



Department of Homeland Security Office of Inspector General

Immigration and Custom Enforcement Detention Bedspace Management



OIG-09-52

April 2009



**Homeland
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Preface

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibilities to promote economy, efficiency, and effectiveness within the department.

This report addresses the strengths and weaknesses of Immigration and Customs Enforcement detention bedspace management. It is based on interviews with employees and officials of relevant agencies and institutions, direct observations, and a review of applicable documents.

The recommendations herein have been developed to the best knowledge available to our office, and have been discussed in draft with those responsible for implementation. We trust this report will result in more effective, efficient, and economical operations. We express our appreciation to all of those who contributed to the preparation of this report.

A handwritten signature in cursive script that reads "Richard L. Skinner".

Richard L. Skinner
Inspector General

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Abbreviations

DRO	Detention and Removal Operations
ICE	Immigration and Customs Enforcement
SBI	Secure Border Initiative
USCIS	United States Citizenship and Immigration Services

OIG

*Department of Homeland Security
Office of Inspector General*

Executive Summary

We performed an audit of Immigration and Customs Enforcement (ICE) detention bedspace management. Our objective was to determine whether ICE is acquiring detention bedspace in a cost-effective manner. Appendix A provides details on our audit purpose, scope, and methodology.

ICE has limited assurance that it is acquiring detention bedspace in a cost-effective manner. Its March 2007 plan for improving bedspace acquisition does not have the management priority needed to ensure its execution. The objective of the plan was to increase ICE use of larger, strategically located facilities, thereby increasing program consistency, improving conditions of confinement, and lowering detention costs. Because the plan has not been implemented, since fiscal year 2006 ICE has increased its reliance on ad hoc intergovernmental service agreements and has made limited use of alternative facilities and strategies for addressing detention bedspace requirements.

We are making three recommendations that the Acting Assistant Secretary, Immigration and Customs Enforcement, update the plan for cost-effective acquisition of detention bedspace, establish adequate and effective financial and management controls, and improve data gathering and analysis capabilities. The agency concurred with our recommendations and in their response provided details on how they made a plan to make improvements.

Background

ICE is the investigative arm of the department responsible for enforcing immigration laws. ICE's Office of Detention and Removal Operations (DRO) is responsible for removing illegal aliens and, when appropriate, safely and securely detaining aliens pending removal. To accomplish this mission, ICE needs a sufficient number of safe, secure facilities compliant with national detention standards for the treatment and care of detainees. Detention bedspace acquisition is the largest single ICE expenditure, totaling more than \$800 million annually. In fiscal year (FY) 2007, ICE received more than \$1.4 billion in funding to support overall alien detention and removal operations.

Since 2005, ICE has pursued a comprehensive interior enforcement strategy composed of concurrent efforts to identify and remove criminal aliens, fugitives, and other immigration violators; build worksite enforcement and compliance programs to deter illegal employment; and uproot criminal activities that support illegal immigration, such as human trafficking and fraudulent document preparation. The strategy focuses on ending the practice of "catch and release" of apprehended aliens. Whereas more than 113,000 aliens were released in FY 2005, by mid FY 2007 that number was nearly zero. Detaining versus releasing aliens increased the demand for detention bedspace. ICE reported an increase in its average daily detention population from more than 28,000 in FY 2007 to nearly 34,000 in FY 2008.

ICE houses detainees in eight ICE-owned and operated service processing centers, seven contract detention facilities owned and operated by private-sector businesses on behalf of ICE, or more than 350 state and local government facilities through intergovernmental service agreements. These agreements provide housing for approximately 52% of the detainee population annually.

In March 2007, ICE developed its National Detention Management Plan to address the demand for adequate bedspace to hold aliens while they are processed for removal. The plan focused on achieving a cost-effective mix of detention bedspace facilities by:

- Expanding the use of existing service agreements to satisfy immediate needs for more bedspace;

-
- Transitioning to the use of larger, strategically located facilities to better control detention conditions and to lower costs; and
 - Developing information systems and forecasting models to predict future detention requirements and the most cost-effective means of acquiring detention services.

Results of Audit

Detention Space Management Plan Has Not Been Implemented

Since its publication in March 2007, ICE's plan for cost-effectively acquiring detention bedspace has not been implemented. Enforcing immigration laws, including conducting work site enforcement, apprehending aliens, and uprooting criminal infrastructures for human trafficking and fraudulent document preparation, remains ICE's priority. Obtaining the most cost-effective detention bedspace is a secondary activity in support of its mission.

Further, given the recent emphasis on alien removal versus detention, the plan and its goals have become outdated. Specifically, to expedite the removal of aliens, ICE has focused on positioning detainees at facilities near removal locations, improving detainee access to immigration judges to adjudicate cases, and increasing the use of video teleconferencing with foreign consulates in the United States to establish agreements on alien deportation. The increased focus on removal versus detention may have reduced ICE's attention to ensuring cost-effective acquisition of detention bedspace.

Continued Ad Hoc Use of Intergovernmental Service Agreements

ICE has continued to rely on ad hoc use of intergovernmental service agreements to meet increased detention bedspace requirements resulting from its expanded interior enforcement strategy. ICE has added more than 6,500 detention beds through the use of intergovernmental service agreements, a 32% increase since FY 2006. In contrast, ICE has made limited progress in its plan to move to increased use of contract detention facilities and service processing centers. Since FY 2006, only 250 additional beds were provided through contract detention facilities; none were provided through service processing centers. Using contract

detention facilities and service processing centers was expected to improve program consistency and conditions of confinement while also lowering costs.

Intergovernmental service agreements provide a comparatively quick means of adding bedspace compared to contracting with commercial detention facilities or constructing new government-owned ones. However, without standards and controls for intergovernmental service agreement use, ICE may be spending more than it should for intergovernmental service agreement detention bedspace and related services. For example:

- For the two months reviewed, the ICE DRO Boston Field Office made unauthorized payments of \$2,400 per month for meals for 800 detainees in transit away from their assigned facilities. Detainee meal costs were included in the intergovernmental service agreement as part of the daily per diem rate. However, duplicate costs were incurred for box lunches for the detainees when they were escorted to various locations for court hearings or medical care.
- For two months, the ICE DRO Boston Field Office paid \$140,837 for 3,889 hours of law enforcement overtime labor to local law enforcement agencies without calculating which portion of the time should have been charged at the normal pay rate. As a result, the Boston Field Office paid \$34,000 in excess overtime charges.
- The ICE DRO Atlanta Field Office gave a local law enforcement agency several vehicles to transport ICE detainees. According to the service agreement, the Field Office would pay mileage costs for detainee transport, but included no provision for the transfer of vehicles.
- The intergovernmental service agreement with the Rolling Plains Jail and Detention Center in Haskell, TX, specified that detainee transportation costs would be paid according to the rate set by the General Services Administration. In contrast, several other counties were paying for services at rates other than those agreed to in the service agreement or set by the General Services Administration.

Requirements Forecasting and Analysis

ICE has not followed through on its March 2007 plan to develop systems to improve its detention budget and expenditure data gathering and analysis capabilities. ICE planned to use the data to develop forecasting models for predicting future detention requirements, strengthening capacity planning, and determining the most cost-effective means of acquiring detainee housing and transportation services. However, ICE has made no significant progress in this regard.

Such requirements forecasting and analysis could help ICE accommodate surges in its detainee population due to immigration enforcement operations. For example, an ICE DRO enforcement operation in San Francisco was expected to result in the apprehension of about 200 aliens. Existing detention space in the San Francisco area was inadequate or too costly to house the number of persons projected. San Francisco management had to make hasty contingency plans and move the aliens to a detention center hundreds of miles outside of the San Francisco area for case review. Such efforts disrupted enforcement operations and resulted in lost productivity and increased transportation costs. Until ICE conducts the needed analysis, it may be hampered in its flexibility to adjust detention bedspace arrangements in such instances to support mission operations.

Potential Opportunities for Controlling Costs

Without improved data gathering and analysis capabilities and forecasting models, ICE may be missing opportunities to control detention bedspace and transportation costs. For example, in FY 2007, the average intergovernmental service agreement bedspace cost was about \$79 per unit per day, compared to an average of about \$77 per unit per day in contract detention facilities. With an average daily detainee population of about 17,000, the potential savings from acquiring bedspace through contract detention facilities versus intergovernmental service agreements would be more than \$13 million annually. Until ICE updates its plan, including conducting the appropriate requirements forecasting and analysis, it may be missing opportunities to control costs or achieve savings and efficiencies in detention bedspace acquisition.

Conclusion

ICE has not fully implemented its National Detention Management Plan, resulting in mixed progress in moving toward a more cost-effective strategy for acquiring detention bedspace. ICE has continued to rely on intergovernmental service agreements with local governments to meet immediate needs, as the plan calls for; however, weak controls resulted in unauthorized charges. ICE planned to use data to develop forecasting models for predicting future detention requirements, strengthening capacity planning, and determining the most cost-effective means of acquiring detainee housing and transportation services. However, ICE has made no significant progress in this regard. Without improved data gathering and analysis capabilities and forecasting models, ICE may be missing opportunities to control costs.

Recommendations

We recommend that the Acting Assistant Secretary, Immigration and Customs Enforcement:

Recommendation #1: Update the plan for cost-effective acquisition of detention bedspace to reflect the agency's current emphasis on alien removal versus detention.

Recommendation #2: Establish adequate and effective financial management controls to ensure that the agency is not paying more than it should for detention bedspace and related services.

Recommendation #3: Improve data gathering and analysis capabilities to support forecasting of requirements and to determine the most cost-effective means of acquiring detention bedspace.

Management Comments and OIG Analysis

We obtained written comments on a draft of the report from the Acting Assistant Secretary of ICE. We have included a copy of the comments in Appendix B.

ICE concurred with recommendation #1. ICE commented that they will update the National Detention Management Plan to include:

- New enforcement initiatives such as Secure Communities;
- A focus on overall cost-effective removal operation coupled with the use of detention bed space gained at a fair and reasonable cost;
- A balanced acquisition strategy to include both flexible intergovernmental service agreements and contract detention facilities with reduced guarantee minimums;
- Continued collaboration with the Office of Acquisition Management; and
- Optimal utilization of alternatives to detention.

ICE also commented that DRO will preserve the cycle time decrease achieved in FY 2008 by focusing on effective alien removal and the Office of Acquisition Management has embarked on several initiatives to make the acquisition of bedspace more cost effective. Other updates to the National Detention Management Plan are also underway regarding intergovernmental service agreements and unit cost and price analysis. We consider this recommendation resolved but open until ICE provides us with documentation that supports the implementation of the actions planned.

ICE concurred with recommendation #2. ICE commented that they are working to establish a robust Contract Officer Technical Representative presence at detention facilities both to monitor performance and to review invoices. ICE plans to recruit 26 Contract Officer Technical Representatives in FY 2009 to improve contract monitoring and financial controls. ICE will provide adequate and constructive training to their Contract Officer Technical Representatives, in order to better equip them to constructively review the bedspace invoices received from its intergovernmental service agreements. This will ensure the agency pays only for the services received. Also, the contracting officer will be involved in any case where there is an issue on proper payment amounts. We consider this recommendation resolved but open until ICE provides us with documentation that supports the implementation of the actions planned.

ICE concurred with recommendation #3. ICE stated that it had already begun to implement this recommendation as evidenced by

its implementation of the Integrated Decision Support system in August 2008. DRO's analysts combine the qualitative information drawn from monthly capacity planning meetings with the quantitative information the Integrated Decision Support system generates, in an effort to make arrest and detention forecasts. Also, DRO will conduct annual cost data analyses of facility daily rates and related services. These cost data analyses can then be incorporated into current bedspace forecasts and evaluation models to more accurately forecast budget needs and facilitate cost-based decision making. We consider this recommendation resolved but open until ICE provides us with documentation that supports the implementation of the actions taken or planned.

Appendix A

Purpose, Scope, and Methodology

This report provides the results of our work to determine whether ICE is acquiring detention bedspace in a cost-effective manner. We initiated this review in response to the FY 2007 Homeland Security Appropriations Conference Report, which directed the Inspector General to review and report on Secure Border Initiative (SBI) contract actions in excess of \$20 million. We examined SBI-related contract actions at Immigration and Customs Enforcement (ICE) and United States Citizenship and Immigration Services (USCIS). We identified three contract actions at ICE, collectively totaling more than \$71 million, and none at USCIS meeting the criteria. The ICE contract actions were for operations, not capital investment programs. Appendix C provides details on the three contract actions. Of the three, we reviewed one contract action related to ICE detention bedspace management. Bedspace management is the largest single ICE expenditure, which totals more than \$800 million annually.

We conducted interviews with key ICE DRO personnel, including the Acting Director, Assistant Director of Field Operations, Assistant Director of Management, Deputy Assistant Director of Mission Support, Deputy Assistant Director of Detention Management, Chief of Budget Formulation/Execution, Chief of Detention Planning and Acquisition, Chief of Flight Operations, Chief of Detention Management and Planning, Field Office Directors, Assistant Field Office Directors, Head Contracting Authority, contracting officers, and contract specialists.

We obtained and reviewed documentation such as ICE DRO's National Detention Management Plan and the National Capacity Expansion Needs Assessment. We also obtained and reviewed intergovernmental service agreements, detainee population distribution reports, budget formulation and execution data, bedspace cost data, and invoices for services rendered.

We analyzed data from the Federal Procurement Data System for FY 2006 and FY 2007 in order to identify SBI-related contract actions in excess of \$20 million. Regarding detention bedspace management, we reviewed specific contracts, intergovernmental service agreements, and financial data from the beginning of FY 2007 through February 2008. We conducted analyses to determine whether there were significant differences in bedspace costs among service processing centers, contract detention facilities, and intergovernmental service agreements. We reviewed supporting documentation provided by DRO management to

Appendix A
Purpose, Scope, and Methodology

determine whether charges that DRO paid agreed with services rendered.

We conducted fieldwork at ICE Headquarters in Washington, DC, and DRO field offices in Atlanta, GA; Boston, MA; Chicago, IL; Dallas and El Paso, TX; Oakdale, LA; and San Francisco, CA.

We conducted our fieldwork between April 2007 and June 2008 according to 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix B Management Comments to the Draft Report

Office of the Assistant Secretary

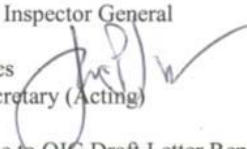
U.S. Department of Homeland Security
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Washington, DC 20536



U.S. Immigration
and Customs
Enforcement

March 17, 2009

MEMORANDUM FOR: Richard Skinner
Office of the Inspector General

FROM: John P. Torres
Assistant Secretary (Acting) 

SUBJECT: ICE Response to OIG Draft Letter Report titled "ICE Detention Bed Space Management"

U.S. Immigration and Customs Enforcement (ICE) provides the following response to the subject Office of the Inspector General (OIG) report.

OIG Recommendation 1: "Update the plan for cost-effective acquisition bed space to reflect the agency's current emphasis on alien removal versus detention."

ICE Response to Recommendation 1: ICE concurs. ICE will update the National Detention Management Plan to include:

- New enforcement initiatives such as Secure Communities;
- A focus on an overall cost-effective mission through effective removal operations coupled with the use of detention bed space gained at a fair and reasonable cost;
- A balanced acquisition strategy to include both flexible Intergovernmental Service Agreements and Contract Detention Facilities with reduced guaranteed minimums;
- Continued collaboration with the Office of Acquisition Management; and
- Optimal utilization alternatives to detention.

ICE Detention and Removal Operations will preserve the cycle time decrease achieved in FY 2008 by focusing on effective alien removal. The drop in the average stay, from 37 days in FY 2007 to 30.5 days in FY 2008, reduced the need for bed space by 17 percent at an estimated cost avoidance of over \$100M.

www.ice.gov

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AILA InfoNet Doc. No. 09051164. (Posted 05/11/09)

Appendix B

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Additionally, ICE Office of Acquisition Management has embarked on several initiatives to make the acquisition of bed space more cost-effective since the OIG's investigation. In particular, ICE Acquisitions now requires that potential Service Providers submit cost data and they use cost analysis techniques on the data submitted for consideration by the Office of Acquisitions when negotiating day rates on new or existing Intergovernmental Service Agreements. To facilitate negotiation of fair and reasonable bed day rates, ICE Acquisitions works with the Office of Detention and Removal Operations program office, Contract Officer Technical Representative, and other DRO field personnel to evaluate the proposed cost of services. ICE Acquisitions compares the proposed bed day rates to those of similarly situated facilities and compares with rates negotiated by other users (both economically and demographics) to determine a fair and reasonable price for detention bedspace in that location. The Office of Acquisitions and the Office of Detention and Removal Operations are planning to continue developing additional methods for locating and acquiring more cost-effective detention bedspace by using competitive procedures to the maximum extent possible.

In addition to these initiatives, four other cost-effective acquisition updates to the National Detention Management Plan are underway. Specifically, ICE plans to:

1. Update the Intergovernmental Service Agreement (IGSA) Template:
 - The Office of Acquisition Management is updating the ICE Contract and Acquisition Procedures for the two IGSA Templates that address shared and dedicated facilities. OAQ worked with DRO Detention Management Unit to revise the Statement of Work for the IGSA template and ensure that the Quality Assurance Surveillance Plans reflected Detention Management Unit's needs. This update will be completed in March 2009.
2. Use Cost and Price Analysis:
 - ICE Acquisition Contract Specialists are trained and follow the cost analysis and the guidelines of allowability outlined in Office of Management and Budget Circular A-87. In addition to cost analysis, price analysis is performed to support negotiated bed day rates. Price analysis includes reviewing facility bed day rates as compared to others in similarly situated facilities and compares with rates negotiated by other users (both economically and demographics).

All rate IGSAs require a pre- and post-negotiation memorandum approved by a warranted Contracting Officer before sending the award documents to ICE Acquisitions policy and the Office of the Principal Legal Advisor for review and concurrence.
3. Create a plan to update/replace United States Marshals Service (USMS), legacy Immigration and Naturalization Service (INS), and Office of Federal Detention Trustee (OFDT) Intergovernmental Service Agreements:

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Management Comments to the Draft Report

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- In FY 2008, the Office of Acquisition Management started replacing the approximately 325 Intergovernmental Service Agreements that ICE utilized through the USMS, legacy INS, and OFDT. In 2008, thirty-two intergovernmental service agreements were updated, replaced, or issued as new. In 2009, ICE's goal is to update or replace fifteen additional intergovernmental service agreements. So far this year, Acquisitions has updated or replaced seven Intergovernmental Service Agreements, three of which are being reviewed for award; an additional nineteen are in the Request for Proposal or cost evaluation phases.
4. Reduce Guaranteed Minimums:
 - As Intergovernmental Service Agreements are replaced, minimums, if any, are deleted or significantly reduced to a consistently achievable number.
 5. Consolidate total number within regions to leverage price negotiation.

Therefore, ICE requests that this recommendation be considered resolved and open pending demonstration that the actions have been taken.

OIG Recommendation 2: "Establish adequate and effective financial management controls to ensure that the agency is not paying more than it should for detention bed space and related services."

ICE Response to Recommendation 2: ICE concurs. The Office of Acquisition Management and the Office of Detention and Removal Operations are working to establish a robust Contract Officer Technical Representative presence at detention facilities, both to monitor performance and to review invoices. The contracting officer is involved in any case where there is an issue on proper payment amounts. Acquisitions Management and Detention and Removal Operations have set up a process to review Jail Cost Services Statements thoroughly when negotiating prices for bed space and related services at Intergovernmental Service Agreements. Detention and Removal Operations and Acquisitions Management will develop strategies for competition, cost, and price-based acquisitions. They will also work together to identify facilities that are good candidates for consolidation and competition.

Finally, ICE places a high priority on providing adequate and constructive training to the agency's Contract Officer Technical Representatives, in order to better equip them to constructively review the bedspace invoices received from its Intergovernmental Service Agreements. This will ensure the agency pays only for the services received. Likewise, Detention and Removal Operations is currently recruiting Contract Officer Technical Representatives in order to provide additional oversight at ICE detention facilities. At present, ICE plans to recruit twenty-six Contract Officer Technical Representatives in FY 2009 to improve contract monitoring and financial controls.

In light of these answers, ICE requests that this recommendation be considered resolved and open.

OIG Recommendation 3: "Improve data gathering and analysis capabilities to support forecasting of requirements and to determine the most cost-effective means for acquiring detention bed space."

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ICE Response to Recommendation 3: ICE concurs. ICE has already begun to implement this recommendation, as evidenced its implementation of the ICE Integrated Decision Support system in August 2008. Detention and Removal Operations analysts combine the qualitative information drawn from monthly capacity planning meetings with the quantitative information that IIDS generates, in an effort to make arrest and detention forecasts, which in turn better equips them for analyzing trends in arrest and detention statistics.

Moreover, to further improve ICE's analytical capability, Detention and Removal Operations will conduct an annual cost data analyses of facility daily rates and related services. These cost data analyses can then be incorporated into current bed space forecasts and evaluation models to more accurately forecast budget needs and facilitate cost-based decision-making, pending completion, operate an interim system to improve short-term decision-making.

Thus, ICE requests that this recommendation be considered resolved and open pending completion of a first subsequent reporting to OIG.

Should you have questions or concerns, please contact Margurite Barnes, OIG portfolio manager at (202) 732-4161 or by e-mail at Margurite.Barnes@dhs.gov.

Appendix C
FY 2007 ICE SBI-related Contract Actions in Excess of \$20 Million

Contract Action Number	Vendor Name	Contract Action Description	Effective Date	Contract Action Dollar Amount
HSCEOP-07-J-00302 Modification #1	Corrections Corporation of America	Detention, Wages, Meals, and Mileage	4/20/07	\$21,840,798
HSCEOP-07-F-CL0380	DELL Marketing Limited Partnership	Microsoft Desktops and Server Software	6/27/07	\$23,923,859
HSCEOP-07-J-00537	Science Applications International Corporation	Information Support Services	6/29/07	\$25,804,782
		Total		\$71,569,439

Appendix D
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