



May 4, 2022

Dr. Joseph V. Cuffari
Inspector General
Office of the Inspector General
Department of Homeland Security
245 Murray Lane SW
Washington, DC 20528

Request for OIG Investigation into Private ICE Contracts in California

Dear Dr. Cuffari:

We are writing to you as California based organizations and community stakeholders concerned with issues related to immigration and detention. We are particularly concerned about what appears to be a record of impropriety with respect to the formation of private detention contracts by United States Immigration and Customs Enforcement (ICE) in the state of California. The formation and procurement of these contracts appears to have violated the spirit if not the letter of the law.

Federal procurement laws favor full and open competition in order to protect the best interests of the government, taxpayer dollars, and detained people. In light of a history of ICE conduct that appears to violate applicable law and regulations, we write to request an investigation of ICE's contracting practices in California. This includes sole-source contracts signed by the agency in 2019, citing "unusual and compelling circumstances," as well as Solicitation No. 70CDCR20R00000002 issued by ICE on October 16, 2019 for Detention Services in California, and the subsequent contracts signed between ICE and private entities pursuant to this solicitation.

Moreover, the Department of Homeland Security (DHS) Office of Inspector General (OIG) has previously identified shortcomings in ICE's procurement activities in other states, putting the agency on notice of its procurement obligations. The OIG concluded that "ICE has no assurance that it executed detention center contracts in the best interest of the Federal Government, taxpayers, or detainees" and further noted that "[i]t appears that ICE deliberately circumvented [Federal Acquisition Regulation (FAR)] provisions[.]"¹

We provide additional background on the issue of private contracts by ICE in California and outline the scope of the alleged impropriety with what we believe is sufficient detail and evidence to initiate a relevant investigation.

¹ Office of Inspector General, Dep't of Homeland Security, *Immigration and Customs Enforcement Did Not Follow Federal Procurement Guidelines When Contracting for Detention Services* (Feb. 21, 2018), <https://www.oig.dhs.gov/sites/default/files/assets/2018-02/OIG-18-53-Feb18.pdf>.

Background

A touchstone of the federal procurement process is the default requirement of “full and open” competition, except under narrowly defined circumstances.² “Full and open” competition promotes the responsible expenditure of taxpayer dollars, the development of high-quality proposals, and fairness in the federal procurement process. Despite this, ICE has a history of consistently relying on the exceptions to full and open competition, raising concerns as to whether contracts have been awarded in a proper manner.

A 2019 audit by the state of California confirmed that the private company, the GEO Group (GEO) used intergovernmental service agreements (IGSAs) with the city of McFarland and Adelanto as a means to circumvent federal procurement rules by approaching various cities in the state to enter into an IGSA agreement with ICE.³ The ability to circumvent competitive bidding law requires the cooperation of a local city, a process typically initiated by a federal entity looking to contract with a local city. However, the California auditor uncovered evidence that it was in fact GEO that initiated these contracts.

The audit provides evidence that GEO took on the improper role of initiating an IGSA with the city of McFarland, in order to secure a noncompetitive contract. The California audit includes an excerpt from a January 2015 memo to the city council in which McFarland’s city manager explained how GEO sought to enter into the contract with ICE by approaching city after city to “partner” with them. The memo states:

GEO would like to enter into an Intergovernmental Service Agreement contract with the Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE) for the detention and care of aliens at its Mesa Verde facility in Bakersfield. GEO cannot enter into an [intergovernmental service agreement] with a federal government on its own. An [intergovernmental service agreement] can only be entered into with another government authority. Mesa Verde is located on South Union, in the City of Bakersfield. Since the prison is in the City of Bakersfield, GEO first approached the City of Bakersfield to partner with them on [the intergovernmental service agreement]. The City of Bakersfield declined to be a partner. GEO then asked the City of McFarland to partner with them.⁴

ICE flouted the open competition requirements of the procurement process a second time when it entered into an IGSA with the city of Adelanto, again through coordination with GEO. In the case of Adelanto, GEO inappropriately negotiated on behalf of the city directly with ICE regarding an IGSA that related to its facilities. As noted by the State Auditor, “A similar situation occurred in Adelanto. In a May 2014 memo to the city council, the Adelanto city manager at the time explained that GEO negotiated with ICE to amend Adelanto’s ICE contract to house additional detainees at the Adelanto Detention Facility.”⁵

² 41 U.S.C. § 3301.

³ Cal. State Auditor, City and County Contracts With U.S. Immigration and Customs Enforcement, Report 2018-117, 15 (Feb. 2019), <https://www.auditor.ca.gov/pdfs/reports/2018-117.pdf>

⁴ *Id.*

⁵ *Id.*

It is difficult, if not impossible, to believe that GEO could have undertaken this type of behavior without some level of coordination with ICE, and believed that they would be awarded a contract so long as they could find a local city to partner with. We believe that the circumstantial evidence provided in the following examples further confirms impropriety in procurement and contracting practices between ICE and private operators in California.

In addition, GEO specifically sought out cities that would provide minimal interference or oversight with respect to their administration of these facilities. As noted by the State audit, “The cities have only been minimally involved in the ICE contracts. For example, the Adelanto city manager stated that the only involvement the city has with ICE or GEO is to sign monthly invoices from GEO and then to transfer to GEO the federal funds the city receives when ICE pays the invoices.”⁶

Reports have also indicated that GEO has used financial incentives to influence local city officials. “City Manager Jessie Flores asked GEO for donations to local causes, including \$7,500 for the city’s annual Christmas parade. In one email, Flores called a Jan. 16, 2019, meeting with Zoley and his executive team “very productive and informative” and asked for a \$3,500 contribution to the baseball league.”⁷

This background provides context for our request for investigation, and underscores the corrupt nature of contract practices in the state of California between ICE and private operators.

2019 Sole-Source Contracts Were Awarded to Private Operators Engaged in Bad Faith Conduct Without Full and Open Competition

In the year 2019, ICE awarded two sole-source contracts to GEO. This included a 19 million dollar one year contract for the operation of the Mesa Verde Detention Facility. GEO also received a 62 million dollar sole-source contract for the Adelanto detention facility. The contracts were awarded outside of the “full and open competition” requirements of federal law, with ICE citing section 6.302-2 Unusual and compelling urgency under the Federal Acquisition Regulations. This standard is normally reserved in urgent situations in which the procurement of specific services is needed to avert serious circumstances or injury. Evidence has come forth that the circumstances that led to these contracts were created by the private prison operator GEO, leading directly to their securing a direct non-competitive contract.

The legal rationale cited by ICE to secure these contracts ignores the role that GEO played in the termination of prior IGSA and points to almost certain collusion and coordination from the outset.

On March 27, 2019, the city of Adelanto informed GEO Group and ICE that it was ending its IGSA for the Adelanto ICE Processing Center. Shortly thereafter, ICE awarded a \$62 million sole-source contract — which bypasses the competitive process — directly to GEO Group.

⁶ *Id.* at p. 17

⁷ Rebecca Plevin, How a private prison giant has continued to thrive in a state that wants it out, Palm Springs Desert Sun, Jan. 25, 2020, <https://www.desertsun.com/in-depth/news/2020/01/24/private-prison-giant-geo-thrives-california-state-wants-out/2589589001/>.

According to ICE, “[t]he award of the sole-source contract is necessary to prevent the immediate disruption of operations while ICE continues its competitive contract process.”⁸ However, reports suggest that GEO Group may have influenced members of Adelanto’s City Council to end its IGSA and to put itself in the position to receive a sole-source contract.⁹ The push to terminate the contracts appears to have been initiated by GEO in order to contract directly with ICE and expand the facility, following the passage of AB 103, a California law that prevented any detention facility operated under an IGSA from expanding to include more bed space.

GEO aggressively lobbied the city of Adelanto in order to end its IGSA, using illicit financial promises outside of any contractual arrangement to do so. Evidence of this conduct comes directly from Adelanto city officials, including Mayor Pro Tem Stevevonna Evans.¹⁰ Evans recounted her own first hand knowledge of GEO’s attempts to lobby the Adelanto City Manager Jesse Flores to end the IGSA in order to expand the facility:

Evans said Flores’ idea to cancel the contract goes back to late February, when she walked in on a meeting between him and GEO Group Chief Executive George Zoley over the possibility of ending the contract. She said they explained that ending the contract would alleviate the city of potential future litigation.

At that February meeting, Evans said, Zoley also explained that state law prohibited the company from expanding operations — unless the city backed out of the contract.

In fiscal year 2017, Adelanto transferred more than \$71 million in payments from ICE to GEO Group. In return, GEO has paid the city a yearly fee of about \$1 million to oversee the distributions. Evans said that Zoley assured city leaders that they would continue receiving payment even after they ended the contract.¹¹

GEO exerted undue influence on city officials by promising the continuation of monetary payments *only* if city officials agreed to terminate the existing IGSA. A collection of emails obtained by the Desert Sun through the California Public Records Act (hereinafter, “CPRA”) documents how GEO systematically lobbied the city of Adelanto to terminate the IGSA agreement and set the stage for the Adelanto facility to expand. The Sun reported, “Zoley, the company’s CEO, called Flores, the Adelanto city manager, and left a message on Feb. 5, 2019, emails show. Looking for Flores, he also called the Adelanto facility’s warden and the city clerk. The emails don’t explicitly state why the CEO needed to reach the city manager and don’t mention the state law. But the correspondence indicates that when they finally spoke, the two discussed Flores sending out a pair of letters to GEO and ICE, announcing the city’s decision to

⁸ Garrett Bergthold, *ICE, GEO Group agree on immigrant detention contract*, DAILY PRESS (July 6, 2019), <https://www.vvdailypress.com/news/20190706/ice-geo-group-agree-on-immigrant-detention-contract>.

⁹ Rebecca Plevin, *Adelanto Moves to Revisit Ending Contract for Troubled Immigration Detention Facility*, PALM SPRINGS DESERT SUN (April 11, 2019), <https://www.desertsun.com/story/news/politics/immigration/2019/04/11/adelanto-wants-revisit-decision-ending-immigrant-detention-facility-contract/3437933002/>.

¹⁰ Andrea Castillo, *Adelanto Cuts Ties to Troubled ICE Detention Center—and Removes a Layer of Oversight*, LOS ANGELES TIMES (Apr. 8, 2019), <https://www.latimes.com/local/lanow/la-me-adelanto-immigrant-detention-20190408-story.html>. Under an IGSA, local governments like Adelanto serve as an intermediary between contractors and ICE.

¹¹ *Id.*

terminate its contracts for the detention facility.”¹² Additional emails published by the Desert Sun show that on February 6th, a GEO employee sent an email to Adelanto City Manager Jesse Flores, indicating that George Zoley, CEO of GEO, promised that financial contributions to the city would continue beyond the termination of the agreement. “George asked me to let you know that there would be no financial impact to the city,” she wrote.¹³ The Desert Sun went on to summarize the emails, stating:

On March 13, a GEO employee sent Flores a memo from Zoley. “We are respectfully requesting that the City of Adelanto give its notice of discontinuation to ICE,” Zoley said in the memo. In addition to the bed taxes, GEO would continue paying the city \$50,000 a year, even though Adelanto would no longer be contractually involved in the detention center and the city would have no oversight role of the facility, he said. Terminating the contract, he said, would “reduce the city’s legal and financial exposure to ICE critics advancing claims for detainee records, or other facility documents.”

“The annual financial compensation to the City of \$50,000 for facilitating the IGSA will be continued by GEO,” he wrote. GEO would also keep paying the bed tax — nearly \$1 million — outlined in the 2016 development agreement between the company and the city, he said. Critics see GEO’s pledge to continue paying Adelanto \$50,000, with no strings attached, as an incentive to get the struggling city to comply with its request.

GEO undertook a similar effort to exercise undue influence over the city of McFarland. As reported by the Desert Sun, “On Nov. 30, 2018, John Wooner, the McFarland city manager at the time, notified GEO that the city would be ending its agreements with the company and ICE. In a letter, he said the city's agreements with the company and ICE had been a "satisfactory arrangement for the City" until the state started adopting laws targeting detention facilities. When he sent two more letters to GEO and ICE on Dec. 19, 2018, informing them that the city would be ending its agreements in three months, he used nearly identical letters as those provided by GEO to Adelanto.”¹⁴

We believe that there were concerted efforts by private corporations to effectively circumvent California state law — which currently prevents the expansion of detention facilities operating under IGSA¹⁵ — and to benefit financially from the detention of individuals in California. The contract was awarded outside of the “full and open competition” requirements of federal law, with ICE citing unusual and compelling circumstances. This standard is normally reserved in urgent situations in which the procurement of specific services is needed to avert serious circumstances or injury. However, in this case the specific circumstance was specifically created by GEO’s conduct.

It is difficult to imagine that GEO did not have some level of assurance that it would be guaranteed a sole-source, and eventual long term contract directly with ICE, before pressuring

¹² Plevin, supra.

¹³ Plevin, supra.

¹⁴ Plevin, supra.

¹⁵ Senate Bill No. 29, Passed and Signed into Law Oct. 5, 2017, https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB29.

the cities of McFarland and Adelanto to terminate their IGSA's. Therefore we believe that there is every indication that some level of coordinated impropriety took place between ICE and GEO.

The legal rationale cited by ICE to secure these contracts ignores clear the role that GEO played in the termination of prior IGSA's and points to almost certain collusion and coordination from the outset. It also indicates the participation of ICE in a scheme to unethically influence local city governments, and award contracts to a private operator acting in bad faith.

Solicitation No. 70CDCR20R00000002 Was Designed to Eliminate Full and Open Competition¹⁶

On October 11, 2019, California signed AB 32 into law. The bill banned the use of private for-profit detention facilities, and prohibited any extension of existing contracts with private detention operators. The bill went into effect on January 1, 2020.

On October 16, 2019, ICE issued Solicitation No. 70CDCR20R00000002 for Detention Services in California. The terms of this solicitation served as the basis for awarding contracts to the same corporations that had previously been operating detention facilities in the state of California, despite the claim that the solicitation was compliant with full and open competition standards required under federal procurement law. The four contracts awarded have a total value of more than six billion dollars.

The contracts signed by ICE in December of 2019 appear to have been a coordinated attempt to circumvent AB 32, a California law set to go into effect on January 1, 2020. AB 32 prevents the signing of any new contracts with private detention operators in the state, and would have precluded ICE from signing new contracts after the law went into effect. Therefore it appears ICE's intent was to push through lengthy contracts for detention services, with little interest in pursuing full and open competition. The solicitation was simply a formality through which ICE was forced to go through in order to renew contracts for all facilities and operators that were already in operation in the state of California.

Although the Solicitation indicated that the procurement process will be conducted in a manner consistent with "full and open competition," its terms appeared designed to eliminate meaningful competition in favor of three private corporations that operate within California. According to the Solicitation synopsis:

- "ICE requires Contractor-Owned/Contractor-Operated detention facilities (existing or renovated) within the San Diego, San Francisco and Los Angeles Areas of Responsibility (AOR)."
- "The facilities shall be turnkey ready at the beginning of contract performance and able to provide housing, medical care, transportation, guard services, meals, and the day to day needs for people in ICE custody. Due to mission needs, proposals for new construction will not be accepted for this solicitation."
- "This procurement is expected to award at least three (3) separate Indefinite Delivery Indefinite Quantity's (IDIQ) with firm-fixed price unit prices and some labor hour

¹⁶ FedBizOpps.gov, No. 70CDCR20R00000002, *Detention Services for California*, https://www.fbo.gov/index?s=opportunity&mode=form&id=3ca524db03e0480542f662dfb7ddbe7f&tab=core&_cvi_ew=0.

Contract Line Item Number (CLINs). Each IDIQ will have a five (5) year period of performance for the base period and two five-year options.”

The solicitation sought four contractor owned and operated facilities, with the requirement that they be “turnkey ready”, and prepared to enter into fifteen year contracts with the agency. These requirements were posted with a 15 day response time for bids. The initial bid posted by ICE was revised on October 23, 2019 and in fact went through multiple revisions in order to address inconsistencies included in the initial posting. Far from creating a competitive process in the interest of public savings and economic efficiency, the solicitation also included a term of 5 years, with additional options that could ultimately result in a 15 year contract. Such a lengthy contract term is in contravention of full and open competition in the marketplace.

The fact that the solicitation in question was publicized for only 15 days, in pursuit of 15 year contracts in excess of 5 billion dollars provides a prima facie case that the solicitation process was neither competitive nor open, but instead designed to expedite contract awards to facilities that were already in operation.

It is improper to write a solicitation in a manner that is so specific that it would only attract certain favored bidders. In this case there is evidence that ICE intended to favor incumbent detention operators and award contracts of considerable length and value without any real competitive oversight or vetting.

On December 20th, 2019 ICE announced that it had entered into four contracts with private prison companies that included:

- Two 15-year contracts, worth a combined \$3.7 billion with GEO Group for facilities in the Los Angeles and San Francisco areas, are likely for the company's Adelanto and Mesa Verde facilities with possible annexing of former GEO Desert View, Central Valley, and Golden State California Department of Corrections facilities.¹⁷
- A 15-year contract, worth \$679 million with Management and Training Corp. to provide guard services at a detention center in the San Diego area, for the Imperial Regional Detention Facility.
- A five-year contract, worth \$2.1 billion with CoreCivic to provide guard services at a private immigration detention center in the San Diego area for the Otay Mesa Detention facility.

Our concerns with the Solicitation can be summarized as follows:

- **Streamlined Solicitation.** Although Federal Acquisition Regulations generally require that contracts with an estimated value exceeding \$25,000 be advertised for at least 15 days before issuance of a solicitation, ICE opted to utilize the combined synopsis and solicitation procedure set forth in FAR 12.603, which is designed “to reduce the time required to solicit and award contracts for the acquisition of commercial items.”¹⁸ The end result is that successful bidders were required to propose turnkey ready facilities within an extremely short period of time, underscoring the advantage that existing contractors are likely to exercise during competition.

¹⁷ <https://www.courthousenews.com/wp-content/uploads/2019/12/CalifPrivatePrisonBan-COMPLAINT.pdf>

¹⁸ 48 C.F.R. § 12.603(a).

- **Waiver Availability.** Following publication of the Solicitation, industry members proposed a series of revisions to the Solicitation’s terms to accommodate the existing design of certain facilities and reduce costly renovations that would otherwise be required. In response to many of these requests, the government directed potential bidders to the “revised RFP/PWS that addresses the possibility [of] ... limited waivers from ICE Design Standards and site-specific requirements subject to certain conditions.” This eleventh hour revision to the Solicitation is especially troubling in light of a report by the DHS Office of Inspector General finding that “[i]nstead of holding facilities accountable through financial penalties, ICE issued waivers to facilities with deficient conditions.”¹⁹
- **Contract Term.** The Solicitation includes an initial contract term of 5 years and provides additional options that could result in a 15-year contract. Instead of creating a competitive process that promotes public savings and economic efficiency, a contract term of this length further suppresses full and open competition. Moreover, there is scant information regarding whether ICE’s use of a contract vehicle that may result in 15-year contracts complies with all applicable requirements for the funding of such contracts, particularly since DHS is operating under a continuing resolution and has yet to obtain a full budget for the fiscal year.
- **Annexing of facilities.** ICE appears to have entered into contracts with GEO group for the Adelanto and Mesa Verde facilities, and then annexed other facilities previously dedicated to the California Department of Corrections. This contract modification is well beyond the scope of the ICE’s solicitations, and the contracting structure reinforces concerns that the bidder and ICE collaborated to circumvent open procurement.

Notwithstanding the phase out of the use of for-profit prisons and civil detention facilities in California after January 1, 2020 pursuant to AB32, a safe harbor provision in the law allowed contracts already in existence to continue until their expiration.²⁰ Given the timing and terms of the Solicitation—particularly in light of ICE’s history of suspect contract activities in the state of California and insufficient oversight—we are concerned that the Solicitation is intended to favor incumbent contractors. If so, these efforts would be in direct contradiction with the spirit of full and open competition required by federal procurement law.

In light of these concerns we ask that your office investigate the following matters:

1. Whether ICE coordinated directly or indirectly with any private entities in devising Solicitation No. 70CDCR20R00000002.
2. Any and all communications between ICE and the GEO Group Inc, leading up to Solicitation No. 70CDCR20R00000002. In addition we ask for an investigation into the two one-year no-bid contracts awarded to GEO in 2019 for the Mesa Verde and Adelanto Detention facilities which were outside the “full and open” requirements of federal law.

¹⁹ Office of Inspector General, Dep’t of Homeland Security, *ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards* (Jan. 29, 2019), <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>.

²⁰ Assembly Bill No. 32, Passed and Signed in to Law October 11, 2019, https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB32.

3. We ask for an investigation into how ICE assessed that sole-source contracts awarded to GEO in 2019 for continuation of services at Mesa Verde and Adelanto were necessary to prevent the immediate disruption of operations, including if ICE explored alternatives to detention such as releasing individuals, including those with serious medical concerns from custody.
4. We ask for an investigation into the legal justifications and motivations for awarding five year contracts with two five year options as part of the 2019 solicitation process. Specifically, we request an investigation into how contracts of this duration comply with requirements for competition and cost-savings.
5. An investigation pertaining to ICE's inclusion of a waiver provision in the 2019 Solicitation and the circumstances under which such waivers were granted.
6. All communications relating or referring to AB 32, including all communications between DHS or ICE and the GEO Group Inc., Core Civic, or MTC regarding AB 32.

Thank you for your attention to this matter.

Sincerely,

/s

Jackie Gonzalez
Policy Director
Immigrant Defense Advocates

/s

Lisa Knox
Legal Director
California Collaborative for Immigrant Justice

Supporting Organizations

Alianza Sacramento
Immigrant Legal Resource Center
NorCal Resist
Centro Legal de la Raza
Secure Justice
California Alliance for Youth and Community Justice
Council on American-Islamic Relations
Center for Gender & Refugee Studies
Interfaith Movement for Human Integrity
California Immigrant Policy Center
Pangea Legal Services
Long Beach Immigrant Rights Coalition
Community Legal Services in East Palo Alto (CLSEPA)
National Immigrant Justice Center
Central American Resource Center - CARECEN- of California
Immigrant Legal Defense