



Housing Federal Prisoners in Local Jails – How to Negotiate an “e-IGA” with the US Marshals Service

▪ JOSEPH SUMMERILL
▪ THE SUMMERILL GROUP, LLC

With an average daily custody population of about 60,000 detainees nation-wide and no “brick-and-mortar” appropriations from the U.S. Congress in order to build detention facilities, the United States Marshals Service (USMS) depends on local Sheriffs to house federal prisoners. More than 5,000 of these federal prisoners are housed in local jails operated by California Sheriffs. For many Sheriffs, the challenge is not the actual housing of the USMS prisoners but instead the negotiation of the intergovernmental agreement (IGA) which establishes the federal per diem rate paid to the Sheriff.

Background

In the past, Sheriffs were paid a per diem rate, based only on the Sheriff’s actual and allowable costs from the previous fiscal year, for each day that a federal prisoner spent in their jail. This per diem rate could only be adjusted after a Sheriff submitted new cost data to the USMS and then waded through a great deal of bureaucratic red tape. By the time the Sheriff had completed negotiations of the IGA, it was often difficult to know whether USMS was paying the appropriate per diem rate. As a result, Sheriffs housed federal prisoners under outdated IGAs, and therefore lost money housing these prisoners. Local taxpayers would end up subsidizing the cost of housing USMS prisoners.

The Evolution of the USMS IGA

In 2006, in an effort to stabilize government costs and achieve “best value” results, as well as to meet the requirements of the President’s “e-government” initiative, the Department of Justice’s Office of the Federal Detention Trustee (OFDT) requested a review of the costs associated with USMS IGAs and directed that a standardized rate structure be designed and applied to all jails participating in IGAs. From there, a plan was developed to evaluate and establish core per diem rates for jails housing federal prisoners, and the Detention Services Network (DSNetwork) was born.

The DSNetwork is an automated system for procuring detention services from local Sheriffs and reporting Quality Assurance Reviews. On November 19, 2007, the DSNetwork replaced the outdated, cumbersome process of negotiating USMS IGAs with a new “electronic Intergovernmental Agreement (eIGA). Under the DSNetwork, the USMS can now enter into a firm, fixed-price per diem rate contract with local governments for housing their prisoners in local jails, and can bypass the bureaucratic and burdensome paper-based IGA process and reduce the workloads involved in the procurement and monitoring of detention services.

How the Negotiations Work

In negotiating an eIGA, the USMS and OFDT complete a four-step process. The first part of this process is referred to as the pre-negotiation process. After a Sheriff prepares their IGA >>>

application, they submit Jail Operating Expense Information (JOEI), which helps OFDT and USMS determine a fair and reasonable price for housing federal prisoners. This data includes expenses such as jail personnel salary and benefits, costs associated with inmate care (such as food, kitchen supplies, medical supplies, and recreation services), facility expenses (such as utilities and insurance), and vehicle expenses (such as maintenance and insurance). In addition to costs incurred, contractors must provide information about credits or revenues which offset expenses. Once the JOEI is submitted, OFDT and USMS personnel review the application for completeness and accuracy, and a USMS grants officer is assigned to the project. This is the USMS representative who will negotiate the IGA and assemble jail-day rate data for negotiations.

Next, the USMS grants officer uses four distinct price analysis techniques to assess the fairness and reasonableness of the Sheriff's proposed per diem rate. First, an adjusted core rate is calculated. This adjusted core rate is determined by applying certain facility characteristics to an econometric model developed by the OFDT. This model includes county wage statistics, facility staff to detainee ratio, facility jurisdiction type, major metropolitan areas, and geographic regions.

Second, rates are estimated using the JOEI data. Specifically, a per diem rate is estimated by dividing the operating costs reported in the JOEI by the facility's total-rated capacity of detainees. The third technique is "market research," which involves comparing the rates of other state and local facilities that are similar to the requesting facility in size and economic situation. The USMS grants officer compares the facility's proposed per diem rate with actual prices charged by other facilities within the same USMS district, an OFDT-calculated average IGA jail-day rate for that USMS district, and/or the facility's previous rate, if ap-

plicable. Finally, the grants officer compares proposed per diem rates to the historical rates of detention space at private detention facilities or to Bureau of Prisons (BOP) per capital rates at federal detention centers.

Usually, price analysis techniques are enough to show the grants officer whether a proposed per diem rate is fair and reasonable. However, when the price analysis techniques are not enough to derive a fair and reasonable per diem rate that is acceptable to the proposing facility, the grants officer performs cost analysis techniques, evaluating a requesting facility's cost elements for allowability and accuracy. The result of this cost analysis should be a per diem rate that provides the facility with enough funds to cover the costs incurred by housing federal prisoners.


Finally, the file is reviewed. USMS grants supervisors review the price negotiation memorandum to ensure that the grants officer adequately justified the proposed negotiated per diem rate. OFDT reviews the price justification memorandum and makes an assessment, and, upon approval of the negotiated per diem rate, the grants officer prepares the IGA documents for the Sheriff's signature.

The Pros and Cons of the New Process

Along with a more streamlined process, the DSNetwork provides other benefits to Sheriffs housing federal prisoners in their local facilities. For example, under the old system, Sheriffs could only submit costs incurred during the previous fiscal year. Under the new DSNetwork, Sheriffs can now submit projected and future jail-operating costs to help the USMS determine a per diem rate for a 36-month fixed-price contract. From my experience, this change in how per diem rates are calculated is often the most advantageous to Sheriffs, as it includes projected jail expenses, such as facility expansions. Such costs were never captured under the old cost-reimbursement IGA system.

Despite the benefits of the new system, there are some drawbacks of the DSNetwork. First, OFDT failed to carry over several significant cost categories from the old IGA system. As a result, the JOEI data will likely not capture all of the allowable costs for the Sheriff, such as repair and maintenance of the facility and the facility's equipment. Likewise, the JOEI data does not show the cost of equipment depreciation or provide guidance on whether to utilize the federal threshold for depreciation or the local threshold. With that, the equipment listed by OFDT, which includes such equipment as fire extinguishers, emergency lights, and lighted exit signs, may mislead Sheriffs into considering only lower price, non-depreciable equipment.

Also, the JOEI fails to capture indirect costs related to county central services and those indirect costs related to the operation of the Office of Sheriff. In a Sheriff's office, the Sheriff, Chief Deputy, and law enforcement and civilian staff should be included in the per diem rate, but these positions are not included in the JOEI line items. Therefore, an unknowing Sheriff may fail to include them. Further, equipment utilized by the Sheriff's staff should be included as a component of direct costs. However, it is a challenge for Sheriffs to determine supportable



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cost allocation methodologies when applying county and Sheriff's office indirect costs.

There also remain problems with the negotiation process. First, the USMS never defines the "core rate" price for housing federal prisoners. Therefore, when Sheriffs provide their cost data and a proposed per diem rate to the USMS, the government never reveals what it feels to be a "fair and reasonable" per diem rate, giving the government the upper hand in the negotiations. Moreover, the USMS "market research", which compares the Sheriff's proposed per diem rate with rates at other nearby local facilities, ignores that disparities can exist between the federal per diem rates offered by nearby Sheriffs. Often, local governments may not have a full understanding of the rules and regulations regarding the negotiations and the per diem rates.

Conclusion

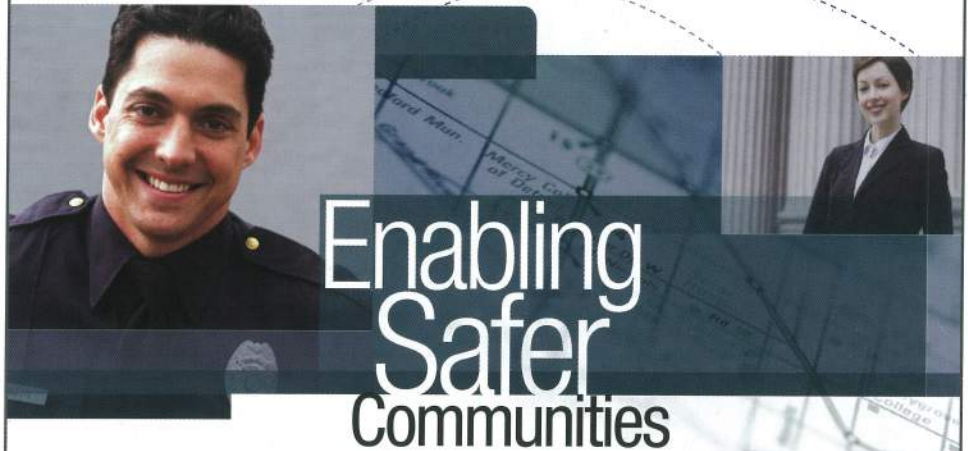
In Fiscal Year 2011, the USMS had an average daily population of 63,112 detainees, a number that has been steadily increasing for nearly the past 20 years. With the new DSNetwork program, USMS has replaced the burdensome and bureaucratic process by which USMS IGAs used to be awarded to local Sheriffs. This has benefited local Sheriffs, as now the Sheriffs can receive 36-month fixed per diem rates, which include projected jail operating expenses. Although there is a clear financial benefit for Sheriffs, it is important that Sheriffs keep in mind the challenges and drawbacks involved with negotiating a per diem rate that accurately captures the costs associated with housing USMS prisoners. ★

Joseph Summerill is the principle Manager of The Summerill Group, LLC, a Washington, DC based law enforcement think tank. Mr. Summerill is also General Counsel for the Major County Sheriff's Association. He may be contacted at joseph@summerill.net.

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A portrait of a middle-aged man with a mustache and glasses, wearing a dark suit, white shirt, and a red and white striped tie. He is smiling slightly. An American flag is visible in the background to his right.

Retired Sheriff Warren Rupf
End of Watch August 9, 2012

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