

AUDIT OF THE INTERGOVERNMENTAL AGREEMENT DETENTION SPACE NEGOTIATION PROCESS

U.S. Department of Justice
Office of the Inspector General
Audit Division

Audit Report 11-21
March 2011

REDACTED – FOR PUBLIC RELEASE

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EXECUTIVE SUMMARY*

The United States Marshals Service (USMS) is responsible for holding Department of Justice (DOJ) criminal detainees while courts adjudicate their cases. During fiscal year (FY) 2010, the USMS had an average daily custody population of about 60,000 detainees, who were mostly housed in state and local detention facilities.¹ The USMS normally procures detention space at these facilities using intergovernmental agreements (IGA), which set a price, referred to as a "jail-day rate," that DOJ will pay a state or local government to hold one detainee for 1 day. While the USMS negotiates IGAs with detention facilities, the Office of the Federal Detention Trustee (OFDT) establishes the framework by which the USMS negotiates these IGAs. In FY 2010, the USMS spent \$888 million on IGAs, which was the largest portion (71 percent) of the \$1.24 billion spent to house DOJ detainees in non-federal facilities.

Before March 2006, jail-day rates were generally based on the reported costs of each detention facility. According to the OFDT, however, basing jail-day rates only on costs did not provide an adequate incentive for state and local governments to operate efficiently and control detention-related expenses. In March 2006, the OFDT directed the USMS to consider other pricing factors besides each facility's costs to negotiate IGA jail-day rates.

The new negotiation strategy, referred to as "price analysis" in the Federal Acquisition Regulation (FAR), allows the USMS to compare proposed rates to estimated rates using facility cost information, government pricing estimates, and the rates charged by similar or nearby facilities.

* The full version of this report includes information that the OFDT and USMS considered to be procurement sensitive, and therefore cannot not be publicly released. According to the USMS and OFDT, disclosure of specific facility names, locations, and facility jail-day rates would impair future negotiations. To create this public version of the report, the Office of the Inspector General replaced each facility name with a number and redacted the portions of the full report that the OFDT and USMS considered sensitive.

¹ Of the 60,000 detainees, about 37,000 were housed in state and local detention facilities. The USMS also housed approximately 12,000 detainees each day in facilities administered by the Federal Bureau of Prisons and another 11,000 detainees in private facilities.

In November 2007, as part of the new negotiation strategy, the OFDT implemented what it called eIGA – the electronic Intergovernmental Agreement system. A web-based system, eIGA is used by state and local detention facilities to submit IGA applications to the OFDT and USMS. The USMS and OFDT also use eIGA to review IGA applications and collect information to negotiate new jail-day rates.

OIG Audit Approach

The DOJ Office of the Inspector General (OIG) conducted this audit to: (1) assess how the OFDT has implemented and the USMS uses eIGA to negotiate jail-day rates, and (2) determine whether the OFDT price analysis negotiation strategy has resulted in fair and reasonable jail-day rates charged by state and local facilities.

This audit follows up on the findings of a March 2007 OIG audit that assessed how the OFDT and USMS negotiated IGAs.² The March 2007 audit summarized the results of 31 individual IGA audits conducted between 1995 and 2006 that the OIG performed to assess the allowability of state and local government detention facility costs. The individual IGA audits identified a total of \$60 million in dollar-related findings, which the OFDT and USMS dispute.³

The March 2007 OIG audit found significant deficiencies in how the OFDT and USMS planned to establish jail-day rates and revamp the IGA negotiation process. The OFDT instructed the USMS to begin using eIGA to apply a statistical pricing model to negotiate new jail-day rates. Because the OFDT's model abandoned the long-held approach of using facility costs to set jail-day rates, the March 2007 OIG audit recommended that the OFDT and USMS still consider facility costs when they negotiate IGAs. In our judgment, cost information was critical for the USMS and OFDT to gauge whether negotiated IGA rates were fair and reasonable. In response to our 2007 audit, the OFDT modified eIGA to require that state and local facilities requesting a new or revised jail-day rate submit detailed cost data, known as jail operating expense information (JOEI), to help USMS negotiators

² U.S. Department of Justice Office of the Inspector General, *Oversight of Intergovernmental Agreements by the United States Marshals Service and the Office of the Federal Detention Trustee*, Audit Report 07-26 (March 2007).

³ Dollar-related findings include questioned costs and funds to be put to a better use. Questioned costs are expenditures that do not comply with legal, regulatory or contractual requirements, or are not supported by adequate documentation at the time of the audit, or are unnecessary or unreasonable. Funds to be put to a better use are dollars that could be used more efficiently if management took actions to implement and complete audit recommendations.

gauge whether the requesting facility was proposing a high rate relative to the facility's actual and allowable expenses.

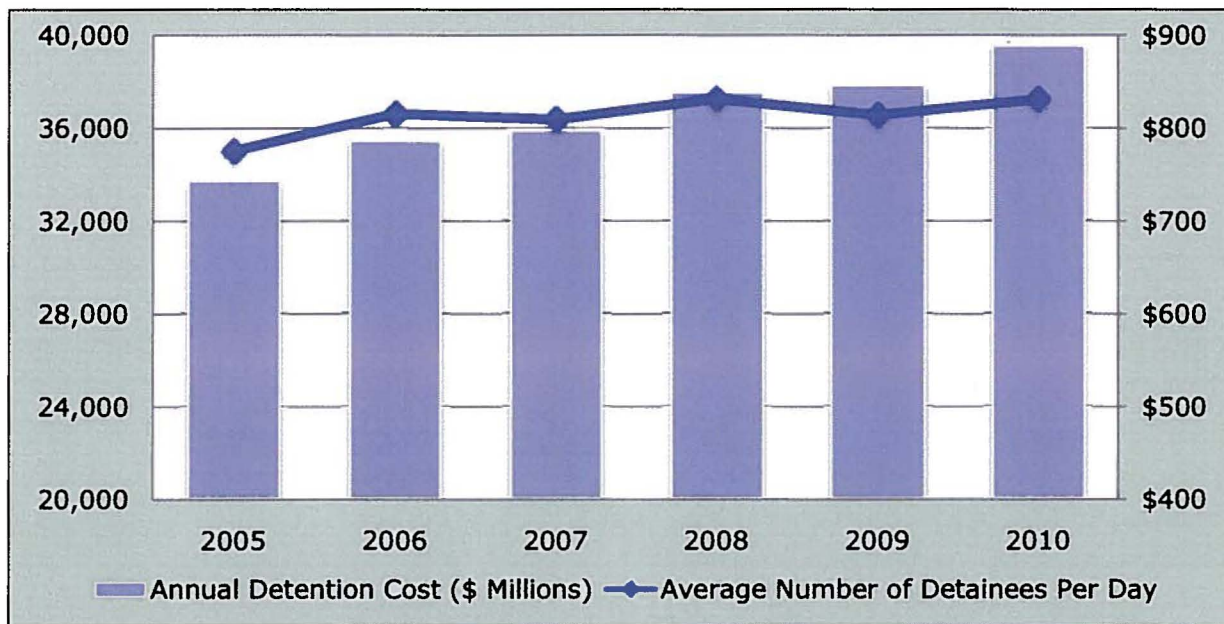
To accomplish the objectives of this audit, we assessed whether the USMS and OFDT effectively used eIGA to ensure that IGA rates are fair and reasonable. We interviewed OFDT and USMS officials responsible for establishing and overseeing IGA negotiation policies and procedures and USMS specialists who negotiate jail-day rates with state and local detention facility officials. We reviewed a sample of 25 IGAs to evaluate how the OFDT and USMS performed and documented negotiations. Further, because the U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement (ICE) also uses detention space from state and local facilities, we compared detention rates paid by ICE to similar rates negotiated by the USMS. We also participated in several discussions and seminars provided by OFDT regarding eIGA and price analysis.

Appendix I contains a more detailed description of our audit objectives, scope, and methodology.

Results in Brief

Since FY 2005, the last fiscal year before the OFDT started using other detention pricing factors besides costs to negotiate IGAs, the number of DOJ detainees housed in state and local facilities has remained relatively constant (ranging between 35,025 and 37,262 detainees each day). As shown by the following exhibit, the annual cost to house these detainees in state and local facilities increased 19 percent, from \$743 million in FY 2005 to \$888 million in FY 2010.

IGA DETENTION POPULATION AND COST (FY 2005 TO 2010)



Source: OFDT

Between FYs 2005 and 2010, the average IGA jail-day rate rose over 12 percent, from \$58 in FY 2005 to over \$65 in FY 2010. According to OFDT officials, this corresponds to a 2.42 percent annual increase in average detention rates, which OFDT officials said was commensurate with cost increases incurred by non-IGA detention facilities during this time period. OFDT officials stated that a 6.3 percent increase in the number of detainees since FY 2005 also contributed to the increase in the overall amount spent on IGAs.

To evaluate whether the OFDT and USMS could improve its IGA negotiation strategy to control detention costs, we sampled 25 separate IGAs negotiated after the OFDT abandoned the traditional approach of establishing IGAs based on facility costs and began using eIGA to negotiate rates. We found that eIGA does not include all the documents prepared by the USMS specialist to substantiate negotiated rates. For example, we found that USMS specialists have not been documenting the contemporaneous pricing information (such as jail rates of other facilities, average district rates, and rates paid by other federal agencies) they should be obtaining before negotiating IGAs. We recommend that the OFDT and USMS develop a template for the USMS specialists to obtain, record, and use this information within eIGA.

Our audit also found that the OFDT and USMS need to ensure that certain application data provided by the requesting facility is accurate before beginning negotiations. We identified one example where a facility underreported the number of detainees it held during the prior year. The USMS specialist then relied on this incorrect figure to estimate a higher rate for this facility based on its reported cost. The subsequent negotiations resulted in a jail-day rate that we believe, based on operating costs, will provide the requesting facility with almost \$8 million in profits over the 3-year term of the IGA.

Once the USMS specialist receives a completed IGA application (which includes reported jail operating expense information (JOEI) data), the USMS specialist uses four distinct price analysis techniques to assess the proposed price against the other types of jail day rates assembled during the pre-negotiation stage. The purpose of these techniques is to determine whether a proposed rate is fair and reasonable.

However, our audit found significant weaknesses in the way the OFDT and USMS have implemented the new IGA negotiation process using these price analysis techniques. For example, we found that USMS specialists did not perform price analysis techniques consistently. First, in some cases USMS specialists compared proposed rates only to the highest rates in a particular district, and in other cases did not compare rates of facilities that were similar in size and location to the requesting facility. Second, USMS specialists did not consistently document the reasons why higher rates were used in rate comparisons and whether the facilities with high rates were similar enough to the requesting facility. The lack of sufficient evidence offered to justify the price analysis makes it appear that USMS specialists are sometimes misapplying price analysis to justify high rates.

Furthermore, USMS specialists did not consistently use what we believe to be the most important price analysis technique: facility-reported JOEI data. Although using facility JOEI data can help readily show whether a proposed jail-day rate would appear to provide excessive payments to state and local facilities, USMS specialists cited JOEI data estimates as justifications offered for only 6 out of the 25 sampled IGAs. By not systematically using JOEI data when negotiating IGAs, the USMS was disregarding information that could provide an important check on the rising jail-day rates. We compared negotiated rates to rates calculated using JOEI data and facility capacities and calculated the costs of detention space over the effective period of each sampled IGA (usually 3 years). This comparison showed that the negotiated rates for the 25 sampled IGAs would provide a total of \$15 million more to state and local governments than rates based solely on facility-reported JOEI data.

In April 2010, the OFDT updated eIGA to calculate estimated JOEI rates automatically. In our opinion, the fact that USMS specialists have not treated the estimated JOEI rates as a starting point for negotiations has strengthened the requesting facility's negotiation position over the USMS. This is because proposed rates are independently set by the requesting facility, and the USMS specialist cannot easily determine whether such rates are reasonable when compared to the requesting facility's costs. We therefore believe that, at the outset of the IGA negotiation, USMS specialists should use the requesting facility's estimated JOEI rate as a starting point to evaluate whether the proposed rate is fair and reasonable. Using the JOEI rate in this way offers USMS specialists an opportunity to gauge whether the proposed rate is fair and reasonable or whether the proposed rate would provide excessive profits to the requesting facility.

We also believe that there are at least two circumstances when USMS specialists should not use price analysis alone to identify a fair and reasonable jail-day rate. The first instance is when price analysis yields a large range of results that vary widely. The second instance is when USMS district has a shortage of detention space and the requesting facilities use this shortage to demand exorbitant jail-day rates. In these circumstances, we recommend that the USMS should perform "cost analysis" or a review of facility costs to evaluate whether facility costs are allowable and accurate.

The following example demonstrates how cost analysis could have been used by the USMS to negotiate a jail-day rate appropriately. In one IGA, the price analysis techniques yielded more than a 60 percent difference between compared rates, which ranged from \$69 to \$125. In this case, the USMS specialist cited the \$125 rate for price analysis to justify a requested \$118 rate. However, if the USMS specialist instead used cost analysis, the specialist would have been in a better position to determine whether the requested \$118 rate was appropriate by considering whether the operating expenses reported by the requesting facility indicated that the negotiated rate should have been in the lower end of the range.

Our audit also identified two IGAs where USMS specialists cited district-level detention space shortages as justification for what appeared to be high jail-day rates. While negotiating these IGAs, the OFDT and USMS could have rigorously applied price and cost analysis results to try to obtain more reasonable jail-day prices from detention facilities. When highly utilized state and local facilities demand rates that cannot be justified via price or cost analysis, we recommend that the OFDT and USMS work closely with local USMS district officials to find more cost-effective facilities – even facilities that may be less operationally convenient – that can instead be used to house detainees.

In our report, we make 15 recommendations to the OFDT and USMS that we believe can improve the IGA negotiation process and save the OFDT and USMS significant detention costs. Many of our recommendations focus on improving specific price and cost analysis guidelines and ensuring that USMS specialists adequately document negotiation decisions.

Our report contains information on the full results of our review of the process used to negotiate detention space IGAs. The remaining sections of this Executive Summary summarize in more detail our audit findings.

Background

IGA negotiations begin when a state or local facility uses eIGA to submit an application that includes a proposed jail-day rate to house DOJ detainees. The following exhibit presents an overview of the IGA negotiation process.

IGA NEGOTIATION PROCESS



Source: OIG depiction of the eIGA process as of September 2010

The USMS specialist assesses the fairness and reasonableness of the proposed jail-day rate by using four specific price analysis techniques outlined by the FAR to consider different types of jail-day rate data. The first technique uses an eIGA-calculated adjusted core rate determined by applying specific facility attributes to an econometric model developed by the OFDT. The second technique estimates a jail-day rate by dividing the operating costs reported by the facility in its JOEI data by the facility's total-rated capacity of detainees. The third technique, referred to as market research, involves comparing rates charged by facilities that are similar to the requesting facility. The fourth technique is similar to market research except that it compares proposed rates to historical detention prices charged by private and federal facilities.

Generally, the specialist can conclude that the proposed rate is fair and reasonable if it aligns with these different rates. However, when the proposed rate is greater than the other price analysis rates, the USMS specialists should use the price analysis results to counteroffer the proposed rate with a lower rate that better aligns with price analysis results.

If price analysis techniques cannot be used to derive a rate that is fair, reasonable, and acceptable to the requesting facility, the OFDT price negotiation strategy directs USMS specialists to use "cost analysis" to evaluate the JOEI data and attempt to set a jail-day rate based on actual costs. Cost analysis is different from price analysis because it involves actually evaluating a requesting facility's cost elements for allowability and accuracy. Cost analysis therefore can serve as an important tool that can strengthen the USMS's negotiation position. Nevertheless, we found that USMS specialists have not been using cost analysis to seek lower rates.

The following sections provide a summary of our review of each part of the IGA negotiation process.

Pre-Negotiation Procedures

Detention facilities requesting jail-day rates use eIGA to submit applications and other data to the USMS and OFDT. The OFDT and USMS use eIGA to document and track application materials and prepare for negotiations. Submitted applications include various administrative and financial data provided by the requesting facility, including the facility's address, contact officials, and total-rated capacity of detainees.

We found that USMS specialists do not always ensure that this data is accurate or complete before moving forward with negotiations. In particular, if a facility incorrectly reported the number of detainees it could hold (total-rated capacity), the estimated jail-day rates using JOEI data became distorted. For example, we found that a requesting facility misreported that it held 275 detainees instead of its actual figure of 400 detainees. The smaller reported number of detainees led to the USMS specialist miscalculating this facility's JOEI rate as \$105 per day, instead of \$73 per day.

We recommend that USMS specialists consult detention facility reference materials and websites and verify application data, such as the requesting facility's detainee capacity, before beginning IGA negotiations.

Under the FAR, government negotiators are required to establish a negotiation strategy at the outset of negotiations. To help fulfill this requirement, USMS specialists have developed strategy sheets to document various known detention rates. However, we found that the strategy sheets were not standardized or otherwise required by the OFDT, and some USMS specialists did not consistently use them to document available pricing information. As a result, we could not ascertain what detention rates the USMS specialists had available when they began negotiations. This information is important for the OFDT and USMS to show that the next step of the IGA negotiation process – price analysis – was complete and performed correctly.

Price Analysis

Price analysis is the process of using other factors such as price estimates and actual rates of other facilities to assess whether a proposed or negotiated price is fair and reasonable. The FAR provides specific techniques that government negotiators may use to conduct price analysis. The following exhibit outlines the four techniques we determined USMS specialists have applied to IGA negotiations.

IGA PRICE ANALYSIS TECHNIQUES

Price Analysis Technique	How To Use Within the eIGA Process
Adjusted Core Rate	Compare the proposed jail-day rate to the facility's adjusted core rate. Adjusted core rates are calculated by eIGA using a pricing model that considers specific facility attributes, including: (1) county wage statistics, (2) facility staff to detainee ratio, (3) facility jurisdiction type, (4) major metropolitan area, and (5) U.S. geographic region.
Jail Operating Expense Information (JOEI)	Calculate the per-detainee costs using JOEI data and the facility's total-rated capacity and compare the calculation results to the proposed jail-day rate. As of April 2010, eIGA automatically calculates estimated JOEI rates.
Market Research	Compare the proposed jail-day rate to: (1) actual prices charged by other IGA facilities within the same USMS district or geographical location; (2) an OFDT-calculated average IGA jail-day rate for the USMS district; or (3) the requesting facility's previous rate, adjusted for inflation (if applicable).
Historical Price	Compare the proposed jail-day rate to actual prices of detention space at private detention facilities (commercial contract prices) used by the USMS district or to BOP per capita rates (government prices) at federal detention centers.

Source: OFDT

Because price analysis incorporates an array of pricing factors, the OFDT asserted that price analysis would better position the USMS to control jail-day rate increases because it could examine prices charged by other facilities, historical prices, and rates estimated using facility pricing attributes in addition to reported operating costs. However, over the past 6 years, the total amount spent on IGAs had increased by 19 percent – from \$743 million in FY 2005 to \$888 million in FY 2010 – while the detainee population held in state and local facilities increased by only 6.3 percent.

OFDT officials stated that the primary cause of the 19 percent increase in the total amount spent on IGAs has been a 2.42 percent average annual increase in detention rates. This annual increase has meant that the average IGA jail-day rate increased 12 percent from \$58 in FY 2005 to over \$65 in FY 2010, which the OFDT stated is commensurate with the increase in costs associated with housing detainees in federal and private facilities. According to OFDT, the average number of detainees held in state and local facilities each day has increased by about 2,200 detainees, or 6.3 percent, over the past 6 years. The OFDT believes this increase has also contributed to the 19 percent rise in the amount of funds DOJ spends to house detainees in state and local jails.

We sampled 25 IGAs to: (1) evaluate how the USMS performed price analysis to justify jail-day rates and (2) determine whether specialists could have improved how they performed specific price analysis techniques. We also compared the negotiated jail-day rates of each sampled IGA to corresponding rates estimated using facility-reported JOEI data and total-rated capacity.⁴ Of the 25 sampled IGAs, 15 provided state and local facilities with more funds than the JOEI data indicated the facilities would spend providing detention services, while only 6 provided less. Four facilities received negotiated rates that were equal to their estimated JOEI rates. As shown by the following exhibit, applying the USMS's anticipated-use figures for these facilities to both the estimated JOEI rate and the actual negotiated rate, the USMS would pay \$15 million more than it reportedly cost the 25 sampled facilities to provide detention space over the duration of the IGAs (generally 3 years).⁵

⁴ To estimate jail-day rates using JOEI data, we divided the requesting facility's reported operating costs by the product of the total-rated capacity of each facility and 365 days.

⁵ We applied the projected number of jail days reported in JDIS as the anticipated use figure for each facility. JDIS uses actual prior usage figures to project a unique number of jail days that the USMS anticipates requiring annually at each IGA facility.

Only 2 of the 25 sampled IGAs did not have a 36-month term. The IGA for detention facility 17 was for 18 months while the IGA for detention facility 9's IGA was for 24 months.

**RESULTS OF NEGOTIATED JAIL-DAY RATES COMPARED TO RATES
BASED ON FACILITY-REPORTED COSTS**

IGA (USMS District)	Jail-Day Rate Negotiated with Price Analysis (\$/day)	OIG-Calculated Jail-Day Rate Using JOEI Data (\$/day)	Difference (\$/day)	Estimated Difference Between Negotiated and OIG-Calculated Rate Over Duration of IGA (\$/IGA Term)
Detention Facility 1	106	124	(18)	(3,593,376)
Detention Facility 2	80	97	(17)	(1,715,232)
Detention Facility 3	63	65	(2)	(138,906)
Detention Facility 4	54	56	(2)	(100,572)
Detention Facility 5	40	41	(1)	(77,826)
Detention Facility 6	110	135	(25)	(75)
Detention Facility 7	78	78	0	0
Detention Facility 8	119	119	0	0
Detention Facility 9	65	65	0	0
Detention Facility 10	80	80	0	0
Detention Facility 11	40	25	15	675
Detention Facility 12	70	65	5	2,865
Detention Facility 13	85	78	7	24,444
Detention Facility 14	55	39	16	119,904
Detention Facility 15	69	62	7	209,643
Detention Facility 16	77	72	5	239,025
Detention Facility 17	63	48	15	364,028
Detention Facility 18	95	91	4	897,444
Detention Facility 19	44	33	11	1,313,400
Detention Facility 20	95	36	59	1,323,783
Detention Facility 21	55	49	6	1,359,360
Detention Facility 22	104	95	9	1,977,777
Detention Facility 23	55	30	25	2,048,400
Detention Facility 24	118	91	27	2,847,474
Detention Facility 25	72	41	31	7,975,494
Subtotal of Anticipated Funds Provided Under OIG-Calculated Rate				(5,625,987)
Subtotal of Anticipated Funds Provided Over OIG-Calculated Rate				20,703,716
Total Amount of Anticipated Funds That Exceed Reported Costs (per OIG Calculation)				\$ 15,077,729

Source: OIG analysis of facility submitted JOEI data, USMS IGA files, and JDIS data.

In many instances, USMS specialists responsible for negotiating the sampled IGAs did not properly perform and document price analysis. The following sections summarize our findings by each price analysis technique.

Technique 1: Adjusted Core Rate

The OFDT programmed eIGA to calculate automatically an adjusted core rate for each detention facility using a pricing model that considers specific attributes of each facility. Under the FAR, the adjusted core rate model can be treated as the results of an independent government estimate or a parametric pricing model, which can be compared to a proposed rate to assess whether it is fair and reasonable.

We found that eIGA used submitted facility-specific attributes to correctly apply the overall econometric pricing model developed by the OFDT to determine each facility’s adjusted core rate. USMS specialists used the adjusted core rate to justify 20 out of 25 sampled IGAs.

We noted, however, that eIGA’s core rate model did not consider whether the facility included fees related to detainee transportation costs in the proposed jail-day rate. If a facility offered to transport prisoners, a proposed jail-day rate may have been reasonable even if it was higher than the facility’s adjusted core rate. We recommend that OFDT incorporate transportation costs as a factor (when applicable) in calculating the adjusted core rate within eIGA.

Technique 2: JOEI Data (Reported Operating Costs)

IGA applications include JOEI data that detail a requesting facility’s operating costs for the most recent budget year and estimated costs for the next year. USMS specialists can then use this information to calculate how much a facility spends per detainee each day. The following illustrates how USMS specialists should calculate estimated jail-day rates with JOEI data.

FORMULA TO CALCULATE ESTIMATED JAIL-DAY RATES USING JOEI DATA

$$\frac{\text{Total Annual Operating Costs Per JOEI Data}}{\left(\text{Number of Detainees Held Each Day} \right) \left(365 \text{ Days} \right)} = \text{Calculated Jail-Day Rate}$$

Source: OIG analysis of OFDT guidelines and IGA files

However, we found that USMS specialists have inconsistently applied this formula to calculate JOEI rates. USMS specialists were not using the same detention population figures as the “number of detainees held daily each day.” Instead, some specialists used the facility’s *total-rated capacity*, which is the maximum number of detainees allocated to the facility by a state or local official. Other specialists used the facility’s *average daily population*, a figure reported by the requesting facility based on detention statistics over a certain period of time. According to the OFDT, a requesting facility’s total-rated capacity is the preferred figure to use in calculating the jail-day rate because it is readily verifiable. This is not the case with a facility’s average daily population, because according to the OFDT, this

figure is difficult to verify and can be erroneously compiled or easily manipulated.

We determined that estimating JOEI rates by using average daily population instead of total-rated capacity helped at least 2 of the sampled 25 IGAs – detention facility 24 and detention facility 25 – receive the largest amount of funding in excess of reported operating costs. Using average daily population, USMS specialists calculated detention facility 24's JOEI rate as \$118 and detention facility 25's as \$105. Applying these estimates, USMS specialists then justified negotiated jail-day rates of \$118 for detention facility 24 and \$72 for detention facility 25. If the estimated JOEI rates were calculated properly using the requesting facility's total-rated capacity, the estimated rates based on costs would have been much lower: \$91 and \$41 respectively. We believe the properly calculated estimated rates would have shown that the rates being negotiated were too high and should have prompted the USMS specialist to counteroffer with lower rates that better aligned with costs.

We also determined that USMS specialists used JOEI data to justify only 6 out of the 25 sampled IGA rates. We believe that by not systematically using JOEI data for negotiations, the USMS is ignoring information that could provide an important check on the reasonableness of the offered jail-day rate. In April 2010, during our audit, the OFDT updated eIGA to calculate estimated JOEI rates automatically.

In our opinion, the fact that USMS specialists treat the requesting facility's proposed rate as the starting point for price analysis negotiations strengthens the requesting facility's negotiation position over the USMS. This is because proposed rates are independently set by the requesting facility, and the USMS specialist cannot easily determine whether such rates are reasonable considering requesting facility costs. At the outset of the negotiations, USMS specialists could have used the estimated JOEI rate as such a starting point and compared the proposed rates against the JOEI rate. This would have enhanced the USMS specialist's ability to gauge whether the proposed rate was fair and reasonable considering the facility's reported costs. If it was not, the USMS specialist could have communicated back to the facility that the requested rate was not in line with costs and use the estimated JOEI rate as leverage for a lower jail-day rate.

Considering that eIGA now automatically calculates two estimated rates that can be used in price analysis – JOEI data rate and the adjusted core rate – we recommend that the OFDT and USMS require that USMS specialists use these estimates as starting points by comparing each to the proposed rate at the outset of IGA negotiations.

Technique 3: Market Research

The market research technique compares the proposed jail-day rate to the IGA rate of other similar or nearby facilities. Market research also considers the average IGA rate for the overall district. To perform this technique properly, USMS specialists should identify as many detention facilities as possible in the district and determine their corresponding jail-day rates. USMS specialists then need to consider the size, location, and services offered by these facilities and document which ones are similar to the requesting facility. This can be accomplished using databases such as the Justice Detainee Information System (JDIS) and OFDT research materials to provide facts about individual detention facilities (such as location, jail-day rates, capacity, and type). Once the USMS specialists identify similar – and therefore comparable – facilities, they should compare those rates to the rates proposed by the requesting facility to help assess whether the proposed rate is fair and reasonable.

We found that 20 of the 25 sampled IGAs used the market research technique to justify negotiated rates. However, we also found that USMS specialists did not consistently document clear and complete market research analysis. Specifically, USMS specialists were neither identifying the universe of detention facilities within a particular USMS district nor determining the attributes that make other detention facilities comparable to the requesting facility. IGA files therefore had little or no documentation to show why USMS specialists compared rates of specific facilities with rates proposed by the requesting facility. We also noted some cases when USMS specialists appeared to compare proposed rates selectively to the highest rates of nearby facilities without detailing the reasons why these facilities were comparable. By not documenting why the high-rate facilities were used to justify proposed rates (as opposed to lower rates of more comparable or closer facilities) the USMS specialists appeared to be misusing price analysis to justify high-rates. We recommend that the OFDT and USMS ensure USMS specialists use market research to compare rates of only facilities that are similar to the requesting facility.

Technique 4: Historical Government and Contract Rates

Under the FAR, USMS specialists can also ascertain whether proposed prices are fair and reasonable by comparing them to detention costs incurred at Federal Bureau of Prisons (BOP) facilities and rates paid to private detention facilities. Of the 25 sampled detention facilities, 9 had rates that were negotiated using the historical rate technique. Yet, similar to our finding for market research, USMS specialists did not consistently document whether they compared proposed rates to historical government or private contract rates of BOP and private facilities that were similar to the requesting facility. In some cases, we determined that even the basic aspects of the federal and private detention facilities whose rates were used – such as size and location – were considerably different from aspects of the requesting facility.

We believe that USMS specialists using the historical rate technique should also consider ICE rates. Our audit found, as of February 2010, 32 instances when the USMS and ICE both had separate IGAs with the same facility. Although we found that many of the rates paid by the USMS and ICE were the same, 12 facilities charged higher jail-day rates to the USMS than ICE, while only 3 charged less. In cases where the USMS was paying more than ICE, we believe the USMS could have reduced the rates it paid for the same detention space had the USMS considered the ICE rates during the IGA negotiation.⁶

In March 2010, the USMS and ICE began working together to reduce instances when they inadvertently compete against each other for state and local detention space. We recommend that the OFDT and the USMS ensure that USMS specialists determine whether the requesting facility has an ICE rate during the negotiation process, and if the facility has an ICE jail-day rate, the USMS specialist must compare the ICE rate to the proposed rate.

Cost Analysis

Under the FAR, when the government cannot negotiate a fair and reasonable rate using price analysis, the government can evaluate vendor cost data using “cost analysis.”⁷ This technique involves more than applying the JOEI data as a price analysis technique to estimate a jail-day rate. Cost analysis instead focuses on assessing and verifying the allowability, accuracy, and completeness of reported costs.

⁶ Of the remaining facilities with both USMS and ICE rates, the rates were the same in 15 instances. ICE was not able to provide data for the two remaining rates.

⁷ FAR § 15.404-1(a)(4) (2010).

Our audit found at least two circumstances where the USMS should not rely on price analysis alone to justify a jail-day rate as fair and reasonable. First, when different price analysis techniques yield very different or large ranges of estimated or average jail-day rates, price analysis does not show whether a specific jail-day rate is fair and reasonable. For example, the USMS specialist who negotiated a \$118 jail-day rate for detention facility 24 performed three different price analysis techniques: adjusted core rate, JOEI estimates, and market research. The facility requested a rate of \$118. The estimated JOEI rate (based on total-rated capacity) was \$91 and the adjusted core rate was \$69. However, market research yielded a range of prices that could have supported a rate of up to \$125. The resulting \$56 difference in the range of prices yielded by different price analysis techniques meant that price analysis alone was not sufficient to determine whether the negotiated rate of \$118 was fair and reasonable.

The second circumstance when price analysis alone is insufficient is when the USMS local district experiences a shortage of detention space and has a dire need to find housing for its detainees. In some instances, the local USMS district advocated housing detainees at facilities proposing rates higher than those that price analysis would have yielded as fair and reasonable. For example, the USMS specialist who negotiated the IGA for detention facility 22 in [REDACTED] cited the local USMS district's emergency need for detention space as the primary justification to provide it with a \$104 jail-day rate. This was done in spite of detention facility 22's estimated JOEI rate of \$95. The USMS specialist further cited the fact that detention facility 22 was a heavily-used facility by the local district because it housed a third of its detainee population.

In both of these cases, we believe that had the USMS specialist performed cost analysis, the USMS specialist might have been able to show that the facilities were seeking to negotiate high jail-day rates that would generate excessive profits. USMS specialists subsequently could have used cost analysis as leverage to gain a stronger negotiating position and justify a lower jail-day rate. We therefore recommend that the OFDT and USMS require USMS specialists perform cost analysis on the JOEI data to evaluate and verify the requesting facility's operating costs when: (1) different price analysis techniques yield a very large range of results that do not align with the estimated JOEI rate or (2) the detention facility rejects offered rates based on price analysis.

When a requesting facility that is heavily used by the local district refuses to accept a jail-day rate justified either by price analysis (JOEI estimates) or cost analysis (evaluating JOEI data), we recommend that the OFDT and USMS work with local USMS district officials to implement a

detention space action plan to move the detainees currently held by the requesting facility to other facilities. Such a plan must require that the OFDT and USMS rigorously solicit IGA applications from facilities – even those that may not be as operationally convenient for the local district. Detention space action plans should then be used to expedite negotiations with and transfer detainees to more reasonably priced facilities.

We also are concerned with the USMS specialist's ability to justify high jail-day rates by citing "serious" or "emergency" detention space shortfalls at the USMS district level. Although the USMS performs annual detention surveys to determine which local districts have the most need for detention space, neither the USMS nor OFDT has developed national or district-level strategies to solicit additional local detention facilities to apply for IGAs. We recommend that the OFDT and USMS require districts designated by the annual detention survey with "emergency" or "serious" detention space needs to solicit additional IGA applications from facilities within those districts. Such an initiative to promote IGAs in these circumstances could provide the USMS with a better market for detention space by enhancing competition between facilities available to house USMS detainees.

IGA Negotiation Oversight

Before IGAs can be finalized, USMS and OFDT officials must review the jail-day rates that USMS specialists negotiated with the requesting detention facilities. The OFDT coordinators provide comments to USMS specialists regarding negotiation documents. However, we found that these comments are not usually tracked or maintained. As a result, we could not ascertain whether USMS specialists addressed or otherwise resolved issues identified by OFDT coordinators. We recommend that the OFDT and USMS develop a process for tracking and resolving IGA review comments.

Conclusions and Recommendations

The amount of DOJ funds spent on non-federal detention space is large – over \$1.2 billion a year – and has continued to rise even though the detention population housed in state and local facilities has remained relatively constant. IGA detention costs have increased by 19 percent from \$743 million in FY 2005 to \$888 million in FY 2010. Because of the significance of these costs, it is critical that OFDT and USMS obtain the lowest rates possible and ensure any jail-day rate paid under IGAs is fair and reasonable.

Our audit concluded that the OFDT and USMS need to take significant actions before price analysis can be considered an effective tool for USMS

specialists to justify fair and reasonable jail-day rates. First, the OFDT and the USMS need to provide greater guidance on how the USMS specialists should apply estimated rates using JOEI data, compare proposed rates to rates of other nearby and similar facilities, and document these comparisons effectively. The OFDT and the USMS should require that USMS specialists obtain as many third-party jail-day rates as possible to use in their comparisons, including comparable rates established by ICE.

In some cases, price analysis techniques yield very large ranges in rates that can be used as pricing factors. In addition, certain USMS districts have a documented shortage of detention space available for district use. Both of these circumstances adversely affect the ability of price analysis to identify whether a specific rate is fair and reasonable – especially when detention facilities demand high rates. In such circumstances, instead of trying to establish rates based strictly on requesting facility operating costs, our audit found that USMS specialists at times tried to justify high rates demanded by requesting facilities by citing operational needs or requirements of the local district. Considering the significant amount of funds spent on IGAs, we believe that in these instances, the OFDT and the USMS should require that USMS specialists use the results of cost analysis to seek to negotiate jail-day rates that are fair and reasonable.

We found that state and local detention facilities at times demand rates that appear to generate excessive profits – sometimes in the range of millions of dollars. When this occurs, we believe the OFDT and USMS need to safeguard DOJ detention funds by either persuading state and local governments to accept more reasonable rates or, if that fails, by collaborating with the local USMS district officials to obtain additional detention space at other facilities.

In total, our audit report contains 15 recommendations to improve the IGA negotiation process, including ensuring that USMS specialists properly document pricing decisions, perform price analysis completely and accurately, and consider costs as a starting point in jail-day rates negotiations.

AUDIT OF THE INTERGOVERNMENTAL AGREEMENT DETENTION SPACE NEGOTIATION PROCESS

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CHAPTER ONE INTRODUCTION

The United States Marshals Service (USMS) is responsible for holding federal criminal detainees while courts adjudicate their cases.⁸ During fiscal year (FY) 2010, the USMS had custody of an average of about 60,000 detainees each day. The USMS held a daily average of 11,554 detainees in Federal Bureau of Prisons (BOP) facilities, 10,942 detainees in private detention centers, and 37,248 detainees in state and local detention facilities. As shown in Exhibit 1-1, this figure constituted 63 percent of the USMS's average daily detention population in FY 2010.

EXHIBIT 1-1: SOURCE OF DAILY DETAINEE BED SPACE (FY 2010)

Facility Type	Average Number of Daily Detainees	Percentage
Federal Bureau of Prisons (BOP)	11,554	19
State and Local Government Detention Facilities	37,248	63
Non-Governmental (Private) Facilities	10,942	18
TOTAL	59,744	100%

Source: FY 2010 DOJ detention records

Note: Total average number of daily detainees figure does not include detainees held in non-federal facilities where the USMS does not pay for their housing costs.

In FY 2010 the Department of Justice (DOJ) spent over \$1.24 billion housing detainees in non-federal facilities. Of this amount, \$888 million, or over 71 percent, was spent on payments made to state and local detention facilities.

Background

The DOJ Appropriations Act of 2001 provided the Attorney General with the authority to enter into agreements for detention space and related services for DOJ detainees.⁹ The Attorney General delegated this authority to the Office of the Federal Detention Trustee (OFDT), which oversees DOJ

⁸ When federal law enforcement agencies arrest an individual suspected of committing a federal crime, the suspect is charged and taken before a federal magistrate or judge. If the magistrate or judge orders that the suspect be detained pending adjudication, the USMS is responsible for providing the suspect with safe and secure detention space.

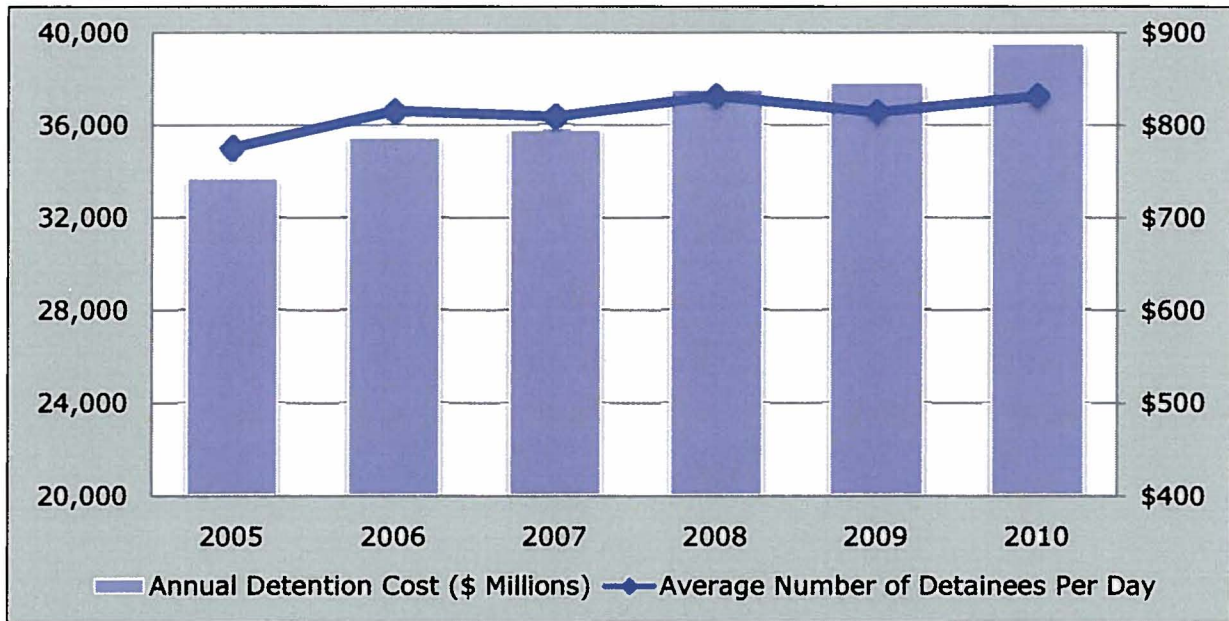
⁹ Pub. L. No. 106-553, Appendix B, § 119 (2001).

detention funds and develops DOJ detention policies and procedures. The USMS is responsible for maintaining custody of DOJ detainees.

The OFDT and USMS pay for detention space at state and local facilities via intergovernmental agreements (IGAs). Individual state and local facilities interested in housing federal detainees need to request an IGA that establishes a price the OFDT and USMS will pay the facility to house one detainee per day. This price, which this report refers to as the "jail-day rate," is unique to each facility and is usually in effect for 3 years. USMS specialists negotiate a jail-day rate with requesting facility officials, and OFDT officials subsequently review and approve the IGA before it is finalized.

Over the past 6 years, the USMS has housed an average of about 36,000 detainees each day in state and local facilities using IGAs. Although the number of daily detainees housed in state and local facilities has remained relatively consistent, the USMS detention costs have increased by over 19 percent, from \$743 million in FY 2005 to \$888 million in FY 2010, as illustrated in Exhibit 1-2.

EXHIBIT 1-2: IGA DETENTION POPULATION AND COST (FY 2005 TO 2010)



Source: OFDT

OFDT officials stated that the primary cause of the 19 percent increase in the total amount spent on IGAs has been a 2.42 percent average annual increase in detention rates. This annual increase has meant that the average IGA jail-day rate increased over 12 percent from \$58 in FY 2005 to over \$65 in FY 2010, which the OFDT stated is commensurate with the increase in costs associated with housing detainees in federal and private facilities. The OFDT stated that the 6.3 percent increase in the average number of daily detainees held in state and local facilities over the past 6 years also contributed to the increase in corresponding detention costs. The OFDT believes this increase has also contributed to the 19 percent rise in the amount of funds DOJ spends to house detainees in state and local jails.

History of Establishing IGAs

Prior to March 2006, the USMS established jail-day rates in accordance with Office of Management and Budget (OMB) Circular A-87, *Cost Principles for State, Local, and Indian Tribal Governments*.¹⁰ Under this method, the USMS used cost data submitted by the detention facility to calculate a jail-day rate by dividing a facility's total allowable operating costs by the product of its average daily detainee population and the number of days per year. For example, if a facility spent \$10 million per year to hold an average of 500 detainees per day, the cost-based calculation would find that the facility spent about \$55 each day on each of its detainees.

Most of the IGAs established before March 2006 also included a clause stating that state and local governments could only request payments for detention services based on costs. At the time, state and local facilities providing detention services to the USMS were thought to have been precluded from receiving payments in excess of their costs.¹¹

Between 1995 and 2006, we performed 31 audits of individual IGAs. The purpose of these reviews was to ensure that individual detention facilities were not receiving excessive funds – more than their costs – when providing detention services to the USMS under an IGA. The audits determined that several state and local governments were receiving windfall

¹⁰ OMB Circular A-87 provided the rationale for establishing jail-day rates based on costs. For an actual cost to be allowable, OMB Circular A-87 requires that the cost: (1) be necessary and reasonable; (2) be authorized or not prohibited under state or local laws and regulations; (3) conform with laws, regulations, and the terms and conditions of the IGA; (4) be accorded consistent treatment; (5) comply with generally accepted accounting principles; (6) be the net of all applicable credits; and (7) be documented adequately.

¹¹ Craig H. Unger, Federal Detention Trustee, Office of the Federal Detention Trustee, memorandum for the Deputy Attorney General, August 1, 2002.

payments by housing federal detainees. Overall, the audits identified \$60 million in dollar-related findings pertaining to IGAs with state and local governments, and recommended that the USMS remedy these payments and renegotiate several of the IGAs reviewed.¹²

In March 2006, the OFDT notified the OIG that it had asked the USMS to refrain from seeking the recovery of overpayments identified by OIG audits.¹³ Citing a December 2002 legal opinion from DOJ's Office of Legal Counsel, the OFDT argued that IGAs were "fixed-rate" agreements instead of agreements based on allowable costs. The OFDT stated that because IGA payments were based on negotiated fixed rates, their purpose was strictly to pay for the detention services instead of reimbursing a state or local government for the costs it incurred. In the March 2006 memorandum, the OFDT further maintained that DOJ did not have the legal standing to seek recovery of overpayments identified by OIG audits.

March 2007 OIG Audit

The OIG issued an audit report in March 2007 that reviewed OFDT and USMS oversight of the IGA negotiation process.¹⁴ The audit detailed how the OFDT was working to implement its electronic Intergovernmental Agreement system (eIGA) to help detention facilities apply for IGAs and to streamline the overall IGA negotiation process.¹⁵ According to the OFDT, eIGA would help the USMS improve the efficiency of the overall IGA application process because eIGA is a web-based system that any state or local detention facility

¹² Dollar-related findings include questioned costs and funds to be put to a better use. Questioned costs are expenditures that do not comply with legal, regulatory or contractual requirements, or are not supported by adequate documentation at the time of the audit, or are unnecessary or unreasonable. Funds to be put to a better use are dollars that could be used more efficiently if management took actions to implement and complete audit recommendations.

¹³ Stacia A. Hylton, Federal Detention Trustee, Office of the Federal Detention Trustee, memorandum for Guy K. Zimmerman, Assistant Inspector General for Audit, Department of Justice Office of the Inspector General, March 17, 2006.

¹⁴ U.S. Department of Justice Office of the Inspector General, *Oversight of Intergovernmental Agreements by the United States Marshals Service and the Office of the Federal Detention Trustee*, Audit Report 07-26 (March 2007).

¹⁵ According to the OFDT, eIGA is an attempt to "e-gov" the IGA application process. Initiated in 2001, the President's Management Agenda included an initiative to expand Electronic Government (e-gov). The purpose of e-gov is to expand the use of internet-based technology to make it easier for citizens and businesses to interact with the government.

with Internet access can use to complete and electronically submit an IGA application.

Our March 2007 audit also reported that the OFDT was requiring the USMS to begin using other pricing factors besides facility-reported operating costs to negotiate IGAs. Referred to as "price analysis" under the Federal Acquisition Regulation (FAR), this change allowed the USMS to consider comparable detention facility jail-day rates, historical prices, independent estimates, and facility-reported costs during negotiations.¹⁶ The OFDT stated that the reason it made this change was because the prior IGA approach that considered only facility costs did not provide an adequate incentive for state and local detention facilities to operate efficiently.

Considering this change in negotiation strategy, the March 2007 audit concluded that the OFDT should not entirely abandon its long-held approach of establishing IGA rates based on costs. The FAR allows negotiators to request cost information from vendors, which we believed would be a valuable tool for the USMS to assess whether proposed rates are fair and reasonable.

Moreover, because the OFDT was drastically changing how the USMS negotiated IGAs while simultaneously requiring the USMS to use its new eIGA system, our 2007 audit recommended that the OFDT develop comprehensive guidance and training for the USMS on how to use eIGA properly, including a description of how the USMS specialists who negotiate IGA rates with requesting facilities should document jail-day rate negotiations while evaluating various detention pricing factors.

In addition to requiring that the USMS use eIGA to negotiate new and updated IGAs, the OFDT modified eIGA to require that requesting facilities report their operating costs when they submitted an IGA application. Further, the OFDT and USMS instituted various training courses for USMS specialists charged with negotiating IGA rates, including overviews of price analysis, different negotiation techniques, and demonstrations of eIGA.

Overview of the IGA Negotiation Process

In August 2010, the USMS revised its policy manual and formally incorporated price analysis as the foundation of its multi-tiered IGA negotiation strategy, as shown in Exhibit 1-3.

¹⁶ Price analysis comprises various techniques buyers can use to compare and evaluate prices proposed by sellers. Examples of price analysis techniques are outlined by the Federal Acquisition Regulation (FAR) § 15.404-1 (2010).

EXHIBIT 1-3: OVERVIEW OF IGA NEGOTIATION PROCESS



Source: OIG depiction of eIGA and negotiation workflow processes as of August 2010

As noted by Exhibit 1-3, IGA negotiations begin when a state or local facility submits an application that includes a proposed jail-day rate for DOJ detainees. A USMS specialist assigned to negotiate a jail-day rate considers the proposed rate as a starting point to compare the proposed rate to other rates using price analysis. The other rates include estimated rates based on reported operating costs and rates at similar detention facilities. The OFDT has instructed USMS specialists that if price analysis comparisons cannot justify a fair and reasonable rate or if the price analysis rate is rejected by the requesting facility, the USMS specialist should perform cost analysis to validate facility costs and set a rate.

OIG Audit Approach

Because of the changes to IGA negotiation policies and procedures that have occurred since the March 2007 audit, the OIG conducted this audit to: (1) assess how the OFDT has implemented and the USMS uses eIGA to negotiate jail-day rates, and (2) determine whether the OFDT price analysis negotiation strategy has resulted in fair and reasonable jail-day rates charged by state and local facilities.

To accomplish these objectives, we interviewed contracting officials and specialists with the OFDT and USMS regarding price analysis techniques and their application to the IGA procurement process. We reviewed IGA negotiation documents, including DOJ detention statistic reports, detention expense data prepared by state and local governments, and correspondence between USMS district offices and headquarters regarding the need for particular detention services. Further, because the U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement (ICE) independently procures detention space from state and local facilities, we compared lists of detention facilities used and jail-day rates paid by ICE to USMS IGA records. We also participated in several technical overviews and discussions with OFDT officials charged with developing eIGA as well as the USMS specialists who use eIGA to negotiate IGAs.

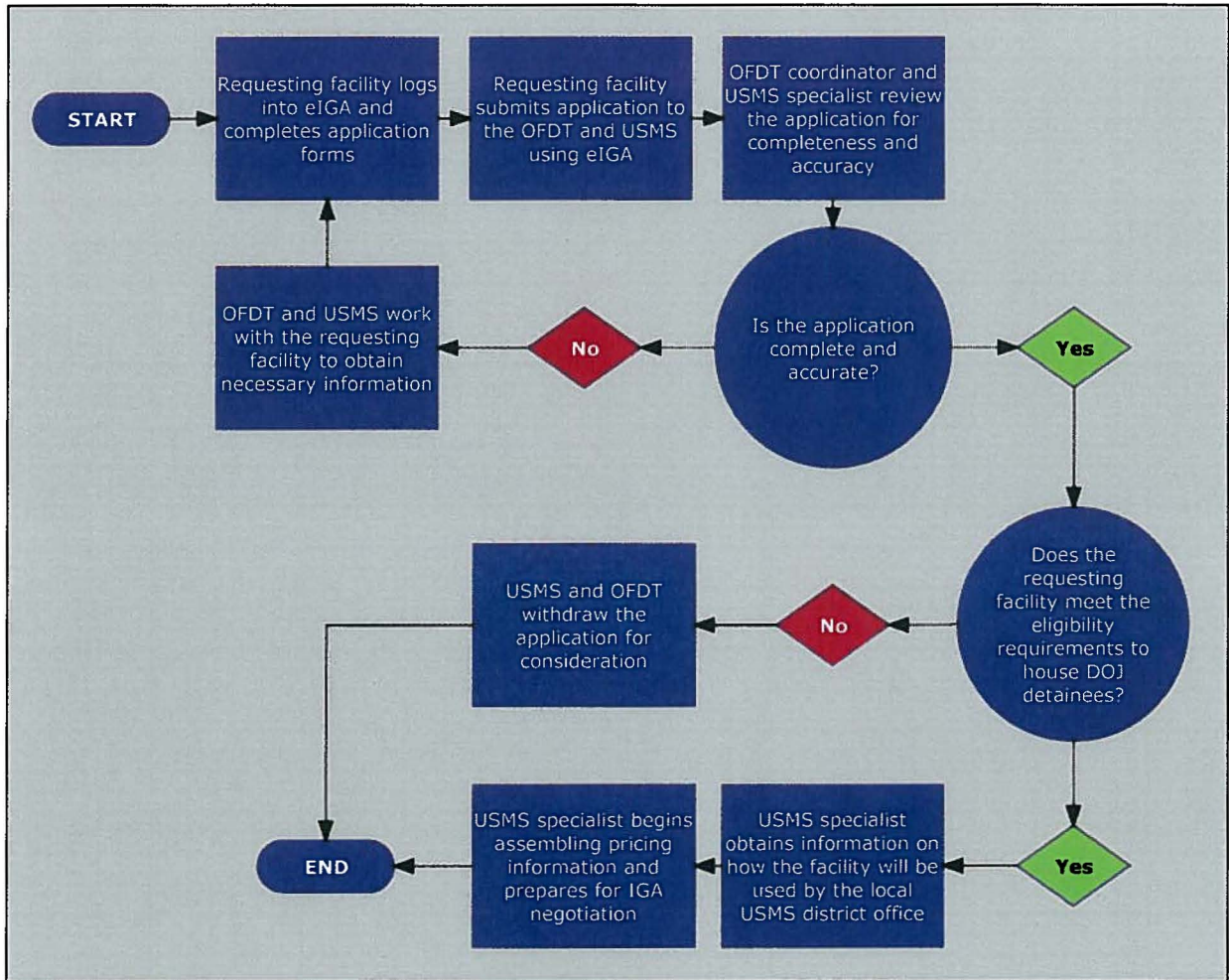
This audit report contains five chapters that generally follow the IGA negotiation process used by USMS specialists as of December 2010. Chapter Two describes how specialists need to enhance their use of eIGA to improve how they acquire and document necessary detention facility information and pricing data at the outset of negotiations. Chapter Three outlines how the inconsistent and weak application of various price analysis techniques provided an opportunity for some state and local facilities to negotiate high jail-day rates that appear to generate excessive profits. Chapter Four discusses the role of cost analysis and the need for the OFDT and USMS to verify requesting facility operating costs when price analysis cannot determine a fair and reasonable jail-day rate or otherwise yields a jail-day rate that is not accepted by the requesting detention facility. Meanwhile, Chapter Five discusses how the USMS and OFDT should enhance their file reviews to ensure that USMS specialists appropriately justified jail-day rates.

Appendix I includes additional details on the audit objectives, scope, and methodology.

CHAPTER TWO PRE-NEGOTIATION PROCEDURES

As shown in Exhibit 2-1, eIGA is used by state and local detention facilities to complete and submit IGA applications to the OFDT and the USMS. The OFDT administers eIGA and oversees the IGA negotiation process.

EXHIBIT 2-1: IGA PRE-NEGOTIATION PROCEDURES



Source: OIG depiction of eIGA workflow process

State and local detention facilities first log into eIGA’s web-based interface to request new or adjusted IGAs. USMS specialists use eIGA to

review detention facility applications, assess facility logistical and expense information, and document pre-negotiation planning.¹⁷

This chapter reviews how the OFDT and USMS use eIGA to document and track application materials and prepare for jail-day rate negotiations.

Completing IGA Applications in eIGA

To complete the IGA application form in eIGA, requesting facilities enter administrative and financial data. The first set of data required by the application includes the: (1) facility's location, (2) entity responsible for day-to-day operations, (3) facility's total-rated capacity, and (4) average daily population of the facility.¹⁸ The application also prompts the facility to provide the detention rates it has previously charged to house federal detainees or other state or local prisoners, in addition to a proposed jail-day rate.

The second set of data that each facility includes in the IGA application is its jail operating expense information (JOEI), which is viewed as "other than certified cost or pricing data" under the FAR.¹⁹ Requesting facilities complete and submit JOEI data using an automated form within the eIGA application that captures prior-year and projected expenses in various cost categories, including: (1) personnel, (2) detainee care and treatment, (3) other operating expenses, and (4) indirect costs. JOEI data should not include any costs that are not ordinary, necessary, or otherwise incurred for the benefit of federal detainees.

Next, eIGA uses the data to populate a JOEI summary data sheet that allocates the reported facility expenses to specific cost categories. Summary data sheets provide an overview of the types of costs each facility incurs, which allows the OFDT and USMS to compare the types of costs among different requesting facilities. In addition, the OFDT enhanced eIGA in April 2010 to calculate automatically the cost incurred to house one detainee per

¹⁷ Because the OFDT devised eIGA as a complete, one-stop solution for the procurement of detention services, our audit considers eIGA as the system of record for documenting jail-day rate decisions.

¹⁸ A facility's *total-rated capacity* is the maximum number of persons a detention facility is certified to hold. In comparison, a facility's *average daily population* is the total number of prisoners and detainees held by a facility over a period of time divided by the number of days in that period. According to the OFDT, jails typically operate at 95 percent capacity nationwide.

¹⁹ *Other than cost or pricing data* is any type of information that the contracting officer believes is necessary to determine price reasonableness. FAR § 15.402 (2010).

day using applicable JOEI data and documented facility total-capacity figures. This allows the USMS specialist to compare the reported per-detainee cost to the proposed jail-day rate.

Validating IGA Application Information

Because submitted applications contain only information provided by the requesting facilities, the USMS and OFDT should review applications for completeness and accuracy.

For example, some detention facilities have included local or county-level administration fees as line items in their initial JOEI submissions. Because these fees are not related to specific detention costs, the OFDT looks for these fees to help ensure that they are not included as costs on the JOEI forms. If such a high-level inconsistency is found, the OFDT coordinator contacts the requesting facility to clarify the issue or adjust the error.

Once an application clears the OFDT-coordinator review, eIGA routes the application to a USMS specialist for “pre-negotiation planning.” This step establishes the federal government’s initial negotiation position and documents any issues that need to be addressed during the negotiation process.²⁰ Pre-negotiation planning also allows the USMS to validate, through publicly available sources, facility-reported information – such as facility size, number of detainees, and location – that subsequently will be used to negotiate and justify IGA jail-day rates.

USMS specialists said that they review applications for completeness and examine the JOEI data for discrepancies – performing essentially the same steps that OFDT coordinators should complete during the preliminary review. One specialist said that she researches USMS records and consults facility websites in an effort to corroborate facility-provided application information, such as the facility’s size and proximity to specific federal courthouses.

However, we determined that USMS specialists did not always verify reported data before using it to calculate figures that were subsequently used to negotiate IGA jail-day rates. For example, we identified one instance where a detention facility – detention facility 25 in [REDACTED] – erroneously reported its average daily population of *federal* detainees instead of its *overall* average daily population. Detention facility 25 reported that it had 275 detainees as its average daily population. However,

²⁰ FAR § 15.406-1 (2010).

according to publicly available detention facility statistic journals, the facility's average daily population was actually closer to 400. Using figures derived from this incorrect data along with the facility's reported average daily population, the USMS specialist calculated that detention facility 25 incurred a per-detainee, per-day detention cost of about \$105, instead of about \$73 per day.²¹

Errors in facility-reported application data can affect the IGA negotiation process. Therefore, it is important that USMS specialists identify application data discrepancies prior to negotiations. We recommend that the OFDT and USMS develop procedures that require USMS specialists to consult available detention facility information sources to validate facility-prepared application data during pre-negotiation planning. Such sources should include USMS records, facility websites, and independent research materials. These procedures should also require that USMS specialists document their validation of IGA application data. We also recommend that the OFDT and USMS update eIGA and require that USMS specialists document the IGA application data verification check within the eIGA system.

Preparing Price Negotiation Strategy Sheets

The FAR requires federal negotiators to document specific objectives that are used to plan negotiations.²² Three of the five USMS specialists developed and shared a template price negotiation strategy sheet (strategy sheet) to document and consolidate the different detention price information available to them prior to negotiations. Strategy sheets helped USMS specialists document the objectives of the IGA negotiation and also detail available price information for negotiating jail-day rates. Exhibit 2-2 describes the various types of jail-day rates captured by the template strategy sheet.

²¹ Chapter 3 evaluates the method used by the USMS specialist to calculate detention facility 25's per-detainee, per day cost further. Under OFDT guidelines, the specialist should have used detention facility 25's total-rated capacity of 700 instead of its average daily population of 392 to derive its per-detainee, per-day cost. If the specialist applied this rule, the specialist would have calculated detention facility 25's per-detainee, per-day cost as \$41.

²² FAR § 15.406-1 (2010).

EXHIBIT 2-2: DETENTION RATES CAPTURED BY PRICE NEGOTIATION STRATEGY SHEETS

- **Adjusted Core Rate.** An independent government cost estimate that is calculated automatically by eIGA. Adjusted core rates are unique to each detention facility because they are based on several different facility attributes.
- **Average USMS District Rate.** The average jail-day rate calculated by OFDT for a district based on USMS IGA(s) in the district.
- **Highest Rate in District.** The highest jail-day rate identified by the USMS specialist. Usually, this is based on a review of the Justice Detention Information System (JDIS) facility list report or a USMS facility usage report.
- **Nearby Federal Bureau of Prison (BOP) Rates.** The OFDT-verified price of detention space at nearby BOP facilities.
- **Nearby Private Facility Rates.** OFDT, BOP, or ICE contract bed space prices paid to detention facilities nearby or in the same district as the requesting facility.
- **Previous Jail-Day Rate.** If applicable, the jail-day rate previously negotiated by the USMS and the rate currently paid by the USMS to an actively used facility.
- **Jail Operating Expense Information (JOEI) Jail-Day Rate.** A jail-day rate derived from the JOEI data submitted by the requesting facility during the application process. JOEI data can either be the actual or estimated total operating costs.
- **Other Rates.** These are included if the USMS specialist has available applicable rates paid to the facility by other entities such as states or other federal agencies.

Source: USMS specialist template strategy sheet

However, USMS specialists did not consistently use strategy sheets to detail the contemporaneous pricing information available to them before the IGA negotiation. Specifically, 16 out of our sample of 25 IGA files did not have strategy sheets. In addition, in the cases where specialists did use strategy sheets, the strategy sheets used were not the most up-to-date template strategy sheet, which we believe is a useful tool to help ensure USMS specialists meet FAR pre-negotiation requirements. As a result, the

IGA files reviewed did not detail all the types of detention rates that the specialists had available at the outset of the negotiation.

In August 2010, the USMS updated its policies to require that USMS specialists at a minimum complete a strategy sheet while preparing for negotiations. However, we recommend that the OFDT and USMS develop a standardized strategy sheet that specialists must complete prior to negotiations.

The strategy sheets that USMS specialists have been using also do not specifically detail whether the requesting detention facility provides detention services to ICE. In cases where the requesting facility houses ICE detainees, USMS specialists should document the price that ICE pays to hold detainees at that facility. Furthermore, because strategy sheets used by many specialists include the USMS jail-day rates of nearby facilities, we believe that a more complete strategy sheet would also capture applicable ICE jail-day rates paid to nearby facilities. We recommend that the OFDT and USMS ensure that the standardized strategy sheet includes entries for ICE jail-day rates of requesting and nearby facilities.

As noted previously, the OFDT implemented eIGA to serve as a comprehensive state and local detention space procurement IT solution. Nevertheless, we found that only some of the USMS specialists who completed strategy sheets were maintaining copies of them.

We recommend that once the strategy sheet is revised and standardized, the OFDT and USMS ensure that pricing information is retained in the requesting facility's IGA file by updating eIGA and requiring that USMS specialists enter the strategy sheet information in eIGA.

Recommendations

We recommend that the OFDT and USMS:

1. Develop procedures that require USMS specialists to consult available detention facility information sources to validate facility-prepared application data during pre-negotiation planning.
2. Update eIGA and require that USMS specialists document the IGA application data verification check within the eIGA system.

3. Develop a standardized strategy sheet that includes entries for ICE jail-day rates for requesting and nearby facilities, which the USMS specialists must complete prior to IGA negotiations.
4. Ensure that pricing information is retained in the requesting facility's IGA file by updating eIGA and requiring that USMS specialists enter the strategy sheet information in eIGA.

CHAPTER THREE PRICE ANALYSIS

Price analysis is the process of assessing a proposed price to determine if it is fair and reasonable without evaluating the offeror's cost elements. Price analysis is basically the method by which the offered price is compared with other pricing factors. As of December 2010, USMS specialists applied four different price analysis techniques during IGA negotiations, as shown in Exhibit 3-1.

EXHIBIT 3-1: IGA PRICE ANALYSIS NEGOTIATION TECHNIQUES

Technique	Federal Acquisition Regulation (FAR) Guidance	How To Use Within the eIGA Process
Adjusted Core Rate	Compare proposed prices to an independent government cost estimate or to the price estimated by a parametric model that highlights price inconsistencies. FAR § 15.404-1(b)(2)(iii) and (v)	Compare the proposed jail-day rate to the facility's adjusted core rate. Adjusted core rates are calculated by eIGA using a pricing model that considers specific facility attributes, including: (1) county wage statistics, (2) facility staff to detainee ratio, (3) facility jurisdiction type, (4) major metropolitan area, and (5) U.S. geographic region.
Jail Operating Expense Information (JOEI)	Review pricing information (JOEI data) provided by the offeror (requesting facility). FAR § 15.404-1(b)(2)(vii)	Estimate the per-detainee costs using JOEI data and the facility's total-rated capacity and compare the calculation results to the proposed jail-day rate. As of April 2010, eIGA automatically calculates an estimated JOEI rates.
Market Research	Compare proposed prices with prices obtained through market research of the same or similar services. FAR § 15.404-1(b)(2)(vi)	Compare the proposed jail-day rate to: (1) actual prices charged by other IGA facilities within the same USMS district or geographical location; (2) an OFDT-calculated average IGA jail-day rate for the USMS district; or (3) the requesting facility's previous rate, adjusted for inflation (if applicable).
Historical Price	Compare historical (previously proposed) government and commercial prices to current proposed prices for the same or similar services, so long as both the validity of the comparison and the reasonableness of the previous prices can be established. FAR § 15.404-1(b)(2)(ii)	Compare the proposed jail-day rate to actual prices of detention space at private detention facilities (commercial contract prices) used by the USMS district or to BOP per capita rates (government prices) at federal detention centers.

Source: OIG analysis of applicable FAR sections and OFDT price negotiation documents

As discussed in the March 2007 OIG Audit, eIGA uses a detention space pricing model to calculate automatically a unique "adjusted core rate" for each requesting facility. The pricing model considers specific attributes of each facility, such as its size and location. USMS specialists treat each facility's adjusted core rate as a unique pricing factor and compare it to the proposed rate. The second technique estimates a jail-day rate based on the costs reported by the requesting facility in its jail operating expense information (JOEI), which is submitted as part of its IGA application. Similar to the adjusted core rate, a jail-day rate estimated with JOEI data can be used to assess whether the proposed jail-day rate far exceeds the costs the jail will reportedly incur to house DOJ detainees. The third and fourth techniques involve USMS specialists acquiring jail-day rates from third-party detention facilities and using market or historical prices to assess whether the proposed rate is fair and reasonable.

As justification for its decision to move toward price analysis, the OFDT stated that the USMS would be better positioned to control jail-day rate increases because it could consider many more pricing factors besides costs during IGA negotiations. Nevertheless, since the OFDT and USMS began using price analysis instead of facility costs to set IGA rates, the total amount spent on IGAs has increased 19 percent – from \$743 million in FY 2005 to \$888 million in FY 2010. This 19 percent increase is greater than the 6.3 percent increase in the average detainee population held in state and local facilities that occurred during the same time period.

Considering the increase in detention costs compared to the increase in detainee population, we assessed a sample of 25 IGAs to (1) evaluate how the USMS performed price analysis to justify jail-day rates and (2) determine whether specialists could have improved how they performed specific price analysis techniques. The sample review identified significant weaknesses regarding both the completeness and accuracy by which the USMS applied price analysis to IGA negotiations. As discussed in the following two sections, we believe that these discrepancies led the USMS to negotiate rates in 15 out of the 25 sampled state and local detention facilities that were excessive.

Using Price Analysis to Negotiate IGAs

To control detention costs using price analysis, the OFDT and USMS need to ensure that USMS specialists properly perform and adequately document price analysis techniques to demonstrate that a negotiated rate is fair and reasonable. After selecting a judgmental sample of 25 of 191 IGAs negotiated using eIGA with price analysis, we compared the negotiated jail-day rates of each to corresponding rates estimated using facility-reported JOEI data and each facility's total-rated capacity.²³ Exhibit 3-2 shows that 15 of the 25 sampled IGAs provided state and local facilities with more funds than the JOEI data indicated the facilities would spend providing detention services, while only 6 provided less. Four facilities received negotiated rates that were equal to their estimated JOEI rates.

²³ To estimate jail-day rates using JOEI data, we divided the requesting facility's reported operating costs by the product of the total-rated capacity of each facility and 365 days.

EXHIBIT 3-2: ACTUAL JAIL-DAY RATES COMPARED TO ESTIMATED JOEI DATA RATES

IGA	USMS District	Jail-Day Rate Negotiated (\$/day)	OIG-Estimated Jail-Day Rate Using JOEI Data (\$/day)	Difference (\$/day)	Projected USMS Facility Usage (Anticipated number of jail days per year)	Price Analysis Technique Cited to Justify Negotiated Rate				Estimated Difference Between Negotiated and OIG-Calculated Rate Over Duration of IGA (\$/IGA Term)**
						Core Rate	JOEI Review	Historical Price	Market Research	
Detention Facility 1		106	124	(18)	66,544		X			(3,593,376)
Detention Facility 2		80	97	(17)	33,632	X			X	(1,715,232)
Detention Facility 3		63	65	(2)	23,151	X			X	(138,906)
Detention Facility 4		54	56	(2)	16,762	X		X	X	(100,572)
Detention Facility 5		40	41	(1)	25,942	X			X	(77,826)
Detention Facility 6		110	135	(25)	1	X		X	X	(75)
Detention Facility 7		78	78	0	40,376	X			X	0
Detention Facility 8		119	119	0	29,274		X			0
Detention Facility 9		65	65	0	34,582	X	X	X	X	0
Detention Facility 10		80	80	0	7,962	X		X	X	0
Detention Facility 11		40	25	15	15	X		X	X	675
Detention Facility 12		70	65	5	191	X		X	X	2,865
Detention Facility 13		85	78	7	1,164	X			X	24,444
Detention Facility 14		55	39	16	2,498	X			X	119,904
Detention Facility 15		69	62	7	9,983	X			X	209,643
Detention Facility 16		77	72	5	15,935	X			X	239,025
Detention Facility 17		63	48	15	16,179	N/A	N/A	N/A	N/A***	364,028
Detention Facility 18		95	91	4	74,787		X			897,444
Detention Facility 19		44	33	11	39,800	X			X	1,313,400
Detention Facility 20		95	36	59	7,479	X		X	X	1,323,783
Detention Facility 21		55	49	6	75,520	X		X	X	1,359,360
Detention Facility 22		104	95	9	73,251	X		X	X	1,977,777
Detention Facility 23		55	30	25	27,312	X			X	2,048,400
Detention Facility 24		118	91	27	35,154	X	X		X	2,847,474
Detention Facility 25		72	41	31	85,758		X			7,975,494
Subtotal of Anticipated Funds Provided Under OIG-Calculated Rate										(5,625,987)
Subtotal of Anticipated Funds Provided Over OIG-Calculated Rate										20,703,716
Total Amount of Anticipated Funds That Exceed Reported Costs (per OIG Calculation)										\$ 15,077,729

Source: OIG analysis of facility submitted JOEI data, USMS IGA files, and JDIS data for the 25 sampled IGAs.

Notes: * We calculated jail-day rates using JOEI data and the facility's total-rated capacity.

** The IGA for detention facility 17 was for 18 months while the IGA for detention facility 9 was for 24 months.

*** We could not ascertain the price analysis techniques used to justify the jail-day rate for detention facility 17 because its IGA file did not contain a required price negotiation memorandum.

The average negotiated rate of the facilities listed in Exhibit 3-2 was \$76 per day. The average rate based on JOEI data was \$69. By applying the number of jail-days the USMS anticipated using for these sampled facilities during the IGA term for each (usually 3 years), our sample showed that the rates set with price analysis will result in the USMS spending about \$173 million to procure detention services.²⁴ Based on facility JOEI data, the same space actually will cost the facilities only \$158 million. The \$7 difference between average negotiated jail-day rates and the estimated rates using JOEI data would therefore result in the USMS and OFDT spending \$15 million more to obtain the same amount of detention space at these 25 facilities.²⁵

Nevertheless, USMS specialists only used JOEI data – information that details facility operating costs – to justify 6 out of the 25 sampled IGA rates. For example, the USMS specialist that negotiated detention facility 20's \$95 jail-day rate justified the rate using every other applicable price analysis technique except JOEI data. By applying detention facility 20's JOEI data to its total-rated capacity, the rate for this facility based on reported costs should only have been \$36 per day, or \$59 less than the rate the USMS specialist justified by using the other price analysis techniques. Applying USMS's anticipated-use figures for detention facility 20, the \$59 discrepancy between the JOEI rate and the negotiated rate resulted in detention facility 20 receiving \$1.3 million more in USMS detention funds than it reported it would spend providing detention services over the 3-year IGA period.

In our opinion, the fact that some USMS specialists appear to treat the requesting facility's proposed rate as a starting point for price analysis negotiations strengthens the requesting facility's negotiation position over the USMS. This is because proposed rates are independently set by the requesting facility and the USMS specialist cannot easily determine whether such rates are reasonable considering requesting facility costs. At the outset

²⁴ We applied the projected number of jail days reported in the USMS's Justice Detainee Information System (JDIS) as the anticipated use figure for each facility. JDIS uses actual prior usage data to project a unique number of jail days the USMS anticipates requiring annually at each IGA facility.

²⁵ The following example demonstrates how a few dollars difference in a jail-day rate can lead to large payments that appear to provide excessive profits to detention centers. Detention facility 21 in ██████ received a \$55 negotiated jail-day rate, which was \$6 more than what its JOEI data indicated it spends to house each of its detainees every day. According to the IGA file, the USMS anticipates housing an average of over 200 detainees in detention facility 21 each day. Applying this number to the 3-year term of this IGA, detention facility 21's \$55 jail-day rate would result in an overpayment of almost \$1.4 million for detention space than the facility reported it will spend housing USMS detainees.

of the negotiations, USMS specialists could have instead used the estimated JOEI rate as the starting point and compared the proposed rates against the JOEI rate. This would have enhanced the USMS specialist's ability to gauge whether the proposed rate was fair and reasonable considering the facility's reported costs. If it was not, the USMS specialist could have communicated back to the facility that the requested rate was not in line with costs and use the estimated JOEI rate as leverage for a lower jail-day rate.

While we were conducting this audit, the OFDT updated eIGA so that it automatically calculates an estimated JOEI rate using cost information submitted by facilities applying for an IGA. Moving forward, this means that two of the four applicable price analysis techniques (adjusted core rate and JOEI review) will automatically be calculated by eIGA. We therefore recommend that the OFDT and USMS require that USMS specialists consistently use these two figures – the estimated JOEI rate and the adjusted core rate – as starting points to help negotiate lower jail-day rates.

If the other price analysis techniques (market research and historical price comparisons) can be applied to the IGA negotiation but are not used by the USMS specialist, we further recommend that the OFDT and USMS require that USMS specialists document and their supervisors approve the reasons that these techniques were not used to justify and negotiate a fair and reasonable jail-day rate.

Review of Individual Price Analysis Techniques

As shown by Exhibit 3-2, our sample of IGA files revealed that USMS specialists did not consistently use the four price analysis techniques to negotiate each sampled jail-day rate. While USMS specialists justified jail-day rates using adjusted core rates and market research 20 times, they only used JOEI data 6 times and historical prices 9 times. USMS specialists also did not include in the IGA file an explanation as to why certain techniques were used instead of others. For example, the IGA file for detention facility 17 in [REDACTED] did not include a memorandum detailing which price analysis technique the USMS specialist used to justify the negotiated jail-day rate.

The following sections present the results of our evaluation of how USMS specialists used each price analysis technique as a tool to negotiate IGA jail-day rates.

Technique 1: Adjusted Core Rate

Using IGA application data, eIGA automatically calculates an adjusted core rate for every requesting facility. Adjusted core rates are derived from a base core rate established by an econometric model developed by the OFDT that uses national detention pricing information. Exhibit 3-3 illustrates how: (1) eIGA applies the base core rate with facility attributes (such as size, location, and staff salaries) to calculate an adjusted core rate and (2) USMS specialists are supposed to compare it to the rate proposed by the detention facility.