

GAO@100 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.

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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
Total	233	185	100

Source: GAO analysis of ICE data. | [GAO-21-149](#)

ICE primarily uses intergovernmental service agreements (IGSA) to acquire detention space. Officials said IGSAs 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.