



U. S. Department of Justice

Federal Bureau of Prisons

Office of Legislative Affairs

Washington, DC 20534

May 6, 2024

The Honorable Elizabeth Warren
United States Senate
Washington, DC 20510

Dear Senator Warren:

This responds to your February 28, 2024, letter regarding the Federal Bureau of Prisons' (BOP) expired contract with the American Correctional Association (ACA). We are sending substantively identical responses to the other Members who signed your letter.

Although there are no federal mandates regarding accreditation of our facilities, BOP recognizes the value offered by adherence to health, safety, and security standards, such as those offered by the ACA. After careful consideration, however, BOP declined to renew its contract with ACA and decided instead to explore other options to ensure continued improvement and innovation in correctional standards for the well-being of adults in custody (AICs) and BOP employees. BOP remains committed to a rigorous assessment of its policies and practices involving all levels of leadership to inform continuous organizational improvement. Moving forward, BOP will evaluate internal control options to ensure its facilities continue to meet and exceed the highest standards of correctional excellence with a renewed commitment to transparency and accountability in support of BOP's strategic goals.

BOP's most recent contract with ACA (15BNAS19DR00109) expired on March 31, 2024. Over the last five years, the cost of this contract was \$2,136,166.99.

In accordance with the recently expired contract requirements and the *ACA Manual of Accreditation Policy and Procedure* from August 2020 (ACA Manual), all BOP institutions the ACA accredited required an on-site, in-person visit. During the most recent contract period (October 1, 2018 – March 31, 2024), 107 of the 122 BOP facilities were audited by ACA for reaccreditation. All 107 audits included an on-site, in-person visit to the facility by the ACA visiting committee. Of those 107 facilities, 105 received reaccreditation after being audited by the contractor. BOP appealed the decisions for the other two facilities, with one resulting in reaccreditation and the other pending appeal proceedings.

The most recent BOP contract with ACA stated, "up to three auditors may be assigned to an audit, and only one additional auditor may be assigned for a complex facility." Typically, ACA management scheduled two auditors for detention centers or stand-alone facility locations, and three auditors for complex facility locations. Initial accreditation and reaccreditation audits of correctional institutions required auditors on site for up to three days in addition to reasonable

travel time. The typical audit week consisted of three 8-hour workdays, for a total of 24 auditing hours per on-site audit. Staff Training Centers and Central Office audits were scheduled for two 8-hour workdays, for a total of 16 auditing hours.

Per the *ACA Manual*, a waiver may be requested for a standard of compliance -- specifically, in instances where a “non-mandatory” ACA standard is found to be “non-compliant” and a “Plan of Action” (POA) is not feasible. This could result from potential POA requirements that conflict with statutory or other regulatory considerations, require unrealistic physical plant modifications, or call for other changes that would render the POA beyond the limits of what would be considered reasonable for the agency to implement effectively. Further, ACA policy states waivers are granted only in situations where “the totality of conditions safeguard the life, health, and safety of offenders and staff.” Waiver requests are only considered for non-compliant, non-mandatory standards. Mandatory standards cannot be waived.

Given the broad range of issues covered by ACA standards and differences between facilities, a waiver can legitimize the non-compliance of a non-mandatory standard. It is very common for facilities to have at least one waiver of an ACA standard out of the 579 ACA standards contained in the *ACA Manual* for correctional institutions. Specific to the BOP, waivers were predominantly used when the facility infrastructure predated the ACA standard and modifying the infrastructure in a way to achieve compliance with the non-mandatory standard in question would be either structurally impossible while still ensuring the safety of inhabitants or unfeasible due to associated costs. When requesting waivers, BOP included descriptions of mitigating techniques used to minimize the impact of the non-compliant standard on AICs, employees, and the community, while ensuring the safety and security of all involved.

A POA should be created by an institution when an ACA standard is listed as “non-compliant,” including when institution requested appeals of non-compliance and waiver requests have been denied by the panel. The POAs must satisfy any concerns the visiting committee and the panel commissioners have with the non-compliant standard. ACA has verified the sufficiency of POAs in two ways, as described below.

For non-mandatory standards found to be out of compliance, ACA typically verifies sufficiency through the annual report process. Specifically, institutions that have been reaccredited are responsible for turning in an annual report during the anniversary month of their accreditation/reaccreditation. The annual report includes discussion of the status of POAs. It allows the institution to self-report on each POA’s level of effectiveness and progress made by the facility in the POA implementation.

For mandatory standards found out of compliance, ACA allows for a period of corrective action. The institution may submit a POA at the panel hearing. If accepted, the panel can approve the POA in lieu of not recommending reaccreditation. In these instances, reaccreditation is granted but reaccreditation is dependent upon the results of a monitoring visit, where an auditor performs an abbreviated on-site audit to assess the effectiveness of the POA. ACA used the monitoring visit process with BOP facilities on 10 occasions during the most recent contract period.

BOP employee attendance at ACA semi-annual conferences for accreditation and reaccreditation purposes varied. Approximately 35-40 BOP employees typically attended, with the group including representatives from the Program Review Division and BOP leadership, as well as wardens representing approximately 20 institutions. Additionally, 10-15 employees of the National Institute of Corrections (NIC) usually attended. BOP did not track speakers for previous ACA conferences and defers to ACA regarding information on ACA conference speakers.

BOP has researched external auditing resources used by other correctional agencies (e.g., state and county level prisons and detention centers) and consulted with NIC regarding alternative auditing resources. Additionally, BOP posted a Request for Information (RFI) regarding options for compliance management to better assist BOP in achieving its review objectives. BOP received multiple responses to its RFI and is evaluating whether viable options exist that do not depend on revenue from audited facilities.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "David D. Mapp", with a stylized flourish at the end.

David D. Mapp
Chief
Office of Legislative Affairs