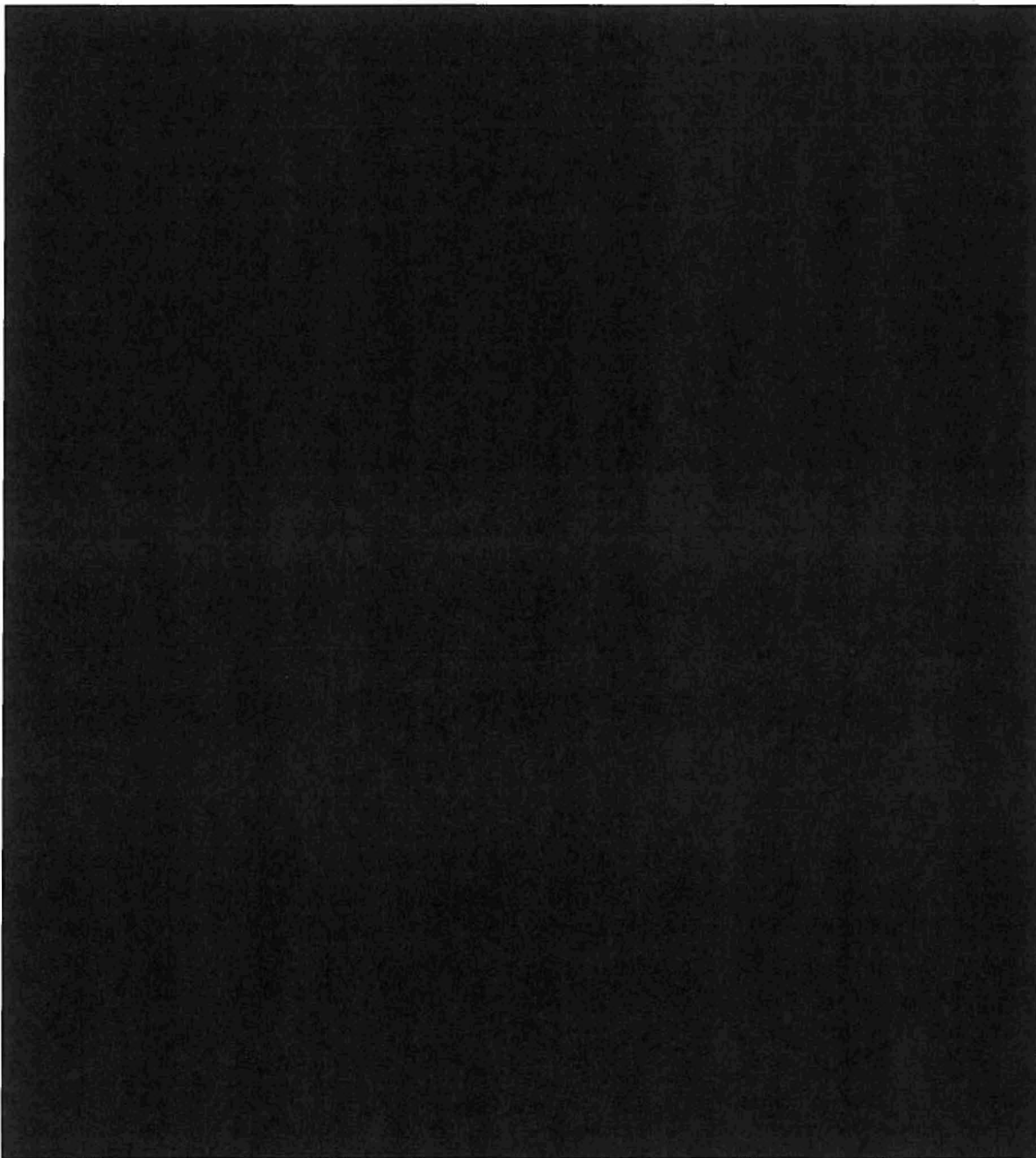


EXHIBIT 3-3: CALCULATING AND APPLYING ADJUSTED CORE RATES



Source: OIG depiction of eIGA adjusted core rate model

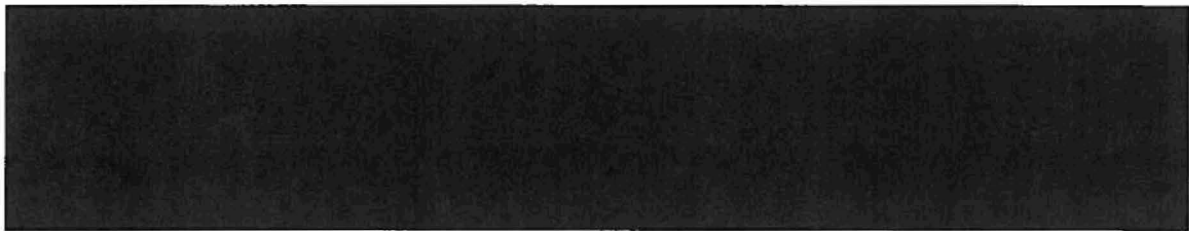
To determine the adjusted core rate for a facility, eIGA modifies the base rate according to the following facility attributes: the average annual wage of county government employees, the prisoner-staff ratio, the type of facility (county, state, multi-jurisdictional, or private), and its locality. The adjusted core rate model attempts to quantify a fair and reasonable

estimated jail-day rate considering these attributes for each requesting facility. According to OFDT price analysis guidelines, if the proposed jail-day rate [REDACTED] the adjusted core rate, the USMS can consider the proposed rate as fair and reasonable.²⁶

In our audit, we reviewed how the adjusted core rate model, as applied, used compiled detention pricing data and unique facility attributes to establish an adjusted core rate for each state and local detention facility. Our review determined that eIGA uniformly applied detention facility attributes and generally calculated adjusted core rates accurately.

We next assessed whether USMS specialists properly identified proposed rates that did not [REDACTED]. As shown in Exhibit 3-4, eIGA automatically displayed the [REDACTED] rates. USMS specialists were therefore able to identify readily whether proposed or negotiated rates aligned with the adjusted core rate.

EXHIBIT 3-4: [REDACTED]



Source: eIGA

Jail-day rates do not normally include costs associated with transporting detainees to trials or medical appointments.²⁷ However, about 10 percent of detention facilities proposed a negotiated jail-day rate that included both detainee housing and transportation costs. While it may be reasonable for USMS specialists to negotiate a higher jail-day rate with these facilities to capture their transportation costs, the USMS does not usually pay for transportation as part of the jail-day rate. As a result, eIGA does not consider transportation costs while calculating the adjusted core rate. Therefore, when the detention facility proposes a rate that includes transportation costs, the USMS specialist cannot readily compare the

²⁶ [REDACTED]

²⁷ Detention facilities usually charge a separate hourly guard rate for transportation services or do not provide any transportation services.

facility's proposed rate to its adjusted core rate and therefore cannot easily ascertain whether the proposed rate is fair and reasonable.

Most detention facilities did not request jail-day rates with transportation costs included, so this issue did not affect the majority of jail-day rates we sampled. However, because the USMS does on occasion include transportation costs in jail-day rates, we believe that eIGA should be adjusted so that it has the ability to provide an adjusted core rate that includes transportation costs. We recommend that the OFDT update eIGA to calculate an adjusted core rate that includes transportation costs for requesting facilities, when applicable.

Technique 2: JOEI Data (Reported Operating Costs)

Requesting facilities provide JOEI data when they submit applications for a jail-day rate. JOEI data details a 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. Exhibit 3-5 shows how USMS specialists should calculate estimated jail-day rates with JOEI data.

EXHIBIT 3-5: FORMULA TO USE 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

Our audit found that USMS specialists (1) have inconsistently applied the formula to calculate JOEI rates and (2) have not used estimated JOEI rates to negotiate jail-day rates.

With regard to how USMS specialists inconsistently calculated estimated JOEI rates, we found that USMS specialists did not use the same type of figures to populate the “number of detainees held each day” in the JOEI formula. 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 that should be based on detention statistics over a 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, which, according to the OFDT, is difficult to verify and can be erroneously compiled or easily manipulated.

We determine that USMS specialists used JOEI data to help justify only 6 jail-day rates out of the 25 sampled IGAs. We reviewed the IGA files and determined that in most of these 6 cases, USMS specialists calculated 2 sets of estimated JOEI rates – one rate used the facility’s average daily population and another rate used its total-rated capacity. In each of these cases, the JOEI rate calculated using average daily population was higher than the rate calculated using total-rated capacity.²⁸ As shown by Exhibit 3-6, while the average negotiated rate for these IGAs was \$96, the average JOEI rate based on total-rated capacity was \$89 and the average rate using average daily population was \$120. However, the USMS specialists only cited the higher JOEI estimates using average daily population in the IGA price negotiation memorandum (which is compiled to justify the negotiated rate). If the USMS specialist had applied the correct JOEI rate using total-rated capacity, the USMS specialist would have found that, based on reported costs, facilities would have spent an average of \$7 less (instead of \$24 more) than the average negotiated rate.

²⁸ Because these six facilities were not at 100 percent capacity, the JOEI rate calculated with average daily population meant that the total operating expenses were divided by a lower figure than the facility’s respective total-rated capacity. In cases where a facility holds more detainees than its total-rated capacity, a JOEI rate applying average daily population may be lower.

EXHIBIT 3-6: ESTIMATING JOEI RATES USING TOTAL-RATED CAPACITY AND AVERAGE DAILY POPULATION FIGURES

IGA	Proposed Jail-Day Rate (\$/day)	JOEI Rate Based on Total-Rated Capacity (\$/day)	JOEI Rate Based on Reported Average Daily Population (\$/day)	Negotiated Rate (\$/day)	Difference Between Negotiated Rate and JOEI Rate Based on Total-Rated Capacity (\$/day)
Detention Facility 9	75	65	67	65	0
Detention Facility 25	75	41	105	72	31
Detention Facility 18	95	91	114	95	4
Detention Facility 24	118	91	118	118	27
Detention Facility 8	148	119	176	119	0
Detention Facility 1	160	124	140	106	(18)
AVERAGE OF RATES	112	89	120	96	7

Source: IGA files

Estimating JOEI rates by using average daily population instead of total-rated capacity helped detention facility 24 and detention facility 25, as shown in Exhibit 3-2, receive the largest amount of funding in excess of reported operating costs among the 25 IGAs we sampled during this audit. Considering also that USMS specialists only intermittently applied JOEI data in 6 of the 25 sampled IGAs, it appears as though USMS specialists at times selectively used JOEI data to justify high jail-day rates.

In April 2010, the OFDT updated eIGA to generate automatically an estimated JOEI rate using the more reliable and verifiable total-rated capacity figures. The eIGA system now provides the USMS specialist with the JOEI rate so they can readily consult it during negotiations, as shown by Exhibit 3-7.

EXHIBIT 3-7: SCREENSHOT OF REQUESTING FACILITY JOEI RATE AUTOMATICALLY CALCULATED IN eIGA

	Note: [Prior Year Costs]	[Projected Year Costs]
TOTAL	\$10,101,777.47	\$10,499,452.40
Calculated Per Day Per Capita:	\$39.54	\$41.09

Source: eIGA (accessed December 7, 2010)

In our opinion, the fact that JOEI data was only used to justify 6 out of 25 of the sampled IGAs demonstrates that USMS specialists were not consistently considering operating costs when negotiating jail-day rates. By not systematically using JOEI data for negotiations, the USMS was ignoring information that could be used to provide an important check on the reasonableness of the offered jail-day rate.

Technique 3: Market Research

The third price analysis technique USMS specialists use to evaluate whether a proposed price is fair and reasonable is market research. USMS specialists used this technique to help justify a negotiated jail-day rate in 20 of the 25 sampled IGAs.

Under the FAR, market research includes collecting and analyzing available pricing information of the same or similar items from other suppliers and comparing these prices to current or proposed prices.²⁹ To perform market research, USMS specialists have to compare the proposed jail-day rate to rates of detention facilities that are similar to the requesting facility. When determining whether a detention facility is similar to the requesting facility, USMS specialists should consider, among other things, the facilities' size, age of construction, location, and level of competition between other detention facilities in the local USMS district. In addition, the number of detention facilities – and therefore the complexity of the detention space marketplace – varies widely among USMS districts.

Accurate market research therefore first requires USMS specialists to identify how many other facilities exist in the same detention space market as the requesting facility. The specialist needs to determine which facilities are similar, and therefore comparable to the requesting facility. Specialists should then document their comparison of the proposed rate to a sufficient number of jail-day rates of similar detention facilities.

Identifying which facilities in the same district are comparable presents challenges because the characteristics and services offered by different detention facilities can vary widely. For example, the size of facilities can range from a small county jail that has a few beds to a large jail with several thousand beds. Facility staffing ratios, which also affect per-detainee facility operational costs, can be high for a large modern facility or low for a small or older medium-sized facility. Facilities closer to large metropolitan areas usually have higher jail-day rates than facilities located in more rural areas, even within the same USMS district. Other factors that affect comparability

²⁹ FAR § 15.404-1(b)(2)(vi) (2010).

of detention facilities include their detainee capacities and proximity to a federal courthouse.

USMS specialists consult Justice Detainee Information System (JDIS) reports to identify facilities within the same USMS district as the requesting facility. The JDIS reports sort facilities by USMS district and include various attributes that can help USMS specialists determine which detention facilities may be similar, including where a facility is located, what type of detainees (adult, juvenile, male or female) it holds, and the number of USMS detainees held by the facility per day. However, JDIS reports used by the USMS specialists only include information for detention facilities that have been used by the USMS to house detainees in the past and do not list all the state and local facilities that have detention space available within a given district. To fill this gap, in 2007 the OFDT began providing USMS specialists with third-party research materials that listed detention space attributes of nearly all state and local detention facilities in the United States.

However, based on our review of 25 sampled IGAs, USMS specialists have not consistently used OFDT-provided third-party materials to help identify a broad number of comparable detention facilities within a USMS district. Our analysis of the agreement files for these 25 IGAs also determined that USMS specialists did not clearly detail the factors used to identify whether a facility in the same detention space market was comparable to a requesting detention facility. Without considering whether detention facilities are similar – and therefore their rates comparable – USMS specialists should not use the market research technique to justify fair and reasonable rates.

Our review of how USMS specialists performed market research also determined that some USMS specialists primarily used the highest detention facility jail-day rates to compare to proposed jail-day rates. For example, in January 2009 detention facility 19, located in [REDACTED], requested a 52 percent increase to its jail-day rate, raising its jail-day rate from \$33 to \$50. According to USMS records, detention facility 19 had been providing housing to an average of over 100 detainees each day, or about 40 percent of the DOJ detainee population of the [REDACTED]. To justify a negotiated rate, the USMS specialist compared detention facility 19's proposed rate to rates of just three other facilities. These three facilities had jail-day rates that ranged between \$40 and \$50, which were the highest jail-day rates paid by

the district at the time.³⁰ After a series of discussions and at least one counteroffer, the USMS specialist used this comparison to help justify a \$44 jail-day rate with detention facility 19. This new rate represented a 33 percent increase over detention facility 19's prior \$33 jail-day rate.

However, according to USMS records, there may have been as many as 19 facilities located in the [REDACTED] whose rates could have been used to compare against detention facility 19's proposed rate. The rates of these other facilities ranged from \$7 to \$40 per day – generally much lower than the rates of the three facilities we determined the USMS specialist compared to the proposed rate.

Because the USMS specialists had the rates of 19 detention facilities available in JDIS at the time of the negotiation, we believe the USMS specialist should have compared detention facility 19's proposed rate to the rates of more than just three facilities. Had the specialist included the facilities with lower rates, the comparisons would have clearly demonstrated that the \$44 proposed rate provided detention facility 19 with the highest jail-day rate of any facility in the district. Moreover, because the three compared rates were among the most expensive, we believe the comparison performed by the specialist helped make the \$44 negotiated rate appear more reasonable than it actually was.

We recommend that the OFDT and USMS ensure that when USMS specialists use the market research technique USMS specialists: (1) consult third-party research materials to identify the universe of facilities that compose the detention space market of the requesting detention facility; (2) document the specific comparability factors of each requesting facility and apply these factors consistently to the universe of detention facilities to identify as many similar facilities as possible; and (3) compare proposed or negotiated facility rates to all facilities that, based on documented comparability factors, are similar to the requesting facility.³¹

³⁰ We also noted that the \$50 rate belonged to a detention facility that was not located in the [REDACTED]. The highest jail-day rate paid to a detention facility located in the [REDACTED] was \$40.

³¹ Based on prior OFDT guidance, we believe that the comparability factors considered by USMS specialists should include, among other things: (1) market conditions, such as inflation or deflation of detention space prices; (2) the quantity or sizes of the facilities; and (3) the geographic location of facilities, including each facility's proximity to a federal courthouse.

Technique 4: Historical Government and Contract Prices

According to price analysis guidelines, a proposed or negotiated rate also may be justified if it aligns with historical government and contract rates. Under the FAR, comparisons between proposed rates and historical prices can be performed only if the previous prices are deemed objectively reasonable and were charged for a similar service.³²

The OFDT has instructed USMS specialists to apply private detention facility and nearby BOP federal detention center rates when performing price analysis using the historical price technique. The private detention facility rates are established by contracts, while the BOP bases federal detention center rates on costs. To facilitate using the historical price technique to justify IGA proposed or negotiated prices, the OFDT includes an updated list of BOP and private facility jail-day rates in the price analysis guide compiled for USMS specialists each year.

We determined that USMS specialists applied the historical price technique to negotiate 9 of the 25 IGA jail-day rates sampled by the audit. However, the specialists did not consistently evaluate whether BOP federal detention centers and private facilities were similar and therefore had rates that could be compared to the requesting facility's proposed rate. For example, the USMS specialist who negotiated the jail-day rate for detention facility 4 in ██████████ compared the requesting facility's proposed jail-day rate to the historical rates for the ██████████, ██████████, and the ██████████. While we did not determine that the use of the historical price technique resulted in excessive costs to the USMS, we did find that the USMS specialist did not first ensure that these two facilities had attributes that were similar to detention facility 4 before comparing rates. The total-rated detention capacities for both the ██████████ and the ██████████ were each nearly three times that of detention facility 4. In addition, the ██████████ was located more than 500 miles away from the requesting facility, and neither compared facility provided bed space for female detainees, as detention facility 4 did.

³² FAR § 15.404-1(b)(2)(ii) (2010).

The historical price technique requires that negotiators compare proposed prices to previous government contract prices for items that are at least similar. When USMS specialists compare jail-day rates of detention facilities that have dissimilar attributes – such as capacities, geographic locations, and service offerings – we believe that the historical price technique does not provide an adequate basis to justify a fair and reasonable rate. We therefore recommend that the OFDT and USMS issue guidelines to require that USMS specialists identify whether government or contract facilities have similar attributes to the requesting facility before using these jail-day rates to justify a negotiated jail-day rate.

We also believe that the OFDT should incorporate in its price analysis guide the rates that ICE establishes with the same or similar facilities in the same geographic area. As of February 2010, ICE had established about 250 of its own jail-day rates with state and local facilities across the United States. By comparing the lists of facilities used by ICE to the lists of facilities used by the USMS, we identified 32 instances where the same facility established separate jail-day rate agreements with the USMS and ICE. As shown in Exhibit 3-8, 12 of these 32 facilities charged the USMS a higher jail-day rate, while 3 facilities charged ICE a higher rate. At least 15 of the 32 facilities charged the USMS and ICE the same rate.³³ The discrepancy between the USMS and ICE jail-day rates at the same facility ranged from \$2 to \$28.

³³ As shown by Exhibit 3-8, ICE was not able to provide us data on rates of two facilities.

**EXHIBIT 3-8: DETENTION FACILITIES WITH SEPARATE
USMS AND ICE DETENTION AGREEMENTS**

IGA	USMS District	USMS Rate (\$/day)	ICE Rate (\$/day)	Discrepancy (\$/day)	Higher Rate
Detention Facility 26		67	95	(28)	ICE
Detention Facility 27		57	63	(6)	ICE
Detention Facility 28		62	64	(2)	ICE
Detention Facility 29		62	62	0	-
Detention Facility 30		85	85	0	-
Detention Facility 2		80	80	0	-
Detention Facility 31		53	53	0	-
Detention Facility 32		85	85	0	-
Detention Facility 20		95	95	0	-
Detention Facility 6		110	110	0	-
Detention Facility 33		105	105	0	-
Detention Facility 34		109	109	0	-
Detention Facility 8		119	119	0	-
Detention Facility 35		67	67	0	-
Detention Facility 36		75	75	0	-
Detention Facility 37		55	55	0	-
Detention Facility 21		55	55	0	-
Detention Facility 4		54	54	0	-
Detention Facility 38		60	57	3	USMS
Detention Facility 23		55	50	5	USMS
Detention Facility 12		70	64	6	USMS
Detention Facility 18		95	86	9	USMS
Detention Facility 22		104	94	10	USMS
Detention Facility 7		78	68	10	USMS
Detention Facility 14		55	45	10	USMS
Detention Facility 15		69	59	10	USMS
Detention Facility 10		80	69	11	USMS
Detention Facility 3		63	51	12	USMS
Detention Facility 13		85	72	13	USMS
Detention Facility 39		72	47	25	USMS
Detention Facility 40		60	No Data*	n/a	N/A
Detention Facility 41		91	No Data*	n/a	N/A

Sources: ICE detention data dated February 22, 2010, and USMS records

Note: The listing provided by ICE did not include pricing data for these two facilities but we identified them as an entries included in the USMS list of IGAs.

In our opinion, having the USMS and ICE separately negotiate for a jail-day rate at the same state or local facility leads to increased rates because the two agencies effectively compete against each other for the same detention space. In March 2010, the USMS and ICE began taking steps to help minimize the instances when they compete against each other for the same detention space. In addition, the OFDT, USMS, and ICE have formed a pricing strategy working group to exchange information on how to improve the negotiation of detention costs.

We recommend that the OFDT and USMS require USMS specialists using the historical prices technique to determine whether a requesting facility has an ICE jail-day rate that can be used before finalizing a separate jail-day rate for the USMS.

Summary of USMS Specialist Application of Price Analysis

Properly performed price analysis can help ensure that negotiated jail-day rates are fair and reasonable to both the buyer (DOJ) and the seller (state or local detention facility). We believe that the OFDT and USMS need to consider JOEI information when evaluating proposed rates and ensure that price analysis comparisons are performed using accurate and complete information.

One of the most critical parts of price analysis is ensuring that USMS specialists document both (1) the reasons they used certain price analysis techniques over others and (2) the contemporaneous information used to justify a negotiated jail-day rate. Our audit identified significant weaknesses in the way the OFDT and USMS have implemented the IGA price negotiation strategy. First, our sample of 25 IGAs determined that USMS specialists have not been properly performing and adequately documenting price analysis. Second, USMS specialists only used JOEI data to justify 6 out of 25 sampled negotiated rates. Third, even when JOEI data was used, jail-day rates were not properly estimated using a facility's total-rated capacity.

We believe that the USMS's inconsistent use of JOEI data increased the rates the USMS paid for detention services. Among the sampled IGAs, the jail-day rates set with price analysis were, on average, \$7 higher than the rates would have been had the USMS based payments on costs alone. By ensuring USMS specialists perform price analysis to consider not only the rates of other detention facilities but also the costs detailed by the requesting facility's JOEI data, we believe the OFDT and USMS will be in a stronger position to negotiate fair and reasonable jail-day rates.

Recommendations

We recommend that the OFDT and USMS:

5. Require that USMS specialists consistently use the estimated JOEI and adjusted core rates automatically calculated by eIGA as starting points to help negotiate lower jail-day rates.
6. Require that USMS specialists document and their supervisors approve the reasons that the market research or historical price techniques are not used to justify and negotiate a fair and reasonable jail-day rate.
7. Ensure that USMS specialists using the market research technique: (1) consult third-party research materials to identify the universe of facilities that compose the detention space market of the requesting detention facility; (2) document the specific comparability factors of each requesting facility and apply these factors consistently to the universe of detention facilities to identify as many similar facilities as possible; and (3) compare proposed or negotiated facility rates to all facilities that, based on documented comparability factors, are similar to the requesting facility.
8. Issue guidelines to require that USMS specialists using the historical price technique: (1) identify whether government or contract facilities have similar attributes to the requesting facility before using their jail-day rates to justify a negotiated rate and (2) determine whether the requesting facility has an ICE jail-day rate that can be considered and used before finalizing a separate jail-day rate for the USMS.

We recommend that the OFDT:

9. Update eIGA to calculate an adjusted core rate to include, when applicable, transportation costs for requesting facilities.

CHAPTER FOUR 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."³⁴ Applied to the IGA negotiation, cost analysis is a tool that USMS specialists should use to assess the requesting detention facility's costs for allowability, accuracy, and completeness. This technique involves more work than applying JOEI data as a price analysis technique to estimate a jail-day rate. This is because with cost analysis the USMS specialist assesses the allowability, accuracy, and completeness of the costs reported by the requesting facility. With the JOEI price analysis technique, the USMS specialist does not verify the costs submitted by the detention facility.

Prior to OFDT's implementation of price analysis, the USMS generally used cost analysis to set jail-day rates. Under this approach, detention facilities requesting an IGA submitted cost data. USMS specialists reviewed the data against the general cost tenets of the Office of Management and Budget (OMB) Circular A-87, which state that costs must be:

- necessary and reasonable;
- allocable;
- authorized or not prohibited under state or local laws;
- in conformance with laws, regulations, and terms and conditions of the agreement;
- accorded consistent treatment;
- in compliance with Generally Accepted Accounting Principles; and
- adequately documented.

Once the USMS specialists determined that the costs were allowable, the USMS specialists used the costs to calculate a jail-day rate.

Reasons to Use Cost Analysis

We believe there are at least two circumstances when the USMS should not use 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 averaged jail-day rates, it is difficult for the USMS to determine that a specific jail-day rate is fair and reasonable. The second instance is when the USMS local district experiences a shortage

³⁴ FAR § 15.404-1(a)(4) (2010).

of detention space and therefore has a dire need to find space for its detainees, sometimes with facilities requesting rates higher than what price analysis determined would have been fair and reasonable. When this occurred, we found that USMS specialists cited the detention space shortage as a reason to justify a higher jail-day rate. We believe cost analysis could have been used in these circumstances to evaluate facility costs and help the USMS negotiate jail-day rates that: (1) ensure the requesting facility receives funds sufficient to cover expenses and (2) represent an appropriate use of federal detention funds.

Large Ranges of Price Analysis Technique Results

Our sample of 25 IGAs identified several instances when the application of different price analysis techniques resulted in a large range of potential jail-day rate prices. For example, the USMS specialist who negotiated the \$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. This resulted in a \$56-difference – or range of 62 percent from the estimated JOEI rate – in prices yielded by different price analysis techniques.

We believe this large range should have been identified by the USMS specialist and resulted a finding that price analysis was not sufficient to determine whether a rate of \$118 was fair and reasonable. Instead of performing cost analysis, the USMS specialist offered detention facility 24 jail-day rates of \$104 and \$111, based on price analysis results. Both of these offers were rejected by detention facility 24, which held to its requested jail-day rate of \$118.

To obtain justification for detention facility 24's \$118 rate, the USMS specialist sent an e-mail to local USMS officials with the [REDACTED] asking whether the district had an "operational need" to use detention facility 24, which could then be used to justify the requested \$118 rate. A local USMS official replied that detention facility 24 was the only jail used by the [REDACTED]. Furthermore, the local USMS official "could only think of two locations" that could house detainees other than detention facility 24. Both of these facilities were reported to be over 110 miles away from both federal courthouses in [REDACTED], and therefore were operationally unfeasible. Citing the operational needs of the local USMS district, the USMS specialist found that detention facility 24's demanded jail-day rate of \$118 was justified.

In this case, the large range in potential jail-day rates derived from different price analysis techniques presented an opportunity for the USMS to use cost analysis. Had the USMS specialist performed cost analysis, the specialist might have found a reason for the discrepancy between the estimated JOEI rate and other price analysis rates. Cost analysis could also have placed the USMS in a position to respond to the facility's request for a higher \$118 jail-day rate and determine whether the facility was seeking excessive profits. We 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 price analysis (estimated JOEI rates) or (2) the detention facility rejects offered price analysis rates.

Lack of Available Detention Space

The USMS conducts annual detention surveys to collect data pertaining to bed space availability, detainee transportation, travel distances, detainee security, and employee safety. These surveys provide the USMS with information on the status of detention space demand in each district. The surveys also report three possible detention space ratings for each USMS district office, as shown in Exhibit 4-1.

EXHIBIT 4-1: LOCAL USMS DETENTION SPACE RATINGS

- 1. No Problem.** The local USMS demand for bed space does not exceed the supply of bed space available at BOP detention centers, state and local facilities that have IGAs, and private jails with USMS contracts.
- 2. Serious.** The local USMS district is making multiple trips to various detention facilities, some of which may be outside the district's boundaries, to house all of its detainees. Commuting distances for USMS deputies that average more than 1-hour result in more overtime and increase the concern for the security and safety of USMS employees and detainees.
- 3. Emergency.** The local USMS district has no bed space available and therefore is forced to use the bed space of other USMS districts to house its detainees. Resulting transportation time and effort increases can:
 - (1) cause problems with producing detainees for court appearances, and
 - (2) jeopardize the safety of USMS employees and detainees.

Source: USMS Detention Status Surveys

For FY 2009, 52 out of 218 USMS district sub-offices received a detention bed space status of "serious," while 17 were rated as "emergency." Out of the sampled 25 IGAs, we identified at least 2 IGAs when USMS specialists disregarded price analysis results. For the IGAs established with detention facility 22 in [REDACTED] and detention facility 16 in [REDACTED], the USMS specialist cited district-level detention space shortages to justify negotiated rates that we determined far exceeded cost rates based on the facilities' respective JOEI data.

The IGA negotiation documented for detention facility 22 in particular illustrates how local USMS detention space has affected how the USMS justifies jail-day rates. In December 2008, detention facility 22 requested a 28 percent jail-day rate increase from \$81 to \$104. Although the requested rate was only \$3 higher than detention facility 22's adjusted core rate of \$101, the requested rate was \$9 over its estimated JOEI rate of \$95.

USMS detention surveys, however, identified that the [REDACTED] had a "serious" detention space shortage. Local USMS officials reported to the USMS specialist that detention facility 22 provided about a third of the district's detention space – 200 detainees per day – and thus was critical to the operations of the district. The USMS specialist did not use the \$95 estimated JOEI rate as a starting point to propose a lower jail-day rate to detention facility 22. Furthermore, the USMS specialist did not perform cost analysis to assess why the JOEI rate was lower than the

\$101 adjusted core rate or detention facility 22's \$104 requested rate. Instead, the USMS specialist cited the local USMS district's need for detention space as the primary justification in the IGA for detention facility 22's \$104 rate.

In addition, based on USMS records, we found that the [REDACTED] could have used 25 other detention facilities with IGAs besides detention facility 22 to fulfill its detention space needs. The average jail-day rate for these facilities was \$73, and out of the 26 facilities, 16 housed both adult males and females. However, at the time this IGA was established, the [REDACTED] was using only 10 of these facilities.

Detention facility 22's request for a \$104 jail-day rate represented a 28 percent increase over its prior rate, and was \$9 more than its estimated JOEI data rate. During the year prior to the negotiation of this IGA, detention facility 22 held an average of 200 detainees a day. Considering these points, we believe the USMS specialist should have tried to apply cost-based estimates, such as the estimated JOEI rate, as a starting point to the negotiation. In our opinion, if the JOEI rate was not acceptable to the facility the USMS specialist should have then assessed the costs to determine if the JOEI data was inaccurate. Cost analysis could also help determine whether the facility was trying to receive excessive profits from housing USMS detainees. If this appeared to have been the case, we believe that the USMS should have sought proactively to obtain detention space at other, potentially more cost-effective facilities.

Therefore, when a local USMS district relies on the requesting facility to house a large or disproportionate number of detainees and the requesting facility demands an increase to its jail-day rate that cannot be justified using price analysis (JOEI estimates) or cost analysis (evaluating JOEI data), we recommend that the OFDT and USMS require that USMS districts implement a detention space action plan to move its detainees to other detention facilities. Such an action plan must require that the OFDT and USMS work with responsible district officials to solicit IGA applications aggressively from facilities – even those that may not be as operationally convenient as the facility demanding an unjustifiable jail-day rate. The detention space action plan should then be used by the OFDT and USMS to expedite negotiations with and transfer detainees to more reasonably priced facilities.

Moreover, the fact that USMS specialists have cited detention space shortages to justify high jail-day rates highlights the shared need of the OFDT and USMS to identify additional detention facility applicants that can help address district-level "serious" or "emergency" detention space shortfalls.

Since 2007, OFDT officials have attended several meetings and conferences for state and local detention personnel, such as the annual American Correctional Association's National Conference. At these events, OFDT officials set up booths to demonstrate how eIGA works and how to request an account. However, the USMS and OFDT have not developed national or district-level strategies to solicit additional local detention facilities to apply for IGAs. We recommend that the OFDT and USMS require that 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 could provide the USMS with a better market for detention space by enhancing competition between facilities available to house USMS detainees.

USMS Specialist Cost Analysis Training

Based on our IGA file review and interviews with OFDT and USMS officials, we determined that USMS specialists were generally under the impression that estimating rates using JOEI data constituted cost analysis. As a result, USMS specialists did not consistently evaluate JOEI data when the price analysis rate was rejected by the requesting detention facility. However, based on the OFDT's negotiation strategy, cost analysis should be used when price analysis techniques (including estimated JOEI rates) does not result in a rate that is both justified and acceptable to both the USMS and the requesting facility.

Our review of OFDT and USMS training materials provided to USMS specialists concluded that the way the materials treated cost analysis contributed to the USMS specialist confusion over the role of cost analysis in the IGA negotiation process. The training material does not specifically describe how USMS specialists should perform cost analysis to assess the accuracy and allowability of the requesting facility's JOEI data. We determined that there are various methods that USMS specialists can apply to perform cost analysis. They can verify JOEI data by: (1) performing audits of facility costs, (2) assessing historical cost data collected from the same facility by the USMS in the negotiation of prior IGAs; or (3) evaluating available expenditure or budget data for similar detention facilities.

Furthermore, the September 2010 training materials that the OFDT provided to USMS specialists describe cost analysis as just another price analysis technique instead of a separate process that should be used to evaluate JOEI data. As discussed previously, using cost analysis differs from estimating rates based on JOEI data because cost analysis evaluates the requesting facility's reported expenditure information. We recommend that the OFDT and USMS develop guidelines and conduct training to ensure that USMS specialists know how to perform cost analysis properly to assess the allowability, accuracy, and completeness of the submitted JOEI data.

Recommendations

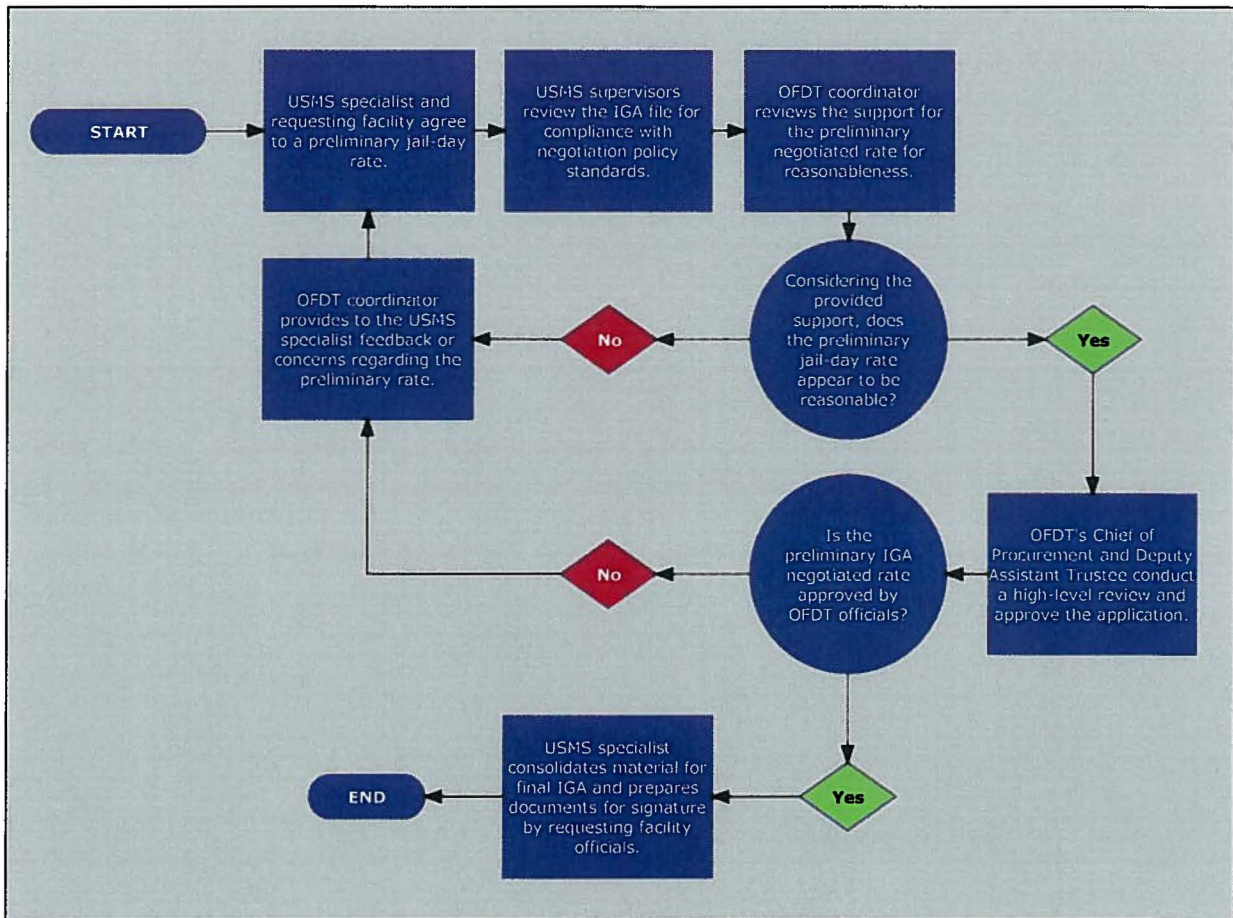
We recommend that the OFDT and USMS:

10. Require that 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 estimated JOEI rates or (2) the detention facility rejects offered price analysis rates.
11. Implement a detention space action plan to move detainees to other detention facilities whenever a requesting facility that is used to hold a large or disproportionate number of USMS detainees demands an increase to its jail-day rate that cannot be justified by price analysis or cost analysis.
12. Require that districts designated by the annual detention survey with "emergency" or "serious" detention space needs to solicit additional IGA applications from facilities within those districts.
13. Develop guidelines and conduct training to ensure that USMS specialists know how to perform cost analysis properly to assess the allowability, accuracy, and completeness of the submitted JOEI data.

CHAPTER FIVE IGA OVERSIGHT

Once USMS specialists negotiate a preliminary (or agreed-upon) jail-day rate with a detention facility, USMS and OFDT officials need to review and approve the preliminary rate before it can be finalized. Exhibit 5-1 outlines how these officials review preliminary jail-day rates.

EXHIBIT 5-1: POST-NEGOTIATION IGA REVIEW PROCESS



Source: OIG depiction of OFDT and USMS IGA review guidelines

Review of USMS Specialist Jail-Day Rate Justifications

First, USMS specialists prepare price negotiation memoranda detailing the reasons why the proposed negotiated jail-day rate is justified. These memoranda are routed to USMS specialist supervisors and OFDT coordinators for review and concurrence. If these officials determine that

the memoranda is complete and accurate, the negotiated jail-day rates are approved and can be finalized.

Under the FAR, the IGA file should include a price negotiation memorandum summarizing: (1) the techniques used and the facts considered by the USMS specialist to establish a pre-negotiation position and (2) how the rate was ultimately negotiated with the detention facility. Price negotiation memoranda also help the OFDT and USMS comply with the FAR requirement that negotiators document the "principal elements" of each negotiation.³⁵ A complete and accurate price negotiation memorandum should therefore demonstrate to a third-party why the preliminary jail-day rate is fair and reasonable.

OFDT coordinators stated they review price negotiation memoranda for detail and clarity. If they note weaknesses in conclusions or in facts of the memorandum, OFDT coordinators are supposed to contact the USMS specialists and provide them with recommendations for improvement.

However, in one instance we found that the OFDT coordinator recommended that the USMS specialist remove an entire section of the price negotiation memorandum, not because it was inaccurate, but because the section did not support a higher negotiated jail-day rate. We also noted that USMS specialists did not always update price negotiation memoranda based on the OFDT's recommendations.

We recommend that the OFDT and USMS implement a procedure within eIGA that formalizes and documents the OFDT coordinator review of price negotiation memoranda. Such a procedure should: (1) require that USMS specialists respond to each OFDT coordinator recommendation; (2) provide the OFDT coordinator with the ability to ensure that the USMS specialist responses address the recommendations; and (3) preserve the OFDT recommendations and USMS responses as part of the permanent IGA file.

Finalizing the IGA

If OFDT officials approve the negotiated jail-day rate, the USMS specialist prepares the final IGA forms for the signature of USMS and requesting facility officials. Once the IGA forms are signed, the USMS

³⁵ These principle elements include: (1) the purpose of the negotiation, (2) a description of what was negotiated, (3) the type and source of data used to support the reasonableness of the price established by negotiations, (4) the government's objectives before negotiations began, and (5) an explanation of any significant differences between the government's initial negotiation objective and the negotiation results.

specialist should upload a scanned copy of the signed IGA, the justification memorandum, and the detention facility inspection report to eIGA.

Our audit revealed that some IGA documents were only maintained in the hardcopy IGA files and were not uploaded to eIGA. Because eIGA should serve as the official system of record for the IGA negotiation, we recommend that the OFDT and USMS ensure USMS specialists upload all documents used to negotiate the jail-day rate into eIGA.

Recommendations

We recommend that the OFDT and USMS:

14. Implement a procedure within eIGA that formalizes and documents the OFDT coordinator review of price negotiation memoranda. Such a procedure should: (1) require that USMS specialists respond to each OFDT coordinator recommendation; (2) provide the OFDT coordinator with the ability to ensure that the USMS specialist responses address the recommendations; and (3) preserve the OFDT recommendations and USMS responses as part of the permanent IGA file.
15. Ensure USMS specialists upload all documents used to negotiate the jail-day rate into eIGA.

ACRONYMS

BOP	Federal Bureau of Prisons
DOJ	Department of Justice
eIGA	Electronic Intergovernmental Agreement System
FAR	Federal Acquisition Regulation
ICE	Bureau of Immigration and Customs Enforcement
IGA	Intergovernmental Agreement
JDIS	Justice Detainee Information System
JOEI	Jail Operating Expense Information
OFDT	Office of the Federal Detention Trustee
OIG	Department of Justice Office of the Inspector General
OMB	Office of Management and Budget
USMS	United States Marshals Service

STATEMENT ON INTERNAL CONTROLS

As required by the *Government Auditing Standards*, we tested, as appropriate, internal controls significant within the context of our audit objectives. A deficiency in an internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to timely prevent or detect: (1) impairments to the effectiveness and efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations. Our evaluation of the internal controls employed by the Office of the Federal Detention Trustee (OFDT) and the U.S. Marshals Service (USMS) was *not* made for the purpose of providing assurance on either agency's internal control structure as a whole. OFDT and USMS management are responsible for the establishment and maintenance of internal controls.

As noted in this report, we identified certain deficiencies in the internal controls employed by both the OFDT and USMS that are significant within the context of the audit objectives and based upon the audit work performed that we believe adversely affect the OFDT and the USMS's ability to negotiate fair and reasonable jail-day rates for Intergovernmental Agreements (IGAs). Internal control deficiencies include the USMS and OFDT not ensuring either: (1) the completeness and accuracy of data submitted by detention facilities applying for an IGA or (2) that USMS specialists consistently and completely document price analysis research and results.

Because we are not expressing an opinion on the internal control structure in place at OFDT and USMS as a whole, this statement is intended solely for the information and use of the OFDT and USMS. This restriction is not intended to limit the distribution of this report, which is a matter of public record.

STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS

As required by the *Government Auditing Standards* we tested, as appropriate given our audit scope and objectives, selected records, procedures, and practices, to obtain reasonable assurance that the Office of the Federal Detention Trustee (OFDT) and the U.S. Marshals Service (USMS) complied with federal laws and regulations, for which noncompliance, in our judgment, could have a material effect on the results of our audit. OFDT and USMS management are responsible for ensuring compliance with federal laws and regulations applicable to the OFDT and USMS. In planning our audit, we determined that the Federal Acquisition Regulation §§ 3.101-1, 15.402, and 15.404-1 to 406-3 applied to how OFDT and USMS officials and personnel negotiated intergovernmental agreements (IGA) and therefore was significant within the context of the audit objectives.

Our audit included examining, on a test basis, whether the OFDT and USMS complied with the aforementioned sections of the FAR insofar as they were applicable to IGA negotiations performed using price analysis. Because non-compliance with these sections of the FAR could have a material effect on the operations of the OFDT and USMS, our audit interviewed responsible officials and personnel performing negotiations, analyzed data, assessed internal control procedures, and examined procedural practices and IGA files. We found that by not ensuring that USMS specialists compiled complete and contemporaneous pricing information prior to beginning negotiations, the USMS and OFDT collectively could not demonstrate compliance with FAR 15.406-1, which the USMS and the OFDT applies as criterion to the IGA negotiation process and requires that government negotiators document pre-negotiation objectives.

Our report provides recommendations that, once implemented, will help ensure that the personnel and officials at the audited components comply with the aforementioned regulation while negotiating IGAs.

OBJECTIVES, SCOPE, AND METHODOLOGY

Objectives

The Department of Justice Office of the Inspector General 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.

Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The scope of the audit encompassed OFDT and USMS policies, procedures, and other activities involving IGA negotiations from November 2007 to September 2010. We used November 2007 as the timeframe to begin our review because that was when the OFDT and USMS started using eIGA in conjunction with price analysis to negotiate IGA jail-day rates. As presented in the following sections, we obtained what we believe to be necessary and sufficient documentation to achieve the objectives of this audit.

Objective 1: Implementation and Use of eIGA

To assess how the OFDT has implemented and how USMS uses eIGA, we reviewed the OFDT's eIGA strategy, obtained an understanding of OFDT and USMS procedures, and reviewed documents showing how OFDT and USMS applied eIGA with price analysis to negotiate jail-day rates. We also reviewed correspondence between the OFDT and USMS and surveyed training classes the OFDT provided to USMS personnel.

We performed audit work at USMS offices and OFDT headquarters, both located in Arlington, Virginia. At these locations, we conducted interviews with the OFDT Budget, Finance, and Forecasting Division, Procurement Division, Information Technology Division, and OFDT

contractors. We conducted interviews and walkthroughs with relevant USMS specialists and supervisors. The purpose of these interviews was to obtain from OFDT and USMS personnel and officials an understanding of their roles and responsibilities as well as any current directives and procedures regarding eIGA and IGA negotiations.

We also attended OFDT demonstrations on the eIGA interface and obtained read-only accounts to eIGA to review selected samples and their computerized records.

Objective 2: Price Analysis and Fair and Reasonable Jail-Day Rates

Between November 2007 and the start of our fieldwork in December 2009, the USMS negotiated 191 new or updated Intergovernmental Agreements (IGA) with state and local governments. To determine whether jail-day rates negotiated by the OFDT and USMS using price analysis appeared to be fair and reasonable – in addition to the aforementioned work in the first objective – we selected a sample of 25 IGAs and analyzed documents in their respective agreement files. The purpose of this review was to ascertain: (1) which price analysis techniques USMS specialists used and the extent to which those techniques were applied; (2) the relevant factors that USMS specialists and OFDT coordinators considered during the negotiation process; and (3) the nature and extent of the negotiations that occurred between the USMS and the detention facilities. To ensure the completeness, accuracy, and validity of tested material, especially the price negotiation memoranda that served as the basis for many of our conclusions, we traced and verified information presented in IGA files as necessary.

To select the sample of 25 IGAs, we employed a judgmental sampling design to obtain a broad exposure to numerous facets of IGAs, including: (1) proposed jail-day rates, counteroffers, and negotiated jail-day rates (2) whether USMS specialists established and documented various and available market-based prices during negotiations; and (3) the justifications documented to show whether the rate was fair and reasonable. Once the sample was selected, we compared the actual jail-day rate to a rate calculated from facility-submitted jail operating expense information (JOEI) data. In assessing USMS specialist decisions for the market research and historical government and contract price techniques, we relied whenever possible on contemporaneous material available to the negotiating parties. As the design of this non-statistical sample does not allow us to project results to the overall universe of IGA rates and costs, we only used this comparison to gauge whether price analysis techniques, as applied and documented by the USMS, resulted in fair and reasonable jail-day rates.

Our audit considered detention pricing information compiled by and received from the U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement (ICE). To determine the number of detention facilities with both ICE and USMS rates, we compared the names of facilities listed by ICE to facilities contained in USMS reports and counted only those detention facilities which, in our judgment, were the same in both sets of records. We also obtained and used annual price analysis guides issued by the OFDT. These guides included schedules for the average IGA rates by USMS district, the Federal Bureau of Prisons per capita cost, and the listing of prices of private detention facilities. We further consulted, as necessary, the *American Correctional Association 2009-2010 National Jail and Adult Detention Directory* (ACA directory) for administrative information pertaining to facilities, specifically their rated capacities and locations. Although we did not assess the reliability of ICE detention rates, OFDT price analysis guides, or information contained in the ACA directory, we do not believe our reliance on this information affects the findings and recommendations offered by this report.

Throughout the audit, we relied on computer-generated data to obtain necessary information about detention facilities (size, location, jail-day rates, and projected use data) and jail-day rates from eIGA and the Justice Detention Information System (JDIS). JDIS is an information technology system separately administered by the USMS and contains jail-day rate information that is used by USMS specialists as other than cost or pricing data during price negotiations. We also relied on electronically derived information, such as price negotiation memoranda, obtained from eIGA to conduct our assessment of price analysis. Although we did not assess the reliability of such computer-derived information, we do not believe our reliance on this data affects our findings and recommendations.

**THE OFFICE OF THE FEDERAL DETENTION TRUSTEE'S
RESPONSE TO THE DRAFT AUDIT REPORT**



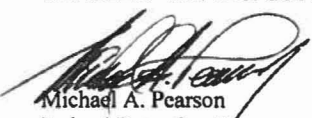
U. S. Department of Justice

Office of the Federal Detention Trustee

Washington, D.C. 20530

February 24, 2011

MEMORANDUM TO: RAYMOND J. BEAUDET
ASSISTANT INSPECTOR GENERAL
FOR AUDIT
OFFICE OF THE INSPECTOR GENERAL

FROM: 
Michael A. Pearson
Federal Detention Trustee
Office of the Federal Detention Trustee

SUBJECT: Draft Audit Report on the Intergovernmental
Agreement Detention Space Negotiation Process

This is in reply to your memorandum dated February 1, 2011, requesting a response on specific actions completed, or alternative actions proposed, on the subject draft audit report. The Office of the Federal Detention Trustee (OFDT) has reviewed the audit report and provides the following responses to recommendations for which this agency is responsible:

Recommendation #5: *Require that USMS specialists consistently use the estimated JOEI and adjusted core rates automatically calculated by eIGA as starting points to help negotiate lower jail-day rates.*

Response: OFDT disagrees, in part, with this recommendation. We recommend that the United States Marshals Service (USMS) develop a Pre-negotiation Objectives Worksheet (POW) in accordance with the Federal Acquisition Regulations (FAR), Sub-Part 15.406-1. While we agree the JOEI rate calculation and adjusted core rate should be included in developing the government's initial position, we do not believe, however, that it should become the default negotiation position of the USMS. Moreover, the FAR, Sub-Part 15.406-1, states the following:

"Pre-negotiation Objectives

(a) The pre-negotiation objectives establish the Government's initial negotiation position. They assist in the contracting officer's determination of fair and reasonable price. They should be based on the results of the contracting officer's analysis of the offeror's proposal, taking into consideration all pertinent information including field pricing

assistance, audit reports and technical analysis, fact-finding results, independent Government cost estimates and price histories.”

With that said, while we disagree with the OIG on portions of this recommendation, we do understand that the OIG’s purpose for this recommendation is to ensure that the USMS establishes a sound negotiation position prior to discussions with the local government, and that that position be based on all pertinent information available to the USMS. At this time, we believe that the USMS has developed a sound POW, which will be added to the eIGA System.

Recommendation #9: *Update eIGA to calculate an adjusted core rate that includes transportation costs for requesting facilities.*

Response: The OFDT concurs with the recommendation and will update the Core Rate Calculation and add an adjustment when a local government proposes to provide transportation as a service covered by the per-day rate. To that end, we anticipate having an updated Core Rate calculation in place by June 30, 2011.

Recommendation #13: *Develop guidelines and conduct training to ensure that USMS specialists know how to perform cost analysis properly to assess the allowability, accuracy, and completeness of the submitted JOEI data.*

Response: On August 13, 2010, the Assistant Director for the USMS Prisoner Operations Division approved standard operating procedures (SOPs) for Intergovernmental Agreements. As an attachment to the SOP, the OFDT provided price/cost analysis guidelines (dated April 21, 2010) to assist the IGA specialists with their negotiations.

On September 8, 2010, OFDT provided Price/Cost Analysis training to the IGA specialists. Additionally, the OFDT is requiring that all IGA specialists receive Level 1 Contracting Certification Courses. Moreover, in Fiscal Years 2007, 2008, 2009 and 2010, the OFDT provided the USMS with funding for acquisition training. At this time, we recommend also that the IGA specialists receive training in “A-87, Cost Principles for State, Local and Indian Tribal Governments.” Training for the IGA specialists will be on-going, based on individual need, and the OFDT will continue to provide annual training to the IGA specialists.

**THE U.S. MARSHALS SERVICE'S
RESPONSE TO THE DRAFT AUDIT REPORT**




U.S. Department of Justice
United States Marshals Service
Associate Director for Operations

Alexandria, Virginia 22301-1025

February 28, 2011

MEMORANDUM TO: Raymond J. Beaudet
Assistant Inspector General for Audit

FROM: Robert J. Finan II 
Associate Director for Operations

SUBJECT: Response to Draft Audit Report:
Intergovernmental Agreement Detention Space
Negotiation Process

This is in response to correspondence from the Office of the Inspector General requesting comment on the open recommendations associated with the subject audit report.

Should you have any questions or concerns regarding this response, please contact Ms. Isabel Howell, Audit Liaison, at 202-307-9744.

Attachment

**USMS Response to Draft Audit Report:
Intergovernmental Agreement Detention Space Negotiation Process**

Recommendation 1: Develop procedures that require USMS specialists to consult available detention facility information sources to validate facility-prepared application data during pre-negotiation planning.

Response (Concur): Please see the attached Pre-Negotiation Worksheet developed by the Prisoner Operations Division (POD). This document is utilized by USMS specialists to annotate revisions to the data provided by the facility, after consulting available detention facility information sources obtained from the Internet and USMS Detention Facility Investigative Report. Prior to submitting a completed eIGA application, detention facilities must certify/validate the accuracy of all information.

Recommendation 2: Update eIGA and require that USMS specialists document the IGA application data verification check within the eIGA system.

Response (Concur): The USMS will work with the Office of the Federal Detention Trustee (OFDT) to add the Pre-Negotiation Worksheet to the eIGA system. Additionally, the USMS will work with OFDT to establish a component within the eIGA framework for facilities to validate updated information that occurs during the pre-negotiation/negotiation process. OFDT reports the eIGA system will be updated by August 1, 2011.

Recommendation 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.

Response (Concur): If applicable, available Immigration and Customs Enforcement (ICE) jail-day rates will be included on the Pre-Negotiation Worksheet from this point forward. OFDT reports the eIGA system will be updated by August 1, 2011.

Recommendation 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.

Response (Concur): All pricing information is documented, incorporated into the IGA file, and uploaded to the eIGA system. As noted in POD's IGA Standard Operating Procedures (SOP), upon final execution of an IGA, the specialist will upload all documents into the eIGA system and archive said file.

Recommendation 5: Require that USMS specialists consistently use the estimated JOEI and adjusted core rates automatically calculated by eIGA as starting points to help negotiate lower jail-day rates.

Response (Nonconcur): The JOEI and adjusted core rates do not always reveal the most reasonable rate. Specialists consistently review all techniques to determine the most fair and reasonable method to employ. According to the Federal Acquisition Regulations (FAR), Sub-Part 15.404-1, there are several price analysis techniques available, with the comparison of proposed prices to two or more offers and the comparison of proposed price to historical prices paid by the Government for same or similar items/services being the “preferred techniques.”

Using detention facility 1 in [REDACTED], as noted on Page 19 of the audit report, the estimated JOEI rate is \$124. If the specialist used this rate as the starting point for negotiations, the negotiated rate would have been \$18 higher than what was actually negotiated by the specialist. This, in turn, would have resulted in an estimated overpayment of \$3,593,376.

The USMS believes the “starting point” for all negotiations should begin only after all available resources, including the JOEI, have been considered, and to start with a price that is fair and reasonable, and in the best interest of the Federal Government, dependent upon circumstances. The USMS has developed a sound Pre-Negotiation Worksheet in accordance with the FAR, Sub-Part 15.406-1 which captures the analysis of all price analysis tools.

Recommendation 6: Require that USMS specialists document and their supervisors approve the reasons that the market research or historical price techniques are not used to justify and negotiate a fair and reasonable jail-day rate.

Response (Concur): The specialist will document the reason why a price analysis technique was selected and other techniques were not in the eIGA system via the uploaded Pre-Negotiation Worksheet. The supervisor can then indicate their approval through the eIGA system, and forward the application to OFDT. This process has already been initiated.

Recommendation 7: Ensure that USMS specialists using the market research technique: (1) consult third-party research materials to identify the universe of facilities that compose the detention space market of the requesting detention facility; (2) document the specific comparability factors of each requesting facility and apply these factors consistently to the universe of detention facilities to identify as many similar facilities as possible; and (3) compare proposed or negotiated facility rates to all facilities that, based on the documented comparability factors, are similar to the requesting facility.

Response (Concur): Specialists are currently documenting this information on the Pre-Negotiation Worksheet. The Pre-Negotiation Worksheet is maintained in the IGA file and will be co-located within the eIGA system.

Recommendation 8: Issue guidelines to require the USMS specialists using the historical price technique: (1) identify whether government or contract facilities have similar attributes to the requesting facility before using jail-day rates to justify a negotiated rate and (2) determine whether the requesting facility has an ICE jail-day rate that can be considered and used before finalizing a separate jail-day rate for the USMS.

Response (Concur): As currently outlined in guidelines established by the IGA SOP, specialists are to use the historical price technique as a price analysis tool. This information will be documented on the Pre-Negotiation Worksheet, along with the justification memorandum. As noted above in the response to Recommendation #3, available ICE jail-day rates will also be included on the worksheet, if applicable. USMS POD will contact ICE to obtain rates paid to same facilities. The USMS will also work with OFDT to include ICE detention facility rates in the eIGA system, also referenced in Response #3.

Recommendation 9: Recommendation specifically addressed to OFDT.

Recommendation 10: Require that 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 estimated JOEI rates or (2) the detention facility rejects offered price analysis rates.

Response (Concur): USMS specialists will perform cost analysis on the JOEI data when the situation presents the criteria as listed in the recommendation. Going forward, this information will be documented on the Pre-Negotiation Worksheet.

Recommendation 11: Implement a detention space action plan to move detainees to other detention facilities whenever a requesting facility that is used to hold a large or disproportionate number of USMS detainees demands an increase to its jail-day rate that cannot be justified by price analysis or cost analysis.

Response (Concur; with conditions): The USMS agrees detention space action plans are necessary, in specific instances. However, we do not agree this should be a preemptive requirement placed upon USMS districts across the board. Currently, the USMS does formulate and execute detailed plans to relocate prisoners when a situation warrants such action. The USMS acknowledges that, when practical, these plans should be formal written documents that are shared and approved by all stakeholders.

Recommendation 12: Require that districts designated by the annual detention status survey with "emergency" or "serious" detention space needs to solicit additional IGA applications from facilities within those districts.

Response (Concur): POD Senior Inspectors will work with districts in their assigned area of responsibility to locate additional housing options in the event that the district has been designated as being in an "emergency" or "serious" status concerning detention space. A report is prepared annually that addresses "emergency" status districts, and details plans designed to assist the districts with their detention space issues.

Recommendation 13: Develop guidelines and conduct training to ensure that USMS specialists know how to perform costs analysis properly to assess the allowability, accuracy, and completeness of the submitted JOEI data.

Response (Concur): On August 13, 2010, Assistant Director Candra Symonds, POD, approved the IGA SOPs. As an attachment to the SOP, the OFDT provided price/cost analysis guidelines, dated April 21, 2010, to assist specialists with negotiations.

On September 8, 2010, OFDT provided Price/Cost Analysis training to specialists. The specialists are currently required to complete a 40-hour Price Analysis and Cost Analysis course. In FY 2011, specialists will complete training in "*FAR*" and/or "*OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments.*"

The OFDT will also respond to this recommendation.

Recommendation 14: Implement a procedure within eIGA that formalizes and documents the OFDT coordinator review of price negotiation memoranda. Such a procedure should: (1) require that USMS specialists respond to each OFDT coordinator recommendation; (2) provide the OFDT coordinator with the ability to ensure that the USMS specialist responses address the recommendations; and (3) preserve the OFDT recommendations and USMS responses as part of the permanent IGA file.

Response (Concur): Currently, specialists update the justification memorandum according to OFDT recommendations. The system stores both justifications. The USMS will work with OFDT to update and identify revisions entered into the system. OFDT will return all requests for revisions/recommendations to the USMS via the eIGA system.

Recommendation 15: We recommend that the OFDT and USMS ensure USMS specialists upload all documents used to negotiate the jail-day rate into eIGA.

Response (Concur): All supporting documentation is included in the IGA file and uploaded into the eIGA system. The IGA SOP states that upon final execution of the IGA, the specialist will upload all documents in the eIGA system and archive the file. The USMS will work with OFDT to develop a component in the eIGA system to remind specialists to upload all documents prior to archiving the application. The OFDT reports the eIGA system will be updated to accommodate this recommendation by August 1, 2011.

**OFFICE OF THE INSPECTOR GENERAL
ANALYSIS AND SUMMARY OF ACTIONS
NECESSARY TO CLOSE THE REPORT**

The OIG provided a draft of this audit report to the OFDT and the USMS. The OFDT and the USMS responses are incorporated in Appendices II and III of this final report. The following provides the OIG analysis of the responses and summary of actions necessary to resolve and close the report.

Recommendation Number:

1. **Resolved.** The USMS concurred with our recommendation to develop procedures that require USMS specialists to consult available detention facility information sources and validate facility-prepared application data during pre-negotiation planning. The USMS stated that it has developed a new pre-negotiation worksheet for its USMS specialists to use to validate detention facility data, including the detention facility's physical address, reported detainee capacity, and whether the facility is a new applicant for an intergovernmental agreement (IGA). The pre-negotiation worksheet also contains fields that the USMS specialist should use to detail the source(s) consulted to verify facility-provided information. However, as discussed in our analysis of the USMS's response to recommendation 3, the worksheet does not require that the USMS specialist indicate whether nearby facilities have ICE agreements.

The USMS also provided its policy on how USMS specialists should prepare for IGA negotiations. However, this policy does not explicitly require that the USMS specialist use the pre-negotiation worksheet provided by the USMS in its response.

This recommendation can be closed once the USMS provides evidence that the USMS specialists are required to complete a revised version of its new pre-negotiation worksheet for validating facility-provided data.

2. **Resolved.** The USMS concurred with our recommendation to update eIGA and require that USMS specialists document the IGA data verification within the eIGA system. The OFDT subsequently confirmed it is working with the USMS to adjust eIGA so that it will electronically include the pre-negotiation worksheet and allow facilities

to validate updated information during IGA negotiations. According to the USMS, this should be accomplished by August 1, 2011.

This recommendation can be closed when the USMS and OFDT provide evidence, such as policy updates, eIGA manual revisions, and computer screenshots showing that USMS specialists are using eIGA to document their IGA data verification work.

3. **Resolved.** The USMS concurred with our recommendation to develop a standardized strategy sheet that includes entries for U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement (ICE) jail-day rates for requesting and nearby facilities, which USMS specialists should complete prior to IGA negotiations. In its response, the USMS provided a copy of a new pre-negotiation worksheet it has developed for USMS specialists to use as a template strategy sheet. The pre-negotiation worksheet has fields where the USMS specialist can indicate whether the requesting facility has an ICE agreement. However, this worksheet does not provide a space for the USMS specialist to indicate whether nearby facilities have ICE agreements.

This recommendation can be closed when the USMS updates its: (1) new pre-negotiation worksheet to provide fields for USMS specialists to document whether facilities close to the requesting facility have established detention agreements with ICE and their respective ICE jail-day rates, and (2) policies to require that the USMS specialist complete these fields on the pre-negotiation worksheet before negotiating a jail-day rate with the requesting facility.

4. **Resolved.** The USMS concurred with our recommendation and reported it is working with the OFDT to update eIGA so USMS specialists can use it to record IGA pricing information.

In its response, the USMS states that its policies require that USMS specialists upload all documents into eIGA once the IGA is finalized. However, our audit found incomplete pricing information maintained in both hardcopy and electronic IGA files. USMS specialists should upload information in eIGA throughout the negotiation process, especially all information used to ascertain whether a jail-day rate is fair and reasonable.

This recommendation can be closed when the USMS and OFDT provide evidence that eIGA is updated and the USMS specialists are using it to record complete IGA pricing information. Such evidence can include

USMS policy updates, screenshots of documents uploaded, and eIGA manual revisions.

5. **Unresolved.** The USMS and OFDT agreed that USMS specialists should consistently consider the estimated JOEI and adjusted core rates in developing the government's initial negotiating position; however, they did not believe that these estimated rates should be the default negotiation position.

The USMS stated in its response that the estimated JOEI and adjusted core rates are not always the most reasonable rates. The USMS provided an example of a facility where its estimated JOEI rate was very high. As a result, using the estimated JOEI rate as a starting point for negotiations could have resulted in more than \$3.5 million in excessive costs. The USMS also stated that the starting point for all negotiations should begin only after all available resources, including the JOEI, have been considered. The USMS therefore developed a new pre-negotiation worksheet for USMS specialists to use to develop an initial negotiation position based on all pertinent information – not just estimated JOEI rates.

The OFDT stated in its response that it agrees that the JOEI rate calculation and the adjusted core rate should be included in developing the government's initial position. However, it does not believe, that these rates should become the default negotiation position of the USMS.

The purpose of this recommendation is to ensure that USMS specialists establish a sound negotiation position prior to discussions with the local government. As such, our recommendation to use JOEI and adjusted core rates as starting points means that USMS specialists should be required to consult JOEI and adjusted core rate data to ascertain the appropriateness of the requesting facility's proposed rate at the outset of the IGA negotiation.

When the USMS specialist receives a proposed jail-day rate from the requesting facility, the USMS specialist needs to be in the position to evaluate whether the proposed rate is fair and reasonable. Although the updated pre-negotiation worksheet will help USMS specialists improve how they document pre-negotiation objectives, without evaluating proposed rates against the estimated JOEI rate and the adjusted core rate – the preliminary data available to USMS specialists at the outset of negotiations – we do not believe the USMS specialist can carefully establish an appropriate negotiation position.

As noted throughout our report, USMS specialists have not been using estimated JOEI rates – even when they are significantly lower than proposed rates – to negotiate fair and reasonable jail-day rates. Indeed, USMS specialists used JOEI rates to negotiate only 6 out of the 25 sampled IGAs – despite the fact that the estimated JOEI rate would have been lower than either the proposed or negotiated jail-day rate for 12 additional IGAs. Because of this, the USMS appears to be negotiating jail-day rates that provide facilities with significantly more funds than they spend to house USMS detainees. We therefore believe this inconsistent application of using JOEI rates (as well as adjusted core rates) to gauge whether the proposed rate is fair and reasonable has resulted in increased detention costs. However, in the occurrence where the JOEI rate is higher than the proposed rate, the USMS specialist can satisfy the recommendation by documenting this fact in eIGA.

Therefore, this recommendation is unresolved. This recommendation can be resolved when we receive evidence that the OFDT and USMS have directed USMS specialists to use the JOEI and adjusted core rates to evaluate facility-proposed rates at the outset of negotiations.

6. **Resolved.** The USMS concurred with our recommendation to require that USMS specialists document and their supervisors approve the reasons that the market research or historical price techniques were not used to justify and negotiate fair and reasonable jail-day rates. According to the USMS, specialists have begun documenting the reasons why price analysis techniques were not used on the pre-negotiation worksheet. In addition, the USMS reports that USMS supervisors have begun to indicate their approval of these reasons in eIGA.

This recommendation can be closed when the USMS provides evidence showing that: (1) USMS specialists are noting on negotiation worksheets why price analysis techniques, specifically market research and historical prices, were not used to determine whether a negotiated rate was fair and reasonable; and (2) USMS supervisors are reviewing and documenting their approval of these reasons before the IGA is finalized.

7. **Resolved.** The USMS concurred with our recommendation to ensure that USMS specialists using the market research technique: (1) consult third-party research materials to identify the universe of facilities that compose the detention space market of the requesting detention facility; (2) document the specific comparability factors of each requesting facility and apply these factors consistently to the universe of detention facilities to identify as many similar facilities as possible; and (3) compare proposed or negotiated facility rates to all facilities that, based on documented comparability factors, are similar to the requesting facility.

In its response, the USMS stated that USMS specialists are documenting this information on the newly developed pre-negotiation worksheet. We note that this information was not being consistently documented in the IGA files we reviewed as a part of our audit.

This recommendation can be closed when the USMS provides evidence showing that USMS specialists are required to conduct market research properly in that they: (1) consult third-party research materials to identify the universe of facilities that compose the detention space market of the requesting detention facility; (2) document the specific comparability factors of each requesting facility and apply these factors consistently to the universe of detention facilities to identify as many similar facilities as possible; and (3) compare proposed or negotiated facility rates to all facilities that, based on documented comparability factors, are similar to the requesting facility.

8. **Resolved.** The USMS concurred with our recommendation to issue guidelines to require that the USMS specialists using the historical price techniques: (1) compare facilities with similar attributes and (2) determine if the facility has a negotiated jail-day rate with ICE. The USMS stated in its response that specialists will document historical price technique data on the pre-negotiation worksheet and the justification memorandum. Furthermore, the USMS will contact ICE to obtain jail-day rates paid to the same facility, and work with OFDT to include the ICE jail-day rates in the eIGA system. The policy cited by the USMS in its response does not detail how USMS specialists should appropriately perform the historical price analysis technique to negotiate jail-day rates. This recommendation can therefore be closed when the USMS updates its policy to require that specialists using the historical price technique appropriately compare facilities of similar attributes and consider a facility's ICE jail-day rate, as applicable.

9. **Resolved.** The OFDT concurred with our recommendation to update eIGA to calculate an adjusted core rate that includes transportation costs for requesting facilities. The OFDT stated in its response that they will update the core rate calculation and add an adjustment when a local government proposes to provide transportation as a service covered by the jail-day rate. OFDT anticipates the implementation of this update by June 30, 2011.

This recommendation can be closed when the OFDT provides evidence that eIGA has been modified to calculate core rates that include transportation costs, as applicable.

10. **Resolved.** The USMS concurred with our recommendation to require that 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 estimated JOEI rates or (2) the detention facility rejects offered price analysis rates.

This recommendation can be closed when the USMS provides evidence showing that USMS specialists are required to perform and document cost analysis when different price analysis techniques yield a very large range of results that do not align with estimated JOEI rates or the detention facility rejects offered price analysis rates. Furthermore, such evidence should be specified in a policy that details what constitutes a large range of results between rates yielded by different price analysis techniques.

11. **Unresolved.** The USMS concurred in part with our recommendation to implement a detention space action plan to move detainees to other detention facilities whenever a requesting facility that is used to hold a large or disproportionate number of USMS detainees demands an increase to its jail-day rate that cannot be justified by price analysis or cost analysis. Although the USMS agrees that detention space action plans are necessary in specific instances, it does not believe that these action plans should be preemptive requirements for "USMS districts across the board."

The audit identified specific circumstances where the USMS needs to be placed in a stronger negotiation position vis-à-vis detention facilities that exploit USMS operational needs and detention space shortages to raise jail-day rates. Our recommendation therefore states that the USMS should work with district offices to develop action plans to move detainees to different detention facilities whenever a facility that houses a large or disproportionate number of USMS detainees demands an unjustifiable rate increase. From our sample of 25 IGAs, we identified only 4 instances that, in our opinion, warranted such an action plan. Further, during our discussions regarding this recommendation with USMS and OFDT officials, it was agreed that the situations triggering the development of an action plan – as detailed in the recommendation – does not occur often.

Therefore, this recommendation is unresolved. This recommendation can be resolved when the USMS agrees to strengthen its negotiation position and begin formulating written and agreed-to action plans to move detainees from facilities that: (1) hold a large number of detainees and (2) demand unjustifiable rate increases.

12. **Resolved.** The USMS concurred with our recommendation to require that districts designated by the annual detention status survey with "emergency" or "serious" detention space needs to solicit additional IGA applications from facilities within those districts. The USMS stated in its response that USMS headquarters officials will work with districts in their assigned area of responsibility to locate additional housing options in the event that the district has been designated as being in an "emergency" or "serious" status concerning detention space.

This recommendation can be closed when we review evidence that USMS headquarters officials are soliciting additional detention facilities in districts designated "emergency" or "serious" by the annual detention survey. Such evidence should include documents that evidence the initiatives undertaken by USMS officials to solicit new IGA applications or additional detention space at current IGA facilities within districts that are experiencing "emergency" or "serious" detention space shortages.

13. **Resolved.** The USMS and the OFDT concurred with our recommendation to develop guidelines and conduct training to ensure that USMS specialists know how to perform costs analysis properly to assess the allowability, accuracy, and completeness of the submitted JOEI data. The OFDT and USMS stated in their responses that they have approved procedures that provide price and cost analysis guidelines to USMS specialists. Additionally, the OFDT stated that it provided price and cost analysis training to the USMS specialists in September 2010 and further recommends that USMS specialists receive: (1) contracting certification courses and (2) training in cost principles for state and local governments.

We agree with the OFDT's proposal that USMS specialists receive contracting certification courses. However, as noted in our report, the negotiation training cited by the OFDT and USMS in the responses, including the most recent September 2010 training, did not provide the specialists with information on how to perform specific price analysis techniques adequately. The training furthermore did not detail the distinct role cost analysis has in the negotiation process and that it should be performed only after price analysis cannot be used to negotiate a fair and reasonable jail-day rate. The August 2010 policies cited by the USMS furthermore do not specify exactly how USMS specialists should conduct and document price analysis and cost analysis.

This recommendation can be closed when we receive evidence showing that: (1) USMS specialists have completed the proposed contracting certification courses and (2) the USMS and OFDT have updated guidance and training to ensure that specialists know how to perform and document each price analysis technique properly.

14. **Resolved.** The USMS concurred with our recommendation to implement a procedure within eIGA that formalizes and documents the OFDT coordinator review of price negotiation memoranda. The OFDT subsequently has confirmed it is working with the USMS to update eIGA so that it will identify revisions to the justification memoranda uploaded to the system.

This recommendation can be closed when the USMS and OFDT provide evidence showing that OFDT recommendations and USMS responses regarding justification memoranda are preserved as part of the permanent IGA file.

15. **Resolved.** The USMS concurred with our recommendation to ensure USMS specialists upload all documents used to negotiate the jail-day rate into eIGA. The OFDT subsequently confirmed that it is working with the USMS to develop a component in eIGA to remind USMS specialists to upload all documents prior to archiving the application. The USMS and OFDT report that eIGA will be updated to accommodate this recommendation by August 1, 2011.

This recommendation can be closed when we review evidence, such as USMS policy updates and eIGA manual revisions, demonstrating that USMS specialists are uploading all IGA negotiation documents to eIGA.