



United States Government Accountability Office

Report to the Chairman  
Committee on Homeland Security  
House of Representatives

January 2021

# IMMIGRATION DETENTION

## Actions Needed to Improve Planning, Documentation, and Oversight of Detention Facility Contracts

Accessible Version

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# GAO Highlights

Highlights of [GAO-21-149](#), a report to the Chairman, Committee on Homeland Security, House of Representatives

## Why GAO Did This Study

The Department of Homeland Security's ICE detained approximately 48,500 foreign nationals a day, on average, for 72 hours or more in fiscal year 2019. ICE was appropriated about \$3.14 billion in fiscal year 2020 to operate the immigration detention system. ICE has three ways of acquiring detention space—IGSAs with state or local government entities; agreements with Department of Justice U.S. Marshals Service to join an existing contract or agreement (known as a “rider”); or contracts.

This report examines (1) what data show about the characteristics of contracts and agreements; (2) the extent to which ICE developed and implemented processes and a strategic approach to acquire space; and (3) the extent to which ICE has overseen and enforced contracts and agreements. GAO reviewed documentation of acquisition and oversight efforts at facilities used to hold detainees for 72 hours or more; analyzed ICE data for the last 3 fiscal years—2017 through 2019; conducted site visits to new and long-standing detention facilities; and interviewed ICE officials.

## What GAO Recommends

GAO is making five recommendations, including that ICE include stakeholder input and document decision-making for new detention space acquisitions; implement a strategic approach to using guaranteed minimums; and revise its supervisory structure for contract oversight. DHS concurred with four recommendations and disagreed with revising its supervisory structure. GAO believes the recommendation remains valid, as discussed in the report.

View [GAO-21-149](#). For more information, contact Rebecca Gambler at (202) 512-8777 or [gambler@gao.gov](mailto:gambler@gao.gov).

January 2021

# IMMIGRATION DETENTION

## Actions Needed to Improve Planning, Documentation, and Oversight of Detention Facility Contracts

## What GAO Found

In fiscal year 2019, U.S. Immigration and Customs Enforcement (ICE) had detention contracts or agreements with 233 facilities, 185 of which it used to hold detainees, as shown below.

Acquisition method	Total facilities	Facilities that held detainees	Percentage of average daily population held in facility
Intergovernmental service agreement	133	108	59
U.S. Marshals Service rider	85	62	17
Federal Acquisition Regulation-based contract	15	15	24
<b>Total</b>	<b>233</b>	<b>185</b>	<b>100</b>

Source: GAO analysis of ICE data. | GAO-21-149

ICE primarily uses intergovernmental service agreements (IGSA) to acquire detention space. Officials said IGSA offer several benefits over contracts, including fewer requirements for documentation or competition.

ICE has a process for obtaining new detention space, but it did not follow this process for most of its recent acquisitions and does not have a strategic approach to using guaranteed minimum payments in its detention contracts and agreements. From fiscal year 2017 through May 11, 2020, ICE entered into 40 contracts and agreements for new detention space. GAO's review of ICE's documentation found that 28 of 40 of these contracts and agreements did not have documentation from ICE field offices showing a need for the space, outreach to local officials, or the basis for ICE's decisions to enter into them, as required by ICE's process. Until ICE consistently uses its process, it will not have reasonable assurance that it is making cost-effective decisions that best meet its operational needs. ICE has increasingly incorporated guaranteed minimum payments into its contracts and agreements, whereby ICE agrees to pay detention facility operators for a fixed number of detention beds regardless of whether it uses them. However, ICE has not taken a strategic approach to these decisions and has spent millions of dollars a month on unused detention space. Planning for detention space needs can be challenging, according to ICE officials, because the agency must respond to factors that are dynamic and difficult to predict. A strategic approach to using guaranteed minimums could help position ICE to balance these factors and make more effective use of federal funds.

ICE relies on Contracting Officer's Representatives (COR) to oversee detention contracts and agreements, but the COR's supervisory structure—where field office management, rather than headquarters, oversee COR work and assess COR performance—does not provide sufficient independence for effective oversight. CORs in eight of 12 field offices identified concerns including lacking resources or support, as well as supervisors limiting their ability to use contract enforcement tools and bypassing CORs' oversight responsibilities in contracting matters. Revising its supervisory structure could help ICE ensure that detention contract and agreement terms are enforced.

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**Abbreviations**

COR	Contracting officer's representative
DHS	Department of Homeland Security
ERO	Enforcement and Removal Operations
FAR	Federal Acquisition Regulation
ICE	U.S. Immigration and Customs Enforcement
IGSA	Intergovernmental service agreement
OIG	Office of Inspector General

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January 13, 2021

The Honorable Bennie G. Thompson  
Chairman  
Committee on Homeland Security  
House of Representatives

Dear Mr. Chairman:

In fiscal year 2019, U.S. Immigration and Customs Enforcement (ICE), within the Department of Homeland Security (DHS), detained approximately 48,500 foreign nationals a day, on average, for 72 hours or more, according to agency data. ICE is the lead agency responsible for providing safe, secure, and humane confinement for detained foreign nationals in the United States. Immigration detention is a civil function rather than a criminal process. ICE detains certain foreign nationals whose immigration cases are pending, or who have been ordered removed from the United States, for the administrative purpose of holding, processing, determining removability, and preparing them for removal. To this end, the DHS Appropriations Act, 2020, provided ICE about \$3.14 billion to operate the immigration detention system.<sup>1</sup>

ICE has three ways of acquiring detention space—contracts with private detention companies, intergovernmental service agreements (IGSA) with state and local government entities, and through riders on Department of Justice U.S. Marshals Service contracts and agreements. Some facilities exclusively hold ICE detainees while others hold ICE detainees along with other confined populations. In fiscal year 2019, ICE had contracts and agreements with over 230 facilities to hold detainees for 72 hours or more.

Since 2018, the DHS Office of Inspector General (OIG) issued two reports on ICE detention contracts and agreements. In February 2018, the DHS OIG reported that ICE improperly modified an existing detention facility IGSA; that ICE's policies and procedures for negotiating, executing, and modifying agreements with local government agencies were insufficient to ensure proper use of such modifications; and that ICE

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<sup>1</sup>See Explanatory Statement, 165 Cong. Rec. H10613, H11033 (daily ed. Dec. 17, 2019), accompanying Division D—DHS Appropriations Act, 2020, Pub. L. No. 116-93, div. D, 1333 Stat. 2371 (2019).

lacked assurance that its contracts were executed in the best interest of taxpayers, the federal government, or detainees.<sup>2</sup> The DHS OIG recommended that ICE address these issues by establishing written procedures for IGSA, among other actions, which ICE subsequently implemented. In January 2019, the DHS OIG reported that ICE did not consistently use available enforcement tools (such as financial penalties) to hold detention facility operators to contract or agreement terms and did not consistently impose penalties when those requirements were not met.<sup>3</sup> The DHS OIG made recommendations to help address these issues, which we discuss later in this report.

You asked us to review ICE's processes for acquiring immigration detention space used to hold detainees for 72 hours or more. This report examines:

1. what data show about the characteristics of contracts and agreements for immigration detention facilities;
2. the extent to which ICE has developed and implemented processes and a strategic approach to acquire space to meet its detention needs; and
3. the extent to which ICE has overseen and enforced the terms and conditions of detention facility contracts and agreements.

To address these questions, we focused our review on ICE detention space acquisition and oversight efforts at facilities that hold detainees for

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<sup>2</sup>DHS OIG, *Immigration and Customs Enforcement Did Not Follow Federal Procurement Guidelines When Contracting for Detention Services*, OIG-18-53 (Washington, D.C.: Feb. 21, 2018).

<sup>3</sup>DHS OIG, *ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards*, OIG-19-18 (Washington, D.C.: Jan. 29, 2019).

72 hours or more.<sup>4</sup> For all three objectives, we analyzed ICE documentation and interviewed relevant ICE officials and selected owners and operators of immigration detention facilities. Specifically, we interviewed ICE headquarters officials from Enforcement and Removal Operations (ERO), Office of Acquisition Management, and Office of the Principal Legal Advisor—offices responsible for approving, negotiating, and reviewing detention space contracts and agreements, among other roles.

We also interviewed officials from a non-generalizable sample of 12 of 24 ERO field offices. ERO field offices are responsible for identifying detention space needs and overseeing operator performance at detention facilities within their geographic areas, among other duties. We selected these field offices to represent a range of characteristics, including varying numbers of facilities and average daily detainee populations; preponderance of new contracts or agreements; geographic variation; and use of differing detention space acquisition methods (i.e., contracts, agreements, or U.S. Marshals Service riders).<sup>5</sup> We conducted site visits to the Seattle and New Orleans field offices, where in addition to meeting with ERO staff, we met with officials from entities that operated five detention facilities and/or held contracts or agreements with ICE for the facilities.<sup>6</sup> We selected these facilities to encompass a range of new and long-running ICE detention facility contracts and agreements. The information we obtained from our field office interviews and site visits

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<sup>4</sup>ICE also holds detainees in shorter-term, under-72-hour detention facilities. In addition, ICE has holding facilities typically for holding individuals for 24 hours or less, but generally no more than 72 hours, in order to complete general processing and determine the appropriate course of action, such as transfer into an ICE under- or over-72-hour detention facility. When ICE detains children, it does so with their families at a family residential facility. Responsibility for housing unaccompanied children lies with the Office of Refugee Resettlement in the Department of Health and Human Services. ICE must transfer unaccompanied alien children less than 18 years of age who are unlawfully in the United States without a parent or other legal guardian to the Department of Health and Human Services Office of Refugee Resettlement's custody within 72 hours of determining that they are unaccompanied alien children. See 8 U.S.C. § 1232(b)(3). This report does not address short-term facilities or Office of Refugee Resettlement facilities.

<sup>5</sup>We met with officials from the Atlanta, Baltimore, Chicago, Dallas, Los Angeles, Miami, New Orleans, St. Paul, San Antonio, Seattle, Phoenix, and Washington ERO field offices. As of December 2019, these 12 field offices were responsible for 62 percent of ICE's over-72-hour detention facilities and 71 percent of ICE's average daily detainee population.

<sup>6</sup>The facilities we visited included Northwest ICE Processing Center in the Seattle field office area of responsibility; and River Correctional Center and Jackson Parish Correctional Center, LaSalle ICE Processing Center, and Winn Correctional Center in the New Orleans field office area of responsibility.

cannot be generalized to all ERO field offices or detention facilities, but offers insight into ICE detention space acquisition and oversight efforts. We also met with officials from the Department of Justice U.S. Marshals Service to discuss ICE's use of U.S. Marshals Service contracts and agreements.

To describe what data show about the characteristics of contracts and agreements for immigration detention facilities, we analyzed ICE data from fiscal years 2017 through 2019—the 3 most recent fiscal years for which complete data were available at the time of our review. We analyzed these data to determine the composition of ICE's detention space portfolio, including the number and types of detention contracts and agreements, variations in contract and agreement costs, and other characteristics. We assessed the reliability of these data by reviewing related documentation, reviewing the data for any obvious errors and anomalies, and interviewing knowledgeable ICE officials. We determined that these data were sufficiently reliable for the purposes of describing the characteristics of contracts and agreements. In addition, we interviewed ERO and Office of Acquisitions and Management headquarters officials, ERO field office officials, and facility operators and owners to discuss contract and agreement costs and other characteristics.

To evaluate the extent to which ICE has developed and implemented processes and a strategic approach to acquire space to meet its detention needs, we analyzed ICE's detention space acquisition proposals (referred to as white papers) and ERO's corresponding evaluations from fiscal year 2017 to May 11, 2020.<sup>7</sup> We analyzed these documents to determine what factors ICE considered when acquiring new detention space, among other information. We also analyzed selected information on contracts and agreements ICE entered into during fiscal years 2017 through 2019 from its Facility List Report—an internal spreadsheet with facility and contract and agreement information. Specifically, we analyzed information on guaranteed minimum payments to detention facility operators (including the number of guaranteed detention beds and associated costs), average daily detainee populations (to determine the extent to which ICE met its guaranteed minimums), and other descriptive information. We reviewed these data for obvious errors and outliers and discussed the data with ERO and Office of Acquisition Management officials. We determined that the data were sufficiently

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<sup>7</sup>We selected this period to focus on the 3 most recent fiscal years for which complete data were available at the time of our review.

reliable for the purposes of analyzing ICE's strategy and processes for acquiring detention space.

We also interviewed officials from ICE headquarters and ERO field offices to discuss their roles in the detention space acquisition process. During our site visits, we met with staff from three private detention companies—CoreCivic, GEO Group, and LaSalle Corrections—to discuss their companies' roles in ICE detention space acquisition, among other topics. We compared ICE's detention space acquisition efforts to its own internal policy documents and guidance, as well as ICE's most current strategic plan. We also compared ICE's efforts to *Standards for Internal Control in the Federal Government* and best practices in portfolio management from the Project Management Institute.<sup>8</sup> The establish structure, responsibility, and authority component of internal controls—documentation of the internal control system—was significant to this objective, along with the related principle that management should maintain effective documentation to provide a means to retain organizational knowledge and communicate that knowledge to external parties, such as external auditors. We reviewed ICE documentation of its detention space acquisition processes and compared this with internal control criteria to identify any gaps.

To evaluate the extent to which ICE has overseen and enforced the terms and conditions of detention facility contracts and agreements, we reviewed all available contract discrepancy reports for incidents occurring from fiscal years 2016 through 2019 and the procedures ICE used to track and report on them.<sup>9</sup> We analyzed these reports to identify any trends, such as the types of facilities where discrepancies occurred or how the discrepancies were resolved. We also analyzed ICE internal memorandums, guidance, and other documents regarding the roles and responsibilities of ICE staff with regard to contract oversight. Additionally, we interviewed contracting officer's representatives (COR)—ICE field

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<sup>8</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sep. 10, 2014); and Project Management Institute, *The Standard for Portfolio Management*, 4th ed. (Newtown Square, PA: 2017).

<sup>9</sup>We selected this period to focus on the most recent years for which reports were available at the time of our review and to ensure we had a sufficient number of reports to analyze. Contract discrepancy reports are used to document performance issues and may include a recommendation for financial penalties. Although ICE refers to these reports as "contract discrepancy reports," we refer to them as "discrepancy reports" for our purposes because they are used to document violations of the terms and conditions set forth in both contracts and agreements.

office officials responsible for monitoring the performance of facility operators—from 12 of 24 ERO field offices. We also interviewed management from five field offices, as well as ICE headquarters officials, regarding ICE’s efforts to oversee and enforce contracts and agreements.<sup>10</sup> We compared ICE’s actions to its internal guidance and *Standards for Internal Control in the Federal Government*.<sup>11</sup> Specifically, we found three areas of internal controls that were particularly relevant—the control environment, documentation of the internal control system, and the sharing of information and ongoing communication with stakeholders.<sup>12</sup>

We conducted this performance audit from August 2019 to January 2021 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.

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## Background

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### ICE Methods for Acquiring Detention Space

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ICE has three methods for acquiring detention space, as described in table 1.

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<sup>10</sup>We interviewed field office management from the Baltimore, New Orleans, San Antonio, Seattle, and Chicago ERO field offices.

<sup>11</sup>[GAO-14-704G](#).

<sup>12</sup>The control environment component of internal controls—segregation of duties—was significant to this objective, along with the related principles that management should consider segregating incompatible duties, as segregation of duties helps prevent fraud, waste, and abuse in the internal control system, and can address the risk of management override. Second, the establish structure, responsibility, and authority component of internal controls—documentation of the internal control system—was significant to this objective, along with the related principle that management should maintain effective documentation to provide a means to retain organizational knowledge and communicate that knowledge to external parties, such as external auditors. Finally, the information and communication component was significant, along with the related principle that management should use quality information to make informed decisions and evaluate the entity’s performance. We compared ICE’s efforts to oversee and enforce contract terms to these criteria to identify any gaps.

**Table 1: U.S. Immigration and Customs Enforcement (ICE) Methods for Acquiring Immigration Detention Space**

Method	Description
Contracts	ICE contracts directly with detention facility operators (e.g., private companies such as CoreCivic, GEO Group, and LaSalle Corrections) to hold detainees at facilities the operators own or to assist in operating a facility ICE owns. These contracts are generally governed by the Federal Acquisition Regulation (FAR) and related competition requirements.
Intergovernmental service agreements (IGSA)	ICE uses a Department of Homeland Security (DHS) authority under the Immigration and Nationality Act to enter into IGSA with state or local entities (e.g., a county sheriff or a city government). These entities in turn may contract the provision of detention services to a private company, or provide the services using local law enforcement (such as a local jail that holds local criminal populations and ICE detainees). <sup>a</sup> DHS's IGSA authority is separate from the statutory framework governing federal contracts which generally must adhere to FAR requirements.
Intergovernmental agreements with U.S. Marshals Services	ICE enters into these agreements with the U.S. Marshals Service, where ICE joins an existing U.S. Marshals Service contract or agreement to use Marshals Service-acquired bed space in a local prison, jail, or private detention facility. This is known as a "rider" on a U.S. Marshals Service contract or agreement, and the ability to use the beds is contingent upon availability.

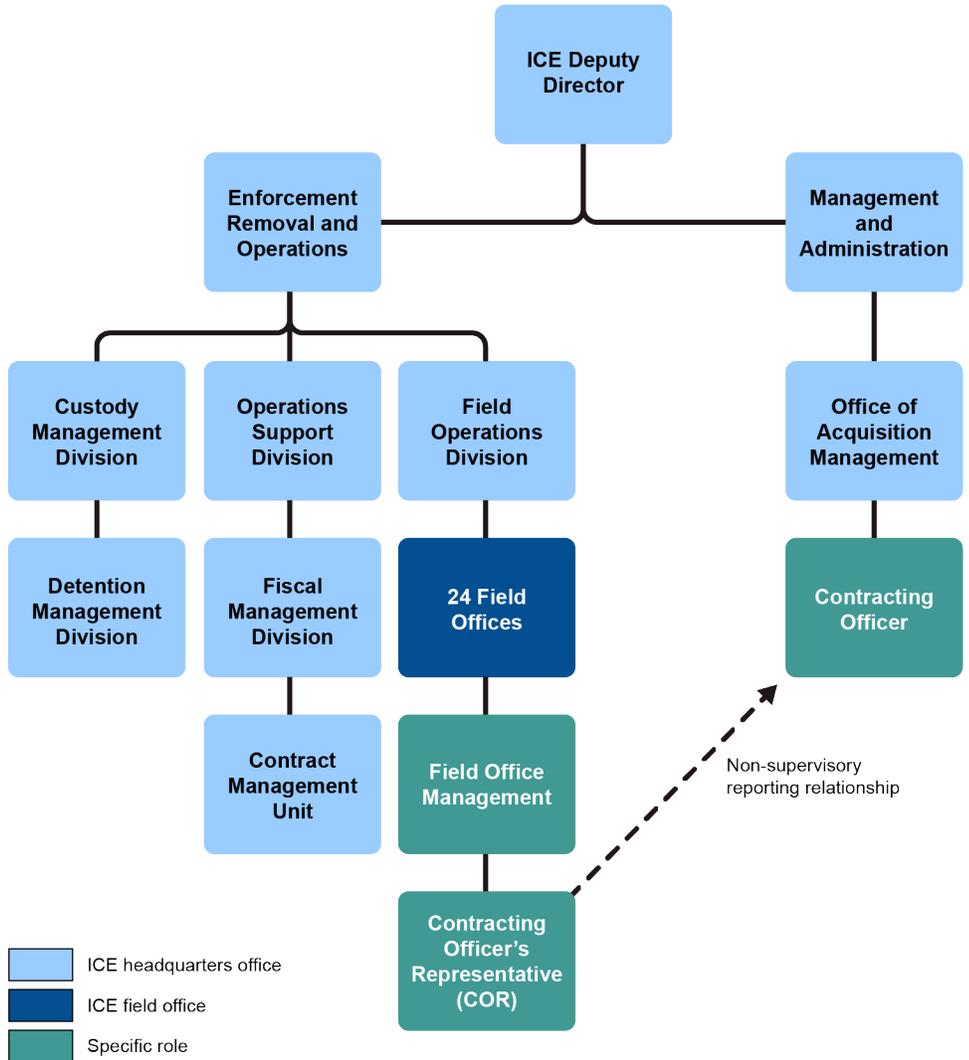
Source: GAO analysis of ICE information. | GAO 21-149

<sup>a</sup>The Immigration and Nationality Act, as amended, grants ICE the authority to enter into an agreement with a state or locality to provide necessary clothing, medical care, requisite guard hire; and the housing, care, and security for detained individuals. See 8 U.S.C. § 1103(a)(11)(A).

## ICE Organizational Structure and Responsibilities

Several ICE offices are responsible for detention facility contract and agreement management and oversight, as shown in figure 1.

**Figure 1: U.S. Immigration and Customs Enforcement (ICE) Offices Responsible for Detention Facility Contract and Agreement Management and Oversight**



Source: GAO analysis of Department of Homeland Security Office of Inspector General information. | GAO-21-149

**ERO.** Within ICE, ERO identifies, apprehends, and detains potentially removable foreign nationals, and removes individuals subject to a final order of removal from the United States. Several divisions within ERO that carry out this work have responsibilities related to detention facility contracts and agreements, including:

- **ERO’s Custody Management Division.** This division oversees detention facility compliance with ICE detention standards. It is also

responsible for analyzing detention space needs identified by ERO field offices and submitting requests for detention contract and agreement action to ICE's Office of Acquisition Management.

- **ERO's Operations Support Division.** Within this division, the Fiscal Management Division oversees the Contract Management Unit, which is responsible for funding contracts and agreements, and monitoring that funding.
- **ERO's Field Operations Division.** This division oversees ERO's 24 field offices, which manage local detention operations and work directly with detention facilities in their geographic regions. Field offices are responsible for identifying needs for additional detention space and preparing detention space acquisition requests.

**ICE's Office of Acquisition Management.** This office is responsible for preparing, executing, and maintaining contracts and agreements for detention facilities, and for processing any contract and agreement modifications. Contracting officers within the office also assign duties and responsibilities to ERO CORs. The contracting officer formally appoints a COR for each contract and agreement in writing, which allows the COR to assist in acquisition planning and other duties, including assessing facility operator performance to ensure compliance with the government's performance objectives and to evaluate the quality and timeliness of the products or services produced. As of September 2020, the Office of Acquisition Management reported that there were 17 detention-related contracting officers.

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## Oversight and Enforcement of Contracts and Agreements

### Contracting Officer

Contracting officers are responsible for appointing contracting officer's representatives (COR) and assigning CORs duties as specifically outlined in each individual contract and agreement. CORs are to monitor contract and agreement performance on behalf of their contracting officer.

Source: GAO analysis of U.S. Immigration and Customs Enforcement information. | GAO-21-149

CORs are responsible for overseeing all types of detention facility contracts and agreements, including IGSA's and contracts. CORs are located in ERO field offices and overseen by field office management. As CORs monitor facility operator performance, they are to report information that may affect contractual commitments and requirements (such as issues related to contractor performance) to the contracting officers within the Office of Acquisition Management. As of January 2020, there were 28 CORs across ERO's 24 field offices. CORs are also responsible for overseeing contracts that support detention facility operations, such as transportation contracts.

Detention facility contracts and agreements establish requirements facility operators are to adhere to, including specific detention standards operators are to meet to ensure humane confinement for detainees.

**Contracting Officer's Representative (COR)**

A COR is appointed by a contracting officer and provides technical direction, clarification, and guidance with respect to the contract or agreement terms.

The COR is the technical liaison between the detention facility operator and the contracting officer, and is responsible for monitoring the performance of the facility operator according to the contract or agreement.

Source: GAO analysis of U.S. Immigration and Customs Enforcement information. | GAO-21-149

These standards cover a variety of issues, including detainee safety, security, care, and the administration and management of the facilities. CORs have the following enforcement tools to assist in holding detention facility operators accountable for adhering to requirements established in contracts and agreements:

- **Quality assurance surveillance plan.** A quality assurance surveillance plan is a standard template included in detention facility contracts and agreements that outlines requirements for complying with applicable ICE detention standards and potential actions ICE can take when a contractor does not meet those requirements. When facilities are found to be noncompliant, CORs may submit a discrepancy report.
- **Discrepancy report.** A discrepancy report is formal documentation by the COR of a performance issue committed by a detention facility operator. CORs may issue discrepancy reports for violations of the terms and conditions set forth in contracts or agreements, such as staffing levels below required minimums or inappropriate use of force towards detainees. Operators are required to create corrective action plans and eventually correct deficiencies identified in the discrepancy report. If an operator fails to respond to a discrepancy report appropriately, ICE can levy financial penalties against the operator.
- **Financial penalty.** In response to a contract or agreement deficiency, ICE can deduct funds from an invoice (deduction) or withhold an amount from an invoice payment pending the correction of a deficiency (withholding). A COR may recommend financial penalties when submitting a discrepancy report to the contracting officer. A number of ICE headquarters entities contribute to the final determination on whether or not to impose a financial penalty, including ICE's Office of Acquisition Management, ERO's Custody Management Division, and the Office of the Principal Legal Advisor.<sup>13</sup>

<sup>13</sup>ICE's Office of the Principal Legal Advisor's Commercial and Administrative Law Division provides legal support to the Office of Acquisition Management by completing legal reviews of contracts and agreements, as well as reviews of discrepancy reports with proposed penalties. The Commercial and Administrative Law Division reviews discrepancy reports to confirm that the contract or agreement has sufficient authority to issue a penalty and advises on whether the proposed penalty amount is appropriate.

## ICE Primarily Acquires Detention Space Using Intergovernmental Service Agreements; Characteristics Vary Based on Facility Operator, Cost, and Other Factors

The contracts and agreements ICE uses to acquire space in detention facilities vary with respect to facility operator, cost, and other factors; however, ICE primarily acquires detention space through agreements between ICE and state and local governments, collectively referred to as IGSA. Our analysis of ICE data showed that by the end of fiscal year 2019, ICE had contracts or agreements in place with a total of 233 over-72-hour detention facilities, with space in about 57 percent of these facilities (133 of 233) acquired through IGSA.<sup>14</sup> After IGSA, detention space was most commonly acquired through ICE joining, or “riding”, U.S. Marshals Service contracts and agreements (36 percent of facilities), and least frequently through contracts (6 percent of facilities).<sup>15</sup> Although ICE data indicated the agency had contracts and agreements in place with 233 facilities, in fiscal year 2019 ICE held detainees in 79 percent (185 of 233) of those facilities, as shown below in table 2.

**Table 2: U.S. Immigration and Customs Enforcement (ICE) Over-72-Hour Detention Facility Types and Average Daily Detainee Population, as of the End of Fiscal Year 2019**

	Description	Number of facilities	Number of facilities that held detainees	Percentage of average daily population held in facility
Non-dedicated intergovernmental service agreement (IGSA)	Facility owned by state or local government or private company, operated under an agreement with ICE; holds ICE detainees and other confined populations, either together or separately	116	91	30
Dedicated IGSA	Facility owned by state or local government or private company, operated under an agreement with ICE; exclusively holds ICE detainees	14	14	25

<sup>14</sup>IGSAs can be dedicated (i.e., facilities that hold only ICE detainees) or non-dedicated (i.e., facilities that hold ICE detainees along with other confined populations). ICE’s family residential centers also operate under IGSA.

<sup>15</sup>Percentages for each acquisition method do not add to 100 percent due to rounding.

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	Description	Number of facilities	Number of facilities that held detainees	Percentage of average daily population held in facility
Family residential center	Facility owned and operated by a state or local government entity under an agreement with ICE that holds children and their families and exclusively holds ICE detainees	3	3	4
U.S. Marshals Service intergovernmental contract or agreement	Facility owned by state or local government or private company, operated under an agreement or contract with U.S. Marshals Service. ICE uses “riders” on these contracts and agreements to hold ICE detainees, either together or separately from other populations	85	62	17
Contract detention facility	Facility owned and operated by private company under direct ICE contract; exclusively holds ICE detainees	10	10	16
Service processing center	Facility owned and primarily operated by ICE with assistance from contractors. ICE acquires various services through contracts, such as guards, food, and facility maintenance. Exclusively holds ICE detainees.	5	5	8
<b>Total</b>		<b>233</b>	<b>185</b>	<b>100</b>

Source: GAO analysis of ICE data. | GAO-21-149

Notes: ICE data included 97 additional agreements that ICE had not used since fiscal year 2015. According to Office of Acquisition Management officials, if ICE has not used facilities for 3 years, it is reasonable to assume that there is not an active agreement in place. Accordingly, we excluded these agreements from our analysis.

ICE authorizes facilities to hold detainees for up to 72 hours or more than 72 hours. In addition to the over-72-hour facilities listed in this table, ICE used 36 IGSA facilities and 57 U.S. Marshals Service agreement facilities to hold detainees for up to 72 hours in fiscal year 2019.

ICE officials explained that unused facility space gives ICE flexibility to respond to potential surges in the overall number of detainees for those facilities where ICE only pays for the detention beds it uses. ICE may choose not to use a facility with which it has a contract or agreement because of changes in transportation routes or the addition of other facilities with guaranteed minimums where ICE pays for a fixed number of detention beds regardless of whether they are used, according to ICE officials.<sup>16</sup> Further, ICE may choose not to use a facility with which it has a

<sup>16</sup>For example, ICE officials said they moved detainees out of a facility in northwest Louisiana because its remote location made transportation a challenge and because ICE had recently acquired detention space in new facilities with guaranteed minimums—beds ICE pays for regardless of whether they are filled—and therefore needed to transfer detainees to meet those minimums.

contract or agreement because the facility has not been inspected under ICE's current detention standards.<sup>17</sup>

ICE officials said that each detention space acquisition method has tradeoffs, but the agency primarily relies on IGSA and U.S. Marshals Service riders. Officials gave several reasons for this. For one, officials said that contract detention facilities may allow ICE to customize the facility to better meet its detention standards, but these facilities are more expensive and the lead-time to acquire them is 18 months or longer, which officials said is often not responsive enough for ICE's detention space needs.

Similarly, officials said that new contracts for ICE-owned service processing centers are not a viable option because of the substantial amount of time needed to design and construct such a facility, coupled with the fact that ICE does not have construction authority. A 2016 Homeland Security Advisory Council report on privatized detention facilities echoed this, noting that ICE-owned service processing centers, which ICE primarily operates, are generally more expensive than contractor-run detention facilities. The report noted that for this reason, ICE has been under sustained pressure from congressional appropriators to reduce the use of service processing centers and has closed several centers over recent years.<sup>18</sup>

ICE officials told us that IGSA and U.S. Marshals Service riders offer the agency several additional benefits over contracts. For one, ICE officials said the agency's detention space needs are often time-sensitive and fluctuate regularly, thus putting a premium on obtaining bed space quickly. Officials said that agreements can be executed in a matter of weeks, as opposed to contracts which, as noted previously, can take 18 months or longer to complete. For example, the COR in one field office

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<sup>17</sup>In addition, ICE officials noted that the agency may not use a facility with which it has an agreement if the facility has not been used in many years and the agreement becomes unacceptable (e.g., because the amount ICE pays is no longer acceptable to the vendor or the facility does not meet ICE's current detention standards). After ICE has not used a facility for 36 months, new terms or a new agreement would likely have to first be renegotiated for ICE to use the detention space, according to ICE officials.

<sup>18</sup>See *Homeland Security Advisory Council, Report of the Subcommittee on Privatized Immigration Detention Facilities*, Dec. 1, 2016. The Homeland Security Advisory Council provides advice and recommendations to the Secretary of Homeland Security on pertinent matters. The council comprises leaders from state and local government, the private sector, and academia, among others.

said that acquiring detention space in a local jail with a U.S. Marshals Service agreement in place is the fastest and easiest option for ICE because ICE does not have to negotiate any new terms, rates, or conditions—it is simply added to the Marshals' existing agreement.

Further, according to ICE officials, the agency is typically able to enter into IGSAs more quickly than contracts because IGSAs include fewer requirements and less documentation than contracts. For example, unlike contract requirements under FAR, according to ICE guidance there is no legal requirement to competitively award an IGSA.<sup>19</sup> Further, when awarding an IGSA, ICE is not required to evaluate the past performance of detention facility operators. Under FAR, however, ICE requires that prospective contractors submit information on their performance in recent contracts. ICE uses the information, along with information from other sources on contractors' past performance, to evaluate the proposals. To evaluate the past performance of detention facility operators under IGSA, Office of Acquisition Management officials said they perform internet searches of facilities to see if any alarming incidents have happened in the past. If an incident has happened, such as a riot or a major disease outbreak, officials said they may suggest that ERO enhance security requirements in the IGSA—such as the number of required guards or health staff—to mitigate concerns. However, acquisition officials noted that they defer to the local ERO field offices on any additional agreement requirements.<sup>20</sup> Table 3 below summarizes these various characteristics for entering into ICE's detention facility contracts and agreements.

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<sup>19</sup>See 8 U.S.C. § 1103(a)(11)(A). ICE has authority under the Immigration and Nationality Act to enter into IGSA separate from the statutory framework generally requiring adherence to the FAR, and full and open contract competition. IGSA holders are also not required to competitively award any contracts awarded pursuant to the IGSA.

<sup>20</sup>For example, one official stated he was researching a potential facility that had a prison riot occur in the past. As a result, he suggested that ERO hire more security personnel for the facility and develop a physical security plan. There was another facility he was researching in New Mexico that had a salmonella outbreak among its detainees, so the Office of Acquisition Management recommended that ERO increase its medical staff. Office of Acquisition Management officials said these additions (or others, such as increased recreation time or adding phones) would likely increase costs. Accordingly, it is up to local ERO subject matter experts to decide whether or not to add these additional measures to the agreement.

**Table 3: Selected Characteristics for Entering into U.S. Immigration and Customs Enforcement’s (ICE) Detention Facility Contracts and Agreements**

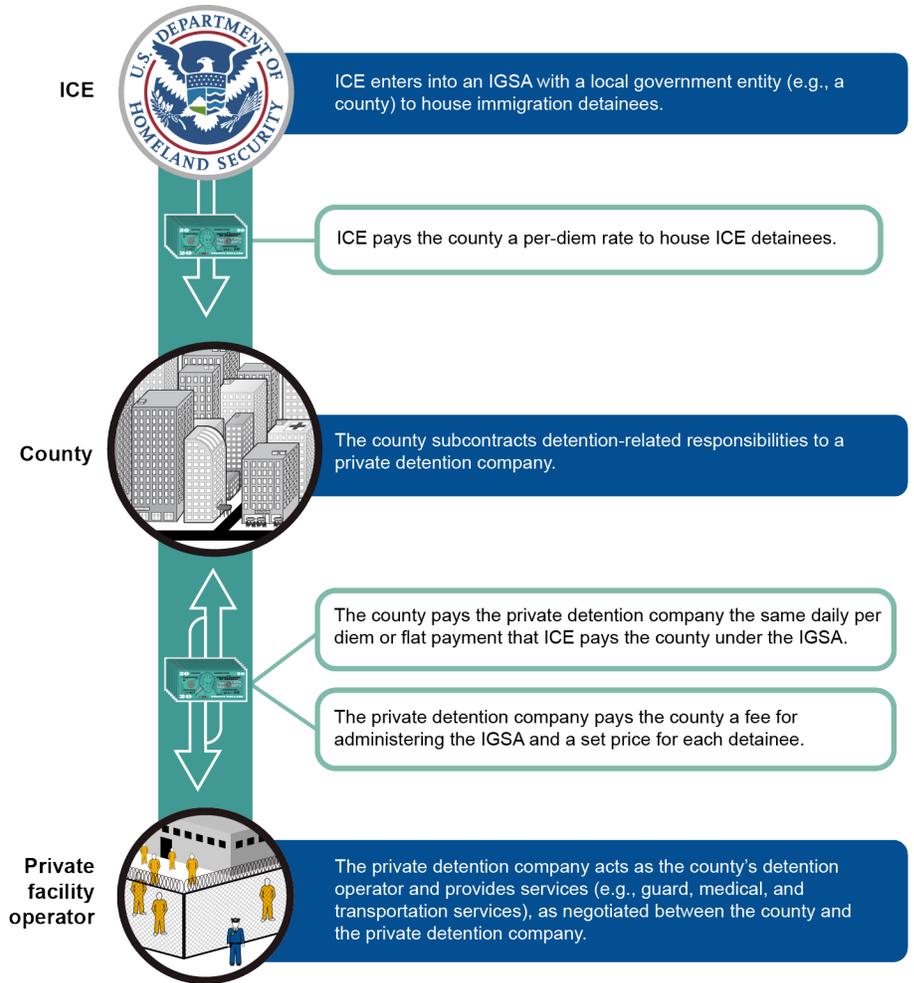
<b>Characteristic</b>	<b>Federal Acquisition Regulation (FAR)-based contract</b>	<b>Intergovernmental service agreement (IGSA)</b>	<b>U.S. Marshals Service contract or agreement rider</b>
Competition	More competition (ICE competes contracts according to FAR requirements)	Less competition (ICE does not formally compete IGSA’s)	N/A (ICE does not compete U.S. Marshals Service contracts or agreements)
Acquisition process timelines	Longer timelines (it typically takes 6 months to a year to complete this process)	Shorter timelines (it typically takes 2 weeks to 2 months to complete this process)	Shorter timelines (it typically takes 1 to 2 weeks to complete this process)
Past performance of operators	More information on facility operator past performance (this information is available to ICE and is an official part of the contract proposal review process)	Less information on facility operator past performance (this information is only available to ICE through internet searches)	Less information on operator past performance (this information is available to ICE only through internet searches)

Source: GAO analysis of ICE documentation and testimony. | GAO-21-149

IGSA’s are also unique with respect to the relationship between ICE and the entity that operates the detention facility and provides various services to detainees (facility operator). Specifically, the IGSA-holder can operate the facility, such as a county sheriff housing ICE detainees in a county jail, or ICE can modify the agreement to allow the IGSA-holder to sub-contract facility operations to a private, for-profit company, as shown below in figure 2.<sup>21</sup>

<sup>21</sup>In instances in which ICE modifies an agreement so that the IGSA holder can engage a private company to operate the facility, the IGSA holder technically does so under a contract. However, we refer to such instances as “subcontracts” to reflect the fact that the contract is independent of ICE and directly between the IGSA holder and the private company.

**Figure 2: Example of U.S. Immigration and Customs Enforcement (ICE) Intergovernmental Service Agreement (IGSA) Model for Subcontracting Detention Services to Private Provider**



Source: GAO analysis of California State Auditor information. | GAO-21-149

Under such an arrangement, a state, county, or city enters into an agreement with ICE for the provision of detention operations and services. The government entity can subcontract with a private company, such as GEO Group or CoreCivic, to be the facility operator. As discussed previously, these agreements and related contracts and subcontracts are not required to be competitively awarded. The IGSA establishes a fixed bed rate—that is, a per diem payment based on the costs associated with the agreement. According to a 2019 report from the California State Auditor, detention subcontracts for three of the state's

IGSAs showed that cities agreed to pay the private detention facility operators the same per diem rate that ICE paid the city under the terms of the agreement, essentially passing through all of the payments to the private facility operator.<sup>22</sup>

**Role of the Government Entity in a U.S. Immigration and Customs Enforcement (ICE) Intergovernmental Service Agreement (IGSA) for Immigration Detention**

One sheriff we interviewed whose office is an IGSA-holder said that dwindling state inmate populations had resulted in prison closures, negatively affecting the local economy.

The sheriff said he was approached by local elected officials and a private facility operator to discuss if he would be interested in pursuing an IGSA with ICE to hold immigration detainees.

He agreed, and the private facility operator provided funding to renovate a decommissioned state corrections center to bring it to ICE's standards.

The sheriff and officials from the private facility operator said that the private operator serves as what they called the "management company" – handling the day-to-day operations of the facility. The management company is responsible for knowing ICE policies and ensuring the facility meets ICE standards.

He said that overall, serving as an IGSA-holder was beneficial, in part because ICE pays more per detainee than the state—about \$60 dollars a day for ICE detainees compared to about \$25 dollars a day per state inmate.

Source: GAO | GAO-21-149.

For administering the ICE agreements, the private facility operators agree to pay the IGSA-holders various fees. ICE does not track the amount of money IGSA holders collect from facility operators when they subcontract detention services, as this is directly negotiated between the IGSA-holder and the facility operator. However, the California State Auditor found that since July 2016, the city of Adelanto received about \$1 million annually from GEO Group. This included an administrative fee of \$50,000 as well as a fee of \$1 per contracted bed per day (regardless of whether the bed was occupied by a detainee or not), and approximately \$339,000 annually for additional police officers to handle detention facility-related issues within the city.

Although ICE does not track how much facility operators pay state or local governments in fees for administering IGSAs, officials from one ERO field office stated that ICE is generally aware at the local level how much IGSA-holders receive. Officials gave examples of IGSA-holder compensation ranging from \$.50 to \$3.50 per detainee per day, or at between \$84,000 to \$438,000 to annually. ICE data does not allow us to reliably identify how many IGSAs are operated by private detention companies. However, as of the end of fiscal year 2019, at least 31 of the 108 IGSA facilities ICE used to hold detainees were operated by private operators.

In addition to varying with respect to the facility operator, ICE detention contracts and agreements also vary with respect to cost, utilization, and other characteristics. For example, the cost of detention facility contracts and agreements varies based on how much ICE pays to hold one detainee per day (or bed rate). The cost also varies based on whether a contract or agreement includes a guaranteed minimum—a fixed number of beds that ICE is required to pay for regardless of whether they are filled. Additionally, costs vary based on whether contracts and agreements with guaranteed minimums include tiered pricing, in which ICE pays a lower bed rate for each detainee housed above the agreed-

<sup>22</sup>California State Auditor, *City and County Contracts with U.S. Immigration and Customs Enforcement, Local Governments Must Improve Oversight to Address Health and Safety Concerns and Cost Overruns* (Sacramento, CA: Feb. 16, 2019).

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upon guaranteed minimum. Appendix I provides additional information on variation in ICE's detention contracts and agreements.

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## ICE Has Not Consistently Followed Its Process for Obtaining Detention Space and Its Guaranteed Payments to Contractors Have Not Been Guided by a Strategic Approach

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### ICE Has Not Consistently Followed Its Process for Identifying and Obtaining Detention Space and has Limited Documentation to Support Its Recently Acquired Detention Space

ICE has a process for identifying needs and initiating efforts to obtain new detention space that starts with individual ICE field offices; however, ICE has not consistently followed its process to obtain field-level input or document its decision making for recent detention space acquisitions. ICE's process for identifying and obtaining new detention space is designed to be "bottom up" and, according to ICE officials, is to identify a field office's detention needs and evaluate costs and other tradeoffs. Field offices are to identify needs and evaluate costs in detention space requirements documents (referred to as white papers), which are evaluated by the ERO Detention Management Division's Detention Planning and Acquisition unit.

The white paper template directs field officials to provide narrative support for how the additional detention space at the proposed location will support the local- and national-level ERO mission. The template also directs field officials to include documentation that key local stakeholders (such as mayors or sheriffs) have indicated support for the proposal; transportation plan requirements; information on how ICE will ensure adequate medical care; and whether current funding and staffing are adequate to support the expansion, among other information.

After the field office completes the white paper, ERO headquarters provides a written evaluation of the proposal, which includes an assessment of the field office's current and historic detainee population trends, transportation and staffing capabilities, and a documented cost analysis of the proposed bed rate. The white paper process allows

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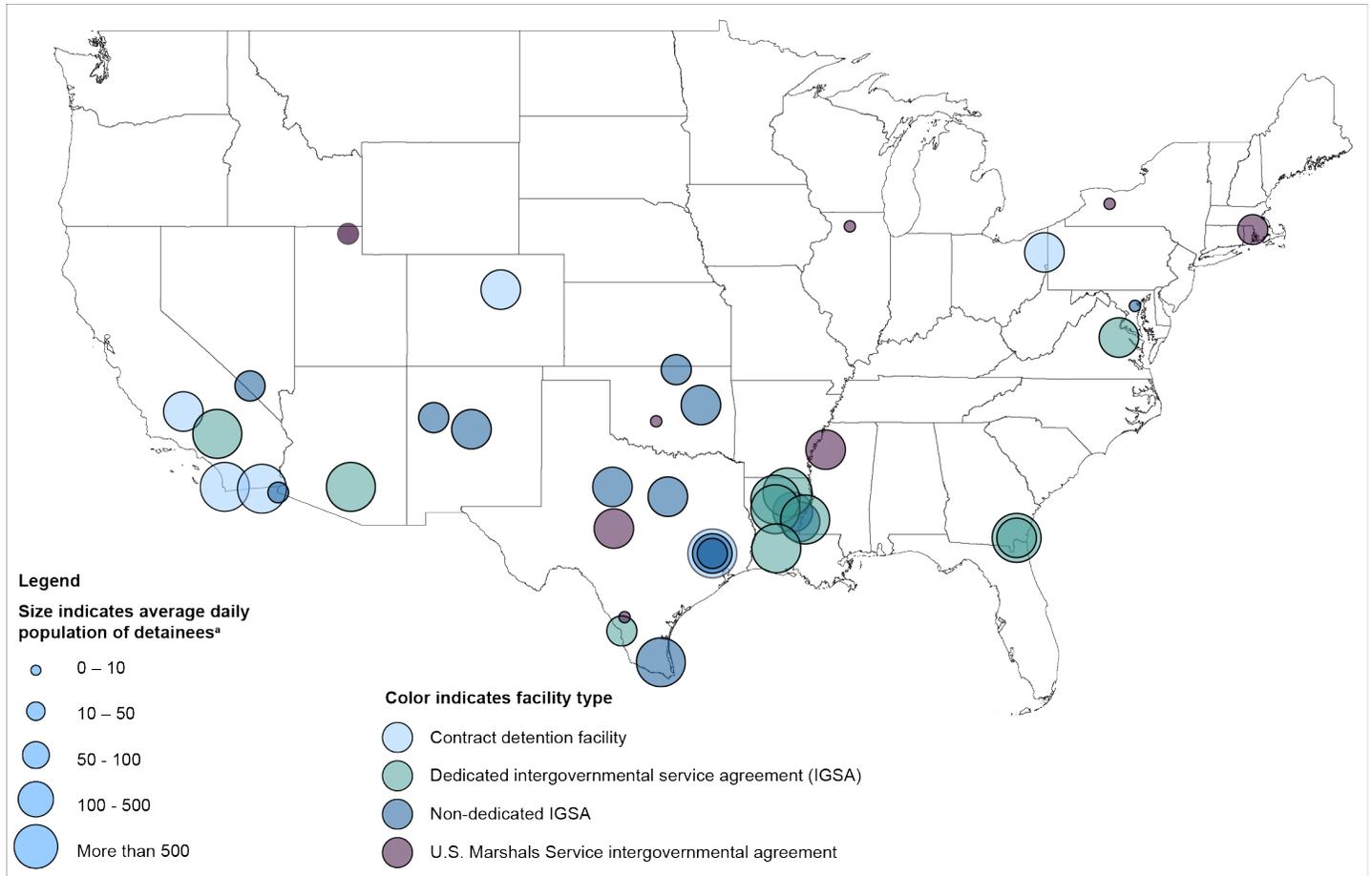
different levels within ICE to weigh in on the need for additional detention space and provides transparency in how ICE is evaluating cost and operational supportability. However, ICE has not consistently followed its process for identifying and obtaining new detention space. In particular, ICE has not consistently obtained input from relevant ERO field offices or documented its decision making for new detention contracts, including how it evaluated costs and other tradeoffs.

From fiscal year 2017 through May 11, 2020, ICE entered into 40 new contracts and agreements for detention space (in both new facilities and existing facilities), as shown below in figure 3.<sup>23</sup>

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<sup>23</sup>Twenty-four of the 40 new contracts and agreements since fiscal year 2017 were at new facilities. The remaining 16 were at facilities ICE had been using prior to fiscal year 2017, but with which it established a new contract or agreement since fiscal year 2017.

**Figure 3: U.S. Immigrations and Customs Enforcement (ICE) Over-72-Hour Detention Facilities with New Contracts or Agreements, Fiscal Year 2017 through May 11, 2020**



Source: GAO analysis of ICE data. | GAO-21-149

<sup>a</sup>The average daily population of detainees is for fiscal year 2020, as of May 11, 2020.

Our review of ICE’s white papers and other documentation for those 40 contracts and agreements found that the majority (28 of 40) did not have a corresponding white paper or other documentation showing coordination with the field or other stakeholders or the basis for ICE’s decisions to enter into the contracts and agreements.

Further, field-level officials we interviewed raised questions or expressed concerns about their lack of input into the process for acquiring detention facilities—noting that most new contracts and agreements in recent fiscal years were identified and negotiated by headquarters with limited input from field offices. For example, field-level officials expressed concerns

about the costs and operational supportability of some of these contracts and agreements, as well as whether the facilities could adequately meet detainee needs. Among others, these concerns included:

- **Cost.** Field office officials said, and ICE data supports, that many of ICE's new contracts and agreements had provisions guaranteeing that ICE would pay for a fixed number of beds each month; however, officials said many of these guaranteed minimums were not supportable by current detainee populations (as discussed later in this report). ERO field office management also raised concerns that bringing some headquarters-identified facilities into compliance with ICE's detention standards would require extensive renovations for which ICE would have to pay.<sup>24</sup>
- **Operational supportability.** Officials from three field offices said that some new contracts and agreements were for facilities that were remote and therefore difficult to staff, and required potentially expensive changes to the field office's transportation networks. For example, officials in one ERO field office expressed concerns that one headquarters-directed facility was in a rural location that would be difficult to staff for the contractor as well as ERO. Additionally, the officials stated that there was no specialized medical care nearby and any chronic care would require significant logistical support. Field office officials said they suggested expanding an agreement that was already in place with a county facility instead, since the county facility was closer and operationally more supportable. Officials said they were nonetheless told to use the facility, which ICE headquarters approved under a 2019 letter approving five different headquarters-identified facilities with minimal justification other than to say ICE urgently needed a significant number of beds to support the 2019 detainee population surge.
- **Detainee needs.** In addition to the challenges noted above with remote locations and limited medical care, field officials raised concerns about the suitability of certain facilities for ICE detainees, whose detention is to be administrative and not punitive in nature. For example, in a facility where ICE would be joining a U.S. Marshals Service contract, the field office officials expressed concerns

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<sup>24</sup>ICE's guidance on IGSA's states that IGSA-providers (such as private detention operators) may seek to amortize construction costs through a negotiated bed day rate over the life of the agreement. In other words, detention operators can reimburse themselves for the cost of renovations or construction needed to meet ICE's facility standards by factoring those costs into the bed rate charged to ICE. See ICE Office of Acquisition Management, *Procurement Guide 18-02, Revision 1, Inter-Governmental Service Agreements*, March 22, 2019.

regarding what they referred to as a very hardened design and perimeter, including the existence of an electrified fence. The officials added that whether operable or not, the electrified fence created poor optics and significant message challenges. Officials also believed the facility was not safe, as the facility layout presented challenges with ensuring sufficient lines of sight and did not have enough staff, which presented safety issues for detainees and staff, according to officials.

In another field office, officials said they strongly disagreed with adding a facility that had previously been under a Bureau of Prisons contract because of that facility's history of chronic understaffing in correctional and health services. The Department of Justice Office of Inspector General concluded that these staffing shortages had contributed to a 2012 riot that resulted in the death of a corrections officer and injuries to approximately 20 inmates and staff. The Office of Inspector General reported in 2016 that the facility continued to be understaffed.<sup>25</sup> The field officials we interviewed said they were directed by headquarters to retroactively write a white paper to support using the facility after the agreement terms (including a nearly \$4 million a month guaranteed payment for 1,100 detention beds) had already been negotiated between ICE headquarters, the IGSA-holder, and the detention operator. A field official said that the office used the white paper to express their disagreement with the agreement and its terms.

ICE headquarters officials stated that not all facilities undergo the white paper evaluation process. For instance, ICE headquarters officials stated that facilities that are used irregularly or infrequently, facilities that are being expanded, or facilities that provide emergency surge capacity may not always submit white papers.<sup>26</sup> However, our analysis of ICE facility data did not always find this to be the case. For example, the fiscal year 2020 average daily detainee population through May 11, 2020, nine of the 28 facilities without white papers exceeded 500 detainees per day, with one facility holding over 1,000 detainees a day. Four of the 28 facilities had been used consistently since fiscal year 2011, suggesting that they may have been expansions (thus not undergoing the white paper process, according to ICE officials). However, ICE's white paper template

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<sup>25</sup>Department of Justice Office of Inspector General, *Audit of the Federal Bureau of Prisons' Contract with CoreCivic, Inc. to Operate the Adams County Correctional Center in Natchez, Mississippi*, Audit Division 17-08 (Washington, D.C.: Dec. 2016).

<sup>26</sup>ICE officials noted that these facilities may be subject to ICE inspections if their usage is under ICE jurisdiction and if they are used for 60 days or more within a fiscal year.

specifically asks field offices to include information on the existing detainee capacity of a facility as well as the total number of additional beds proposed, suggesting that the white paper process is to be followed in the case of expansions.<sup>27</sup> Finally, 14 of the 28 facilities without white papers have contractually guaranteed minimum payments—guaranteeing payments for 8,009 total beds per day—suggesting these are not facilities ICE is using irregularly or infrequently or for emergency surge capacity.

ICE's detention space acquisition guidance states that when additional bed space is requested, ICE should begin the acquisition process with submission of the white paper proposal.<sup>28</sup> This documented proposal is to serve as the foundation used by headquarters to determine detention space requirements, including the number of beds, number of guards, and medical needs. Additionally, *Standards for Internal Control in the Federal Government* states that documentation is a necessary part of an effective internal control system. Documentation provides a means to retain organizational knowledge, as well as a means to communicate that knowledge as needed to external parties, such as external auditors.<sup>29</sup> Moreover, the Project Management Institute states that communicating and working with stakeholders—such as the ICE field offices—allows project managers to increase support and minimize resistance from stakeholders, significantly increasing the chances of achieving project success.<sup>30</sup> ICE officials have said that in urgent circumstances, the agency needs to retain ultimate flexibility in decision-making. As a result, ICE headquarters took action to identify facilities and negotiate contracts to meet the demand for detention space, according to these officials. However, without consistently using a process to obtain new detention facility space that includes stakeholder input and documentation of its decision-making, ICE does not have reasonable assurance that it has

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<sup>27</sup>An ERO official said that facilities with new contracts and agreements that did not include additional detention beds—that is, new contracts and agreements without expansions—would also not need to undergo the white paper process. Therefore, if the four facilities did not add additional beds when their contracts and agreements were renewed in fiscal years 2018 and 2019, ICE would not have required a white paper, according to this official. ICE data did not allow us to conclusively determine if these four facilities' contracts and agreements included the addition of any new detention space.

<sup>28</sup>ICE OAQ Procurement Guide 18-02, Revision 1, Inter-Governmental Service Agreements, March 22, 2019.

<sup>29</sup>[GAO-14-704G](#).

<sup>30</sup>Project Management Institute, Inc. *The Standard for Portfolio Management-Fourth Edition*, 2017.

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appropriately considered and weighed relevant factors to make the most cost effective decisions that best meet its operational needs.

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## ICE Has Not Taken a Strategic Approach to Using Guaranteed Minimums when Obtaining Detention Space

ICE has increasingly incorporated guaranteed minimums into individual detention contracts and agreements, but has not taken a strategic approach to these decisions and has spent millions of dollars a month on unused detention beds. Acquiring and maintaining a sufficient number of cost-effective detention beds that meet ICE detention standards is a complex challenge that requires ICE to balance sufficient detention space to respond to surges in detainees with unnecessarily paying for unused detention beds.

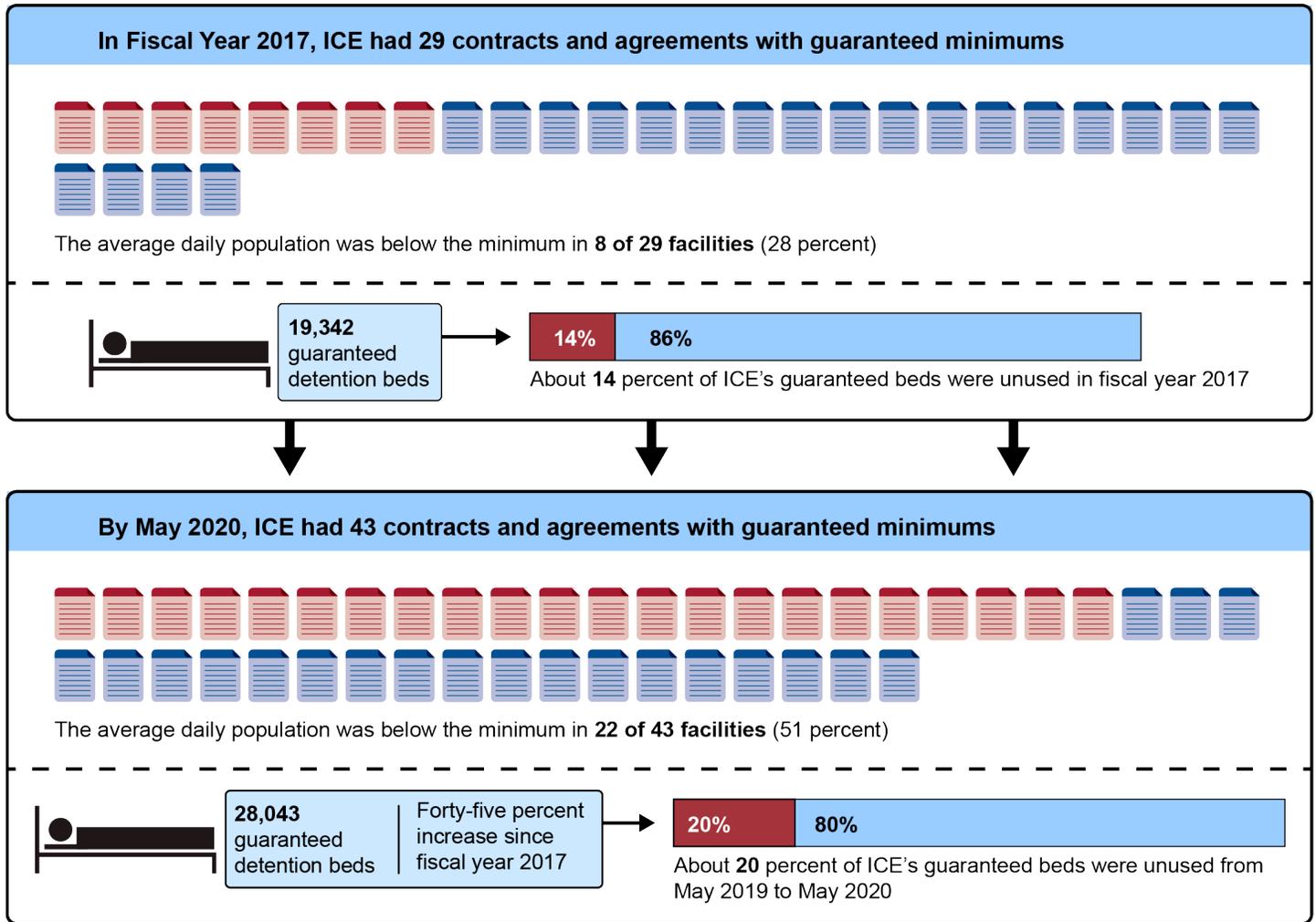
From fiscal years 2017 to 2019, ICE increased its number of contracts and agreements with guaranteed minimums by about 38 percent—from 29 in fiscal year 2017 to 43 as of May 11, 2020 (the most current data available at the time of our review).<sup>31</sup> With this increase came a corresponding increase in the number of beds ICE guarantees to pay for—from 19,342 beds in fiscal year 2017 to 28,043 in May 2020—which ICE has consistently not used, as shown below in figure 4.<sup>32</sup>

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<sup>31</sup>Of these 43 contracts and agreements, 17 were contracts for contract detention facilities (12 contracts) or service processing centers (5 contracts). Twenty-five were IGSA (including family residential centers), and one was a U.S. Marshals Service contract rider. For the contracts, 7 of the 17 were for facilities that ICE has used to house detainees since 1990 or before. Two facilities with contracts have dates of first use after 2018.

<sup>32</sup>Although ICE data identifies 45 facilities as having guaranteed minimums, ICE has 43 unique contracts and agreements for these facilities because four facilities share a guaranteed minimum. For example, under one agreement, two facilities share a 650-person guaranteed minimum for about \$2 million a month.

**Figure 4: U.S. Immigration and Customs Enforcement (ICE) Detention Contracts and Agreements with Guaranteed Minimums, Fiscal Years 2017 to May 2020.**



Average daily population is below the guaranteed minimum      Average daily population is above the guaranteed minimum

Source: GAO analysis. | GAO-21-149

Note: Data are as of May 11, 2020.

More specifically, from May 2019 through May 11, 2020, the average daily detainee population of these facilities was below the guaranteed minimum for 22 of 43 facilities. As of May 11, 2020, ICE was paying for 12,027 empty beds a day, on average, at a cost of \$20.5 million for the

month.<sup>33</sup> This figure does not take into account the 13 facilities for which ICE pays a guaranteed flat rate (rather than a per diem for each bed). ICE's average daily detainee population did not meet the guaranteed minimum for 11 of these facilities. As a result, at these 11 facilities ICE paid \$41.2 million for the month of May while using 38 percent of the beds it paid for. Further, five of these 11 facilities did not meet the guaranteed minimum for a single month in the entire prior year (May 2019 to May 2020).<sup>34</sup>

ICE's 2016-2020 Strategic Plan states that one of ICE's objectives is to improve the detention system.<sup>35</sup> As part of this effort, ICE states that it will seek favorable business terms in contracts. Further, the Office of Acquisition Management's mission statement for detention procurement is to acquire the necessary detention space and services to assist ICE's enforcement operations in an effective and cost efficient manner. Along these lines, the office's guiding principles for new detention acquisitions include (1) clearly defining and communicating decision-making processes and criteria and (2) procuring space that allows for flexibility in detained populations and that can handle influxes without abandoning cost considerations. Further, Office of Management and Budget guidance on capital planning states that all of the items in a portfolio—such as all of the different types of detention contracts and agreements ICE maintains—must support strategic plans, goals, objectives and priorities.

According to ICE headquarters officials, the agency works to attain a balance between having sufficient space to meet its current detention needs while being able to quickly respond to any potential surges in the number of individuals it must detain. However, ICE's approach does not align its use of contracts or agreements that guarantee payments for a fixed number of beds with the agency's strategic plan and other guiding acquisition principles. More specifically, officials did not provide or explain an approach to ICE's use of guaranteed minimums that shows how

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<sup>33</sup>The number of empty beds per day, on average, fluctuated monthly from May 2019 to May 2020. As of May 11, 2020, the number of empty beds, based on the average daily detainee population that month, was 12,027 beds. That number declined to a low of 4,588 unused beds in October 2019. The number of unused beds then generally increased, with 6,537 unused beds in March 2020 and 9,685 unused beds in April 2020.

<sup>34</sup>An ERO official said that restrictions related to Coronavirus Disease 2019 contributed to the number of unused beds in May 2020. However, the number of unused beds had generally increased since October 2019 and several facilities had not met their guaranteed minimums for the entire prior year (May 2019 to May 2020).

<sup>35</sup>DHS, *U.S. Immigration and Customs Enforcement Strategic Plan 2016-2020*.

decisions made on these minimums relate to or support ICE's strategic plans, goals, and priorities or help to ensure effective use of tax dollars.

For example, ICE headquarters officials described the agency's approach to using guaranteed minimums (and the ensuing negotiations between the detention service providers, ERO, and Office of Acquisition Management), as often difficult, and stated that the terms ICE accepts tend to depend on ICE's need for beds at that time. Specifically, an ERO official said that in situations where ICE has an urgent need for detention space, such as during a surge or when it must replace detention beds that are no longer available, ICE is limited in its options and often will agree with the service provider's terms on bed rates or guaranteed minimums. Internal ICE guidance states that detention operators prefer contracts with guaranteed minimums because they protect operators from losing money and can increase profits. ICE guidance also states that contracts with guaranteed minimums, if structured to include lower priced bed rates if ICE uses more than the minimum number of detention beds required in the contract or agreement, can potentially save ICE money while also improving relations with the detention operators.

Officials we spoke with from two field offices also stated that ICE's urgent need for bed space has driven the increase in guaranteed minimums; however, officials from three field offices disagreed with the recently negotiated guaranteed minimums, and officials from four stated that, in their view, many of these contracts and agreements were not in the best interest of the government. Officials also said that the decision to include a guaranteed minimum was driven by ICE headquarters without field input.

For example, an official from one ERO field office said his office expected to pay at least a million dollars a month for empty beds in recently negotiated contracts and agreements that the field office did not believe were necessary. Our review of ICE data supports this, showing that ICE has committed to 5,245 guaranteed beds across six IGSA facilities in this particular field office's area of responsibility. The May 2019 to May 2020 average daily detainee population was below the guaranteed minimums for five of the six facilities, resulting in ICE paying an average of about \$1.2 million per month for empty beds, as shown below in figure 5.

**Figure 5: U.S. Immigration and Customs Enforcement (ICE) Guaranteed Beds and Average Detainee Populations for One Field Office, May 2019 to May 2020**

Intergovernmental service agreement	Guaranteed minimum number of beds ICE pays for	Guaranteed payment per bed per ICE's agreement with the facility <sup>a</sup>	Average daily detainee population, May 2019 - May 2020	Meeting or below guaranteed minimum	Empty guaranteed beds per day, on Average	Average amount ICE paid per month for empty beds <sup>b</sup>
Facility A	550	\$76.63	362	Below	188	\$431,060.62
Facility B	625	\$75.01	442	Below	183	\$411,804.90
Facility C	700	\$81.50	564	Below	136	\$332,520.00
Facility D	1,100	\$3,950,885.89 <i>(flat monthly fee)</i>	762	Below	338	N/A
Facility E	1,100	\$72.96 <sup>c</sup>	1,112	Meeting	0	N/A
Facility F	1,170	\$76.64	1,161	Below	9	\$20,692.80
<b>Total</b>	<b>5,245</b>	<b>N/A</b>	<b>734</b>	<b>N/A</b>	<b>854</b>	<b>\$1,196,078.32</b>

Meeting guaranteed minimum
  Below guaranteed minimum

Source: GAO analysis of ICE data. | GAO-21-149

<sup>a</sup>For nearly all of ICE's contracts and agreements with guaranteed minimums, ICE pays a discounted bed rate for each individual detained above the guaranteed minimum. Tiered pricing is not shown on this table because ICE generally did not exceed the guaranteed minimums.

<sup>b</sup>Payment calculation is based on a 30-day month.

<sup>c</sup>This facility agreement did not include a discounted bed rate for when ICE exceeded the guaranteed minimum number of detainees. In other words, ICE exceeded the minimum but still paid \$72.96 per detainee. The bed rate at this facility decreases to \$36 when ICE exceeds 1,400 detainees.

Note: Data are as of May 11, 2020.

Planning for detention space needs can be challenging, according to ICE officials, because the agency must respond to a number of dynamic factors that are difficult to predict. An ERO headquarters official said that detainee numbers fluctuate and surge regularly, and changes in national immigration policy can result in increasing (or decreasing) numbers of detainees. ICE also shares space with the U.S. Marshals Service in some facilities, and when the Marshals Service needs that space, ICE officials said the agency has had to move its detainees elsewhere on short notice. Further, officials from the Custody Management Division at ICE headquarters told us that ICE's bargaining power was declining, as some state and local agencies have made decisions not to work with ICE on immigration detention. Accordingly, ICE officials stated that private facility operators and a smaller pool of localities have an advantage when it

comes to negotiating bed rates, including whether a contract or agreement will include guaranteed payments.<sup>36</sup>

However, documents from ICE's Office of Acquisition Management indicate that ICE is well-positioned to negotiate favorable terms in its contracts and agreements. Specifically, a 2019 internal presentation on the detention market structure and private facility operator profiles states that two operators, which provide over 60 percent of ICE's total private beds, lead the market for private detention services. However, according to Office of Acquisition Management officials, ICE has leverage in negotiations because it is the largest customer in the detention market and is responsible for more than 20 percent of overall detention industry revenue.<sup>37</sup>

Given that ICE has to consider various factors in planning for and acquiring detention space, a strategic approach could better position the agency to weigh and balance among these factors. ICE has increased its use of guaranteed minimums in its recent contracts and agreements, committing millions of dollars to detention beds regardless of whether the beds are used. As ICE considers how it can meet its current and projected detention needs, documenting and implementing a strategic approach for using guaranteed minimums—that is, an approach that supports ICE's strategic plans, goals, and priorities—could help position ICE to better balance these factors and seek better contract and agreement terms while making more effective use of federal funds.

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<sup>36</sup>Officials added that although the agency has had to pay guaranteed minimums in some cases, it may pay a discounted bed rate if it exceeds that minimum.

<sup>37</sup>Although Office of Acquisition Management has produced negotiations guidance, an official with Office of Acquisition Management said that ERO's Custody Management Division drives decision-making on guaranteed minimums. Office of Acquisition Management officials said they will accept what Custody Management Division tells them with respect to whether a facility should have a guaranteed minimum or not.

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## ICE's Supervisory Structure and Incomplete Information on Penalties Limit Oversight and Enforcement of Detention Contracts and Agreements

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### ICE's Supervisory Structure Does Not Provide Sufficient Independence for Effective Oversight of Detention Facility Contracts and Agreements

ICE primarily relies on its CORs to oversee detention facility contracts and agreements; however, the COR's supervisory structure—where field office management directly oversees the CORs' work and assesses CORs' performance—limits CORs' ability to provide independent oversight of contracts and agreements. ICE's guidance states that CORs are to function as the “eyes and ears” of the contracting officer by monitoring technical performance and reporting any potential or actual problems to the contracting officer. This includes ensuring the contractor is performing per the terms of the contract, and also applies to ICE's IGSA's.

ICE created a full-time COR program in 2009 to ensure the proper oversight and administration of detention contracts and agreements in each field office, as well as provide project management support for facility projects. According to their position description, ERO CORs are to spend 100 percent of their time on the planning, oversight, and management of ERO field office contracts, agreements, and leases. The COR positions were initially established in ERO field offices, with ERO headquarters' Contract Management Unit serving as the CORs' first line supervisor.<sup>38</sup> Internal ICE documents stated that CORs were to report directly to ICE headquarters to ensure independence and consistency in their efforts. Further, CORs were expected to primarily interact with field office personnel and communicate with ICE headquarters for status reporting. CORs were directly supervised by headquarters, while field office management were expected to provide input on COR performance

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<sup>38</sup>The COR position was created under the Office of Detention and Removal Operations, now titled Enforcement and Removal Operations.

work plans and ratings and were responsible for day-to-day management (such as time-keeping, scheduling leave, and training).

In 2010, ICE moved direct oversight of the CORs from ERO headquarters' Contract Management Unit to each of the 24 ERO field offices, resulting in 24 separate first line supervisors.<sup>39</sup> Thus, since 2010, CORs' work and performance has been overseen by ERO field office management. ICE guidance states that management officials within ERO's field offices are responsible for assessing CORs' performance and balancing CORs' workloads to provide them with adequate time and resources to perform all of their delegated duties, which include inspecting supplies or services, performing technical reviews of invoices for payment, and ensuring the timely submission of required reports.<sup>40</sup>

In addition, according to ICE guidance, CORs have a dual reporting structure in that they report both to ERO field office management and to contracting officers within the Office of Acquisition Management. Under this dual reporting structure, ICE guidance states that contracting officers are to appoint the COR and delegate the COR's specific roles and responsibilities for each contract and agreement. CORs are to monitor technical performance and report any information that may affect contractual commitments and requirements to their contracting officers. The COR's ERO field office supervisor is responsible for ensuring that the COR successfully carries out the duties as delegated by the contracting officer. A contracting officer has the authority to terminate a COR's appointment from a contract or agreement, but field office management can recommend termination to the contracting officer, according to ICE guidance.

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<sup>39</sup>A 2010 memorandum from ICE to ERO field office directors stated that the reporting relationship of CORs (supporting the ERO field office while under ERO headquarters supervision) was proving to be cumbersome and sub-optimal. We asked ICE officials for further information about why ICE found the headquarters-based reporting structure cumbersome and sub-optimal; however, officials we spoke with did not elaborate on the agency's reasoning. Similarly, in January 2019, the DHS OIG reported that ICE officials did not provide additional explanation as to why ICE moved supervision of CORs from ERO headquarters to ERO field offices. See OIG-19-18.

<sup>40</sup>Department of Homeland Security, U.S. Immigration and Customs Enforcement, *Enforcement and Removal Operations Contracting Officer's Representative Supplement*, Version 1.0 (October 2015). ERO's COR Supplement states that it was developed to distill the most relevant information from DHS's COR Supplement for reinforcement and ease of reference.

ICE officials identified various reasons for why its supervisory structure for CORs—in which field office management supervises and oversees CORs' performance and functions—is beneficial. For example, one field office manager told us that having a COR in the field office chain of command was important because the manager could ensure that the field office and the facility operators worked together to resolve issues. Specifically, the manager also stated that he wanted to be in a position to be able to personally give headquarters advance notice of any possible contract or agreement issues, including advance notice of any discrepancy reports being sent to the contracting officer. Further, one COR noted that since moving to field office supervision, he has received better administrative support for travel and technology issues. Additionally, officials from the Office of Acquisition Management said that CORs reporting to the field office is positive insofar as it drives a consensus-based decision on a discrepancy report sent to headquarters for review.

While ICE officials identified some benefits from field office management supervising and overseeing the performance and work of CORs, we have identified concerns that this supervisory structure limits CORs' ability to conduct independent oversight of contracts and agreements. For example, an official with the ERO headquarters Contract Management Unit—the original office that had direct supervision of CORs—said that moving CORs to ERO field office supervision had a detrimental impact on CORs' ability to complete their work with independence and created other challenges. The official noted that Field Office Directors are responsible for all detention facilities in their areas of responsibility and face competing priorities in terms of ensuring sufficient detention space for the offices' operational needs while also holding facility operators accountable for their performance under the contracts or agreements. In balancing these priorities, the official noted that Field Office Directors may exclude CORs from key conversations with facility operators and otherwise minimize the COR role in order to optimize their offices' broader enforcement and removal goals, of which detention facilities are a part.

We also found that ERO field office managers provided varying views on the supervisory structure of CORs. Field office management and the COR in one field office told us about an instance in which a prior Field Office Director did not allow the COR to write a discrepancy report to a facility that the COR said was notably uncooperative and non-compliant. In this instance the COR and field office managers told us that it was their understanding that the COR could not circumvent the Field Office Director

in submitting a discrepancy report to the contracting officer at headquarters. Field office managers and CORs told us that, in their view, the ability of CORs to effectively carry out their functions is dependent on the working relationships between the CORs and field office managers. For instance, field office managers in two field offices and CORs in six field offices said that a CORs' ability to conduct oversight depends on the level of support provided by field office managers.

CORs also identified challenges and concerns with the current supervisory structure. Our interviews with CORs from 12 of 24 ERO field offices—whose contracts and agreements encompass detention facilities that hold two-thirds of ICE's detained population—suggest that this supervisory structure does not provide CORs' oversight functions with sufficient independence from local field office management, thus limiting CORs' ability to effectively ensure contracts and agreements are properly administered. For example, CORs in eight of 12 offices stated that supervision by field office management has hindered their ability to conduct oversight and enforcement of their detention facility contracts and agreements. CORs identified to us concerns about reporting to ERO field offices that included lack of resources or support to carry out their oversight duties, limitations of their ability to use enforcement tools, and being bypassed by field office management.

- **Lack of resources or support in carrying out oversight.** CORs from seven field offices said that field office management did not provide sufficient support or resources to carry out their oversight functions, as called for in ICE guidance. ICE guidance states that ERO field office supervisors are responsible for ensuring CORs have adequate time and resources to perform all of their delegated duties.<sup>41</sup> However, CORs in five offices said that they did not have enough time to conduct their oversight duties and CORs in three offices reported that their field office management did not provide them with the means to conduct in-person visits to detention facilities. A COR in another field office said that field office management asked for contract and agreement oversight to be conducted by phone rather

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<sup>41</sup>Department of Homeland Security, U.S. Immigration and Customs Enforcement, *Enforcement and Removal Operations Contracting Officer's Representative Supplement*, Version 1.0 (October 2015).

than in person, which the COR considered ineffective oversight.<sup>42</sup> CORs from three offices stated that they were excluded from conversations between their field office supervisor and detention facility operators pertaining to the facility contract or agreement. This limits CORs' ability to be the "eyes and ears" of the contracting officer and hinders COR's ability to relay information to headquarters that may affect contractual commitments or requirements.

- **Limited ability to use enforcement tools.** CORs in four field offices said that ERO field office management limited the CORs' ability to issue discrepancy reports for contract or agreement violations, including in instances of a detainee escape and a guard who abandoned an assigned post. CORs from two field offices stated that ERO field office managers may be reluctant to issue discrepancy reports because they prefer to handle violations informally, or because the field office may not want to damage their relationship with the detention facility operator. Conversely, CORs from two offices stated that their field office management pressured them to issue discrepancy reports that the COR found to be unwarranted, which one COR said put him in a position where he lacked sufficient independence.

ICE's discrepancy report guidance states that reports are to be generated at the field office level by CORs based on an observed infraction, or through audits and inspections.<sup>43</sup> The guidance states that CORs and facility operators can work together to resolve issues informally. However, when the COR determines that documentation of an issue or deficiency is required, the COR is to initiate the discrepancy report process and alert the contracting officer.

Although ICE's policy does not specify a role for ERO field office management in this process, our interviews with ICE headquarters, field office officials, and CORs indicated that, in practice, field office management generally determine whether an issue rises to the level at which a COR will notify the contracting officer, or whether the issue

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<sup>42</sup>CORs are expected to conduct periodic site visits as necessary, with the number and frequency depending on facility size, contract (or agreement) complexity, and level of acceptable performance by the facility operators. ICE ERO headquarters officials stated that they expect CORs to have a physical presence at detention facilities in their area of responsibility.

<sup>43</sup>U.S. Immigration and Customs Enforcement, Office of Acquisition Management. *Procurement Guide 20-04, Contract Discrepancy Reports (CDR) Detention Contracts* (January 31, 2020). Discrepancy reports are discussed in more detail later in this report.

will be handled locally.<sup>44</sup> ICE guidance states that if CORs identify unsatisfactory performance, they should immediately bring that to the attention of the contracting officer so that corrective action can be taken.<sup>45</sup> However, local field office management are CORs' first line supervisors, and if field office management disagrees with the CORs' assessment, CORs do not have sufficient independence to challenge the direction of their management over whether a discrepancy report should be formally documented or brought to the contracting officer, according to CORs we interviewed.

- **Being bypassed by field office management.** Additionally, CORs in two offices said that ERO field office managers made requests for work directly to contractors (including for the installation of televisions and an exercise room for ICE staff at a detention facility) outside the terms of a contract or agreement, which the CORs felt unable to challenge.<sup>46</sup> CORs from two offices said that after expressing concern regarding provisions that ERO field office management wanted to include in an agreement, their duties were reassigned to an ICE employee who was not appointed as an oversight entity in the contract. These CORs reported that they felt unable to carry out their oversight duties due to fear of retaliation.

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<sup>44</sup>For example, ICE headquarters officials stated that the field office manager's authority to review discrepancy reports is implied by the chain of command, as field office management supervise the COR, and that field office managers may prefer to review discrepancy reports before the COR submits them to the contracting officer. At the field office level, a field office manager we met with stated that he expected CORs to bring certain matters directly to field office management, who will then choose whether to elevate issues to ICE headquarters. Further, one COR stated that field office managers generally review discrepancy reports and determine whether they can be sent to the contracting officer.

<sup>45</sup>ICE's discrepancy report guidance states that the contracting officer is ultimately responsible for the final determination of the adequacy of the detention facility operator's performance, but Office of Acquisition Management officials told us that in practice this determination is made by senior officials within ERO's Custody Management Division for discrepancy reports with recommended penalties over \$100 thousand. Department of Homeland Security, U.S. Immigration and Customs Enforcement, *Enforcement and Removal Operations Contracting Officer's Representative Supplement*, Version 1.0 (October 2015).

<sup>46</sup>In instances where field offices would like additional work outside of the terms of a contract or agreement, CORs must notify the contracting officer, who has the authority to modify contract and agreement terms. According to ICE guidance, the COR must have full knowledge of all executed modifications and pending modifications to contracts and agreements as they occur.

In addition to our findings, the DHS OIG has raised concerns about the supervisory structure of CORs. In a 2019 report, the DHS OIG found that CORs may not be able to carry out their oversight and enforcement duties due to pressure from field office management to do things outside of protocol. For example, the DHS OIG reported that two CORs stated they were hesitant to identify instances of noncompliance or to issue discrepancy reports out of fear of retaliation from their field office supervisors. The report further noted that contracting officers expressed concerns about the CORs' inability to conduct their work independently. The DHS OIG recommended ICE evaluate the organizational placement of CORs, and if CORs remained under field office supervision, to develop safeguards to prevent field office supervisors from interfering with CORs' ability to fulfill their contract oversight duties.<sup>47</sup>

DHS OIG officials and ICE reported that ICE has taken some actions in response to this recommendation, but that as of August 2020, the DHS OIG still considered the recommendation open.<sup>48</sup> Specifically, ICE maintained its existing supervisory structure for CORs and implemented actions intended to serve as safeguards for CORs. For instance, ICE's Office of the Principal Legal Advisor prepared a list of what they termed "do's and don'ts for non-contracting officials," which ERO officials said would be sent to Field Office Directors in summer 2020 via internal broadcast. This document also included a reminder to Field Office Directors to include contracting officers and CORs in discussions with detention facility operators, and that only warranted contracting officers were authorized to enter into contracts and negotiate contract terms and conditions. ICE also reported shifting CORs' direct supervision from lower-level managers to Field Office Directors or Deputy Field Office Directors. ICE officials said this was done to make COR supervision more consistent across field offices.

While these could be positive steps towards implementing the DHS OIG's recommendation to develop safeguards, they do not address the issues we identified. For example, these steps do not address CORs' and some ICE headquarters officials' concerns that the ability of CORs to independently and effectively carry out their oversight functions is dependent on relationships between the CORs and field office managers.

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<sup>47</sup>OIG-19-18.

<sup>48</sup>OIG-19-18 included four additional recommendations to improve oversight and compliance of ICE detention facility contracts and agreements. According to the DHS OIG, ICE has fully addressed one of the five recommendations.

Further, these steps do not address the concerns we identified with CORs having sufficient support and resources to conduct their oversight functions.

In addition, CORs and Office of Acquisition Management officials identified benefits to CORs being able to report directly to a headquarters entity. For example, CORs said that headquarters supervision could provide them with a safeguard for instances where they believe they should push back on ERO field office management in order to uphold the terms and conditions of a particular contract by, for example, issuing a discrepancy report. Office of Acquisition Management officials also said that ERO headquarters makes many oversight-related decisions that it could communicate to CORs more efficiently and effectively if the CORs reported to headquarters.

Office of Management and Budget guidance states that management is responsible for the establishment of a governance structure that effectively implements, directs, and oversees internal controls; and that successful implementation requires agencies to establish a culture that encourages people to communicate with their superiors about potential risk and concerns without fear of retaliation or blame.<sup>49</sup> Management should also implement control activities to ensure that agency objectives are met, which includes ensuring the proper segregation of duties. *Standards for Internal Control in the Federal Government* states that management should consider segregation of duties in designing control activity responsibilities so that incompatible duties are segregated, as segregation of duties helps prevent fraud, waste, and abuse in the internal control system. In particular, internal control standards state that segregation of duties can address the risk of management override.<sup>50</sup>

Revising its supervisory structure to ensure that CORs have sufficient independence from ERO field office management to carry out their oversight duties could better position CORs to more effectively conduct detention contract and agreement oversight and enforcement, while still allowing for collaboration and communication between CORs and field office management. These revisions—which could include reverting to ICE’s initial supervisory structure where CORs were stationed in field

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<sup>49</sup>United States Office of Management and Budget, *Management’s Responsibility for Enterprise Risk Management and Internal Control*, OMB Circular A-123 (Washington D.C.: July 15, 2016).

<sup>50</sup>[GAO-14-704G](#).

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offices but supervised and assessed by ICE headquarters—could help ICE better ensure that detention contracts and agreements are properly managed and that their terms are properly enforced.

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### ICE Does Not Have Complete Information on Discrepancy Reports and Their Resolution, Limiting Oversight and Analysis Efforts

ICE's detention contracts and agreements generally include quality assurance tools that CORs can use to hold contractors and agreement-holders accountable, but ICE does not maintain complete information on the use of these tools, limiting oversight and analysis efforts. In 2019, the DHS OIG reported on ICE's use of quality assurance tools and found that ICE had not consistently included quality assurance surveillance plans in detention facility contracts and agreements, which led to confusion among CORs about how to issue discrepancy reports.<sup>51</sup> The OIG reported that this problem was compounded by ICE not tracking these reports and rarely imposing financial consequences.

The DHS OIG recommended that ICE develop protocols to guide CORs and contracting officers in issuing discrepancy reports and imposing appropriate financial penalties against detention facility operators in response to contract and agreement noncompliance. The DHS OIG recommended that such protocols include clear guidance for determining when to issue a discrepancy report, as well as a process to track all discrepancy reports and any financial penalties imposed by ICE, including the final resolution of the issue that led to the discrepancy report or financial penalty. Following the DHS OIG's report, in 2019 ICE developed an internal website where CORs can upload discrepancy reports, along with a spreadsheet to serve as a tool for tracking relevant information.<sup>52</sup> Additionally, in January 2020 ICE issued a procurement guide with discrepancy report procedures, as shown below figure 6.<sup>53</sup>

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<sup>51</sup>OIG-19-18.

<sup>52</sup>The tracking spreadsheet ICE developed includes fields for the contract number, name of the detention facility, a description of the incident, any financial penalties proposed by the CORs, and the outcome of any proposed financial penalties.

<sup>53</sup>Department of Homeland Security, U.S. Immigration and Customs Enforcement, *Contract Discrepancy Reports (CDR) (Detention Contracts)*, Procurement Guide 20-04 (January 31, 2020). As of August 2020, the DHS OIG considers this recommendation open.

**Figure 6: U.S. Immigration and Customs Enforcement (ICE) Discrepancy Report Process**

- The Contracting Officer's Representative (COR) identifies a contract (or agreement) discrepancy and informs the facility operator.
- The COR may then submit a discrepancy report or a written warning to the facility operator for correction or explanation.
- The facility operator may respond to the discrepancy report with a correction to the deficiency or a corrective action plan. The COR then evaluates the facility operator's response.
- The COR can recommend a withholding (money the operator can recover), or a deduction (money the operator cannot recover), to the contracting officer.
  - For discrepancy reports with no proposed penalty, the COR does not pass the report to the contracting officer, but maintains documentation of the discrepancy in the contract or agreement file. The COR is to involve ICE headquarters entities—such as Enforcement and Removal Operations (ERO) and the Office of Acquisition Management—in the discrepancy report review process when the recommended penalty is over \$100,000.
- If the contracting officer agrees with the COR's proposed penalty, the officer is to organize a meeting with the COR, ICE ERO field office officials, and ICE headquarters to ensure agreement.
- Once all stakeholders agree, the contracting officer notifies the facility operator of ICE's decision and the COR moves forward with the proposed penalty.
- The facility operator has 10 days to appeal the decision. The contracting officer is to review any appeal and transmit a final version of the discrepancy report, including a final decision on penalties, to the facility operator. ICE ERO's Custody Management Division senior officials make the final decision regarding a facility operator's appeal, and can choose to reduce or eliminate the financial penalty.
- The COR is to maintain a record of all open and resolved discrepancy reports, and log all reports in ICE's tracking tool.

Source: GAO Analysis of ICE Documentation and Interviews with ICE Officials. | GAO-21-149

**Text of Figure 6: U.S. Immigration and Customs Enforcement (ICE) Discrepancy Report Process**

- The Contracting Officer's Representative (COR) identifies a contract (or agreement) discrepancy and informs the facility operator.
- The COR may then submit a discrepancy report or a written warning to the facility operator for correction or explanation.
- The facility operator may respond to the discrepancy report with a correction to the deficiency or a corrective action plan. The COR then evaluates the facility operator's response.
- The COR can recommend a withholding (money the operator can recover), or a deduction (money the operator cannot recover), to the contracting officer.
  - For discrepancy reports with no proposed penalty, the COR does not pass the report to the contracting officer, but maintains documentation of the discrepancy in the contract or agreement file. The COR is to involve ICE headquarters entities—such as ERO and the Office of Acquisition Management—in the

discrepancy report review process when the recommended penalty is over \$100,000.

- If the contracting officer agrees with the COR's proposed penalty, the officer is to organize a meeting with the COR, ICE Enforcement and Removal Operations (ERO) field office officials, and ICE headquarters to ensure agreement.
- Once all stakeholders agree, the contracting officer notifies the facility operator of ICE's decision and the COR moves forward with the proposed penalty.
- The facility operator has 10 days to appeal the decision. The contracting officer is to review any appeal and transmit a final version of the discrepancy report, including a final decision on penalties, to the facility operator. ICE ERO's Custody Management Division senior officials make the final decision regarding a facility operator's appeal, and can choose to reduce or eliminate the financial penalty.
- The COR is to maintain a record of all open and resolved discrepancy reports, and log all reports in ICE's tracking tool.

The guide focuses on the accurate tracking of specific issues in order to hold facility operators—such as jails or private detention companies—accountable to the level of service and standards established in their contract or agreement. The guide describes the documentation that CORs must maintain in their local files, and further states that CORs must record discrepancy reports into an online report tracking tool. The guide states that the tracking tool will allow ERO and Office of Acquisition Management to (1) track historic trends at particular facilities; (2) provide guidelines on consistent sanction processing across facilities around the country; (3) proactively monitor facilities with a history of discrepancy reports; and (4) analyze trends, including most common causes and best practices in how issues can be remedied. The guide says the tracking tool can also aid in response to inquiries (such as external audits) regarding discrepancies and contract oversight.

However, our analysis of available discrepancy reports and the tracking tool indicates that the data in the tool are not complete enough to allow ICE to determine the extent to which the agency is enforcing the terms and conditions of facility contracts and agreements or to conduct the types of analyses set forth in its guidance. Specifically, our analysis indicates that information for many discrepancy reports that was included in the tracking tool was incomplete, and in some cases inaccurate. Further, our analysis indicates that the tracking tool did not contain all discrepancy reports that CORs have issued since ICE developed the tool.

Specifically, ICE provided two versions of its tracking tool—one from July 2019 that showed 42 discrepancy reports (18 of which recommended deductions), and another from May 2020 that showed 17 new reports (7 of which recommended deductions). However, the May 2020 tool did not include 36 reports that were found on the 2019 version. Further, our review of ICE’s discrepancy report documentation identified an additional three reports with recommended penalties that were not found on either version of the tracking tool. Our review also found two instances where the tracking tool incorrectly stated that no penalty was recommended when the reports themselves identified over \$10,500 in recommended penalties.

The 2019 tracking tool also contained incomplete information with respect to whether ICE ultimately assessed the financial penalties proposed by the CORs. Specifically 18 discrepancy reports included a proposed penalty from the COR, but the tracking tools provided information on the resolution of only 10 of these.<sup>54</sup> The remaining eight reports recommended a percentage to deduct from the facility operator’s invoice.<sup>55</sup> However, for three reports with recommended percentages to deduct, the reports themselves (not the tracking tool) listed recommended penalties of about \$2.2 million. Examples of contract or agreement violations that ICE identified for which there was no documented resolution in the tracking tool included multiple instances of detainee escapes, overpayments for vacant staff positions, and the negligent deaths of two detainees in 2018.

We asked ICE Office of Acquisition Management officials about the outcomes of 14 discrepancy reports that recommended financial penalties. Of these 14 reports, 11 were on the tracking tool without a recorded resolution, and three were not on the tracking tool (but

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<sup>54</sup>One deduction from March 2019 was listed as pending. For the 10 discrepancy reports where the tracking tool indicated that ICE assessed a penalty, it indicated that ICE collected about \$1.6 million dollars for contract and agreement discrepancies that included: the 2017 death of a detainee as a result of deficient medical care and a detainee escape during transport.

<sup>55</sup>A contract or agreement’s quality assurance surveillance plan outlines the standards that the COR will use to evaluate the facility operator’s compliance with contract and agreement provisions, and generally will include percentage ranges of a facility operator’s monthly invoice that can be withheld or deducted if the facility provider fails to meet those standards.

recommended penalties).<sup>56</sup> The officials were able to identify the outcomes of most of these reports through outreach to CORs and reviewing contract files, as detailed below:

- Six of the 14 discrepancy reports ultimately resulted in a financial penalty to the facility operator, either in the form of deductions or withholdings. These six discrepancy reports resulted in deductions and withholdings totaling about \$3.9 million, of which ICE returned about \$2.6 million to the detention operators after the discrepancies were resolved.<sup>57</sup> Examples of discrepancies for which ICE withheld or deducted funds included improper use of pepper spray, detainee escapes, and ICE paying for vacant staff positions.
- Four of the 14 discrepancy reports resulted in no financial penalty. Office of Acquisition Management officials provided varying reasons why ICE did not impose the recommended penalties. For example, one discrepancy report stated that staffing at a facility was below the requirements outlined in the agreement, and therefore the COR recommend a penalty to recover overpayments. Officials said the penalty was never imposed because the IGSA did not include a staffing plan; however, as a result of the discrepancy report the facility operator agreed to modify the IGSA to incorporate a staffing plan. Other reasons that penalties were not imposed included CORs resolving issues directly with the detention facility operator, and an instance in which officials said that ERO's Custody Management Division took too long to review the discrepancy report for ICE to impose the penalty. In this instance, the field office also said it was satisfied with the facility operator's corrective actions. Two reports were under legal review with ICE headquarters. Additionally, ICE could not locate one of the reports and did not provide a response for another.

Office of Acquisition Management guidance requires CORs to enter information into the tracking tool for the contracts and agreements they oversee; however, there are not processes in place to ensure that the data are complete and accurate. For example, ICE ERO's Custody

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<sup>56</sup>We selected these 14 from the 2019 version of the discrepancy report tracker and available discrepancy reports from ICE as of March 2020 in order to provide for sufficient time to have passed for there to be a resolution of the recorded incident.

<sup>57</sup>In one of these cases, the facility operator submitted a claim to ICE requesting a reduced deduction—from a penalty of about \$900,000 to about \$600,000. As of June 5, 2020 the request was still under legal review. The \$3.9 million total includes the amount of the full deduction.

Management Division—which is responsible for determining whether a financial penalty will be assessed—does not enter any information into the tracking tool regarding the final outcome of the discrepancy report. As a result, the only way for the Office of Acquisition Management to obtain complete information on all discrepancy reports is to compile it from the individual contract files maintained by CORs, which officials said is a time-consuming and laborious process.

Office of Acquisition Management officials explained that the office developed the tracking tool in response to repeated requests for data about discrepancy reports and their status, but the office does not use the tool for any internal or programmatic purposes. Rather, the tracking tool solely serves as a centralized source of information for responding to external data requests. However, the tracking tool is insufficient for that purpose because its incomplete data limit ICE’s and external reviewers’ ability to determine whether financial sanctions are being levied, and if not, why not.

Although the information ICE maintains on discrepancy reports is incomplete, our analysis of available reports—which came from 11 of ICE’s 24 field offices—and the tracking tool confirmed that analyzing information in accordance with ICE’s guidance could help identify useful information, such as inconsistencies in when penalties are levied, facilities with histories of discrepancies, and trends in common causes. For example, at least 50 of the reports were for multiple violations of similar issues, such as violations of agreed-upon discipline processes and staffing shortages that compromised detainee health or safety. Additionally, at least 12 reports with recommended financial penalties were written to the same three facilities, which included penalties for the deaths of three detainees, multiple detainee escapes, violation of use of force policies regarding the use of pepper spray and restraints, and other violations.

In addition to ICE’s discrepancy report guidance requiring that CORs record discrepancy reports in a tracking tool and citing the benefits of analyzing the information to identify trends, *Standards for Internal Control in the Federal Government* notes that documentation is a necessary part of an effective internal control system.<sup>58</sup> Documentation provides a means to retain organizational knowledge and mitigate the risk of having that knowledge limited to a few personnel, as well as a means to

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<sup>58</sup>[GAO-14-704G](#).

communicate that knowledge as needed to external parties, such as external auditors. Further, *Standards for Internal Control in the Federal Government* provides that management should process data into quality information and use the information to make informed decisions that support program goals. Ensuring the completeness and reliability of its discrepancy report tracking tool and analyzing the information therein could help ICE better report, track, and resolve identified contract or agreement deficiencies and hold facility operators accountable to the service levels required by their contracts and agreements.

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## Conclusions

The immigration detention system in the United States is a multi-billion dollar a year enterprise. ICE has entered into contracts and agreements for detention space at over 230 facilities, but needs to improve its detention space acquisition planning and oversight to more effectively use federal funds. First, ICE has not consistently followed its process for obtaining detention space. Consistently using a process that includes gathering input from relevant stakeholders and documenting the basis for decisions made before entering into contracts for new or expanded detention space could help provide assurance that ICE has appropriately considered and weighed relevant factors to make the most cost effective decisions that meet its operational needs. Second, in recent years ICE has entered into a dozen contracts and agreements that included guaranteed payments—putting taxpayers in the position of compensating local government entities and private detention companies for millions of dollars a month for detention space that may not be used. Documenting and implementing a strategic approach for using guaranteed minimums that is linked to ICE’s strategic plans, goals, and priorities could help ICE seek better contract terms and more effectively use federal funds. Third, ICE took some actions to safeguard contract oversight, but revising its supervisory reporting structure to properly segregate duties could help ICE ensure that officials responsible for contract oversight have sufficient independence from local management, while still allowing for collaboration and communication at the local level. This could allow ICE to conduct contract and agreement oversight and enforcement in a more objective, uniform, and effective manner, thereby better ensuring that ICE detention contracts and agreements are enforced. Last, ensuring that ICE has complete and reliable information on instances where detention facility operators fail to meet their requirements—and analyzing that information in a manner that enables trends in contract and agreement deficiencies to be identified and addressed—could help ICE hold facility

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operators accountable to the service levels required by their contracts and agreements.

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## Recommendations for Executive Action

We are making the following five recommendations to ICE:

- The Director of ICE should ensure that ERO consistently uses a process that includes input from relevant stakeholders and documentation of the basis for decisions made before entering into contracts or agreements for new or expanded detention space. (Recommendation 1)
- The Director of ICE should document and implement a strategic approach for using guaranteed minimums in detention contracts and agreements that supports ICE's strategic plans, goals, and priorities. (Recommendation 2)
- The Director of ICE should revise its supervisory structure so that the CORs' oversight functions are independent of field office management. (Recommendation 3)
- The Director of ICE should ensure that the agency has complete and reliable information on discrepancy reports and their resolution. (Recommendation 4)
- Once ICE has complete and reliable discrepancy report information, the Director of ICE should regularly analyze the information in a manner that enables trends in facility operator and agreement-holder deficiencies to be identified and addressed. (Recommendation 5)

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## Agency Comments and Our Evaluation

We provided a draft of this report to DHS and DOJ for review and comment. DOJ did not provide written comments. DHS provided written comments, which are reproduced in appendix II. DHS also provided technical comments, which we incorporated as appropriate. DHS concurred with four of the five recommendations and described actions to address them. DHS did not concur with one recommendation.

With regard to our first recommendation that ERO consistently use a process that includes input from relevant stakeholders and documentation of the basis for decisions made before entering into contracts or agreements for new or expanded detention space, DHS concurred. DHS

stated that ICE plans to review and revise its operating guidance to ensure consistent implementation of its white paper process across various offices for detention space acquisition. Provided that ICE implements its revised operating guidance, these actions should address the intent of our recommendation.

With regard to our second recommendation that ICE document and implement a strategic approach for using guaranteed minimums in detention contracts and agreements that supports ICE's strategic plans, goals, and priorities, DHS concurred. DHS stated that ICE will review existing guidance to ensure its acquisition strategy for guaranteed minimum payments is appropriately documented and supports ICE's strategic plans, goals, and priorities. Provided that ICE implements its guidance after it finishes its planned review, these actions should address the intent of our recommendation.

DHS did not concur with our third recommendation that ICE revise its supervisory structure so that CORs' oversight functions are independent of field office management. DHS stated that in 2019, ICE ERO Field Operations evaluated the supervisory structure of CORs and determined that the optimal alignment was for them to remain within the chain of command of field office management. Further, DHS stated that COR positions were intended to reduce the administrative workload of officers that were previously performing COR duties in the field, providing officers with more time to engage in detention and removal activities. DHS stated that ERO ensures the COR appointment and supervisory notification letters for each detention contract detail the responsibilities of each role and that field office management assures adherence.

We continue to believe that revising its supervisory structure to ensure that CORs have sufficient independence from ERO field office management would better position CORs to more effectively conduct detention contract and agreement oversight and enforcement, while still allowing for collaboration and communication at the field office level. As discussed in this report, interviews with CORs from 12 ERO field offices—whose contracts and agreements encompass detention facilities that hold two-thirds of ICE's detained population—suggest that the existing supervisory structure does not provide CORs' oversight functions with sufficient independence from field office management. CORs reported that they lacked resources (including adequate time) or support in carrying out their oversight duties; that field office management had limited CORs' ability to use contract enforcement tools; and that field office management had by-passed CORs' authority in some instances.

These concerns echo those reported by the DHS OIG in 2019, and this report discusses the actions ICE took in response to the DHS OIG's recommendation to evaluate the organizational placement of CORs and to develop appropriate safeguards. However, ICE's actions in response to the DHS OIG's recommendation do not address the issues we identified. For example, as discussed in this report, these actions do not address CORs' and some ICE headquarters officials' concerns that the ability of CORs to independently carry out their oversight functions is dependent on relationships between the CORs and field office managers. Further, they do not address the concerns we identified with CORs having sufficient support and resources to carry out their oversight duties. A revised supervisory structure—which could include reverting to ICE's original structure for the CORs where they were stationed in the field but supervised by ICE headquarters—could help ensure CORs have sufficient independence to carry out their oversight duties.

With regard to our fourth recommendation to ensure ICE has complete and reliable information on discrepancy reports and their resolution, DHS concurred. DHS stated that ICE Office of Acquisition Management's Quality Assurance Division has been tasked with recording pertinent data elements for all submitted discrepancy reports into a tracking spreadsheet and ensuring that the spreadsheet is up to date. Office of Acquisition Management will also work with ICE ERO to ensure CORs comply with the requirement to submit all discrepancy reports to the contracting officers for tracking submissions. Once completed, these actions should address the intent of our recommendation.

With regard to our fifth recommendation to analyze discrepancy report information in a manner that enables trends in facility operator and agreement-holder deficiencies to be identified and addressed, DHS concurred. DHS stated that upon ICE Office of Acquisition Management completing the discrepancy report tracking mechanism and notifying CORs of their duties related to discrepancy report submission, ERO Custody Management will implement procedures to periodically analyze the tracking spreadsheet to identify any trends in facility operator deficiencies. DHS stated that this analysis will aid in identifying best practices, among other things, and that supporting guidance may be updated accordingly. Once completed, these actions should address the intent of our recommendation.

As agreed with your office, unless you publically announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the Acting Secretary of

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Homeland Security and the Acting Attorney General. In addition, the report will be available at no charge on the GAO website at <https://www.gao.gov>.

If you or your staff have any questions, please contact me at (202) 512-8777 or [gablerr@gao.gov](mailto:gablerr@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made significant contributions to this report are listed in appendix III.

Sincerely yours,

A handwritten signature in black ink that reads "Rebecca Gambler". The signature is written in a cursive, flowing style.

Rebecca Gambler  
Director, Homeland Security and Justice

# Appendix I: Selected Characteristics of U.S. Immigration and Customs Enforcement (ICE) Contracts and Agreements

ICE's detention contracts and agreements vary across several characteristics. This appendix provides information on how contracts and agreements vary with respect to:

- Total value
- Bed rate
- Guaranteed minimums
- Utilization

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## Total Value

ICE internal guidance defines total value as the entire value of the contract or agreement over a given period of time. It is calculated by adding up all costs and profit on ICE's detention services cost statement.<sup>1</sup> Costs are broken down into two categories—operating and non-operating.

- Operating costs include staffing, facility costs (such as building rent and utilities), and other direct costs (such as food; recreation; or other detainee supplies, such as linens or toiletries).
- Non-operating costs include depreciation and interest on any buildings or equipment, contracted services (such as medical,

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<sup>1</sup>The detention services cost statement is an Excel workbook that ICE uses to gather cost or pricing data. According to the related handbook, the data helps ICE to determine a fair and reasonable price for each detention facility, in collaboration with the detention service provider. Further, it allows for quicker processing times for requests for equitable adjustments due to new wage determinations.

education, or food services) and general and administrative costs (such as accounting, human resources, and insurance costs).

The Office of Acquisition Management defines profit (sometimes called “margin” or “return”) as the money that detention operators have left over after expenses. In other words, profit is the total contract value, minus total costs.

Given the range of costs within a facility, as well as the variations in operator profits, the total value of contracts and agreements across ICE’s detention portfolio varies substantially. For example, ICE entered into a contract in 2015 with a total value of approximately \$747 million over a 10-year period. According to ICE data, in fiscal year 2019 ICE spent about \$70 million against this contract to hold a daily average of 1,342 detainees. In another example, ICE entered into a 6-year contract with a total value of approximately \$207 million. In fiscal year 2019, ICE spent \$33 million against this contract to hold a daily average of 651 detainees, according to ICE data.

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## Bed Rate

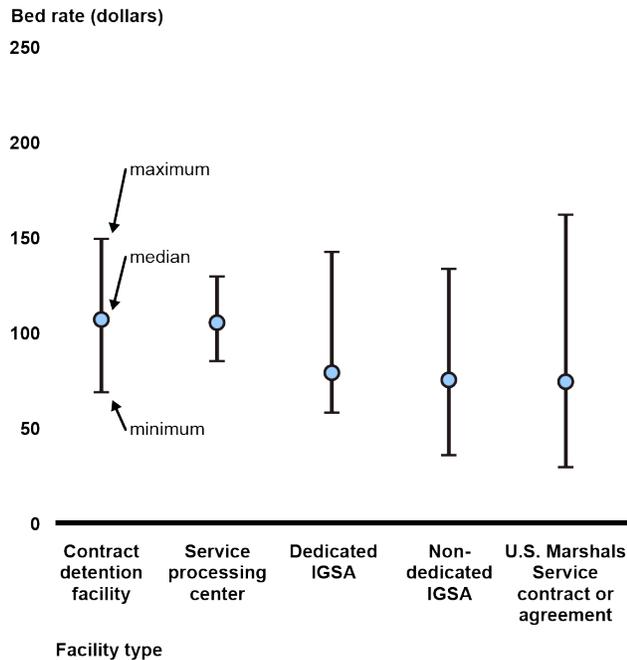
ICE’s contracts and agreements also vary with respect to the bed rate—the amount ICE pays a facility to hold one detainee for 1 day. Guidance from ICE’s Office of Acquisition Management states that bed rate is calculated by dividing the total contract value by the facility’s population, by 365. The guidance notes that use of a bed rate allows for comparisons across different facilities. It also states that a number of factors impact the bed rate, including:

- The number of beds at the facility;
- Fixed costs—expenses which must be paid regardless of the beds used, such as property loans or maintenance;
- Variable costs—expenses that fluctuate with the number of beds used, such as detainee clothing and food;
- The service provider’s expected rate of return, or profit; and
- How much of the facility operator’s “business risk” that ICE shares. Business risk is the possibility that a company will have lower than anticipated profits or operate at a loss. Business risk sharing refers to the way that a detention operator’s business risk is distributed between the operator and ICE.

**Appendix I: Selected Characteristics of U.S. Immigration and Customs Enforcement (ICE) Contracts and Agreements**

According to ICE data, in fiscal year 2019, bed rates for facilities that held detainees ranged from about \$28 to \$162, with an overall median of \$75 per detainee per day, as shown in figure 7.<sup>2</sup>

**Figure 7: U.S. Immigration and Customs Enforcement (ICE) Detention Bed Rates, by Facility Type, Fiscal Year 2019**



**IGSA** Intergovernment Service Agreement

Source: GAO analysis of ICE data. | GAO-21-149

Note: The overall median bed rate of \$75 does not include family residential centers. ICE uses bed rates from individual facilities to estimate an overall bed rate across detention facilities, which it uses to project adult detention costs. In 2018, we reported that including both adult and family beds in ICE's overall bed rate results in double counting of certain costs in bed rate projections. As a result, ICE removed family residential center costs from its calculation of the overall adult bed rate. See GAO, *Immigration Detention: Opportunities Exist to Improve Cost Estimates*, [GAO-18-343](#), (Washington, D.C.: April 18, 2018). Facilities with a guaranteed minimum have a tiered bed rate where ICE typically pays a lower bed rate after it meets the facility's guaranteed minimum. For those facilities, we used ICE's theoretical bed rate calculation based on 100 percent utilization.

<sup>2</sup>In 2014, we reported on limitations with ICE's data on facility costs, including the bed rate, but determined that the data were sufficiently reliable to provide a general indication of approximate bed rate ranges across and within facility types. See GAO, *Immigration Detention: Additional Actions Needed to Strengthen Management and Oversight of Facility Costs and Standards*, [GAO-15-153](#) (Washington, D.C.: October 10, 2014). We determined that the data continue to be sufficiently reliable to provide approximate bed rate ranges.

In 2014, we reported that variation in bed rates results from such factors as the different services provided at the facility, as well as the facility location and type.<sup>3</sup> For example, we reported that labor costs make up the majority of all facility costs, and according to ICE officials, the number of staff needed at each facility can vary based on factors such as a facility's physical layout. Additionally, we reported that variations in local pay rates may contribute to differences in bed rates across geographic regions, according to ICE officials. We also reported that an ICE study had found that bed rates were higher at service processing centers as compared to ICE's other facility types. This was due to the use of separate contracts for guards, food, facility maintenance, and other services, which can increase overhead costs. ICE officials we interviewed during our review stated that these factors continue to contribute to variation in bed rates.

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## Guaranteed Minimums

ICE contracts and agreements may include a guaranteed minimum number of beds that ICE is required to pay for regardless of whether they are filled. Specifically, as of May 11, 2020, ICE data indicated that it had 43 contracts and agreements with guaranteed minimums, which encompassed about a quarter of the 178 facilities ICE had used in fiscal year 2020.<sup>4</sup> Across these 43 contracts and agreements, ICE guaranteed payment for approximately 28,000 beds a day nationwide at a total annual cost of approximately \$1.3 billion, according to ICE data. The value of the guaranteed payments varied across contracts and agreements and ranged from about \$1.6 million to about \$254.5 million annually, according to ICE data.

The number of guaranteed beds per contract and agreement also varied, ranging from 40 beds (in a county correctional center) to 2,400 at a family residential facility. According to ICE data, all but five of its contracts and agreements with guaranteed minimums also included tiered pricing. In these arrangements, ICE pays a lower bed rate for each detainee housed above the agreed-upon guaranteed minimum. For example, in one private detention facility, ICE guaranteed payment for 640 beds at \$155.65 a

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<sup>3</sup>[GAO-15-153](#).

<sup>4</sup>Although ICE data identifies 45 facilities as having guaranteed minimums, ICE has 43 unique contracts and agreements for these facilities because four facilities share a guaranteed minimum. For example, under one agreement, two facilities share a 650 person guaranteed minimum for about \$2 million a month. For our purposes, we are counting these as four unique facilities under two agreements with guaranteed minimums.

bed. If ICE exceeds 640 detainees, the rate for each additional bed drops to \$45.46.

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## Utilization

ICE generally has a set number of beds available for use at each facility, which may be less than the total bed space at the facility. If ICE's contract or agreement with a facility does not have a guaranteed payment, ICE will pay the established bed rate for the number of beds it utilizes at the facility.

ICE tracks utilization rates for facilities at which it has a set number of beds.<sup>5</sup> Of the 185 facilities ICE used in fiscal year 2019, 109 had a set number of beds. Among the 109 facilities, those that housed only ICE detainees (contract detention facilities, service processing centers, dedicated IGSAAs) generally operated at capacity or close to capacity (on average 93 percent) during fiscal year 2019. At those of the 109 facilities that housed ICE detainees and other populations (non-dedicated IGSAAs and U.S. Marshals Service-contracted facilities) ICE utilized a lower portion of available beds (on average 69 percent), according to ICE data. This is due in part to ICE's ability to use these facilities on an as-needed basis, according to ICE officials. ICE data indicated that facilities that exclusively hold families with children (family residential centers) had a lower utilization rate (on average 50 percent) during fiscal year 2019.

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<sup>5</sup>ICE calculates a facility's utilization rate by dividing average detainee population by the facility's set number of beds (capacity). ICE data include utilization rates for 109 of the 185 facilities ICE used in fiscal year 2019. For the remaining 76 facilities, ICE data note an "as needed" capacity, which according to ICE officials, means that detention beds are available for ICE to use if the bed is open and available (i.e., not being used by a county or state inmate) at the time that ICE requests to house a detainee. As a result, ICE data do not include utilization rates for these 76 facilities and they are not included in our analysis.

## Appendix II: Comments from Department of Homeland Security (DHS)

U.S. Department of Homeland Security  
Washington, DC 20528



December 14, 2020

Rebecca Gambler  
Director, Homeland Security and Justice  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Re: Management Response to Draft Report GAO-21-149, "IMMIGRATION  
DETENTION: Actions Needed to Improve Planning, Documentation, and  
Oversight of Detention Facility Contracts"

Dear Ms. Gambler:

Thank you for the opportunity to comment on this draft report. The U.S. Department of Homeland Security (DHS or the Department) appreciates the U.S. Government Accountability Office's (GAO) work in planning and conducting its review and issuing this report.

The Department is pleased to note GAO's acknowledgment of the challenges inherent in planning for detention space needs. U.S. Immigration and Customs Enforcement (ICE) endeavors to deliver quality acquisition solutions in support of this aspect of its mission. More specifically, during the acquisition process ICE reviews offers or quotes received against the evaluation factors set forth in the solicitation. Proposals deemed compliant are evaluated to ensure that the award is made to a vendor that meets or exceeds the selection criteria and will be able to perform or provide deliverables in accordance with the contract requirements, terms, and conditions.

ICE continuously strives to improve the efficiency and effectiveness of its operations and services. For example, in July 2020, the ICE Office of Acquisition Management (OAQ) developed and implemented new guidance for contracting staff to improve the contract discrepancy reports process and data collection. The new process also consists of OAQ and ICE Enforcement and Removal Operations (ERO) working jointly to identify undesirable trends and implement necessary corrective actions regarding oversight of detention contracts. ICE will also begin better leveraging the data collected to more fully

**Appendix II: Comments from Department of  
Homeland Security (DHS)**

understand its resource needs and link them to acquisition strategies for critical mission operations.

The draft report contained five recommendations, with which the Department concurs with four (Recommendations 1, 2, 4, and 5) and non-concurs with one (Recommendation 3). Attached find our detailed response to each recommendation. DHS previously submitted technical comments addressing several accuracy and contextual issues under a separate cover for GAO's consideration.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Sincerely,

**JIM H**

**CRUMPACKER**

JIM H. CRUMPACKER, CIA, CFE

Director

Departmental GAO-OIG Liaison Office

Digitally signed by JIM H  
CRUMPACKER  
Date: 2020.12.14 10:19:59  
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Attachment

**Attachment: Management Response to Recommendations  
Contained in GAO-21-149**

GAO recommended that the Director of ICE should:

**Recommendation 1:** Ensure that ERO consistently uses a process that includes input from relevant stakeholders and documentation of the basis for decisions made before entering into contracts or agreements for new or expanded detention space.

**Response:** Concur. ICE ERO agrees that its bedspace acquisition process should be consistently applied, whether the process is initiated by a field component or by headquarters. Within ERO, the Detention Planning and Acquisition Unit (DPAU) oversees planning and acquisition activities to provide civil detention space at strategically located sites in support of efficient immigration enforcement and removal operations. DPAU coordinates detention-related requirements at the national level with input from ERO field offices, Criminal Alien Program, Fugitive Operations, Homeland Security Investigations, OAQ, U.S. Customs and Border Protection, and other federal, state, local, and tribal stakeholders. These collaborative efforts result in the acquisition of safe and secure detention facilities that are in compliance with applicable detention standards at fair and reasonable costs to the government. ERO will review and revise its operating guidance to ensure consistent implementation of its white paper process across the enterprise for detention space acquisition. Estimated Completion Date (ECD): December 31, 2021.

**Recommendation 2:** Document and implement a strategic approach for using guaranteed minimums in detention contracts and agreements that supports ICE's strategic plans, goals, and priorities.

**Response:** Concur. ICE ERO has implemented a strategic approach in its acquisition of detention space that appropriately accounts for guaranteed minimum payments within detention contracts and agreement. Prior to the Coronavirus Disease 2019 pandemic, ICE acquired guaranteed minimums and surge beds to meet historically high demand in Fiscal Year (FY) 2019. ERO DPAU has continuously supported the evaluation of detention beds acquisition and the reporting of their usage. DPAU will review existing guidance to ensure the ICE acquisition strategy for guaranteed minimum payments is appropriately documented and supports ICE's strategic plans, goals, and priorities. ECD: December 31, 2021.

**Recommendation 3:** Revise its supervisory structure so that the CORs' [Contracting Officer's Representatives] oversight functions are independent of field office management.

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**Appendix II: Comments from Department of  
Homeland Security (DHS)**

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**Response:** Non-concur. In 2019, ICE ERO Field Operations evaluated the supervisory structure of CORs assigned to detention facility contracts and determined the optimal alignment is for them to remain within the chain of command of field office management. The COR positions were established in each field office to ensure the proper oversight and administration of contracts and contractual agreements supporting each field office, as well as to provide project management support for facility-related projects. The positions were intended to reduce the administrative workload of officers that were previously performing COR duties in the field, providing them with more time to engage in detention and removal activities. ERO ensures the COR appointment and supervisory notification letters for each detention contract detail the responsibilities of each role, and field office management assures adherence. We request that GAO consider this recommendation resolved and closed as implemented.

**Recommendation 4:** Ensure that the agency has complete and reliable information on discrepancy reports and their resolution.

**Response:** Concur. ICE OAQ implemented an appendix to the ICE Acquisition Manual (ICAM) in June of 2020 related to Contract Discrepancy Report (CDR) processing and tracking. The OAQ ICAM implements and supplements the Federal Acquisition Regulation, the Homeland Security Acquisition Regulation, and the Homeland Security Acquisition Manual. It is non-regulatory in nature and provides uniform procedures for the internal operation of acquiring supplies and services within OAQ. The CDR appendix establishes guidelines for processing and tracking CDRs associated with OAQ detention and related services contracts. In addition, the CDR process is outlined in a contract's Quality Assurance Surveillance Plan. The intent of the ICAM appendix is to serve as a guide for OAQ staff to ensure CDRs and any associated actions (i.e., withholdings, deductions, cure notices) are resolved, closed out, and properly tracked. In conjunction with the issuance of the ICAM guidance, OAQ also instituted a CDR submission mailbox for Contracting Officers (COs) to submit completed CDRs for tracking. The OAQ Quality Assurance Division has been tasked with recording pertinent data elements for all submitted CDRs into a tracking spreadsheet and ensuring the spreadsheet is up to date. OAQ will work with ERO to ensure CORs comply with the requirement to submit all CDRs to the COs for tracking submission. The ICAM appendix, submission mailbox, and tracking mechanism are completed. The notification to ERO CORs of expected compliance will be completed by the end of FY 2021 Quarter 2. ECD: June 30, 2021.

**Recommendation 5:** Once ICE has complete and reliable discrepancy report information, the Director of ICE should regularly analyze the information in a manner that enables trends in facility operator and agreement-holder deficiencies to be identified and addressed.

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**Appendix II: Comments from Department of  
Homeland Security (DHS)**

**Response:** Concur. Upon OAQ's completion of the tracking mechanism and notification to ERO CORs of expected compliance for CDR submissions, ERO Custody Management will implement procedures to periodically analyze the OAQ tracking spreadsheet to identify any trends in facility operator deficiencies. This analysis will aid in identifying the most common causes and best practices with corrective actions taken to address issues with facility operators. Supporting guidance, if applicable, will be updated accordingly. ECD: December 31, 2021.

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## Text of Appendix II: Comments from Department of Homeland Security (DHS)

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Page 1

December 14, 2020

Rebecca Gambler

Director, Homeland Security and Justice

U.S. Government Accountability Office

441 G Street, NW

Washington, DC 20548

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## Page 2

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Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Sincerely,

JIM H. CRUMPACKER, CIA, CFE

Director

Departmental GAO-OIG Liaison Office

Attachment

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## Page 3

### Attachment: Management Response to Recommendations

Contained in GAO-21-149

GAO recommended that the Director of ICE should:

**Recommendation 1: Ensure that ERO consistently uses a process that includes input from relevant stakeholders and documentation of the basis for**

**decisions made before entering into contracts or agreements for new or expanded detention space.**

**Response: Concur.**

ICE ERO agrees that its bedspace acquisition process should be consistently applied, whether the process is initiated by a field component or by headquarters. Within ERO, the Detention Planning and Acquisition Unit (DPAU) oversees planning and acquisition activities to provide civil detention space at strategically located sites in support of efficient immigration enforcement and removal operations. DPAU coordinates detention-related requirements at the national level with input from ERO field offices, Criminal Alien Program, Fugitive Operations, Homeland Security Investigations, OAQ, U.S. Customs and Border Protection, and other federal, state, local, and tribal stakeholders. These collaborative efforts result in the acquisition of safe and secure detention facilities that are in compliance with applicable detention standards at fair and reasonable costs to the government. ERO will review and revise its operating guidance to ensure consistent implementation of its white paper process across the enterprise for detention space acquisition. Estimated Completion Date (ECD): December 31, 2021.

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December 31, 2021.

**Recommendation 3: Revise its supervisory structure so that the CORs' [Contracting Officer's Representatives] oversight functions are independent of field office management.**

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Page 4

**Response: Non-concur.**

In 2019, ICE ERO Field Operations evaluated the supervisory structure of CORs assigned to detention facility contracts and determined the optimal alignment is for them to remain within the chain of command of field office management. The COR positions were established in each field office to ensure the proper oversight and administration of contracts and contractual agreements supporting each field office, as well as to provide project management support for facility-related projects. The positions were intended to reduce the administrative workload of officers that were previously performing COR duties in the field, providing them with more time to engage in detention and removal activities. ERO ensures the COR appointment and supervisory notification letters for each detention contract detail the responsibilities of each role, and field office management assures adherence. We request that GAO consider this recommendation resolved and closed as implemented.

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**Recommendation 5: Once ICE has complete and reliable discrepancy report information, the Director of ICE should regularly analyze the information in a manner that enables trends in facility operator and agreement-holder deficiencies to be identified and addressed.**

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Page 5

**Response: Concur.**

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## Appendix III: GAO Contact and Staff Acknowledgments

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### GAO Contact

Rebecca Gambler, at (202) 512-8777 or [gablerr@gao.gov](mailto:gablerr@gao.gov)

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### Staff Acknowledgments

In addition to the contact named above, Taylor Matheson (Assistant Director), Charlotte Gamble (Analyst-in-Charge), Kelsey M. Carpenter, Benjamin Crossley, Pamela Davidson, Hannah Hubbard, Sasan J. “Jon” Najmi, Danielle Pakdaman, and Adam Vogt made key contributions to this report.

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Chuck Young, Managing Director, [youngc1@gao.gov](mailto:youngc1@gao.gov), (202) 512-4800  
U.S. Government Accountability Office, 441 G Street NW, Room 7149  
Washington, DC 20548

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## Strategic Planning and External Liaison

Stephen J. Sanford, Acting Managing Director, [spel@gao.gov](mailto:spel@gao.gov), (202) 512-4707  
U.S. Government Accountability Office, 441 G Street NW, Room 7814,  
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