



FREDERICK COUNTY GOVERNMENT

INTERAGENCY INTERNAL AUDIT AUTHORITY

Tricia Griffis, Director of Internal Audit

Memorandum

To: Frederick County Council
Sheriff Chuck Jenkins

From: Tricia A. Griffis, CPA


Date: June 11, 2018

Subject: Review of Intergovernmental Service Agreement (IGSA) with the U.S. Department of Homeland Security U.S. Immigration and Customs Enforcement Office of Detention and Removal (ICE) and Analysis of Costs

Introduction and Summary

At the request of the County Council and as agreed by the Interagency Internal Audit Authority (IIAA); the Internal Audit Division (IAD) performed a non-attest special project reviewing and analyzing the cost associated with the IGSA ICE inmate housing agreement. This review was conducted by the IAD to evaluate the agreement, with IGSA and the U.S. Department of Homeland Security, U.S. ICE Office of Detention and Removal and the Frederick County Sheriff's Department (FCSO) to determine costs associated with the program and the analysis and allocation of such costs of multiple fiscal years. The procedures and work performed by the IAD constitutes a non-attest engagement and does not fall under the guidance of Government Auditing Standards (GAS).

During the special project the IAD reviewed and analyzed the following data and criteria:

- The Inter-Governmental Service Agreement (IGSA) between the United States Department of Homeland Security U.S. Immigration and Customs Enforcement Office of Detention and Removal (ICE) and the Frederick County Sheriff's Department, Frederick MD (FCSO)
- Fiscal years 2015, 2016 and 2017 Transaction Detail Reports and Budget vs Actual Summary Reports for the Detention Center under the General Fund
- Fiscal year 2018 budget Salary Worksheet
- Fiscal year 2016, 2017 and 2018 to date billing support for ICE reimbursement
- FCSO Direct Cost to house IGSA inmates spreadsheet
- Frederick County Sheriff's Office - Corrections Bureau 2017 Annual Report
- FCSO Standard Operating Procedures regarding minimum staffing

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- The U.S. ICE "Jail Services Cost Statement Cost Sheet for Detention Services" (blank form for calculating and analyzing costs)
- Direct information from the Detention Center regarding average daily detention center population and average daily ICE population
- ICE Uniform Corrective Action Plan, review date July 13, 2017

It is management's responsibility to design and implement an adequate system of internal control and it is the IAD's responsibility to determine if management's system of internal control is functioning properly in relation to the objectives of the special project. It is also management's responsibility to decide if action should be taken in response to any reported recommendations, taking into consideration related costs and benefits. Management, therefore, assumes the risk of making the decision not to implement any reported recommendations.

The objectives of the special project were as follows:

- To review the current Inter-Governmental Service Agreement (IGSA) between ICE and the FCSO; and
- To determine if the current per diem rate provided by ICE is reasonable in accordance with the agreement and current actual costs incurred by the FCSO.

Background

The FCSO follows the IGSA with ICE as dated August 1, 2007. This agreement allows for an \$83 per day detainee rate as reimbursement from ICE to the FCSO. ICE is responsible for reviewing and approving costs associated with the agreement along with any modifications to the agreement. It would be a decision between the Sheriff's Office and ICE to update their Inter-Governmental Service Agreement at which time a new or updated U.S. Department of Homeland Security U.S. Immigration Customs Enforcement "Jail Services Cost Statement Cost Sheet for Detention Services" would be completed. The "Jail Services Cost Statement Cost Sheet for Detention Services" follows the Office of Management and Budget (OMB) Circular A-87 in which only allowable costs may be funded under the program as with other grant funded programs, allowable costs are outlined by the agreement (IGSA) itself. A new agreement could also cause potential additional costs to the Frederick County Sheriff's Office and tax payer funds as well as potential changes in the calculation of per day detainee rates. It would be at the discretion of the FCSO to review changes within the agreements and costs associated with any requirement changes and how that would affect FCSO and taxpayer funds.

The current agreement states that "The Service Provider shall not charge for cost, which are not directly related to the housing and detention of detainees. Such costs include but are not limited to: 1) Salaries of elected officials; 2) Salaries of employees not directly engaged in the housing and detention of detainees; 3) Indirect costs in which a percentage of all local government costs are pro-rated and applied to individual departments unless, those costs are allocated under an approved Cost Allocation Plan; 4) Detainee services which are not provided to, or cannot be used by Federal detainees; 5) Operating cost of facilities not utilized by Federal detainees; 6) Interest on borrowing (however represented), bond discounts, costs of

financing/refinancing, except as prescribed by OMB Circular A-87; 7) Legal or professional fees (specifically legal expenses for prosecution of claims against the Federal Government, legal expenses of individual detainees or inmates); 8) Contingencies”.

Following the agreement, only direct costs associated with housing the detainees may be accumulated into the detainee per day rate. Some indirect costs may be allocated at the discretion of ICE. If the department intends on claiming central service costs they must provide a cost allocation plan and indirect cost proposal. ICE defines an indirect cost as “any cost not directly identified with a single, final cost objective and is not subject to treatment as a direct cost”. Cost of equipment and depreciation on facilities must be for items used directly for jail operations. In lieu of depreciation an allowance method can be utilized. In this case, there is no specific equipment directly related to IGSA inmates and due to the fact that open beds only are allowed for IGSA use, no portion of the jail is specifically held for the IGSA agreement or inmates. All costs would be the cost of the tax payer with or without the inmates other than actual direct food, medical costs (as described above) and any other incidental or operating items situationally dependent.

Facts surrounding the detention center, facility and program:

- The FCSO detention center utilizes open beds only to allow for IGSA Program Housing and does not hold beds or space for the program.
- The detention center follows a minimum staffing policy. Minimum staffing whether or not beds are utilized must always be in place, therefore no additional officers are in place to oversee the IGSA housed inmates. Total detention center beds is 405.
- Additional officers or staffing are not hired or brought onto assignment to cover IGSA detainees.
- The only true additional direct costs that the detention center incurs is food for the additional inmates and minimal medical costs. Any medical costs for IGSA inmates outside of the detention center for doctor visits are reimbursed by ICE along with any internal dental and medication costs.

Since the program itself does not cause the FCSO to hire or post additional staffing, the only absolute direct and intentional cost associated with the program is food for the detainees and medical costs as described above. The FCSO Detention Center also does not have a build out or specific IGSA unit/space at the Detention Center and therefore, no specific portion of the building is allocated directly to the IGSA programming.

The IAD reviewed the direct cost analysis performed by the FCSO Detention Center and found the information to be reasonable as they allotted cost for food per inmate as noted in their annual report and a calculated medical cost per average daily population to come up with the daily direct cost rate. This direct only analysis provides a cost of \$20.73 per inmate per day rate (\$6.17 per day for food and \$14.56 per day for medical) for fiscal year 2017.

However, according to the “Jail Services Cost Statement Cost Sheet for Detention Services” (ICE Cost Statement) ICE allows for an allocation of potentially direct/indirect personnel costs as

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well. This allocation provides for the FCSO to mitigate costs and operations of the facility overall on a per bed and average daily population basis for positions/personnel that could be involved with the federal inmate. In reviewing the FCSO minimum staffing policy and the ICE Cost Statement, the IAD has determined positions that could have an effect on the program. Utilizing Part I of Schedule B of the Cost Statement for "Personnel Costs" (only those positions directly involved in jail operations and benefiting federal inmates) the IAD determined that cost sharing amongst all beds in the detention center would allot to \$26.04 per day per inmate. However, again, these costs must be incurred by the FCSO Detention Center whether or not federal IGSA inmates are in place. This \$26.04 includes salaries and benefits of positions that **could** be related to housing federal inmates, however none of which are directly related to the program.

In accordance with the OMB Circular A-87 standards, the FCSO Detention Center cannot allocate all Detention Center costs to the program. There are rules and guidelines as to the costs that can be mitigated with the Federal funds and indirect cost factors must be approved by ICE.

In a reasonableness test the IAD took the fiscal year 2017 total operating costs of \$3,050,925.57 (not including salaries and wages or the federal IGSA recovery funds, but including food and medical costs) and allocated that cost over the average daily jail population (detention center only) (ADP) of 335 inmates. This allocation is conservative as it does include costs that are not related to the ICE program such as fleet fuel and fleet charges (as ICE picks up and drops off IGSA inmates in transportation). The total costs per ADP is \$24.95 per inmate per day. The IAD also analyzed depreciation as a factor to indirect costs of the agreement as laid out in the ICE Cost Statement. The Detention Center is a large building space utilizing depreciation on a 50 year basis. Due to the fact that only open beds are utilized and space utilized over the entire center is minimal the IAD determined that spreading the depreciation over total beds would be reasonable to allocate indirectly to the program agreement. This allows for \$2.26 per day in depreciation allocation.

Overall, strict direct costs only to the program agreement amount to \$20.73 per inmate per day. Also, in a reasonable test, analysis and calculation it appears that including potential allowable indirect costing units would equate to \$53.25 per inmate per day (\$26.04 for personnel time, \$24.95 for operating costs and \$2.26 for the depreciable value of the Detention Center). The \$83 per inmate per day rate provided by ICE to the FCSO covers the \$53.25 per inmate per day rate as reasonably calculated. The variance allows for additional personnel from time to time that may be indirectly related to housing inmates as well as other external program funds that might be utilized from time to time. The above calculation was a reasonableness test and due to the fluctuation of open beds only available to inmates and programs not consistently utilized it appears to be a fair representation of expectations to the program.

The FCSO has also been subject to annual ICE audit and inspection. The IAD reviewed the most recent inspection corrective action plan from ICE noting no major issues at the facility or with the program in accordance with the agreement and Federal regulations and standards which would include a review and analysis of the program, agreement and cost allocation itself. The last corrective action plan viewed was performed in July 2017.

It appears that the current reimbursement is reasonable and based upon the agreement with ICE from 2007. It would be at the discretion of the FCSO to update their agreement with ICE which could affect the program in availability and ICE funding changes as well as cost to taxpayer funds.

During this analysis it was a pleasure to work with FCSO personnel and the IAD sincerely appreciates their full cooperation and assistance with the support and information required to perform the necessary work. The work performed under this special project was not performed in accordance with Generally Accepted Government Auditing Standards and is considered a non-attest service.

Please let the Director of the IAD, Tricia A. Griffis, CPA, know if you have any questions or concerns as it relates to this special project. The IAD staff will be happy to assist in any way that we can.

Pc: Dawn Reed, Administrative Coordinator, Internal Audit
IIAA, Interagency Internal Audit Authority, Frederick County, Maryland
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