



Office of the State Auditor

Keys to Success



Improving Accountability, Contract Management &
Fiscal Oversight
at the Department of Corrections

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Vermont State Auditor

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Mission Statement

The mission of the State Auditor's Office is to be a catalyst for good government by promoting reliable and accurate financial reporting as well as promoting economy, efficiency and effectiveness in State government.

Cover Photo: Northwest State Correctional Facility in Swanton.
Courtesy of the Department of Corrections

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Northern State Correctional Facility in Newport

“Ideally, there should be continuous and thorough dialogue between prisoners and prison officials regarding the conditions of confinement. This would enable the managers to be fully informed when they made their decisions on facility operations. Unfortunately, too many prison administrators think they are all-knowing, and they view prisoner input negatively. In the past couple months I have witnessed several incidents of retaliation against concerned prisoners at this facility.”

- from a letter written by inmate James Quigley to the Office of the State Auditor in September 2001. Mr. Quigley committed suicide at Northwest State Correctional Facility in Swanton on October 17, 2003, 118 days after being placed in solitary confinement.

Message from the Auditor

This review of selected contracts at the Department of Corrections (DOC) was requested by a number of legislators, State employees, and citizens. It demonstrates that since 2000, the DOC has neglected to properly manage key contracts, valued at nearly \$50 million, with private companies and individuals.

The failure to monitor its contracts has resulted in significant financial impacts, services that were paid for and not received, and, in some cases, serious reports of poor living conditions, substandard medical and dental care, and inadequate programming for inmates.

We found several key findings with financial implications:

1. The DOC routinely allowed its health services contractor, Correctional Medical Services (CMS), of St. Louis, MO, to bill the State for full health care staff coverage at all correctional facilities without reducing bills or assessing penalties. We estimate questioned costs related to insufficient staffing by CMS to be \$144,547, based on testing selected records for a six-month period. Further review of other time periods could identify additional questioned costs.

2. The DOC has failed to deduct from CMS invoices the amount of money that the State contributed to the Vermont Health Assistance Plan as required by the contract. Our Office estimates the amount due the State from CMS is \$166,540.

3. The DOC allowed nearly 75 percent of mental health pharmaceutical prescriptions to be more costly “off-formulary” prescriptions. The CMS pharmacy receives a 12 percent “overhead” fee for labor, packing and shipping of drugs. These two factors have contributed to the State paying \$239,643 in additional pharmacy charges in the three fiscal years ending June 30, 2003.

4. The DOC did not require CMS to submit quarterly and annual financial reports required by the contract, with accumulated potential penalties of \$279,000 since January 1, 2001.

Contractors are getting a new message from the DOC since legislators asked this Office to undertake this review. The health services contractor CMS, for example, has recently credited the DOC more than \$100,000 for missed staff hours.

5. The DOC paid a total \$46,809 in interest charges for late payments on five different monthly invoices from the State of Virginia for out-of-state inmate housing in 2002.

This report also demonstrates that the DOC's failure to properly monitor its contracts may have a direct impact on quality assurance, and, in some cases, has resulted in the failure on the part of contractors to provide adequate living conditions, medical and dental care, and programming for inmates.

For example, our Office has received complaints regarding inadequate or long-delayed medical, dental and mental health care, as well as substandard programming and housing conditions in the out-of-state prisons. In one of the Kentucky facilities housing Vermont inmates, there was no kitchen or dining room and meals were delivered from another building and served in a hallway. In each of these instances, Corrections Commissioner Steven Gold has promised to follow up quickly. (See Appendix B.)

We found:

1. The DOC does not have an adequate, independent system to evaluate the quality of medical services to inmates through its \$23.9 million contract with CMS, and cannot assure that all services are being provided.
2. The out-of-state housing contract with Corrections Corporation of America does not specify minimum standards for inmate housing, kitchen and dining areas, inmate programming or for hiring and training correctional officers, and relies instead on national accreditation guidelines.
3. CMS has consistently failed to provide adequate dental services, and the DOC has not assessed full penalties despite staff and inmate reports of excessive delays and inadequate treatment.

In the past decade, the number of Vermonters in jail or prison has more than doubled, from roughly 900 in 1994 to nearly 1,900 in 2004. To achieve its mission and meet the demands of this rising population, the DOC has increased reliance on private contractors for medical, dental and mental health, as well as special programs such as drug abuse counseling and sex offender treatment.

But the failure to monitor these contracts is widespread and systemic.

Therefore, the DOC must immediately strengthen its process of reviewing and approving invoices from its many contractors. For example, we found that:

- The DOC does not require contractors to provide enough detail with each bill to allow the State to verify that it is paying for personnel hours actually worked and services actually provided;

- There is no system in place at prisons and jails for the DOC to verify that contractors are providing the required hours and services or that the quality of these services meets the terms of the contract; and,
- The DOC often issues multiple contracts to the same firm to provide both direct services and evaluation services for the same activities.

This lack of accountability and oversight has led the DOC to pay for services that were never delivered, and to pay for workers who never set foot inside a prison.

Since undertaking our special review in February, the DOC, under the leadership of Commissioner Gold and Deputy Commissioner Janice Ryan, has taken strides to improve accountability. Their Action Plan responds to issues raised in the Marks-McLaughlin Report, and in *Who's Keeping Watch? A Review of the Department of Corrections' Oversight and Management of Mental Health Services Contracts* issued by this Office.

Contractors are getting a new message from the DOC since legislators asked our Office to undertake this review. The health services contractor CMS, for example, has recently credited the DOC more than \$100,000 for missed staff hours. The mental health services contractor, Paul Cotton, M.D., P.C., has credited the DOC approximately \$60,000.

Our Office's recommendations aim to help the DOC ensure that its Action Plan is more than just another report for the shelf. We believe that it can provide long-term solutions to improve the DOC's ability to manage and oversee contractors and ensure that the State receives all the services agreed to in its contracts.

Among other suggestions, this Office has recommended that the DOC:

- Manage all service contracts to ensure contract performance and cost containment;
- Develop a contract monitoring and administration oversight team to:
 - Enforce current invoicing requirements in each service contract;
 - Establish better controls to account for professional hours worked and services provided in each facility or field site by contractors;
 - Review all non-staffing responsibilities in the service contracts, assess penalties where necessary and renegotiate and amend the current contract to reflect realistic work goals; and,
 - Require that all service contracts be fully executed before services are delivered.

- Review past invoices to assess possible overpayments due to insufficient staffing;
- Establish written policies and procedures to provide contract monitors with clear protocols to evaluate the performance of contractors;
- Amend the out-of-state housing contract as necessary to ensure that the contractor meets appropriate standards for inmate housing, kitchen and dining areas, programming and for the hiring and training of correctional officers; and,
- Conduct post-contract meetings with contractors.

These recommendations are just the beginning and will not serve the DOC in the long term unless positive efforts within the department are nourished. This will take an ongoing support from the Administration and the General Assembly.

As mentioned, the DOC does not have in place an independent system to evaluate the quality of services delivered by medical and mental health contractors. Therefore, our Office did not extensively examine the quality of care provided by these private firms. Given the substantial complaints our Office has received from inmates, family members and DOC staff, we believe this is an area that deserves further attention from the General Assembly and the DOC. An independent review could answer some of these lingering questions and re-occurring complaints.

In closing, I would like to thank Commissioner Gold and Deputy Commissioner Ryan and the DOC's staff for their cooperation and professional assistance during our Office's review.

Sincerely,



Elizabeth M. Ready
State Auditor

May 26, 2004

Section I

System-Wide Issues & Observations



An aerial photo of the Southern State Correctional Facility in Springfield.

Background

Our Office's review of selected contracts at the Department of Corrections (DOC) to provide inmate services found a number of deficiencies that carried across all contract areas. These deficiencies raise the need for a stronger system of oversight and contract management that ensures open lines of communication between various private contractors and DOC personnel, and that guarantees services are being provided according to contractually-agreed terms.

These system-wide issues can be grouped into three main categories:

- A. Contract Bidding;
- B. Contract Payments; and,
- C. Contract Performance.

Our Office believes that addressing the issues raised in these three areas could improve the way the DOC holds contractors, and DOC employees, accountable for their work on behalf of State taxpayers.

In the subsequent sections of this report, our Office offers findings and recommendations specific to the contract areas of Medical Services, Out of State Housing and Inmate Programs.

In many instances, there are issues that our Office found during its testing that are best addressed within the program area, and do not rise to the level of being a system-wide issue - even though some areas raise similar concerns around bidding, fiscal oversight and evaluating contractor performance.

A. Contract Bidding

Finding 1

The DOC does not consistently comply with Agency of Administration Bulletin No. 3.5 Contract Procedures when issuing, reviewing and approving proposals to provide contracted services.

The DOC has entered into more than 100 contracts in the past four years at a cost of more than \$50 million to provide a wide variety of services to inmates, from substance abuse counseling and housing to medical and mental health treatment.

The DOC issues requests for proposals (RFPs) for a variety of direct and consultation services related to these areas. To determine if the DOC is complying with the State's Agency of Administration Bulletin No. 3.5, Contracting Procedures our Office reviewed contract files in selected areas. Bulletin No. 3.5 recommends that a contract file contain:

1. The signed original contract, all amendments and associated AA-14 or AA-16 forms, a sole source authorization, if applicable; and,
2. For contracts of \$10,000 or less, the written explanation for contractor selection;
3. For contracts greater than \$10,000 through \$75,000, the scope of services, price quotations, a list of vendors solicited, and any written determinations of the supervisor;
4. For contracts greater than \$75,000, the documents described in subsection 3 above, the bid documents, vendor bids, any adjustments to or written interpretations of the bid documents, any staff analyses and/or recommendations regarding the bid;
5. For contracts of more than two years in duration, a written explanation detailing the reasons for the longer than normal contract length.

In general, the DOC does comply with guidelines related to issuing detailed RFPs that outline specific scopes of service, and create a competitive environment in which multiple proposals are reviewed. However, our Office observed missing documentation from contract files during our test work. For example, we found:

- The DOC did not document how and why it awarded a 2003 contract to Matrix Health Systems to provide mental health services, and then subsequently failed to document the legal reasoning to re-assign the contract to a company that was not part of the original bidding pool;

- The DOC failed to document negotiations between the State and Correctional Health Solutions (CHS) in 2000, when substantive changes were made to the scope of services between the RFP and the final contract, including penalty provisions and special medical treatment;
- The DOC allowed the medical services contract to be assigned to Correctional Medical Services (CMS) in November 2000 when CMS purchased CHS, without documenting how it addressed concerns about CMS by a panel of six evaluators that rated CMS last among four proposals reviewed in May 2000; and,
- The various inmate programs for Sex Offender Treatment, Intensive Domestic Abuse Programs, Intensive Substance Abuse Programs and Cognitive Self Change Programs generally complied when it came to the RFP and selection, but were often missing documentation about why a vendor was selected, and how they were selected, and how or if losing bidders were notified.

General Recommendation

The DOC should comply with the spirit, intent, and requirements of Agency of Administration Bulletin No. 3.5, Contracting Procedures, and establish a contract administration oversight team that will help preserve the integrity of the competitive bidding process by:

- Strictly adhering to all procedures for proposal, review and evaluation outlined in DOC's request for proposals;
- Seeking clarification and guidance from the Agency of Administration on the legal and financial ramifications resulting from requests for contract reassignments versus the benefits of a competitive bidding process. This is particularly important in those instances when contracts are being reassigned, when they are originally being executed and when the scope and dollar value of contracts increase significantly; and,
- Ensuring all contracts and amendments are signed and fully executed before the effective dates and actual delivery of services.

The DOC should also consider holding contract monitor meetings on a quarterly, rather than an annual basis. The DOC should enhance training opportunities for key personnel who monitor private contractors. This training could be coordinated with Department of Finance & Management staff.

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Components of an Effective Contract Monitoring System

Effective contract monitoring lowers the risks associated with contracting out services. Our Office presents the following as essentials of a contract monitoring system:

- ✓ **Training in Contract Monitoring** – to increase the likelihood that employees will monitor contracts reliably.
- ✓ **Written Policies and Procedures** – to serve as a formal guide to employees in setting up a high-quality contract monitoring system.
- ✓ **Contingency Plans** – to avoid interruption of services if a vendor defaults on key services or obligations.
- ✓ **Communicating Clear Expectations** – to develop detailed scope of services statement, with clear performance goals for the vendor.
- ✓ **Contract Administration Plan** – to detail the methods an agency will use to monitor the vendor.
- ✓ **Organized Contract Files** – to provide a clear understanding of all aspects of the contract, to know what is expected in a contract, and if it was delivered.
- ✓ **Regular Reports from Vendors** – to track how the vendor is doing in meeting the goals and responsibilities set out in the contract.
- ✓ **On-Site Monitoring** – to conduct random inspections of records and service delivery, best done with checklist of items developed before the visit.
- ✓ **Incentives and Penalties** – to foster high performance and accountability by writing clear penalty or incentive clauses in the contract and putting them in the monitoring program.
- ✓ **Access to Records** – to allow the State or authorized agent to review payroll and other records related to bills submitted by the vendor.
- ✓ **Measuring Customer Satisfaction** – to help the vendor and the State understand how the vendor is doing in meeting goals and responsibilities.
- ✓ **Dispute Resolution Procedures** – to detail how problems will be identified, addressed, and solved by the contractor and the State.
- ✓ **Closeout Procedures** – to document all the information needed, and tasks to be accomplished, before a contract has ended.
- ✓ **Post-Contract Review** – to formally evaluate the vendor's performance with the contract to improve future contracts.

B. Contract Payments

The Department of Corrections did not have sufficient controls in place to assure that staff hours and services were provided according to signed contracts. As a result, DOC may have paid for hours not worked and services not provided.

Finding 2: The DOC does not require full details of expenditures (payroll, mileage or office expenses) to be submitted by contractors. This limits the ability of the DOC to assess contract deliverables, and has allowed payments to be made for services that may, or may not, have been fully delivered.

Finding 3: The DOC accepts invoices from contractors well past the due date required in most contracts, and fails to pay many invoices within 30 days, also a requirement of most contracts.

Finding 4: The DOC does not use a standard payment routing form to ensure that all signatures and dates for each invoice are properly recorded.

Finding 5: The DOC occasionally incurs costs for services before a contract is officially signed and approved by department officials.

General Recommendation

The DOC should properly manage all service contracts to ensure contract performance and cost containment. A contract monitoring and administration oversight team should be created to:

- Enforce current invoicing requirements in each contract;
- Establish better controls to account for and assess professional hours worked and services provided in each facility or field site by contractors;
- Review all non-staffing responsibilities in the service contracts, assess penalties where necessary and renegotiate and amend the current contract to reflect realistic work goals;
- Require that all service contracts be fully executed before services are delivered; and,
- Develop appropriate contracts and amendments that better protect and serve the interests of the State, the DOC and Vermont inmates.

The DOC should conduct a thorough review of all invoices paid under all service contracts to assess possible overpayments due to insufficient staffing. The DOC should seek to recover funds from contractors for hours not worked in accordance with the penalty provisions in the contract.

Finding 2

The DOC does not require full details of expenditures (payroll, mileage or office expenses) to be submitted by contractors. This limits the ability of the DOC to assess contract deliverables, and has allowed payments to be made for services that may, or may not, have been fully delivered.

In its standard payment provision language for contracts the DOC does not require contractors to provide supporting documents that specify the work performed and hours worked when submitting invoices for payment.

Some contractors provide this information without prompting from the DOC; however, there is no consistency in how the data is reported. In some cases, hours and mileage are provided in lump sums, (i.e. monthly hours worked x hourly rate = amount to be paid and/or miles traveled during the billing period x mileage reimbursement rate = amount to be paid). In other cases, contractors provide explicit service delivery dates during a month, the number of hours worked on those days, the numbers of inmates served and, when appropriate, the miles traveled on those days. However, this type of reporting is the exception, not the rule.

The National Institute of Governmental Purchasing (NIGP) offers the following advice to contract administration personnel when it comes to accounting for services provided:

“There must be a direct correlation between dollars paid the contractor and contract progress. Before approving invoices for payment, contract administration personnel must be assured performance has been completed as promised in the contract. Some government organizations ‘hold-back’ a certain percentage of the proceeds paid to a contractor, e.g., professional services (10 percent hold-back is typical but progress payments have been made). These ‘hold-back’ dollars then are not released until contract completion and acceptance documented for the contracting officer.”

The DOC has, in the past, attempted to create a uniform invoice for all contractors to provide in terms of service delivery contracts. Only one contractor - who provides intensive domestic abuse services at the Newport CCSC - uses this form. According to DOC officials, the form used by this contractor was a draft document and never approved for official use.

This draft uniform invoice provides a wealth of information and requires the contractor to provide more than just the hours worked in a month, the hourly rate and an amount to be paid. This form requires the contractor to fill in all service dates, number of hours on those dates, number of individuals served and if any amount of the service was charged to the offender or to an insurance company.

Additionally, Vermont law requires substantial documentation to be provided to the State before bills can be paid.

According to 32 V.S.A. §§ 463-464, the Commissioner of Finance & Management is given broad authority to require all bills to be fully itemized and accompanied with vouchers.

For example, 32 V.S.A. §463 reads: “The commissioner of finance and management shall require all bills presented to him for allowance to be fully itemized and accompanied, as far as possible, with vouchers.”

The Commissioner is also given the authority to require that anyone who bills the State for services, must swear, under the penalty of perjury, that those amounts are accurate. This authority is granted in 32 V.S.A. § 464, which reads:

“When required by the commissioner of finance and management and before payment therefore is made by the state, all claimants for compensation for services rendered or expense incurred for the state shall furnish the commissioner of finance and management itemized statements in such form as the commissioner may from time to time prescribe and shall be verified by written declarations that they are made under the pains and penalties of perjury, and a person who willfully makes a false statement shall be guilty of perjury and be punished accordingly. However, the commissioner of personnel shall exercise such authority as necessary to carry out the payroll function.”

In a decentralized accounting environment, such as the State of Vermont, the Department of Finance & Management could utilize these Statutory provisions to provide additional guidance to all business units in State government as it relates to approving invoices for contractual services. This could better assure that each business unit is following identical, written procedures.

Finding 3

The DOC accepts invoices from contractors well past the due date required in most contracts, and fails to pay many invoices within 30 days, also a requirement of most contracts.

Standard payment provision language requires contractors to submit bills no later than the 15th of the month proceeding the month in which services were provided. Therefore, services provided in the month of June should be billed by no later than July 15. Contract language also states that the DOC is not liable for any charges if they are not submitted by the due date.

Contract managers routinely allowed contractors to submit payments not only days late, but in some instances several months past the date of service. There is no evidence that neither the contract managers, nor staff from the business office, made attempts to bring contractors into compliance.

Allowing contractors to submit invoices months after a service is provided can make tracking services on a monthly basis difficult, and can allow for some services to be billed for, and paid, twice.

For example, the DOC received an invoice (No. 10363 and dated November 12, 2003) from Correctional Medical Services (CMS) on November 24, 2003 for \$8,463 for additional inmates served by CMS in October 2003. The DOC's contract with CMS caps the number of inmates in Vermont facilities at a set number (at the time of the bill it was 1,400). CMS is allowed, under the contract, to bill the DOC \$3.50 a day for each inmate over this cap. In this case, CMS stated the total statewide inmate census to be 1,478. The DOC amended the census amount to 1,463 and reduced the invoice to \$6,835.50 and the State cut a check to CMS on December 24, 2003 for that amount.

Then, the DOC received the identical invoice - same invoice number, same date, same amount and for the same monthly additional inmates charge - from CMS on March 8, 2004. The DOC amended the bill, however this time the bill was reduced by a different census number, and the DOC paid CMS \$6,944.00. The State cut a check to CMS on March 20, 2004 for the reduced amount of \$6,944.00. (The DOC reported that it detected this overpayment in April and requested a credit.)

The DOC also approved and paid a late invoice from the State of Virginia related to extraordinary medical services provided to a Vermont inmate. The invoiced amount of \$48,726.19 was billed to the DOC on February 6, 2002 for services that were provided between September 1999 and June 2001. The DOC eventually paid this bill on July 23, 2003 as part of a larger bill that also dealt with penalties the State incurred for failing to pay invoices in a timely manner.

Another standard provision in several contracts holds the DOC accountable for making timely payments by charging 1.5 percent interest penalty on any amount not paid within 30 days of receiving an invoice. The out-of-state housing contract with the State of Virginia had a different stipulation, requiring the DOC to pay the invoice no later than 45 days after it was submitted to the State.

The DOC did not always meet these standards, and as a result has paid fines. For example, the DOC was assessed interest charges of \$114,079 by the State of Virginia due to failing to pay bills in a timely fashion for five months in 2002. DOC negotiated a lower penalty total and paid \$46,809 in interest charges for failure to pay agreed-upon costs in a timely manner.

In its contract with CMS, the DOC failed to make timely payments in 16 out of 90 invoices reviewed by our Office. Had CMS imposed the allowed penalty, the DOC could have been charged roughly \$55,000.

Finding 4

The DOC does not use a standard payment routing form to ensure that all signatures and dates for each invoice are properly recorded.

The DOC's eight-person Business Office maintains a standard contract cover sheet that identifies when each invoice is paid, and how much has been drawn down from the amount of the contract.

Each contract maintains standard language that names the DOC individual to whom a contractor must submit bills and when those bills are to be submitted. The DOC, in turn, agrees to pay invoices 30 days from invoice date consistent with State guidelines.

Given the number of people who must review and sign off on an invoice before it reaches the Business Office for final approval in VISION, it was difficult to determine where delays in the system existed - especially when purchase orders were dated far beyond the 30-day provision of the contract.

In some cases, our Office was able to determine that the amount may have been in dispute, or service delivery was being questioned with handwritten notes on the invoices. In other instances, it was impossible to determine where in the system a delay occurred as there were no dates alongside signatures by key personnel. A standard form would create a record of the approval and accounting steps that must occur before a payment is made.

Finding 5

The DOC incurs costs for services before a contract is officially signed and approved by department officials.

A good system of internal controls requires that an agreed-upon and fully executed contract be in hand before services begin. This practice helps avoid potential liability issues.

Our Office observed that a number of contracts, and subsequent amendments, were not fully executed on the date services began. In some cases, services were also provided before DOC officials, the Attorney General's Office and the Secretary of Administration signed the AA-14 form that grants approval to enter into a contractual arrangement. Examples include:

- CMS assumed the contract to provide medical services for inmates in November 2000, but did not have a signed and fully executed contract until January 24, 2001. During this time, CMS billed the State \$407,156.84 a month for services provided.

“I have worked very hard to ensure that infrastructure and programs are in place to provide offenders with high quality mental health and medical services. Although the infrastructure is now in place and the framework of statutes and policies are in place, there seems to be a problem with the implementation and delivery of these contracted services.”

- from a letter written by Sen. Vincent Illuzzi requesting a review of mental health and medical services contracts.

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- The DOC signed a one-year extension of the CMS contract (to add the time period of July 1, 2003 to June 30, 2004) on September 3, 2003. This meant that no fully executed contract was in place from July 1, 2003 to September 2, 2003. CMS billed the State more than \$1 million during this time. Additionally, the AA-14 was not signed by the Secretary of Administration until July 14, 2003.
 - The DOC amended the CMS contract to reflect the opening of the Southern State Correctional Facility in Springfield. The effective date of the amendment is October 1, 2003, but the contract was not signed by the DOC until December 29, 2003. Additionally, the AA-14 was not signed until October 30, 2003 by the DOC, November 19, 2003 by the Attorney General's Office, and December 3, 2003 by the Secretary of Administration.
 - The DOC failed to have a signed and executed contract to house inmates in Virginia before those inmates were placed, or their stays were extended;
 - The DOC's \$2,840,640 contract with Matrix Health Systems scheduled to be in effect from June 1, 2003 to May 31, 2006 was not signed by DOC until June 27, 2003 and not signed by Matrix until August 22, 2003; and,
 - The statewide ISAP contract with Phoenix Houses of New England to provide services at the nine Community Correctional Service Centers was dated to begin June 3, 2002, but was not signed until July 16, 2002. The contractor billed the DOC \$66,650 during this time. Additionally, the AA-14 was not signed until June 5, 2002 by the DOC and the Attorney General's Office, and on June 28, 2002 by the Secretary of Administration.

These delays place the contractor, the inmates, and the State at risk in the event that problems arise during the time a fully executed contract is not in place.

C. Contract Monitoring

The Department of Corrections does not have an independent system to evaluate the quality of medical services.

Finding 6: The DOC does not have written policies and procedures detailing how to monitor contractors for fiscal and program performance.

Finding 7: The DOC has not required contractors to comply with service agreements and the DOC has not issued penalties or held back payments for non-compliance as allowed under these contracts.

Finding 8: The DOC does not conduct post-contract meetings with key State and contracted personnel to evaluate the performance of the contract.

General Recommendation

The DOC should establish written policies and procedures to provide contract monitors with clear protocols to evaluate the performance of contractors.

A contract monitoring team for each contract could be split up into at least three components: fiscal oversight, performance evaluation, and documentation. The first would ensure that all financial provisions of the contract are being met and documented, the second would ensure that all deliverables of the contract are being met and documented and the third would ensure that the contract file is complete and that all reports are filed timely and consistently.

The DOC should conduct post-contract meetings with key State and contracted personnel to constantly evaluate the contracting system to ensure it is meeting the goals of the DOC and the private contractors. Any problems should be addressed in future contracts.

“It is my feeling that Vermont DOC has no control over how we are abused or used by these people at Corrections Corporation of America and their employees.”

- from an inmate letter to the State Auditor's Office in March 2004.

Finding 6

The DOC does not have written policies and procedures detailing how to monitor contractors for fiscal and program performance.

Our Office found no evidence of written policies and procedures related to monitoring contractors for fiscal and program performance at the Central Office, which handles the largest and most complex of all contracts. According to the NIGP, the administration of service contracts consists of two primary functions:

- To ensure that required obligations, detailed in the contract, are fulfilled; and,
- To ensure that acceptable levels of service are provided.

These functions are cornerstones of a successful contracting process. The NIGP also states: *“Contract evaluation and monitoring can be extremely difficult, especially when working with an unreliable or poorly performing contractor. It is important to commence the contract by designating a contract administration team. Contract administration may be the sole responsibility of the procurement manager or it could be cross-functional depending on the size of the contract and the jurisdiction. There could be as many as four primary participants on the jurisdiction’s contract administration team:*

- *Procurement manager;*
- *Project manager;*
- *Contract administrator; and,*
- *Field manager.”*

In some of the contracts our Office reviewed, a single contract manager often holds all four of these positions - even on large, multi-site contracts.

Standards issued by NIGP outline a number of monitoring measures that can be detailed directly in the standard contract language to ensure that both the DOC and the contractor know what to expect of each other. Those measures include direct monitoring, follow-up monitoring, monitoring by exception, scheduled monitoring and random monitoring. NIGP defines this as “outcome monitoring” that is defined as *“the analysis of the results of a service and is based on user-provided data on service quality. In a street maintenance contract, for example, the number of potholes repaired is a measure of output, whereas an outcome analysis might focus on the smoothness of the repair or on the reduction of hazards to pedestrians.”*

The DOC’s Business Office does have a written fiscal review process that it follows to ensure that a contract meets all criteria of Bulletin No. 3.5 and that payment provisions match the work specified in the scope of services. The DOC does not have a similar written review process for performance review of a contract, and Business Office staff interviewed acknowledged that such a document would be helpful.

More detailed, written policies that allow the Business Office to ensure compliance with all reporting provisions could strengthen the DOC’s ability to hold contractors accountable and create an auditable review trail to assess staff and contractor performance.

Contract monitors currently have the multiple tasks of reviewing invoices for accuracy and evaluating the overall contractor performance and handling any disputes. Having a contract team, rather than one individual, responsible for overseeing these contracts may be more effective in the long run and allow for constant dialogue and peer review of performance. In our interviews with contract monitors, they readily admit that their strengths are not in accounting skills and reviewing “the numbers.” These skills are, however, identified more strongly with the Business Office and could be tapped more effectively in the contract monitoring process.

These written guidelines and policies could also give more support to field and facility sites managers, who are also often asked to review and approve payments for services and evaluate a contractor’s work. Similar facility- or field-based teams related to contract management could be established.

Finding 7

The DOC has not required contractors to comply with service agreements and the DOC has not issued penalties or held back payments for non-compliance as allowed under these contracts.

The DOC currently has issued, since 2000, more than \$50 million in contracts with vendors to provide the contractual services that we examined as part of this review. During our review, our Office found:

- The DOC did penalize CMS for some contract deficiencies regarding a lack of dental services and LPNs, but other deficiencies were ignored by the DOC;
- The DOC, in some instances, did not properly penalize its mental health contractors for services not provided, and these penalties were self-reported; and,
- The DOC did not penalize Phoenix Houses of New England for not fully providing required services or reports under the statewide intensive substance abuse program (ISAP) contract, even though evidence exists that such deliverables were not provided.

Our Office’s review of other inmate program contracts found adequate compliance with service agreements, and with provisions calling on contractors to report their activities. Those areas include Sex Offender Treatment, Cognitive Self Change (CSC), Residential Substance Abuse Treatment (RSAT) and Intensive Domestic Abuse Program (IDAP).

Our review of RSAT raised some concern regarding the level of detail reported back to the Federal government in the annual reports. However, both the DOC and the Department of Public Safety have approved this practice, and the Federal government has repeatedly endorsed this program.

Finding 8

The DOC does not conduct post-contract meetings with key State and contracted personnel to evaluate the performance of the contract.

During our review it became clear that DOC does not conduct rigorous ongoing review of contractor performance, nor does it conduct post-contract reviews to identify areas of possible improvement. A post-contract review could also contain a fiscal analysis to ensure that contracting out the services remains financially beneficial to the DOC.

The NIGP recommends that the final step in the contract management cycle is to conduct an analysis of the contract process. This begins by reviewing the documentation compiled during the life of the contract to determine if changes would be beneficial in any subsequent contract for similar services. The NIGP recommends questioning two key areas:

Contract Development

- a. Were the contract goals adequate?
- b. Are there any changes that could be made in the contract document to better handle the agency's needs?
 - i. Additional contract clauses?
 - ii. Different contract language?

Contract Administration

- a. Did the contract administration team require additional training?
- b. Did any unanticipated problems occur?
- c. What could be done differently or better?

The NIGP also developed a 15-point checklist to monitor contract performance before formally accepting the final work. In many instances, accepting final work includes making a performance payment previously withheld to ensure the contractor delivers all work. These questions include:

- Have all contract deliverables been inspected and accepted by the government (yes/no)?
- Have any lawsuits/legal actions relating to contract activity been settled (yes/no)?
- Have all contract funds been reconciled with invoices or receivers? Have all invoices been paid (yes/no)?

The NIGP says contract closure should not be completed if any of the questions it lists have been answered "no."

“[My fiancé] was diagnosed with rectal cancer back in August or September and thus far has received no treatment other than prescriptions for laxatives and stool softeners.

As a medical professional I am greatly concerned that the frequent moves between facilities seriously compromises the quality and consistency of his care.

There is such a stigma attached to having a loved one in prison, as though we are somehow guilty by association, or that we should just forget that they exist, but these are important people in our lives that we hope to be rehabilitated and returned as productive members of society.”

- from a letter to the State Auditor's Office dated February 16, 2004.

Section II

Medical Services Contracts



Chittenden Regional Correctional Facility in South Burlington.

Background

The State currently contracts with Correctional Medical Services (CMS) of St. Louis, MO, for medical services for inmates housed in Vermont by the DOC, currently numbering approximately 1,500 individuals.

The contract costs approximately \$575,000 per month at the present time, or \$6.9 million per year, and includes comprehensive health and dental services, optical services, pharmacy, laboratory services, supplies, etc. Certain charges for HIV and Hepatitis C treatments are not included and must be paid by the State.

Our review found three main areas of concern:

- A. Ineffective Financial Oversight;
- B. Insufficient Quality Assurance; and,
- C. Questionable Procedures for Contract Bidding, Amendment & Assignments.

CMS assumed the contract in the fall of 2000 after acquiring then-contractor Correctional Healthcare Solutions (CHS) of Pennsylvania.

The latest proposed amendment to the original contract would extend the agreement with CMS until June 30, 2005. This would be the final amendment allowed under Bulletin 3.5, and the DOC plans to issue a new RFP later in 2004/early 2005.

A. Ineffective Financial Oversight

The Department of Corrections does not have an adequate system to independently verify the invoiced amounts presented by Correctional Medical Services. Therefore, the DOC may have paid for services that were never delivered.

Finding 9: The DOC approved, and paid, \$18,741,227 for base contractual services with little, or no, detail provided by the contractor to verify that all contractual hours were provided.

Finding 10: CMS failed to fulfill staffing requirements and billed the DOC for full coverage of all sites, and the DOC allowed this to occur without reducing bills or assessing penalties. Our Office estimates the total questioned cost related to insufficient staffing to be \$144,547 for the six months we reviewed.

Finding 11: The DOC paid \$2,284,226 recently for four months of services, and received \$102,997 in credits from CMS without any detailed back-up showing how the deductions were derived.

Finding 12: The DOC approved, and paid, \$575,499 in additional charges with little, or no, detail provided by the contractor to verify that these additional costs were borne by the contractor.

Finding 13: The DOC routinely approves, and pays, invoices that have been submitted past the due date outlined in the contract, even though the contract is clear that the State is not liable for charges submitted past the due date.

Finding 14: The DOC has failed to deduct from CMS invoices the amount of money that the State contributed to the Vermont Health Assistance Plan as required by the contract. Our Office estimates the amount due the State from CMS is \$166,540.

Finding 15: Mental health personnel are prescribing, with DOC approval, more than 75 percent of all medications outside of the approved pharmaceutical formulary. To date, the DOC has paid more than \$240,000 in additional charges above a contract stop-loss provision for these drugs. Additionally, the parent company of CMS, Spectrum Health, owns the pharmacy that provides medications to Vermont inmates, and charges the DOC 12 percent overhead for all prescription orders.

Finding 16: The DOC does not always pay invoices within 30 days as required in the contract, exposing the State to the assessment of penalties by the contractor.

Finding 17: CMS failed to produce annual or quarterly financial reports on State-furnished templates to the DOC. CMS was not penalized and the DOC never provided the templates. The penalty for not providing these reports is \$1,000 a month for each month the report is late. Our Office estimates that the potential penalty owed to the State is \$279,000.

General Recommendation

The DOC should properly enforce financial performance and penalty provisions of the medical services contract to ensure contract performance and cost containment. A contract monitoring and administration oversight team should be created to:

- Enforce current invoicing requirements in the contract, and establish controls to account for and assess professional hours worked and services provided in each facility by the contractor;
- Review all invoices paid under the medical services contract with CMS to assess possible overpayments due to insufficient staffing, and seek to recover funds for hours not worked in accordance with the penalty provisions in the contract, plus interest, from the contractor;
- Review all medical provider non-staffing responsibilities in the contracts, assess penalties where necessary and renegotiate and amend the current contract to reflect realistic work goals and the need for contract monitoring; and,
- Require contractors to submit a standard invoice to the DOC for payment, with proper back-up detail including payroll reports, and consider requiring contractors to submit invoiced amounts to the Business Office to be reviewed for compliance with fiscal provisions of the contract.

Findings & Discussion - Section A

Finding 9

The DOC approved, and paid, \$18,741,227 for base contractual services with little, or no, detail provided by the contractor to verify that all contractual hours were provided.

When CMS bills for its monthly base services, it submits a one-page invoice that gives the monthly amount - currently more than \$575,000. Our testing found that up until December 2003, CMS provided no compensation summaries, payroll reports or other evidence with its monthly invoices that would allow the DOC to verify that CMS was fulfilling its staffing obligations as required by the contract.

Language on each Standard State Invoice, that accompanied payments prior to the installment of VISION on July 1, 2001, read:

"I hereby certify that the bills, hereto attached and set out in the foregoing schedule, are just and true in all respects, and that the goods or materials covered by this claim have been inspected and received or the services have been performed in accordance with specification and are in proper form, kind, amount and quality. Payment is hereby recommended."

Of the 14 invoices submitted by the contractor prior to VISION, and approved by DOC, only 4 had the signature of the "head of dept or authorized agent" as required by the form. DOC staff told our Office that the form in the payment file is not the original, which would have contained the signature, but rather an earlier copy of the form prior to signature. The signed forms are likely at Public Records in Middlesex.

The above language, which specifically states that someone is watching over and approving these payments, has not been carried over into VISION, or on any State form that requires signature approval before a bill is paid.

Since the start of the contract, and through invoiced amounts dated December 11, 2003, the DOC paid \$18,741,227 in base contractual services. CMS bills for these services monthly, with invoices usually dated the first of the month, at a fixed price.

Of those invoices, only one had any detail explaining how the contractor arrived at the billed amount. This was the last invoice - dated December 11, 2003 - for services provided in November 2003. This invoice included the base monthly contract fee, plus funds to pay for the phase-in staffing at Southern State Correctional Facility in Springfield. The invoiced amount shows two groups of figures, including anticipated expenses and actual expenses for personnel and fixed costs. The billed amount includes a "credit" or amount not billed to the State by the contractor.

No other invoice prior to this bill presented any evidence that the contractor was, or wasn't, meeting anticipated personnel or fixed cost targets and that the State was

being billed for actual costs incurred. All other invoices simply billed for the maximum monthly amount with no other evidence, and the DOC approved these invoices as appropriate and made payment on each one.

Our testing only found one instance where a monthly invoice had reductions, approximately \$75,000 in May 2002, for penalties dating back to the calendar year 2001.

All medical service contract invoices are submitted directly to Dr. Thomas Powell, the DOC's clinical programs director, by CMS via an overnight courier. According to Dr. Powell, invoices are first reviewed by Chief Nursing Officer Diane Bogdan for accuracy and then signed off, before returning to him for his signature. They are then forwarded to the Business Office for payment where they are entered into the DOC's payment routing system.

A purchase order is created to make the payment, it is then set up in VISION and budget checked by the Accountant C in the Office before it is sent to the Department of Finance & Management for payment. This process usually takes a few days once it arrives in the Business Office.

The paid amount is then handwritten on a tracking sheet in the contract payment file that shows how much remains against the approved maximum value of the contract.

Finding 10

CMS failed to fulfill staffing requirements and billed the DOC for full coverage of all sites, and the DOC allowed this to occur without reducing bills or assessing penalties. Our Office estimates the total questioned cost related to insufficient staffing to be \$144,547 for the six months we reviewed.

According to the performance guarantees of the contract, "(s)hould Contractor fail to sustain a full staff complement as described in [the staffing matrix], penalties shall be accrued against the monthly additional invoice payments as follows:

"Unacceptable vacancy period - If any position has been vacant more than 30 days, beginning on the 31st day of vacancy, Contractor shall rebate to the State an amount 125 percent of the standardized base rate for the position until such a time as the position is filled.

"The use of temporary staff that is not part of a pool of staff approved by the DOC does not constitute filling a vacancy for the purposes of this contract."

The DOC and CMS amended the medical services contract as of November 29, 2001 that added additional staffing to the contract at a cost of \$254,000. The amendment included language that eliminated the need for site-by-site staffing matrix compliance and allowed CMS to simply meet the overall FTE hourly requirements for the statewide matrix. The DOC also did not amend the penalty language above to reflect this new standard for meeting staffing levels.

Eliminating the site-by-site staffing requirements is a concern. For example, many of Vermont inmates with diabetes and mental health problems are now housed at the new Springfield facility, where the full staffing of nurses has been problematic. The contract amendment means that CMS could comply with overall FTE requirements while falling short at the facility where inmates are most in need of care.

Based on testing, our Office calculated that CMS was understaffing DOC facilities during a number of contract months.

- **February 2004:** A total FTE shortage of 3.75 - providing 11,280 work hours out of a possible 11,880. (This number includes the staffing at the Springfield facility, which was not fully operational and therefore not all staff could be brought on board. CMS appears to have “credited,” or not billed, the DOC for these positions.)
- **January 2004:** A total FTE shortage of 8.2 - providing 10,568 work hours out of a possible 11,880. (This number includes the staffing at the Springfield facility, which was not fully operational and therefore not all staff could be brought on board. CMS appears to have “credited,” or not billed, the DOC for these positions.)
- **October 2003:** A total FTE shortage of 3.15 - providing 8,352 work hours out of 8,856 scheduled to be provided by 55.35 FTEs. (These numbers do not include the additional 3.2 FTEs scheduled for Springfield because the infirmary was not up and running.) At an average rate of \$21.08 per hour, the missing 504 hours cost the State \$10,624.
- **September 2003:** A total FTE shortage of 2.25 - providing 8,496 work hours out of 8,856 scheduled to be provided by 55.35 FTEs. At an average rate of \$21.08 per hour, the 360 missing hours cost the state \$7,588.
- **December 2001:** A total FTE shortage of 8.76 - providing 7,454 work hours out of 8,856 scheduled to be provided by 55.35 FTEs. At an average rate of \$19 per hour, the missing hours cost the State \$26,638.
- **November 2001:** A total FTE shortage of 9.47 - providing 7,340 work hours out of 8,856 scheduled to be provided by 55.35 FTEs. At an average rate of \$19 per hour, the missing hours cost the State \$28,804.
- **December 2000:** A total FTE shortage of 10.6 - providing 6,800 work hours out of 8,496 scheduled to be provided by 53.1 FTEs. At an average rate of \$17.83 per hour, the missing 1,696 hours cost the State \$30,239.
- **November 2000:** A total FTE shortage of 14.25 - providing 6,216 work hours out of 8,496 scheduled to be provided by 53.1 FTEs. At an average rate of \$17.83 per hour, the missing 2,280 hours cost the State \$40,652.

Our Office estimates the total questioned costs related to insufficient staffing in the months we reviewed to be \$144,547.

The FTE shortages outlined above were calculated by evaluating CMS payroll records requested by our Office. Our Office totaled the number of direct service hours worked across all positions and then subtracted that from the amount of hours that should have been provided that month given the approved staffing matrix. The total hours include all overtime, but did not include sick time, paid leave or other non-site related pay.

Fully determining the penalties for failing to meet these staffing levels could be difficult. That's because when the DOC amended the contract in November 2001 to only hold CMS accountable for meeting the statewide staffing matrix, it failed to amend the penalty provisions of the contract to reflect this new approach. The existing penalty language still reflects the stipulation that CMS maintain certain positions, and only be penalized for having distinct positions remain vacant more than 31 days. Our Office believes the DOC should re-examine this penalty provision and require CMS to provide all FTEs called for in the contract or face a penalty.

However, assessing penalties for failure to provide staff has not been a practice of DOC contract monitors. Our Office found that the DOC, without documentation or approval by the Commissioner or any other State official, chose not to assess penalties against CMS for failing to provide adequate staffing levels at each facility. The DOC knew that CMS was not providing adequate coverage, however the DOC did not penalize CMS or restructure the contract because it believed all health care institutions in the region were experiencing a severe nursing shortage.

According to interviews with our Office, CMS said it routinely uses "backfilling" to cover vacancies - either hiring temporary employees or paying staff to work overtime. CMS officials also said in interviews that they view the staffing matrix FTEs as service delivery hours, and if someone is out sick, or on vacation, they backfill those position hours as well.

DOC officials repeatedly stated in interviews that CMS was "doing all it could" to recruit and train new nurses and that correctional health care was a difficult field.

Still, problems remain. In the January 13, 2004 minutes of the Executive Health Committee - a committee that meets monthly to discuss interrelated issues regarding medical and mental health service delivery - the regional administrator for CMS notes that Springfield has five vacancies (it does not note what positions are vacant).

However, it is difficult to determine how chronic vacancies are at each facility. This is because CMS stopped sending staffing vacancy reports in September 2002 and the DOC accepted this change.

Our Office did review four statewide vacancy reports produced by CMS between March 1 and May 31, 2001. The reports listed vacancies, by facility, including the date at which the position became vacant. The reports show the following vacancies that were beyond the 30-day allowance under the contract:

March 1, 2001 Report

- Marble Valley Regional Correctional Facility in Rutland: One part-time RN or LPN position, totaling .2 FTEs, and vacant since January 1, 2001.
- Northern State Correctional Facility in Newport: Four LPN positions, totaling 2.4 FTEs and four part-time RN positions, totaling 1.4 FTEs, and all vacant since January 1, 2001.
- Northeast Regional Correctional Facility in St. Johnsbury: Two part-time RN or LPN positions, totaling .8 FTEs, and both vacant since January 1, 2001.
- Northwest State Correctional Facility in Swanton: One part-time RN or LPN position, totaling .4 FTEs, and vacant since January 1, 2001.

April 2, 2001 Report

- Northern State Correctional Facility in Newport: Four LPN positions, totaling 2.2 FTEs and four part-time RN positions, totaling 1.2 FTEs, all of which were vacant since January 1, 2001. An additional RN position had been vacant since February 1, 2001.
- Northeast Regional Correctional Facility in St. Johnsbury: Two part-time RN or LPN positions, totaling .8 FTEs, and both vacant since January 1, 2001.
- Northwest State Correctional Facility in Swanton: One part-time RN or LPN position, totaling .4 FTEs, and vacant since January 1, 2001.

April 30, 2001 Report

- Northern State Correctional Facility in Newport: Four LPN positions, totaling 2.2 FTEs and three part-time RN positions, totaling 1.4 FTEs, all of which were vacant since January 1, 2001.
- Northeast Regional Correctional Facility in St. Johnsbury: Two part-time RN or LPN positions, totaling .8 FTEs, and both vacant since January 1, 2001.
- Northwest State Correctional Facility in Swanton: One part-time RN or LPN position, totaling .4 FTEs, and vacant since January 1, 2001.

May 31, 2001 Report

- Northern State Correctional Facility in Newport: Four LPN positions, totaling 2.2 FTEs and three part-time RN positions, totaling 1.4 FTEs, all of which were vacant since January 1, 2001.
- Northwest State Correctional Facility in Swanton: One part-time RN or LPN position, totaling .4 FTEs, and vacant since January 1, 2001.
- Southeast State Correctional Facility in Windsor: One part-time LPN position, totaling .2 FTEs, vacant since February 28, 2001.

CMS provided our Office with copies of additional vacancy reports, but these reports did not include information stating the duration that a position had remained open.

For example, the June 2003 staffing vacancy report provided to us by CMS (and which allegedly did not reach the DOC) shows a self-reported shortage of 7.2 FTEs. CMS billed the DOC for \$480,799 (the standard monthly charge) for June 2003 without making any reductions.

Finding 11

The DOC paid \$2,284,226 recently for four months of services, and received \$102,999 in credits from CMS without any detailed back-up showing how the deductions were derived.

Since the start of the contract, and through invoiced amounts up to December 11, 2003, the DOC paid \$18,741,227 in base contractual services. CMS bills for these services monthly, with invoices usually dated the first of the month, at a fixed price.

Of those invoices, only one had any detail explaining how the contractor arrived at the billed amount. This was the last invoice - dated December 11, 2003 - for services provided in November 2003.

This invoice included the base monthly contract fee, plus funds to pay for the phase-in staffing at Southern State Correctional Facility in Springfield. The invoiced amount shows two groups of figures, including anticipated expenses and actual expenses for personnel and fixed costs. The billed amount includes a "credit" or amount not billed to the State by the contractor.

For the months of November, December, January and February, CMS reduced from its bills personnel services not delivered because of the delay in the opening of the Springfield infirmary, as well as shortfalls in staffing across the state.

These credits total \$102,999. From this credit, it is clear that CMS has the capability to track estimated personnel service charges and actual personnel service charges

allowed under the contract, and could have been remitting to the State more accurate bills since the inception of the contract.

Credited amounts:

November services -	\$4,006
December services -	\$20,013
January services -	\$33,452
February services -	\$45,526

Total: \$102,999

Finding 12

The DOC approved, and paid, \$575,499 in additional charges with little, or no, detail provided by the contractor to verify that these additional costs were borne by the contractor.

For the first three years of the contract, CMS was allowed to bill the DOC for additional services, according to a payment schedule in Attachment B, for a variety of services. They were:

Intake/physical

2000-2001: \$25 per encounter
2001-2002: \$26 per encounter
2002-2003: \$27 per encounter

Hepatitis B vaccines

2000-2001 \$55 per encounter
2001-2002: \$57 per encounter
2002-2003: \$59 per encounter

Diphtheria/Tetanus vaccines

2000-2001: \$5 per encounter
2001-2002: \$5 per encounter
2002-2003: \$5 per encounter

TB testing

2000-2001: \$2 per encounter
2001-2002: \$2 per encounter
2002-2003: \$2 per encounter

Hepatitis C treatment

2000-2001: \$1,667 per inmate/per month
2001-2002: \$1,733 per inmate/per month
2002-2003: \$1,803 per inmate/per month

When the contract was amended to add services to cover July 1, 2003 to June 30, 2004, the incidental service charges were amended to:

Intake/physical: \$28 per encounter
Hepatitis B vaccines: \$24.50 per encounter
Diphtheria/Tetanus vaccines: \$0
TB testing: \$2
Hepatitis C treatment: \$130,000 annual cap.

CMS is also allowed to charge the DOC for all additional inmates being held above the average daily population (ADP) allowed for under the contract. This ADP represents all inmates being housed in a facility in Vermont. For the first three years of the contract, the monthly ADP was capped at 1,351. In the one-year contract amendment, the ADP was increased to 1,400.

During testing, we found that the DOC contract monitors routinely accept invoices for additional services with little, or no, detail that spells out what additional services are being provided. (See Finding 9 for a detailed explanation of the DOC payment routing process).

For example, out of 30 invoices our Office reviewed, 17 contained no detail regarding what additional services were being provided.

For additional inmate days, CMS usually provided an ADP summary for the month across all facilities, but did not break these down by facility for the DOC to review. In some cases, Diane Bogdan would find errors in the census reports and would subtract from the CMS invoice.

Out of 32 invoices reviewed by our Office, six had no back-up detail. Of the remaining invoices, 12 had the billed amount reduced by the DOC for a total of \$10,161.

Finding 13

The DOC routinely approves, and pays, invoices that have been submitted past the due date outlined in the contract, even though the contract is clear that the State is not liable for charges submitted past the contractual due date.

Contract language contained in Attachment B, Payment Provisions, is clear that the State is not liable for charges that arrive later than the 15th of the month following the month during which the services were delivered.

Additionally, all monthly base contract service invoices are to be received on the first of the month following the month in which services were provided. In other words, the bill for standard services provided in October is due November 1.

Our testing found numerous examples where invoices were accepted days, weeks and even months past their due date, and often with no corroborating evidence to back up the invoiced amount.

For example, our testing found:

- Eight out of 41 invoices for base monthly service were received late - several by as much as three months.
- Eighteen out of 32 invoices for additional inmates were received late - some by several days, others by as much as two months.
- Twenty four out of 30 invoices for additional monthly services were received late, approved and paid - some by several days, others by as much as three months.

When invoices are received late, they interrupt a workflow in the Business Office that must process thousands of purchase orders annually and track more than 100 private contract payment files. Holding contractors accountable to the terms of the contract sets an overall tone and establishes a clear understanding between the DOC and any contractor.

Allowing contractors to submit invoices months after a service is provided can make tracking services on a monthly basis difficult, and can allow for some services to be billed for, and paid, twice.

For example, the DOC received an invoice (No. 10363 and dated November 12, 2003) from CMS on November 24, 2003 for \$8,463 for additional inmates served by CMS in October 2003. The DOC's contract with CMS caps the number of inmates in Vermont facilities at a set number (at the time of the bill it was 1,400). CMS is allowed, under the contract, to bill the DOC \$3.50 a day for each inmate over this cap. In this case, CMS stated the total statewide inmate census to be 1,478. The DOC amended the census amount to 1,463 and reduced the invoice to \$6,835 and the State cut a check to CMS on December 24, 2003 for that amount.

Then, the DOC received the identical invoice - same invoice number, same date, same amount and for the same monthly additional inmates charge - from CMS on March 8, 2004. The DOC amended the bill, however this time the bill was reduced to 1,464 inmates and the DOC agreed to pay \$6,944. The State cut a check to CMS on March 20, 2004 for the reduced amount of \$6,944.

Correspondence from the DOC Accounting Office shows that they did catch the payment, after the check was issued by the State:

“On April 4th, 2004 the DOC Accounting Office was in contact with CMS regarding the duplicate payment being processed and requested a refund of the March 30, 2004 payment. CMS provided a credit invoice in the amount of \$6,944.00 for the DOC to use against our account with them. That credit was entered in Vision on 05/04/04 and reduce[s] two payments that will be made by May 19, 2004.

“Going foreword the DOC Accounting Office will take the following steps on this contract and the other contracts of similar complexity:

(1) Establish a list of the types of contract services that will be invoiced for a given month from a vendor and use that a basis to ensure that only one payment gets done for each type.

(2) Double check any payment for services against the processed payments for the same month to ensure that an identical invoice isn't being presented for payment again.”

VISION is programmed to detect and avoid duplicate payments of identical invoices, however, the DOC Accounting Office staff said, *“Because the original payment was reduced to \$6,835.50 from the \$8,463.00 and the second payment was reduced to \$6,944.00 it didn't get caught by Vision as being a duplicate payment (same amount, invoice number, invoice date).”*

How Other New England States Provide Key Medical Services to Inmates

In three out of the six New England state prison systems, university medical schools provide some or all of the medical services delivered to inmates - serving far larger prisoner populations than are housed in Vermont facilities.

Connecticut: Connecticut contracts with the University of Connecticut's academic health center which established the University of Connecticut Correctional Managed Health Care program. The program manages all medical, dental, and mental services for inmates at 18 facilities.

Maine: Maine contracts with Correctional Medical Services (CMS) to provide comprehensive medical and dental services. Some state employees fill nursing and some clerical staff positions. Mental health services are divided between CMS, state psychologists and mental health counselors and Liberty Health Care, a national psychiatric services provider. Maine audits the contractors using consultants from the National Commission on Correctional Health Care.

Massachusetts: The state signed a 4-year, \$222-million contract with the University of Massachusetts Medical School Correctional Health program in 2003 for all medical, dental and mental health services for the State's approximately 10,000 state prison inmates.

New Hampshire: A contract with Dartmouth College Medical School provides psychiatrists and nurse practitioners for mental health services. Other medical services are handled by contracted physicians and dentists, and state employees. Practitioners make referrals to outside providers, clinics and hospitals.

Rhode Island: State employees, in a Health Care Services division, provide medical and mental health services to approximately 3,600 inmates. Health Care Services personnel make referrals to outside contracted providers and medical facilities as necessary.

Vermont: Vermont contracts with CMS for comprehensive medical and dental services and with Paul Cotton, M.D. P.C., a private comprehensive mental health services provider for mental health services. Pharmacy costs are paid by CMS as part of its per capita fee, with drugs selected from a formulary it manages. CMS also pays for mental health prescriptions up to \$178,000 a year, after which point the State picks up the costs.

Source: Vermont State Auditor's Office.

Finding 14

The DOC has failed to deduct from CMS invoices the amount of money that the State contributed to the Vermont Health Assistance Plan as required by the contract. Our Office estimates the amount due the State from CMS is \$166,540.

Since June 1, 2000, the State's Vermont Health Access Plan (VHAP) has paid for \$446,848 in emergency-related costs for incarcerated inmates. When an inmate is lodged at a correctional facility, one of the actions taken by CMS staff is to fill out a VHAP enrollment form that can be used if and when the inmate is taken to a hospital during an emergency. According to Office of Vermont Health Access (OVHA) staff, an inmate is enrolled into VHAP only for emergency care - not for routine check-ups and pre-planned doctor's visits.

When an inmate leaves a DOC facility, CMS immediately faxes the inmate's enrollment form to OVHA. The inmate is enrolled in VHAP from the time that the enrollment form is received (as faxes are sometimes received during weekends or at nights when OVHA staff are not available). As long as it is for emergency care, the inmate is enrolled into VHAP for 12 days. If the inmate needs care beyond that 12-day period, CMS will call OVHA and request a 12-day extension.

Upon review of contract provisions and the amount of money paid for inmate services by VHAP, it appears the State may be owed by CMS the amount of money it contributed toward payment for eligible services under the VHAP program.

According to the contract with CMS (Section 2(b) of Attachment B) under VHAP Adjustments:

*"Some inmates are eligible to participate in the Vermont Health Access Plan (VHAP) program. The State shall contribute toward payment for eligible services under the VHAP program. **This contribution shall be deducted from the Contractor's additional monthly charge invoice.** If the State's deduction is larger than the Contractor's invoice, the deduction will be incorporated into the following month's invoice. If the State's deduction is larger than the combined amount of two invoices, the State will deduct its payment from the Base Payment invoice." [Emphasis added.]*

The contract also states: *"All reductions will be fully documented and discussed with Contractor prior to the issuance of an adjusted payment by the State."* During our testing, our Office could find no documentation of any VHAP reductions occurring on CMS invoices.

DOC staff told our Office in interviews that there have been no adjustments, either offered by CMS or requested by the DOC, regarding State VHAP payments since the inception of the contract. DOC staff also said that they believed the contract language was in place to protect the State from being charged for services that were already being covered by VHAP, and was an incentive for CMS to enroll inmates in VHAP to cover the costs of emergency care.

During FY 2000-2003, the State paid an average of 37.27 percent of all VHAP claims with the remaining amount covered by Federal dollars. At that ratio, the State would have contributed \$166,540 in State Medicaid funds toward the VHAP-related charges from June 1, 2000 to February 1, 2004. The contract language does not specify that these payments must be made by the DOC, but by the State. This may be an area for further legal examination to determine if the State is owed money to its Medicaid budget due to payments it made for inmates enrolled in VHAP.

A review of information provided to our Office by OVHA shows that VHAP was billed a total of \$4,667,537 in medical charges incurred by inmates since June 1, 2000. Of these charges, the State approved \$854,272 as payable under VHAP guidelines, and to date VHAP has paid \$466,848.

According to a report provided to the Auditor's Office by OVHA, two inmates who died outside of a correctional facility had a portion of their medical care costs paid by VHAP.

Inmate Neil Prentiss, who had a history of serious illness, including hepatitis B, hepatitis C, abdominal hernia, peripheral vascular disease and a traumatic brain injury, died on November 25, 2002 at the Lahey Clinic in Burlington, MA after first being treated at Fletcher Allen Health Care in Burlington. Prentiss was, at the time of last incarceration, lodged at the Chittenden Regional Correctional Facility in South Burlington. In Prentiss' case, VHAP was billed \$259,564 for emergency services, but the State only approved \$47,602 in charges. Of the approved amount, VHAP paid \$24,938. Most of these charges - \$247,841 - occurred on one bill, according to the OVHA report.

Our Office noted two other instances in the OVHA report where bills for inmates far exceeded the amount approved and paid for by VHAP. They were:

- A total of \$334,391 in emergency service care charges were billed to VHAP for an inmate; the State approved \$102,063 in charges and VHAP paid \$52,647;
- A total of \$260,731 in emergency service care charges were billed to VHAP for an inmate; the State approved \$71,926 in charges and VHAP paid \$36,411.

According to the OVHA report, bills are often denied for one of 998 different reasons, some of which our Office found to be related to being billed twice for the same service, or the provider not being eligible to bill for Medicaid payments.

Finding 15

Mental health personnel are prescribing, with DOC approval, more than 75 percent of all medications outside of the approved pharmaceutical formulary. To date, the DOC has paid nearly \$240,000 in additional charges above a contract stop-loss provision for these drugs. Additionally, the parent company of CMS, Spectrum Health, owns the pharmacy that provides medications to Vermont inmates, and charges the DOC 12 percent overhead for all prescription orders.

A ccording to the contract with CMS, the St. Louis-based company “*shall provide a total pharmaceutical system, including medications prescribed by mental health care providers, which is sufficient to meet the needs of the DOC inmates. Contractor shall be responsible for the costs of drugs administered under the contract, consistent with the limitations described in Attachment B.*”

The reference to Attachment B above is the “Stop-Loss Provision - Psychopharmacy Costs” section. The section reads: “*The State agrees to limit Contractor’s psycho-pharmacy drug costs to a maximum amount of \$160,000 in Year One of the contract. Any psycho-pharmacy drug expense beyond \$160,000 will be paid by the State based upon a report prepared by the Contractor after the completion of a contract year summarizing total psycho-pharmacy drug utilization and cost after the completion of a contract year. The limit for Year Two will not exceed \$166,400. The limit for Year Three will not exceed \$173,056.*”

On September 2, 2003, the DOC amended the CMS contract to add an additional year of services. At the same time, it increased the stop-loss provision to \$178,000 in year four of the contract.

The DOC does review the annual psycho-pharmacy bill from CMS to ensure that all mental health-related drug costs are included in the cap calculations. This analysis is done to ensure that the DOC is paying for medications that have been prescribed by the proper clinician. However, using higher-priced, non-formulary drugs means that the cap will be reached sooner.

A formulary, as envisioned in the contract with CMS, is designed to promote cheaper, equally effective drugs, and ensure that consistency is being provided in the types of medications being used in the facilities.

According to the contract with CMS:

“Contractor will maintain a formulary listing the available medications. The formulary must be submitted to the DOC’s Medical Director or designee for review and approval before being implemented.”

Additionally, the contract states:

“Compliance with the formulary will be strongly encouraged. However, if the Psychiatric Director and/or the Medical Director determine, following a review of all options, that the most effective treatment is a non-formulary medication, this medication will be made available to the inmate. Non-formulary medications will be obtained by completing a non-formulary request. Disputes arising over the use of non-formulary medications will be referred to the DOC’s Medical Director for resolution.”

According to a report provided to our Office by CMS, which covers from July to October 2000, of the \$77,576 in billed psycho-pharmaceuticals \$57,215 was for medications that were not on the approved formulary. Our Office requested, but did not receive, more recent formulary reports.

This report also documented that CMS’ pharmacy receives a 12 percent “overhead” fee associated with labor, packing and shipping of these medications. This 12 percent fee is applied toward the stop-loss amount. From November 2000 to June 2001, this overhead fee cost the State \$16,987.

In each year of the contract, CMS has billed the State for costs above the stop-loss provision, for a current total of nearly \$240,000.

For the period covering July 1, 2000 until June 30, 2001, the State paid an additional \$96,251 in psycho-pharmacy charges above the stop-loss provision of \$160,000.

For the period covering July 1, 2001 until June 30, 2002, the State paid an additional \$84,834 in psycho-pharmacy charges above the stop-loss provision of \$166,400.

For the period covering July 1, 2002 until June 30, 2003, the State paid an additional \$58,556 in psycho-pharmacy charges above the stop-loss provision of \$173,056.

Additionally, the original contract draft included language that would have required any discounts negotiated by the contractor with pharmacy vendors to be passed through directly to the State. This language was not in the final contract.

Our Office has found, in other areas of State government, that these discounts can provide a sizeable revenue stream for the State and, when combined with a well-crafted formulary, can save the State money on pharmaceutical purchases.

Finding 16

The DOC does not always pay invoices within 30 days as required in the contract, exposing the State to the assessment of penalties by the contractor.

Test work conducted by our Office found that the DOC did not pay some invoices within 30 days as required by the contract. The contract states that the DOC must pay the invoices within 30 days of receipt or be assessed a 1.5 percent penalty on the overdue amount. Out of 90 invoices our Office reviewed, 16 were paid beyond 30 days.

These invoices totaled \$3,673,429. At 1.5 percent interest charge, the DOC could have been charged a penalty of \$55,101 by CMS.

Finding 17

CMS failed to produce annual or quarterly financial reports on State-furnished templates to the DOC. CMS was not penalized and the DOC never provided the templates. Our Office estimates that the potential penalty owed to the State is \$279,000.

Section K of the contract - Performance Guarantees - outlines the penalties that DOC can assess the contractor for not providing key deliverables. Item 5 is: "Operational and Financial Reports." Under this item, the contract states: "*Failure by the Contractor to provide required operational and financial reports within prescribed time periods will result in a penalty of \$1,000 per month for each month that the report is not received.*"

The financial reports are defined in Section I of the contract. It reads:

"Contractor will submit quarterly and annual financial statements, using State-furnished templates, which specifically report the Contractor's performance under the contract with the State. The statements will be prepared in accordance with generally accepted accounting procedures. Quarterly reports are due 45 days after quarter end close. Final annual financial statements are due 90 days after the close of the contract period."

The financial reports CMS are required to submit to the DOC have never been submitted, according to interviews with DOC staff. DOC officials stated clearly that the State never furnished the templates and CMS never provided the reports.

Our Office calculated the potential penalties associated with the failure of CMS to provide these reports, and estimate the amount owed to be \$279,000.

B. Insufficient Quality Assurance

The Department of Corrections does not have an adequate, independent system to evaluate the quality of health services to inmates provided by this \$23.9 million contract, and cannot assure that all services are being provided.

Finding 18: The DOC relies solely on the contractor's reports to verify that services are being delivered and does not have an independent system to evaluate the performance of the contractor and determine if contractual staff is delivering appropriate care that meets applicable standards.

Finding 19: The DOC destroyed nearly one year's worth of QA reports and other monthly statistical data in error. This data is the cornerstone of the contractual QA requirements, and allows the DOC to evaluate CMS' service delivery and adherence to State and national health policies.

Finding 20: The DOC penalized CMS for not providing dental services in Calendar Year 2001, however problems persist and the DOC has not levied additional penalties.

Finding 21: CMS did not employ a contract monitor as required in the contract to evaluate the Quality Improvement Program (QIP), file monthly QIP reports to the DOC, and assess any penalties or address performance-related problems if found. The DOC did not require CMS to provide the monitor and did not assess penalties.

Finding 22: The DOC had access to services of the Pacific Health Policy Group to monitor CMS' contract performance, but this monitoring never occurred.

Finding 23: The DOC has failed to require that CMS maintain sick call slips in triplicate as required in the contract, and neither CMS, nor the DOC, consistently responds to inmate grievances within 10 days, as required by the contract. Sick call slips and grievance files are two key elements that can be used to verify the timely provision of care and document contractor performance.

General Recommendation

The DOC should develop strategies to independently verify the quality of medical services, to understand compliance or quality problems, and to quickly implement changes.

These should include a manual of policies and procedures that ensure consistent, independent evaluations of contract personnel. This monitoring should be conducted either by members of the contract monitoring team, or by another division within the DOC. All monitoring should be documented in the contract management file.

Findings & Discussion - Section B

Finding 18

The DOC relies solely on the contractor's reports to verify that services are being delivered and does not have an independent system to evaluate the performance of the contractor and determine if contractual staff is delivering appropriate care that meets applicable standards.

CMS provides the DOC with monthly QI reports from each facility, and during this annual process does review elements of the mental health delivery system. Despite finding deficiencies in mental health records, the DOC took no action.

On-site evaluations in 2001 by the National Commission on Correctional Health Care (NCCHC) found numerous deficiencies during its accreditation review at CMS-staffed locations, including missing, outdated, or incorrect standards.

The August 13, 2002 Executive Health Committee (EHC) minutes reflect a discussion related to "QI Issues" the committee had discussed during the previous two years. A representative of the contractor prepared the handout. A handout was provided to attendees, but was not in the files of the minutes. The minutes reflect that other items were to be added to the list: "Springfield start-up issues, Psychopharm costs, CCHP, and staff support and training ..."

CMS also does not appear to hold regular QI Committee meetings at each facility as required in the contract. This leaves key State personnel - including the facility superintendent - "out of the loop" regarding clinical or performance issues among health care staff.

The contract between the DOC and CMS requires that the mental health and medical teams meet weekly to discuss issues and record those meetings and then bring any significant issues to the EHC, and to oversee the Quality Improvement Program (QIP).

Specifically, the contract states:

"The QIP will be managed by a QI Committee which serves as its focal point. Regularly scheduled meetings will be held monthly with the Contract Monitor, nursing staff, representatives of the Mental Health Contractor, dental staff, medical records staff and Contractor administration.

"The multi disciplinary QI committee is responsible for monitoring inmate health, the control and prevention of communicable diseases, safety and sanitation of the facility environment. The primary purpose of the committee is to identify problems and opportunities for improvement, based upon the data collected in the monitoring process. Contractor's QI manual will be used to provide in-service training."

According to interviews with DOC and CMS staff, our Office determined that neither the CMS regional office nor the DOC Central Office reviews the monthly facility QI meeting minutes to determine if they are being held.

In addition, the minutes of these meetings are only kept on file at the facility, and it is generally the contractor who decides whether an issue is serious enough to be brought to the attention of the EHC. The EHC has the charge, under the contract, to address system-wide, or site-specific, issues related to all aspects of inmate care and treatment.

Finding 19

The DOC destroyed nearly one year's worth of QA reports and other monthly statistical data in error. This data is the cornerstone of the contractual QA requirements, and allows the DOC to evaluate CMS' service delivery and adherence to State and national health policies.

During our review, we sought to examine all monthly reports provided by CMS to the DOC in calendar year 2003. At that time, we were informed by DOC personnel that all of the monthly QI and statistical reports that CMS is required to produce and submit to DOC for 2003 had been destroyed at DOC Central Office because it was determined that since elements of what is sent is cumulative, it didn't seem to make sense to keep them on file and take up space.

We were informed that CMS maintained this information at its new regional office inside the Southern State Correctional Facility in Springfield prison.

A good system of internal controls includes maintaining records of all contract activity and reports provided by a contractor, or created by the contract monitor. Having constant access to evaluate this information allows the DOC to monitor and evaluate CMS' service delivery and adherence to State and national health policies and procedures.

Finding 20

The DOC penalized CMS for not providing dental services in Calendar Year 2001, however, problems persist and the DOC has not levied additional penalties.

A key ancillary service to be provided to inmates is dental care, including preventative measures. Since the inception of the medical services contract in 2000, dental services proved to be a difficult service to provide to inmates. Interviews with DOC and CMS staff identified a problem with finding community dentists willing to do the work.

When CMS assumed the contract from CHS, the DOC put CMS on notice that dental services were a key provision of the contract that must be delivered.

On December 27, 2000 Dr. Powell wrote to Bill Davidson, then CMS Regional Administrator, that *“as of January 1, 2001, we will start the meter running for dental services that are not being provided as per the contract, page 26, section W. At this time we will also be evaluating the staffing levels statewide from November 1. The penalties assessed will be as defined on page 40, section K, No. 2, paragraph 2.”*

The May 8, 2001 EHC meeting minutes noted a discussion related to addressing the NCCHC draft reports. In part, some of the problems were related to dental care. One notation in the minutes states: *“Some inmates are refusing dental treatment for the following reasons: Dr. Hsu doesn’t use novocaine and fear of physical harm resulting from tooth extractions ... Dr. Hsu will be paying fines to state for non-compliance of his contract ... CMS needs to guide Dr. Hsu in his hiring practice.”*

Letters back and forth between the DOC and CMS during the calendar year 2001 outline the general concerns by the State regarding a lack of dental services and other staffing concerns - mainly a vacant LPN position.

During this time, Chief Nursing Office Diane Bogdan completed an audit of dental files at all nine DOC facilities to substantiate the problems regarding dental services. Bogdan’s audit found that dentists were not providing oral hygiene and dental health education within 14 days of intake, were not making dental exams within three months of intake, and were not following through on post-procedure visits.

CMS presented an invoice May 14, 2002 that included the following reductions from their monthly service bill of \$467,463: \$53,271 for “Dental Pybks” and \$21,200 for “LPN Pybks” during the calendar year 2001. The total bill for that month, therefore, equaled \$392,991.

Still, problems persist, according to records reviewed by our Office.

In the June 2002 QI review for dental care at the Caledonia Community Work Camp, the reviewing nurse noted that: “Dental prophylactics (cleaning) has not been compliant (0%) and nurse manager will enquire if more time can be allotted for this purpose.” During that QI review, it was also discovered that the dentists’ current licenses, as well as provisions for emergency care during off hours, were not on file.

In determining compliance with these standards, the nurse manager reviewed 10 dental visits. A key indicator is whether inmates are seen within 10 days of a sick call slip. The dentist at the CCWC failed to meet this standard in a number of instances: one inmate was seen three-and-a-half months after submitting a sick slip; another inmate waited three months, and a third waited 80 days. Four other inmates were seen 40, 27, 22, and 4 days after submitting a sick slip.

Finding 21

CMS did not employ a contract monitor as required in the contract to evaluate the Quality Improvement Program (QIP), file monthly QIP reports to the DOC, and assess any penalties or address performance-related problems if found. The DOC did not require CMS to provide the monitor and did not assess penalties.

During our review of the contract between the DOC and CMS, we observed that specific language related to a QIP was included. As part of this QIP contract section, it stated: *“The Contractor shall employ a Contract Monitor, whose responsibilities will be to perform quality assurance measurements, compile reports for the QI Committees and monitor the compliance to developed plans and the contract and to assess the need for fines in all areas of non-compliance. The format of such reports generated by the QIP and Contract Monitor will be subject to approval by the State Clinical Director.”*

In an interview with the CMS Regional Administrator, our Office was told that no such Contract Monitor was ever employed by CMS. However, facility nurse managers provide monthly QIP reports to the DOC. There is no documentation on file that our Office found during its review that indicated DOC approval for CMS to absolve itself of this contract responsibility.

If, however, CMS had employed a contract monitor there is no guarantee that the company would self-report deficiencies and assess itself penalties. Any contract monitoring should be done strictly by the entity paying for the services - either directly or through a third party. As noted below, it appears as if the State had access to, but did not request, such services from a third party to provide contract oversight.

Finding 22

The DOC had access to services of the Pacific Health Policy Group to monitor CMS’ contract performance, but this monitoring never occurred.

The Pacific Health Policy Group (PHPG) is a contractor that provides a variety of services to Departments, Divisions and Offices within the Agency of Human Services. From July 1, 1998 to May 31, 2002, PHPG had a contract valued at up to \$2,295,431.

During this time, PHPG was contracted to provide technical assistance to the DOC during two critical points of the medical services contract. According to the contract, PHPG was to be paid up to \$136,850 for this work. Its scope of services was amended and updated five times during that four-year period. In September 1999, the following tasks were added:

“Task 1: Provide Technical Assistance to the State with Assessing Financial and Utilization for Current Contractor;” and, “Task 2: Provide Technical Assistance to the State with the Development of a Request for Proposals for Prison Health Services for SFY 2001.”

The activities of Task 1 include “consultation and assistance to the State in an assessment of financial and utilization data from the current prison health contractor (EMSA) ...” The activities of Task 2 include “consultation and assistance to the State with assessing the current prison health program and identifying opportunities for program modifications; assisting in the drafting of a Request for Proposals for prison health services ... negotiating a contract with the offeror; developing standard reporting requirements, including detailed utilization and cost reports; and overseeing the implementation of the new contract.”

Amendment No. 4, signed on July 22, 2001 (eight months after CMS took over the contract) added this service:

*“Task 5: Provide Implementation Assistance to the Department of Corrections for Inmate Health Services.” The activities called for PHPG to “assist the State with the implementation and administration of the prison health benefits program. **Assistance may include contract monitoring and compliance; evaluation of financial and utilization reports; and development of program policies.**” [Emphasis added.]*

In each amendment, the following language is included under the heading General Contractor Responsibility:

“The Contractor is expected to train staff to perform functions which must be carried out on an ongoing basis, but which have been carried out by the Contractor or primarily by the Contractor.”

The Agency of Human Services entered into a separate, two-year contract (June 15, 2002 - June 14, 2004) in July 2002 with PHPG. Task 5 of their scope of services is to provide “implementation assistance to the Vermont Department of Corrections (DOC) for inmate health services.” This task is defined as:

*“The Contractor will assist the State with implementation/administration of the prison health benefits program and to design programs that integrate DOC and other State health assistance programs. **Assistance may include contract monitoring and compliance, program development, evaluation of financial and utilization reports, and development or revision of program policies.**” [Emphasis added.]*

In interviews DOC staff said PHPG was only paid for drafting the 2000 RFP for medical services, and assisted in the analysis and the wording of the final, approved contract. The DOC never utilized, or paid for, the additional service capacity granted to it under the PHPG contract to assist with the oversight and evaluation of its medical services contractors.

Finding 23

The DOC has failed to require that CMS maintain sick call slips in triplicate as required in the contract, and neither CMS, nor the DOC, consistently responds to inmate grievances within 10 days, as required by the contract. Sick call slips and grievance files are two key elements that can be used to verify the timely provision of care and document contractor performance.

According to the Executive Health Committee minutes of November 2003, it was “suggested that sick call slips be carbonized so the inmate can keep a copy for their records.”

Under “Action/Follow-Up” the notation reads: *“It was decided that the sick call slip procedure at all facilities is going to be reviewed. The nurse managers will communicate with security that staff should not take slips, that the inmate should put them in the box themselves.”*

The contract with CMS is very clear regarding the standards to be used by the contractor to handle sick call slips:

“Contractor will implement a sick call system which provides inmates with unimpeded access to health care services ... Contractor shall utilize a three-part sick call request form which allows the inmate’s request, triage and disposition information, and the health care encounter to be documented all on one form. The form is printed on no carbon required (NCR) paper to provide additional copies. One copy is kept by the inmate at the time the request is submitted. The second copy may be used for a variety of purposes. For example, if the inmate’s request does not require a health care encounter, a written response will be documented on the form and a copy will be returned to the inmate. The original becomes a part of the inmate’s permanent record.”

Another key element in a health care delivery system is the grievance process that inmates are afforded to lodge complaints about the quality, timeliness and effectiveness of health care delivery. While not all complaints may be medically valid, when examined as a group patterns can often emerge that would allow the DOC and the contractor to re-evaluate how services are provided and care meted out to inmates.

According to the Executive Health Committee minutes of November 18, 2003, the CMS Regional Administrator asked, *“who should be responding to grievance (sic), she noted that the nurse managers are not properly trained legally, and the time and volume demand on medical and mental health staff should be considered.”*

Under the “Action/Follow-Up” column, the minutes state: *“DOC is going to take a look at how grievance (sic) are handled. The question is where do they go - i.e. superintendent, some other central location.”*

“He understands he has a debt to society to pay. Should his medical and mental health be the price he pays for his wrongdoing? This is a system willing to risk a man’s life while he pays his debt to society.”

- from a letter to the State Auditor’s Office in February 2004.

The contract states that regarding inmate grievances the “Contractor will recognize the inmate as a consumer of the health care services. Grievances are reviewed to identify potential areas of concern and to determine if problematic patterns exist. Inmate grievances will be documented in a log to assist in monitoring compliance with policy and procedure related to inmate grievances and to summarize those areas that are frequently the topic of inmate dissatisfaction. All inmate grievances will be responded to within ten days of receipt and completed responses will be forwarded to State Administrators on a monthly basis.”

At multiple points during the contract, as reflected in the Executive Health Committee minutes, grievance response times often topped 30 days. This was also found to be the case in the NCCHC surveys of 2001.

However, at no point was CMS penalized for not responding to grievances in a timely fashion, or forwarding completed responses to State Administrators on a monthly basis.

C. Questionable Procedures for Contract Bidding, Amendment & Assignments

The Department of Corrections did not follow Bulletin No. 3.5 when approving, amending and assigning its medical service contracts, and failed to properly account and document changes made to contractual services.

Finding 24: The DOC amended the CMS contract to give greater flexibility to deploy contractual staff among the facilities, but decisions were made informally and were neither documented nor tracked by DOC staff. This makes it difficult to properly analyze if CMS is providing adequate staffing levels when billing for services.

Finding 25: The DOC reduced clinical dental hours from 80 to 68 to allow for 12 paid administrative hours to be reimbursed to dentists, despite specific contract language stating that dental hours were for direct service. The DOC did not amend the contract language to reflect this change.

Finding 26: DOC reassigned the contract to Correctional Medical Systems (CMS) on October 31, 2000 after CMS' purchase of CHS, without addressing the concerns of five out of six DOC reviewers who, in May 2001, rated CMS last out of four proposals to provide medical services.

Finding 27: The DOC did not have a signed and executed contract on file before services were provided by CMS when the company first assumed the contract on November 1, 2000, when the contract was extended by one year to cover FY 2004, and when the contract was amended to add services being provided at the Springfield prison.

Finding 28: The DOC allowed a deferred payment of \$227,314 to be paid at the end of years two and three of the contract with CHS, without reducing the corresponding monthly payments due the contractor because of insufficient staffing and dental services.

Finding 29: The DOC properly followed State bidding and contracting procedures when it awarded the initial medical contract to Correctional Health Solutions (CHS) in 2000, but failed to properly document the negotiations that determined the final contract, which was different from the request for proposals.

General Recommendation

The DOC should comply with the spirit, intent, and requirements of Agency of Administration Bulletin No. 3.5, Contracting Procedure when bidding, amending or assigning contracts. To accomplish this the DOC should:

- Create a written manual that includes all policies and procedures that ensure compliance with applicable State and Federal contract management and monitoring;
- Create a contract monitoring tracking sheet for the term of each contract that outlines when all key monitoring activities will occur, and then records any findings, recommendations and/or penalties that result. This tracking sheet should also record any contract amendments that affect program delivery or personnel services;
- Hold contract monitor meetings on a quarterly, rather than annual basis, and enhance training opportunities for key personnel to monitor private contractors for fiscal and program performance;
- Require all changes to a contract to be made in writing via a signed document between the contractual parties and that document be placed in a central contract file. Those changes should also be part of a formal amendment process to ensure that the State has an accurate record of all contract variations in the event that a contract dispute arises; and,
- Ensure all contracts and amendments are signed and fully executed before the effective dates and actual delivery of services.



Caledonia Community Work Camp in St. Johnsbury.

Findings & Discussions - Section C

Finding 24

The DOC amended the CMS contract to give greater flexibility to deploy contractual staff among the facilities, but decisions were made informally and were neither documented nor tracked by DOC staff. This makes it difficult to properly analyze if CMS is providing adequate staffing levels when billing for services.

The DOC and CMS amended the medical services contract as of November 29, 2001 that added additional staffing to the contract at a cost of \$254,000. The amendment included language that added a section to Attachment A of the contract. That new section reads:

“STAFF ASSIGNMENT - The parties recognize that demand for nursing coverage is variable and subject to change, as the mission, size and role of the specific institutions change. It behooves the Parties to have flexibility in responding to these demands. In order to insure that assignment of staff to specific sites matches the clinical need, and that staff are optimally deployed throughout the state, the Parties agree to permit minor changes in the Staffing Matrix (Attachment D) according to mutually agreed-upon plans ... contingent upon the total statewide number of those particular positions in advance by the Executive Health Committee, and an updated staffing matrix shall be maintained at all times.”

Our Office found only one record that explicitly noted a change in staffing, although from interviews with DOC and CMS personnel it is evident that other changes in staff deployment happen on a routine basis as needed to backfill positions, or address pressing health delivery needs.

In the April 23, 2002 EHC meeting minutes, a discussion occurred related to a staffing matrix change offered by the contractor.

The changes moved an administrative assistant position of 12.5 hours from WRCF to SESCOF and an administrative assistant position of 7.5 hours from Dale to SESCOF, as well as nurse manager shift from WRCF to CCWC (to account for a previous change it was a money shift of \$6,520), and then two RNs from WRCF. One 8-hour position was shifted to NERCF and one 28-hour position was shifted to SESCOF.

The changes to the matrix were approved at the meeting, and an updated matrix was reviewed at the May 14, 2002 EHC meeting.

In interviews, DOC staff said that the EHC is the official avenue for all staffing matrix changes to be reviewed and approved. Other changes are noted as they occur, and are relayed to the DOC either by e-mail or by phone.

The DOC does not receive a monthly schedule from CMS regarding shift coverage at all facilities. However, this is a requirement of the contract.

Section III of the contract (Personnel Services) outlines the job descriptions of the main contractual personnel who are to provide direct oversight of health care delivery by the contractor, and serve as a liaison with the DOC.

Under Health Services Administrator, one of the required job duties is to *“make available to the administrators a monthly health care services staffing schedule for each facility prior to the initiation of the schedule. This report shall include the number of full-time, part-time and relief staff by day, shift and location. The Health Services Administrator shall also be responsible for providing designated State officials with all reports required by the State.”*

It is not clear if the “administrators” under this description are CMS administrators or State administrators. However, if these reports are being produced, it would behoove the State to receive copies to ensure compliance with the contractual staffing matrix.

Finally, when the DOC amended the contract to only hold CMS accountable for meeting the statewide staffing matrix, it failed to amend the penalty provisions of the contract to reflect this new approach and allow the DOC to penalize the contractor for failing to maintain adequate staff. The current contract language still reflects the stipulation that CMS maintain positions, and only be penalized for having actual positions remain vacant more than 31 days.

Our Office believes the DOC should re-examine this penalty provision and require CMS to provide all FTEs called for in the contract or face a penalty.

Finding 25

The DOC reduced clinical dental hours from 80 to 68 to allow for 12 paid administrative hours to be reimbursed to dentists, despite specific contract language stating that dental hours were for direct service. The DOC did not amend the contract language on fees to reflect this change.

Dental services are a key ancillary service outlined in the contract between the DOC and CMS that must be provided to inmates. The contract is explicit. It states: *“Contractor shall provide on-site dental services which include preventive and restorative care. The Contractor will provide a schedule, by facility, to the State with the hours that dentists will be on-site actually seeing patients (i.e. exclusive of time used for set-up and dismantlement of equipment and for administrative activities). The hours across all facilities must equal at least two FTEs.”*

Additionally, the contract states: *“The initial dental appraisal and instruction in oral hygiene will be conducted at the time of the initial health appraisal by trained registered nurses and within fourteen (14) days of admission ... If the Contractor is unable*

to provide on-site assessment, screening and/or treatment within these timeframes, inmates shall receive services through local community dentists, with costs for said services to be borne by the Contractor.”

During our Office’s review, we examined a letter dated November 29, 2000 from Dr. Powell to Ann Mack, CMS’ Area Vice President, regarding “Dental Contract Performance Guarantees and Administration,” and attempting to clarify issues around the dental contract and any financial penalties. In this letter, Dr. Powell noted, *“Given the scenario that CHS, and subsequently CMS, inherited from the previous provider, the VDOC feels that this contract requirement needs clarification.”*

Dr. Powell further noted that the DOC was waiving any penalties for six months from the commencement date of the contract - July 1, 2000 - and was willing to use Medicaid guidelines regarding inmate backlogs and waiting times. This means routine care must be completed within four weeks of request.

Finally, Dr. Powell concluded by altering another contract provision: *“In addition, we would like to clarify that up to 12 hours weekly of the contracted 80 weekly dentist hours may be used for administrative purposes with the remaining 68 hours weekly being utilized for direct patient care.”*

These changes were not reflected in the final executed contract between CMS and the DOC on January 24, 2001 - even though it is obvious that it had been agreed to well in advance.

Finding 26

DOC reassigned the contract to Correctional Medical Systems (CMS) on October 31, 2000 after CMS’ purchase of CHS, without addressing the concerns of five out of six DOC reviewers who, in May 2001, rated CMS last out of four proposals to provide medical services.

When the DOC sought proposals to provide medical services to inmates, it evaluated four complete proposals: one from CHS, another from CMS, one from Prison Health Services, and one from St. Barnabus Correctional Health Systems.

During the review process, it was clear that the top choice of all reviewers was CHS. However, CMS’s proposal was ranked fourth by four of the six evaluators and third by the other two evaluators.

Prison Health Services (PHS), of Nashville, TN, was ranked second by four evaluators, third by one and fourth by the sixth evaluator. At the time of the evaluation, PHS was the State’s contractor providing medical care to inmates. PHS had purchased EMSA Correctional Care, the previous medical contractor, in 1999.

St. Barnabus Correctional Health Systems of New York, NY, was ranked second by two evaluators, third by three evaluators and fourth by the sixth evaluator.

In a memo to the reviewers from Dr. Thomas Powell, Ph.D., Clinical Programs Director at the DOC, CMS' bid was described, in part, by these main points: *"comprehensive proposal in which Vermont would basically be administered as a satellite for its Massachusetts corrections contract ... weak administrative structure, skeletal staffing ... poor references with persistent complaints about low-ball bidding followed by constant add-on charges for basic care. We had unsolicited calls from wardens warning against this company."*

Our Office found no documentation that the substantive concerns about the ability of CMS to carry out contract services were addressed during the reassignment process.

In the evaluation sheets reviewed by the Auditor's Office, CMS ranked high in terms of a technical review of its proposal, but scored the lowest among all proposers during the interview with DOC personnel (5.83 out of a possible 17.50).

Finding 27

The DOC did not have a signed and executed contract on file before services were provided by CMS when the company first assumed the contract on November 1, 2000 and again when the contract was extended by one year to cover FY 2004.

CMS assumed the CHS contract as of October 31, 2000 - however the DOC did not have a signed and executed contract on file until January 24, 2001. Then, in 2003 the DOC received approval to extend the contract with CMS for one year to cover FY 2004. The original contract term ended on June 30, 2003, however a signed contract was not executed until September 3, 2003. Additionally, the AA-14 was not signed by the Secretary of Administration until July 14, 2003.

An "Assignment and Assumption Agreement (Customer Contracts)" is on file at the DOC that recognizes the reassignment of all CHS contracts to CMS. The reassignment date in the document is October 31, 2000. The document was signed by representatives of CMS, CHS and the DOC, however there is no date accompanying these signatures. Despite this reassignment, there was not a signed contract amendment recognizing this reassignment until January 24, 2001. During that time, the DOC paid CMS \$407,156 a month for services in November and December without an executed contract in place.

The invoice for November services was dated November 21, 2000 and was paid by DOC on February 16, 2001. The December invoice was dated January 4, 2001 and was paid by DOC on February 16, 2001. DOC personnel approved both invoices for payment on January 22, 2001.

Between July 1, 2003 and September 1, 2003, CMS billed monthly for services provided in July and August totaling \$1,057,748. The DOC did not pay these bills until September 9, 2003. However, the contract monitor for this contract - and his designee - approved these bills for payments upon arrival at DOC.

Finally, the DOC amended the CMS contract to reflect the opening of the SouthernState Correctional Facility in Springfield. The effective date of the amendment is October 1, 2003, but the contract was not signed by the DOC until December 29, 2003. Additionally, the AA-14 was not signed until October 30, 2003 by the DOC, November 19, 2003 by the Attorney General's Office, and December 3, 2003 by the Secretary of Administration.

Finding 28

The DOC allowed a deferred payment of \$227,314 to be paid at the end of years two and three of the contract with CHS, without reducing the corresponding monthly payments due the contractor because of insufficient staffing and dental services.

On June 29, 2000 - just two days before the contract with CHS was to begin - a legal agreement was signed between CHS and the DOC that deferred compensation to CHS in the amount of \$227,314.

This agreement would give CHS lump sum payments of \$114,072 in July 2001 and \$113,242 in July 2002, respectively after fully completing the first contract year.

In its contract analysis for the DOC, the PHPG suggested that in order for the DOC to keep its costs down in the first year of the contract - during a time when the DOC was looking to squeeze as much revenue as possible from a variety of sources - that it defer payments to a lump sum arrangement to keep monthly payments down. Also, the DOC could use the lump sum payment as a way to address contract deficiencies, and reduce the payment to reflect penalties or other assessments if necessary.

As is noted earlier in this report, both CHS and CMS failed to fulfill their obligations under the contract to provide dental services or full staffing. However, the DOC did pay out this additional money to CMS on September 7, 2001 and July 22, 2002.

Finding 29

The DOC properly followed State bidding and contracting procedures when it awarded the initial medical contract to Correctional Health Solutions (CHS) in 2000, but failed to properly document the negotiations that determined the final contract, which was different from the request for proposals.

The DOC first hired a private contractor to provide medical services to inmates in 1997, when it contracted with EMSA. EMSA was the State's contractor from 1997 to 2000.

When the three-year contract was coming to a close, the DOC used PHPG to write the initial RFP for services, which also served as a template for the contract language.

PHPG was, at the time, engaged in contractual services for a variety of departments of the Agency of Human Services. The total contract value, through 2000, was \$1.66 million, of which its work for the DOC represented \$116,350.

In its comments to the DOC, the PHPG noted that it was undertaking a financial analysis to determine if the DOC could save money. In a May 5, 2000 memo from Mary Bading of PHPG to Dr. Tom Powell, Ph.D., DOC Clinical Programs Director, she notes: *"The analysis on Pages 2 and 3 were performed to determine whether there were areas of expense that appeared excessive or unusual for this type of contract. Three expenses: corporate overhead, other and profit seemed to be the areas that might be targeted for some type of reduction, if only on a temporary basis."*

The three areas, combined, represent 22 percent of the contract price. "Corporate overhead" was 10 percent, "other" was 5 percent and "profit" was 7 percent. It is unclear whether the DOC followed through on this advice and if it reduced the expenses in these three areas, as the proposed total contract price from CHS, as analyzed by PHPG, was \$16,963,585. However, the final contract amount was \$16,350,937.

Examples of differences, include:

- The RFP did not contain language outlining how Hepatitis C treatment services would be delivered and paid for; however this was added to the final contract language. CMS was allowed to bill for the full cost of this treatment, but the most recent amendment to the contract caps the annual amount that the DOC will pay for this treatment;
- A penalty clause related to high staff turnover rates was removed from the final contract;
- The original contract draft included language that would have required any discounts negotiated by the contractor with pharmacy vendors to be passed through directly to the State. This language was not in the final contract;

- The requirement to have a disaster management plan in place; and,
- The requirement to evaluate the existing management information system that maintains all health care records, manpower utilization and statistical summaries of activities and if they install a new system, to assume responsibility for all historical data.

Our Office's review of the 2000 RFP, bid review and approval process found that the DOC properly followed Agency of Administration Bulletin No. 3.5 Contract Procedures. The RFP contained the necessary outline of how the bids would be reviewed and scored, and contained a price summary form, as well as a clear expectation of the deliverables the contractor was expected to produce.

The DOC may wish to follow nationally-established standards to document the process and issues in between when an RFP is accepted and a contract is executed.

According to the National Institute of Governmental Purchasing (NIGP) a "key element in the process of completing a negotiation is full documentation of the entire negotiation. Personnel turnover, the stops and starts of the negotiations, and the frailties of the human memory make accurate documentation of the negotiation essential. The documentation must permit a rapid reconstruction of all significant considerations and agreements. This documentation is essential especially when future contract disputes occur."

The NIGP recommends the following elements be included in a format to document the negotiations:

- **Overview:** A statement of all contract information to date, including scope of work, names of the negotiators, and the purpose of the negotiation.
- **Summary of Particulars:** A summary of all areas targeted for negotiation and the original position of the parties.
- **Negotiation Summary:** A summary of the results of the negotiation and how positions changed as a result of the negotiation. This should be specific and be the basis for the final contract.
- **Justification and Recommendation for Award:** This should justify the rationale of the final contract and why it is in the best interest of the State.

It should be noted that *all* departments, under Bulletin No. 3.5, must include a letter of recommendation to accompany the contract when it is sent to the Secretary of Administration for final approval. The DOC routinely complies with this requirement.

“I am asking you and members of the legislature to promptly come here to Marion (Adjustment Center) yourselves. Listen to us inmates and see for yourselves what our conditions are. Many legislators signed off on this CCA contract. Please don't allow having chosen to align yourselves with CCA to turn a blind eye to what has been sown. Allowing VT DOC to police CCA under the circumstances that DOC has failed to police itself with transparency and accountability for actions having led so far to at least 17 inmate deaths in only 5 years. Isn't it reasonable that the legislative oversight committee should exercise true oversight that is not limited to VT DOC and CCA telling you what is going on?”

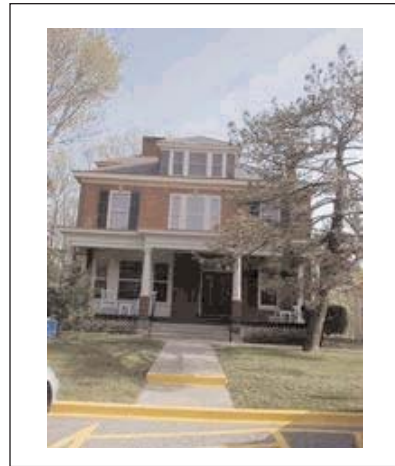
- from a March 2004 letter written by inmate Kirk Wool to State Senator Vincent Illuzzi outlining conditions at CCA Marion Adjustment Center in Kentucky.

Section III

Out-of-State Housing Contracts



Lee Adjustment Center
Beattyville, Kentucky.



Marion Adjustment Center
St. Mary, Kentucky.

Background

The State of Vermont currently contracts with the Corrections Corporation of America (CCA) of Nashville, TN to house Vermont inmates. As of early May 2004 there were approximately 360 inmates under the care of CCA in three facilities:

Marion Adjustment Center approximately 235 inmates
St. Mary, Kentucky

Lee Adjustment Center approximately 120 inmates
Beattyville, Kentucky

Florence Correctional Center 6 inmates
Florence, Arizona

The CCA contract expires on June 30, 2007 at a maximum cost of \$29,524,829 for up to 700 inmates. The cost is currently \$42 per day per inmate for facilities in Kentucky and \$43.50 per day at the Arizona facility. The costs will rise on July 1, 2004 to \$42.84 per day in Kentucky and \$44.37 per day in Arizona.

The per diem costs include necessary routine medical and mental health care, pharmacy costs, training programs, and treatment programs. CCA is responsible for inpatient hospital and surgery charges for the first 72 hours an inmate is confined in a hospital, or the first \$20,000 in costs, whichever comes first. The State's contract with CCA outlines other possible procedures and payment provisions, as well as protocols for discipline, inmate transportation, record-keeping, etc.

From July 1, 1998 until early 2004 the State contracted with the State of Virginia for out-of-state inmate housing. The most recent per diem at three Virginia facilities was \$48.50.

“Regarding the general issue of lack of sufficient program, library and recreation space at the Marion facility, I have addressed that pointedly with CCA officials.”

- DOC Commissioner Steven Gold in correspondence with the State Auditor on May 14, 2004.

A. Contract Bidding

Finding 30

The DOC allowed the State of Virginia to provide out-of-state housing services without signed contract renewal amendments in place.

There is an increased risk to the State and Vermont inmates when out-of-state housing services are provided without the benefit of fully executed contracts being in place.

This has occurred during the period when the Commonwealth of Virginia was housing Vermont inmates. The Virginia contract began July 1, 1998 and continued past its formal endpoint of January 30, 2004 into February and March.

At several points in the State's relationship with the Commonwealth of Virginia, a fully executed contract was not in place while services were being provided. This apparently had financial consequences for the State of Vermont (see Finding 2 below).

The Virginia contract formally ended January 31, 2004, but Vermont inmates continued to be housed in Virginia during February and March while a contract amendment was moving through the approval process. As of this writing, the contract amendment process has not been concluded and Virginia is awaiting payment for services it provided after January 31, 2004.

The new Corrections Corporations of America (CCA) contract officially began on January 15, 2004 and expires on June 30, 2007, and has a maximum total payment of \$29.5 million.

The contract was fully executed after the contract start date, on January 19, 2004, when it was signed by DOC Commissioner Steven M. Gold. However, CCA did not begin receiving Vermont inmates in its Kentucky facilities until the first week of February.

The Secretary of Administration has recently required that contracts or amendments that need approval by the Secretary's office be submitted to the Secretary four weeks before the contract's starting date. In order to accommodate this request, the DOC Business Office now requires all completed contracts requiring Agency of Administration action to be delivered to the Business Office eight weeks prior to the contract's starting date. This should help reduce the times when services begin or continue without a contract or renewal amendment in place.

Recommendation

DOC should adhere to state guidelines for timely development and signing of contracts so that all legally required contract documents have been executed prior to the commencement of services by a contractor.

Finding 31

DOC followed Administrative Bulletin No. 3.5, Contracting Procedures, in awarding a \$29.5 million, 3.5-year contract to Corrections Corporation of America (CCA), and has adequate documentation of the bidding, proposal review and decision-making process.

The contract requires CCA to maintain accreditation by the American Correctional Association (ACA), and does not specify other, possibly higher, minimum standards for inmate housing, kitchen and dining areas, inmate programming or for hiring and training correctional officers.

The contract lacks provisions on financial penalties for contractor non-performance (except for health care accreditation).

The current contract with CCA is the State's first with a privately-owned and operated prison company. As such, many legislators and citizens inquired about the process for awarding this contract to a private-sector company.

Our review determined that the DOC adequately followed the contracting procedures in Administrative Bulletin No. 3.5, which governs this process, and has a well-documented file on the contract. It should be noted that the previous contractor, the State of Virginia, did not submit a proposal to continue housing Vermont inmates.

We also note that with this contract the DOC is implementing a comprehensive audit and quality assurance system, including a checklist and workbook for use by Vermont officials who are scheduled to visit CCA facilities in Kentucky. Vermont inmates are held. Vermont did not have such a quality assurance program during its contract with Virginia.

However, there are areas of concern. Unlike the medical and mental health care services contracts we reviewed, the CCA contract does not specify a minimum staffing level of correctional officers to be achieved by the contractor in providing the required safe custody for Vermont inmates. The contract is also silent on specific qualification levels, background checks, and training for CCA correctional officers above those required by ACA accreditation standards.

Vermont inmates, family members and advocates have also registered complaints with this Office and elsewhere regarding the Marion Adjustment Facility in Kentucky, citing the lack of a kitchen and dining hall (meals are brought from another building and served in a hallway), cramped spaces for programs, recreation, law library and visiting area. Regarding such specific areas, the CCA contract specifies only that the facilities will meet the national ACA standards.

The current contract with CCA also does not have specific penalty clauses outlining the financial consequences for the potential failure of the contractor to live up to all terms of the contract, with the exception of health care accreditation. (CCA has 12 months in which to see their Kentucky facilities accredited by the NCCHC or be subject to a financial penalty of \$500 per day.)

Recommendation

The DOC should address issues of contractor non-performance and possible financial penalties. The DOC should clearly describe the required background checks and minimum job qualifications and training requirements for CCA correctional officers, as well as higher standards for inmate housing, kitchen and dining areas, inmate programming and other areas that may be necessary. The DOC should seek to amend the CCA contract relating to these issues at the earliest opportunity.

“The first thing to strike the visitor is that the main part of the prison, housing Kentuckians, is a beautiful former college campus with no fence. In contrast, the Vermont section, known as the Columbia Unit, is a tiny enclosure rimmed by a double fence and thousands of feet of razor wire on a hill overlooking the rest of the prison. I was struck by an inherent incompatibility between these two prison environments at Marion. The Vermonters in their cramped enclosure on the hill get to watch the Kentuckians, some of them lifers, strolling around their beautiful grounds. There’s something cruel about that.”

- from a letter to the State Auditor’s Office in April 2004.

B. Fiscal Oversight

Finding 32

The DOC was assessed interest charges of \$114,079 by the State of Virginia due to late payments for five monthly payments in 2002. The DOC negotiated a lower penalty total and paid \$46,809 in interest charges for failure to pay agreed-upon costs in a timely manner.

The State's contract with Virginia spelled out the process for Virginia to submit invoices for housing Vermont inmates, and the timelines for the DOC to pay those invoices and penalties for tardy payments:

"Sec. 4.7 Invoicing and Payment Terms: Invoices will be submitted by the VADOC each month for services rendered during the preceding month. Invoices will be transmitted by mail, courier service, or other method as agreed to by the Parties. Payments are due not later than 30 calendar days after submission to the Director of Administrative Services for the VTDOC or his designated agent. Beginning forty-five (45) days after submission, a charge of 1.5% per month of the outstanding balance will be added to all past due balances ..."

The DOC was late in paying monthly per diem invoices sent by Virginia for housing Vermont inmates for the following months:

<u>Month of Services</u>	<u>Invoice for Per Diem Costs</u>	<u>Date Paid by DOC</u>
July 2002	\$636,329	January 30, 2003
August 2002	\$639,341	January 30, 2003
September 2002	\$647,591	January 30, 2003
October 2002	\$666,805	March 12, 2003
November 2002	\$682,290	March 12, 2003

On February 1, 2003 Virginia invoiced Vermont for \$77,931 in interest charges for delayed payments of July, August and September, 2002 per diem expenses.

On March 17, 2003, Virginia invoiced Vermont for \$36,147 in interest charges for delayed payments of October and November 2002.

Virginia invoiced a total of \$114,079 for the five months in question.

There was no dispute about the Vermont payments being late. When asked by this Office for the reason the payments were late, DOC officials said the primary reason was that a fully executed contract was not in place during a period of transition to an extended contract. Negotiations between Vermont and Virginia on contract language regarding indemnification were protracted, according to DOC staff, and contributed to the late signing of the contract.

After discussions with Virginia officials, the DOC agreed to settle two outstanding issues. One was the interest charges on late payments, and the other was a large health care bill for a hospitalized inmate that was submitted nearly two years after services were rendered. Vermont agreed to pay the entire hospital bill, but only a portion of the interest charges for late payments - \$46,809. Virginia accepted this agreement in June 2003, and Vermont made the agreed-upon payments in July 2003, which totaled \$100,000.

Recommendation

The DOC should ensure that adequate internal control procedures are in place in order to execute contracts and pay appropriate invoices in a timely manner so as to avoid unnecessary interest penalties on late payments.

Finding 33

When out-of-state inmates in Virginia had to go to the hospital or other health facility for special services that Vermont would pay for, the DOC pre-approved the expenses verbally, leaving no written record to refer to when invoices for these services were received up to a month or more later.

The Vermont-Virginia contract included in the basic per diem rate the provision by Virginia of *“necessary medical, dental, psychiatric, optometric and medication services necessary to provide for the health and well-being of Vermont inmates in the same manner as it provides for Virginia inmates.”*

Some types of additional medical services were billed to Vermont, but the DOC first had to approve the expense. This approval was given verbally to Virginia officials by the Vermont out-of-state housing unit, and not written down. DOC officials reported that the number of these approvals was modest and that invoices for extra charges could be related by memory to previous telephone authorization.

A better business practice would be to keep a log of approvals, including date, type of service authorized, etc., and to use this log to review invoices for additional charges as they arrive in case non-authorized procedures were performed.

The State’s new contract with CCA requires the contractor to obtain “written VTDOC approval” when scheduled inpatient hospitalization or surgery is likely to result in costs being paid by the State of Vermont.

Recommendation

The DOC should keep a written record of approvals given to out-of-state contractors for additional medical services the State is obligated to pay for under the contract, and require that these approvals be reviewed before approving any payment for service.

“Since his incarceration he has received very little medical treatment. [He is] suffering from headaches as well as complaining that his left eye feels ‘floppy.’

“Having all medications taken away literally overnight as well as the withdrawal from nicotine and caffeine, suffering from constant pain and not being able to sleep, has clearly caused a serious deterioration in [his] mental and physical health. I am very concerned about his mental condition right now as he has become severely depressed.”

- from letters received by the State Auditor’s Office in February-March 2004.

Section IV

Inmate Program Contracts



Dale Correctional Facility in Waterbury.

Background

The DOC manages a wide variety of contracts for specific offender treatment services. The DOC has issued more than 60 contracts at a cost of nearly \$7 million since 2000 to provide a variety of offender treatment services.

These services include:

Residential and Community-Based Substance Abuse Programs;

Sex Offender Treatment Services;

Cognitive Self-Change Services;

Domestic Abuse Treatment Program; and,

Consultation and Supervision Services for Offender Treatment Programs.

Services are provided at correctional facilities and at Community Correctional Service Centers (CCSCs) and Court & Reparative Service Units (CRSUs) throughout the State.

A. Contract Bidding

The Department of Corrections does not have an adequate system of controls to ensure compliance with State contracting procedures when using private contractors to provide services to inmates.

Finding 34: The DOC does not fully document its activities when issuing, reviewing and approving proposals to provide inmate program services, which means it does not always fully comply with Agency of Administration Bulletin No. 3.5, Contract Procedures.

Finding 35: The DOC allows facility superintendents and supervisory field unit superintendents to develop, issue and maintain contracts and contract files for a variety of services with little or no oversight by the Central Office.

Finding 36: The DOC issues multiple contracts with the same vendor to provide identical services to separate locations - jails, prisons or community field sites. Multiple contracts for similar services typically add unnecessary administrative overhead and staff costs to oversee and manage the contracts.

General Recommendation

The DOC should comply with the spirit, intent, and requirements of Agency of Administration Bulletin No. 3.5, Contracting Procedures, and fully document all activities associated with the issuance, review, approval and amendment of all private contracts for services. To accomplish this, the DOC should:

- Ensure all contracts and amendments are signed and fully executed before the effective dates and actual delivery of services;
- Hold contract monitor meetings on a quarterly, rather than annual basis, and enhance training opportunities for key personnel to monitor private contractors for fiscal and program performance;
- Review all service contracts issued from field sites and facilities to ensure they fully comply with State contracting procedures;
- Review the practice of issuing multiple contracts to the same vendor to provide identical services at multiple DOC locations and determine legal ramifications of combining contracts in these instances to reduce State administrative overhead and processing costs; and,
- Conduct on-site reviews, as well as post-contract audits, at facilities and field sites to ensure compliance with contract requirements as well as State and DOC and policies and procedures.

Finding 34

The DOC does not fully document its activities when issuing, reviewing and approving proposals to provide inmate program services, which means it does not always fully comply with Agency of Administration Bulletin No. 3.5, Contract Procedures.

To determine if the DOC was complying with Bulletin No. 3.5 provisions related to maintaining a record of public bidding, staff review and contract approval and any subsequent amendments, our Office tested a select number of contracts from each program area: ISAP, IDAP, CSC, Sex Offender treatment, and RSAT.

During test work, our Office observed instances of missing documents from several contract files. Specifically, we found:

- The statewide ISAP RFP (for CCSC sites) did contain the proper scope of services, price quotation form and identified how a vendor would be chosen. There was also documentation in the contract file to verify bid openings and contractor selection and approval. The contract is for three years, and a written explanation outlining why it is more than two years in length (per Bulletin No. 3.5 provision) was in the file. The only item missing was verification that the DOC had advertised the RFP.
- The RSAT RFP did contain the proper scope of services, and identified how a vendor would be chosen, but did not contain a price quotation form. There was also documentation related to bid openings and public advertising of the contract. However, there were no documents related to how the contractor was selected. The contract has been amended three times, each reauthorizing for another year Phoenix Houses of New England.
- The CSC file did contain the RFP with the scope of services, copies of public notices, but did not contain information related to how a contractor would be selected, a price quotation form or evidence related to how the contractor was selected. The contract file also did not have a list of vendor bids solicited and reviewed - or notification that only one bid was received.
- The sex offender treatment program contract files did contain documentation that the DOC had reviewed and evaluated vendor proposals in those cases where more than one clinician replied to an advertisement (which were also in the contract file). The RFP did contain the scope of services to be provided, but vendors are not told in writing how they are to be evaluated and scored, although our Office found that the DOC did conduct exhaustive reviews of each proposal. Other than handwritten notes on each resume and cover letter, there is no final, written evaluation that states why a vendor was selected. There was evidence that rejected bidders were notified.

Finding 35

The DOC allows facility superintendents and supervisory field unit superintendents to develop, issue and maintain contracts and contract files for a variety of services with little or no oversight by the Central Office.

The DOC has roughly 60 contracts to provide offender treatment services at its nine jails and prisons and nine Community Correctional Service Centers (formerly known as Probation & Parole offices). Some of these contracts are managed and overseen from the Central Office in Waterbury, and some are handled directly at the facility or CCSU.

For those services in which contractors report directly to a facility superintendent or CCSU superintendent, the main contract file (all bid documents, staff analysis, and subsequent reports) are kept on site. Only copies of invoices are kept at the Central Office in Waterbury.

This decentralization, without proper written policies and procedures, is a weakness in the overall system the DOC has developed over time to respond to emerging needs of its inmate population. This lax oversight allows for separate monitoring and payment procedures and policies to be developed at each site, with no uniform process in place that can be easily reviewed by the Central Office.

For example, not all facility or CCSU superintendents review and approve invoices from contractors, even though they are listed in the contracts as the DOC's designated contact.

The DOC's Central Office has the authority to put in place system-wide policies and procedures related to reviewing, approving and documenting contractor invoices, and could make it a priority to ensure that each field site is adhering to these standards. This approach would likely require that the Management Executive, or his or her designee, make routine site visits to verify compliance.

The DOC's Central Office could also take a more direct role in the contract bidding and approval process to ensure that the payment provisions provide clear instructions to all contractors about what they must provide to support their invoice for services.

Without significant changes in staffing, it is not probable that the Central Office could review and approve all contract invoices prior to payment, but it can and should establish a clear tone that can ripple through all divisions and field sites about what to expect from private contractors.

Finding 36

The DOC issues multiple contracts with the same vendor to provide identical services to separate locations - jails, prisons or community field sites. Multiple contracts for similar services typically add unnecessary administrative overhead and staff costs to oversee and manage the contracts.

The DOC has adopted, though not by a strict policy, an overall goal of bidding out for services rather than using simplified bids or sole source contracts. This has provided the DOC an opportunity to review multiple submissions. This appears to have kept costs down for individual programs by finding the best deal for Vermonters in a number of instances.

This unofficial policy has led to the DOC to issue multiple contracts for identical services (just different in terms of where in the state the service is provided) to a single vendor. Here are some examples:

- Spectrum Youth & Family Services in Burlington provides IDAP services at the CCSCs in Barre, Burlington, Rutland and St. Albans while also serving as a consultant and evaluator for the statewide program.
- Spectrum Youth & Family Services also provides CSC services for women at the Burlington CCSC and at Northwest State Correctional Facility in St. Albans, and group CSC services in Burlington. Most of these contracts are for different time periods, but for nearly identical services.
- Phoenix Houses of New England provides a variety of ISAP services at the nine CCSCs and at the Northeast Regional Correctional Facility in St. Johnsbury.
- Charles Gurney provides direct services for CSC and IDAP Programs and evaluative services for the CSC program.

While keeping with the spirit of Bulletin No. 3.5 to provide for competitive bidding for services when contracting out is contemplated, the DOC may wish to combine select contracts with providers. The services could still be separately bid upon completion of the contract, but it may allow for more efficient and effective contract administration and monitoring. It may also reduce the administrative cost the contractor bills to the State in order to invoice multiple program directors, and the State's cost to review and approve multiple invoices from the same contractor.

B. Contract Payments

The Department of Corrections did not have sufficient controls in place to assure that staff hours and services were provided according to signed contracts. As a result, DOC may have paid for hours not worked and services not provided.

Finding 37: The DOC does not require full details of expenditures (payroll, mileage or office expenses) to be submitted by contractors. This limits the ability of the DOC to assess contract deliverables, and has allowed payments to be made for services that may, or may not, have been fully delivered.

Finding 38: The DOC incurs costs for services provided before a fully executed contract is on file at the DOC. In some cases, services are provided before the Attorney General and Secretary of Administration sign the AA-14 that grants approval to enter into the contract.

General Recommendation

The DOC should properly manage its inmate program services contracts to ensure contract performance and cost containment. A contract monitoring and administration oversight team should be created to:

- Enforce current invoicing requirements in the contract;
- Establish better controls to account for and assess professional hours worked and services provided in each field site and/or facility by the contractor;
- Review all provider non-staffing responsibilities in the contracts, including reporting provisions, and assess penalties where necessary and renegotiate and amend the current contract to reflect realistic work goals and the need for contract monitoring;
- Develop a standard invoice for all inmate program service contractors to report activity to the DOC when they invoice for services; and,
- Develop appropriate amendments that would better protect the interests of the State, the DOC and Vermont inmates.

The DOC should conduct a thorough review of all invoices paid under the inmate program services contracts to assess possible overpayments due to insufficient staffing or failure to meet reporting requirements. The DOC should seek to recover funds for hours not worked in accordance with the penalty provisions in the contract, plus interest, from the contractor.

Finding 37

The DOC does not require full details of expenditures (payroll, mileage or office expenses) to be submitted by contractors. This limits the ability of the DOC to assess contract deliverables, and has allowed payments to be made for services that may, or may not, have been fully delivered.

In its standard payment provision language for its contracts the DOC does not require contractors to provide supporting documents that specifies the work performed and hours worked when submitting invoices for payment.

Some contractors provide this information without prompting from the DOC; however, there is no consistency in how the data is reported. In some cases, hours and mileage are provided in lump sums, (i.e. monthly hours worked x hourly rate = amount to be paid and/or miles traveled during the billing period x mileage reimbursement rate = amount to be paid.) In other cases, contractors provide explicit service delivery dates, the number of hours worked on those days, the numbers of inmates served and, when appropriate, the miles traveled on those days. However, this type of reporting is the exception not the rule. For example, our test work found:

- Invoices for IDAP services provided by Spectrum Youth & Family Services at the Rutland CCSC did not include dates of service, just total hours for the month. However, Spectrum did provide very detailed invoices for its statewide IDAP consultation services contract;
- Invoices from Dr. Paul Cotton, MD, PC, to provide services under the Sex Offender Treatment program did not indicate dates and locations of services, only a flat eight hours per month charge;
- Invoices from Phoenix Houses of New England to provide RSAT services, do not provide a detailed list of the dates of service and total hours worked, and there are no vouchers for mileage and equipment that was billed and reimbursed by the DOC; and,
- Invoices from Steven Woodson, who provides consultation services under the CSC contract, do not detail dates of services, just total hours for the month.

The DOC has, in the past, attempted to create a uniform invoice for all contractors to provide in terms of service delivery contracts. Only one contractor uses this form, which was drafted but never approved for official use.

This form provides a wealth of information and requires the contractor to provide more than just the hours worked in a month, the hourly rate and an amount to be paid. This form requires the contractor to fill in all service dates, number of hours on those dates, number of individuals served and if any amount of the service was charged to the offender or to an insurance company.

This level of detail, if submitted from all contractors, would provide the DOC with valuable, auditable information that can be used to inform clinical directors and business staff that contract deliverables are being met. It would also allow facility and field site managers to randomly audit those invoices and compare those dates with the scheduled dates of therapy sessions.

Finding 38

The DOC incurs costs for services provided before a fully executed contract is on file at the DOC. In some cases, services are provided before the Attorney General and Secretary of Administration sign the AA-14 that grants approval to enter into the contract.

A rule of contracting is to have an agreed-upon and fully executed document in hand before services begin. Our Office observed that a number of contracts, and subsequent amendments, were fully executed after the date services began. In some cases, it was only days, but in others it was more than a month.

In other instances, services were being provided before representatives of the DOC, the Attorney General's Office and the Secretary of Administration (where applicable) signed the AA-14 form granting approval to enter into the contract. Examples include:

- The statewide ISAP contract with Phoenix Houses of New England to provide services at the CCSCs was dated to begin June 3, 2002, but was not officially signed until July 16, 2002. The contractor billed the DOC \$33,600 for the entire month of June, and \$33,050 for the entire month of July. Additionally, the AA-14 was not signed until June 5, 2002 by the DOC and the Attorney General's Office and on June 28, 2002 by the Secretary of Administration.
- The contract to provide RSAT services by Phoenix Houses of New England was originally signed 10 days after services began on May 1, 2001. However, the second amendment to the contract, which extended the contract term for one year, was signed on July 10, 2002. Services began on May 1, 2002 and the contractor submitted invoices for \$32,910 and \$34,939 for services provided during the full months of May, June and July 2002. In addition, the AA-14 was not signed until May 21, 2002 by the DOC, May 27, 2002 by the Attorney General's Office and June 7, 2002 by the Secretary of Administration.

C. Contract Monitoring

The Department of Corrections does not have an independent system to evaluate the quality of inmate program services and ensure compliance with all contract requirements.

Finding 39: The DOC has allowed contractors to not comply with service agreements and the DOC has not issued penalties or held back payments.

Finding 40: The DOC utilizes multiple contracts to vendors in separate contract areas that are designed to provide supervision and evaluation. In some instances, these vendors are also providing direct services to offenders. This allows a contractor to hold potentially conflicting roles as both an evaluator and service provider.

General Recommendation

The DOC should establish written policies and procedures to provide contract monitors with clear protocols to evaluate the performance of contractors. To accomplish this task, the DOC should consider:

- Creating a contract monitoring team for each contract that is split up into at least three components: fiscal oversight, performance evaluation, and procurement. The first would ensure that all financial provisions of the contract are being met and documented, the second would ensure that all deliverables of the contract are being met and documented and the third would ensure that the contract file is complete and that all reports are filed timely and consistently.
- Conducting post-contract meetings with key State and contracted personnel to constantly evaluate the contracting system to ensure it is meeting the goals of the DOC and the private contractors. Any problems should be addressed in future contracts.
- Conducting an analysis of how to streamline the use of contractors to provide services, supervision, and evaluation of its offender treatment programs.

Finding 39

The DOC has allowed contractors to not comply with service agreements and the DOC has not issued penalties or held back payments.

The DOC has issued more than 60 contracts at a cost of nearly \$7 million since 2000 to provide a variety of offender treatment services. During our review of the offender treatment programs, we were unable to find any instance where a contractor was penalized for failing to provide required reports or services, even though evidence exists that such deliverables were not provided.

For example, the statewide ISAP contract with Phoenix Houses of New England to provide substance abuse services at the nine CCSCs requires the contractor to provide group counseling at each site, for a total of 32 across the state. The contract requires Phoenix Houses to deliver the following number of standard treatment groups at DOC CCSCs:

- Barre - 4
- Bennington - 4
- Brattleboro - 3
- Burlington - 5
- Newport - 2
- Rutland - 4
- St. Albans - 3
- St. Johnsbury - 4
- White River - 3

The contract also states:

“The number of groups at each site is flexible and may be adjusted to meet changing conditions. Adjustments in group quantity by location may be changed with the approval of both Parties, provided that overall number of groups (32) remains unchanged. The Parties may agree to change the overall number of groups, if a shift of resources to one of the other program components described in this contract is agreed to by both Parties.”

In turn, Phoenix Houses receives monthly payments from the DOC, based on a formula of receiving \$1,600 for the first group in each location and \$1,100 for each additional group. Monthly payments range from a full coverage amount of \$39,700 to a low of roughly \$32,000 with only partial coverage.

Each invoice from Phoenix Houses of New England includes a matrix that identifies each of the nine CCSCs, the number of first groups, amount billed, the number of second groups, amount billed, and a total due. There is no other information provided by the contractor, such as dates of service or material that verifies that a group was held, to the DOC.

While reviewing invoices submitted by Phoenix Houses of New England, and approved by the DOC's Clinical Director, there are number of instances in which there are either no group services being provided in St. Albans and White River from June through October 2002, or extremely limited services.

There is no evidence in the contract file that the DOC approved Phoenix Houses' reduction in services at these CCSCs, or explanation why the contractor was unable to provide services at these locations. While the State was not charged for services that were not provided, the fact remains that a key deliverable was not being provided to the State to carry out its offender treatment programs in two locations and the State charged no penalties against the contractor.

However, the contractor did submit revised invoices in April 2003 that appear to correct these numbers and show full or partial coverage in these areas during July, August, September and October 2002. The Clinical Director approved some of these adjustments, and the Director of Violence and Substance Abuse Services approved others. It is not clear what other evidence the contractor submitted to the DOC to adjust these numbers.

Per the contract, for each ISAP group not held the DOC is to be credited \$75. There is no evidence that credits were sought from the contractor related to non-performance.

Additionally, Phoenix Houses of New England is required to submit the following reports:

Monthly operational reports (that include):

- a. Number of individual assessments;
- b. Preliminary treatment plans;
- c. Program admissions;
- d. Number of units of service for each category of services (e.g. group sessions, treatment plan reviews, risk assessment testing, relapse prevention plan development, etc.) during the period.

Quarterly outcome/disposition reports (that include):

- a. The number of ISAP participants at the beginning of the period;
- b. The number of new participants added;
- c. The number of participants leaving the program (broken down by reason for discharge);
- d. A summary of offender demographics and treatment services delivered.

Quarterly and annual financial statements, using State-furnished templates:

- a. Quarterly reports will be due 45 days after close of the quarter;
- b. Final annual financial statements will be due 120 days after the close of the contract period.

Our Office attempted to review the above-mentioned reports submitted to the DOC and were given what files were on hand at the DOC. Given what our Office reviewed it became clear that either not all quarterly reports had been submitted, or the DOC had not properly maintained the contract file.

Additionally, those reports that were on hand lacked the specific information outlined above. There was also no evidence that the contractor had submitted either the monthly reports or the quarterly and annual financial statements as required in the contract.

Our Office's review of other contract areas that require reports found widespread compliance with reporting provisions. Those areas include Sex Offender Treatment, CSC, RSAT and IDAP.

Another program area we reviewed, RSAT, raised some concern regarding the level of detail reported back to the Federal government in the annual reports.

On the Federal form used to report annual progress, information is requested to assess how much the program costs per inmate. In each of the reports our Office reviewed, this line was left blank. However, both the DOC and the Department of Public Safety have allowed this to occur and the Federal government has endorsed the program.

It was also difficult to determine from these reports how many inmates had been dropped, and then re-enrolled, in the program on an annual basis. In assessing the cost of this program, these two details would be helpful and the DOC should endeavor to find a way to work with the contractor to provide this information.

Finding 40

The DOC utilizes multiple contracts to vendors in separate contract areas that are designed to provide supervision and evaluation. In some instances, these vendors are also providing direct services to offenders. This allows a contractor to hold potentially conflicting roles as both an evaluator and service provider.

The DOC relies on a variety of consultants to evaluate each of the offender treatment programs, at a cost of more than \$350,000 annually. These consulting services include:

- Direct IDAP services are provided by Spectrum Youth & Family Services in multiple locations throughout the State. This non-profit organization also provides statewide consultation and supervision services to the DOC - mainly by helping craft program guidelines and standards for tracking contractor performance and inmate treatment. The value of these contracts is roughly \$340,000 annually. The supervision/consultant contract is more than \$105,000 annually;
- The CSC program uses three contracted evaluators, and one of those evaluators is also providing direct group services in Bennington (this consultant also provides IDAP services). The total value of the evaluator contracts is more than \$100,000 annually;
- The sex offender treatment program uses several assessors and special consulting contracts to provide services other than direct therapy. The total value of these contracts is more than \$65,000 annually; and,
- Managed Correctional Resources provides additional supervisory and evaluation services under the direct supervision of the Clinical Programs Director to all of these above-mentioned program areas. The total value of this contract is up to \$65,000 for nine months of service.

A mix of contractor clinical staff (a cost included in the service contract) and State personnel oversee the three substance abuse program areas - the statewide ISAP, RSAT and the facility-based substance abuse treatment programs. There is a single, one-year \$5,000 contract with the Howard Center for Human Services to provide consultation for this program.

The DOC has staff designated as directors of these programs: Director of Violence and Substance Abuse Services, the Chief of Sex Offender Programs, and the director of Domestic Violence, Women Offender and Family Services. All of these positions report to the Clinical Programs Director.

Currently, the Clinical Programs Director is responsible for direct oversight of IDAP services and the Deputy Commissioner reviews and approves invoices. The director of IDAP services has been reassigned in the past year and is now the Director of Women Offender Services.

DOC staff said in interviews that certain specialty care positions are hard to bring into public sector pay grades. However, relying too heavily on outside contractors can result in Central Office staff spending more time monitoring invoices than conducting assessments and evaluations of actual services and ensuring that all program guidelines and DOC protocols and directives are being followed.

Both 3 V.S.A. §342 and Bulletin No. 3.5 require that before going out to bid, departments must determine that the cost of providing the service is a savings to the State, that the contract is not burdensome on State personnel to oversee and monitor, and that the service could not be done more effectively by State personnel. The DOC may find it useful to conduct such an evaluation before the close of each contract to determine if the services need to be re-bid, or if using State personnel would be more cost-effective.



Southeast State Correctional Facility in Windsor.

Purpose, Authority, Scope & Methodology

Purpose

The Office of the State Auditor is reviewing how the Department of Corrections (DOC) contracts for the following inmate services: Out-of-State Inmate Housing, Medical Services, Mental Health Services, Intensive Substance Abuse Programs, Sex Offender Treatment Services, Cognitive Self-Change Programs, and Intensive Domestic Abuse Treatment Programs. This report was prepared with the goal of providing compliance and performance information related to the DOC's systems of contract management.

Authority

This review was conducted pursuant to the Office of the State Auditor's authority outlined in 32 V.S.A. §§ 163 and 167.

Scope & Methodology

The scope of this review is to provide findings and recommendations focusing on three primary areas of contract management:

1. Contract Bidding;
2. Contract Payments; and,
3. Contract Monitoring.

The process includes reviewing the design and implementation of internal control systems related to contract management to ensure that established procedures and controls are being followed and continue to be appropriate, and to assess compliance with any relevant laws, rules, and regulations.

The review of contracts assessed compliance and internal controls in a number of ways, including:

1. An analysis of DOC policies and procedures and internal controls related to contract administration;
2. Interviews with key DOC staff, contracted staff, and attending Legislative hearings;

3. A review of contract files for documentation relating to the bidding, evaluation and awarding of contracts to determine compliance with Agency of Administration Bulletin No. 3.5, Contract Procedures and any other applicable rules and regulations; and,
4. A review of contract work specifications and deliverables, payment provisions, contractor invoices and DOC payments to determine if they are appropriately issued, recorded and processed.

This review is not an audit conducted in accordance with applicable professional standards. The purpose of an audit is to express an opinion. The purpose of a special review is to identify observations related to a particular issue or program, and to make recommendations so that the relevant department can better accomplish their mission and more fully comply with laws, regulations, or grant requirements.

Appendix A

Department's Response to Draft Review

May 21, 2004

Elizabeth Ready, Auditor of Accounts
132 State Street, Drawer 33
Montpelier, VT 05633-5101

Re: Commissioner's Response to Auditor's Review of the Department of Corrections' Oversight and Management of Selected Contracts for Inmate Services

Dear Auditor Ready:

I have reviewed the draft copy of the State Auditor Office (SAO) document: A Review of the Department of Corrections' Oversight and Management of Selected Contracts for Inmate Services. As you stated in your cover letter to me for that draft, the report's observations and recommendations, which reiterate the findings and recommendations of the SAO's initial report, A Review of the Department of Corrections Oversight and Management of Mental Health Services Contracts, "will add to the excellent work you and your staff have recently achieved in laying out a new direction for the Department, one founded on improved performance and accountability."

As you are aware, the Department has addressed the recommendations of the first report through strategies detailed in the Plan of Response presented to the Joint Legislative Corrections Oversight Committee on April 28, 2004. Those strategies will likewise serve to carry out the recommendations of this second report. Specifically, those documented strategies, some of which are already underway, will have the Department:

- Establish a contract administration oversight team that will ensure adherence to the spirit, intent and requirements of Agency of Administration Bulletin 3.5 and ensure and enforce financial performance and penalty provisions of contracts;
- Conduct a review of invoices paid under all service contracts to assess possible overpayments and seek to recover funds from contractors that may be owed to the Department;
- Develop written policies and procedures to provide contract monitors with clear protocols to evaluate contractor performance. This will be carried out within the context of the planned development of both internal and external Quality Assurance units focusing on the operations of the Department and its contractors, with the monitoring of the medical, mental health and substance abuse services contracts conducted by the Department of Health.

Elizabeth Ready, Auditor of Accounts
May 21, 2004
Page Two

Regarding the report's references to and advocacy for the standards and advice of the National Institute of Governmental Purchasing (NIGP), while I appreciate and the Department will incorporate, to the extent practicable, the NIGP information, it is the case that resource constraints will affect the degree to which these very extensive standards can be implemented. In fact, as I am sure you are aware, resource constraints will always significantly impact the ability of any State entity to have the capacity to accomplish the ideal.

That said, the Department of Corrections is committed to doing the best job it can do with the resources it has available and will work closely with the Agency of Human Services and the Department of Finance and Management to improve its oversight and management of its services contracts.

Sincerely,

Steven M. Gold
Commissioner

Appendix B

Supplemental Correspondence during Review

May 7, 2004

Mr. Steven Gold, Commissioner
Department of Corrections
103 South Main Street, 6 South
Waterbury, VT 05671-1001

Dear Commissioner Gold:

I continue to receive messages and letters from out-of-state inmates and their families about poor and unsafe living conditions and inappropriate treatment by staff at the CCA facilities in Kentucky.

With the current focus on DOC's out-of-state inmate housing contractor, I recently reviewed the DOC out-of-state housing audit manual. I was favorably impressed with the comprehensive nature of the audit checklist and the regular inspections being conducted by DOC staff to evaluate CCA's compliance with the contract.

One of the weaknesses we found in reviewing the DOC's in-state mental health contracts was DOC's reluctance to hold the contractor to all the terms of the contracts and to assess penalties when necessary.

Your new action plan stresses accountability and quality assurance in inmate services. The quality program you have instituted regarding out-of-state housing should give comfort to inmates, families and Vermont taxpayers concerned about conditions in Kentucky.

However, reports seem to indicate that CCA may not be meeting all contract terms. For example, the word from the Marion facility is that there is no kitchen or dining room; meals are delivered from another building and served in a hallway. Fire extinguishers and airpaks are reported as being missing. Recreation and library spaces, and the segregation unit, are reported to be small. Staff may be insufficient at times, which is another safety concern. If critical deliverables in the contract are not being provided, the State should consider financial penalties and must insist that corrective actions are quickly taken. I would be interested in knowing your views on the situation.

Sincerely,

Elizabeth M. Ready
Vermont State Auditor

The DOC's reply to the May 7 letter

Via e-mail

May 14, 2004

Dear Auditor Ready:

In response to your letter of May 7, 2004, regarding complaints about poor and unsafe living conditions and inappropriate treatment by staff at the CCA facilities in Kentucky, I have consulted both with my staff who directly oversee the CCA contract operations there and with CCA officials concerning the specific issues you have raised with the Marion Adjustment Center.

The Marion facility, as are all CCA facilities, is an American Correctional Association (ACA) accredited facility, which means that it meets all the life and safety standards set by that organization. CCA officials informed me that when it was reviewed, it received a score of 100%, the highest score possible. ACA accreditation is the standard for correctional facilities in the USA. CCA staff specifically said that all ACA required fire safety equipment is appropriately placed in the facility. However, I believe that ACA does not require airpaks; I will look into that further.

Regarding the general issue of lack of sufficient program, library and recreation space at the Marion facility, I have addressed that pointedly with CCA officials. They have responded immediately by: 1) reducing the population at Marion by 30 inmates, transferring them to the Lee Adjustment Center, about which we have heard no complaints regarding its space or program availability and which is a much more spacious facility. This results in approx. 200 VT inmates continuing to be housed in Marion. 2) Initiating the purchase of folding tables, similar to those used in many schools, which will be placed in the gym and brought out for each meal, for which there will be two sittings. This will create a dining hall situation that will be an improvement over the current practice of providing individual meals from a steam cart on the units. Regarding meal preparation, I have been assured that all meals are prepared under close supervision by CCA staff.

In addition, they are working on costing out: 1) pushing the secure perimeter fence out to make more outside recreation room and 2) bringing a modular building into the facility to use for program space (we do that here in VT at the Rutland facility for the school and it works well). Beyond that, they are looking into further reducing the population or even possibly eliminating Marion as a VT inmate housing site, using the Lee facility or another nearby in Tenn. I have expressed great interest in this last direction but regardless will insist that physical space at Marion be improved.

We will continue to monitor the contract closely and will insist on corrective actions.

Sincerely,
Steve Gold

Appendix C

Initial Letter of Engagement

February 10, 2004

Steve Gold, Commissioner
Department of Corrections
State of Vermont
103 South Main Street, 6 South
Waterbury, VT 05671-1001

Dear Commissioner Gold:

Based on a number of Legislative and citizen requests my Office is engaging the Department of Corrections (the Department) in a review of internal controls, business processes and procedures associated with the bidding, awarding, and oversight of contracts for services to Vermont inmates.

Our review will initially focus on some or all of Department contracts that provide the following inmate services: Out of State Inmate Housing, Medical Services, Mental Health Services, Substance Abuse Services, Sex Offender Treatment Services, Cognitive Self-Change Services, and Domestic Abuse Treatment Services.

This review will be conducted in accordance with our responsibilities and authority contained in 32 V.S.A. §§ 163 and 167. In connection with our audit of the Basic Financial Statements of the State of Vermont and the Federal Single Audit, we are required to perform certain procedures with respect to the internal control structure for the State and to test the State agencies' and departments' compliance with certain Federal and State statutes, rules and regulations. The general objectives of this Office's review are:

- To review the Department's systems related to contract management to ensure that established procedures are being followed and continue to be appropriate; and,
- To assess compliance with relevant laws, rules, and regulations.

In assessing compliance and Department systems internal controls, this review may include, but is not limited to:

- Analyzing Department policies and procedures and conducting interviews to understand business objectives and identify and prioritize areas of risk and assess the adequacy of manual and systems controls;

- Reviewing contract files for documentation relating to the bidding, evaluation of bidders and awarding of contracts to determine compliance with Agency of Administration Bulletin 3.5, Contract Administration and any other applicable rules and regulations;
- Reviewing contract work specifications and deliverables, payment provisions, contractor invoices and Department payments to determine if they are appropriately issued, recorded and processed; and,
- Assessing the adequacy of the Department's oversight of contracts, including but not limited to cost containment, quality assurance and data management.

Michael Clasen, Deputy State Auditor, and George Thabault, Chief of Special Audits and Reviews, will coordinate the review for the Office. Mr. Clasen will be the primary contact for your staff throughout the review and he may be reached at 828-4633 or by e-mail at Michael.Clasen@state.vt.us. In addition to staff from my Office, we may utilize the expertise of outside consultants to assist us in this review. I encourage you or your staff to contact Mr. Clasen or me if you have any questions.

The review will result in a report to be distributed to the General Assembly, the Governor, the Agency of Administration, the Department of Finance and Management and the general public. When the process is complete a draft report will be provided to you for your evaluation of factual accuracy and your response. A Management Representation Letter verifying that all relevant information and documentation was provided to the State Auditor's Office will be requested from you upon completion of the review.

We look forward to working with you and your staff and appreciate your cooperation.

Sincerely,

Elizabeth M. Ready
State Auditor

Cc: Senator Vincent Illuzzi, Chair, Senate Committee on Institutions
Senator Richard Sears, Chair, Joint Legislative Corrections Oversight Committee
Representative Cola Hudson, Chair, House Committee on Government Operations
Representative Margaret Hummel
Charles Smith, Secretary, Agency of Human Services

To obtain additional copies of this report contact:

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State Auditor

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This report is also available on our website:
www.state.vt.us/sao