, and sick leave. According to CoreCivic's Benefits Handbooks, eligible employees accrue 1.54 hours of sick leave per bi-weekly pay period, up to maximum of 40 hours for 2015. The Boon Group, as part of its effort to ensure that CoreCivic employees are paid the required amount of fringe benefits, tracks the monetary cost of CoreCivic employees' sick leave. Typically, a contractor calculates the cost of employees' annual sick leave by multiplying their respective pay rates by the maximum amount of earnable sick leave.<sup>90</sup> This did not occur. Instead, the Boon Group calculated contributions to the employee "sick account" by first aggregating the cost of other employee benefits - health insurance, life insurance, and 401(k) retirement - then subtracting this cost from the Health & Welfare benefits required by the wage determination. The Boon Group allocated the difference to the sick account. In essence, CoreCivic contributions to the sick account are a "plug" or reconciling figure and not based on CoreCivic's actual cost of providing sick leave.

For example, in March 2015 CoreCivic had to provide employees benefits costing \$643 to comply with the wage determination.<sup>91</sup> CoreCivic provided many of its full-time correctional officers with insurance and retirement benefits costing \$558, and then allocated the remaining \$85 to these employees' sick accounts. However, during this timeframe these correctional officers only accrued 3.08 hours of sick leave (1.54 hours per pay period x 2 pay periods) valued at \$58. The difference of \$27 represents a contribution of funds to the sick account in excess of CoreCivic's actual monetary cost of providing usable sick leave to its employees. CoreCivic officials confirmed that the 1.54 hours of sick leave earned per pay period represents the sick leave available to employees, regardless of the amount of funds contained in the Boon Group sick account. In other words, correctional officers could exhaust all of their accrued sick leave, yet still have a positive balance in their Boon Group sick account. To further demonstrate the inconsistency, we selected a judgmental sample of 18 employees and compared their accrued sick leave balances maintained by CoreCivic, to their respective sick account balances

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<sup>90</sup> For example, in 2015 a full-time correctional officer would earn 40 hours of sick leave valued at \$755.60 (40 hours x \$18.89 pay rate).

<sup>91</sup> In March 2015 there were two pay periods.

maintained by the Boon Group.<sup>92</sup> As shown in Table 9, the Boon Group's sick account balances were greater than the actual accrued sick hours for 16 of 18 employees, and the 18 employees' Boon Group sick account balances contained on average 131 more hours of sick leave, worth \$2,511, than their CoreCivic accrued sick leave balances.<sup>93</sup>

**Table 9**  
**Differences In CoreCivic Accrued Sick Leave**  
**and Boon Group Sick Accounts (Dollars & Hours)**

No.	EMPLOYEE POSITION	CORECIVIC ACCRUED SICK LEAVE BALANCE (HOURS)	BOON GROUP SICK ACCOUNT BALANCE (HOURS)	DIFF. (HOURS)	CORECIVIC ACCRUED SICK LEAVE BALANCE (\$)	BOON GROUP SICK ACCOUNT BALANCE (\$)	DIFF. (\$)
1	Case Manager	168	312	144	\$ 3,328	\$ 6,199	\$ 2,871
2	Corr. Officer	30	143	113	559	2,709	2,150
3	Sr. Corr. Officer	254	464	210	5,032	9,178	4,146
4	Sr. Corr. Officer	266	412	146	5,271	8,156	2,885
5	Corr. Officer	177	335	158	3,338	6,332	2,994
6	Corr. Officer	164	325	161	3,102	6,135	3,033
7	Warehouse/ Comm. Worker	2	186	184	48	3,588	3,540
8	Corr. Officer	27	19	(8)	506	355	(151)
9	Corr. Officer	357	573	216	6,747	10,831	4,084
10	Corr. Officer	174	386	212	3,295	7,288	3,993
11	Corr. Officer	7	195	188	140	3,693	3,553
12	Corr. Officer	120	249	129	2,259	4,704	2,445
13	Corr. Officer	31	229	198	577	4,326	3,749
14	Licensed Practical Nurse	18	26	8	348	512	164
15	Case Manager	715	688	(27)	14,616	14,063	(553)
16	Corr. Counselor	31	112	81	604	2,215	1,611
17	Sr. Corr. Officer	415	473	58	8,214	9,360	1,146
18	Corr. Officer	5	193	188	100	3,646	3,546
<b>AVERAGE</b>		<b>165</b>	<b>296</b>	<b>131</b>	<b>\$3,227</b>	<b>\$5,738</b>	<b>\$2,511</b>

Source: CoreCivic Employee Leave Statements and Boon Group Fringe Benefit Reports

Excess funds accumulate within the Boon Group sick accounts and are not available to CoreCivic personnel until their termination, transfer to a non-SCLS

<sup>92</sup> This comparison required the OIG convert the Boon Group's sick account balance from dollars to hours. Included in this sample are 12 individuals who have since left CoreCivic.

<sup>93</sup> In some instances, CoreCivic employees' accrued sick leave balances were greater than their Boon Group sick account balances (e.g., Table 9, nos. 8 and 15). CoreCivic officials said this may be applicable to long-tenured employees with accrued sick leave balances prior to the establishment of the Boon Group sick account. Specifically, when the Boon Group sick account was established in 2004, employees' accrued sick leave balances were not transferred into it. Therefore long-tenured employees could maintain more accrued sick leave than what is contained in their Boon Group sick accounts.

facility, or upon a change in status from a non-exempt SCLS position to an exempt position. At this time, employees are issued a check for the sick account balance. For example, one of the Correctional Officers that ended his employment at CoreCivic in 2015 (Table 9, no. 11) departed with an accrued sick leave balance of 7 hours, and in addition to receiving the cash value of this 7 hours, also received a payment of \$3,553, the equivalent of 188 additional hours, based on the balance in the Boon Group sick account.

Given CoreCivic's methodology, its characterization of the sick account as a "bona fide" fringe benefit appears inconsistent with federal requirements because the primary purpose of the excess funds does not appear to be to provide systematically for the payment of benefits to employees.<sup>94</sup> Furthermore, to be considered a "bona fide" fringe benefit, the provision of the benefits plan must be specified and communicated in writing to the affected employees.<sup>95</sup> After reviewing CoreCivic's Employee Benefits Handbooks and speaking with LDC's Human Resources official, we concluded that CoreCivic had not adequately communicated the "sick account" benefit to its employees. CoreCivic Policy 3-5-1, *Paid Leave Benefits (SCA Employees)* states that employee sick leave balances are maintained by a third party administrator, but neither provides the Boon Group's name or contact information, nor does it explain the Boon Group's process for calculating the sick account contribution or that the contribution contains funds greater than the value of accrued sick leave that are paid upon an employee's termination, transfer, or upon a change in SCLS-status. LDC's Human Resources official said all LDC employees have access to an employee portal which gives their accrued sick leave balance/used, paid time off balance/used, holidays used, and projected leave amounts for the year. However, the employee portal does not provide employee's sick account balances, as maintained by the Boon Group, and the LDC's Human Resources administrator was not aware of it.

We believe that the Boon Group's sick accounts likely represent a combination of sick leave and what could be interpreted as "cash equivalents." Federal regulations state that fringe benefit obligations may be discharged by paying employees a cash amount per hour instead of fringe benefits. Importantly, such cash equivalents must be paid to employees on their *regular payday*. Because CoreCivic withheld these funds for months or years before disbursement to employees, its sick account may not comply with 29 C.F.R. § 4.177(c)(1), *Furnishing Cash Equivalents*.<sup>96</sup> This appears to be a systemic issue as CoreCivic uses this process at all its USMS and BOP-contracted facilities.

CoreCivic officials disagreed with the OIG's concerns and provided a DOL memorandum dated August 2003 that CoreCivic believed justified its methodology

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<sup>94</sup> 29 C.F.R. §4.171(a)(2) (2013).

<sup>95</sup> 29 C.F.R. §4.171(a)(1) (2013).

<sup>96</sup> This requirement is also described in 29 C.F.R. § 4.165(a)(1) (2013), *Wage Payment and Fringe Benefits – in General*.



for contributing funds to its sick account.<sup>97</sup> The memorandum stated that the Service Contract Act and accompanying regulations permitted use of a sick leave policy provided that the policy meets several conditions. One of the conditions was that [OIG emphasis in italics] “the amount contributed by the contractor *approximately* represents the actual rate of costs or contributions required to provide paid sick leave benefits to each participating employee.” CoreCivic officials acknowledged that their methodology to calculate and allocate funds to the sick account may not be the most accurate, but contended that it approximates the actual cost and is therefore compliant. However, we noted that the 18 employees we sampled had Boon Group sick account balances with an average of 131 more hours of sick leave than was accrued and usable; an 80 percent difference. We do not agree that significant differences such as these meet a reasonable definition of “approximate.”

To remedy this matter, we recommend that the USMS work with DOL, and as necessary CoreCivic, to determine whether placing funds that are significantly in excess of the actual cost of employees’ accrued sick leave balances into a “sick account,” and not making the excess funds available to employees on their regular payday, is a proper fringe benefit practice. We also recommend that the USMS ensure that CoreCivic properly communicates the “sick account” benefit to its employees.

#### *Unallowable Commissary-Related Service Contract Labor Standards Price Adjustments*

As stated earlier, if a change in the LDC’s wage determination results in additional compensation owed to CoreCivic employees, CoreCivic is entitled to a price adjustment from the USMS equal to the amount of additional wages and benefits CoreCivic was required to pay its employees. This price adjustment is applied to CoreCivic’s monthly invoice by increasing the MOP.

One of CoreCivic’s obligations under the LDC contract is to operate a commissary. CoreCivic employs two to three commissary workers and recovers their staffing costs from commissary revenue. Therefore, these commissary workers’ salaries and benefits were not priced into the LDC contract’s MOP and CoreCivic is not eligible to request price adjustments for those positions. However, CoreCivic had been incorrectly requesting price adjustments for these commissary worker positions dating back to 2008 and the USMS approved these unallowable price adjustments and increased the LDC’s MOP. Accordingly, from June 2008 to April 2016, CoreCivic received \$103,271 in unallowable price adjustments. CoreCivic officials stated that requesting price adjustments for these commissary worker positions was a mistake.

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<sup>97</sup> The memorandum was issued by the DOL’s Wage and Hour Division to the Contractors Employee Benefits Association, Inc., dated August 8, 2003.

Unless the MOP is reduced, the unallowable commissary-related price adjustments will continue to be reflected in CoreCivic's monthly invoices from May 2016 through the end of the contract in December 2026, assuming all options are exercised. To determine the necessary MOP reduction, we analyzed the 9 contract modifications containing improper commissary-related price adjustments and calculated their cumulative increase to the MOP, which totaled \$1,597 per month (our methodology to calculate the MOP and the questioned costs are contained in Appendix 2). In March 2017, the USMS issued a contract modification to CoreCivic to recover unallowable price adjustments and modify the MOP to reflect the proper monthly price. Therefore, we do not make any recommendations relating to the unallowable commissary-related SCLS adjustments.

#### *Transaction Testing of CoreCivic Invoices and Commissary Expenditures*

To ensure that CoreCivic's billings were accurate and complete, we reviewed the invoices in a sample consisting of 15 months within the scope of the contract. We found that contractor invoices for housing were generally calculated accurately, invoiced, authorized, and supported by proper documentation.

Also, in order to test the controls put in place for commissary funds we reviewed the expenditures recorded in the commissary accounting records. We selected a judgmental sample of 15 transactions to test the controls in place for the commissary checking account as well as to ensure that expenses for commissary operations and detainee welfare were appropriate.<sup>98</sup> We determined that the transactions were accurate, based on supporting documentation, and properly approved and received.

#### *Justice Prisoner and Alien Transportation System (JPATS) Transactions*

At the beginning of our audit, CoreCivic informed us that it was conducting a review of transportation services provided to USMS under the LDC contract. After the USMS raised questions about discrepancies in mileage figures recorded on a CoreCivic transportation invoice, CoreCivic discovered that it had been charging the USMS for guard hours and mileage while in transit from their duty station in Tennessee to the LDC, which did not involve the transfer of detainees. CoreCivic was only supposed to charge the USMS for guard hours and mileage associated with the transportation of detainees to or from the LDC.

To resolve the matter, CoreCivic provided what it believed was the total overpayment and correct amounts for mileage for transfers of detainees from the LDC to applicable BOP facilities.<sup>99</sup> We assessed the adequacy of the mileage

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<sup>98</sup> Since the control of the detainee accounts is handled at the corporate level, we did not feel it would be appropriate within the scope of our audit to review the controls in place regarding detainee funds or movement of individual detainee's accounts.

<sup>99</sup> For our sample, we did not assess what the adequate amount charged for guard hours and for mileage since this issue is under negotiations between CoreCivic and USMS. We determined that it would not be appropriate to attempt to assess the accuracy of charges for these services.

reported for the transactions in our original sample of CoreCivic invoices to determine if this discovery could have been made sooner. Using web tools available online, we were able to assess the accuracy of the mileage reported by CoreCivic in its invoices to USMS.<sup>100</sup> Specifically, in 11 of the 13 months in our billings sample that included JPATS transactions, there was a significant difference between the mileage CoreCivic reported and the mileage we calculated using applications commonly available online.

We asked the District COR what steps are taken to review transportation transactions, and how the information in those transactions is used. The District COR said each USMS district verifies its trips, which include detainee information and their destination, were taken by comparing the trip reports included in the invoice to the scheduling in the Justice Detainee Information System (JDIS), which includes information on each detainee and the facility they are located in. This information is submitted to the District COR. The District COR reviews each District's submission to verify hours of travel and to ensure there are no duplications between districts; the COR then submits an invoice directly to JPATS. JPATS officials then confirm that services have been received, review the invoice for accuracy, and sign and return the invoice to the District COR. After receiving the signed JPATS invoice, the District COR also verifies the scheduled trips in the invoice to information in JDIS. The District COR also stated that they had recently changed the requirements of the invoice content because of this issue. The invoice now includes the starting and ending times and odometer reading for each trip, which the District COR confirms using a matrix of travel distance and times between transfer locations during her verification process.

In order to verify the adequacy of the matrix used by USMS, we selected three JPATS transactions from our initial CoreCivic billings sample. We then compared the appropriate mileage for these transactions using the matrix to the amounts calculated by OIG auditors. The mileage totals using USMS's matrix were not materially different from what OIG auditors had approximated using web tools available online. We also obtained a CoreCivic invoice sent after the start of our fieldwork and confirmed that the mileage matrix ensured that the invoice mileage was accurate. Therefore, we do not make any recommendations relating to the controls for JPATS transactions.

## **Conclusion**

Our audit determined that the USMS failed to provide sufficient oversight of the LDC and that this failure resulted in several significant issues with LDC operations going unaddressed for extended periods of time. We believe the USMS's oversight of the LDC was inherently reactive: instead of actively monitoring LDC operations to identify discrepancies and thwart potential incidents, the USMS often became aware of incidents after they occurred. Oversight by the USMS and quality control efforts by CoreCivic were particularly hampered by lack of detention-related

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<sup>100</sup> The web tools that we used in our assessment can be found at [www.google.com/maps](http://www.google.com/maps).

training and formal guidance for USMS and CoreCivic personnel. Of particular concern, the USMS COR had no previous contract oversight experience, received no formal guidance and negligible training, and was located offsite, and LDC's internal quality assurance staff also received minimal instruction and guidance, failed to conduct sufficiently thorough reviews, and failed to address deficiencies with corrective action. In our judgment, deficiencies in the USMS's monitoring at the LDC present potentially systemic weaknesses and risks that may extend throughout all of its other contract detention facilities.

Stronger oversight may have allowed the USMS to prevent or more quickly mitigate the impact of LDC's understaffing. Specifically, from October 2014 through September 2015, the LDC's staffing levels deteriorated and the facility-wide average vacancy rate more than doubled to 11 percent. This was primarily driven by correctional officer vacancies. This understaffing led to several problems in 2015, including the LDC's long-term use of mandatory overtime; the closure of security posts, many of which were designated by CoreCivic as "mandatory"; and Unit Management personnel being assigned to security posts instead of performing their normal job duties, sometimes to the detriment of detainee services. The absence of strong monitoring and oversight was further demonstrated by LDC officials' decision to intentionally conceal the facility's use of triple bunking, unbeknownst to the USMS, from the ACA in what appears to be an effort to receive a higher accreditation score by uninstalling the third beds bolted to the floor of several cells designed for two.

We also determined that CoreCivic was slow to react to the understaffing and did not utilize all available staffing options to remedy the problem, such as by requesting temporary staff from other CoreCivic facilities. CoreCivic instead exacerbated LDC understaffing by temporarily transferring its personnel to other CoreCivic facilities, which in one instance led to a significant reduction in the size of the LDC's already shorthanded Special Operations Response Team, weakening its ability to operate effectively and fulfill its mission in the event of a significant incident. The USMS also contributed to the LDC's staffing deficiencies by authorizing CoreCivic's request in 2014 to transfer a small contingent of LDC personnel to Dilley, Texas, to help CoreCivic operate the then recently opened South Texas Family Residential Center. If staff is indeed the most indispensable, important, and expensive resource in corrections as noted by the Department's National Institute of Corrections, CoreCivic's and the USMS's efforts to adequately staff the LDC should reflect that.

These issues and the others we identified in this report – such as those relating to sole sourcing, "sick accounts," and invoice deductions – should be promptly addressed.

## Recommendations

We recommend that the USMS:

1. Establish acquisition procedures to ensure that future detention pre-solicitation and solicitation notices include the widest place of performance practical, and that sole source justifications are fully documented, maintained in the contract file, and include all FAR-required language. This language should include the certification that the justification was accurate and complete to the best of the Contracting Officer's knowledge.
2. Establish policies and procedures to ensure that, when USMS price analysis is based on a comparison of historical prices paid, it establishes the prior price as a valid basis for comparison.
3. Continue to develop a training program for CORs monitoring and overseeing its detention-related contracts that ensures CORs receive and maintain a level of training and experience commensurate with their responsibilities.
4. Continue to develop and implement inspection guidance, monitoring tools, and its new onsite contract monitoring initiative for use at all of its privately contracted facilities, and ensure that its continuous monitoring efforts incorporate QAR steps, to the maximum extent practicable.
5. Request and incorporate internal and external audit results and POAs into the USMS's quality assurance program to ensure each identified deficiency was adequately resolved.
6. Create policies and procedures requiring CORs to conduct continuous oversight and monitoring of QAR-identified deficiencies to ensure that the completed POAs are operating effectively and that the CORs document this follow-up work and communicate the results to POD.
7. Include in the USMS's new standard operating procedures COR requirements for developing and maintaining a document control system and for retaining quality assurance-related documentation. Standard operating procedures should also include COR guidance on formally documenting inspections that include tracking deficiencies and contractor POAs.
8. Continue to input performance assessment reports for its active contracts into CPARS, and finalize policies and procedures to ensure that contractor performance data on future detention contracts is entered into CPARS.
9. Conduct Performance Evaluation Meetings, as required by the contract, at the LDC and other detention facilities as applicable.

10. Ensure that the District COR complies with contract and USMS District requirements to evaluate contractor performance prior to the payment of monthly invoices.
11. Ensure that the LDC's QAM request and retain supporting audit documentation to ensure audits are properly conducted and conclusions are supported.
12. Ensure that the LDC enforces existing CoreCivic policies and procedures for generating and approving comprehensive POAs, including: (a) drafting POAs that sufficiently address the deficiencies and requiring department heads identify the deficiencies' root cause; (b) ensuring the LDC's QAM and Warden provide instruction and guidance to department heads on the contents of a sufficient POA, and only approve fully compliant POAs; and (c) ensuring that department heads complete and the LDC's QAM retain the corrective action worksheets.
13. Ensure that the LDC enforces existing CoreCivic policies and procedures by confirming and documenting that POA strategies and action steps were completed.
14. Ensure that CoreCivic creates an Audit Procedure Manual or some other mechanism or process to provide the LDC's QAM with comprehensive guidance on how to properly conduct facility audits and continuously monitor closed POAs. Such guidance should describe: (a) the frequency and breadth of reviews; (b) the establishment of a sample size when one is not already specified in the CCAAT; (c) the maintenance of requisite qualifications, technical expertise, and accountability by personnel supporting the QAM's efforts; (d) the appropriate documentary evidence necessary to validate the auditors' conclusions and enable re-performance if necessary; (e) methods for proper retention of documentary evidence; (f) the approval and monitoring of the LDC's inspection and audit methodologies by the FSC; (g) and the establishment of contingency plans for conducting quality assurance-related work should the QAM be unavailable. Lastly, this guidance should obtain both FSC and USMS approval.
15. Consider implementing policies and procedures similar to those of the BOP that independently evaluate contractor-provided detainee mortality reports.
16. Monitor LDC compliance with the new CoreCivic policies and post orders related to recreation yard searches and detainee movement in the SHU, to ensure they are operating effectively.

17. Ensure that CoreCivic establish policies and procedures that prevent the closure of mandatory posts at CoreCivic's USMS contracted facilities and require FSC assess completed shift rosters to determine if facilities are adequately filling their security-related posts.
18. Include in its contract monitoring program staffing-related procedure steps that help District CORs assess facility staffing trends and determine if post closures are occurring.
19. Incorporate milestones into its price reduction guidance to ensure a more efficient and expedient submission of final price reduction decisions to its contractors.
20. Ensure that during periods of chronic contractor understaffing, contractors utilize all available options, including the provision of temporary staff.
21. Establish policies and procedures for assessing and approving contractor requests to transfer staff out of USMS contracted facilities, and: (a) obtain reasonable assurance from the facility Warden and FSC officials that such a transfer will not compromise the facility's ability to comply with contract requirements and CoreCivic policy; (b) independently assess whether the proposed transfers may jeopardize facility staffing requirements and operational readiness; and (c) ensure that the Contracting Officer and COR approve and continuously monitor the arrangement, respectively.
22. Clearly specify in its new and existing contracts the circumstances under which triple bunking is allowed, and what rules, procedures, and ACA standards apply to the practice.
23. Specify for its contractors, in their contracts or in some other appropriate manner, the use of multi-user arrangements at its existing and future contract facilities, to ensure USMS maximizes its value and assesses the impact, if any, on USMS's contracted staffing, facility safety and security, and other institutional matters.
24. Work with the Department of Labor, and as necessary CoreCivic, to determine whether placing funds significantly in excess of the actual cost of employees' accrued sick leave balances in a "sick account," and not making the excess funds available to employees on their regular payday, is a proper fringe benefit practice, and that CoreCivic properly communicates the "sick account" benefit to its employees.

## STATEMENT ON INTERNAL CONTROLS

As required by *Government Auditing Standards*, we tested, as appropriate, internal controls significant within the context of our audit objectives. A deficiency in an internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect in a timely manner: (1) impairments to the effectiveness and efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations. Our evaluation of the U.S. Marshals Service's (USMS) administration of Contract No. DJJODT7C0002 awarded to CoreCivic, Inc. (CoreCivic), and CoreCivic's compliance with the contract requirements to operate the Leavenworth Detention Center (LDC) was not made for the purpose of providing assurance on these entities' internal control structures as a whole. USMS's and CoreCivic's management are responsible for the establishment and maintenance of internal controls.

As noted in the Findings and Recommendations section of this report, we determined that the USMS's continuous monitoring efforts at the LDC were not adequate to sufficiently monitor contractor performance of a detention services contract valued at nearly \$700 million. This determination was based on several problems including:

- inadequate District Contracting Officer's Representative experience and detention-related training;
- insufficient continuous monitoring processes at the LDC;
- inadequate monitoring of internal, external, and Quality Assurance Review audit results;
- insufficient quality assurance documentation; and
- insufficient mechanisms to hold contractors accountable.

Because several of these problems appear to be inherent in the USMS's overarching continuous monitoring approach, we believe they may also be occurring at the USMS's other 14 contract detention facilities. However, because we are not expressing an opinion on the USMS's internal control structure as a whole, this statement is intended solely for the information and use of the USMS. This restriction is not intended to limit the distribution of this report, which is a matter of public record. Given the significance of our concerns, in February 2016 the OIG issued a Management Advisory Memorandum to the USMS, advising it of these matters. In March 2016 USMS responded to our memorandum by proposing several actions. We believe the USMS's suggested actions demonstrate a commitment to improving its contractor oversight.



## STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS

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

- Federal Acquisition Regulation (FAR)
  - FAR Subpart 4.8, *Government Contract Files*
  - FAR Part 6, *Competition Requirements*
  - FAR Subpart 15.4, *Contract Pricing*
  - FAR Subpart 46.4, *Government Contract Quality Assurance*
  - FAR 52.246-4, *Inspection of Services – Fixed Price*
- Justice Acquisition Regulations
- 29 C.F.R. § 4, *Labor Standards for Federal Service Contracts*

Our audit included examining, on a test basis, the USMS's and CoreCivic's compliance with the aforementioned laws and regulations that could have a material effect on USMS's and CoreCivic's operations. We interviewed auditee personnel, assessed internal control procedures, and examined accounting records and performance reports. As noted in the Findings and Recommendations section of this report, we determined that the USMS's continuous monitoring efforts at the LDC under FAR Subpart 46.4, *Government Contract Quality Assurance*, were not adequate to sufficiently monitor contractor performance of a detention services contract valued at nearly \$700 million.

Furthermore, we concluded that the Boon Group's sick accounts represent a combination of sick leave and what could be interpreted as "cash equivalents." Because CoreCivic withheld payment of these funds sometimes for months or years before disbursement to its employees, its sick account may not comply with federal regulations. Specifically, 29 C.F.R. § 4.177(c)(1), *Furnishing Cash Equivalents* states that [OIG emphasis in italics]: "fringe benefit obligations may be discharged by paying to the employee *on his regular payday*, in addition to the monetary wage required, a cash amount per hour in lieu of the specified fringe benefits, provided such amount is equivalent to the cost of the fringe benefits required."<sup>103</sup>

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<sup>103</sup> This requirement is also addressed in 29 C.F.R. § 4.165(a)(1), *Wage Payments and Fringe Benefits – in General*.

**APPENDIX 1**

**USMS PRIVATELY-MANAGED DETENTION FACILITIES  
AS OF FEBRUARY 2017**

<b>FACILITY NAME</b>	<b>LOCATION</b>	<b>CONTRACTOR<sup>104</sup></b>	<b>USMS POPULATION<sup>105</sup></b>	<b>USMS MAXIMUM CONTRACT BEDS</b>
Aurora Detention Facility	Aurora, Colorado	GEO	48	325
Catholic Charities	San Diego, California	CCS	21	15
Webb Co. Detention Center	Laredo, Texas	CoreCivic	269	300
Central Arizona Detention Facility	Florence, Arizona	CoreCivic	3,587	5,100
Crossroads Correctional Center	Shelby, Montana	CoreCivic	89	96
Leavenworth Detention Center	Leavenworth, Kansas	CoreCivic	681	922
Northeast Ohio Correctional Center	Youngstown, Ohio	CoreCivic	572	600
Nevada Southern Detention Center	Pahrump, Nevada	CoreCivic	622	750
Otay Mesa Detention Center	San Diego, California	CoreCivic	301	400
Queens Private Correctional Facility	Jamaica, New York	GEO	215	222
Rio Grande Detention Center	Laredo, Texas	GEO	1,092	1,228
Robert A. Deyton Detention Facility	Lovejoy, Georgia	GEO	645	768
West Tennessee Detention Facility	Mason, Tennessee	CoreCivic	281	500
Western Region Detention Facility	San Diego, California	GEO	574	708
Willacy Co. Regional Detention Facility	Raymondville, Texas	MTC	537	600
<b>TOTAL</b>			<b>9,535</b>	<b>12,534</b>

Source: USMS

<sup>104</sup> In addition to the LDC, USMS detention contracts were also awarded to The GEO Group, Inc., Management & Training Corporation, and the Catholic Charities Diocese of San Diego.

<sup>105</sup> The difference between the total USMS population and the sum of the individual figures is due to rounding.

### OBJECTIVES, SCOPE, AND METHODOLOGY

#### Audit Objective

The objective of this audit was to assess U.S. Marshals Service (USMS) administration of, and CoreCivic, Inc.'s (CoreCivic) compliance with contract terms and conditions in the areas of: (1) contract management, oversight, and monitoring; (2) staffing requirements; and (3) billings and payments.

#### Scope and Methodology

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

This was an audit of USMS Contract No. DJJODT7C0002, awarded to CoreCivic to provide comprehensive detention services at the Leavenworth Detention Center (LDC) in Leavenworth, Kansas. Our audit generally covered, but was not limited to October 2010 through May 2015.

To ensure compliance with contract management, oversight, and monitoring, we reviewed the OFDT's justification for issuing a sole source contract and for determining the contract price to be fair and reasonable. We examined the USMS's Quality Assurance Surveillance Program to ensure the USMS monitored the quality of LDC services and that the contract requirements were defined and satisfactorily met. We reviewed CoreCivic's quality control program to determine if CoreCivic provided and maintained an inspection system that enabled it to demonstrate positive performance and identify areas of non-compliance before the level of performance became unsatisfactory.

To determine if USMS and CoreCivic followed staffing requirements, we reviewed the contract's staffing provisions and compared them to the BOP's, evaluated the LDC's staffing policies, procedures, budgeted and actual figures, and shift rosters; and interviewed facility staff to gain an understanding of the facility's staffing levels and conditions.

Lastly, to ensure compliance with contract requirements regarding billings and payments, we assessed the accuracy of USMS payments for monthly invoices and examined CoreCivic compliance with Federal Acquisition Regulation requirements related to the payment of prevailing wages and benefits to staff based on locality.

### *Transaction Testing for Billings and for Commissary Expenses*

During our audit, we noted that from January 2007 through May 2015 CoreCivic submitted 225 invoices to the USMS, totaling \$224,646,247. We selected 37 invoices in a sample of 15 months totaling \$36,400,230. When selecting our invoices for testing, we selected the 8 months that had the highest total and judgmentally selected another 7 months and tested all invoices to USMS in those months. We employed this judgmental sampling design to obtain a broad exposure to numerous facets of the contract reviewed, such as dollar amounts, invoice or deduction category, and risk. However, this non-statistical sample design does not allow a projection of the test results for all invoices or internal controls and procedures. We also selected a judgmental sample of 15 expenditures noted in the commissary records from January 2014 through June 2015 to test the controls in place for commissary funds as well as to ensure that what is being purchased for the commissary or detainee welfare is appropriate.<sup>106</sup> Our sample selection methodology for reviewing commissary expenses was not designed with the intent of projecting our results to the population from which the samples were selected.

### *Service Contract Labor Standards-Related Calculations and Analysis*

We assessed CoreCivic's compliance with rules and regulations related to the Service Contract Labor Standards to determine if it properly accounted for and paid the requisite wages and Health & Welfare benefits to its employees; to ensure that the requests for price adjustment were accurate and justified; and to assess whether the USMS reviewed, approved, and monitored CoreCivic's requests for reimbursement. To accomplish this we obtained: (1) payroll records containing service employees' actual wages, (2) information on the cost of Health & Welfare benefits offered to employees, (3) the DOL wage determinations containing the minimum wages and benefits; and (4) CoreCivic's request for reimbursement sent to the USMS. For wages, we compared new rates from the wage determination to payroll records. If employees were entitled to a wage increase, we verified that they began receiving additional pay effective as of the beginning of the contract year, that CoreCivic accurately calculated its reimbursement from the USMS, and that the request for reimbursement was justified.

In order to verify that the Boon Group and CoreCivic correctly calculated salary and fringe benefit costs and made adjustments in accordance with DOL-issued wage determinations, we selected a judgmental sample of 10 CoreCivic LDC position types (e.g., correctional officer, accounting clerk). For each position type we reviewed Boon Group fringe benefit reports and CoreCivic employee payroll records to verify that employees under each position type were paid salaries and benefits that met or exceeded the rates prescribed in the DOL wage determinations. This was a judgmental sample of positions, so if over the course of

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<sup>106</sup> Since the control of the detainee accounts is handled at the corporate level, we did not feel it would be appropriate within the scope of our audit to review the controls in place regarding detainee funds or movement of individual detainee's accounts.

a single year a position switched from one employee to another, we included the latter in the next portion of our sample.

In our analysis, we determined of the span of 8 years, all of CoreCivic's wage determinations resulted in improper price adjustments related to Commissary Worker positions. To identify the cumulative costs, we multiplied each wage determination's annual improper costs by the amount of proceeding years in which the costs repeated, ending at our cutoff date of May 1, 2015. For example, if there was an annual price adjustment of \$10 for these commissary positions, this \$10 cost would be repeated in every subsequent year throughout the life of the contract. Therefore, by the end of May 2015, the cumulative cost of this price adjustment would be \$80 (\$10 annual cost times 8 years).

For our analysis of CoreCivic's sick leave trust, we selected a sample of 18 employees. We selected 12 of the 18 employees as employees who were no longer working at the LDC, 6 of those were selected for the highest dollar value in each year reviewed and the remaining 6 were judgmentally selected. We then judgmentally selected the remaining 6 employees who were still employed at the LDC as of May 2015, focusing on including positions that were not already selected by our previous methods. For our detailed review, we judgmentally selected three of the employees that were still employed at the LDC as of May 2015 and compared CoreCivic sick leave information to Boon Group sick information from October 2010 through May 2015. Our sample selection methodologies were not designed with the intent of projecting our results to the populations from which the samples were selected.

### *Shift Roster and Unit Team Analysis*

During our examination of shift closures, we selected a sample of shift rosters to determine if the LDC had filled its security posts. If not, we counted the number of and length of post closures, the posts most often closed, and described any other discrepancies. For our review, we chose shift rosters during two periods which we refer to as the Winter and Summer Timeframes. The Winter Timeframe was from February 1 through March 31, 2015, and consisted of 59 days and 118 shifts. The Summer Timeframe was from July 1 through August 15, 2015, and consisted of 46 days and 92 shifts. We compared the closure information to applicable facility-wide staffing plans to note that required posts are filled.

For our Unit Team analysis, we judgmentally selected 33 days from July 20 to September 6, 2015. For each day selected we reviewed the timesheet information for all Correctional Counselors and Case Managers at the LDC as well as the AM and PM shift rosters. First, we used the timesheet information to note the amount of time each Unit Team member clocked in at the LDC on each of our sampled days. Second, we reviewed the shift rosters of our sampled days in order to identify when Unit Team members were on post. During our analysis we made the assumption that while a Unit Team member was assigned to a post, they were not able to perform their Unit Team duties. Third, for each Unit Team member that was clocked in for each sampled day, we subtracted the amount of time on the shift

roster from the amount of time noted in the timesheet data to determine the amount of time that each Unit Team member did not spend on a post (and therefore spent on Unit Team Duties.) Fourth, once we determined the amount of time that each Unit Team member did not spend on a post, we compared these times to the amount of work hours referred in the staffing plan for these positions. We used this comparison to show how many hours the Unit Team members should have spent on their duties instead of working on post, when referencing the required staffing plan as well as calculating the value lost to the USMS based on price adjustment information submitted by CoreCivic. For example, if a Correctional Counselor spent 3 hours of their 8 hour workday not on a post, we can conclude that they spent 5 hours on post and did not spend those hours on their duties as required by the staffing plan.

**OIG MANAGEMENT ADVISORY MEMORANDUM TO THE USMS ON  
OVERSIGHT OF DETENTION SERVICE CONTRACTS**



U.S. Department of Justice

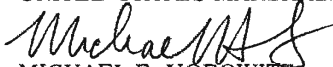
Office of the Inspector General

February 11, 2016

MANAGEMENT ADVISORY MEMORANDUM FOR:

DAVID HARLOW  
ACTING DIRECTOR  
UNITED STATES MARSHALS SERVICE

FROM:

  
MICHAEL E. HOROWITZ  
INSPECTOR GENERAL

SUBJECT:

Potential Systemic Deficiencies in U.S. Marshals Service's  
Continuous Oversight of Contracts for Detention Services

The purpose of this memorandum is to advise you of significant issues that may be affecting the U.S. Marshals Service's (USMS) ability to adequately monitor contractor performance on its contracts for detention services. This concern arises from my office's ongoing audit of USMS Contract Number DJJODT7C0002, awarded to Corrections Corporation of America (CCA) to operate the Leavenworth Detention Center (LDC) in Leavenworth, Kansas. We initiated this audit in June 2015 with the objective to assess USMS and CCA administration of and compliance with contract terms and conditions in the areas of: (1) billings and payments; (2) staffing requirements; and (3) contract management, oversight, and monitoring. During the course of this audit, we identified significant concerns with USMS oversight and monitoring that in our judgment warrant the USMS's immediate attention and corrective action.

*Background*

Federal Acquisition Regulation (FAR) Subpart 46.4, *Government Contract Quality Assurance*, requires federal agencies perform contract quality assurance at such times and places as may be necessary to determine that services conform to contract requirements. Federal agencies articulate these requirements through quality assurance surveillance plans (QASP), which specify all work requiring surveillance and the method of surveillance.

USMS's QASP for its LDC contract primarily consists of two components: (1) Quality Assurance Reviews (QAR), which are multi-day reviews conducted annually at contracted facilities; and (2) continuous monitoring activities performed by staff in the USMS District responsible for the detention facility. This memorandum focuses on the continuous monitoring component.<sup>1</sup> USMS's QASP states that "the contractor shall be paid on a monthly basis as such services provided for each billing cycle must be determined based on performance to be 'Acceptable'." The Contracting Officer's Representative (COR) is responsible for verifying CCA compliance with contract requirements, which are divided into 6 functional areas that contain 46 standard sections derived from Federal Performance-Based Detention Standards (FPBDS).

During our ongoing audit, we are finding that the USMS's continuous monitoring efforts are not adequate to sufficiently monitor contractor performance of a contract that could potentially cost \$697 million. We identified several problems with the USMS's continuous monitoring of the LDC, including a limited onsite presence; inadequate COR experience and detention-related training; insufficient continuous monitoring procedures; a lack of oversight guidance; failure to monitor CCA's internal and external audit reviews; and failure to use the Contractor Performance Assessment Reporting System (CPARS) as required by the FAR. Furthermore, in light of what we have learned during the audit, we have reason to believe these discrepancies are not isolated to the LDC but are occurring, to an unknown extent, at the USMS's other contract detention facilities. Given that the continuous monitoring issues described in this memorandum are potentially systemic across all USMS contract detention facilities, we are notifying you immediately so you can consider what corrective actions are necessary to remedy the issues as expeditiously as possible.

#### *Limited Onsite Presence*

The LDC contract suggested that the USMS would have a continuous onsite presence at the facility, stating that "the government anticipates a nominal number of staff will be onsite to monitor contract performance and manage other government interests associated with operation of the facility. The contractor shall provide an onsite enclosed office space for the USMS's staff." The USMS used contract language similar to that found in the Bureau of Prisons' (BOP) private prison contracts, whose quality assurance staffs are

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<sup>1</sup> The purpose of the Quality Assurance Review (QAR) is to evaluate facility compliance across several functional areas in accordance with the Federal Performance-Based Detention Standards. The QAR is a headquarters-managed, 3-day review that is conducted by experienced USMS and contract staff. The QAR process concludes with an annual final report and overall facility rating. We analyzed the LDC's QAR reports and observed the performance of a QAR at the Aurora Detention Facility. Thus far, we have not identified any deficiencies associated with the QAR process.



*permanently* located onsite. However, we have found that the USMS neither stations staff at the LDC (USMS does not co-locate staff at any of its contract detention facilities), nor does the contractor provide any dedicated space at the LDC. Rather, the responsibility for continuous monitoring is held by a USMS COR located in the USMS District of Kansas office (District COR), approximately 30 miles southeast of the LDC. We found that the District COR performed onsite inspections at the LDC on a very infrequent basis. From January 2014 through September 2015, a period encompassing 21 months, the District COR visited the facility 17 times for approximately 41 hours. Approximately 37 percent of this time was spent observing the QAR team's annual reviews, and if these QAR-related hours are removed, the District COR spent 26 hours conducting inspections from January 2014 through September 2015, or approximately 1.2 hours per month. During the audit, USMS officials acknowledged that this was not a sufficient amount of onsite inspection time, and told us that there was no standard operating procedure or formal expectation of how much time District CORs should be performing onsite inspections.

We also identified a potential LDC effort to circumvent jail standards that we believe the USMS could have detected earlier with a greater onsite presence at the LDC. Specifically, in 2005, 2008, and 2011, LDC officials may have concealed from the American Correctional Association (ACA) its use of three beds in a cell designed for two (i.e., "triple bunking") in an effort to avoid being found non-compliant with three ACA standards.<sup>2</sup> Several LDC staff told us that prior to the ACA reviews in those years, third beds bolted to the floor were uninstalled, removed from the facility, and subsequently reinstalled after the ACA concluded its review. We are currently engaged in discussions with CCA's Office of General Counsel and a CCA Investigator on this ongoing matter.

#### *Inadequate COR Experience and Training*

The District COR was appointed in March 2011, only 2 weeks after attaining her COR Certification. Prior to certification, the District COR had no contracting experience and this almost \$700 million contract was her first assignment. Furthermore, the District COR did not have experience in detention services and relied on the expertise of a Deputy U.S. Marshal to conduct inspections. We found that the USMS failed to provide sufficient training to the District COR to bolster her knowledge of detention services and monitoring and oversight. From this District COR's March 2011 appointment through August 2015, her only formalized detention-related training was a

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<sup>2</sup> The contract requires CCA perform in accordance with the most current edition of the ACA's Performance-Based Detention Standards for Adult Local Detention Facilities. The three ACA standards, all non-mandatory, were: (1) 4-ALDF-1A-10, Multiple-Occupancy Rooms/Cells, (2) 4-ALDF-1A-12, Dayrooms, and (3) 4-ALDF-1A-19, Environmental Conditions.

60-minute lecture on the roles and responsibilities of the COR during the pre-solicitation and post-award phases of the contract.

USMS officials acknowledged during our audit that COR training is a weakness across all Districts responsible for detention facilities that must be addressed, and said that options to address the issue include obtaining training from organizations specializing in jail operations or coordinating with the BOP on a training exchange program. USMS officials also noted that LDC's oversight arrangement was unique because COR duties were assigned to an administrative staff member instead of a Detention Management Inspector (DMI) as is done in other Districts. DMIs are Deputy U.S. Marshals that - in addition to serving as the COR - are the District's criminal investigator responsible for investigating prisoner deaths, assaults, escape attempts, and to facilitate and enforce minimum conditions of confinement standards.

#### *Insufficient Continuous Monitoring Procedures*

The District COR is required to "monitor contractual compliance through inspections of [the LDC]" but there was no guidance on what a sufficient inspection would entail or how often it should be performed. The District COR's only documented evidence of inspections was an annual Detention Facility Review (DFR) conducted by the District COR and a Deputy U.S. Marshal in his capacity as a Jail Inspector. However, DFRs (conducted using Form USM-218, *Detention Facility Monitoring Report*) were not intended for use on privately contracted facilities but for facilities operated under an Intergovernmental Agreement (IGA). A USMS official from the Detention Standards and Compliance Branch confirmed that DFRs are not the proper instrument to review the LDC or any other contracted facility, and are much less comprehensive and arduous than an annual QAR. USMS Policy Directive 9.7, effective March 2014, states that the DFR is designed to review jail practices at IGA facilities to verify basic, minimal requirements are met. In addition, DFRs are not to be used in lieu of potentially more intense or focused reviews, and "are not certifications, accreditations, or compliance approvals of any sort." The Chief of USMS Prisoner Operations Division's (POD) Office of Detention Services said a sufficient inspection should entail monitoring procedures more rigorous than DFRs but less than QARs.

The District COR indicated that she also performed periodic, informal inspections while onsite at the LDC, but these inspections were not documented, nor were they administered in an organized and systematic fashion. We also found that several requirements listed in the District COR's job description were not being performed, such as developing monitoring instruments and establishing a document control system. In addition, the District COR did not evaluate the performance of the LDC and prepare reports on its performance, as required. Lastly, the COR and her supervisor were

required to develop a project plan to define the inspection work to be performed and the scope of the work. This too had not been completed.

*Lack of Guidance for Oversight*

We believe it is unrealistic to expect a single District COR – who lacked detention experience and proper training, was located offsite, and was responsible for performing numerous other duties – to establish and maintain, a comprehensive continuous monitoring program of an almost \$700 million private detention contract without the USMS POD or District of Kansas providing significant guidance and monitoring tools.<sup>3</sup> USMS officials confirmed that aside from the DFR procedures, which were not intended for use at private facilities, the POD did not provide the District CORs formal guidance on how to conduct adequate oversight and monitoring at contract facilities. In contrast, the BOP's Privatization Management Branch disseminated operating procedures to all its onsite monitoring teams to “provide consistent guidance for staff involved with the oversight of correctional facilities under contract with the Bureau.”<sup>4</sup> The Privatization Management Branch operating procedures contain oversight staff responsibilities; the contract monitoring strategy and activities; and monitoring methods such as checklists, logs, written evaluations, and performance meetings. The LDC contract requires the USMS to conduct formal performance evaluation meetings “on a regular basis as determined necessary by the [Contracting Officer]”, but we determined that none of these meetings were conducted.

*USMS's Failure to Monitor Contractor Internal and External Audit Results*

We also found that the USMS did not request CCA's LDC-conducted internal audit results or corrective actions to identify areas of risk and ensure that LDC officials addressed deficiencies in an effective and timely manner. For the USMS to conduct proper oversight, we believe it should, at a minimum, be requesting and incorporating into its quality assurance program all contractor internal and external audit results and corrective actions taken to ensure each identified deficiency was adequately resolved. This matter is not just particular to the LDC, but applicable to all Districts monitoring USMS contract facilities.

One example of the benefit of monitoring a contractor's internal and external audit results is the triple-bunking issue. In September 2015 the USMS issued a memorandum to CCA stating that “USMS detainees/prisoners will not be housed three persons to a cell, in which the physical design, square

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<sup>3</sup> The District COR's additional duties included overseeing seven IGA facilities in Kansas, including their inspections, and processing invoices and medical pre-authorizations.

<sup>4</sup> The Privatization Management Branch is located within BOP's Correctional Programs Division and its responsibilities include managing the operation of secure contract facilities.

footage and unencumbered space is constructed for 2-person occupancy.” If the USMS had monitored the LDC’s internal audit results it may have identified this triple-bunking problem in January 2014, rather than over a year later, pursuant to CCA headquarters’ Mock ACA Review, which cautioned that “... the ACA auditors may voice a recommendation that the facility utilize [vacant housing pods] to eliminate the triple bunking, given that this practice impacts approximately one-third of the facility’s inmate population.”

*Insufficient USMS Continuous Monitoring may be Widespread*

We believe that CCA Leavenworth is likely not the only USMS-contracted facility with a problematic approach to continuous monitoring. As detailed in this memorandum, several problems with the USMS’s continuous monitoring efforts are applicable to all USMS Districts overseeing contract detention facilities including the lack of detention-related training; lack of POD-issued oversight guidance; and failure to monitor CCA’s internal and external audit reviews. The adequacy of other Districts’ onsite presence is currently unknown but potentially problematic, as some District CORs have oversight responsibilities for more than one facility. For example, in Texas, a single COR is responsible for the oversight of the Webb County, Rio Grande Detention, and Willacy detention facilities, which have a combined capacity of nearly 3,000 USMS beds, and the latter two facilities are located approximately 165 miles apart. Furthermore, in California a single COR is responsible for the continuous oversight of the Western Region Detention Facility and Otay Mesa Detention Center, which together house approximately 2,300 detainees. USMS officials said that the COR in Texas receives assistance from Deputy U.S. Marshals in their collateral role as Jail Inspectors, but as previously described, the DFRs performed by Jail Inspectors are not rigorous enough for privately contracted facilities.

Because of the USMS’s decentralized approach to continuous monitoring, the adequacy and consistency of inspections performed across the 15 USMS contract facilities are also unknown. The District COR told us that she is not aware of how other District CORs operate and they do not communicate with one another or share best practices. USMS officials agreed that there is no standardization in how districts develop and execute their inspection programs and believe this is partly due to district ownership of the COR positions. They explained that the districts specialize in law enforcement, not facility management and are not in the best position to oversee continuous monitoring and the COR positions. They said that POD maintains the organizational knowledge and experience to create, formalize, and implement a continuous monitoring strategy.<sup>5</sup> We agree and believe the USMS should reassess the

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<sup>5</sup> USMS officials’ comments referred to the continuous monitoring of privately contracted facilities and not facilities operated under IGAs.

organizational placement of the COR positions to determine if POD is better suited to provide guidance, training, monitoring, and responsibility for the COR positions in a manner that enhances the USMS's continuous monitoring of private detention facilities.

*USMS is not Using CPARS as required by the Federal Acquisition Regulation*

We found that the USMS was not entering past performance evaluations into CPARS for any of its detention contracts, including the LDC contract, as required by FAR Subpart 42.15.<sup>6</sup> Consequently, agencies such as U.S. Immigration and Customs Enforcement and BOP (which also contract for services from private prison operators) are not be able to view past performance on USMS contracts during their source selection processes in the Past Performance Information Retrieval System.<sup>7</sup>

We are providing this information so that USMS can assess the potential systemic nature of our preliminary findings and take appropriate corrective action. Please advise us within 30 days of the date of this memorandum of any actions the USMS has taken or intends to take regarding the issues discussed herein. We are continuing our audit of the USMS contract for the Leavenworth Detention Center and intend to incorporate in our final audit report any corrective actions USMS takes in response to this memorandum. If you have any questions or would like to discuss 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.

cc: Carlos Uriarte  
Associate Deputy Attorney General

Andrew Barker  
Assistant Chief Inspector  
External Audit Liaison  
Office of Professional Responsibility-Compliance Review  
United States Marshals Service

Richard P. Theis  
Assistant Director  
Audit Liaison Group  
Internal Review and Evaluation Office  
Justice Management Division

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<sup>6</sup> On January 7, 2016, a USMS official told us that the USMS had just started entering past performance evaluation information into CPARS.

<sup>7</sup> In May 2010, the Past Performance Information Retrieval System was designated as the government-wide single repository of contractor past performance data.

**USMS'S RESPONSE TO THE OIG'S MANAGEMENT ADVISORY MEMORANDUM**



U.S. Department of Justice


United States Marshals Service

Office of the Director

Washington, DC 20530-0001

March 11, 2016

MEMORANDUM TO: Michael E. Horowitz  
Inspector General

FROM: David L. Harlow   
Deputy Director

SUBJECT: Potential Systemic Deficiencies in U.S. Marshals Service  
Continuous Oversight of Contracts for Detention Services

On February 11, 2016, the United States Marshals Service (USMS) received your memorandum, entitled *Potential Systemic Deficiencies in U.S. Marshals Service Continuous Oversight of Contracts for Detention Services*, advising of significant issues that may be affecting the ability of the USMS to adequately monitor contractor performance on its contracts for detention services.

Your office identified several areas of concern arising out of its ongoing audit of the Leavenworth Detention Center (LDC) with regard to the continuous monitoring of contractor performance, including a limited onsite presence; inadequate Contracting Officer's Representative (COR) experience and detention-related training; insufficient continuous monitoring procedures; a lack of oversight guidance; failure to monitor the contractor's internal and external audit reviews; and failure to use the Contractor Performance Assessment Reporting System (CPARS) as required by the Federal Acquisition Regulation. You further expressed concerns that the issues identified at LDC may be systemic across all USMS private contract detention facilities.

The USMS takes its oversight responsibilities seriously, and has taken, or will take, the following steps to address these issues:

1. The USMS will improve its contract monitoring by establishing an on-site detention contract monitoring program staffed by full-time professional contract administrators (CA) for private detention facilities used to house USMS prisoners. The CAs will serve as CORs under the supervision of the Prisoner Operations Division. The first CA will be assigned to the LDC in fiscal year (FY) 2016. The CAs will complement existing and future operational Detention Management Inspectors (DMIs). The USMS will seek additional positions for the remaining facilities through the appropriations process.

Memorandum from Deputy Director Harlow Page 2  
Subject: Potential Systemic Deficiencies in U.S. Marshals Service Continuous Oversight of  
Contracts for Detention Services

2. The USMS will develop standard operating procedures and contract monitoring instruments, similar to those currently utilized by the Bureau of Prisons, to assist CAs and DMIs in monitoring detention service contract compliance.
3. The USMS will develop a training program for contract administrators/CORs assigned to detention and transportation contracts. In addition to basic COR training and certification requirements, the program will cover detention facility inspections, contract monitoring instruments, reporting requirements, and corrective action plans.
4. The USMS will conduct a Quality Assurance Review (QAR) at the LDC in May 2016, and an additional unannounced QAR in FY 2016.
5. USMS Contracting Officers have confirmed that each private detention facility contract has at least one COR with a Federal Acquisition Certification for Contracting Officer's Representatives (FAC-COR) Level II certification.
6. Effective December 2015, all active private detention contracts utilized by the USMS were loaded into CPARS, and contractor performance information is being entered into the system.

Thank you for the opportunity to comment on these important matters. I look forward to reviewing your final audit report.

cc: Carlos Uriarte  
Associate Deputy Attorney General

Richard P. Theis  
Assistant Director  
Audit Liaison Group  
Internal Review and Evaluation Office  
Justice Management Division

Eben Morales  
Assistant Director  
Prisoner Operations Division  
United States Marshals Service

Andrew Barker  
Assistant Chief Inspector and External Audit Liaison  
Office of Professional Responsibility  
United States Marshals Service

**USMS'S RESPONSE TO THE DRAFT AUDIT REPORT**



U.S. Department of Justice  
United States Marshals Service  
*Office of the Associate Directors*

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*Washington, DC 20530-0001*

April 6, 2017

MEMORANDUM TO: Jason R. Malmstrom  
Assistant Inspector General for Audit  
Office of the Inspector General

FROM: William D. Snelson *William D. Snelson*  
Associate Director for Operations

SUBJECT: Response to Draft Audit Report: United States Marshals Service  
Contract No. DJJODT7C0002 with CoreCivic, Inc. to Operate the  
Leavenworth Detention Facility

This memorandum is in response to correspondence from the Office of the Inspector General requesting comment on the recommendations associated with the subject draft audit report. The United States Marshals Service appreciates the opportunity to review the Report and concurs with the recommendations therein. Our response to each of the recommendations is attached.

Should you have any questions or concerns regarding this response, please contact Andrew Barker, Audit Liaison, at 703-740-9068.

Attachment

cc: Scott Schools  
Associate Deputy Attorney General

Gary Barnett  
Counsel to the Deputy Attorney General

Richard P. Theis  
Assistant Director  
Audit Liaison Group  
Internal Review and Evaluation Office  
Justice Management Division

Andrew Barker  
External Audit Liaison  
United States Marshals Service



**USMS Response to OIG Draft Report  
U.S. Marshals Service Contract No. DJJODT7C0002 with CoreCivic, Inc. to Operate  
the Leavenworth Detention Facility**

**Recommendation 1: Establish acquisition procedures to ensure that future detention pre-solicitation and solicitation notices include the widest place of performance practical, and that sole source justifications are fully documented, maintained in the contract file, and include all Federal Acquisition Regulations (FAR)-required language. This language should include the certification that the justification was accurate and complete to the best of the Contracting Officer's knowledge.**

**Response (Concur):** We have redesigned our Sources Sought to provide specific geographic information to ensure the widest area is included while maintaining compliance with 18 USC 4013 which requires the private provider must be located in the District of need.

Additionally, we now store all Market Research electronically, as well as by paper in the contract file. We understand there was missing information from the 2007 justification. Unfortunately, we did not save in electronic format and the paper file was not located to provide the Audit Team clear supporting information for the sole source decision. Since the Office of the Federal Detention Trustee (OFDT) merged with the United States Marshals Service (USMS) we have followed the existing USMS Procurement Policies which provide specific procedures for all acquisitions.

We can provide samples of actual Sources Sought announcements to provide documentation of compliance with this recommendation. Additionally, we have issued a new Sources Sought for the District of Kansas to determine if conditions have changed since our original determination of 2007.

**Recommendation 2: Establish policies and procedures to ensure that, when USMS price analysis is based on a comparison of historical prices paid, it establishes the prior price as a valid basis for comparison.**

**Response (Concur):** Since 2007 we have developed a number of tools to assist both Contracting Officers (CO) and Intergovernmental Agreements (IGA) Specialists to determine fair and reasonable pricing. In 2008, we developed the Core Rate which is a method to determine a schedule of fair per diem reimbursement rates with private, state, and local agencies that provide bed space to house federal prisoners.

We teamed with the Federal Bureau of Prisons (BOP) and Immigrations and Customs Enforcement (ICE) to develop the Pricing Analysis Guide in 2008, which is updated biannually. It compiles pricing information from these contracts and IGAs, creating the average baseline per-day rate paid by Federal organizations. This document is meant to be used as a pre-negotiation guide for price analysis only and to help specialists determine if a proposed per-day rate is fair and reasonable in accordance with FAR Part 15.404-1.

**Recommendation 3: Continue to develop a training program for CORs monitoring and overseeing its detention-related contracts that ensures CORs receive and maintain a level of training and experience commensurate with their responsibilities.**

**Response (Concur):** The USMS will continue to develop a training program for CORs monitoring and overseeing its detention-related contracts that ensure CORs receive and maintain a level of training and experience commensurate with their responsibilities.

**Recommendation 4: Continue to develop and implement inspection guidance, monitoring tools, and its new onsite contract monitoring initiative for use at all of its privately contracted facilities, and ensure that its continuous monitoring efforts incorporate Quality Assurance Review (QAR) steps, to the maximum extent practicable.**

**Response (Concur):** The USMS will continue to develop and implement inspection guidance, monitoring tools, and its new onsite contract monitoring initiative for use at all of its privately contracted facilities, and ensure that its continuous monitoring efforts incorporate QAR steps, to the maximum extent practicable.

**Recommendation 5: Request and incorporate internal and external audit results and POAs into the USMS's quality assurance program to ensure each identified deficiency was adequately resolved.**

**Response (Concur):** The USMS has updated the Performance Work Statement to require written responses of internal and external audits, and Plan of Actions are provided to the CO and COR within 30 days of completion.

**Recommendation 6: Create policies and procedures requiring CORs to conduct continuous oversight and monitoring of QAR-identified deficiencies to ensure that the completed POAs are operating effectively and that the CORs document this follow-up work and communicate the results to POD.**

**Response (Concur):** The USMS has developed an on-site Standard Operating Procedure requiring and providing oversight tools to CORs.

**Recommendation 7: Include in the USMS's new standard operating procedures COR requirements for developing and maintaining a document control system and for retaining quality assurance-related documentation. Standard operating procedures should also include COR guidance on formally documenting inspections that include tracking deficiencies and contractor POAs.**

**Response (Concur):** The USMS has developed an on-site Standard Operating Procedure requiring and providing oversight tools to CORs.

**Recommendation 8:** Continue to input performance assessment reports for its active contracts into CPARS, and finalize policies and procedures to ensure that contractor performance data on future detention contracts is entered into CPARS.

**Response (Concur):** All existing Detention Service Contracts have been loaded into the Contractor Performance Assessment Reporting System (CPARS), and we have incorporated this requirement into our Quality Assurance Program (QAP) to match the CPARS rating system (see attached), and to include the reporting through the Past Performance Information Retrieval System (PPIRS) and the Federal Awardee Performance and Integrity System (FAPIS) through CPARS.

We are currently processing the three (3) reports for three of our detention services contracts. We will provide OIG copies of the reports once they have been processed through CPARS.

**Recommendation 9:** Conduct Performance Evaluation Meetings, as required by the contract, at the LDC and other detention facilities as applicable.

**Response (Concur):** The USMS has developed an on-site Standard Operating Procedure that requires Performance Meetings.

**Recommendation 10:** Ensure that the District COR complies with contract and USMS District requirements to evaluate contractor performance prior to the payment of monthly invoices.

**Response (Concur):** The USMS has developed an on-site Standard Operating Procedure requiring and providing oversight tools to CORs.

**Recommendation 11:** Ensure that the LDC's QAM request and retain supporting audit documentation to ensure audits are properly conducted and conclusions are supported.

**Response (Concur):** The USMS will review and approve contractors QAM and require any changes to be approved by USMS.

**Recommendation 12:** Ensure that the LDC enforces existing CoreCivic policies and procedures for generating and approving comprehensive POAs, including: (a) drafting POAs that sufficiently address the deficiencies and requiring department heads identify the deficiencies' root cause; (b) ensuring the LDC's QAM and Warden provide instruction and guidance to department heads on the contents of a sufficient POA, and only approve fully compliant POAs; and (c) ensuring that department heads complete and the LDC's QAM retain the corrective action worksheets.

**Response (Concur):** The USMS will review and approve contractors QAM and ensure it is managed by the contractor appropriately.

**Recommendation 13:** Ensure that the LDC enforces existing CoreCivic policies and procedures by confirming and documenting that POA strategies and action steps were completed.

**Response (Concur):** The USMS will review and approve contractor's QAM and ensure it is managed by the contractor appropriately.

**Recommendation 14:** Ensure that CoreCivic creates an Audit Procedure Manual or some other mechanism or process to provide the LDC's QAM with comprehensive guidance on how to properly conduct facility audits and continuously monitor closed POAs. Such guidance should describe: (a) the frequency and breadth of reviews; (b) the establishment of a sample size when one is not already specified in the CCAAT; (c) the maintenance of requisite qualifications, technical expertise, and accountability by personnel supporting the QAM's efforts; (d) the appropriate documentary evidence necessary to validate the auditors' conclusions and enable re-performance if necessary; (e) methods for proper retention of documentary evidence; (f) the approval and monitoring of the LDC's inspection and audit methodologies by the FSC; (g) and the establishment of contingency plans for conducting quality assurance-related work should the QAM be unavailable.

Lastly, this guidance should obtain both FSC and USMS approval.

**Response (Concur):** The USMS will review and approve contractor's QAM and require any changes to be approved by USMS.

**Recommendation 15:** Consider implementing policies and procedures similar to those of the BOP that independently evaluate contractor-provided detainee mortality reports.

**Response (Concur):** The USMS will consider implementing policies and procedures similar to those of the BOP that independently evaluate contractor-provided detainee mortality reports.

**Recommendation 16:** Monitor LDC compliance with the new CoreCivic policies and post orders related to recreation yard searches and detainee movement in the SHU, to ensure they are operating effectively.

**Response (Concur):** The USMS will review and approve contractor's QAM and ensure it is managed by the contractor appropriately.

**Recommendation 17:** Ensure that CoreCivic establish policies and procedures that prevent the closure of mandatory posts at CoreCivic's USMS contracted facilities and require FSC assess completed shift rosters to determine if facilities are adequately filling their security-related posts.

**Response (Concur):** The USMS will update detention contracts and the Performance Work Statement to ensure shift rosters are reviewed adequately.

**Recommendation 18:** Include in its contract monitoring program staffing-related procedure steps that help District CORs assess facility staffing trends and determine if post closures are occurring.

**Response (Concur):** The USMS has developed an on-site Standard Operating Procedure requiring and providing oversight tools to CORs.

**Recommendation 19:** Incorporate milestones into its price reduction guidance to ensure a more efficient and expedient submission of final price reduction decisions to its contractors.

**Response (Concur):** We have updated our Reduction Review Manual to include milestones for the process.

**Recommendation 20:** Ensure that during periods of chronic contractor understaffing, contractors utilize all available options, including the provision of temporary staff.

**Response (Concur):** The USMS has updated the Performance Work Statement to address this recommendation.

**Recommendation 21:** Establish policies and procedures for assessing and approving contractor requests to transfer staff out of USMS contracted facilities, and: (a) obtain reasonable assurance from the facility Warden and FSC officials that such a transfer will not compromise the facility's ability to comply with contract requirements and CoreCivic policy; (b) independently assess whether the proposed transfers may jeopardize facility staffing requirements and operational readiness; and (c) ensure that the Contracting Officer and COR approve and continuously monitor the arrangement, respectively.

**Response (Concur):** The USMS has updated the Performance Work Statement and on-site Standard Operating Procedures to ensure both CO and COR approve all contractor staff

**Recommendation 22:** Clearly specify in its new and existing contracts the circumstances under which triple bunking is allowed, and what rules, procedures, and ACA standards apply to the practice.

**Response (Concur):** The USMS contract already requires compliance with ACA Standards concerning Multiple Occupancy Cells; however, we have updated the Performance Work Statement to require USMS approval prior to housing prisoners outside of the ACA Standard:

*“The Contractor shall maintain full compliance with ACA ALDF standards pertaining to: (1) Physical Plant; (2) Inmate Housing; (3) Single Occupancy Cells; (4) Multiple Occupancy Cells; (5) Cell Room Furnishings; (6) Dayrooms; (7) Washbasins; (8) Bathing Facilities; and (9) Toilets. Under no circumstances will the contractor fail to comply with the unencumbered space requirements, a practice commonly referred to as Triple Bunking, without prior approval of the Contracting Officer and the District's Chief Deputy U.S. Marshal.”*

**Recommendation 23:** Specify for its contractors, in their contracts or in some other appropriate manner, the use of multi-user arrangements at its existing and future contract facilities, to ensure USMS maximizes its value and assesses the impact, if any, on USMS's contracted staffing, facility safety and security, and other institutional matters.

**Response (Concur):** The USMS will review existing law and regulations to determine any actions we can specify in our multiple users' contracts. We will take appropriate action if any impact affects the services USMS has contracted.

**Recommendation 24:** Work with the Department of Labor, and as necessary CoreCivic, to determine whether placing funds significantly in excess of the actual cost of employees' accrued sick leave balances in a "sick account," and not making the excess funds available to employees on their regular payday, is a proper fringe benefit practice, and that CoreCivic properly communicates the "sick account" benefit to its employees.

**Response (Concur):** The USMS will work with the Department of Labor, Wage and Hour Division, to determine if CoreCivic is in compliance with the Service Contract Act requirements.

**CORECIVIC'S RESPONSE TO THE DRAFT AUDIT REPORT**



Natasha K. Metcalf  
Vice President, Partnership Development

April 5, 2017

Jason R. Malmstrom  
Assistant Inspector General for Audit  
1425 New York Avenue, NW  
Suite 500  
Washington, DC 20530

Dear Mr. Malmstrom:

CoreCivic, Inc. (CoreCivic or “the Company”), formerly Corrections Corporation of America, appreciates the opportunity to review and comment on the Draft Audit Report of the United States Department of Justice (DOJ) Office of the Inspector General (OIG) in relation to its audit of the United States Marshals Service (USMS) contract with CoreCivic to operate the Leavenworth Detention Center (Leavenworth or LDC). The stated goals of the OIG were “to assess USMS and CoreCivic administration of, and compliance with, contract terms and conditions in the areas of: (1) contract management, oversight, and monitoring; (2) staffing requirements; and (3) billings and payments.” Draft Audit Report at i. The draft audit report focuses on, but is not limited to, the time frame of October 2010 through May 2015.

We appreciate the opportunity to comment upon the draft audit report and the revisions that the OIG has made to its working draft audit report in response to the issues we raised during the exit conference. This response addresses those areas where we believe the audit would benefit from further explanation and provides an update on our efforts to meet USMS expectations and address many of the findings in the report. To briefly summarize:

- CoreCivic has increased training for its Quality Assurance Managers (QAMs) and significantly enhanced its Quality Assurance policies and procedures to ensure greater effectiveness in monitoring and improving operational performance.
- CoreCivic has worked to provide greater visibility into the staffing at LDC for its partners, and we have incentivized employees to recommend qualified staff in an effort to further strengthen recruitment.
- For nearly 15 years, CoreCivic has relied on The Boon Group, a leading employee benefits company specializing in government contracts, to administer our sick leave trust in full compliance with Department of Labor rules and regulations.

**I. Overview**

**A. Our Record of Compliance at LDC**

CoreCivic provides a diverse range of government solutions and has worked in close partnership with the USMS at LDC for over 26 years, supporting the USMS's need to securely and safely house individuals criminally-charged with violating federal laws. In doing so, the safety and security of our facility, staff, and those entrusted to our care has consistently been our top priority. Furthermore, we are committed to meeting all relevant contract requirements as well as the USMS Federal Performance-Based Detention Standards (FPBDS) and applicable correctional industry accreditation standards.

USMS Quality Assurance Reviews (QARs), which have been conducted at LDC since 2006, have found facility operations acceptable every time but once, and those findings were quickly addressed and corrected, resulting in a return to an "acceptable" rating.

In January 2017, the USMS conducted its most recent QAR of LDC and also rated the facility's operations as satisfactory overall. Indeed, as assessed against the FPBDS, LDC received satisfactory evaluations in every functional area, including security, safety and services, and for nearly every standard.

Other recent reviews of LDC include:

- In the most recent American Correctional Association (ACA) review conducted in March 2017, LDC received a preliminary score of 100% on both mandatory and non-mandatory standards. In August 2017, LDC will appear before the ACA Commission on Accreditation where we anticipate that the facility will receive accreditation. LDC previously appeared before the ACA Commission on Accreditation in August 2014, at which time LDC also received accreditation with a score of 100% on both mandatory and non-mandatory standards.
- In March 2017, LDC underwent an audit to assess its compliance with the Prison Rape Elimination Act (PREA) Commission standards. The on-site portion of the audit was completed on March 22, but a final report has not yet been received. Previously, LDC underwent a PREA audit in January 2015 and was found to be in 100% compliance.
- Also in 2015, the National Commission on Correctional Health Care (NCCHC), whose mission is to improve the quality of correctional health services and assist correctional facilities with providing effective and efficient care, accredited LDC with the facility meeting 100% of the essential health service standards applicable to LDC and 100% of the important health service standards applicable to the facility.

Our partnership with the USMS is important to us, and accordingly, we respect the OIG's audit process as one of the many oversight and audit tools that the Government employs to monitor



contract performance and advance overall contracting processes and procedures. As a responsible partner that strives to meet USMS's expectations and learn from the feedback we receive from our customers, the OIG, and accreditation organizations, we appreciate the draft audit report's identification of areas for improvement. Below, we provide our response and identify actions we have taken to enhance our performance at LDC and elsewhere.

**B. Our Commitment to Enhancing Our Partnerships and Performance**

CoreCivic was founded in 1983 to establish public-private partnerships for the management and operation of correctional facilities. Today, the Company, a publicly-traded real estate investment trust, is a diversified government solutions company offering high quality corrections and detention services, innovative real estate solutions, and a network of residential reentry centers to help tackle America's recidivism crisis. CoreCivic is proud of its decades-long record of partnering with the Government to meet the USMS's mission.

CoreCivic strives to deliver services in a way that honors our values of having PRIDE in all we do: Professionalism, Respect, Integrity, Duty, and Excellence. We take seriously our obligations as a responsible federal contractor and desire to serve the USMS and our other Federal government customers as a reliable, dependable partner.

Toward these ends, we have an established ethics and compliance program and system of internal compliance controls, including those administered by our Quality Assurance Division, and we have made investments in technology to permit CoreCivic to be more responsive to the needs and requirements of our government partners. We believe recent investments in these areas, some of which are discussed at greater length in this response, address several of the OIG's stated concerns and, together with management changes at the facility, continue to improve operations at LDC.

In recent years, the Company initiated significant enhancements to its ethics and compliance, investigations and quality assurance functions. Ethics and compliance became a stand-alone function within the Company, reporting directly to CoreCivic's President and Chief Executive Officer. In addition, CoreCivic management initiated an "ethics liaison" program at each of CoreCivic's secure facilities to bolster our commitment to integrity, reporting and non-retaliation. Moreover, the Company's investigations function was enhanced to improve management's ability to prevent, detect and respond to allegations of employee misconduct. The Quality Assurance Division is making improvements to its processes for auditing compliance with government partner contract requirements, initiating policy changes to improve facility-level quality control functions, and re-designing processes for responding to internal and external audit findings to improve their effectiveness and durability. From a technology perspective, management has invested in a new Workforce Management System to better manage, monitor, and report on facility staffing levels. Together, these investments demonstrate the Company's proactive efforts to promote a strong culture of ethics and compliance, meet our contractual commitments and provide high quality, efficient services to our government partners.

## II. Quality Control

CoreCivic prides itself on maintaining a comprehensive Quality Control Plan (QCP) at LDC, administered by an on-site, full time Quality Assurance Manager (QAM). Nonetheless, as part of our focus on continuous improvement, the Company always welcomes the opportunity to improve its operations and quality assurance processes and appreciates the OIG's findings and recommendations.

As noted in the draft audit report, CoreCivic's QCP is comprised of a comprehensive multi-tiered approach to internal compliance monitoring at the facility. The procedures utilized by CoreCivic to monitor compliance at LDC include annual operational audits performed by full-time auditors, staff and inmate climate surveys, quarterly self-monitoring audits, monthly security inspections, ad hoc/informal inspections, and ACA and PREA mock audits.

The OIG chose to focus its review solely on LDC's informal inspections and quarterly self-monitoring audits. Draft Audit Report at 28. With respect to these two monitoring procedures, the draft audit report identified areas for improvement in our processes. For example, the report observes that with respect to self-monitoring and informal inspections, CoreCivic could do a better job of documenting its audits and managing its Plans of Action (POAs) developed to address identified shortcomings. The audit also found that LDC's QAM would benefit from additional guidance.

We acknowledge that LDC's audits can be improved. As part of CoreCivic's ongoing commitment to improving continuously our quality assurance processes across the organization, we have implemented a number of improvements and enhancements relevant to an evaluation of our Leavenworth program. Below is a summary of the improvements and enhancements we have initiated to date.

- **Root Cause Analysis Training.** Between July and September of 2016, we provided our facility QAMs and some department heads with refresher "Root Cause Analysis Training". This training provided instruction on the importance of and methods for determining the root cause of a deficiency and provided several real-world, corrections-based examples. Afterwards, QAMs were provided with a copy of the training materials and were encouraged to share the training with the department heads in their facilities. Going forward, root cause analysis refresher training will be provided annually to all facility QAMs. Facility wardens, Administrative Duty Officer (ADO) staff, and department heads also will be encouraged to participate in this training.
- **Plan of Action Training.** In October and November 2016, CoreCivic's Quality Assurance Division also provided training to QAMs on developing and drafting effective POAs. This training focused on the overall POA process (identify the deficiency, determine root cause, develop the POA, implement the POA, document/validate POA implementation, and verify POA effectiveness), the QAM's role in developing and processing POAs, key components of effective POAs, and tips for drafting effective POAs. Like the refresher training discussed above, the training covered several real-world, corrections-based

examples. After attending the training, QAMs received copies of the training materials and were encouraged to share the training with department heads and others at their facilities. Going forward, refresher training on developing and writing effective POAs will be provided annually to all facility QAMs. Facility wardens, ADO staff, and department heads also will be encouraged to participate in this training.

- **Enhancement of Quality Assurance Policies and Procedures.** CoreCivic is in the process of substantially revising and enhancing its POA policy and renaming it the *Audits, Inspections, and Corrective Action* policy. We believe that the revised *Audits, Inspections, and Corrective Action* policy, which we expect to finalize on or before May 1, 2017, addresses many of the recommendations outlined in the draft audit report. Once finalized, LDC will submit the revised policy to the USMS for review and approval. The enhancements in this policy address documentation, root cause analysis, development of POAs, and monitoring of POAs, as described in greater detail below:
  - First, under the revised *Audits, Inspections, and Corrective Action* policy, QAMs will be required to capture specific audit-related information for each internal audit, including the date of the audit, the department or functional area audited, a detailed description of each deficiency identified, including, where applicable, the physical location of the deficiency (e.g., Day Room of Housing Unit Alpha); the name or description of any record(s) audited or inspected (e.g., Medication Administration Record); the date(s) or date range of any record(s) audited or inspected; the description and date(s) and, when applicable, time(s), of any activity or performance measure audited or inspected (e.g., “observed day-shift fire drill on January 1, 2017” or “interviewed four evening-shift COs on January 1, 2017”).
  - Second, the revised policy will provide specific instructions to department heads for the development of POAs, requiring identification of the root cause and the inclusion of detailed corrective action steps. The instructions require identifying the title of the person(s) responsible for completing each corrective action step, and the date each corrective action step was completed or is targeted to be completed. In addition, department heads are encouraged to consult with Facility Support Center (FSC) subject matter experts when developing draft POAs. Once the POA is drafted, it must be reviewed by the facility QAM, who is tasked with assessing whether the POA effectively addresses each component of the deficiency, appears to provide a long-term viable solution, is clear and concise, and includes all of the information listed above. In addition, the QAM is responsible for working with the department head to obtain clarifications and make revisions or amendments to the POA prior to submitting it to the Warden for review and approval. Finally, the Warden must review and approve all POAs.
  - Third, the revised policy will improve the POA validation process at LDC. Under the revised policy, department heads must provide the QAM with evidence (*i.e.*,

proof of practice) of completion of each action step in the POA. Such evidence may consist of documentation (e.g., training records, updated policies or post orders, or work orders), photographs, or other evidence demonstrating that the corrective action steps were properly and fully completed. The QAM reviews the evidence and assesses whether it substantiates completion of the POA. If so, the QAM submits the evidence to the Warden and will request closure of the POA. If the evidence does not satisfactorily substantiate completion of the POA, the QAM is required to obtain additional information from the department head. Once both the QAM and Warden are satisfied that they have received sufficient evidence to substantiate completion of the POA, the Warden will approve closure of the POA in writing (or electronically), and the QAM will upload the evidence and Warden's written approval to the Quality Assurance data system.

- Fourth, the revised policy will require LDC to monitor the effectiveness of POAs on a monthly or quarterly basis. Under the revised self-monitoring program, if a POA is completed for a partner-identified repeat deficiency, the QAM is required to audit the applicable requirement/audit indicator at least once per month for a period of six months. If the requirement is found deficient during any of the monthly self-monitoring audits, the QAM is required to reopen the POA, work with the department head to reevaluate the root cause, and develop and implement a revised POA to address the deficiency. Once the revised POA is closed, the QAM is instructed to monitor the requirement/audit indicator on a monthly basis – repeating the process until an effective long-term solution is implemented and successfully monitored.
- Fifth, under the revised *Audits, Inspections, and Corrective Action* policy, department heads will no longer be primarily responsible for conducting facility self-monitoring audits. Instead, the QAM will have primary responsibility for conducting facility self-monitoring audits, with department heads assisting the QAM with audits in their operational areas as requested. This change will not only help ensure that only trained personnel conduct audits, but it also should provide more consistency in the audit process across all operational areas. To support this change, in May 2017, CoreCivic's Quality Assurance Division will provide QAMs with training on conducting self-monitoring audits effectively. This training will focus on how to conduct and document self-monitoring audits properly using both CoreCivic and customer audit tools. Thereafter, refresher training on conducting self-monitoring audits will be provided annually to all facility QAMs.
- Sixth, pursuant to CoreCivic's revised audit policy, LDC's Warden must designate an employee to serve as the QAM's back-up in the event of an extended absence or vacancy by the QAM.

- **Enterprise-Wide Software Enhancement.** To assist CoreCivic's Quality Assurance Division and facility QAMs with tracking and monitoring each of the POAs, CoreCivic is acquiring a new enterprise-wide software system. This system will allow CoreCivic to more effectively and efficiently manage internal audits, track and catalog internal and external audits, and develop, catalog, track, and monitor POAs. The software system has been purchased and is currently in development phase with facility roll-out projected to occur by the end of 2017.

- **QAM Job Description.** In April 2016, we revised the QAM job description. The updated job description provides more extensive details regarding the primary responsibilities of the position as well as the specific essential functions the position is expected to perform. In part, the updated job description states:

The Manager, Quality Assurance is responsible for managing all areas of Quality Assurance to include conducting regular audits and inspections. Develops, reviews, edits and oversees the implementation of facility policies, procedures and corrective action plans, by gathering and analyzing data related to the operation and management of the facility. Ensures ongoing facility compliance in accordance with established company policies and procedures and contractual requirements.

Manages and conducts audits and inspections of overall facility operations and maintenance to make improvement recommendations affecting the, efficiency and quality of the facility organization, security, operations, services, programs and budget. Coordinates and assists department heads with developing, reviewing, implementing, and validating corrective action plans to ensure that root causes are addressed and corrective actions are effective.

- **Audit Procedures Manual.** We agree with the OIG that in addition to the training and the revision to our *Audits, Inspections, and Corrective Action* policy discussed above, a comprehensive Audit Procedure Manual would be beneficial to our QAMs and help ensure the use of consistent auditing procedures across the Company. In response to one of the recommendations in the report, the Audit Procedure Manual will provide general instructions for establishing a sample size when one is not specified in the CoreCivic audit tool or the USMS audit tool. Our Quality Assurance Division has started development of such a manual and anticipates distribution of an initial version to all QAMs by mid-2017.

### III. Staffing

The draft audit report notes that CoreCivic's staffing at LDC between October 2012 through September 2014 generally met the requirements of the facility plan thresholds, but that there was a higher vacancy rate during the period from October 2014 through September 2015. As mentioned in the draft audit report, this higher vacancy rate was likely due to other regional job opportunities at that time. We recognize that attracting and retaining qualified staff is a challenge within the corrections industry as a whole. At CoreCivic, we continue to explore ways to tackle this industry-wide issue. We, along with the USMS, have initiated several efforts to provide greater visibility into staffing and staff vacancies. We are also pursuing measures to recruit additional staff. These efforts include the following:

- **Shift Roster Verification Process.** Under this process, the on-shift supervisor indicates on the original roster any post reassignments or vacated posts that occur throughout the shift so that the roster is a "real-time" record. Within 24 hours of the next scheduled work day, the Chief of Security or the Chief of Unit Management is required to review the completed shift roster(s) from the previous day(s). Each week, the Master Scheduler is required to review and verify three shift rosters from the previous week using the original rosters. In addition, the Duty Officer (a management employee serving a weekly rotational assignment to monitor overall facility operations) performs one live review of rosters each week. During this review, the Duty Officer receives a copy of the current shift roster from the on-duty supervisor and physically visits each post to confirm that the roster accurately reflects current postings. At the end of each week, the verified and signed rosters that document reviews by Shift Supervisors, Chiefs, and Master Schedulers, along with any supporting documentation, are forwarded to the scheduled ADO (an upper management employee serving a weekly rotational assignment that assumes the duties and responsibilities of the facility Warden during non-business hours), who conducts a final review. All of this documentation is retained at the facility, and verified shift rosters for each week are uploaded into the Quality Assurance data system within 10 working days of ADO review. To measure compliance with these procedures, our Quality Assurance organization audits the shift roster management process as part of the annual facility audit.
- **Workforce Management System.** We are investing more than \$9 million in a Workforce Management (WFM) system. The system is developed by Kronos, a global leader in workforce management solutions that are used by other corrections entities including the California Department of Corrections and Rehabilitation. Our objective is to improve visibility into facility-level staffing for ourselves, including FSC management, and partners such as the USMS and to enhance our ability to make necessary staffing adjustments. At a high level, the WFM system is intended to automate the application of policies and procedures that guide the roster management process. This automation will connect Company employees to our rosters and to employee timecards in real time; provide an alert when mandatory posts are not filled; manage post and employee certifications/licenses by providing alerts when a certification or license is nearing expiration; provide transparency in

scheduling to include overtime assignment and post re-assignment; improve reporting to partners and establish audit trails for compliance; automate the different leave types (such as personal time off, family and medical leave, and sick leave); and generally provide supervisors with the tools to better manage staff day to day and empower employees with information to manage work-life balance. We are tentatively scheduled to launch our first pilot of the system in the third quarter of this year. After assessing the results of the pilot and making any responsive adjustments to the system, we will identify facilities for a second round of piloting.

- **Shift Roster Management Training.** Shift roster management is a core component of bi-monthly training for the Chief of Security and Master Scheduler. Shift Supervisors are also encouraged to attend this training. The training includes an examination of key elements of the detailed shift roster review process that is conducted by these staff on a daily basis to confirm that rosters are properly completed and posts are properly filled. During a previous training session, Shift Supervisors, Master Schedulers and Chiefs of Security were provided a sample shift roster that must be posted in their office for reference.
- **Enhanced Reporting of Vacancies.** Pursuant to Modification 103 of our contract with the USMS, effective July 1, 2016, CoreCivic is providing additional reporting of staff vacancies. Specifically, every month, CoreCivic submits to the Contracting Officer the current average monthly vacancy rate, by department, and indicates any individual positions that have been vacant for more than 30 days.
- **Employee Referral Program.** In an effort to hire and retain qualified employees, LDC also has approved a Correctional Officer Referral Plan. The current plan began February 27, 2017. Under the plan, the facility will pay referral awards to employees who refer an individual who is hired, completes training, and remains actively employed at the facility as a Correctional Officer for a continuous period of six months. An eligible employee who refers a candidate will receive a total award of \$1,000, payable in two installments.

The draft audit report also discusses the implications of Wyandotte County's use of the LDC. Our ability to flexibly and cost-effectively meet the needs of our government partners is one of our greatest strengths. Because of our long-standing partnership, CoreCivic understands that the USMS will have significant population variability over the life of a facility. Specifically, at the LDC, the population has ranged from 510 to 1,134 over the last 10 years. We believe that housing supplementary populations in facilities that otherwise house USMS populations as an anchor provides the ability to smooth that variability while the USMS retains the first right to all of the beds in the facility. If the USMS population increases, other populations are displaced. This approach enables CoreCivic to provide a high-quality service to the USMS that meets their changing needs at a cost that provides value for taxpayers.

For background, the initial pricing for a correctional facility considers both the likely population and the cost to construct a facility to adequately meet its needs, among other factors. At Leavenworth, there is a fixed payment from the USMS that covers the cost to house 602

inmates, which falls significantly below the amount needed to cover the risk of constructing and operating the 1033 capacity facility over its life. Rather than having to hire or lay off staff in response to changes in USMS populations, requesting an increase in the fixed payment, or modifying the tier pricing structure to significantly shift the population risk to the USMS when populations decline, CoreCivic has traditionally sought other partners in need of capacity to supplement the USMS when its populations are lower. This structure helps CoreCivic continue to offer the USMS a competitive price while continuing to be able to safely and effectively operate the facility when the USMS does not have a need for the available capacity for extended periods of time.

#### **IV. Billing and Payments (Particularly Administration of Sick Leave)**

Although the OIG concluded that “contractor invoices for housing were generally calculated accurately, invoiced, authorized, and supported by proper documentation,” the draft audit report did include observations regarding CoreCivic’s compliance with the McNamara-O’Hara Service Contract Act of 1965 (“SCA”), 41 U.S.C. § 6701 *et seq.* In particular, the report questions whether service employees at LDC have received sick leave benefits that satisfy the SCA’s criteria for “bona fide” fringe benefits.

As an initial matter, we appreciate the draft audit report’s recognition that CoreCivic complies with its SCA obligations. As the draft audit report states, “CoreCivic officials, upon receipt of a new wage determination, ensure compliance with the [SCA] wage rates by comparing all positions and actual pay rates with rates shown in the new DOL wage determination.” Draft Audit Report at 62. Even where the report disagrees with compliance efforts, the draft audit report reflects a limited impact because “CoreCivic employees were generally provided salaries and fringe benefits that met or exceeded wage determination requirements.” *Id.* The draft audit report does not suggest that CoreCivic contributed less than the required Health & Welfare (“H&W”) amounts to the trust, and there is also no suggestion that service employees received or will receive less than the H&W benefits that they have earned. Although the draft audit report acknowledges that CoreCivic has consistently incurred the cost of SCA wage and fringe benefits that meet or exceed the SCA’s required minimum amounts, the report nevertheless suggests that the administration of the company’s sick leave benefit needs improvement.

CoreCivic maintains that the plan under which the sick benefit is provided is consistent with written guidance from the U.S. Department of Labor (DOL) in 2003.<sup>1</sup> In that guidance, DOL determined that a plan with the same features as CoreCivic’s sick leave benefit plan would qualify as a bona fide fringe benefit under the DOL regulations at 29 C.F.R. § 4.171. Since then, CoreCivic has relied on The Boon Group, a nationally recognized leader in managing SCA benefits, to administer CoreCivic’s sick leave through a trust in accordance with the guidance provided in DOL’s 2003 letter.

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<sup>1</sup> DOL directed the written guidance, dated August 8, 2003, to Contractors Employee Benefits Association, Inc., which CoreCivic understands is the former name of Boon Administrative Services, Inc., a subsidiary of The Boon Group, Inc.



Specifically, as CoreCivic previously advised the OIG, in 2003, The Boon Group received DOL's written guidance on administering sick leave through an irrevocable trust. We have enclosed DOL's letter with this response. The letter described a sick leave package very similar to the leave available at Leavenworth: service employees receive a set number of sick leave days per 12-month period, funded by contributions from the employer to The Boon Group.

In the letter, DOL advised that the SCA and its regulations "would permit a sick leave policy provided that" the policy/practice satisfied five criteria specified in the letter. Since that time, the Boon Group has administered CoreCivic's sick leave benefits consistent with all five criteria:

DOL Criteria	The Boon Group-Administered Trust
"[T]he contractor cannot recapture any of the contributions paid in, or in any way divert the funds to its own use or benefit (29 CFR § 4.171(a)(4))."	The Boon Group maintains CoreCivic's contributions in an irrevocable trust. CoreCivic is not and has never been able to access the funds for its own use or benefit.
"[T]he contractor makes payments to the sick leave plan on a periodic basis that is not less often than quarterly (29 CFR § 4.175(d))."	The Boon Group receives CoreCivic's contributions on a monthly basis.
"[T]he amount contributed by the contractor approximately represents the actual rate of costs or contributions required to provide paid sick leave benefits to each participating employee (29 CFR § 4.171(a)(3))."	The amounts contributed by CoreCivic to the irrevocable trust approximate the costs to provide sick leave to the covered service employees. The differences, as measured by comparing employees' wage rates to the composite rate that The Boon Group uses in its administration, are consistent with DOL guidance. The differences that remain in the trust as unused leave are also paid out to service employees, such that they remain costs incurred by CoreCivic without forfeiture or recapture.
"[S]ick leave contributions are fully vested for each service employee participating in the plan."	Service employees are fully vested in the sick leave benefits, with the full contribution amounts provided as sick leave and/or cashed out following any of the events specified in the next entry below.
"[T]he unused sick leave balance amounts in individual employee accounts are paid no later than at the conclusion of the contract or termination of employment, whichever comes first."	The Boon Group cashes out the unused balances when a service employee terminates employment, ends performance on SCA-covered contracts, or changes duties to become an SCA-exempt employee.

It appears to us that the draft audit report disagrees with DOL's regulations and written guidance. Since the DOL is vested with exclusive jurisdiction to provide interpretive guidance under the SCA, we are compelled to adhere to DOL guidance in these matters. For example, the draft audit report questions whether The Boon Group's trust administration satisfies the OIG's interpretation of DOL's guidance. In particular, based on calculations involving a small "judgmental sample" reviewed for the report, Draft Audit Report at 63, the report claims that The Boon Group has administered the trust in such a way that, according to the draft report, the H&W credit calculated for the sick leave does not "meet a reasonable definition of 'approximate'" when compared to the alleged cost of providing the sick leave. *Id.* at 66.

Yet, DOL's guidance expressly recognized that differences might arise in methods of calculating sick leave by the contractor and by the benefits trustee. (CoreCivic understands that that issue is what prompted the inquiry to DOL in the first place.) DOL certainly anticipates differences will arise, and only DOL can determine whether differing calculations can reasonably "approximate" each other. DOL has not provided CoreCivic or The Boon Group further guidance on what constitutes calculations that "approximate" each other. CoreCivic is unaware of any published guidance on that point, either. Given this, we do not believe that the fact that funded amounts in the trust do not match accrual rates (or the cost credited against the H&W fringe rate) can call into question whether the sick leave is a bona fide fringe benefit.<sup>2</sup>

Furthermore, the draft audit report appears to question the timing of the trust's payment of unused sick leave and states that the trust should be required to provide "pay outs" of unused sick leave prior to the date employees cease working on an SCA-covered contract or upon termination of employment. The draft audit report also claims that unused sick leave must be provided as a "cash equivalent" payment on the employee's next payday. Recognizing that this is an issue for the DOL to resolve, the Company nonetheless does not believe there is support in DOL regulations or interpretive guidance for such a rule regarding contributions made to an irrevocable SCA trust.<sup>3</sup> Moreover, we believe that the 2003 DOL letter directly contradicts the draft report's conclusion on the timing of payment of unused sick leave. Notably, the 2003 letter states that "SCA compliance would most certainly be achieved" if payment of unused sick leave amounts are made "no later than at the conclusion of the contract or termination of employment, whichever comes first." It does not state that unused sick leave amounts must be paid to SCA-covered employees as a cash equivalent on the employees' next payday. The Boon Group's administration of sick leave satisfies this express guidance because CoreCivic service employees receive cash payouts at

<sup>2</sup> Notably, DOL auditors have not identified any "unreasonable" approximations of sick leave benefits by The Boon Group during the eight DOL SCA audits performed on CoreCivic's SCA compliance since 2005.

<sup>3</sup> CoreCivic also notes that the United States Court of Appeals for District of Columbia Circuit has expressly denied the DOL's claim that an employee hour bank which includes over funded fringe contributions to a fringe benefit plan must be paid as cash in an employee's paycheck at the time the employee earns it. *Tom Mistick & Sons, Inc. v. Reich*, 54 F.3d 900 (D.C. Cir. 1995). In *Mistick*, the D.C. Circuit determined that an hour bank funded with remaining fringe contributions (to satisfy Davis-Bacon Act requirements) passed the reasonable relationship test for a bona-fide fringe benefit plan because every employee received the full value of the fringe contribution *and it was not necessary that the employee received the benefit of every dollar at the time that it was earned*. Under CoreCivic's plan, every employee will receive the full value of all of the fringe contributions made on the employees' behalf, whether through use of paid sick leave or as a cash payment upon employment termination or when the employee stops working on SCA-covered contracts.

employment termination or if they stop working on SCA-covered contracts. In fact, The Boon Group's administration is more generous than DOL's guidance requires: unused sick leave is also cashed out when service employees change duties such that they become SCA exempt.

At bottom, CoreCivic incurs the costs for service employees' bona fide fringe benefits as required by the SCA. DOL regulations provide for measuring H&W benefits by the cost of those benefits to the contractor. *See generally* 29 C.F.R. §§ 4.172, 4.177(a). DOL also recognizes that third parties often administer fringe benefits on contractors' behalf. Under the regulations, contractors "may dispose of certain of the fringe benefit obligations . . . by irrevocably paying the specified contributions for fringe benefits to an independent trustee . . . pursuant to an existing 'bona fide' fund, plan, or program" for the service employees working on a covered contract. 29 C.F.R. § 4.170(b). Further, "Health and Welfare . . . payments to a 'bona fide' trust program may be made on a periodic payment basis which is not less often than quarterly." 29 C.F.R. § 4.175(d)(1).

CoreCivic believes that it not only meets but exceeds that requirement. On a monthly basis, CoreCivic contributes amounts to the irrevocable trust equal to service employees H&W benefits earned during the month. These contributions encompass the costs that CoreCivic incurs for sick leave. CoreCivic cannot recover those funds once contributed, so they are properly considered a cost of the company at that point. Thus, based on this timing, CoreCivic satisfies its H&W obligations by incurring the cost for the fringe benefits to be provided—including sick leave, specifically—through monthly contributions to The Boon Group-administered trust. Overall, CoreCivic incurs costs as required by the SCA so that The Boon Group can administer sick leave in a manner dictated by written DOL guidance—with unused leave cashed out when DOL requires or even earlier.<sup>4</sup>

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<sup>4</sup> Although CoreCivic disagrees with the draft audit report's findings, the Company has nonetheless taken certain action in response to them. Most notably, CoreCivic has enhanced its employee communications to better explain how The Boon Group administers service employees' sick leave. CoreCivic also agrees on an annual basis to review the balance in each employee's paid sick leave account to review whether there is an unreasonable overage and, if so, assess how to best address any such overages for the employees so affected. In addition, the Company understands that it may need to assess its practices for providing fringe benefits to SCA-covered service employees as a result of the recent final rules requiring sick leave. As the OIG is likely aware, Executive Order 13706 and implementing rules now require paid sick leave for many employees performing on or in support of many SCA-covered prime contracts solicited starting January 1, 2017, or awarded outside the solicitation process starting on that date. CoreCivic and The Boon Group are still assessing next steps in connection with these changes to the sick leave rules and will keep the OIG apprised to the extent any changes affecting the sick leave plan are made.

*Mr. Malmstrom  
April 5, 2017  
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**V. Conclusion**

For more than three decades, the Company has been an innovative, dependable partner for government and we appreciate the audit's efforts to identify areas for improvement in the execution and administration of the Leavenworth contract in the future. We remain committed to continued partnership with the USMS to ensure the safe and effective delivery of services to the prisoners in our care.

Sincerely,

A handwritten signature in blue ink that reads "Natasha Metcalf". The signature is written in a cursive style with a large, stylized initial 'N'.

Natasha Metcalf

Enclosure

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

The Office of the Inspector General (OIG) provided a draft of this audit report to the U.S. Marshals Service (USMS), CoreCivic, Inc. (CoreCivic), and the Boon Group. USMS's and CoreCivic's responses are incorporated into Appendix 5 and Appendix 6, respectively. The Boon Group elected not to provide a formal response. CoreCivic did not explicitly agree or disagree with many of our recommendations but provided comments that were applicable to some. In those comments, CoreCivic disagreed with our analysis of how certain employee "sick accounts" have been administered. We describe and, where appropriate, reply to these responses in the applicable recommendation below. The following provides the OIG analysis of the responses and summary of actions necessary to close the report.

**Recommendations to the USMS:**

- 1. Establish acquisition procedures to ensure that future detention pre-solicitation and solicitation notices include the widest place of performance practical, and that sole source justifications are fully documented, maintained in the contract file, and include all Federal Acquisition Regulation (FAR) required language. This language should include the certification that the justification was accurate and complete to the best of the Contracting Officer's knowledge.**

Resolved. USMS concurred with our recommendation and stated that it had redesigned its sources sought notice to ensure the widest geographic place of performance while maintaining compliance with a federal statute that requires the USMS's privately contracted facilities be located in the district of need. For example, the USMS issued a new sources sought notice for the District of Kansas to determine if market conditions have changed since its original determination in 2007. USMS also said it now stores market research information electronically and by paper in the contract file.

This recommendation can be closed when the USMS provides us with samples of actual sole source announcements that demonstrate compliance with this recommendation, and evidence that USMS Procurement Policy ensures that future detention pre-solicitation and solicitation notices include the widest place of performance practical, and that sole source justifications are fully documented, maintained in the contract file, and include all FAR-required language.

- 2. Establish policies and procedures to ensure that, when USMS price analysis is based on a comparison of historical prices paid, it establishes the prior price as a valid basis for comparison.**

Resolved. USMS concurred with our recommendation and stated that since the contract was awarded in 2007, it has developed tools to assist its staff when determining fair and reasonable pricing. One of these tools is the "Core Rate" model, which establishes a baseline for negotiating per diem reimbursement rates with private, state, and local agencies that provide bed space to house federal prisoners. USMS also stated that it worked with the Federal Bureau of Prisons and Immigration and Customs Enforcement in 2008 to develop a Pricing Analysis Guide which compiles pricing information from contracts and intergovernmental agreements to create an average baseline per diem rate paid by federal agencies. USMS said this guide is meant to be used for price analysis and to help specialists determine if a per diem rate is fair and reasonable.

This recommendation can be closed when the USMS provides evidence that USMS policies and procedures require the use of the aforementioned tools, and provides an example of their application to the USMS's more recent private detention contracts.

- 3. Continue to develop a training program for Contracting Officer's Representatives (COR) monitoring and overseeing its detention-related contracts that ensures CORs receive and maintain a level of training and experience commensurate with their responsibilities.**

Resolved. USMS concurred with our recommendation.

This recommendation can be closed when we receive evidence that the USMS developed a training program for CORs monitoring and overseeing its detention-related contracts that ensures CORs receive and maintain a level of training and experience commensurate with their responsibilities.

- 4. Continue to develop and implement inspection guidance, monitoring tools, and its new onsite contract monitoring initiative for use at all of its privately contracted facilities, and ensure that its continuous monitoring efforts incorporate QAR steps, to the maximum extent practicable.**

Resolved. USMS concurred with our recommendation.

This recommendation can be closed when we receive evidence that the USMS developed and implemented inspection guidance, monitoring tools, and its new onsite contract monitoring initiative for use at all of its privately contracted facilities, and ensure that its continuous monitoring efforts incorporate QAR steps, to the maximum extent practicable.

**5. Request and incorporate internal and external audit results and Plans of Action (POA) into the USMS's quality assurance program to ensure each identified deficiency was adequately resolved.**

Resolved. USMS concurred with our recommendation and stated that it had updated the Performance Work Statement to require written responses to internal and external audits and that POAs are provided to the Contracting Officer and COR within 30 days of completion.

This recommendation can be closed when we receive the updated Performance Work Statement and evidence that internal and external audit results and POAs are incorporated into the USMS's quality assurance program to ensure each identified deficiency was adequately resolved.

**6. Create policies and procedures requiring CORs to conduct continuous oversight and monitoring of QAR-identified deficiencies to ensure that the completed POAs are operating effectively and that the CORs document this follow-up work and communicate the results to POD.**

Resolved. USMS concurred with our recommendation and stated that it has developed an onsite Standard Operating Procedure requiring and providing oversight tools to the CORs.

This recommendation can be closed when we receive the Standard Operating Procedure and evidence that CORs are conducting continuous oversight and monitoring of QAR identified deficiencies to ensure that the completed POAs are operating effectively and that the CORs document this follow-up work and communicate the results to POD.

**7. Include in the USMS's new standard operating procedures COR requirements for developing and maintaining a document control system and for retaining quality assurance-related documentation. Standard operating procedures should also include COR guidance on formally documenting inspections that include tracking deficiencies and contractor POAs.**

Resolved. USMS concurred with our recommendation and stated that it has developed an onsite Standard Operating Procedure requiring and providing oversight tools to CORs.

This recommendation can be closed when we receive the Standard Operating Procedure and evidence that LDC's onsite COR is maintaining a document control system, retaining quality assurance-related documentation, and formally documenting inspections that include tracking deficiencies and contractor POAs.

**8. Continue to input performance assessment reports for its active contracts into the Contractor Performance Assessment Reporting System (CPARS), and finalize policies and procedures to ensure that contractor performance data on future detention contracts is entered into CPARS.**

Resolved. USMS concurred with our recommendation and stated that all existing detention service contracts have been loaded into CPARS, and the CPARS rating system has been incorporated into the USMS's Quality Assurance Program. USMS also said that it was currently processing reports for three of its detention services contracts and will provide the OIG with copies of the reports once they have been processed through CPARS. As noted in the report, as of February 2017, the USMS had incorporated new CPARS-related language into its Request for Proposal template and created a draft CPARS template.

This recommendation can be closed when we receive copies of the three CPARS-generated reports and the finalized CPARS template that was incorporated into the USMS's Quality Assurance Program.

**9. Conduct Performance Evaluation Meetings, as required by the contract, at the LDC and other detention facilities as applicable.**

Resolved. USMS concurred with our recommendation and stated that its onsite Standard Operating Procedure requires Performance Meetings.

This recommendation can be closed when we receive the Standard Operating Procedure and evidence that LDC is now conducting Performance Evaluation Meetings (e.g. meeting minutes).

**10. Ensure that the District COR complies with contract and USMS District requirements to evaluate contractor performance prior to the payment of monthly invoices.**

Resolved. USMS concurred with our recommendation and stated that its onsite Standard Operating Procedure requires and provides oversight tools to CORs.

This recommendation can be closed when we receive the Standard Operating Procedure and evidence that LDC's COR is evaluating contractor performance prior to the payment of monthly invoices.



**11. Ensure that the LDC's Quality Assurance Manager (QAM) request and retain supporting audit documentation to ensure audits are properly conducted and conclusions are supported.**

Resolved. USMS concurred with our recommendation and stated that it would require that any contractor changes to policies or procedures be approved by the USMS.

CoreCivic did not agree or disagree with this recommendation but acknowledged that there is room for improvement for the LDC's audit documentation. CoreCivic stated that it was in the process of revising its POA policy, which will be renamed the *Audits, Inspections, and Corrective Action* policy. This revised policy will require better documentation of facility inspection efforts and results. Facility QAMs will need to capture specific audit-related information for each internal audit, including the date of audit, department or functional area audited, a detailed description of the deficiency, the name or description of the record reviewed, description of any activity or performance measure reviewed, and other pertinent information. CoreCivic anticipates finalizing this revised policy on or before May 1, 2017.

This recommendation can be closed when we receive a copy of CoreCivic's USMS-approved *Audits, Inspections, and Corrective Action* policy and evidence that the LDC's QAM is now requesting and retaining supporting audit documentation to ensure audits are properly conducted and conclusions are supported.

**12. Ensure that the LDC enforces existing CoreCivic policies and procedures for generating and approving comprehensive POAs, including: (a) drafting POAs that sufficiently address the deficiencies and requiring department heads identify the deficiencies' root cause; (b) ensuring the LDC's QAM and Warden provide instruction and guidance to department heads on the contents of a sufficient POA, and only approve fully compliant POAs; and (c) ensuring that department heads complete and the LDC's QAM retain the corrective action worksheets.**

Resolved. USMS concurred with our recommendation.

CoreCivic did not agree or disagree with this recommendation but acknowledged that LDC's audits can be improved and provided a summary of improvement initiatives, including additional training, enhancements to policies and procedures, and the acquisition of a new software system. Each is briefly described below.

CoreCivic stated that it is providing annual root cause analysis training to facility QAMs and some department heads, and providing annual POA training to QAMs on developing and drafting effective POAs. Senior facility staff will be encouraged to participate in these trainings. Additionally, CoreCivic plans

to provide annual training to facility QAMs on effectively conducting self-monitoring audits.

CoreCivic also stated that that its upcoming *Audits, Inspections, and Corrective Action* policy will: (1) provide specific instruction to department heads on the development and review of POAs, including requirements to identify the root cause of a deficiency and generate detailed corrective action steps; (2) require the QAM and Warden obtain sufficient evidence to substantiate completion of the POA; (3) transfer primary responsibility for conducting facility self-monitoring audits from department heads to the QAM, with department heads instead providing assistance to the QAM, based on their operational areas of expertise; and (4) designate an employee to serve as the QAM's backup in the event of an extended absence or vacancy by the QAM. CoreCivic anticipates finalizing this revised policy on or before May 1, 2017.

CoreCivic also stated that it is acquiring a new enterprise software system to allow CoreCivic to more effectively and efficiently manage internal audits, track and catalog internal and external audits, and develop, catalog, track, and monitor POAs. Software roll-out is projected to occur by the end of 2017.

This recommendation can be closed when we receive a copy of CoreCivic's USMS-approved and implemented *Audits, Inspections, and Corrective Action* policy and evidence that the LDC's QAM attended root cause analysis training and Plan of Action (POA) training in 2016.

**13. Ensure that the LDC enforces existing CoreCivic policies and procedures by confirming and documenting that POA strategies and action steps were completed.**

Resolved. USMS concurred with our recommendation.

CoreCivic did not agree or disagree with this recommendation but acknowledged that the LDC's audits can be improved. CoreCivic stated that its upcoming *Audits, Inspections, and Corrective Action* policy will require the LDC to monitor the effectiveness of POAs. Specifically, if a POA is completed for a partner-identified deficiency, the QAM will be required to audit the applicable requirement/audit indicator at least once per month for a period of 6 months. If the requirement is found deficient during this timeframe, the QAM is required to reopen the POA, work with department heads to reevaluate the root cause, and develop and implement a revised POA to address the deficiency. Once the revised POA is closed, the QAM must monitor it monthly until they reach an effective long-term solution. CoreCivic anticipates finalizing this revised policy on or before May 1, 2017.

This recommendation can be closed when we receive a copy of CoreCivic's USMS-approved and implemented *Audits, Inspections, and Corrective Action*

policy that contains updated procedures for confirming and documenting that POA strategies and action steps were completed.

- 14. Ensure that CoreCivic creates an Audit Procedure Manual or some other mechanism or process to provide the LDC's QAM with comprehensive guidance on how to properly conduct facility audits and continuously monitor closed POAs. Such guidance should describe: (a) the frequency and breadth of reviews; (b) the establishment of a sample size when one is not already specified in the CCAAT; (c) the maintenance of requisite qualifications, technical expertise, and accountability by personnel supporting the QAM's efforts; (d) the appropriate documentary evidence necessary to validate the auditors' conclusions and enable re-performance if necessary; (e) methods for proper retention of documentary evidence; (f) the approval and monitoring of the LDC's inspection and audit methodologies by the Facility Support Center (FSC); (g) and the establishment of contingency plans for conducting quality assurance-related work should the QAM be unavailable. Lastly, this guidance should obtain both FSC and USMS approval.**

Resolved. USMS concurred with our recommendation.

CoreCivic agreed with this recommendation, stating that a comprehensive Audit Procedure Manual would be beneficial to its QAMs and help ensure the use of consistent company-wide auditing procedures. CoreCivic said that the Audit Procedure Manual will provide general instructions for establishing a sample size when one is not specified in the QAM's audit tools, and that its Quality Assurance Division has begun development of the Audit Procedure Manual and anticipates distribution of an initial version to all QAMs by mid-2017. Also, CoreCivic stated that it revised the QAM job description to provide more detail on the QAM's primary responsibilities and the essential functions they are expected to perform.

This recommendation can be closed when we receive a copy of CoreCivic's Audit Procedure Manual that contains comprehensive guidance on how QAMs are to conduct facility audits, evidence that CoreCivic distributed the manual to facility QAMs, and a copy of the QAM's updated job description.

- 15. Consider implementing policies and procedures similar to those of the BOP that independently evaluate contractor-provided detainee mortality reports.**

Resolved. USMS concurred with our recommendation.

This recommendation can be closed when we receive evidence that the USMS considered implementing policies and procedures similar to those of the BOP that independently evaluate contractor provided detainee mortality reports.

**16. Monitor LDC compliance with the new CoreCivic policies and post orders related to recreation yard searches and detainee movement in the SHU, to ensure they are operating effectively.**

Resolved. USMS concurred with our recommendation.

This recommendation can be closed when we receive evidence that the USMS monitors LDC compliance with the new CoreCivic policies and post orders related to recreation yard searches and detainee movement in the SHU, to ensure they are operating effectively.

**17. Ensure that CoreCivic establish policies and procedures that prevent the closure of mandatory posts at CoreCivic's USMS contracted facilities and require FSC assess completed shift rosters to determine if facilities are adequately filling their security-related posts.**

Resolved. USMS concurred with our recommendation and stated that it will update its detention center contracts and the Performance Work Statement to ensure shift rosters are reviewed adequately.

CoreCivic did not agree or disagree with this recommendation, but stated that the USMS and CoreCivic initiated efforts to provide greater visibility into staffing and staffing vacancies, and recruit additional staff. Specifically, CoreCivic's efforts include: (1) a shift roster verification process that requires facility management review completed rosters and perform a live examination of rosters each week to confirm that the roster accurately reflects current postings, uploading the appropriate documentation into the Quality Assurance Data system, and CoreCivic's Quality Assurance Division reviewing the shift roster verification process as part of its annual facility audit; (2) a more than \$9 million investment in a workforce management system that would improve visibility into facility-level staffing, and provide several features such as an alert when mandatory posts are not filled and tools for supervisors to better manage daily staffing [this system is tentatively scheduled to launch its first pilot in the third quarter of 2017]; (3) shift roster management training; (4) enhanced reporting of vacancies pursuant to a USMS-issued contract modification requiring that CoreCivic submit to the USMS the current average monthly vacancy rate, by department, and identification of any individual positions that have been vacant for more than 30 days; and (5) LDC approval of a Correctional Officer Referral Plan that will pay rewards of \$1,000 to employees that refer an individual who is hired, completes training, and remains actively employed at the facility as a Correctional Officer for 6 continuous months.

This recommendation can be closed when we receive evidence that CoreCivic established policies and procedures that prevent the closure of mandatory posts at CoreCivic's USMS contracted facilities and that FSC assesses completed shift rosters to determine if facilities are adequately filling their security-related posts.

- 18. Include in its contract monitoring program staffing-related procedure steps that help District CORs assess facility staffing trends and determine if post closures are occurring.**

Resolved. USMS concurred with our recommendation and stated that its onsite Standard Operating Procedure requires and provides oversight tools to CORs.

This recommendation can be closed when we receive the USMS's Standard Operating Procedure and evidence that it includes staffing-related procedure steps that help District CORs assess facility staffing trends and determine if post closures are occurring.

- 19. Incorporate milestones into its price reduction guidance to ensure a more efficient and expedient submission of final price reduction decisions to its contractors.**

Resolved. USMS concurred with our recommendation and stated that it has updated its Reduction Review Manual to include milestones.

This recommendation can be closed when we receive the USMS's updated Reduction Review Manual, and evidence of its distribution, that contains milestones to ensure a more efficient and expedient submission of final price reduction decisions to its contractors.

- 20. Ensure that during periods of chronic contractor understaffing, contractors utilize all available options, including the provision of temporary staff.**

Resolved. USMS concurred with our recommendation and stated that it has updated the Performance Work Statement to address this matter.

This recommendation can be closed when we receive the updated Performance Work Statement that ensures that during periods of chronic contractor understaffing, contractors utilize all available options, including the provision of temporary staff.

- 21. Establish policies and procedures for assessing and approving contractor requests to transfer staff out of USMS contracted facilities, and: (a) obtain reasonable assurance from the facility Warden and FSC officials that such a transfer will not compromise the facility's ability to comply with contract requirements and CoreCivic policy; (b) independently assess whether the proposed transfers may jeopardize facility staffing requirements and operational readiness; and (c) ensure that the Contracting Officer and COR approve and continuously monitor the arrangement, respectively.**

Resolved. USMS concurred with our recommendation and stated that it has updated the Performance Work Statement and onsite Standard Operating Procedures to ensure both the Contracting Officer and COR approve all contractor staff transfers.

This recommendation can be closed when we receive the updated Performance Work Statement and onsite standard Operating Procedures that assess and approve contractor requests to transfer staff out of USMS contracted facilities, and meet the other conditions contained in this recommendation.

**22. Clearly specify in its new and existing contracts the circumstances under which triple bunking is allowed, and what rules, procedures, and ACA standards apply to the practice.**

Resolved. USMS concurred with our recommendation and stated that while the LDC contract already requires compliance with ACA standards, its updated Performance Work Statement requires that contractors obtain USMS approval prior to housing prisoners outside of the ACA Standard. It states that “under no circumstances will the contractor fail to comply with the unencumbered space requirements, a practice commonly referred to as Triple Bunking, without prior approval of the Contracting Officer and the District’s Chief Deputy U.S. Marshal.”

This recommendation can be closed when we receive the updated Performance Work Statement which describes the circumstances under which triple bunking is allowed, and what rules, procedures, and ACA standards apply to the practice; and evidence that the new Performance Work Statement has been incorporated into the USMS’s new and existing contracts

**23. Specify for its contractors, in their contracts or in some other appropriate manner, the use of multi-user arrangements at its existing and future contract facilities, to ensure USMS maximizes its value and assesses the impact, if any, on USMS’s contracted staffing, facility safety and security, and other institutional matters.**

Resolved. USMS concurred with our recommendation and stated that it will review existing laws and regulations to “determine any actions we can specify in our multiple users’ contract.” USMS stated that it would take appropriate action if multiple-user arrangements affect contracted services.

CoreCivic did not agree or disagree with this recommendation but shared its perspective on the benefits of housing supplementary populations in facilities that otherwise house USMS populations. CoreCivic said that such supplementary populations help smooth the USMS’s significant population variability. CoreCivic added that by seeking other partners in need of capacity, it can avoid “having to hire or lay off staff in response to changes in USMS populations, requesting an increase in the fixed payment, or modifying

the tier pricing structure to significantly shift the population risk to the USMS when populations decline.”

We disagree with CoreCivic’s contention that the arrangement benefitted the USMS. While the USMS’s contracted per diem ranged from \$85 to \$98 per detainee per day, Wyandotte’s contracted per diem ranged from \$50 to \$58. In our judgment, the USMS contract subsidized Wyandotte County’s lesser per diem rate and the USMS received little or no discernible benefit, financial or otherwise. We also disagree with CoreCivic’s suggestion that this arrangement helped avoid the possible modification of the USMS pricing structure. The LDC contract is a firm-fixed-price contract, which according to FAR 16.202-1 “provides for a price that is not subject to any adjustment on the basis of the contractor’s cost experience in performing the contract.” In other words, CoreCivic is not entitled to an increase in the fixed payment under this contract just because the USMS detainee population declines. Further, CoreCivic is not allowed to modify the tier pricing structure to shift risk to the USMS. In fact, the opposite is true; FAR 16.202-1 states that (the OIG’s emphasis in italics) “this contract type places upon the contractor *maximum risk* and full responsibility for all costs and resulting profit or loss.”

This recommendation can be closed when we receive evidence that the USMS specifies for its contractors, in their contracts or in some other appropriate manner, the use of multi-user arrangements at its existing and future contract facilities, to ensure USMS maximizes its value and assesses the impact, if any, on USMS’s contracted staffing, facility safety and security, and other institutional matters.

- 24. Work with the Department of Labor, and as necessary CoreCivic, to determine whether placing funds significantly in excess of the actual cost of employees’ accrued sick leave balances in a “sick account,” and not making the excess funds available to employees on their regular payday, is a proper fringe benefit practice, and that CoreCivic properly communicates the “sick account” benefit to its employees.**

Resolved. USMS concurred with our recommendation and stated that it will work with the Department of Labor, Wage and Hour Division, to determine if CoreCivic is in compliance with Service Contract Labor Standards.

In its response to the draft report, CoreCivic disagreed with the recommendation and maintained that its sick account was consistent with the Department of Labor memorandum dated August 2003. We note that CoreCivic’s response does not accurately characterize the OIG’s report in certain respects (for instance, in suggesting that the OIG “disagrees with DOL’s regulations and written guidance”). However, these inaccuracies in CoreCivic’s response are not critical to the resolution of the OIG’s recommendation, which can be closed when we receive evidence that the USMS worked with the Department of Labor, Wage and Hour Division, to

determine if CoreCivic is in compliance with Service Contract Labor Standards.



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