Department of Homeland Security
Office of Inspector General

U.S. Immigration and Customs Enforcement's Enforcement and Removal Operations' Contract Funding and Payment Processes

OIG-13-80

April 2013

APR 24 2013

MEMORANDUM FOR: Gary Mead
Executive Associate Director
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement

FROM: Anne L. Richards
Assistant Inspector General for Audits

SUBJECT: *U.S. Immigration and Customs Enforcement's Enforcement and Removal Operations' Contract Funding and Payment Processes*

Attached for your action is our final report, *U.S. Immigration and Customs Enforcement's Enforcement and Removal Operations' Contract Funding and Payment Processes*. We incorporated formal comments from the U.S. Immigration and Customs Enforcement's (ICE) Office of Management and Administration in the final report.

The report contains four recommendations aimed at improving ICE's Enforcement and Removal Operations' contract funding and payment processes. ICE's Office of Management and Administration concurred with all four recommendations. Based on information provided in ICE's response to the draft report, we consider recommendation 1 open and resolved. Once ICE has fully implemented the recommendation, please submit a formal closeout letter to us within 30 days so that we may close the recommendation. The memorandum should be accompanied by evidence of completion of agreed-upon corrective actions and the disposition of any monetary amounts.

Recommendations 2, 3, and 4 are considered open and unresolved. As prescribed by the Department of Homeland Security Directive 077-01, Follow-Up and Resolution for Office of Inspector General Report Recommendations, within 90 days of the date of this memorandum, please provide our office with a written response that includes your corrective action plan and target completion date for each recommendation. Also, please include responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendations. Until your response is received and evaluated, recommendations 2, 3, and 4 will be considered open and unresolved.

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 the Department of Homeland Security. We will post the report on our website for public dissemination.

Please call me with any questions, or your staff may contact Mark Bell, Deputy Assistant Inspector General for Audits, at (202) 254-4100.

Attachment

Table of Contents

Appendixes

Abbreviations

DHS	Department of Homeland Security
ERO	Enforcement and Removal Operations
FAR	Federal Acquisition Regulation
FY	fiscal year
ICE	U.S. Immigration and Customs Enforcement
MSD	Mission Support Division
OIG	Office of Inspector General
OBPP	Office of Budget and Program Performance
SAF	Subject to Availability of Funds

Executive Summary

U.S. Immigration and Customs Enforcement's (ICE) primary mission is to promote homeland security and public safety through the criminal and civil enforcement of Federal laws governing border control, customs, trade, and immigration. One of its principal operating program offices is Enforcement and Removal Operations, which identifies and apprehends removable aliens, detains these individuals when necessary, and removes illegal aliens from the United States.

During fiscal years 2010 and 2011 audits of Department of Homeland Security (DHS) financial statements, independent auditors noted concerns with recorded obligations for some Enforcement and Removal Operations contracts. Since the scope of the financial statements audit does not necessarily include an in-depth review of matters that are not material to the audit, we conducted a performance audit of the processes. Our audit objective was to determine whether ICE is appropriately managing its contract funding and payment processes.

ICE did not appropriately manage its contract funding and payment processes. ICE rejected some proper invoices for contracts that included the Subject to Availability of Funds clause and did not accurately calculate or pay interest penalties on some proper invoices. These deficiencies occurred because ICE did not provide contractors with the required written notification, had standard operating procedures that instructed personnel to reject invoices, and did not timely make funds available in the financial system to process proper invoice payments.

As a result, ICE's rejection of proper invoices for Enforcement and Removal Operations contracts and inaccurate calculation and payment of interest penalties may increase its risk for interruption of contracted services essential to its mission to remove aliens, including convicted criminals who pose a threat to national security or are a risk to public safety.

We made four recommendations intended to improve ICE's management of its contract funding and payment processes. ICE concurred with all four recommendations.

Background

ICE's primary mission is to promote homeland security and public safety through the criminal and civil enforcement of Federal laws governing border control, customs, trade, and immigration. The agency has an annual budget of more than $5.8 billion, primarily devoted to its two principal operating program offices: Homeland Security Investigations and Enforcement and Removal Operations (ERO).

ERO identifies and apprehends removable aliens, detains these individuals when necessary, and removes illegal aliens from the United States. ERO prioritizes the apprehension, arrest, and removal of convicted criminals and those who pose a threat to national security or are a risk to public safety. It executes its mission through 7 Headquarters Divisions and 24 Field Offices. The seven Headquarters Divisions are:

1. Secure Communities and Enforcement
2. Repatriation
3. Custody Management
4. Field Operations
5. ICE Health Service Corps
6. Law Enforcement Systems and Analysis
7. Operations Support

ICE incurs expenses related to ERO activities from vendor contracts and similar agreements. These contracts also provide detainee services such as food, legal services, recreation, and medical needs. The Office of Acquisition Management awards and administers ERO contracts in conjunction with the ERO program office representative.

Contracts that include the Availability of Funds (SAF) clause allow contracting officers to initiate contract actions chargeable to funds of the new fiscal year before these funds are available.[1] The SAF clause indicates to service providers that funds are not available for the contract at a particular date, and work may not begin until the contractor is provided written notification that funds are available.

According to the Federal Acquisition Regulation (FAR) Section 32.703-2(c), "[t]he Government shall not accept supplies or services under a contract conditioned upon the availability of funds until the contracting officer has given the contractor notice, to be

[1] The Availability of Funds clause is commonly referenced as "Subject to Availability of Funds (SAF)" on ICE documents.

confirmed in writing, that funds are available." Additionally, ICE contracts that include the SAF clause indicate, "ICE will neither present detainees to the service provider [contractor] nor direct performance of any other services until ICE has the appropriate funding …Performance under this Agreement is not authorized until the Contracting Officer issues an order in writing."

Prior to the beginning of the fiscal year, ICE's Office of Budget and Program Performance (OBPP) sends ERO's Mission Support Division (MSD) spend plans with estimated levels of spending. OBPP considers the approved spend plans to determine the amount of funds it provides to ERO. Subsequently, ERO MSD allocates these funds to field offices and headquarters. The agreed-upon spend plans show how ERO plans to use its funds throughout the fiscal year (FY) by category within the program.

The ICE Dallas Finance Center obligates funds for ERO contracts in ICE's Federal Financial Management System (financial system) after consideration of contract actions performed by the ICE Office of Acquisition Management and the funds allocated by MSD to the pertinent field office or headquarters.[2] These obligations determine the funds available for processing payments for ERO contract invoices.

The ICE Burlington Finance Center and ERO Contracting Officer Representatives review invoices for ERO contracts and approve or reject the invoices for payment. When information is missing, incorrect, or obligations are insufficient, the invoice is returned to the contractor with a rejection memorandum stating the reason(s) for rejection.

Contractors are entitled to interest penalty payments if their proper invoice is not paid promptly or is erroneously rejected. According to FAR Section 32.906, if the ICE billing office erroneously rejects a proper invoice, it should calculate and pay the contractor the original invoice amount as well as the associated interest amount.

During FYs 2010 and 2011 audits of DHS financial statements, independent auditors noted that ICE recorded obligations at $0 for ERO contracts that included the SAF clause. Since the scope of the financial statements audit does not necessarily include an in-depth review of matters that are not material to the audit, we conducted a performance audit of the processes.

[2] According to the U.S. Government Accountability Office, obligating funds means that they are committed, and the government has a legal duty, which could become a legal liability, to pay for goods and services ordered or received (*A Glossary of Terms Used in the Federal Budget Process*, September 2005, p. 70).

Results of Audit

ICE did not appropriately manage its contract funding and payment processes. It rejected some proper invoices for contracts that included the SAF clause and did not accurately calculate or pay interest penalties on those invoices.

These rejections occurred because ICE did not provide contractors with written notification of funds availability for ERO contracts that included the SAF clause before contractors provided services. Additionally, ICE standard operating procedures instructed its personnel to reject proper invoices when the funds were not obligated in its financial system. Finally, ICE did not obligate sufficient funds timely to process proper invoice payments.

As a result, ICE's rejection of these proper invoices and inaccurate calculation and payment of interest penalties for ERO contracts may have increased the risk of interruption of contracted services essential to its mission to remove aliens who present a danger to national security or are a risk to public safety.

ICE's Processing of Invoices

ICE's rejection of proper invoices and inaccurate calculation and payment of interest penalties due to the contractor violates the FAR. Out of 20 rejected invoices we reviewed for contracts that included the SAF clause, ICE rejected 4 proper invoices. The rejection notices listed reasons such as "Contract is Subject to the Availability of Funds… Please resubmit once funds are available... Subject to Availability of Funds contracts are not billable until funds are available." These reasons do not constitute appropriate criteria for rejection. Additionally, these proper invoices should have incurred interest penalties because they were rejected improperly.

According to FAR, Subpart 32.9, "Prompt Payment," interest penalty payments must be paid in addition to the amount(s) of the erroneously rejected proper invoices. Specifically, FAR Section 32.906(b)(4) states, "When it is determined that the designated billing office erroneously rejected a proper invoice and upon resubmission of the invoice, [the designated payment office] will enter in the payment system the original date the invoice was received by the designated billing office for the purpose of calculating the correct payment due date and any interest penalties that may be due."

ICE should have calculated and paid interest penalties, as required by the FAR, for these improperly rejected proper invoices. ICE subsequently paid the rejected invoices, but without accurately calculating and paying interest penalties to the contractor. Of the 20 rejected invoices we reviewed, 4 were paid a total 270 days late. This practice of rejecting proper invoices and not paying interest penalties violates the FAR and increases the risk of interruption of services for detention and removal of aliens.

ICE's Written Notification of Funds Availability to Contractors

ICE does not provide contractors written notification of funds availability for ERO contracts that include the SAF clause. This violates the FAR and the underlying contracts and agreements. Four of the ICE contracting officials we interviewed did not notify contractors of funds availability in writing before the contractors began work. One contracting official considered the initial contract modification to be sufficient notification. However, this modification listed the dollar value at $0, reiterated that funds were not available, and stated that the contracting officer would provide availability of funds in writing. The modification did not satisfy the FAR requirement.

In addition, a contractor performing detention-related work for ICE informed us that contracting officials had not provided the required notification for the past 4 years. ICE's practice of not providing this required written notification has created a situation where the contractors start work before funds are available to process payments at the ICE Burlington Finance Center.

An Office of Acquisition Management official believed that the SAF clause indicates to the vendor that funds are not available at the time, but that services need to continue. According to this official, if a contractor chooses to perform work under a contract that includes the SAF clause when funds are not available for payment, the contractor is working at its own risk. This official explained that maintaining services for detention contracts is critical and that services need to continue. However, we determined that detention services are regular, ongoing, nonemergency services, and not exempt from the FAR requirements.

According to FAR Section 32.703-2(c), "The Government shall not accept supplies or services under a contract conditioned upon the availability of funds until the contracting officer has given the contractor notice, to be confirmed in writing, that funds are available." Additionally, contracts including the SAF clause indicate, "ICE will neither present detainees to the Service Provider [contractor] nor direct performance of any other services until ICE has the appropriate funding … Performance under this Agreement is not authorized until the Contracting Officer issues an order in writing."

ICE's Standard Operating Procedures

ICE's standard operating procedures instruct personnel responsible for processing invoice payments at the ICE Burlington Finance Center to reject proper invoices when funds are not available in the financial system. According to the standard operating procedures, a contract that includes the SAF clause directs that the contractor shall not provide services until the contracting official provides funding via a contract modification to the contractor. If these conditions are not met, no payments may be authorized and the invoices must be rejected.

However, FAR Section 32.904(b) contradicts ICE standard operating procedures. It indicates, in part, that generally, the due date for making a payment to a proper invoice is the later of the 30th day after the designated billing office receives a proper invoice from the contractor, or the 30th day after Government acceptance of supplies delivered or services performed. The FAR does not suggest unobligated funds as a reason for rejecting a proper invoice.

ICE's Obligation of Funds

ICE allowed contractors to perform work without sufficient funds obligated in its financial system. Although a written agreement between the agency and contractors for services existed, 17 of the 20 rejected invoices reviewed did not have sufficient funds obligated until after the performance start date listed on the invoices. According to Title 31 of the U.S. Code, section 1501(a), an amount must be recorded as an obligation when supported by documentary evidence of a binding agreement between an agency and another person, provided that it is in writing and executed while the appropriation is available.

ICE's Corrective Actions

In FYs 2010 and 2011, independent auditors issued notices of findings and recommendations noting that ICE recorded obligations at $0 for ERO contracts that included the SAF clause. These notices also included ICE's concurrence of the findings and need for corrective action. ICE officials provided various explanations concerning the progress of corrective actions to remediate these findings.

In March 2012, officials at MSD explained that a Mission Action Plan, which included modifying the period of performance for some ERO contracts, was developed. In April 2012, an official at the Office of Assurance and Compliance explained that the Office of the Chief Financial Officer had developed a different plan during spring 2011, but was unable to provide us any documentation. In September 2012, ICE officials at OBPP indicated that corrective actions were in draft. In October 2012, MSD officials provided documentation supporting partial implementation of corrective actions. This plan included the modification of the period of performance for ERO contracts and is intended to better align contract start dates with available funding. Although this plan has been underway since May 2012, corrective actions had not been fully implemented by the end of our fieldwork.

Recommendations

We recommend that the Executive Associate Director for Enforcement and Removal Operations:

Recommendation #1:

Develop a plan in conjunction with the Office of Acquisition to ensure that ICE contracting officials provide written notification to vendors indicating that funds are available before the performance start date of services for all contracts with the SAF clause.

Recommendation #2:

Coordinate with Burlington Finance Center officials to revise standard operating procedures to ensure that invoices related to detention contracts with the SAF clause are not rejected solely because funds are not readily available to pay them.

Recommendation #3:

Ensure timely and sufficient obligation of funds within the financial system, in compliance with laws and regulations.

Recommendation #4:

Continue implementation of corrective actions, ensuring that pertinent officials and personnel are aware of official plans.

Management Comments and OIG Analysis

A copy of the ICE's response in its entirety is included as appendix B. ICE concurred with all the recommendations. A summary of the responses and our analysis of the ICE's response to the recommendations follows.

Management Response to Recommendation #1: ICE concurs and has begun action to address this recommendation. ICE has indicated that it has established a policy of forward funding these contracts so that funds are available on the contracts into the new fiscal year.

OIG Analysis: We consider ICE's actions responsive to the recommendation. The recommendation will remain open and resolved until ICE provides us (1) evidence that corrective actions have been completed and (2) a formal closeout request.

Management Response to Recommendation #2: ICE concurs and has taken action to address this recommendation. ICE has indicated that it has mitigated future risks associated with the rejection of detention related invoices, including significantly reducing the use of SAF clauses for detention contracts. Further, ICE stated that it will review and revise its procedures as appropriate to improve its invoice payment process.

OIG Analysis: We consider ICE's actions responsive to the recommendation. However, the recommendation will remain open and unresolved until ICE provides us (1) evidence that corrective actions have been completed and (2) a formal closeout request.

Management Response to Recommendation #3: ICE concurs with this recommendation and has indicated that it will develop and implement a plan to resolve this recommendation.

OIG Analysis: We consider ICE's actions responsive to the recommendation. However, the recommendation will remain open and unresolved until ICE provides us (1) evidence that corrective actions have been completed and (2) a formal closeout request.

Management Response to Recommendation #4: ICE concurred with this recommendation and stated that ICE's ERO OAQ will work to modify contract periods of performance to properly align contract start dates with anticipated funding availability.

OIG Analysis: We consider ICE's actions responsive to the recommendation. However, the recommendation will remain open and unresolved until ICE provides us (1) evidence that corrective actions have been completed and (2) a formal closeout request.

Appendix A
Objectives, Scope, and Methodology

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibilities to promote economy, efficiency, and effectiveness within the Department.

This report provides the results of our work to determine whether ICE ERO is appropriately managing contract funding and payments. To accomplish our objective, we reviewed applicable Federal laws and regulations to identify acquisition and reporting requirements. To gain an understanding of internal controls significant within the context of the audit objective and to determine compliance, we evaluated Department and component-specific procurement policies and procedures. We also interviewed ICE representatives to obtain an understanding of their contract funding and payment process, including internal controls and corrective actions for issues noted by independent auditors.

The Office of Acquisitions provided OIG with raw data of all Office of Acquisitions–managed contracts from October 1, 2010, through March 31, 2012. This resulted in 1,164 documents. We removed duplicates and lines that appeared to lack activity and judgmentally selected 54 detention-related invoices. We narrowed this list of 54 invoices to include only contracts that contained the Availability of Funding clause, which resulted in 20 invoices. Of those, 4 were improperly rejected.

We reviewed each unique contract and order number in WebView and documented the rejected invoice, invoice number, date the invoice was submitted, date of invoiced services, date the invoice was received by the Burlington Finance Center, amount of the invoice, and rationale provided for any rejected invoices.[3] Next, we located the same contract and order number in the Federal Financial Management System and documented the date funds were obligated for the contract's specific invoice(s), amount that was obligated, and date and amount of the paid invoice. We analyzed whether the invoice was properly rejected; whether the funds were obligated before, during, or after the invoice period; and how many days the Burlington Finance Center took to pay the invoice after receiving it.

[3] The information system used by ICE to process and document invoices.

We identified the same contract and order number in ICE's financial system and analyzed the date funds were obligated for the contract's specific invoices and amounts obligated in relation to the dates and amounts listed in the invoices. Additionally, we determined how many days ICE took to pay the improperly rejected proper invoices.

We conducted this performance audit between April and December 2012 pursuant to the *Inspector General Act of 1978*, as amended, and according to 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 upon our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objectives.

Appendix B
Management Comments to the Draft Report

Office of the Chief Financial Officer

U.S. Department of Homeland Security
500 12th Street, SW
Washington, DC 20536

U.S. Immigration and Customs Enforcement

March 15, 2013

MEMORANDUM FOR: Anne L. Richards
Assistant Inspector General for Audits
Office of Inspector General

FROM: Radha C. Sekar
Acting Executive Associate Director, Management and Administration

SUBJECT: Management Response to OIG Draft Report titled, "U.S. Immigration and Customs Enforcement's Enforcement and Removal Operations' Contract Funding and Payment Processes", dated January 30, 2013.

U.S. Immigration and Customs Enforcement (ICE) appreciates the opportunity to respond to the subject draft report. Attached is our response for each of the four recommendations. We have reviewed and concur with all recommendations. ICE will continue working to resolve all identified weaknesses.

Should you have any questions or concerns, please contact Michael C. Moy, Audit Portfolio Manager, at (202) 732-6263, or by e-mail at Michael.C.Moy@ice.dhs.gov.

Attachment

www.ice.gov

U.S. Immigration and Customs Enforcement (ICE)

OIG Audit: ICE Contract Funding and Payment Process for ERO

1. Develop a plan in conjunction with the Office of Acquisition to ensure that ICE contracting officials provide written notification to vendors indicating that funds are available before the performance start date of services for all contracts with the SAF clause.

   ICE concurs. ICE has already established a policy of forward funding these contracts so that funds are available on the contracts into the new fiscal year. This will preclude the use of the SAF clause, and the current modification of the contract will act as notification of available funds. We ask that this recommendation be considered closed.

2. Coordinate with Burlington Finance Center officials to revise standard operating procedures to ensure that invoices related to detention contracts with the SAF clause are not rejected solely because funds are not readily available to pay them.

   ICE concurs. ICE has mitigated future risks associated with the rejection of detention related invoices, including significantly reducing the use of SAF clauses for detention contracts. Further, ICE will review and revise its procedures as appropriate to improve its invoice payment process. We ask that this recommendation be considered Resolved and Open, pending ICE's review and revision of its procedures.

3. Ensure timely and sufficient obligation of funds within the financial system in compliance with laws and regulations.

   ICE concurs. ICE will develop and implement a plan to resolve this recommendation. We request the OIG consider this recommendation resolved and open pending production of the plan.

4. Continue implementation of corrective actions, ensuring that pertinent officials and personnel are aware of official plans.

   ICE concurs. ICE's Enforcement and Removal Operations (ERO) and Office of Acquisition Management (OAQ) will work to modify contract periods of performance to properly align contract start dates with anticipated funding availability. We request the OIG consider this recommendation resolved and open pending implementation of corrective actions,

Appendix C
Major Contributors to This Report

Sandra John, Director, Financial Management Division
Eric Young, Audit Manager
Alejandro Jaca-Mendez, Auditor-In-Charge
Terrell Tindull, Auditor-In-Charge
Pete Christopher, Program Analyst
Garrick Greer, Auditor
Jason Kim, Senior Auditor
Gwendolyn Schrade, Senior Program Analyst
Kevin Dolloson, Communications Analyst
Ralleisha Dean, Referencer

Appendix D
Report Distribution

Department of Homeland Security

Secretary
Deputy Secretary
Chief of Staff
Deputy Chief of Staff
General Counsel
Executive Secretary
Director, GAO/OIG Liaison Office
Assistant Secretary for Office of Policy
Assistant Secretary for Office of Public Affairs
Assistant Secretary for Office of Legislative Affairs
Acting Chief Privacy Officer

U.S. Immigration and Customs Enforcement

Chief Financial Officer
Executive Associate Director, Enforcement and Removal Operations
Assistant Director of Operations Support
ICE Audit Liaison
OBPP Audit Liaison

Office of Management and Budget

Chief, Homeland Security Branch
DHS OIG Budget Examiner

Congress

Congressional Oversight and Appropriations Committees, as appropriate

ADDITIONAL INFORMATION AND COPIES

To obtain additional copies of this document, please call us at (202) 254-4100, fax your request to (202) 254-4305, or e-mail your request to our Office of Inspector General (OIG) Office of Public Affairs at: DHS-OIG.OfficePublicAffairs@oig.dhs.gov.

For additional information, visit our website at: www.oig.dhs.gov, or follow us on Twitter at: @dhsoig.

OIG HOTLINE

To expedite the reporting of alleged fraud, waste, abuse or mismanagement, or any other kinds of criminal or noncriminal misconduct relative to Department of Homeland Security (DHS) programs and operations, please visit our website at www.oig.dhs.gov and click on the red tab titled "Hotline" to report. You will be directed to complete and submit an automated DHS OIG Investigative Referral Submission Form. Submission through our website ensures that your complaint will be promptly received and reviewed by DHS OIG.

Should you be unable to access our website, you may submit your complaint in writing to: DHS Office of Inspector General, Attention: Office of Investigations Hotline, 245 Murray Drive, SW, Building 410/Mail Stop 2600, Washington, DC, 20528; or you may call 1 (800) 323-8603; or fax it directly to us at (202) 254-4297.

The OIG seeks to protect the identity of each writer and caller.