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# Negotiating a New Per Diem Rate for Housing Federal Prisoners

by Joseph Summerill, Esq. and David Goodwin, Esq.

Today, over 1,000 federal prisoners are housed in local jails throughout the state of Missouri. Historically, local sheriffs have been reimbursed by the U.S. Marshals Service for the actual costs of housing a federal prisoner in the local jail. A new federal program, however, now allows sheriffs to build into their federal per diem rate both projected future jail operating costs, as well as profit. Unfortunately, sheriffs need to be cautious about pitfalls under the new program, which could inadvertently lead to a low per diem rate which does not capture all allowable jail operating expenses.

## Background

Sheriffs have traditionally been reimbursed the cost of housing a federal prisoner in a local jail under Intergovernmental Agreements (IGA) executed by the sheriff and the U.S. Marshals Service (USMS). Each IGA listed a per diem rate which reimbursed the sheriff for the costs of housing one federal prisoner per day. These per diem rates were calculated by the local sheriff and could only include actual and allowable jail operating costs from the previous fiscal year.

The process of calculating a per diem rate under this old system was complicated, and sheriffs were susceptible to audits in which the federal government could retroactively demand reimbursement of monies already paid to the sheriff. This situation created uncertainty and apprehension on the part of sheriffs. They tended to err on the side of undercounting costs, which in turn resulted in inaccurately low per diem rates for housing federal prisoners.

## A New Way to Contract with U.S. Marshals Service

In 2006, the Department of Justice Office of Federal Detention Trustee (OFDT) created a new automated network known as the Detention Services Network (DSNetwork). By November 2007, the USMS completely retired the old system and requested that sheriffs replace old IGAs with new "electronic Intergovernmental Agreements" (eIGA) under the DSNetwork. The new system allows sheriffs to negotiate per diem rates based upon projected future jail operating costs and to seek profit.

## A New Way to Calculate Federal Per Diem Rates

Under the new DSNetwork system, sheriffs are required to submit Jail Operating Expense Information (JOEI) which includes expenses regarding (1) Jail/detention center personnel salary and benefits; (2) Costs associated with inmate care such as food/kitchen supplies, medical supplies, and recreation services; (3) Facility expenses such as utilities and insurance and; (4) Vehicle expenses such as maintenance and insurance. Under the old IGA system, sheriffs could only submit costs from the previous fiscal year. Under the new DSNetwork system, however, sheriffs can submit projected/future jail operating costs.

It is important for sheriffs to recognize that not all cost categories under the old IGA system appear under the new system. For example, the new system does not request information about county or sheriff's office indirect costs. Local sheriffs risk negotiating a new eIGA per diem rate that does not include costs for centralized services provided by the county or the sheriff's office. The new system also does not include cost categories related to equipment depreciation, maintenance or repair, as well as facility depreciation. Nevertheless, sheriffs should seek indirect costs, as well as equipment depreciation and facility depreciation. These are allowable costs for inclusion in the JOEI.

## Sheriffs Can Now Seek Profit

A specific challenge for sheriffs under the new system is determining how much profit to include in their requested per diem rate. In making this decision, sheriffs should consider the total per diem rate as compared against per diem rates of jurisdictions of similar size and economic conditions.

In closing, remember to be cautious about pitfalls under the new program, which could inadvertently lead to a low per diem rate which does not capture all allowable direct and indirect jail operating expenses.

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