

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE INSPECTOR GENERAL**

**AUDIT OF
DISTRICT-OWNED NURSING HOMES**



**CHARLES J. WILLOUGHBY
INSPECTOR GENERAL**

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Inspector General

Inspector General



September 23, 2011

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Natwar M. Gandhi, Ph.D.
Chief Financial Officer
Office of the Chief Financial Officer
The John A. Wilson Building
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Washington, D.C. 20004

Dear Dr. Thompson, Mr. Staton, and Dr. Gandhi:

Enclosed is our final report summarizing the results of the Office of the Inspector General's (OIG) Audit of the District-Owned Nursing Homes (OIG No. 10-1-02BY/HT). This audit was included in our 2010 annual audit plan.

As a result of our audit, we directed five recommendations to the Executive Director for the District of Columbia Office on Aging (DCOA), four recommendations to the Chief Procurement Officer, Office of Contracting and Procurement (OCP), and one recommendation to the Chief Financial Officer, Office of the Chief Financial Officer (OCFO), that we believe are necessary to correct the deficiencies noted in this report. DCOA, OCP, and OCFO provided written responses to the July 15, 2011, draft report. However, DCOA did not respond to Recommendation 8.

The DCOA, OCP, and OCFO generally agreed with the report's findings, with the exception of Recommendation 8. However, DCOA did not provide completion dates for planned actions for any of the recommendations.

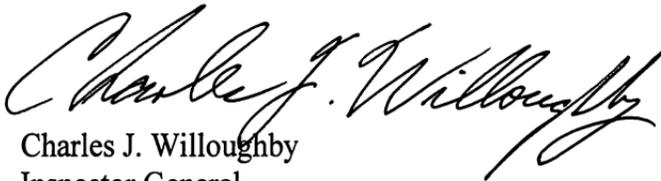
We consider the actions taken and planned by DCOA, OCP, and OCFO to meet the intent of the recommendations, with the exception of DCOA's lack of a response for Recommendation 8. We request that DCOA respond to Recommendation 8 and provide us with completion dates for all recommendations within 60 days of the date of this report. The full text of the DCOA, OCP, and OCFO responses are included at Exhibits D, E and F, respectively.

Dr. Thompson, Mr. Staton, and Dr. Gandhi
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September 23, 2011
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We did not direct any recommendations to the nursing home management contractor referred to in our draft, however we provided a courtesy copy of the report to such contractor. The contractor furnished comments which we included in Exhibit G.

We appreciate the cooperation and courtesies extended to our staff by DCOA, OCP, and the contractor. If you have questions, please contact me or Ron King, Assistant Inspector General for Audits, at 202-727-2540.

Sincerely,

A handwritten signature in black ink, reading "Charles J. Willoughby". The signature is written in a cursive style with a large, prominent "C" at the beginning.

Charles J. Willoughby
Inspector General

CJW/ws

cc: See Distribution List

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Mr. Brian J. Hanlon, Interim Director, D.C. Department of Real Estate Services
Ms. Solanges Vivens, President, VMT Corporation

AUDIT OF THE DISTRICT-OWNED NURSING HOMES

ACRONYMS

CAB	Contract Appeals Board
CFO	Chief Financial Officer
CA	Contract Administrator
CMS	Centers for Medicare and Medicaid Services
COTR	Contracting Officer Technical Representative
CY	Calendar Year
DCOA	District of Columbia Office on Aging
DCMR	District of Columbia Municipal Regulations
DHCF	Department of Health Care Finance
DOL	U. S. Department of Labor
DRES	Department of Real Estate Services
GL	General Ledger
FY	Fiscal Year
JBJ	J. B. Johnson Nursing Center
MMIS	Medicaid Management Information System
OCFO	Office of the Chief Financial Officer
OCP	Office of Contracting and Procurement
OIG	Office of the Inspector General
OoA	Office on Aging
REGIS	Regis and Associates

AUDIT OF THE DISTRICT-OWNED NURSING HOMES

SCA	Service Contract Act
SOAR	System of Accounting and Reporting
VMT	Vital Management Team Long Term Care Management, Inc.
WCAS	Washington Center for Aging Services

EXECUTIVE DIGEST

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EXECUTIVE DIGEST

OVERVIEW

Enclosed is our final report summarizing the results of the Office of the Inspector General's (OIG) Audit of District-Owned Nursing Homes, the Washington Center for Aging Services (WCAS) and the J.B. Johnson Nursing Center (JBJ). This audit was included in the OIG's annual audit plan and is part of our continuous review of the District Medicaid program. The OIG initiated this audit because each home had been operated by Vital Management Team Long Term Management, Inc. (VMT) via long-term contracts to WCAS for over 20 years and JBJ for 15 years. The lack of rebidding raised the question of whether the District was paying the best possible price for management services of District-owned nursing homes. During 2010, both facilities changed from a management contract (e.g., overseeing nursing home operations) to a ground lease where the nursing homes are to be managed by private companies for approximately the next 20 years.

The original audit objective was to determine compliance by the Office of Contracting and Procurement (OCP) and the District Office on Aging (DCOA) with the District's contract award and administration procedures. When the District decided to discontinue the nursing home management contracts and lease the facilities to private nursing home operators, the initial audit objective was changed and expanded to review transition issues from District-owned nursing homes to ground leases; review compliance with the final management contracts; and determine the reasonableness of Medicaid and Medicare claims submitted by VMT on behalf of WCAS and JBJ.

CONCLUSIONS

VMT used approximately \$2 million of District funds without authorization and violated performance conditions of its WCAS contract valued at approximately \$750,000. These events occurred because DCOA lacked internal controls to provide adequate contract oversight. In addition, VMT, a long term District contractor, used its experience and assertive management style to execute questionable hiring practices and exercise improper account management. Without proper contract oversight, significant contract violations went unresolved or undetected for several years. As a result of our audit, we identified \$2.7 million in contract costs that the District could have avoided.

OTHER MATTERS OF INTEREST

On June 17 and 25, 2010, we met with OCP concerning VMT's proposal to handle the WCAS transition via a sole source contract. We expressed concern about the length and cost of this contract as well as the independence factor of VMT closing out its own work.

On June 28, 2010, we met with the Director of DCOA and the Contracting Officer's Technical Representative (COTR) to discuss several preliminary audit findings that demonstrated VMT's noncompliance with the terms of VMT's current contract to manage

EXECUTIVE DIGEST

WCAS. Subsequent to that meeting, OCP met with DCOA and the parties decided not to proceed with a sole source contract; but rather, to solicit bids for the work.

On July 30, 2010, OCP issued a bid announcement from the D.C. Supply Schedule and received several responses. On September 1, 2010, a contract was awarded to Regis and Associates for a maximum of \$626,912.

Additionally, our audit found that VMT and DCOA had 17 joint bank and investment accounts, 9 for WCAS and 8 for JBJ. We questioned this joint arrangement for handling District revenue because the joint accounts existed outside the District's system of internal controls.

SUMMARY OF RECOMMENDATIONS

We directed five recommendations to the Executive Director for the DCOA, four recommendations to the Chief Procurement Officer, OCP, and one recommendation to the Chief Financial Officer that we believe are necessary to correct the deficiencies noted in this report. The recommendations, in part, focus on:

- Implementing steps to recover \$1.8 million of District funds VMT used to settle a Department of Labor fine, without District approval;
- Implementing steps to recover \$195,489 VMT used to pay for its corporate legal fees, without District approval;
- Implementing steps to recover \$400,000 from VMT for violating conditions of the WCAS contract by not submitting claims for Medicare reimbursement;
- Implementing steps to recover \$357,839 from VMT for violating conditions of the WCAS contract, which prohibits subcontracting for services without proper approval;
- Developing procedures to expand COTR Training;
- Implementing periodic COTR meetings to share best practices;
- Developing procedures to outsource COTR services when specialized expertise is required; and
- Implementing policies that maintain relevant work experience for COTR personnel to ensure proper contract monitoring.

A summary of the potential benefits resulting from the audit is shown at Exhibit A.

EXECUTIVE DIGEST

MANAGEMENT RESPONSE

The Directors of DCOA, OCP, and OAG provided written responses to the draft report, as did nursing home operator VMT, which was provided with a courtesy copy of the July 15, 2011, draft of this report. According to the responses, DCOA and OCP will be working together to aggressively pursue the recovery of the funds we identified as owed by the contractor. DCOA, however, disagreed with the extent of oversight the audit believed the COTR should have been provided in order to identify and correct issues the audit identified. OCP provided a listing of initiatives it has developed and continues to develop to better inform COTRs of their responsibilities and provide them with new tools to assist in performing those responsibilities.

OIG COMMENT

We consider the actions taken and planned by DCOA and OCP to meet the intent of the recommendations.

INTRODUCTION

BACKGROUND

According to the D.C. Office on Aging's (DCOA) website,¹ DCOA "develops and carries out a comprehensive and coordinated system of health, education, employment and social services for the District's elderly population, who are 60 years of age and older." The agency's mission is to "advocate, plan, implement, and monitor programs in health, education, employment, and social services which promote longevity, independence, dignity and choice for our senior citizens."² DCOA's website also contains the following summary of its establishment and operations:

DCOA was created by DC Law 1-24 in 1975 as the District's State and Area Agency on Aging. It is structured to carry out advocacy, leadership, management program and fiscal responsibilities. On the program level, the Office on Aging oversees the operation of two on-site programs, the Information and Assistance Center, and the Senior Employment and Training Program. In addition, DCOA also provides nursing home care and services to District residents 18 years of age and older. Currently, the DCOA/District owns two nursing facilities that are privately operated and managed via contract and lease.³

DCOA provides a variety of community-based services to District seniors and their caregivers. DCOA's website indicates that it operates (in conjunction with the Department of Health Care Finance) "the Aging and Disability Resource Center (ADRC), a one-stop resource for long-term care information, benefits and assistance for residents age 60 and older and persons with disabilities age 18 and older."⁴ DCOA also was responsible for managing the WCAS and JBJ contracts for the District.

Washington Center for Aging Services

Washington Center for Aging Services (WCAS) is a Medicare/Medicaid certified facility, licensed and owned by the District of Columbia. WCAS is a 259-bed long-term care facility that provides skilled and intermediate nursing care to residents 60 years of age and older.

The facility also has a geriatric day program (adult day care) called "Center Care," an Alzheimer's special care unit, and offers respite care or short-term relief for caregivers, based on availability.

¹ [HTTP://dcoa.dc.gov/DC/DCOA/About+DCOA/Who+We+Are](http://dcoa.dc.gov/DC/DCOA/About+DCOA/Who+We+Are) (last visited Mar. 30, 2011).

² *Id.*

³ *Id.*

⁴ *Id.*

INTRODUCTION

JB Johnson Nursing Center

The JB Johnson Nursing Center (JBJ) is a 230-bed Medicare/Medicaid certified facility, licensed and owned by the District of Columbia to provide long-term, residential nursing care. It provides skilled and intermediate nursing care to hundreds of District residents as young as 18 years of age.

The Office of Contracting and Procurement

As set forth on its website, the Office of Contracting and Procurement's (OCP) mission is to "partner with vendors and District agencies to purchase quality goods and services in a timely manner and at a reasonable cost while ensuring that all purchasing actions are conducted fairly and impartially."⁵

The agency is organized into four Commodity Groups: Services; Goods; Transportation & Specialty Equipment; and Information Technology. OCP provides acquisition services to District agencies so that they have the supplies and services needed to support their missions. OCP contracting program officials assisted DCOA with preparation of the contracts for award to WCAS and JBJ.

Department of Real Estate Services

Per the Department of Real Estate Services (DRES) website, DRES "has primary responsibility for facility management services within the District government. DRES performs acquisition, construction, leasing, facility management, repair and alteration, facility modernization, and security services for tenant agencies and occupants of its facilities."⁶ DRES is comprised of five core divisions, each with distinct responsibilities. The divisions include: Portfolio; Facilities; Construction; Contracting and Procurement; and Protective Services. DRES assisted DCOA with preparation of the lease agreement executed for WCAS and JBJ.

⁵ [HTTP://ocp.dc.gov/DC/OCP/About+OCP/Who+We+Are?nav=&vgnextrefresh+1](http://ocp.dc.gov/DC/OCP/About+OCP/Who+We+Are?nav=&vgnextrefresh+1) (last visited Mar.30, 2011).

⁶ [HTTP://track.dc.gov/Agency/AMO](http://track.dc.gov/Agency/AMO) (last visited Mar. 30, 2011).

INTRODUCTION

Transition to Ground-Leased Facilities

Vital Management Team Long Term Care Management, Inc. (VMT) has managed WCAS for over 20 years and JBJ for 15 years pursuant to contracts awarded by OCP and administered by DCOA.

In fiscal year (FY) 2010, DCOA moved from a management contract to a ground-lease option for WCAS and JBJ. DRES issued requests for proposals for these two facilities. On April 2, 2010, the D.C. Council approved the WCAS ground-lease with Stoddard Baptist Home, Inc. (Stoddard), which had been competitively bid through DRES. A five-member committee evaluated the proposals and the recommendations for award were made to the D.C. Council by the Director of DRES.

OBJECTIVES, SCOPE, AND METHODOLOGY

The original audit objective was to determine OCP and DCOA compliance with the District's contract award and administration procedures. When the District decided to terminate the nursing home management contracts and lease the facilities to private nursing home operators, the initial audit objective was changed and expanded to review transition issues from District-owned nursing homes to ground leases; review compliance with the final management contracts; and determine the reasonableness of Medicaid and Medicare claims submitted by VMT on behalf of WCAS and JBJ.

To accomplish our objectives, we reviewed applicable laws, policies, and procedures. We conducted interviews with DCOA, DRES, OCP, WCAS, JBJ and contractor officials. We reviewed and analyzed management contract data, financial records, and video recordings of recent District Council hearings on the subject of District-owned nursing home operations. We also focused on the role of the Contracting Officer's Technical Representative (COTR)(or Contract Administrator), who is responsible for providing oversight and ensuring that the current management contractor complies with contract requirements.

The OIG issued a draft Management Alert Report (MAR), entitled *Transition Plan for Washington Center for Aging Services (WCAS)*, OIG MAR No. 10-A-01, was issued on June 9, 2010, and a final report issued on September 13, 2010. The MAR determined that DCOA had not prepared an adequate written transition plan that included prioritized goals and objectives. We recommended that DCOA give special attention to the multiple stakeholders and financial aspects of the transition to ensure that the interests of the District are protected. We considered the response from DCOA to be sufficient to meet the needs of a successful transition. However, in our final report, we identified some crucial tasks, such as collecting overdue accounts receivable and obtaining funds for prepaid insurance premiums that were not addressed in DCOA's transition plan. We recommended that these

INTRODUCTION

items be included in the written transition plan. DCOA's response indicated that action had been taken to correct the deficiencies noted in our final report of September 13, 2010.

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

PRIOR REVIEWS

We did not identify any prior reviews conducted in the last 5 years related to DCOA.

FINDINGS AND RECOMMENDATIONS

FINDING 1: CONTRACT APPEALS BOARD/DISTRICT INVESTMENT ACCOUNT
--

SYNOPSIS

VMT used \$1.8 million of District funds to pay a U.S. Department of Labor (DOL) fine without proper authorization from DCOA. In accordance with Section H.1 of contract POBY-2005-C-0003, VMT was required to pay its employees at WCAS according to the Service Contract Act (SCA) of 1965, as amended (41 U.S.C. § 351). This finding is related to an unresolved issue currently before the Contract Appeals Board (CAB) involving the payment of back wages resulting from a DOL investigation. The dispute arose when VMT initiated action against the District claiming VMT was not responsible for a pay provision in the contract. However, on September 25, 2008, DOL notified VMT that it owed back wages to employees totaling \$3,226,144 because of SCA violations. VMT then paid its DOL fine using funds from a District investment account without District authorization.

DISCUSSION

Contract Provisions

On October 22, 2004, the District executed contract POBY-2005-C-0003 with VMT to manage and operate the WCAS for FYs 2005-2009. This contract included many provisions for operating this 259-bed licensed Medicare and Medicaid certified nursing facility. The contract included the following provisions related to the SCA and financial responsibilities at WCAS:

Section B.1.1 Nursing Facility - The Contractor will be reimbursed for the nursing facility services under the contract through Medicare, the DC Medicaid program and residents fees. Approximately 96% of the nursing facility's revenue is generated by the D.C. Medicaid program. The remaining 4% is generated through Medicare and resident fees. The D.C. Office on Aging (OoA) will not reimburse the Contractor for this service. The proposed nursing facility budget must be within the revenue generated by the facility.

Section C.6.1.3 The Contractor shall manage the nursing facility within the revenue generated through Medicare, Medicaid and resident payments. There is no OoA subsidy for this service.

FINDINGS AND RECOMMENDATIONS

Section G.4.1 (a) The costs for performing this contract shall not exceed amounts specified in Section B...

Section H.1 The Contractor shall be bound by the Wage Determination No. 1994-2103, Revision No.32, dated 5/27/2004, issued by the U. S Department of Labor in accordance with the Service Contract Act of 1965, as amended (41 U.S.C. § 351) and incorporated herein as Attachment J.3 of this solicitation. The Contractor shall be bound by the wage rates for the term of the Contract. If an option is exercised, the Contractor shall be bound by the applicable wage rate at the time of the option. If the option is exercised and the Contracting Officer for the option obtains a revised wage determination, that determination is applicable for the option periods; the Contractor may be entitled to an equitable adjustment.

This contract language makes clear that VMT is responsible for the financial management of WCAS and that the District would not be responsible for any potential shortfalls in revenue. For accepting this risk, the District paid VMT approximately \$1 million a year to solely manage WCAS. Further, the contract states that the nursing facility operating budget – which would include fees and fines – was required to be funded by revenue the facility generated. The contract also specifies that revenue was to be generated through Medicare, Medicaid, and resident payments.

DOL Investigations

In 2007, the DOL conducted an investigation of VMT concerning the WCAS contract (POBY-2005-C-0003). The investigation focused on employees who worked in the Engineering Department at WCAS. The results of that investigation concluded that VMT owed \$162,510 for failure to pay prevailing wages and fringe benefits under applicable SCA wage determinations.

In 2008, the DOL conducted another investigation related to VMT's compliance with contract POBY-2005-C-0003, looking specifically into the terms of the SCA for all covered employees at WCAS. This expanded investigation reviewed all departments at WCAS using Service Center employees. As a result of that investigation, additional SCA violations were found based on VMT's failure to provide required health and welfare benefits as specified in the contract. The DOL held a final conference with VMT officials on March 18, 2008, to inform them of the results of the investigations.

FINDINGS AND RECOMMENDATIONS

VMT's Payments and Contract Appeal

On June 7, 2008, VMT processed payments from WCAS operating accounts via a special manual payroll. The total payment of \$162,510 to current and former employees of VMT who had worked in the Engineering Department of WCAS from September 2002 to October 2007, resolved part of the dispute with DOL. Employer taxes totaling \$13,604, were also paid from the WCAS operating accounts.

VMT's attorney contacted the OCP Contracting Officer for the POBY-2005-C-0003 contract on July 9, 2008, and requested relief from the contract on issues related to cost reimbursements and the SCA provision.

On September 25, 2008, DOL sent a letter to VMT's corporate offices in Washington, D.C. The letter stated, in part:

The investigation, to date, has disclosed that the firm [VMT] underpaid 604 covered workers in the amount of \$2,326,144.23 for the period covering 10/15/2004 through 10/14/2007. In addition, you have advised the Department of an additional amount of back wages due covered workers for the contract period commencing 10/15/2007 through March 2008 in the approximate amount of \$900,000. Therefore, total back wages found due in this case amount to \$3,226,144.23 to over 600 workers.

OCP sent VMT a certified letter on October 14, 2008, notifying VMT that its request for relief was denied. Pursuant to D.C. Code § 2-309.04 (2006), the contractor filed notice of its appeal of OCP's decision to CAB on January 8, 2009, and subsequently filed a complaint for damages and/or equitable adjustment and other relief on February 9, 2009.⁷

As a result of the DOL investigation, VMT made two additional payments to WCAS employees, as follows:

- On September 20, 2009, VMT processed payments for distribution between September 25, 2009 - October 2, 2009, for WCAS employees entitled to back pay through a special manual payroll from WCAS operating accounts. The amounts paid to current and former employees totaled \$1,715,815 for work performed at WCAS from October 2004 to July 2008.

⁷ We contacted a representative from the CAB to discuss the status of this case. At the time of our field work, the case remained on the CAB docket but had been inactive for close to a year. As a result of our meeting, CAB contacted the D. C. Office of the Attorney General (OAG) to determine if a resolution had been made. The CAB representative told us that the OAG planned to contact the parties involved in the case and urge closure.

FINDINGS AND RECOMMENDATIONS

The total paid was less than the \$3,226,144 cited in the DOL audit report because VMT negotiated a lesser amount. In addition, VMT paid employer taxes totaling \$142,899 from the WCAS operating accounts.

- On September 23, 2009, to cover the 2009 back pay (\$1,715,815) and taxes (\$142,899), VMT's President and CEO authorized a wire transfer for \$1,858,714 between a District investment account and the WCAS operations account. The investment account contained funds owned by the District but reserved for the exclusive use of the District owned nursing homes. A VMT employee and two DCOA employees were authorized signatories for the WCAS investment account allowing this transfer to occur. We noted that the DCOA Director did not approve the transaction unlike previous transfers of this type. When we asked the Director of DCOA why he did not sign this transfer signifying its approval, he said that during a prior meeting with the VMT President, he told her that District funds could not be used to pay the DOL obligation. He assumed that his instructions were carried out because he did not sign or authorize a transfer from any District accounts for this purpose.

We also asked the COTR for the WCAS contract, who had direct monthly contact with VMT on financial matters, whether she knew that VMT transferred funds from the investment account to the WCAS operating account to pay DOL obligations. The COTR said no; she assumed that the payments were made from WCAS operating account and was unaware that a transfer came from a District investment account. According to the OCP decision, VMT should have paid DOL from its own funds.

Financial Position of VMT

During discussions regarding the DOL assessment, VMT expressed concerns about the impact on its finances. VMT hired an attorney to represent its interests and in a letter to the District on July 9, 2008, VMT's attorney stated, "Neither VMT nor the Center can sustain that burden [SCA contract provisions]". VMT and the Center will be driven into ruin by the conflicting demands of the District and the U.S. Department of Labor."

FINDINGS AND RECOMMENDATIONS

As evidenced by Table 1 below, VMT was far from financial ruin. For the 5-year period 2004 to 2008, approximately \$3.5 million was distributed to the only VMT stockholder, an average of \$700,000 per year. Further, in 2008, without District approval, VMT transferred \$1,860,000 from District accounts to pay the DOL assessment, but in the same year distributed \$1,796,000 to its only stockholder.

Table 1.		Summary of VMT Finances Calendar Years 2004-2008		
Calendar Year	Total Revenue	Total Operating Expenses	Income From Operations	Distributions to Stockholder
2004	\$5,620,000	\$5,485,000	\$135,000	\$113,206
2005	\$6,325,000	\$5,515,000	\$810,000	\$500,000
2006	\$6,870,000	\$6,230,000	\$640,000	\$308,457
2007	\$6,900,000	\$5,960,000	\$940,000	\$830,000
2008	\$8,140,000	\$7,020,000	\$1,120,000	\$1,795,994

RECOMMENDATION:

We recommend that the Executive Director, DCOA and Chief Procurement Officer:

1. Take the necessary steps including consulting with the Office of the Attorney General, as appropriate, to recover the \$1.8 million of District funds that VMT transferred without the District's authorization and used to settle a DOL assessment.

DCOA RESPONSE

DCOA agreed with our recommendation, consulted with the OAG, and will work with OCP and OAG as appropriate to recover District funds. DCOA's full response is included at Exhibit D.

OIG COMMENTS

We consider DCOA's planned actions to meet the intent of our recommendation.

FINDINGS AND RECOMMENDATIONS

OCP RESPONSE

OCP does not agree or disagree with the recommendation. OCP stated that it would coordinate with the DCOA and OAG and work aggressively to pursue all options to recover funds identified in this report, and will provide the OIG with a status report at the end of the first quarter of fiscal year 2012. The full text of OCP's response is included at Exhibit E.

OIG COMMENTS

We consider OCP's planned actions to meet the intent of our recommendation.

FINDINGS AND RECOMMENDATIONS

FINDING 2: WCAS AND JBJ OPERATING ACCOUNTS

SYNOPSIS

VMT incurred corporate legal fees related to its management of WCAS and JBJ nursing homes. Twenty-six payments were made to two law firms for services related to a DOL investigation and an organized labor effort at the two nursing homes. VMT used funds from a WCAS operating account to pay for these legal expenses amounting to \$195,487. Section C.6.1.3 of contract POBY-2005-C-0003 states that VMT alone is responsible for the financial management of WCAS and that the District is not liable for any potential shortfalls in revenue. Therefore, these expenses should have been paid from VMT corporate accounts. This condition was caused by DCOA's failure to provide adequate oversight for the contractor's financial activities. As a result, the contractor improperly spent \$195,487 of District funds for VMT corporate expenses.

DISCUSSION

Contract Language for the WCAS

Section B of the WCAS contract (POBY-2005-C-0003) states that the contract is a "multiyear Cost Reimbursement type contract with a Fixed Fee." The District paid VMT an annual management fee in the amount of \$1,075,000 for FYs 2006 – 2010. The contract also contains the following language:

Section B.1.1 Nursing Facility - The Contractor will be reimbursed for the nursing facility services under the contract through Medicare, the D.C. Medicaid program and residents fees. Approximately 96% of the nursing facility's revenue is generated by the D.C. Medicaid program. The remaining 4% is generated through Medicare and resident fees. The Office on Aging [] will not reimburse the Contractor for this service. The proposed nursing facility budget must be within the revenue generated by the facility.

Section C.2.10 The operating expenses of the nursing facility are Covered by the revenue generated from Medicare, Medicaid, and resident payments. There is no [Office on Aging] subsidy for this service.

FINDINGS AND RECOMMENDATIONS

Section C.6.1.3 The Contractor shall manage the nursing facility within the revenue generated through Medicare, Medicaid and resident payments. There is no [Office on Aging] subsidy for this service.

Contract Language for the JBJ

Section B.1 of the JBJ contract (PO-JA-2003-C-0039) states that the contract is a firm-fixed price contract with a management fee to be paid on a monthly basis in equal installments. The annual management fees for the contract are set forth in Table 2 below:

Table 2. VMT Management Fee at JBJ Nursing Home FYs 2006-2010		
Fiscal Year	Annual Management Fee	Monthly Management Fee
2009 & 2010	\$996,000	\$83,000
2006 to 2008	\$980,662	\$81,721

For legal services provided during July 2007 - June 2010, VMT paid two law firms a total of \$195,487 from VMT and JBJ operating accounts, as detailed below:

- In the first case, VMT made six payments totaling \$13,980 to Law Firm A for services related to action taken by VMT against the District. VMT filed a complaint against the District alleging that the CO should have granted VMT's request to remove the SCA provision in the WCAS contract, raise the contract's reimbursement ceiling and allow for an equitable adjustment to cover SCA fringe benefits and other costs. These payments were made from a WCAS operating account and covered the period July 2007 to January 2008. (See Finding 1 of this report for a complete discussion of the DOL investigation.)
- In the second case, VMT made 13 payments to Law Firm B for various forms of legal advice in connection with a campaign by VMT employees at WCAS to unionize. The work performed by the law firm involved union meetings, meeting strategy, election preparation, and legal bargaining obligations. These payments were made from a WCAS operating account, totaling \$107,258, and covered the period May 2009 to April 2010.

FINDINGS AND RECOMMENDATIONS

- In the final case, VMT made seven payments to Law Firm B for various forms of legal advice and assistance regarding an attempt by JBJ employees to unionize. The legal services involved drafting collective bargaining agreements, legal research, discussing unfair labor practices, counting ballots, and drafting correspondence. VMT paid \$74,249 from a JBJ operating account to cover these services rendered during January 1, 2010 - June 30, 2010.

Section C.3.1 of the JBJ contract (PO-JA-2003-C-0039) states VMT shall appoint a licensed Administrator to be responsible for certain duties, including the following:

C.3.1.1 Compliance with all requirements necessary in order to maintain the existing Medicaid and Medicare certification of the Center and shall comply with applicable District and Federal laws, rules, regulations and the District's State Plan for Medical Assistance hereinafter referred to as the "State Plan".

C.3.1.2 Provide all personnel, supplies, operating materials and services necessary for the operation of the Center, including but not limited to, utilities, and for the maintenance of the Center's surrounding grounds, except as modified by this contract or applicable laws or regulations.

The contract also places certain fiscal requirements on VMT, including the following:

C.4.2 The Contractor shall act as the fiscal agent for the Department of Human Services (DHS) in the billing, collection, and accounting of all Medicaid, Medicare (including cost reports) private-pay and other third-party payments for services provided to the Center residents, and any other revenue which may be generated from the operation of the Center.

C.4.3 The Contractor shall pay expenses incurred, including utility bills, in managing the Center.

Responsibilities of VMT, WCAS, and DCOA

The expense to take legal action against the District and get legal advice on how to handle labor issues are management costs that should have been paid from VMT's corporate accounts and not from income generated by the operation of WCAS or JBJ nursing facilities. These costs concerned the unionization of employees and the nonpayment of wages. VMT's management decision relative to employees was not a direct result of operations at WCAS or JBJ nursing facilities. The contract does not entitle VMT to reimbursement of these costs.

FINDINGS AND RECOMMENDATIONS

VMT employees worked in the Finance Department at WCAS and had direct contact with the President and the Chief Financial Officer (CFO) of VMT. These VMT employees did not interact with DCOA and had no responsibility to enforce provisions of the contract covering WCAS. Contract enforcement was the responsibility of DCOA and the COTR who worked at DCOA. On a monthly basis the COTR received financial updates but did not get involved in approving payments made by WCAS. The COTR rarely saw detailed invoices for payment. The monthly expense reports were presented in summary form with no expense detail. Without looking at a detailed expense report, there would be no reasonable way for the COTR to know that improper payments were made.

Through our review of invoices, we found that invoices did not always contain the support or detail to determine exactly what services were rendered. Sometimes the bills were paid from detailed billing information or from balances forwarded that did not indicate the nature of the bill. In fact, the confusing billing statements resulted in duplicate payments to WCAS in November of 2008 and March of 2009.

Actions Taken to Recover Payments

On June 28, 2010, the OIG discussed with DCOA the payment of VMT's legal fees along with several other issues. The purpose of the meeting was to inform DCOA about our preliminary audit findings because of possible future decisions related to VMT. At the time, DCOA was in the process of deciding issues for the lease of the nursing homes and selecting a vendor to conduct transitioning to leased facilities.

On July 12, 2010, the OIG also shared information about the legal fees with OCP officials and provided them with the detailed invoices from the WCAS for these payments. On July 13, 2010, OCP sent a certified letter to VMT informing them that OCP was disallowing costs of \$121,238. To recoup these disallowed costs, section H.2.1 provides OCP with authority to reduce amounts found by the CO not to constitute allowable costs as adjusted for prior overpayments or underpayment.

On August 27, 2010, the OIG shared information about additional legal fees with OCP officials and provided them with the detailed invoices from the JBJ nursing home for these payments. On August 31, 2010, OCP sent a certified letter to VMT informing them that OCP was disallowing costs of \$34,135. To recoup these disallowed costs, OCP requested repayment of the disallowed amount and gave VMT the option of paying the District directly or deducting the amount from the next VMT monthly management fee. In either case, VMT was required to take action within 30 days after receipt of OCP's decision.

FINDINGS AND RECOMMENDATIONS

On October 5, 2010, the OIG again contacted OCP and DCOA about additional payments for legal services related to union activities. On that same day, OCP sent a certified letter to VMT officials informing them that OCP was disallowing costs of \$40,114.

In total, OCP required VMT to repay the District \$195,487 for legal fees that should have been paid from VMT's corporate account.

VMT's Response

In spite of communication through certified letters by DCOA and OCP to recover disallowed contract costs, VMT still attempted to get the District to pay its WCAS management fee. On July 12, 2010, OCP suspended the final monthly management fee to VMT and withheld the payment due on July 21, 2010. In August, the VMT CFO presented the July invoice to the DCOA COTR for payment but was refused. Later in August, the VMT's CFO again presented the invoice, this time to a Stoddard⁸ administrator who had been collecting invoices for payment under the expired WCAS contract. After checking the circumstances surrounding this invoice, the Stoddard administrator forwarded the request for payment to the CPA firm handling the transition and they refused payment. The CPA firm forwarded the invoice to DCOA, which also refused payment. VMT officials informed DCOA that they intend to appeal OCP's decision to withhold their management fee.

RECOMMENDATION

We recommend that the Executive Director, DCOA and Chief Procurement Officer:

2. Take the necessary steps including consulting with the Office of the Attorney General, as appropriate, to recover the \$195,487 of District funds VMT transferred without authorization to pay corporate legal fees that were disallowed according to the contract.

DCOA RESPONSE

DCOA agreed with the recommendation and stated that it had already recovered \$195,489 for legal fees. VMT appealed OCP's claim for back wages and fringe benefits to the CAB because VMT believed that the legal action it took prevented higher costs to the nursing homes for likely increased wages. The full text of DCOA's response is included at Exhibit D.

⁸ On April 2, 2010, the D.C. Council approved the ground lease with Stoddard Baptist Home, Inc. for the WCAS facility, effective July 2010.

FINDINGS AND RECOMMENDATIONS

OIG COMMENTS

We consider DCOA's planned actions to meet the intent of our recommendation.

OCP RESPONSE

OCP does not agree or disagree with the recommendation. OCP stated that it would coordinate with the DCOA and OAG and work aggressively to pursue all options to recover funds identified in this report, and will provide the OIG with a status report at the end of the first quarter of fiscal year 2012. The full text of OCP's response is included at Exhibit E.

OIG COMMENTS

We consider OCP's actions to meet the intent of our recommendation. At the time of the draft report OCP recovered these funds by withholding a portion of the contractor's last management fee.

FINDINGS AND RECOMMENDATIONS

FINDING 3: WCAS MEDICARE BILLING

SYNOPSIS

VMT did not submit Medicare claims for reimbursement for services provided by WCAS during the period January 2008 to April 2010. VMT was required to complete this billing pursuant to contract requirements. We estimate that during this 28-month period, Medicare services of \$2.8 million were not billed to the federal government, resulting in the District losing approximately \$1.9 million in Medicare reimbursement.

DISCUSSION

Our audit found that in October 2008, VMT was trying to reduce expenses at the WCAS because of operating losses of \$4 million in FY 2006 and \$3.9 million in FY 2007. VMT took several actions to reduce operating losses such as reducing overtime hours and eliminating positions. One of the positions VMT eliminated in December 2008 was held by the employee who submitted Medicare billings for residents. According to WCAS staff in the Finance Department, they attempted to convince the VMT President that this was not a good idea, to no avail because the VMT President believed that Medicare billings could be handled by the person filing Medicaid claims.

In addition to the elimination of the Medicare billing position, the Medicare revenue process was further complicated by turnover in the Admissions Department. WCAS employed six different admissions managers from 2006 to 2010, and one of the managers resigned after working for only 1 week. The Admissions Department is crucial to Medicare billing because it collects required information needed in the billing process, such as Social Security and Medicare numbers, insurance information, and names of attending physicians. If this information is inaccurate, it contributes to delays or even disallowed payments.

In December 2008, WCAS had a daily average of 17 Medicare residents. The monthly average of Medicare residents for calendar year 2008 was 11. For calendar year 2009, the monthly average was 20, and 24 for the first 5 months of 2010, Medicare represented a significant revenue stream for WCAS because the facility's average monthly Medicare billing was approximately \$11,000.

FINDINGS AND RECOMMENDATIONS

From December 2008 until April 2010, WCAS did not employ a person devoted to billing Medicare claims, rather, WCAS only submitted Medicare billings when the Medicaid billing employee had time. Medicare billing often requires special coding, and the WCAS Medicaid billing employee could not keep up with the increased workload.

Section C.6.1.2 of the WCAS contract states that: The Contractor shall act as the fiscal agent for the Office on Aging in the billing, collection and accounting of all Medicaid, Medicare (including cost reports and electronic submission of Minimum Data Set), private-pay and other third-party payments for services provided on behalf of Center residents and Center Care participants, and any other revenue which may be generated from the operation of the facility and used for general operational expenses as well as for the capital, facility repair, equipment and renovation costs of the facility.

VMT's failure to submit Medicare reimbursement requests on behalf of the District was caused by poor judgment on the part of VMT and a lack of oversight by the DCOA COTR. It not only resulted in reduced cash flow for the operation of WCAS, but the District also lost revenue of approximately \$400,000 because Medicare claims were not submitted. Medicare claims for any fiscal year must be submitted within 15 months from the end of that fiscal year.

A public accounting firm audited WCAS financial statements and found that WCAS' accounts receivable balance increased from \$2.5 million in 2007, to \$4.7 million in 2009. The percentage of those balances increased from 23% in 2007 to 43% in 2009, and the Medicare bad debt balance increased from \$800,000 in 2007 to \$3.5 million in 2009.

DCOA officials should have questioned the significant increase in accounts receivable reported in the facility's annual financial audit. These reports were available to DCOA, however, we inquired several times at DCOA and found no indication that DCOA officials were aware of the significance of the reported numbers or that anyone asked questions to determine the reason for the increase in accounts receivable.

RECOMMENDATION

We recommend that the Executive Director, DCOA and Chief Procurement Officer:

3. Take the necessary steps, including consulting with the Office of the Attorney General, as appropriate, to recover \$400,000 from VMT for its failure to submit Medicare claims in a timely manner within 15 months from the end of FY 2007 through 2009.

FINDINGS AND RECOMMENDATIONS

DCOA RESPONSE

DCOA does not agree or disagree. DCOA said it could not comment further on this violation because DCOA claims it is not responsible for day-to-day monitoring of nursing facility operations. DCOA also stated that it did not possess the expertise or personnel to review Medicaid or Medicare billings or claims. As a result, DCOA stated that it will consult with the OCP and OAG regarding VMT's failure to submit \$400,000 worth of Medicaid claims to better determine the next course of action in recovering funds. The full text of DCOA's response is included at Exhibit D.

OIG COMMENTS

An analysis of nursing home operations should begin with year-to-year comparisons of revenue and expenses and note questionable representations. The COTR should not need extensive expertise to identify trends that could lead to questions in determining the financial well-being of the facilities. The COTR cannot solely rely on the contractor to tell the District that things are going well. The analysis does not need to be conducted daily. However, it is the COTR's responsibility to monitor the contract.

Subsequent to the issuance of the draft report, OCP, at DCOA's request, hired a contractor in part to bill outstanding Medicare claims that occurred during and after the time frame discussed in our report. From this process, DCOA should determine the net loss to the District and seek to recover that balance from the nursing home contractor.

OCP RESPONSE

OCP does not agree or disagree with the recommendation. OCP stated that it would coordinate with the DCOA and OAG and work aggressively to pursue all options to recover funds identified in this report, and will provide the OIG with a status report at the end of the first quarter of fiscal year 2012. The full text of OCP's response is included at Exhibit E.

OIG COMMENTS

We consider OCP's planned actions to meet the intent of our recommendation.

FINDINGS AND RECOMMENDATIONS

FINDING 4: DCOA/VMT CONTRACT

SYNOPSIS

VMT violated the terms of contract POBY-2005-C-0003 by subcontracting the billing of Medicare services for WCAS. Due to inadequate DCOA contract oversight, VMT subcontracted this function without prior approval from OCP. According to the contract, VMT must obtain Contracting Officer approval before subcontracting a service covered by the contract. In addition to not getting approval for the subcontract, VMT did not inform the COTR of the plan to obtain this service. As a result, VMT incurred an additional \$357,839 in expenses through a subcontract to file Medicare claims.

DISCUSSION

After VMT eliminated its position dedicated to filing Medicare claims in December 2008, it hired a collection agent in November 2009 to bill for Medicare services provided from October 2007 – August 2009. On November 2, 2009, VMT signed a contract with the collection agent to assist VMT in collecting approximately 518 Medicare Part A claims, totaling \$2.235 million, and 964 Medicare Part B claims, totaling \$341,045. VMT agreed to pay the subcontractor 15% of the cash received from the collection effort.

In April 2010, the parties amended the contract to pay the subcontractor 15% of cash received for the period October 2007 through November 2009 and 10% for the period December 2009 through July 2010.

According to VMT's contract with the District, VMT was responsible for billing all the services provided by WCAS. Section C.6.1.2 states:

The Contractor shall act as the fiscal agent for the Office on Aging in the billing, collection and accounting of all Medicaid, Medicare (including cost reports and electronic submission of Minimum Data Set), private-pay and other third-party payments for services provided on behalf of Center residents and Center Care participants, and any other revenue which may be generated from the operation of the facility and used for general operational expenses as well as for the capital, facility repair, equipment and renovation costs of the facility.

FINDINGS AND RECOMMENDATIONS

In addition, VMT was not allowed to subcontract for services required by the contract without approval of the CO. Section I.7 states:

The Contractor hereunder shall not subcontract any of the Contractor's work or services to any subcontractor without the prior, written consent of the Contracting Officer. Any work or service so subcontracted shall be performed pursuant to a subcontract agreement, which the District shall have the right to review and approve prior its execution by the Contractor. Any such subcontract shall specify that the Contractor and the subcontractor shall be subject to every provision of this contract. Notwithstanding any such subcontractor approved by the District, any Contractor shall remain liable to the District for all Contractor's work and services required hereunder.

We interviewed the OCP CO responsible for this contract, who disclosed having no knowledge or record of ever communicating with VMT to approve the use of a subcontractor to collect Medicare claims. DCOA and OCP were unaware of the magnitude of delayed Medicare billings because VMT did not follow the contract terms regarding filing Medicare claims and obtaining prior approval for the subcontract and DCOA, did not exercise sufficient contract oversight. This delay resulted in lost revenue because some Medicare claims were not submitted within 15 months from the end of the fiscal year.

On January 8, 2010, WCAS issued the collection agent its first check for \$24,875. This check paid the subcontractor for reimbursement claims for 37 residents of WCAS who were provided services between October 2007 and May 2009. Since that initial check was issued, the collection agent has submitted 8 invoices for a total of \$357,839. As a result, WCAS incurred \$357,839 in Medicare claims filing expenses for services performed by a subcontractor although VMT was contracted and paid to perform these same services.

Not only was this subcontracting not approved by the District, the amount charged was excessive for the services provided. The rate of 15% for the collection of outstanding receivables may be reasonable, but, based on best practices, 15% for merely submitting Medicare claims is excessive. The collection agent performed similar work at JBJ from February to May 2008 and charged \$100⁹ per hour. Had the subcontractor charged the same rate at WCAS, it would have logged 3,578 hours or enough to work full-time for approximately 22 months.

⁹ The \$100 per hour rate is significant because Medicare billing for a month averaged about \$10,000. If the subcontractor charged 15%, it would cost the District \$1,500 to collect \$10,000. Using the WCAS accounting system, it would take a few hours to bill Medicare for \$10,000. Therefore, collecting \$10,000 would cost the District \$300 where the subcontractor charged an \$100 hourly rate versus \$1,500 based on the 15% fee.

FINDINGS AND RECOMMENDATIONS

The collection agent performed all its work at WCAS within a 9-month period. However, the subcontractor did not submit an hours-worked summary along with the invoices.

RECOMMENDATION

We recommend that the Executive Director, DCOA and Chief Procurement Officer:

4. Take action including consulting with the Office of the Attorney General, as appropriate, to recoup \$357,839 from VMT Corporation for subcontracting Medicaid billing services without proper authorization.

DCOA RESPONSE

DCOA does not agree or disagree with the recommendation. DCOA stated that it did not know that VMT was using a third-party collection agency to bill and collect from Medicare. However, DCOA was aware that VMT hired several contractors to assist in the operations of the facility. After receiving the finding, DCOA asked other nursing home vendors whether it was a common practice to seek outside assistance in collecting Medicaid and Medicare revenue. DCOA found this practice was not out of the ordinary. Nonetheless, if the contract was violated, DCOA will consult with OCP and OAG to determine the best course of action going forward. The full text of DCOA's response is included at Exhibit D.

OIG COMMENTS

DCOA's decision to consult with OCP and OAG to determine how to recover funds owed to the District meets the intent of our recommendation. The purpose of this finding was to identify services the District contracted for and what additional costs the District incurred when the contractor issued a subcontract for billing services, which the contract prohibited unless government approval was granted. The contract required VMT to process these billings, which negates the need for a third-party collection agency.

OCP RESPONSE

OCP does not agree or disagree with the recommendation. OCP stated that it would coordinate with the DCOA and OAG and work aggressively to pursue all options to recover funds identified in this report, and will provide the OIG with a status report at the end of the first quarter of fiscal year 2012. The full text of OCP's response is included at Exhibit E.

OIG COMMENTS

We consider OCP's planned actions to meet the intent of our recommendation.

FINDINGS AND RECOMMENDATIONS

FINDING 5: DCOA'S CONTRACT OVERSIGHT

SYNOPSIS

DCOA identified significant administrative and fiscal problems related to VMT's management of WCAS and JBJ nursing facilities; however, DCOA allowed VMT to continue to manage these two facilities. DCOA and the assigned COTR did not provide adequate contract oversight of VMT's performance and deliverables. OCP requires contracts managed by the District to have a designated COTR. COTR responsibility is assigned to the DCOA Director, who most often delegates these duties to a DCOA staff member in accordance with OCP policy. Because DCOA provided inadequate contract oversight and monitoring, the District lost \$2.7 million.

DISCUSSION

OCP established the COTR role to perform critical oversight activities. The OCP 2009 Procedures Manual Chapter 4 § 4.1.6 – 4.1.26 regarding contract management identifies 21 activities for which the COTR may be responsible. These duties include the following:

- Assume primary responsibility to monitor the performance of the contractor during the period of performance;
- Identify and address performance issues; and
- Monitor subcontractor utilization, where applicable

In addition to these general COTR duties, the JBJ and WCAS contracts contain more specific language as described below.

COTR Language in JBJ Contract

In accordance with contract PO-JA-2003-C-0039, the COTR performs the following duties:

G.5.1 The COTR is responsible for general administration of the contract and advising the Contracting Officer as to the Contractor's compliance or noncompliance with the contract. In addition, the COTR is responsible for the day-to-day monitoring and supervision of the contract [, and ensuring] that the work conforms to the requirements of this contract and such other responsibilities and authorities as may be specified in the contract.

G.5.2 It is understood and agreed that the COTR shall not have authority any to make changes in the specifications/scope of work or terms and conditions of the contract.

FINDINGS AND RECOMMENDATIONS

G.5.3 The COTR will monitor the Center to observe the program and general operation in order to ensure adherence to this contract. Other fiscal and program staff of the District shall have the right to examine pertinent documents and records involving transactions relating to this contract. The services provided under this contract will be monitored by: Site visits, Reports from the Contractor, Personal conferences between the COTR and the Contractor or between their staffs, Review of all official certification and inspection reports, Review of documents submitted to satisfy requirements of this contract; and Investigation of complaints in conjunction with D.C. Department of Regulatory Affairs and the D.C. Office of Investigation and Compliance.

H.3.1 The COTR shall perform the duties of the DHS Property Administrator and be responsible to the Contracting Officer for monitoring the Contractor's compliance with the property provisions herein.

H.3.3 In the event any Government property is lost, damaged or stolen, the Contractor shall immediately notify the COTR by phone and follow up in writing. In addition, the Contractor shall immediately report any loss that may be due to theft to the local police.

H.3.5 All Government furnished property must be inspected and checked promptly at the time of receipt, any visible audible, or other external evidence of damage should be noted on the waybill with the signature of the Carrier agent. The Contractor shall send the COTR a full report of damage, including its extent, its apparent cause, and the estimated cost of repairs. The COTR will advise the Contractor of the action to be taken. For damage, defect, or error in delivery of Government property purchased by the Contractor, the Contractor is responsible for taking all corrective action.

H.3.6 For all property purchased or acquired, the Contractor shall submit to the COTR a document showing; (a) the contact number, (b) name of items; (c) manufacturer's name; (d) serial number (if possible); (e) acquisition document reference or data; (f) guarantee or warranty lapse date; (g) location; (h) unit price; (i) additional cost (if any) for transportation, installation, and taxes (each as a separate item).

H.3.18 The Contractor shall relinquish all keys to the Contracting Officer Technical Representative (COTR) at the termination of or expiration of the contract. The Contractor shall be fully responsible for

FINDINGS AND RECOMMENDATIONS

all keys and distribution of keys to staff during the contract period of performance.

COTR Language in WCAS Contract

Contract POBY-2005-C-0003 sets forth the following duties for the COTR:

G.8.1. The COTR is responsible for general administration of the contract and advising the Contracting Officer as to the Contractor's compliance or noncompliance with the contract. In addition, the COTR is responsible for the day-to-day monitoring and supervision of the contract, of ensuring that the work conforms to the requirements of this contract and such other responsibilities and authorities as may be specified in the contract.

G.8.2 It is understood and agreed that the COTR shall not have the authority to make changes in the specifications/scope of work or terms and conditions of the contract.

The inadequate oversight by DCOA has many potential causes including the lack of sufficient training by OCP. OCP provides 5 hours of training for employees who are assigned COTR duties. These classes are offered once a month. During the training the only information that a COTR receives is a Power Point handout. There are no advanced training classes or websites to further assist a COTR. OCP estimated that at any one time, the District has approximately 700 contracts and approximately 115 COTR's to monitor those contracts.

Another contributing factor to inadequate contract oversight is the lack of COTR experience for the complexity of the contracts managed. The contracts for both facilities had a combined value of over \$40 million. The COTR's lack of experience was compounded by insufficient time to adequately supervise operations. The DCOA COTR estimated that she spent about 35 to 40 percent of her time acting as a COTR with the remainder of her time dedicated to other tasks.

Firm, consistent decisions and support from the DCOA Director when dealing with the contractor may have improved outcomes. Oversight for two nursing homes is a difficult assignment, especially when tasked with several other responsibilities.

FINDINGS AND RECOMMENDATIONS

OCP plays a critical role in supporting the activities of the COTR and it recognizes the importance of that function. In testimony before the D.C. City Council on December 16, 2009, OCP officials cited progress in providing training for COTRs and said that they have “significantly enhanced COTR training and support services.” However, providing a training class of 5 hours may not be adequate, especially if the COTR assigned is inexperienced or the contract is large or complex.

As a result, the District did not exercise adequate oversight for the WCAS and JBJ management contracts. Also, the lack of oversight resulted in significant under-billing of Medicare claims, unauthorized subcontracting of Medicare billing services, and dramatic increases in WCAS accounts receivable balances, and the unauthorized payment of VMT expenses.

Bank and Investment Accounts Outside of CFO Control

Our audit found that VMT and DCOA had joint bank and investment accounts outside the normal process of the District. A total of 17 bank and investment accounts (Exhibit C) existed for WCAS and JBJ.

The financial statements for these accounts were included in the Comprehensive Annual Financial Report; therefore, the assets and liabilities related to these accounts were reflected on the District’s financial statements. However, these accounts are not subject to the normal controls of the District and the individual transactions are not reflected on the District general ledger (GL) system. This joint account arrangement caused problems at DCOA regarding proper approvals and the inability to monitor activity within each account.

RECOMMENDATIONS

We recommend that the Chief Procurement Officer, OCP:

5. Enhance the available training provided to COTRs for oversight on complex or multi-million dollar contracts. Contracts should be rated as to difficulty of low, medium, and high, and the extent of COTR training should be determined by the level of difficulty. COTR assignments should be based on each employee’s level of training and experience.

OCP RESPONSE

OCP does not agree or disagree with the recommendation. OCP stated that it was working to implement its Contract Administration Compliance Program (CACCP) in FY 2012. The enhanced training program will ensure COTRs, now designated as Contract Administrators, fully understand their duties. COTRs will then be required to affirm their understanding of

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the requisite duties and responsibilities. The full text of OCP's response is included at Exhibit E.

OIG COMMENTS

We consider OCP's planned actions to meet the intent of our recommendation.

We recommend that the Chief Procurement Officer, OCP:

6. Conduct periodic COTR meetings to assist COTRs in filling their important role through updates on best practices and changes in rules and regulations.

OCP RESPONSE

OCP agreed with the recommendation. OCP stated that it will work to ensure that COTRs receive quarterly updates on best practices and changes in rules and regulations through its website. Further, access to information on the website will be monitored to confirm COTRs/Contract Administrators have reviewed the information updates. The full text of OCP's response is included at Exhibit E.

OIG COMMENTS

We consider OCP's planned actions to meet the intent of our recommendation.

We recommend that the Chief Procurement Officer, OCP:

7. Outsource COTR services when expert or specialized contract management experience is required.

OCP RESPONSE

OCP did not agree or disagree with the recommendation. OCP stated that it will consider this recommendation in consultation with their agency partners and their funding availability in determining when expert or specialized experience is required. It will review and support program agency recommendations of internal /external candidates that it believes are qualified to perform the duties of a COTR/Contract Administrator. The full text of OCP's response is included at Exhibit E.

OIG COMMENTS

We consider OCP's planned actions to meet the intent of our recommendation.

FINDINGS AND RECOMMENDATIONS

We recommend that the Executive Director DCOA:

8. Ensure that employees assigned COTR responsibilities have the background, experience, and training to provide proper oversight for contracts they monitor.

OIG COMMENTS

DCOA did not provide a response to this recommendation; we request that DCOA provide a response to the recommendation within 60 days of the date of this report.

We recommend that the Chief Financial Officer:

9. Require DCOA to identify and report on the status of the 17 bank and investment accounts that we found during our audit, and establish the necessary controls to prevent District agencies and private entities from opening bank accounts without proper authority and controls.

OCFO RESPONSE

OCFO concurred with our recommendation stating that the bank and investment accounts were not subjected to the normal controls placed on District accounts. OCFO noted that the nursing homes were required to submit audited financial statements to the OCFO, which used the information when preparing the District's Comprehensive Annual Financial Report. The OFCO reports that it has taken steps to gain control over these nursing home funds.

OIG COMMENTS

We consider the actions taken by the OCFO to meet the intent of our recommendation.

OTHER MATTERS OF INTEREST

Sole Source Contract Option Not Used In WCAS Lease Transition

On July 30, 2010, OCP issued a bid announcement to D.C. Supply Schedule vendors and received several responses. On September 1, 2010, the contract valued at \$626,912 was awarded to Regis and Associates (Regis) for a maximum of 6 months.

We believe this approach was highly preferable to using VMT as the sole source vendor to close-out the contract it managed. Not only was the Regis award at least \$183,000 less than the amount proposed by VMT, Regis brought independence to the engagement that VMT did not have.

On April 27, 2010, we met with DCOA to discuss our preliminary findings for our report on the transition issues at WCAS (Mar No. 10-A-01). We discussed our general finding that DCOA had not prepared an adequate written transition plan that included and prioritized goals and objectives, and our recommendation that DCOA give special attention to the multiple stakeholders and financial aspects of the transition to ensure that the interests of the District are protected. After issuing the MAR to DCOA, we received DCOA's response, which was sufficient to meet the needs of a successful transition. However, in our final report, we identified some crucial tasks, such as collecting overdue accounts receivable and obtaining funds for prepaid insurance premiums that were not addressed in DCOA's transition plan. We recommended inclusion of these items in the written transition plan. DCOA's response indicated that action had been taken to correct the deficiencies noted.

As DCOA officials were deciding how to select a contractor to complete these transition tasks, they received a proposal from VMT dated May 28, 2010. This proposal followed a DCOA meeting with VMT on May 21, 2010, to discuss transition issues. A representative from OCP also attended that meeting.

VMT's proposal offered to complete the transition over a 2-year period for \$810,000. The proposal included activities such as billing, collecting, and accounting for all Medicaid, Medicare, private-pay, and other third party payments; paying all bills, providing monthly statements of expenses and revenue, etc. Many of these activities are the same as those discussed in this report that was not handled in accordance with VMT's management contract.

On June 17 and 25, 2010, the OIG met with OCP concerning VMT's proposal and expressed concern about the length and cost of the contract as well as VMT's ability to remain independent while closing out its own work. On June 28, 2010, the OIG met with the Director of DCOA and COTR to discuss several preliminary audit findings that demonstrated VMT's noncompliance with contract terms.

OTHER MATTERS OF INTEREST

Subsequent to that meeting, OCP met with DCOA and the parties decided not to proceed with a sole source contract; but rather, solicit bids for the work.

Transition Issues at JBJ

In September 2010, VMT, subject to final Council approval, was awarded the 30-year lease for the JBJ facility. A five-member panel consisting of representatives from DRES, DCOA, and two outside experts, recommended to DRES and the DCOA Director that the proposal submitted by VMT be selected.¹⁰

We met with DRES officials and discussed the process used to arrive at the recommendation. It appears from the DRES response that the panel used an evaluation method similar to the one used to select the Stoddard Baptist Corporation to lease WCAS. We also reviewed documentation to make sure that a structured approach was used to make the selection.

If the final approval for this lease is received, some of the same transition issues related to WCAS may arise at JBJ without proper monitoring by DCOA. In addition, when deciding how to finish the transition tasks at JBJ, DCOA only should consider firms with proper independence to complete the transition tasks in a credible manner.

¹⁰ We did not conduct an analysis of the selection process and, therefore, have no comment on the methodology used to make this award.

**EXHIBIT A: SUMMARY OF POTENTIAL BENEFITS
RESULTING FROM AUDIT**

RECOMMENDATIONS	DESCRIPTION OF BENEFIT	AMOUNT AND TYPE OF BENEFIT	AGENCY REPORTED ESTIMATED COMPLETION DATE	STATUS¹¹
1	Internal Control, and Economy and Efficiency. Provides assurance that District funds will be recovered that were used inappropriately.	Monetary \$1.8 Million	TBD	Open
2	Internal Control and Economy and Efficiency. Provides assurance that District funds will be recovered that were used for an unauthorized purpose.	Monetary \$195,487	August 4, 2011	Closed
3	Compliance, Economy and Efficiency. Provides assurance that the District is reimbursed for lost revenue due to contract noncompliance.	Monetary \$400,000	TBD	Open
4	Internal Control and Economy and Efficiency. Provides assurance that the District is reimbursed for disallowed costs due to contract noncompliance.	Monetary \$357,839	TBD	Open

¹¹ This column provides the status of a recommendation as of the report date. For final reports, “**Open**” means management and the OIG are in agreement on the action to be taken, but action is not complete. “**Closed**” means management has advised that the action necessary to correct the condition is complete. If a completion date was not provided, the date of management’s response is used. “**Unresolved**” means that management has neither agreed to take the recommended action nor proposed satisfactory alternative actions to correct the condition.

**EXHIBIT A: SUMMARY OF POTENTIAL BENEFITS
RESULTING FROM AUDIT**

RECOMMENDATIONS	DESCRIPTION OF BENEFIT	AMOUNT AND TYPE OF BENEFIT	AGENCY REPORTED ESTIMATED COMPLETION DATE	STATUS¹¹
5	Internal Control. Provides COTR training to include level of difficulty, complexity, and oversight for multi-million dollar contracts.	Non-Monetary	December 31, 2012	Closed
6	Internal Control. Provides periodic COTR meetings to share best practices and receive updates to laws, rules, and regulations.	Non-Monetary	December 31, 2012	Closed
7	Internal Control. Provides other options for COTR services, if necessary, when contracts require expert or specialized capabilities.	Non-Monetary	August 10, 2011	Closed
8	Internal Control. Provides assurance that assigned COTRs possess the background, experience, and training to properly monitor contracts.	Non-Monetary	TBD	Open
9	Internal Control. Provides assurance that District agencies will not open bank accounts without proper authorization and controls.	Monetary TBD	September 6, 2011	Closed

Exhibit B: Overview of Nursing Homes' Relationship with DCOA, OCP and VMT

--Prior to July 2010--

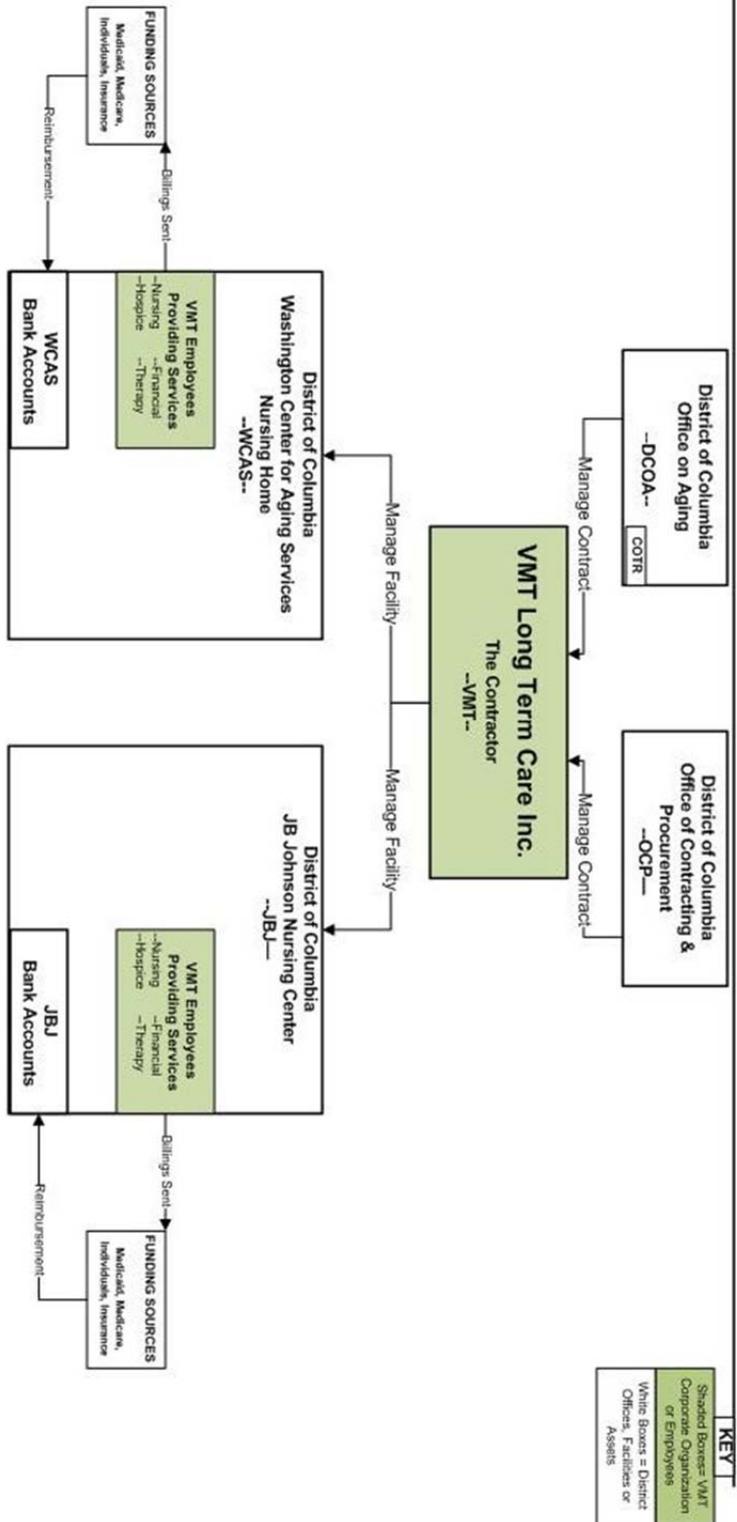


EXHIBIT C: BANK ACCOUNT INFORMATION

DETAILS OF WCAS & JBJ BANK ACCOUNTS

WCAS Bank Accounts

Chevy Chase Bank

#811—Resident Funds Trust Account
#110—RFMS Care Cost Account
#532—Petty Cash Account

Industrial Bank

#837—Repo Account (short term investment)
#647—Business Checking Account (accounts payable)
#829—Payroll Account

Morgan Stanley

#331--Washington Center for Aging (investment account)
#333--Washington Center for Aging (payroll reserve)

RBC Wealth Management

#009—Washington Center for Aging Services (investment account)

JBJ Bank Accounts

Chevy Chase Bank

#211—Resident Funds Trust Account
#440—RFMS Care Cost Account
#439--RFMS Petty Cash Account

Industrial Bank

#600 Repo Account (short term investment)
#597—Business Checking Account
#570—Business Checking Account (payroll)
#589—Business Checking Account (accounts payable)

Morgan Stanley

#732—VMT Long Term Care MNG Inc. DBA (investment account)

EXHIBIT D: DCOA RESPONSE TO DRAFT REPORT

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE ON AGING

★ ★ ★



Office of the Executive Director

August 4, 2011

Charles J. Willoughby
Inspector General
Office of the Inspector General
717 14th Street, NW
Washington, DC 20005

Dear Inspector Willoughby:

The District of Columbia Office on Aging (DCOA) has carefully reviewed the Office of Inspector General's (OIG) Draft Audit of the District-Owned Nursing Homes, namely the Washington Center for Aging Services (WCAS) and JB Johnson Nursing Center (JB Johnson). Therefore, the Office on Aging would like to provide its written comments to the findings and recommendations as outlined in the report (OIG No. 10-1-02BY/HT).

Previous OIG Management Alert Report

It is important to note, this is DCOA's second response with respect to the OIG's audit of the two District-owned nursing homes, which was included in the OIG's 2010 annual audit plan. Thus, DCOA's first response addressed the preliminary Management Alert Report (MAR), *Transition Plan for Washington Center for Aging Services* (OIG MAR No. 10-A-01), issued on June 9, 2010. We understand the preliminary MAR was part of the overall work to audit the two contracts for operating and managing the District-owned nursing homes, and issued to identify problems that needed to be addressed immediately by management because the deficiencies could not wait until the completion of the entire audit. As a result of the report, the OIG directed two recommendations to the Office on Aging, in which our agency responded and subsequently met the needs of a successful transition. Therefore, we recognize this newly issued draft audit is a result of the continued work since that time covering issues not included in the previous report.

History of District-Owned Nursing Facilities

In 1981, the District purchased the Washington Center for Aging Services (formerly the National Lutheran Home) and, shortly thereafter in the late 80s, the JB Johnson Nursing Center was gifted to the District by Housing and Urban Development (HUD) under the

441 Fourth Street, N. W., Suite 900S, Washington, D.C. 20001 (202)724-5622

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EXHIBIT D: DCOA RESPONSE TO DRAFT REPORT

Barry Administration. Upon the District's acquisition of the facilities, WCAS was assigned to the Office on Aging and JB Johnson to the Department of Human Services (DHS) with the understanding that the agencies did not possess the staff bandwidth or specialized skills to manage and operate a skilled nursing facility. Therefore, these acquisitions required the Office of Contracting and Procurement (OCP) to solicit and award contracts to a competitive bidder to fully manage and operate the facilities on behalf of the District of Columbia. Since the District's acquisition of the two nursing facilities, the contractor, the Vital Management Team (VMT), served on a competitive basis, as the fiscal and management agent for both facilities until the contracts ultimately expired on July 20, 2010, and December 13, 2010 due to the city's decision to move forward with the ground lease option.

Nursing Home Contracts and Lease Transition

The nursing home management contracts have been in existence for over 20 years and administered by the Office of Contracting and Procurement. From the onset, the District carelessly gave the contractor the authority to act as the fiscal agent on behalf of the District which consisted of managing private banking (cash and investment) accounts outside of the District's financial system. With this authority, the contractor billed and collected Medicare, Medicaid, private pay, and other third party revenue to operate the nursing homes. Together, the two District-owned nursing homes generated revenue of approximately \$40 million each year. In addition, the District paid the contractor approximately \$1 million in management fees per year/per facility while also covering all capital improvements and repairs. As a matter of information, although both facilities were District-owned properties, they were still subject to the same independent financial audits, licensure requirements, and regulations as the other seventeen (17) privately-owned nursing homes in the District. However, due to the fact that the facilities were District-owned and under contract, they were the only two nursing homes in the city subject to the Department of Labor's (DOL) Service Contract Act (SCA) of 1965 and included in the Comprehensive Annual Financial Report (CAFR) produced by the Office of the Chief Financial Officer (OCFO).

Once the current structure of the nursing home contracts was fully understood, the disposition (lease) of the properties was not a hard sale to District government officials. The unprecedented effort by DCOA to transition from a management contract to a long-term ground lease was mainly due to the very unusual and complex structure of the contracts coupled with the previous administration's desire to exit out of the nursing home business. In FY 2009 and FY 2010, the Office on Aging, specifically the Executive Director at the time and the new and current DCOA Contracting Officer Technical Representative (DCOA COTR), began the transition process to move toward a long-term ground lease with the approval of the Mayor and DC City Council. DCOA, in collaboration with the Department of Real Estate Services (DRES), successfully executed the leases by the third quarter of FY 2010 and first quarter of FY 2011, which ultimately took the District out of the nursing home business altogether with a few additional benefits to the city. As a result of the new lease arrangements, the city now collects rent payments from the new management firm and will no longer be responsible for capital

EXHIBIT D: DCOA RESPONSE TO DRAFT REPORT

improvements and repairs. Additionally, the existing revenue (approximately \$17 million) that belonged to the city that VMT collected and billed for on behalf of the District was transferred to the District although these funds were never accounted for anywhere in the District's financial system. DCOA also expects another \$12 million to become available upon completion of the Medicaid rebasing audit and will transfer these funds to the District as well. That said, the new lease arrangements were a win-win for the city and has become a huge revenue generator and cost saver for the District as a whole.

During this same transition period, the OIG included this audit in their 2010 annual audit plan and began their audit approximately half-way through DCOA's process in moving toward the lease. Hence, the OIG's need to release the MAR report on June 9, 2010 before the execution of the lease of the WCAS on July 21, 2010. Shortly after execution of the lease of WCAS, DCOA hired a CPA firm to conduct the financial close-out audit of the facility. For the record, it was never DCOA's intent to use VMT to conduct the close-out audit as this would have been an obscene conflict of interest. The contract for this work was competitively bid through the Office of Contracting and Procurement (OCP) process and Regis & Associates PC (Regis) was selected to perform the WCAS audit. The audit work concludes on August 11, 2011 and to date, Regis has collected approximately \$1.5 million in additional nursing home revenue with more funds forthcoming. As for JB Johnson Nursing Center, it will undergo the same financial close-out process to ensure the District's financial interests are protected with this facility as well.

Findings Related to DCOA Deficiencies

DCOA greatly appreciates the work of the OIG to audit the two contracts of the District-owned nursing homes; however, our office understands best the complexity of the nursing home business model. This model combined with the dynamics of the unusual public-private partnership that the District had with VMT was destined to fail. Therefore, DCOA disagrees with the OIG in that our agency lacked the internal controls and failed to provide adequate contract oversight of the financial activities. The contract was flawed from the beginning by giving undue authority to VMT to maintain private bank accounts outside of the District's financial system. The accounts housed approximately \$40 million dollars over the course of any given year of nursing home revenue that ultimately belonged to the District. That said, there was no plausible way for DCOA or any agency to monitor all financial aspects to the magnitude in which the OIG suggests given the contractual structure. Based on the management contract, the DCOA COTR was not responsible for day-to-day tracking and accounting for Medicaid billing as this is a specialized skill set that DCOA does not possess and is the reason the city choose to outsource the operation and management of the facility to begin with as mentioned earlier in the report. The contract does state, however, the DCOA COTR is responsible for providing general administration of the contract and advising the Contracting Officer within the Office of Contracting and Procurement as to the contractor's compliance or noncompliance with the contract.

EXHIBIT D: DCOA RESPONSE TO DRAFT REPORT

Furthermore, the evidence shared by the OIG in this report lacked a comprehensive view of the structure of nursing home contracts and understanding of the role of DCOA, OCP and other stakeholders. For example, DCOA does not have legal representation in-house, and therefore, had to rely on OCP's legal sufficiency review process for the administration of the contracts. Additionally, the OIG strictly focused on the dollars and cents of the management contracts although DCOA's oversight role was not limited to only the financial matters affiliated with the operations of the facilities. The DCOA COTR was also responsible for ensuring quality care was being provided at the 259-bed long-term care facility. DCOA was equally concerned with the safety and quality of care being provided to the WCAS residents along with the potential negative exposure during a risky hand-off from VMT to a new provider as the facility cares for some of the city's most frail seniors and people with disabilities. Therefore, the discovery of \$2.7 million in disallowed costs from a \$40 million operation does not qualify DCOA or its COTR as inadequate in performing its oversight responsibilities. However, DCOA will consult and work with the OCP and OAG to recover the disallowed costs from VMT, as appropriate.

DCOA Comments on Recommendations

Recommendation #1: Implementing steps to recover the \$1.8 million of District funds VMT used to settle a Department of Labor fine, without District approval.

Per the management contract between the Office on Aging and VMT, the contractor was bound by the Department of Labor's Service Contract Act to pay specific wages to its nursing home staff. However, since VMT failed to pay the wages as instructed, the Department of Labor notified VMT of its claim for back wages and fringe benefits of \$3.2 million to current and former employees. Subsequently, VMT contacted OCP and DCOA and requested relief from the contract on issues related to cost reimbursements and the SCA provision. After careful deliberation, OCP notified VMT that its request for relief was denied. Subsequently, the contractor filed notice of its appeal of OCP's decision to the Contracts and Appeal Board (CAB) and filed a complaint for damages and/or equitable adjustment and other relief. Meanwhile, VMT has paid both the current and former employees claim of back wages in the amount of \$1.8 million.

Due to the audit findings, DCOA understands the claim was paid from the reserve account for operations expenses (Morgan Stanley) and not from the primary operational account (Industrial Bank). Therefore, VMT should have received permission from DCOA prior to paying the claim with funds from this account. The payment itself was legitimate as the employees' wages are part of the operational expenses to the nursing home, which are usually paid from the main operational account. Therefore, if the funds were not paid on the front end as instructed by DOL, it was expected the contractor would have used the same funds to reimburse the employees on the back end. However, the auditor discovered additional information as it relates to VMT's \$1.7 million distribution to its one stockholder during the same year that VMT transferred \$1.8 million to pay the DOL claim that DCOA was not privy to prior to this audit. Therefore, as stated in the Office of the Attorney General's response, DCOA will work with OCP and OAG as appropriate, to recover \$1.8 million for the DOL claim of back wages.

EXHIBIT D: DCOA RESPONSE TO DRAFT REPORT

Recommendation #2: Implementing steps to recover \$195,489 VMT used to pay for its corporate legal fees, without District approval.

DCOA has already recovered the \$195,489 for the legal fees. This information was shared with the DCOA and OCP in the Summer of FY 2010. As a result, OCP instructed VMT to repay the legal fees and subsequently, DCOA recovered the fees by denying the final management fees for both facilities for the month of July for WCAS and the month of November for JB Johnson and the collected the remaining \$31,656.38 in the form of a check, which was written to the DC Treasurer. VMT continued to file its appeal of OCP's decision to the CAB because the firm believed it would have had to pay employees higher wages if WCAS was unionized and the higher wages would have been born by the nursing home, not VMT. DCOA understands that the VMT's case is still pending at this time.

Recommendation #3: Implementing steps to recover \$400,000 from VMT for violating conditions of the WCAS contract by not submitting claims for Medicare reimbursement.

DCOA is not in a position to comment further on this particular violation as our office was not responsible for monitoring the day-to-day operations of the nursing facility. Also, as stated above, DCOA does not possess the staff bandwidth or expertise in Medicaid or Medicare billing or claims. Therefore, DCOA will consult with the OCP and OAG regarding VMT not submitting \$400,000 worth of Medicaid claims to better determine the District's next course of action in recovering the funds.

Recommendation #4: Implementing steps to recover \$357,839 from VMT for violating conditions of the WCAS contract, which prohibits subcontracting for services without proper approval.

Prior to the audit, DCOA was not aware that VMT was using a third party collection agency to bill and collect from Medicare. However, DCOA was aware that VMT hired a plethora of subcontractors (therapists, pharmacists, housekeeping, dental services, etc.) to assist with the operations of the facility as it is not feasible for one contractor to perform all of the required services that go along with operating a nursing facility. Since learning VMT subcontracted this work to a third party, DCOA had several discussions with other DC nursing homes and discovered it is not an uncommon practice for nursing homes to seek outside assistance in collecting its Medicare and Medicaid revenue if backlogged. Nonetheless, if the contract was violated, DCOA will consult further with the OCP and the OAG to determine the best course of action in recovering the identified funds.

In closing, DCOA officials, as advocates for seniors, caregivers, and people with disabilities, are dedicated to the safety and quality of care provided by WCAS as well as the financial safeguards to ensure the District's interests are protected. To that end, DCOA's unprecedented efforts to transition from a management contract to a lease were a significant change and necessary to correct the District errors from twenty years ago.

EXHIBIT D: DCOA RESPONSE TO DRAFT REPORT

Therefore, DCOA will continue to work with OCP and OAG in the best interest of the District to recover any disallowed cost by VMT.

If you should have further questions or concerns, please direct them to Chief of Staff at (202) 727-

Sincerely,

Chief of Staff

cc: John Thompson, Ph.D., Executive Director, DC Office on Aging
James Staton, Acting Chief Procurement Officer, Office of Contracting and Procurement
Gandhi Natwar, Ph.D., Chief Operating Officer, Office of the Chief Financial Officer

441 Fourth Street, N. W., Suite 900S, Washington, D.C. 20001 (202)724-5622

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EXHIBIT E: OCP RESPONSE TO DRAFT REPORT

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF CONTRACTING AND PROCUREMENT**



OFFICE OF THE DIRECTOR

August 10, 2011

Charles Willoughby
Office of the Inspector General
717 14th St, N.W.
Washington, DC 20005

Re: OIG Control Number 10-1-02BY/HT

Dear Mr. Willoughby:

Pursuant to the OIG audit of District-Owned Nursing Homes, the Washington Center for Aging Services (WCAS) and the J.B. Johnson Nursing Center (JBJ), our office has reviewed the report and addresses the following OIG recommendations:

- **Multiple recommendations related to recovering funds from Vital Management Team Long Term Management, Inc. (VMT).**

OCP, in coordination with the D.C. Offices on Aging and Attorney General, is aggressively pursuing all options to recover funds listed on page ii of draft report OIG No. 10-1-02BY/HT. OCP will provide a status report to the OIG on the recovery of these funds at the end of the 1st Quarter in FY12.

- **Enhance the available training provided to COTRs for oversight on complex or multimillion dollar contracts. Contracts should be rated as to difficulty of low, medium, and high, and the extent of COTR training should be determined by the level of difficulty. COTR assignments should be based on each employee's level of training and experience.**

COTR Training Development: OCP is working to refine and roll-out its Contract Administration Compliance Program (CACP) in FY 2012. Elements of this program were shared with OIG audit staff at the FY2012 Audit Planning Conference and

EXHIBIT E: OCP RESPONSE TO DRAFT REPORT

Symposium. The enhanced training program will ensure COTRs, now designated as Contract Administrators, fully understand their duties and responsibilities.

Upon completion of the training component, COTRs/Contract Administrators will be required to affirm their understanding of the requisite duties and responsibilities.

- **Conduct periodic COTR meetings to assist COTRs in fulfilling their important role through updates on best practices and changes in rules and regulations.**

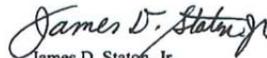
Education and Awareness: OCP will work to insure that, by posting quarterly updates on its website, COTRs/Contract Administrators receive updates on best practices and changes in rules and regulations. Further, access to information on the website will be monitored to confirm that COTRs/Contract Administrators have reviewed the information updates.

- **Outsource COTR services when expert or specialized contract management experience is required.**

OCP will consider this recommendation in consultation with our agency partners and their funding availability in determining when expert or specialized experience is required. We will review and support program agency recommendations of internal/external candidates it believes are qualified to perform the duties of a COTR/Contract Administrator.

If you have any further questions or comments please call [redacted] Office of Procurement Integrity & Compliance (OPIC) at 724- [redacted].

Sincerely,



James D. Staton, Jr.
Chief Procurement Officer
Office of Contracting and Procurement

Cc:

[redacted] Office of the City Administrator
[redacted] Interim Assistant Director, OPIC

EXHIBIT F: OCFO RESPONSE TO DRAFT REPORT

Government of the District of Columbia
Office of the Chief Financial Officer



Natwar M. Gandhi
Chief Financial Officer
September 6, 2011

Charles J. Willoughby
Inspector General
Government of the District of Columbia
Office of the Inspector General
717 14th Street, N.W
Washington, DC 20005

Dear Mr. Willoughby:

This is in response to the findings indicated on the draft audit report dated July 25, 2011, requiring DCOA to identify and report on the status of the 17 bank and investment accounts that were found during your audit, and establish the necessary controls to prevent District agencies and private entities from opening bank accounts without proper authority and controls.

The Office of the Chief Financial Officer (OCFO) concurs with the finding that the bank and investment accounts of the D.C. Office on Aging's (DCOA's) nursing centers and its contractors were not subjected to the normal controls placed on District accounts. Although the normal practice is for such accounts to be managed by OCFO personnel, these accounts were managed by the DCOA's nursing centers via its contractors. These entities were responsible for producing audited financial statements which included the financial activities of the bank accounts and investment accounts under their control. These audited financial statements were subsequently submitted to the OCFO. The OCFO used the information contained in the nursing centers' audited financial statements when preparing the District's Comprehensive Annual Financial Report (CAFR).

For financial reporting purposes, DCOA's nursing center operations were treated like other independent agencies of the District, and adhered to the OCFO's requirements for annual financial reporting. However, the OCFO recognizes that more effective internal control would require that these accounts and the activity in them be controlled and managed by the OCFO. For that reason, consistent with the recommendations of the OIG, during fiscal year 2011, the OCFO has taken the appropriate steps to gain control over and management responsibility for all accounts holding District funds that relate to DCOA and its nursing home activities.

If you have any questions, please contact [redacted] Deputy Chief Financial Officer, Office of Finance and Treasury, at (202) 727-4 [redacted]

Sincerely,

Natwar M. Gandhi

cc: [redacted] Deputy Chief Financial Officer, Office of Finance and Treasury
[redacted] Executive Director, Office of Integrity and Oversight

1350 Pennsylvania Avenue, N.W., Suite 203, Washington DC 20004 (202) 727-2476
www.cfo.dc.gov

EXHIBIT G: OAG REPOSE TO DRAFT REPORT

ENTERED
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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General 2011 JUL 27 PM 4:17



July 26, 2011

Charles J. Willoughby, Esq.
Inspector General
Office of the Inspector General
717 - 14th Street, N.W.
Washington, D.C. 20005

RE: OIG's July 15, 2011 Draft Audit Report of the District-Owned Nursing Homes
(OIG No. 10-1-02BY/HT)

Dear Mr. Willoughby:

This is to inform you that my office was contacted by the Office of Aging in response to your July 15, 2011, draft audit report of the District-Owned Nursing Homes. In that draft report, you recommended that the Executive Director of the Office of Aging and the Chief Procurement Officer consult with my office to recover approximately \$2.7M due to VMT's alleged misuse of District funds and violation of the performance conditions in its contract with the District. Please be assured that my office will consult with the Office of Aging and the Office of Contracting and Procurement to investigate these issues thoroughly and take all appropriate action to protect the District of Columbia's interests.

Sincerely,

A handwritten signature in blue ink, appearing to read "Irvin B. Nathan", written over a faint blue circular stamp.

Irvin B. Nathan
Attorney General
for the District of Columbia

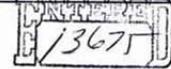
EXHIBIT H: VMT RESPONSE TO AUDIT REPORT



Long Term Care Management, Inc.

4201 Connecticut Avenue, N.W. Suite 208 • Washington, D.C. 20008
(202) 282-3100 • Fax (202) 282-3109
Education Center (202) 282-3010 • Home Health Agency (202) 282-3004
Placement Agency (202) 282-0557

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August 5, 2011

Mr. Charles J. Willoughby
Inspector General
Office of the Inspector General
717 14th Street, N.W.
Washington, DC 20005

Re: Draft Report of OIG Audit of District-Owned Nursing Homes
(OIG No. 10-1-02BY/HT)

Dear Mr. Willoughby:

Enclosed is the draft Audit of District-Owned Nursing Homes, OIG No. 10-1-02BY/HT, July 15, 2011 (“**OIG Audit Report**”), annotated to include the comments from VMT. As you notice, VMT has inserted comments throughout the document to clarify the statements made in the OIG Audit. As a general matter, VMT’s comments make clear that the author of the OIG Audit has a fundamental misunderstanding of the 2 contracts that are discussed in the OIG Audit. This letter will summarize VMT’s comments to the OIG Report, provide some key elements of the VMT/District relationship and a summary of the relevant history to understand the Contracts.

Finding 1: The author of the OIG Audit Report does not understand the Washington Center for Aging Services Contract (“**WCAS Contract**”). Under the WCAS Contract, operating expenses including cost of labor are paid out of revenue collected from accounts receivables. The Department of Labor’s determination increased the labor expense, and thereby increased the operating expense which is consistent with the WCAS Contract. Also, the District’s Attorney General agrees with VMT that the expense was appropriate and that it is not a fine.

Finding 2: The author of the OIG Audit Report incorrectly seeks to recover \$195,487. VMT has reimbursed the District the entire amount of \$195,487. VMT challenged the payment with the Contracting Officer. The Contracting Officer notified VMT of the final decision denying VMT request on July 13, 2010. VMT filed an Appeal with the CAB on October 12, 2010, which remains pending.

Finding 3: The author of the OIG Audit Report misstates the Medicare law. During the period in question, timely billing was extended up to 24 months. In addition, there was no \$400,000 loss, or need to make any such recovery. In addition, during the period in question by

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EXHIBIT H: VMT RESPONSE TO AUDIT REPORT

the OIG Audit Report, VMT collected more than \$3.8 million. VMT requests to see documentation of this alleged \$400,000 loss.

Finding 4: The author of the OIG Audit Report is mistaken. VMT has regular vendor services which it contracts for and which were discussed with the Contracting Officer, Jean Wright. VMT explained verbally and in writing that getting District Government approval for vendor services would make operations impossible. VMT understands that vendor services would not be considered subcontracting. Collection services is one such vendor service.

From VMT's perspective, the OIG Audit Report shows a gross misunderstanding of both the WCAS and JBJ Contracts, which are unique in the District, and the business of operating nursing homes. To better understand the two unique nursing home contracts and the business of nursing homes takes a considerable amount of time and effort. Here are some of the key elements of these contracts some of which are unique to these contracts:

- 1) Both nursing homes are run as enterprises and receive no District funds. The nursing homes are supposed to operate within funds generated by patient billings and collections.
- 2) Because the facilities are run as enterprises, the management company has the authority to make vendor purchases on behalf of the facility without going through OCP. VMT regularly contracts with vendors for services, such as food, supplies, medical and financial and such services have not been considered subcontracts.
- 3) VMT's management fee is paid directly by the nursing home out of nursing home operating funds.
- 4) VMT Corporation did three things under its contract: A) manage the facility B) operate the facility and C) manage the nursing home funds. The nursing home care, building services and billing fall under operations.
- 5) The two nursing home contracts are structured totally different. Washington Center is a cost-reimbursed contract and the JB Johnson contract is a management fee only contract.
- 6) Both contracts include a concept of "Fiscal Agent" but fail to define what exactly that means. Findings 3 and 4 rely on the OIG's broad interpretation of this term. The term "Fiscal Agent" is common in the banking industry but usually refers to the holding of funds and / or making disbursements. Nowhere has VMT seen this term tied to billing and collection of healthcare claims.
- 7) There are no revenue or collections targets or penalties in the contracts.

The OIG also does not understand the contribution VMT has made to the District of Columbia. For that reason, VMT also wants to provide a summary of the key historical aspects of the relationship between VMT, the District and the 2 nursing homes which are the subject of the OIG Audit Report.

Historical Account of WCAS and JBJ under VMT's Management

WCAS

In the late 70's the District of Columbia experienced a major shortage of Nursing Home beds and DC General Hospital alone had over 200 seniors awaiting a nursing home bed. The Lutheran home at 2601 18th street NE was vacant and the Office on Aging convinced then

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Mayor Barry, to purchase the old Lutheran Nursing Home to expand nursing home capacity. The need was so urgent that the DC general patients were transferred to the old Lutheran Nursing Home after only one coat of paint was applied. Subsequent to the move Mayor Barry spent millions of dollars and several years in renovating this old Nursing Home and WCAS was born. In the mid 80's WCAS was so poorly managed that the Federal government threaten to close the Nursing Home. Then through an OCP open bid process, VMT was successful at winning the contract to manage the WCAS in 1989. Within a few years, VMT had brought the facility up to a 5 star rating, which is the highest rating from Medicare. When VMT started management of WCAS, the Nursing Home had been running a \$1,800,000.00 dollar per year deficit and was in the middle of a major rate reimbursement dispute with Medicaid. Medicaid believed that the WCAS owed Medicaid four million dollars and VMT, the new management company, believed otherwise. VMT brought in an experienced financial reimbursement expert, () Significantly, VMT/WCAS hired and paid _____ from the VMT/WCAS nursing home operating funds. VMT/WCAS and () appealed the case to the DC Contract Appeals Board. As a result of the Appeal, Medicaid owed the WCAS four million dollars and not the other way around. This was a major step in the financial recovery of WCAS. Under VMT's management, the facility began earning an annual profit. Between 1989 and 2002, cash balances at WCAS increased to \$34 million dollars. If VMT was negligent in billing, how can you explain the \$34 million profit? In 2003, \$12.6 million was transferred to the DC treasurer to solve a budget shortfall. Knowing that additional remodeling was yet to come, VMT was able to get \$15 million of the remaining funds earmarked for WCAS capital purchases to ensure the funds would be available when needed. This was noted in the DC government FY 2004 budget as a capital contribution to WCAS. Between FY 2004 and FY 2010, around \$8 million of capital improvements were made to WCAS. When the WCAS contract ended, there were still account balances of approximately \$14 million remaining in the WCAS accounts for use by the DC Treasurer.

The VMT CEO is a well known speaker at National conventions bringing positive attention to the District regarding WCAS. The VMT CEO became Vice President of the National Association for Long Term Care, American Health Care Association ("AHCA"), which has 5000 members. WCAS, the Nursing Home that the Federal Government once threatened to close, is now well known all over the United States and abroad. WCAS has become such a model that DC Convention Center's Visitors' Bureau included VMT/WCAS as a site to visit while in this Capital City. VMT/ WCAS hosted visitors from several states and internationally such as Japan and China on several occasions.

JB Johnson

When the JB Johnson Nursing Center was built it was intended to be an outpatient clinic by _____ Unfortunately, there was a default and the building was seized by HUD and donated to the District in 1980 when the Feds required then Mayor Marion Barry to deinstitutionalize patients with mental illness to the community. This building was very deficient for a nursing home but had to suffice as the Mayor had no other place to discharge 150 patients from St Elizabeth psychiatric hospital. At that time, JBJ was managed by shelter. In 1995 the facility had over 100 deficiencies, the employees were not being paid and the facility was delinquent with paying health insurance and payroll taxes. Employees

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were not coming to work and nurses from the DOH were brought in to deliver care to the residents. There was no food to feed the residents, nor linen to make their beds. The employees camped in the Mayor's office and it was all over the media. The management company hand delivered a letter to Mayor Barry in essence telling him "I quit." The employees for 20 days became DC Government employees until a management contractor was in place. At that time DC was under the control Board, JB Johnson was under DHS and [redacted] was the DHS Director. Significantly, VMT Corporation was called by Mr. [redacted] and asked to take over JBJ based on VMT's demonstrated management skills at WCAS. As part of the contracting process, the President of VMT testified in front of Mr. [redacted], Control Board Chair describing the emergency state the facility was experiencing. JBJ had no money and the control Board authorized funds to pay the employees so that they can come back to work. VMT took over the JBJ management in December 1995 and applied the VMT/WCAS management and operating skills to turn the facility around financially and from a quality prospective. The prior company managed the facility poorly. In addition to multiple deficiencies, it failed to collect payment for a large number of residents. VMT/JBJ brought in a local CPA firm, Walker and Walker to handle the backlog of rebilling and delayed billing due to the nature of retrospective billing inherent in the Medicaid and Medicare payment systems. VMT/JBJ with the assistance of [redacted] collected \$ 7,000,000.00 and deposited it into accounts VMT opened to manage JBJ. VMT/JBJ used that money to renovate the building because the fire marshall had threatened to close down the facility for fire violations. VMT was also able to correct physical issues and the health code deficiencies in the building which were the basis of the Department of Health threats to close the facility. If not for the gallant effort by VMT, there would have been no money to feed the residents and pay employees and for sure there was no money for repair and maintenance. The first order of business was to clear this fire hazard, created by the poor state of repair of nursing home equipment. The second order of business was to pay Pepco for electric services as they were about to cut off power in the building and the third order of business was to pay the telephone bill so that the staff can call EMS in case of an emergency.

Congresswoman Eleanor Holmes Norton came to JB Johnson with then Council Member Sandy Allen, DOH Director [redacted] and Mayor Anthony Williams to discuss the poor rating the DC Nursing Homes received from the Federal Government and Congresswoman Norton subsequently selected JB Johnson for commendation because at its last survey JBJ had ZERO deficiencies. This is the VMT/ JBJ you need to know.

Unfortunately, the two COTRs VMT worked with for over ten years each at WCAS and JBJ are no longer with the District. One retired and the other passed away. The Department of Health can also attest that both facilities were run effectively with very low deficiencies and that no fines from any regulatory body were paid by VMT.

VMT finds it very disturbing that after twenty plus years at serving the government tirelessly and faithfully, that a report like this could even be written. The District used to own and managed a home for retarded children, (Forest Haven) a Nursing Home (DC Village) and a Hospital (DC General Hospital) and they are now all closed because the District could not successfully manage nor operate these health care facilities. What VMT

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did for the Government required knowledge, hard work, dedication and commitment. These were not just contracts to VMT, it was the care, well being and happiness of 475 nursing home residents whose lives we impacted.

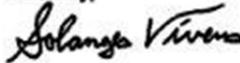
Summary

VMT is proud of what it accomplished for the two nursing homes and the District government. VMT believes that it has been a great partner for the District and has accomplished the goals the District had for the two government-owned homes. VMT has operated the two nursing homes as enterprises, requiring no subsidy from the DC government and has generated considerable cash balances that have benefited the District while at the same time operating the homes to ensure a high quality of care is provided, without subjecting the District to bad press.

Please find attached a copy of the Draft Nursing Home Audit report with VMT's responses imbedded into the text.

VMT finds this report unfounded and even malicious and looks forward to discussing these issues, clearing up any misunderstandings and hopefully resolving these issues to everyone's satisfaction.

Sincerely,



Solanges Vivens

cc: Natwar Gandhi, Ph.D
James Staton, Jr.
John M. Thompson, Ph.D

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