



ICE Notification of Non-Performance-Based National Detention Standards 2011 Detention Contract (Sherburne County)

March 26, 2018

Fiscal Year 2018 Report to Congress



**Homeland
Security**

Under Secretary for Management

Message from the Under Secretary for Management

March 26, 2018

I am pleased to present the following report, “ICE Notification of Non-Performance-Based National Detention Standards 2011 Detention Contract” for Sherburne County, which has been prepared by U.S. Immigration and Customs Enforcement (ICE).

This report was compiled pursuant to the Joint Explanatory Statement accompanying the Fiscal Year 2017 Department of Homeland Security Appropriations Act (P.L. 115-31).

Pursuant to congressional guidelines, this report is being provided to the following Members of Congress:



The Honorable John R. Carter
Chairman, House Appropriations Subcommittee on Homeland Security

The Honorable Lucille Roybal-Allard
Ranking Member, House Appropriations Subcommittee on Homeland Security

The Honorable John Boozman
Chairman, Senate Appropriations Subcommittee on Homeland Security

The Honorable Jon Tester
Ranking Member, Senate Appropriations Subcommittee on Homeland Security

Inquiries related to this report may be directed to me at (202) 447-3400 or to the Department’s Acting Chief Financial Officer, Stacy Marcott, at (202) 447-5751.

Sincerely,

A handwritten signature in black ink that reads "Claire M. Grady". The signature is written in a cursive, flowing style.

Claire M. Grady
Under Secretary for Management



ICE Notification of Non-Performance-Based National Detention Standards 2011 Detention Contract (Sherburne County)

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I. Background

This notification has been compiled in response to the Joint Explanatory Statement accompanying the Fiscal Year 2017 Department of Homeland Security (DHS) Appropriations Act (P.L. 115-31), which states:

U.S. Immigration and Customs Enforcement (ICE) shall refrain from entering into new contracts or other agreements, or changing or significantly modifying existing contracts or other agreements, to detain individuals unless such contracts or agreements meet or exceed the Performance Based National Detention Standards (PBNDS) 2011, as revised in 2016 and which were in effect on January 1, 2017, unless the Secretary submits a report to the Committees on Appropriations of the Senate and the House of Representatives at least 30 days in advance justifying the rationale for requiring changed standards.

II. Notification

The purpose of this report is to provide Congress with the required 30-day notification that U.S. Immigration and Customs Enforcement (ICE) plans to enter into an intergovernmental service agreement (IGSA) with the county of Sherburne, Minnesota, for the use of up to 300 detention beds at the Sherburne County Jail, located at 13880 Business Center Drive, Suite 200, Elk River, Minnesota. This is a new ICE IGSA for a facility that has housed ICE detainees for 12 years under a U.S. Marshals Service (USMS) agreement.

Sherburne County Jail, operated by the Sherburne County Sheriff's Office, is the county's main correctional facility. The jail has a total capacity of 667 beds, with approximately 250 ICE detainees being housed on a nonguaranteed basis. The remaining available beds allow the county to house USMS prisoners and state inmates, or to contract with other counties or entities that need detention beds.

Sherburne County Jail currently complies with the ICE National Detention Standards (NDS) 2000; is American Correctional Association-accredited; and is compliant with all state and county inspections. Additionally, the new agreement with ICE will require full compliance with DHS Final Rule, 6 CFR Part 115, *Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities*, also known as the DHS Prison Rape Elimination Act (PREA) Standards (March 7, 2014). The facility last underwent an ICE NDS inspection in December 2017 and received a rating of "acceptable."

Sherburne County Jail is ICE's primary detention facility within the Minneapolis metropolitan area. ICE has an operational need for 300 guaranteed detention beds within this area for coordinating transfers, removals, and court hearings within the St. Paul area of responsibility, which oversees ICE facilities in five states. Sherburne County Jail is capable of housing both males and females at all security levels, and currently is providing detainee transportation services for ICE.

County officials have offered ICE up to 300 beds at a proposed man-day rate of \$100. The county's rate was calculated with the intent of meeting the NDS 2000. The jail is staffed to accommodate its maximum capacity of 667 individuals; however, it does not have the staff or facility operations in place to meet some of the elements of Performance-Based National Detention Standards (PBNDS) 2011 adequately. These requirements include:

- The jail does not have the staffing to implement the PBNDS 2011 training requirements outlined in standard (7.3) *Staff Training* effectively. ICE assesses that the training requirements in the NDS are sufficient and that the additional training requirements in the PBNDS 2011 represent best practices rather than operational necessity.
- The jail does not offer outdoor recreation to detainees or inmates. Optimally, under PBNDS 2011 standard (5.4) *Recreation*, detainees should have access to outdoor recreation at least 4 hours per day, 7 days per week, weather and scheduling permitting.

Currently, the jail offers detainees an opportunity to participate in recreational activities Monday through Friday for 1 hour outside the housing unit in the indoor gymnasium, which is equipped with operable windows that supply fresh air to the area. In accordance with the NDS 2000, ICE offers detainees a transfer to a facility with outdoor recreation if the detainee is housed at Sherburne County Jail for more than 180 days. Under the 2011 standards, if a detainee is housed for more than 90 days in a facility that provides only indoor recreation, ICE will offer voluntary transfer to a facility that provides outdoor recreation.

Sherburne County Jail's inability to satisfy all PBNDS 2011 requirements is typical when compared with similar facilities. Because of facility design and operational scope, county jails often lack the infrastructure, staffing, and financial backing to meet some of the rigorous requirements outlined in ICE's PBNDS 2011 standards, which, in many ways, exceed industry correctional standards. Sherburne County officials have said that they do not plan to change jail policies to implement PBNDS 2011 at this time. They have indicated a willingness to consider adopting the 2011 standards at a later date, but only if ICE is willing to negotiate a guaranteed minimum number of beds; if the county is able to renovate or build out parts of the jail's physical plant; and if the county is able to increase overall bed space capacity at the facility.

Finally, ICE is in the process of pursuing a dedicated detention facility in the St. Paul area that will meet ICE's PBNDS 2011 detention standards and will help reduce the agency's reliance on jails, such as Sherburne County Jail, for individuals who will remain in longer-term detention.

III. Summary

An IGSA between ICE and Sherburne County will allow the St. Paul Field Office to maintain essential detention operations and provide additional regional support for local apprehensions within the five-state area.

Following this notification, ICE will proceed with negotiations for an IGSA with Sherburne County for up to 300 detention beds operated under the NDS 2000 and DHS PREA.