

Congress of the United States

Washington, DC 20515

November 14, 2019

The Honorable Chad F. Wolf
Acting Secretary
U.S. Department of Homeland Security
245 Murray Lane SW
Washington, D.C. 20528

Mr. Matthew T. Albence
Acting Director
U.S. Immigration and Customs Enforcement
500 12th Street, SW
Washington, D.C. 20536-5003

Dear Acting Secretary Wolf and Acting Director Albence:

We write to express our serious concern with the process by which Immigration and Customs Enforcement (ICE) has solicited contracts for federal detention facilities. 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 additional information about Solicitation No. 70CDCR20R00000002 issued by ICE on October 16, 2019 for Detention Services in California.¹

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 such contracts have been awarded in a proper manner.

For example, ICE recently turned to sole-source contracting to replace an intergovernmental services agreement (IGSA) that was canceled by the city of Adelanto, California. On March 27, 2019, Adelanto informed GEO Group and ICE that it was ending its IGSA for the Adelanto ICE Processing Center.³ Shortly thereafter, ICE awarded a \$62 million sole-source contract—which

¹ FedBizOpps.gov, No. 70CDCR20R00000002, *Detention Services for California*, <https://www.fbo.gov/index?s=opportunity&mode=form&id=3ca524db03e0480542f662dfb7ddbe7f&tab=core&cvew=0>.

² 41 U.S.C. § 3301.

³ 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->

bypasses the competitive process—directly to GEO Group. 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.”⁴ However, reports suggest that GEO Group may have influenced Adelanto to end its IGSA.⁵

Reports of similar conduct have surfaced in connection with other facilities in California that formerly operated under IGSA. If true, these activities appear to be a concerted effort by private corporations to circumvent California state law—which currently prevents the expansion of detention facilities operating under IGSA—and to benefit financially from the detention of individuals in California. Moreover, the Department of Homeland Security (DHS) Office of Inspector General (OIG) has previously identified additional shortcomings in ICE’s procurement activities. 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[.]”⁶

Solicitation No. 70CDCR20R0000002⁷

Although the Solicitation indicates that the procurement process will be conducted in a manner consistent with “full and open competition,” its terms appear 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

[20190408-story.html](#). [Under an IGSA, local governments like Adelanto serve as an intermediary between contractors and ICE.](#)

⁴ Garrett Bergthold, *ICE, GEO Group agree on immigrant detention contract*, DAILY PRESS (July 6, 2019), <https://www.vvdailynews.com/news/20190706/ice-geo-group-agree-on-immigrant-detention-contract>.

⁵ 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/>.

⁶ 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>.

⁷ FedBizOpps.gov, No. 70CDCR20R0000002, *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.

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.”⁸ 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.
- **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 declined to make any changes, directing 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.”⁹
- **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.

On January 1, 2020, legislation (AB 32) prohibiting for-profit prisons and civil detention facilities in California is scheduled to take effect. However, existing contracts may continue until they expire. Given the timing and terms of this Solicitation—particularly in light of ICE’s history of suspect contract activities and insufficient oversight—we are understandably 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, please provide the following information within 30 days of receipt of this letter:

⁸ 48 C.F.R. § 12.603(a).

⁹ 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>.

1. All information, communications, and documentation relating to the preparation and publication of this Solicitation, including any information, communications, and documentation establishing the Solicitation's initial requirements and any revisions to those requirements."
2. All written materials pertaining to ICE's assessment and decision to utilize the combined synopsis and solicitation procedures for this Solicitation.
3. All communications pertaining to ICE's inclusion of a waiver provision in this Solicitation and the circumstances under which such waivers will be granted.
4. 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.
5. A list of all Solicitations, including Solicitation numbers, issued for California detention facilities (including CDFs and IGSA's) for FYs 2018, 2019 and 2020, including all entities that submitted proposals for each Solicitation, the locations of the facilities that they proposed to build or operate, and the awardee for each opportunity.

Thank you for your attention to this matter.

Sincerely,

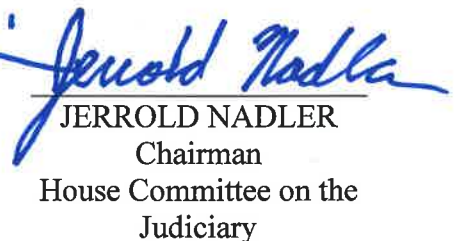


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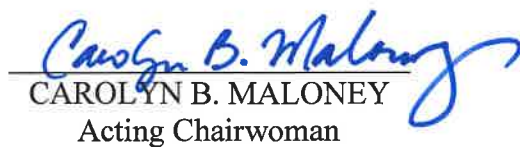
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