

DEPARTMENT OF HOMELAND SECURITY
Office of Inspector General

**Review of Immigration and Customs Enforcement
Detainee Telephone Services Contract**



OIG-08-54

MAY 2008



Homeland Security

MAY 12 2008

MEMORANDUM FOR: The Honorable Julie L. Myers
Assistant Secretary
Immigration and Customs Enforcement

FROM: 
Richard L. Skinner
Inspector General

SUBJECT: *Review of Immigration and Customs Enforcement
Detainee Telephone Services Contract*

Based on U.S. Government Accountability Office (GAO) and Immigration and Customs Enforcement (ICE) concerns that the contractor, Public Communications Services, Inc. (PCS), was not complying with the terms and conditions of its contract, you asked us to conduct an audit of the detainee telephone services contract (Attachment 2). You had questions about three main issues: services that ICE contracted for compared with services the contractor provided; technical issues, including call routing, excess fees, call volume, connectivity rates, and telephone maintenance; and the sale, use, and rates of debit calling cards. This letter summarizes observations from our preliminary work and provides information about the strengths and weaknesses of ICE's solicitation for a replacement contract. We make three recommendations that when implemented will strengthen the detainee telephone services contract and ICE management controls. Attachment I provides information about our purpose, scope, and methodology.

We did not determine the full extent of PCS's compliance with the terms and conditions of its contract with ICE. Data elements required for a thorough analysis are not maintained by the program office and might not be readily available from the contractor. Also, the contract does not provide for financial or other penalties against the contractor for inadequate connectivity, excessive fees, or other improprieties. Finally, the structure of the contract does not provide a mechanism for the government to withhold payment from the contractor. ICE will soon award a replacement contract on the recently closed solicitation for a new detainee telephone services provider. Based on the likelihood that a full audit would not result in a material recovery to the government or detainees and ICE's ongoing actions to replace and improve the contract, we do not plan to conduct additional audit work on PCS's performance.

Background

ICE standards for detainee treatment specify that all detainees be entitled to "reasonable and equitable access" to telephones. Moreover, detainees are entitled to call legal services, consulates, and the Office of Inspector General (OIG) hotline at no charge to the detainee or the receiving party. To provide this fee call and *pro bono* detainee telephone service, ICE awarded no-cost to the government contract, known as DTS-IV (the fourth detainee telephone services contract). The contractor provides detainees with *pro bono* telephone service in exchange for the exclusive right to sell debit calling cards to detainees and to charge fees for collect calls. The contractor is also responsible for installing, maintaining, and repairing the telephone system; and connecting calls to the *pro bono* network. DTS-IV governs service for the 15 primary ICE detention facilities and almost 200 secondary detention facilities, called intergovernmental service agreement facilities (IGSAs). ICE extended the current contract through July 2008, while ICE conducts a competition and awards a replacement contract.

Prior OIG and GAO reports identified problems with detainee telephone access and service. According to our December 2006, we were unable to connect with 50 of 63 consulate telephone numbers (79%) that we tested at an IGSAs in Paterson, New Jersey.¹ We also tested 12 *pro bono* legal service telephone numbers and were unable to connect with any of them. In its July 2007 report, GAO identified systemic *pro bono* telephone system problems and made 6 related recommendations². Issues GAO reported on included lack of contract oversight, posting of incorrect consular and legal services phone numbers, and inadequate inspections of telephone service functionality. The ICE contracting officer also documented in May 2007 access and maintenance problems.

Data on Compliance Not Readily Available; Recovery Unlikely

An accounting of the full extent of contractor compliance cannot be determined in the near term. Such a determination would require analyzing millions of call minutes and rate charges- an enormous audit undertaking for which data is not readily available. The information needed includes actual data on debit cards sold, collect call rates and surcharges, commission payments, and data related to the routing of calls and subsequent fees. Most, if not all, of this needed information is under PCS control, due to the contract structure. While the current contract includes reporting requirements on call volumes and maintenance, it does not require reporting on contractor revenue. At present, PCS provides information to ICE about minutes used, but not associated charges.

The government is likely not entitled to a recovery stemming from this no cost contract. The government cannot withhold payment, because the government is not paying the contractor. Likewise, prior payments do not exist against which the government could

¹ OIG, *Treatment of Immigration Detainees Housed at Immigration and Customs Enforcement Facilities*, OIG-07-01, December 2006.

² GAO, *Alien Detention Standards: Telephone Access Problems Were Pervasive at Detention Facilities; Other Deficiencies Did Not Show a Pattern of Noncompliance*, GAO-07-875, July 2007.

recoup funds. Moreover, the contract does not provide for financial or other penalties against the contractor for inadequate connectivity, excessive fees, or other improprieties.

In the event we were able to identify precisely the extent of contractor improprieties that necessitated refunds, returning money to detainees or collect call recipients would involve locating thousands of individuals. Immigration detainees and their contacts pay the ICE contractor through debit card sales and collect call surcharges. Large percentages of these individuals have likely been deported or are detainee relatives who were never in the United States. Moreover, the current contract does not address refunding detainees for unused debit calling cards or incorrect charges.

Stronger Requirements and Opportunities to Strengthen New Contract

The existing contract, DTS-IV, expires July 21, 2008, at which time ICE will implement anew, stronger contract. In designing the new solicitation, ICE corrected many weaknesses in the current contract. For example, the solicitation statement of objectives includes specific call rates, realistic volumes expected across call types, a rebate and refund plan requirement, and a strengthened quality assurance surveillance plan. Each of these provisions improves service or oversight compared to the current contract.

ICE can further strengthen its forthcoming contract by addressing the additional issues we identified in the current contract.

Remedies for Poor Performance. The current contract has no measures with which ICE can compel improved contractor performance. Moreover, DTS-IV does not provide incentives for excellent contractor performance or innovation. Under a typical contract, the government can withhold partial payment until a contractor improves. By contrast, because DTS-IV is no cost to the government, ICE has no measures at its disposal to deter poor contractor performance. For the new contract, ICE should develop and implement a plan to reward the contractor for exceeding performance benchmarks and penalize the contractor for missing them, e.g., an award pool and performance bond.

Telephone Service. Contractor status reports continue to indicate problems similar to those previously reported by OIG and GAO, including failures to connect pro bono calls, out of service equipment, and untimely resolution of service and rate complaints. For example, the October 2007 status report shows that 82% of the unresolved telephone issues involved incorrect phone numbers on the pro bono system. A stronger contract would establish performance benchmarks, such as pro bono connectivity and fee accuracy rates and complaint response and resolution times. ICE should then vigorously monitor contractor performance compared to the established benchmarks and respond appropriately.

Charges and Revenues. More comprehensive reporting requirements would strengthen ICE's ability to oversee and manage detainee telephone services. ICE needs more information than it now has to price the new contract and ensure that detainees pay competitive charges in the volatile telecommunications market. At present, the

government is not receiving any information regarding charges to recipients of detainee collect calls. Collect calling is particularly vulnerable to abuse, because the rates are not specified in the contract and the call recipient might not immediately know how much the call costs. ICE should require that the contractor report revenues related to the dollar value of collect call charges and debit card sales. The contractor should also provide information about outstanding balances of unused cards to reveal the potential for refunds.

Refunds for Debit Card Balances and Incorrect Charges. DTS-IV does not address refunding detainees for unused debit calling cards or incorrect charges. The new solicitation requests that bidders submit refund plans. To strengthen the contract, ICE should require that the successful bidder's refund plan provide an efficient process to expedite refunds to detainees within specified time frames and to account fully for refunds due to detainees who cannot be located. To prevent the contractor from earning excess profits, ICE should determine the disposition of refunds for detainees who cannot be located. ICE should receive regular reports on the status of refunds.

Commissions and Revenue Sharing. ICE officials told us that some ICE detention facilities receive revenue sharing and commission payments from PCS under agreements about which neither the contracting officer nor contracting officer's technical representative were aware of until May 2007. For example, PCS has revenue sharing agreements with at least 7 facility operators, wherein PCS pays the operators a percentage of debit cards sold at their facilities. In some cases, a facility operator is in the detention center pursuant to a government contract; the operator should disclose such revenues to the government as an offset to incurred costs, a practice not currently happening.

As the steward of the detainee population, ICE should be aware of all third-party arrangements the contractor has related to telephone service. Revenue sharing and commission arrangements create an environment vulnerable to fraud; management controls are not in place to determine whether the payments are legal, proper, and documented. To ensure the propriety of the relationships and flow of funds, ICE needs to be knowledgeable about the specifics of these arrangements. ICE should require the follow-on contractor to disclose fully all revenue sharing agreements and commission payments. ICE needs to research the legality of these payments. If illegal, ICE should require the contractor to obtain approval for each agreement and the facilities need to be accountable for payments received. If the payments are not legal or the contractor and detention facilities cannot properly account for them, the arrangements should be prohibited.

Recommendation #1: We recommend that you include provisions in the detainee telephone services contract to establish and implement

- (a) Remedies for poor contractor performance, such as an award pool and performance bond.

- (b) Performance benchmarks, including pro bono connectivity and fee accuracy rates and complaint response and resolution times.
- (c) Reporting requirements related to collect call charges and debit card sales and unused balances.
- (d) An efficient refund process that specifies time frames and requires accounting of refunds for detainees who cannot be located.

Recommendation #2: With respect to third-party commission and revenue sharing arrangements, we recommend that you

- (a) Require the detainee telephone services contractor to disclose all third-party commission and revenue sharing arrangements.
- (b) Determine whether such arrangements are legal.
- (c) If the arrangements are legal, require the contractor to obtain ICE approval for each agreement and detention facilities to account for payments received.
- (d) If the arrangements are illegal or the contractor or detention facilities cannot properly account for the payments, prohibit such arrangements.

Better Management Controls Will Improve ICE's Ability to Ensure Telephone Service Consistent with Standards

We identified opportunities for ICE to develop its management controls related to overseeing and managing detainee telephone service provision. Taking advantage of these opportunities would improve ICE's ability to ensure that telephone service is consistent with applicable standards.

Field Office Participation and Support. ICE headquarters procures detainee telephone services that are then delivered in field locations. Successful monitoring and oversight of contractor performance requires the active participation of field staff. The contracting officer and contracting officer's technical representative told us that, to date, 12 of the 24 field office directors have reported to headquarters on their required weekly telephone serviceability tests and random pro bono programmed number verification.

Under the current contract, the contracting officer and contracting officer's technical representative have to work through a cumbersome Detention and Removal Operations management structure to monitor contractor performance. In effect, the contracting officer and contracting officer's technical representative have the responsibility for detainee telephone service, but no authority over ICE field staff who have an essential role. A more effective internal control program would better integrate the headquarters and field roles in ensuring proper telephone service to detainees. For example, performance of oversight responsibilities should be an element for consideration in field

staff annual appraisals. Moreover, the ICE facility inspection program should include a more substantial regimen to evaluate telephone service provision.

No-Cost to the Government Contract Structure. To moderate the influence of incentives in the no cost structure, ICE needs strong management controls to ensure service quality and fairness, such as performance standards, incentives, and field office participation. For example, the contractor has an incentive to focus on increasing its revenue through debit card sales and collect call surcharges, rather than providing and maintaining high quality pro bono service that would likely increase contractor costs. When the pro bono network is not working properly or easily, some detainees might resort to fee calls, thereby generating revenue and decreasing costs for the contractor.

Recommendation #3: We recommend that you develop better management controls to improve ICE's ability to ensure telephone service consistent with standards, such as

- (a) Integrating headquarters and field office oversight roles.
- (b) Including a more substantial evaluation in the facility inspection program.
- (c) Moderating the influence of incentives in the no-cost contract structure.

Conclusions

ICE is already improving its ability to ensure adequate detainee telephone services. First, ICE decided to end the current contract in July 2008. Also, ICE strengthened requirements for the succeeding contract. We identify further opportunities for contract improvements above. Stronger ICE management controls will extend the improvements ICE already has underway to fulfill its inherent responsibility to provide both quality pro bono and fairly priced fee telephone service to detainees in its custody.

Neither the government nor detainees are likely entitled to a recovery stemming from the current no cost contract. The government cannot withhold payment and prior payments do not exist against which the government could recoup funds. Moreover, the contract does not provide for financial or other penalties. The amount of time, cost, and resources necessary for a comprehensive accounting of contractor compliance would likely exceed any recovery to the government or detainees.

Consistent with our responsibility under the *Inspector General Act*, we are providing copies of our report to appropriate congressional committees with oversight and appropriation responsibility over DRS. In addition, we will post a copy of the report on our website for public dissemination. Please advise our office within 90 days of the date of this memorandum on your progress in implementing the recommendations and the date by which each recommendation will be fully implemented.

Should you have any questions, please call me, or your staff may contact Anne L. Richards, Assistant Inspector General for Audits, at (202) 254-4100.

Attachment 1

Objective, Scope, and Methodology

Our original objective was to conduct the financial audit the Assistant Secretary, ICE, requested (Attachment 2). To prepare for the audit, we conducted preliminary work to understand the issues, data sources, and audit requirements. As we proceeded with this activity, we realized that the program office was preparing to award a replacement contract. We decided to provide timely support to ICE's effort to improve the contract, its oversight, and telephone service provision, and, therefore, we did not conduct additional audit work on PCS's performance.

The work we conducted focused on detainee pro bono and fee telephone services pursuant to ICE contracts with Public Communications Services, Inc. These contracts covered 15 primary ICE facilities and about 200 secondary IGSA facilities, an increase from 168 IGSA when ICE awarded DTS-IV. We obtained, indexed, and analyzed ICE contract files for the DTS-I, DTS-II, DTS-III, and DTS-IV contracts, including a comparative analysis of the contract provisions. We obtained additional information from knowledgeable individuals such as the contracting officer, COTR, OIG Counsel, and the GAO staff involved with the July 2007 GAO report.

We conducted our work between September 2007 and January 2008 under the authority of the Inspector General Act of 1978, as amended. We did not perform this review in accordance with generally accepted government auditing standards.

Major Contributors to this Report

Rosalyn G. Millman, Director
Frank Parrott, Audit Manager
Jeffrey Wilson, Team Leader
Christopher Byerly, Team Member
Gwendolyn Priestman, Team Member

Attachment 2
Request from Assistant Secretary, ICE

*Office of the Assistant Secretary
U.S. Department of Homeland
Security
425 I Street, NW
Washington, DC 20536*



**U.S. Immigration
and Customs
Enforcement**

JUN 01 2007

MEMORANDUM FOR:

Richard L. Skinner
Inspector General
Department of Homeland Security

FROM:

Julie L. Myers *ju*
Assistant Secretary

SUBJECT:

Request for Inspector General Audit of ICE Pro-Bono
Telephone System and Contract

As we discussed during our meeting on May 3, 2007, I am asking for your assistance in conducting an audit of contract COW-4-C-0122 with Public Communications Services (PCS). This contract provides telephone services to detainees at almost 200 facilities. ICE has confirmed that PCS has not complied with the terms and conditions of the contract and we need your assistance to determine the extent of non-compliance and possible remedies. The following issues are of concern; however, we will defer to you to determine the scope of the audit.

- The exact services contracted for and those actually provided;
- Contractor performance across the life of the contract, including:
 - Routing of calls across networks that might have generated excessive fees, or similar activity
 - Call volume and connectivity success rates
 - Telephone maintenance and the rate which telephones were available to detainees
- Activity relevant to the sale and use of debit cards
 - Rates and fees charged for telephone calls and card usage
 - Debit card sales transactions, including transfer of unused funds or minutes between cards and reimbursements made to card purchasers

Attachment 2 – continued
Request from Assistant Secretary, ICE

My staff has begun an aggressive effort to ensure PCS complies with the contract. We recently completed visits to seven sites to assess performance issues. We will be happy to share information resulting from these visits to assist you with this audit.

Should your staff require additional information, please do not hesitate to contact Ms. Clinett Short at (202) 616-7629.

Attachment 3
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