

(i) a. This is a combined synopsis/solicitation for commercial items prepared in accordance with the format in Federal Acquisition Regulations (FAR) Subpart 12.6, as supplemented with additional information included in this notice. This announcement constitutes the only solicitation; bids are being requested and a written solicitation will not be issued.

b. The Indian Health Service/Cheyenne River Health Center intends to award multiply Firm Fixed-Price, Non-Personal Service, Performance Based, Indefinite Delivery/Indefinite Quality (IDIQ) contracts, to provide Diagnostic CT Technologist Services for the Radiology Department at the Cheyenne River Health Center located in Eagle Butte, South Dakota. The contract resulting from this solicitation will not obligate funds; funds must be obligated prior to ordering through the issuance of a task order. All orders may be submitted electronically, facsimile, or hard copy.

(ii) This solicitation is being issued under solicitation number CRHC23-23.

(iii) The solicitation document and incorporated provisions and clauses are those in effect through Federal Acquisition Circular 2023-01, dated 12/30/2022.

(iv) This is a 100% Small Business Set-Aside and the associated NAICS code is 561320 Temporary Help Services, with a Small business Size Standard of \$34.0 Million, Product Service Code is Q522 Medical-Radiology .

(v) Services purchased through this contract will be Diagnostic CT Technologist Services for patient care. A list of line items, quantities/units of measure at attached. The “Unit Price” is an all-inclusive cost. All “inclusive cost” is defined to include, but not limited to travel, lodging, per diem, benefits, fuel, freight etc., plus all other costs pertinent to the performance of this contract. The period of performance will be a base year, plus the option to exercise, Four-one(1) year option terms.

See Attached Pricing/Cost Schedule.

(vi) Description of Services: Include, but not limited to, continuous Diagnostic CT Technologist Services, required by the attached Performance Work Statement, for the Cheyenne River Health Center, Eagle Butte, South Dakota.

(vii) The period of performance will include one base year, plus the option to exercise four-1 year option years. Delivery and acceptance terms for this order are with the PWS. POP: Base Year: 9/1/2023 – 7/31/2024, OY1: 8/1/2024 – 7/31/2025, OY2: 8/1/2025 – 7/31/2026, OY3: 8/1/2026 – 7/31/2027, and OY4: 8/1/2027 – 7/31/2028.

(viii) The provision at [52.212-1](#), Instructions to Offerors – Commercial Products and Commercial Services (Nov 2021), applies to this acquisition. Quotes shall be submitted on company letterhead stationary, signed and dated; it shall include, at a minimum;

1. Solicitation number CRHC23-23
2. Closing Date: August 24, 2023 at 1:00pm MST
3. Name, address, telephone number of the offeror and email address of the contact person
4. Technical description of the item/service being offered in sufficient detail to evaluate compliance with the requirements in the solicitation.
5. Terms of any express warranty
6. Price and any discount terms
7. “Remit to” address, if different than mailing address

8. A completed copy of the representations and certifications at FAR 52.212-3
9. Acknowledgement of Solicitation Amendments, if issued
10. A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representation or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

Quotes shall also include the following to be considered acceptable.

1. Signed SF1449.
2. Price/Cost Scheduled.
3. At least 2 Past Performance Questionnaire's filled out and submitted.
4. Proof of Malpractice Insurance Coverage.
5. Certify they understand and can meet all requirements listed in this Solicitation, Performance Work Statement and Attachments.
6. Candidate information, to include: Resume, current/up-to-date licenses & certifications as requested in the PWS, completed Background clearance forms attached to this solicitation, proof of Mandatory Employee Health Records Requirements as spelled out in the PWS, and guarantee report date.

(ix) The clause at [52.212-2](#), Evaluation-Commercial Products and Commercial Services (Nov 2021) applies to this acquisition. (a) The Government will award a contract resulting from this solicitation to the responsible offerors whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered.

The basis for award will be based on "Lowest Price Technically Acceptable" along with credential able candidates. Past performance is always an evaluation factor and will be considered.

Technical and past performance, when combined are equal to costs or price.

(b) *Options*. The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(c) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

IHS reserves the right to make multiple awards, which is most advantages to the Government. This is a competitive solicitation and the offer your firm submits will be used by IHS to determine, which of the quantities listed within are, "estimate only" and it is not the intent of IHS to be obligated to order the "quantities"

(x) Offerors must include a completed copy of the provision at [52.212-3](#), Offeror Representations and Certifications – Commercial Products and Commercial Services (Dec 2020), with its offer. The offeror shall complete only paragraphs (b) of the provision if the Offeror has completed the annual representations

and certification electronically via the System for Award Management (SAM) Web site located at <http://www.sam.gov>

(xi) The clause at [52.212-4](#), Contract Terms and Conditions -- Commercial Items (Oct 2018), applies to this acquisition.

(xii) The clause at [52.212-5](#), Contract Terms and Conditions Required To Implement Statutes or Executive Orders -- Commercial Items (Aug 2019) – See attachment for full text.

(xiii) Any additional contract requirement(s) or terms and conditions are determined by the contracting officer to be necessary for this acquisition and consistent with customary commercial practices (i.e. warranty requirements, HHSAR, etc..) are attached.

(xiv) N/A

(xv) Offerors are due on August 24, 2023 by 1:00 PM MST, and can be mailed, e-mailed or fax to:

Cheyenne River Health Center  
Attn: Stephanie Red Elk, COR  
24276 166<sup>th</sup> Street  
PO Box 1012  
Eagle Butte, South Dakota 57625  
Fax: 605/964-7737  
Email: [Stephanie.RedElk@ihs.gov](mailto:Stephanie.RedElk@ihs.gov)

Questions in reference to this solicitation shall be submitted to the email address listed above. The last day to submit questions is August 8, 2023 at 1:00pm MST. No questions will be answered after this date/time. Please be advised that the Government reserves the right to transmit those questions and answers of a common interest to all prospective vendors through a solicitation amendment.

(xvi) Points Of Contacts: Danielle Chasing Hawk, Supervisory Contract Specialist, [Danielle.ChasingHawk@ihg.gov](mailto:Danielle.ChasingHawk@ihg.gov), 605/964-0605 or Stephanie Red Elk, COR, [Stephanie.RedElk@ihs.gov](mailto:Stephanie.RedElk@ihs.gov), 605/964-0507,

(xvii) Contractor will need a UIE number, TIN number, and be active & registered in SAM at [www.sam.gov](http://www.sam.gov).

<b>SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, &amp; 30</b>				1. REQUISITION NUMBER <b>N/A</b>		PAGE 1 OF <b>1 of</b>	
2. CONTRACT NO.		3. AWARD/EFFECTIVE DATE		4. ORDER NUMBER		5. SOLICITATION NUMBER <b>CRHC23-23</b>	
7. FOR SOLICITATION INFORMATION CALL:		a. NAME <b>Stephanie Red Elk, COR</b>				b. TELEPHONE NUMBER (No collect calls) <b>605/964-0507</b>	
6. SOLICITATION ISSUE DATE <b>07/24/2023</b>		8. OFFER DUE DATE/ LOCAL TIME <b>08/24/2023 1:00 PM MST</b>					
9. ISSUED BY <b>IHS/Cheyenne River Health Center 24276 166th St. Airport Rd. Eagle Butte, SD 57625</b>				10. THIS ACQUISITION IS <input type="checkbox"/> UNRESTRICTED OR <input type="checkbox"/> SET ASIDE: <b>100</b> % FOR: <input checked="" type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM NAICS: <b>561320</b> <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> EDWOSB SIZE STANDARD: <b>\$35.0M</b> <input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS <input type="checkbox"/> 8 (A)			
11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE		12. DISCOUNT TERMS		13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) <input type="checkbox"/>		13b. RATING	
15. DELIVER TO <b>IHS/Cheyenne River Health Center 24276 166th St. Airport Rd. Eagle Butte, SD 57625</b>				16. ADMINISTERED BY <b>IHS/Cheyenne River Health Center 24276 166th St. Airport Rd. Eagle Butte, SD 57625</b>			
17a. CONTRACTOR/ OFFEROR		18a. PAYMENT WILL BE MADE BY <b>IPP.GOV US Treasury</b>		14. METHOD OF SOLICITATION <input checked="" type="checkbox"/> RFQ <input type="checkbox"/> IFB <input type="checkbox"/> RFP			
17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER <input type="checkbox"/>		18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM					
19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES			21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	Firm Fixed-Price, Non-Personal Healthcare Service, Commercial Item, Indefinite Delivery/Indefinite Quantity Contract, for Diagnostic CT Technologist Services for the Radiology Department, at the Cheyenne River Health Center(CRHC), Eagle Butte, South Dakota  The Period of Performance will be a one(1) year base period, with four(4) - one(1) year option periods. <i>(Use Reverse and/or Attach Additional Sheets as Necessary)</i>						
25. ACCOUNTING AND APPROPRIATION DATA					26. TOTAL AWARD AMOUNT (For Govt. Use Only)		
<input checked="" type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED <input checked="" type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED					<input checked="" type="checkbox"/> 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN <u>1</u> COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED		
29. AWARD OF CONTRACT: REF. _____ OFFER DATED _____. YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:							
30a. SIGNATURE OF OFFEROR/CONTRACTOR				31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)			
30b. NAME AND TITLE OF SIGNER (Type or print)		30c. DATE SIGNED		31b. NAME OF CONTRACTING OFFICER (Type or print)		31c. DATE SIGNED	
				Craig Wells, CCO, IHS/GPA			

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	<p>Period of Performance:            Base Year: 09/1/2023 - 07/31/2024            Option Year 1: 08/1/2024 - 07/31/2025            Option Year 2: 08/1/2025 - 07/31/2026            Option Year 3: 08/1/2026 - 07/31/2027            Option Year 4: 08/1/2027 - 07/31/2028</p> <p>Fill Out Attached Price/Cost Schedule to submit pricing.</p> <p>This IDIQ contract does not obligate any funds            Funds will be obligated on an individual basis as            Task Orders and will be issued electronically,            sent by email. For details, please refer to the            attached clauses FAR 52.216-18 Ordering,            FAR 52.216-19 Ordering Limitations and            FAR 52.216-22 Indefinite Quantity.</p> <p>This is a 100% Small Business set-aside            Multiply awards will be made.</p>				

32a. QUANTITY IN COLUMN 21 HAS BEEN

☐ RECEIVED

☐ INSPECTED

☐ ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED: \_\_\_\_\_

32b. SIGNATURE OF AUTHORIZED GOVERNMENT  
REPRESENTATIVE

32c. DATE

32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT  
REPRESENTATIVE

32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE

32f. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE

32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE

33. SHIP NUMBER

34. VOUCHER NUMBER

35. AMOUNT VERIFIED  
CORRECT FOR

36. PAYMENT

37. CHECK NUMBER

☐ PARTIAL ☐ FINAL

☐ COMPLETE ☐ PARTIAL ☐ FINAL

38. S/R ACCOUNT NO.

39. S/R VOUCHER NUMBER

40. PAID BY

41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT

42a. RECEIVED BY (*Print*)

41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER

41c. DATE

42b. RECEIVED AT (*Location*)

42c. DATE REC'D (*YY/MM/DD*)

42d. TOTAL CONTAINERS

**SERVICES AND PRICES/COSTS**

(Fixed-Price, Services, Commercial Items)

Firm Fixed Price, Non-Personal Services, IDIQ contract, to provide CT Technologist Services, for the Radiologist Department, at the Cheyenne River Health Center, located in Eagle Butte, South Dakota. The Period of Performance will be a base year and four 1-year option years.

**BASE YEAR: 09/1/2023 – 07/31/2024.**

**CT Technologist Regular Hours**

CLIN	Descript of Service	Estimated Qty	Unit	Unit Price		Total Amount
001	CT Regular Hours	4,160	HRS (x)	\$	=	\$
002	CT Overtime Hours	416	HRS (x)	\$	=	\$
003	CT On-Call Hours	416	HRS (x)	\$	=	\$
					Total:	\$

**OPTION YEAR ONE (1): 08/1/2024 – 07/31/2025.**

**CT Technologist Regular Hours**

CLIN	Descript of Service	Estimated Qty	Unit	Unit Price		Total Amount
004	CT Regular Hours	4,160	HRS (x)	\$	=	\$
005	CT Overtime Hours	416	HRS (x)	\$	=	\$
006	CT On-Call Hours	416	HRS (x)	\$	=	\$
					Total:	\$

**OPTION YEAR TWO (2): 08/1/2025 – 07/31/2026.**

**CLIN201. CT Technologist Regular Hours**

CLIN	Descript of Service	Estimated Qty	Unit	Unit Price		Total Amount
007	CT Regular Hours	4,160	HRS (x)	\$	=	\$
008	CT Overtime Hours	416	HRS (x)	\$	=	\$
009	CT On-Call Hours	416	HRS (x)	\$	=	\$
					Total:	\$

**OPTION YEAR THREE (3): 08/1/2026 – 07/31/2027.**

**CLIN301. CT Technologist Regular Hours**

CLIN	Descript of Service	Estimated Qty	Unit	Unit Price		Total Amount
010	CT Regular Hours	4,160	HRS (x)	\$	=	\$
011	CT Overtime Hours	416	HRS (x)	\$	=	\$
012	CT On-Call Hours	416	HRS (x)	\$	=	\$
					Total:	\$

**OPTION YEAR FOUR (4): 08/1/2027 – 07/31/2028.**

**CLIN401. CT Technologist Regular Hours**

CLIN	Descript of Service	Estimated Qty	Unit	Unit Price		Total Amount
013	CT Regular Hours	4,160	HRS (x)	\$	=	\$
014	CT Overtime Hours	416	HRS (x)	\$	=	\$
015	CT On-Call Hours	416	HRS (x)	\$	=	\$
					Total:	\$

**AGGREGATED TOTALS**

		<b>TOTALS</b>
1.	Base Year	\$
2.	Option Year One (1)	\$
3.	Option Year Two (2)	\$
4.	Option Year Three (3)	\$
5.	Option Year Four (4)	\$
	<b>AGGREGATED TOTAL:</b>	\$



Cheyenne River Health Center  
Performance Work Statement  
Non-Personal Services

**DIAGNOSTIC CT TECHNOLOGIST**

**General**

This performance based work statement describes the requirements for non-personal services for the recruitment, credentialing and placement for Diagnostic CT Technologists to support the mission of the Indian Health Service (IHS)/Cheyenne River Health Center (CRHC).

**Background**

The Indian Health Service (IHS) an agency within the Department of Health & Human Services is responsible for providing federal health services to American Indians and Alaska Natives. The Indian Health Service provides a comprehensive health service delivery system for approximately 1.9 million American Indians and Alaska Natives who belong to 567 federally recognized tribes, in 35 states. The Indian Health Service Headquarters is located in Rockville, MD and then divided into twelve physical areas: Alaska, Albuquerque, Bemidji, Billings, California, Great Plains, Nashville, Navajo, Oklahoma, Phoenix, Portland and Tucson.

Our facility, the Cheyenne River Health Center (CRHC), falls under the GPAO. CRHC provides medical care for approximately 9,000 tribal members living on the CRST Reservation. Serving a rural area, many of our patients travel 100 miles round trip to receive care. The CRHC was built in 2011 to provide an expanded level of health care services specifically designed to meet the needs of the CRHC population. The Cheyenne River Sioux Tribe through a 638 contract with IHS, operates four satellite health stations which offer basic ambulatory services at Cherry Creek, Red Scaffold, Swiftbird, and Whitehorse communities. Services include: Emergency Room Department, Pharmacy, Physical Therapy, Public Health Nursing, Radiology Services, Inpatient Care, Laboratory, MRI, Dental, Community Health, Contract Health Services, Dietitians, Audiology, Eye Care, Inpatient, Pain Management, and Specialist Clinics: OB/GYN, ENT, Podiatry & Neurology.

**Objective**

To provide uninterrupted CT Technologist services, in the delivery of patient care, for the Radiology Department at the Cheyenne River Health Center.

**Period of Performance**

Base Year: 09/1/2023 – 07/31/2024

Option Year One (1): 08/1/2024 – 07/31/2025

Option Year Two (2): 08/1/2025 – 07/31/2026

Option Year Three (3): 08/1/2026 – 07/31/2027

Option Year Four (4): 08/1/2027 – 07/31/2028

## **TOUR OF DUTY**

Contract CT Tech will work into current departmental schedule. Assignments will require shifts of no less than eight (8) hours and no more than twelve (12) hours. These shifts may rotate any time during the twenty-four (24) hour period for a total of 80 hours in a two-week pay period. Holidays and weekends will be included as part of the 80 hour work period. All scheduled hours will be determined by Radiology Supervisor. Occasional On-Call status may be required.

**Regular Hours:** Working rotating 8-12 hours shifts, during a two week period and equal 80 hours in a two week period.

**Overtime Hours:** Any hours worked over 80 hours in a two week period.

**On-Call:** The contractor is off duty, but remains available by telephone for the purpose of being contacted when unanticipated situations arise, and remains within a reasonable call-back radius, and reports for duty within 45 minutes of contact, or if live on campus, within 30 minutes of contact.

**Work Flexibility:** Because we are a health facility and there are compliance issues where coverage is mandatory, work schedules shall occasionally change. As directed by the departmental supervisor, the contractor shall rotate into other duty sections as needed to support patient care.

A 30 minute unpaid meal break will be included with each shift. Lunch breaks will be taken at the approximate midpoint of the shift, and will not be saved in order to leave 60 minutes early. rest periods, not to exceed 15 minutes every four hours of scheduled duty, if not on a call at that time. Rest periods will not be used for a continuation of lunch/dinner period or taken at the beginning or end of the workday.

Hours worked do not include travel time to reach the CRHC or other place of performance.

**Compensation:** The contractor shall be paid a fixed flat rate of per hour. No differential pay for government holidays, compensation time, and night differential. Holidays and weekends shall be included as part of the 80 hour work period and considered regular hours. Regular, and/or Overtime shall be determined by the Radiology Department Supervisor.

**Task Order:** An order issued in accordance with the terms of the contract that details an ordering activity's specific requirements. An ordering activities written order to obtain services, at a minimum will include the following where applicable: description of services, hours, price, period of performance, contract number, and the ordering activities task order number.

### **Place of Performance:**

Cheyenne River Health Center  
Radiology Department  
24376 166th Street  
Eagle Butte, South Dakota 57625

## **SCOPE OF WORK**

The Contractor will be required to provide a variety of computerized tomography & diagnostic radiographic examinations. The government reserves the right to accept or reject services if the level of performance is unsatisfactory to Indian Health Service.

The Joint Commission on Accreditation of Health Care Organizations (JCAHO) standards must be considered and adhered to at all time in order to be compliant. All Medical Record Information generated in the performance of this contract shall remain the property of and subject to the exclusive control of the Indian Health Service. The Contractor is responsible for maintaining Patient Confidentiality and adhering to the Privacy Act of 1974 and the Health Insurance Portability & Accountability Act (HIPAA) of 1996.

## **PERSONNEL**

CT Technologists must have highly proficient experience with Toshiba CT equipment. CT Technologist may assist in the training of departmental staff. Diagnostic/CT Technologists must have verified documentation that technologists who perform diagnostic/CT examinations participate in ongoing education that includes annual training on safe radiation protection practices in the Radiology environment.

## **CERTIFICATIONS**

The contractor shall ensure employees have the following current and valid professional certifications before starting work:

ARRT Certification for CT

## **Contracting Officer's Representative Designation**

The Contracting Officer Representative (COR) designated for this Project is:

Stephanie Red Elk

605-964-0507

Cheyenne River Health Center  
24276 166<sup>th</sup> Street, Airport Road  
Eagle Butte, SD 57625

The COR is responsible for:

- a. Monitoring the Contractor's technical progress;
- b. Interpreting the statement of work;
- c. Technical evaluation as required;
- d. Technical inspections and acceptance required by this contract; and,
- e. Assisting the Contractor in the resolution of technical problems encountered during performance of this contract.

## **EMERGENCY SERVICES**

On occasion, services may be required to support an activation or exercise of contingency plans outside the normal duty hours described above.

## **LANGUAGE**

The contractor must be able to read, write, speak and understand English.

## **EMPLOYEES APPEARANCE**

Contractor personnel shall present a neat appearance and be easily recognized. This may be accomplished by wearing distinctive clothing bearing the name of the company or by wearing appropriate badges that contain the company name and employee name.

## **GOVERNMENT REVIEW**

The government may review the contractor's QC plan to determine if it is adequate. If the plan is found to be adequate, a government will authorize the plan. If the plan is not adequate as submitted, the deficiencies will be identified to the contractor in writing. The contractor shall correct all identified deficiencies and submit a corrected QC plan within 10 working days or by contract start date whichever is sooner. Contractor-performed work that fails to conform to standards when this CO performs quality assurance (QA) work will serve as an indicator at the contractor is QC system is not adequate.

Technical evaluation as required

Technical inspections and acceptance required by this contract.

Assisting in the resolution of technical problems encountered during performance of this contract.

## **GOVERNMENT MONITORING**

Government will monitor the contractor's performance under this contract using the method(s) of surveillance specified in the performance standards. All monitoring observation will be recorded by the government. When an observation indicates defective performance, this COR will request the contractor's representative to confirm defective work and perform corrective action.

## **PERFORMANCE EVALUATION MEETINGS**

The contract manager may be required to meet weekly with that COR or others during the first month of the contract meeting shall be as often as necessary thereafter as determined by this CO. However, if the contractor requests, a meeting will be held whenever a contract discrepancy report is issued. The meetings shall focus on contractor performance and actual or potential problems.

All documentation, records, and schedules as described in the SOW that are the responsibility of the contractor are the property of the government and shall be turned over to the government upon completion or termination of the contract. All records are subject to the Freedom of Information and/or Privacy Acts and any request for release of any records shall be handled accordingly.

**Acceptable Quality Level (AQL)**

The maximum percent defective (or the maximum number of defects per 100 units) that, for purposes of random sampling, may occur before the government will effect the price computation system in accordance with that performance standards and the Inspection of Services clause. When the method of surveillance is other than random sampling, the AQL is defined as the number of defects or maximum percentage of defects and a lot that may occur before the government will effect the price computation system in accordance with the performance standards and the Inspection of Services clause. An AQL does not allow a contractor to knowingly offer defective service but limits reduced payment to circumstances in which defective performance results in a measurable reduction in the value of services rendered.

**Performance Standards (PS)**

Identifies the key service outputs of the contract that will be evaluated by the Government to ensure contract performance standards are met by the contractor.

**Quality Assurance (QA)**

The actions taken by the Government to ensure that services meet the requirements of the SOW.

Contracting Officer's Representative

A Government person designated by the CO with authority to act within the scope of the delegated authority.

**Quality Assurance surveillance Plan (QASP)**

The purpose of the QASP is to describe the systematic methods used to monitor performance and to identify the required documentation and the resources to be employed. The QASP provides a means for evaluating whether the contractor is meeting the performance standards/quality levels identified in the PWS and the contractor's quality control plan (QCP), and to ensure that the government pays only for the level of services received.

**Quality Control (QC)**

Those actions taken by contractor to control the performance of services so that services meet the requirements of the PWS.

Random Sampling

A sampling method in which each service output in a lot has an equal chance of being selected.

A sample consists of one or more service outputs drawn from a lot. The number of outputs in the sample is the sample size.

**GOVERNMENT-FURNISHED PROPERTY**

The government will provide any property, power, facilities, forms, supplies, and phone lines or physicians services if needed during the term of this contract.

### PERFORMANCE STANDARDS

TASK DESCRIPTION	PERFORMANCE STANDARD	METHOD OF MONITORING	+ OR - INCENTIVIES
Provide Diagnostic/CT Technologist services 40 hrs/week	Agency must provide competent Diagnostic/CT Technologist to ensure no gaps in department coverage	Diagnostic/CT Technologist will be scheduled by Radiology department supervisor Diagnostic/CT Technologist Services 40 hrs/week	For every shift not covered by agency, the shift rate will be deducted from the next submitted invoice.

**Face Masks/Badges:** The contractor personnel will be required to obtain and wear badges and masks, in the performance of this service at all times.

**Lodging:** The Contractor shall be responsible for arranging lodging for their employees that work under this contract. Government Housing is available on a limited basis. Please check with the Cheyenne River Housing Manager for availability and rates at least two weeks before arrival is expected. The CRHC does offer furnished units for contract employees. Depending on the needs of the CRHC and the contract employee, there are unfurnished units available for extended periods of employment. The contract employee is responsible for executing the rental agreement and prompt payment. The Government does not guarantee government housing availability and will be on a first come first serve basis.

**Emergency Health Care:** IHS/Cheyenne River Health Center will provide emergency healthcare of the contract providers for injuries incurred while on duty at the facility. These services will be billed to the Contractor at the current full reimbursement rate.

#### **Security/Background Investigation**

To perform the work specified herein, contractor personnel will require access to sensitive data, regular access to HHS-controlled facilities, and/or access to HHS information systems. The Government has determined the position sensitivity under this effort to be Level I.

To gain access to the sensitive data, HHS-controlled facilities, and/or HHS information systems, the Contractor shall comply with Homeland Security Presidential Directive 12, Policy for a Common Identification Standard for Federal Employees and Contractors, and with the personal identity verification and investigation procedures obtained in:

- HHS Information Security Program Policy, <http://www.hhs.gov/ocio/securityprivacy/>
- HHS Office of Security and Drug Testing, personnel Security Suitability Handbook, <http://www.hs.gov/ocio/policy/hhs-ocio-2011-0003.html>
- HHS HSPD-12 Implementation Policy (draft)

The minimum Government investigation for a non-critical sensitive position is a National Agency Check and Inquiries (with fingerprinting), which consists of searches of records covering specific areas of a person's background during the past five years. Those inquiries are sent to current and past employers, schools attended, references, and local law enforcement

authorities. More restricted positions, above non-sensitive, require more extensive documentation and investigation.

This security applies to all sub-contracts and/or sub-contractors associated and/or created from this contract.

Required Security Clearance Forms for credentialing and security clearance will be provided to the contractor after award.

### **References**

Statutes, Acts, Laws, and/or Regulations generally applicable to IHS security and functions, include, but are not limited to:

- Health Information Technology for Economic and Clinical Health Act
- Federal Information Security Management Act (FISMA), part of the E-Government Act of 2002 (Public Law 107-347, Title II)
- OMB Circular A-130 and Appendix III, Security of Federal Automated Information Resources
- OMB Circular A-11, Preparing, Submitting, and Executing the Budget
- Presidential Decision Directive 63 (PDD 63)
- NIST Special Publications – 800 Series
- Health Insurance Portability and Accountability Act (HIPAA)
- Indian Healthcare Improvement Act (HCIA) – Public Law 94-437
- Crime Control Act 1990 – Public Law 101-647
- Indian Child Protection and Family Violence Prevention Act Public Law 101-630
- Privacy Act of 1974
- Section 508 of the Rehabilitation Act of 1973
- Courtesy and Respect in the Workplace Policy

### **Business Agreement**

Pursuant to 45 C.F.R. 164.502(e), the Indian Health Service, as a covered entity, is required to enter into an agreement with a “business associate”, as defined in 45 C.F.R. 160.103, under which the business associate must agree to appropriately safeguard Protected Health Information (PHI) that it will use and disclose when performing function, activities or services pursuant to its contract with IHS. Therefore, a business associate agreement shall be attached to this contract and executed upon award of this contract. See attached Business Associate Agreement.

### **Invoice Submission:**

Invoices shall be submitted through Invoice Processing Platform (IPP).

The IPP website address is: <https://www.ipp.gov>

In compliance with the Office of Management and Budget (OMB) M-15-19 memorandum “Improving Government Efficiency and Saving Taxpayer Dollars Through Electronic Invoicing” directing Federal agencies to adopt electronic invoicing as the primary means to disburse payment to vendors. Invoices submitted under any award will be required to utilize the Invoice Processing Platform (IPP) in accordance with HHSAR 352.232-71, Electronic Submission and Processing of Payment Requests” IPP is a secure, web-based electronic invoicing system

provided by the U.S. Department of the Treasury's Bureau of the Fiscal Service, in partnership with the Federal Reserve Bank of St. Louis (FRSTL).

Contractors are encouraged to register an account with IPP if they have not already done so. If your organization is already registered to use IPP, you will not be required to re-register- however, we encourage you make sure your organization and designated IPP user accounts are valid and up to date. It will be the responsibility of the contractor to keep active and maintain there SAM.gov account, in order to keep there IPP account active. Payment is sent via E.F.T., through the account registered in SAM.gov.

If you require assistance registering or IPP account access, please contact the IPP Helpdesk at (866) 973-3131 (M-F 8AM to 6PM ET), or [IPPCustomerSupport@fiscal.treasury.gov](mailto:IPPCustomerSupport@fiscal.treasury.gov) or [ihse-invoicingteam@ihf.gov](mailto:ihse-invoicingteam@ihf.gov)

Should the contractor feel that use of the IPP would be unduly burdensome, their response to the solicitation should include an explanation of this position, for a determination by the contracting officer to allow non-IPP invoicing.

The contractor shall submit a signed and approved invoice to request payment through IPP, at least bi-weekly. If services are billed at an hourly rate, invoices will include timesheets, signed off by the department supervisor.

The Contractor shall include the following information on each invoice in accordance with the Prompt Payment Act (5 CFR Part 1315.9(b):

1. Contractor's name;
2. Invoice number and date;
3. Entire award number/**Contract number** or other authorization number for delivery of goods or services;
4. Description (including dates of service), price, and quantity of goods and services rendered;
5. Shipping and payment terms;
6. UEI number and Taxpayer Identifying Number (TIN); and
7. Contact name (where practicable), title and telephone number.

Only actual hours worked must be invoiced for, at the Fixed Rate referenced in the award document(s). The government reserves the right to not use all hours enacted under each task order and will de-obligated excess hours at close-out of the task order.

#### **Mandatory Background/Security Clearance Requirements:**

The employees of the Contractor or its subcontractors, are subject to a background investigation and shall comply with Section 231 of the Crime Control Act of 1990, P.L. 101-647; and the Indian Child Protection and Family Violence Prevention Act, P.L. 101-630. In addition, each person shall also comply with the Privacy Act of 1974 and the HIPPA Act of 1996. Failure to comply with these statutes will result in immediate removal.

Contractor personnel performing work under this contract, which involve regular contact with, or control over, Indian children, are subject to a character investigation in accordance with the



“Indian Child Protection and Family Violence Prevention Act” P.L. 101-630. The Indian Health Service Personnel Office will conduct these investigations following award of a contract unless in the judgment of the Contracting Officer, in consultation with the Personnel Officer, investigation may be waived based on prior investigations on file. Until the character investigation has been completed and the Contracting Officer notified, such individual shall not have unsupervised contact with Indian children. This level of security is required, and must be maintained for the life of the contract.

Before starting work requiring routine access to I.H.S. facilities or systems each person must complete a FBI National Criminal History Check (Fingerprint Check) adjudicated by an I.H.S. employee using the Office of Personnel Management Personnel Investigations Processing System.

Fingerprint cards need to be mailed by USPS, UPS, or Fed Ex, to:

Cheyenne River Health Center  
Attn: Chelsie Veit, Background Clearance  
24276 166<sup>th</sup> Street  
Eagle Butte, South Dakota, 57625

**The only acceptable format for official fingerprints is federal document FD-258 (Rev. 5-15-17) 1110-0046. The fingerprints must be ORIGINAL in ink. The document must be completed in its entirety. The fingerprint form when completed can be sent using USPS, Fed-Ex or any commercial carrier but must be sent to the address and person named above.**

In addition, no Contractor or subcontractor employee shall be permitted to perform work under this contract if listed on the HHS Office of Inspector General List of Excluded Individuals/Entities (LEIE), <http://exclusions.oig.hhs.gov>. As soon as practicable prior to the start of work, the performance of the work the Contractor shall provide to the Contracting Officer the names of all individuals to be used in performance of work for screening against the LEIE.

The Contractor is responsible for conducting security preclearance investigations in sufficient depth to ensure that each Contractor or subcontractor employee referred to I.H.S. is not on the LEIE and can obtain a favorable fingerprint clearance. Each security preclearance shall be conducted sufficiently in advance of the start of performance to avoid delays caused by denial of access. If this is a Time and Materials, Labor-Hour or Cost Reimbursement contract, the contractor shall not charge for or be reimbursed for labor hours or other costs incurred for employees who are unable to perform due to denial or access or the excess time required to resolve and clear unfavorable security clearance findings. If this is a Fixed Price contract, denial of access due to security clearance findings shall not be a basis for excusable delay or an increase to the contract amount.

Government will pay for the cost to process the contractors suitability clearances. However, multiple investigations for the same position may, at the Contracting Officers discretion, lead to reduction(s) in the contract price of no more than the cost of the extra investigation(s).

Employees that **DO NOT** have access to LMS, contractors, volunteers, or IHS employees with IPA's or MOA's to tribal organizations please, click here [IHS Sexual Abuse Prevention website](#). When the contractors have completed and passed the training, please have them send a copy of the last page of the training with Name, Date, and Time to their respective Department Supervisor, COR, and Kimmen LeBeau, e-mail: [Kimmen.LeBeau@ihs.gov](mailto:Kimmen.LeBeau@ihs.gov)

Request Background documents from the contractor, to complete the clearance process, should be mailed/FedEx to the designated background coordinator with 5-7 days.

Since the background clearance process may take up to 2 weeks to be processed and cleared, candidates coming on board should have their complete background documents properly filled out, Employee Health Records, and fingerprint cards, sent to the background coordinator 10 days before there scheduled start date. Failure for delay of getting the required background documents into the Background coordinator, will be reflect on contractors rating performance and entered into CPARS.

### **Mandatory Employee Health Records Requirements:**

Clearance from the Employee Health Coordinator (EHC) needs to be obtained prior to the contractor arriving to the facility, this means all records have been collected and reviewed by the EHC. The EHC will mark the contractor as "Yes" in the Cleared Column of the database when they have been cleared by the EHC in the Onboarding Database.

The required records are:

- Two (2) documented vaccinations of MMR or a titer showing immunity to Mumps, Measles (Rubeola), Rubella
- Three (3) documented vaccinations of hepatitis b or a titer showing immunity to hepatitis B
- Two (2) documented vaccinations of varicella or a titer showing immunity to varicella
- COVID-19: Completed primary series along with most recent bivalent booster vaccine
  - Medical and Religious Exemptions may be submitted – will need to be reviewed and approved / disapproved by EHC
  - Appeals process not valid for contractors, only Federal Employees
- Tdap within the last 10 years
- PPD (purified protein derivative) or QuantiFERON- TB Gold within the last year or chest x-ray within last five (5) years to rule out Tuberculosis
  - Neither item can expire within contracted time
  - If contractor were to extend and the PPD/Gold/X-ray were to expire during the extension time frame, the expiring items must be completed and submitted to CRHC prior to extension being signed by CRHC
- Flu vaccine for current Flu Season if contracted between Oct 1 and March 31
- Fit Test within the last year to a mask that CRHC carries.
  - Fit test cannot expire within contracted time
  - If contractor were to extend and the fit test were to expire during the extension time frame, a new fit test must be completed and submitted to CRHC prior to extension being signed by CRHC

Contactors are required to follow any Employee Health or Infection Control mandates given by Indian Health Services (IHS) Headquarters, IHS Great Plain Areas, IHS Cheyenne River Health Center, or the Infection Control Preventionist of CRHC. Listed are examples of mandates that would need to be followed as of 1.24.2023, these mandates are fluid and always changing:

- Mandatory Self Screening for COVID before each shift
- Mandatory masking for all areas of the facility
- Mandatory COVID Bivalent Booster Vaccination

**Past Performance Questionnaire/Information  
CRHC23-23 Diagnostic CT Technologist Services**

OFFEROR INSTRUCTIONS: A separate record must be completed for each Past Performance Information and Survey; Offeror must directly send to the evaluator, requesting they complete and return as indicated on the attached Past Performance Survey, no later than, **August 24, 2023 at 1:00pm MST** to [stephanie.redelk@ihs.gov](mailto:stephanie.redelk@ihs.gov). Further, Offeror must include a copy of each requested Past Performance Information page with proposal submission, showing the date and time you sent to evaluator.

Name of Offeror being evaluated:
Address of Offeror:
Contract Details (i.e. Contract #/ Delivery or Task Order #, Title, Location, etc)
Evaluator's Full Name:
Evaluator's Position held or function in relation to project:
Evaluator's Company/Organization Name, Address and Phone number:
Evaluator's email address:
Please complete and return to: <a href="mailto:Stephanie.RedElk@ihs.gov">Stephanie.RedElk@ihs.gov</a> No Later Than: <b>August 24, 2023 @ 1:00pm MST</b>

## Past Performance Questionnaire

Reference Instructions: The Indian Health Service/Cheyenne River Health Center is considering the Offeror listed above for award of a firm-fixed price, non-personal service, IDIQ contract, for Diagnostic CT Technologist Services. Your comments would be appreciated regarding this firm's past performance. Your comments are considered Source Selection Sensitive; therefore, you are advised that the Federal Acquisition Regulation (FAR) 15.506 prohibits the release of the names of the individuals providing reference information about the Offeror's past performance. **Survey should be completed by the evaluator and returned to Stephanie Red Elk** at [Stephanie.RedElk@ihs.gov](mailto:Stephanie.RedElk@ihs.gov), no later than the date specified at the bottom of the form.

Please evaluate the Past Performance using only the following ratings without variation. If the rating is Marginal or Unacceptable, provide additional information in the appropriate block or in the remarks section of this form.	
O = Outstanding	= Performance greatly exceeded contract requirements
A = Above Average	= Performance exceeded contract requirements
S = Satisfactory	= Performance met contract requirements
M = Marginal	= Performance met the minimum contract requirements but some material aspects of the contractor's performance were less than satisfactory.
U = Unacceptable	= Performance was poor and/or did not satisfy contract requirements

**NOTE: Do not use a color marking pen to circle the response. Best to use a ball point pen (Black or Blue) to circle your response.**

Describe exactly what type of CT Technologist services, or similar service(s) were provided to your company/organization?

Length of the Service (Provide dates):

Rate the following questions if the company provided temporary medical staffing or similar services. Provide information/comments in the Remarks Section below.	Circle One
Q1. To what extent did the contractor comply with contract requirements?	O   A   S   M   U
Q2. How timely was the contractor's performance?	O   A   S   M   U
Q3. How well did the contractor comply with the labor and safety standards?	O   A   S   M   U

Q4. Rate the effectiveness of the contractor's management of the contract?	O A S M U
Q5. Rate the contractor's handling of staff integrity issues.	O A S M U
Q6. Rate the contractor's personnel management practices.	O A S M U
Q7. Quality Control: Rate the overall quality of contractor's work.	O A S M U
Q8. How well did the contractor comply with the training requirements with respect to its employees?	O A S M U
Q9. What extent was contractor flexible in responding to changing needs?	O A S M U
Q10. To what extent was the contractor reliable and responsive?	O A S M U
Q11. To what extent did the contractor have continuous uninterrupted service?	O A S M U
Q12. Have any cure notices, show cause letters, suspension of payment, or termination been issued? If yes, explain on the following page.	Yes No
Q13. Would you award another contract to this contractor? If no, explain on the following page.	Yes No
Q14. Was the customer satisfied with the service provided? If no, explain on the following page.	Yes No
Q15. To what extent did contractor notify you of problems of potential issues?	O A S M U
Q16. Did the Contractor submit accurate invoices during the performance period?	Yes No
Q17. Was the contractor professional and courteous in its interaction with you?	Yes No
Q18. Did the contractor respond promptly to requests?	Yes No
Q19. Did the contractor meet all expectations under the contract?	Yes No

### Past Performance Questionnaire – Remarks Section

Evaluator's Additional Remarks regarding services:	
Signature of Evaluator:	Date of Evaluation:
Print Name of Evaluator:	

**Please email scanned copy directly to**  
**[Stephanie.RedElk@ihs.gov](mailto:Stephanie.RedElk@ihs.gov)**  
**Do NOT return survey to the company you are evaluating**

## CLAUSES & PROVISIONS INCORPORATED BY REFERENCE

(Firm Fixed-Price Service - Commercial Item)

### 52.252-1 -- Solicitation Provisions Incorporated by Reference (Feb 1998)

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es): <http://arnet.gov/far/index.html>

### 52.252-2 -- Clauses Incorporated by Reference (Feb 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es): <http://arnet.gov/far/index.html>

#### I. Federal Acquisition Regulations (FAR) (48 CFR Chapter 1) Clauses

No.	FAR Citation	Clause Title	Clause Date
1.	52.202-1	Definitions	Jun 2020
2.	52.203-3	Gratuities	Apr 1984
3.	52.203-12	Limitation on Payments to Influence Certain Federal Transactions	Jun 2020
4.	52.203-17	Contractor Employee Whistleblower Rights and Requirements To Inform Employees of Whistleblower Rights.	Jun 2020
5.	52.204-7	System for Award Management	Oct 2018
6.	52.204-9	Personal Identity Verification of Contractor Personnel	Jan 2011
7.	52.204-13	System for Award Management Maintenance	Oct 2018
8.	52.204-15	Service Contract Reporting Requirements for Indefinite-Delivery Contracts	Oct 2016
9.	52.204-16	Commercial and Government Entity Code Reporting	Aug 2020
10.	52.204-18	Commercial and Government Entity Code Maintenance	Aug 2020
11.	52.204-19	Incorporation by Reference of Representation and Certifications	Dec 2014
12.	52.212-1	Instructions to Offerors – Commercial Products and Commercial Services	Nov 2021
13.	52.212-4	Contract Terms and Conditions – Commercial Products and Commercial Services	Dec 2022



14.	52.215-5	Facsimile Proposals	Oct 1997
15.	52.216-27	Single or Multiple Awards	Oct 1995
16.	52.217-4	Evaluation of Options Exercised at Time of Contract Award	Jun 1988
17.	52.217-5	Evaluation of Options	Jul 1990
18.	52.217-8	Option to Extend Services	Nov 1999
19.	52.222-41	Service Contract Labor Standards	Aug 2018
20.	52.222-43	Fair Labor Standards Act and Service Contract Labor Standards -Price Adjustment (Multiple Year and Option Contracts)	Aug 2018
21.	52.223-6	Drug-Free Workplace	May 2001
22.	52.224-1	Privacy Act Notification	Apr 1984
23.	52.224-2	Privacy Act	Apr 1984
24.	52.232-25	Prompt Payment	Jan 2017
25.	52.232-33	Payment by Electronic Funds Transfer – System for Award Management	Oct 2018
26.	52.232-39	Unenforceability of Unauthorized Obligations	Jun 2013
27.	52.232-40	Providing Accelerated Payments to Small Business Subcontractors	Nov 2021
28.	52.233-1	Disputes	May 2014
29.	52.233-3	Protest After Award	Aug 1996
30.	52.237-1	Site Visit	Apr 1984
31.	52.237-2	Protection of Government Buildings, Equipment, and Vegetation	Apr 1984
32.	52.237-3	Continuity of Services	Jan 1991
33.	52.237-7	Indemnification and Medical Liability Insurance	Jan 1997
34.	52.242-15	Stop-Work Order	Aug 1989
35.	52.243-1	Changes-Fixed-Price	Aug 1987

36.	52.249-2	Termination for Convenience of the Government (Fixed-Price)	Apr 1984
37.	52.249-8	Default (Fixed-Price Supply and Service)	Apr 1984
38.	52.253-1	Computer Generated Forms	Jan 1991

## II. Federal Acquisition Regulations (FAR) (48 CFR Chapter 1) Clauses in Full Text

No.	FAR Citation	Clause Title	Clause Date
1.	52.204-21	Basic Safeguarding of Covered Contractor Information Systems	Nov 2021
2.	52.212-3	Offeror Representation and Certifications - Commercial Products and Commercial Services	Dec 2022
3.	52.212-5	Contract Terms and Conditions Required to Implement Statutes Or Executive Orders – Commercial Items	Dec 2022
4.	52.216-18	Ordering	Aug 2020
5.	52.216-19	Order Limitations	Oct 1995
6.	52.216-22	Indefinite Quantity	Oct 1995
7.	52.217-9	Option to Extend the Term of the Contract	Mar 2000
8.	52.232-19	Availability of Funds for the Next Fiscal Year	Apr 1984
9.	52.223-99	Ensuring Adequate COVID-19 Safety Protocols For Federal Contractors	Oct 2021

### **52.204-21 Basic Safeguarding of Covered Contractor Information Systems.**

As prescribed in [4.1903](#) , insert the following clause:

#### **BASIC SAFEGUARDING OF COVERED CONTRACTOR INFORMATION SYSTEMS (NOV 2021)**

(a) *Definitions.* As used in this clause—

*Covered contractor information system* means an information system that is owned or operated by a contractor that processes, stores, or transmits Federal contract information.

*Federal contract information* means information, not intended for public release, that is provided by or generated for the Government under a contract to develop or deliver a product or service to the Government, but not including information provided by the Government to the public (such as on public websites) or simple transactional information, such as necessary to process payments.

*Information* means any communication or representation of knowledge such as facts, data, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual (Committee on National Security Systems Instruction (CNSSI) 4009).

*Information system* means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information ( [44 U.S.C. 3502](#)).

*Safeguarding* means measures or controls that are prescribed to protect information systems.

(b) Safeguarding requirements and procedures.

(1) The Contractor shall apply the following basic safeguarding requirements and procedures to protect covered contractor information systems. Requirements and procedures for basic safeguarding of covered contractor information systems shall include, at a minimum, the following security controls:

(i) Limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems).

(ii) Limit information system access to the types of transactions and functions that authorized users are permitted to execute.

(iii) Verify and control/limit connections to and use of external information systems.

(iv) Control information posted or processed on publicly accessible information systems.

(v) Identify information system users, processes acting on behalf of users, or devices.

(vi) Authenticate (or verify) the identities of those users, processes, or devices, as a prerequisite to allowing access to organizational information systems.

(vii) Sanitize or destroy information system media containing Federal Contract Information before disposal or release for reuse.

(viii) Limit physical access to organizational information systems, equipment, and the respective operating environments to authorized individuals.

(ix) Escort visitors and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices.

(x) Monitor, control, and protect organizational communications (*i.e.*, information transmitted or received by organizational information systems) at the external boundaries and key internal boundaries of the information systems.

(xi) Implement subnetworks for publicly accessible system components that are physically or logically separated from internal networks.

(xii) Identify, report, and correct information and information system flaws in a timely manner.

(xiii) Provide protection from malicious code at appropriate locations within organizational information systems.

(xiv) Update malicious code protection mechanisms when new releases are available.

(xv) Perform periodic scans of the information system and real-time scans of files from external sources as files are downloaded, opened, or executed.

(2) *Other requirements.* This clause does not relieve the Contractor of any other specific safeguarding requirements specified by Federal agencies and departments relating to covered contractor information systems generally or other Federal safeguarding requirements for controlled unclassified information (CUI) as established by Executive Order 13556.

(c) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (c), in subcontracts under this contract (including subcontracts for the acquisition of commercial products or commercial services, other than commercially available off-the-shelf items), in which the subcontractor may have Federal contract information residing in or transiting through its information system.

(End of clause)

### **52.212-3 Offeror Representations and Certifications—Commercial Products and Commercial Services**

As prescribed in 12.301(b)(2), insert the following provision:

#### **OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (DEC 2022)**

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The Offeror shall complete only paragraph (b) of this provision if the Offeror has completed the annual representations and certification electronically in the System for Award Management (SAM) accessed through <https://www.sam.gov>. If the Offeror has not completed the annual representations and certifications electronically, the Offeror shall complete only paragraphs (c) through (v) of this provision.

(a) Definitions. As used in this provision—

"Covered telecommunications equipment or services" has the meaning provided in the clause 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

Economically disadvantaged women-owned small business (EDWOSB) concern means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States and who are economically disadvantaged in accordance with 13 CFR part 127, and the concern is certified by SBA or an approved third-party certifier in accordance with 13 CFR 127.300. It automatically qualifies as a women-owned small business eligible under the WOSB Program.

Forced or indentured child labor means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

Highest-level owner means the entity that owns or controls an immediate owner of the offeror, or that owns or controls one or more entities that control an immediate owner of the offeror. No entity owns or exercises control of the highest level owner.

Immediate owner means an entity, other than the offeror, that has direct control of the offeror. Indicators of control include, but are not limited to, one or more of the following: ownership or interlocking management, identity of interests among family members, shared facilities and equipment, and the common use of employees.

Inverted domestic corporation, means a foreign incorporated entity that meets the definition of an inverted domestic corporation under 6 U.S.C. 395(b), applied in accordance with the rules and definitions of 6 U.S.C. 395(c).

Manufactured end product means any end product in product and service codes (PSCs) 1000-9999, except—

- (1) PSC 5510, Lumber and Related Basic Wood Materials;
- (2) Product or Service Group (PSG) 87, Agricultural Supplies;
- (3) PSG 88, Live Animals;
- (4) PSG 89, Subsistence;
- (5) PSC 9410, Crude Grades of Plant Materials;
- (6) PSC 9430, Miscellaneous Crude Animal Products, Inedible;
- (7) PSC 9440, Miscellaneous Crude Agricultural and Forestry Products;
- (8) PSC 9610, Ores;
- (9) PSC 9620, Minerals, Natural and Synthetic; and
- (10) PSC 9630, Additive Metal Materials.

Place of manufacture means the place where an end product is assembled out of components, or otherwise made or processed from raw materials into the finished product that is to be provided to the Government. If a product is disassembled and reassembled, the place of reassembly is not the place of manufacture.

Predecessor means an entity that is replaced by a successor and includes any predecessors of the predecessor.

Reasonable inquiry has the meaning provided in the clause 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

Restricted business operations means business operations in Sudan that include power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, as those terms are defined in the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174). Restricted business operations do not include business operations that the person (as that term is defined in Section 2 of the Sudan Accountability and Divestment Act of 2007) conducting the business can demonstrate—

- (1) Are conducted under contract directly and exclusively with the regional government of southern Sudan;
- (2) Are conducted pursuant to specific authorization from the Office of Foreign Assets Control in the Department of the Treasury, or are expressly exempted under Federal law from the requirement to be conducted under such authorization;
- (3) Consist of providing goods or services to marginalized populations of Sudan;
- (4) Consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;
- (5) Consist of providing goods or services that are used only to promote health or education; or

(6) Have been voluntarily suspended. "Sensitive technology"—

Sensitive technology—

(1) Means hardware, software, telecommunications equipment, or any other technology that is to be used specifically—

- (i) To restrict the free flow of unbiased information in Iran; or
- (ii) To disrupt, monitor, or otherwise restrict speech of the people of Iran; and

(2) Does not include information or informational materials the export of which the President does not have the authority to regulate or prohibit pursuant to section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)).

Service-disabled veteran-owned small business concern—

(1) Means a small business concern—

- (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
- (ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service connected, as defined in 38 U.S.C. 101(16).

Small business concern—

(1) Means a concern, including its affiliates, that is independently owned and operated, not dominant in its field of operation, and qualified as a small business under the criteria in 13 CFR part 121 and size standards in this solicitation.

(2) Affiliates, as used in this definition, means business concerns, one of whom directly or indirectly controls or has the power to control the others, or a third party or parties control or have the power to control the others. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships. SBA determines affiliation based on the factors set forth at 13 CFR 121.103.

Small disadvantaged business concern, consistent with 13 CFR 124.1002, means a small business concern under the size standard applicable to the acquisition, that—

(1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by—

- (i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and
- (ii) Each individual claiming economic disadvantage has a net worth not exceeding \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(2) The management and daily business operations of which are controlled (as defined at 13 CFR 124.106) by individuals, who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

Subsidiary means an entity in which more than 50 percent of the entity is owned—

(1) Directly by a parent corporation; or

(2) Through another subsidiary of a parent corporation

Successor means an entity that has replaced a predecessor by acquiring the assets and carrying out the affairs of the predecessor under a new name (often through acquisition or merger). The term "successor" does not include new offices/divisions of the same company or a company that only changes its name. The extent of the responsibility of the successor for the liabilities of the predecessor may vary, depending on State law and specific circumstances.

Veteran-owned small business concern means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

Women-owned business concern means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women

Women-owned small business concern means a small business concern—

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

Women-owned small business (WOSB) concern eligible under the WOSB Program (in accordance with 13 CFR part 127), means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States, and the concern is certified by SBA or an approved third-party certifier in accordance with 13 CFR 127.300.

(b)

(1) Annual Representations and Certifications. Any changes provided by the Offeror in paragraph (b)(2) of this provision do not automatically change the representations and certifications in SAM.

(2) The offeror has completed the annual representations and certifications electronically in SAM accessed through <http://www.sam.gov>. After reviewing SAM information, the Offeror verifies by submission of this offer that the representations and certifications currently posted electronically at FAR 52.212-3, Offeror Representations and Certifications-Commercial Products and Commercial Services, have been entered or updated in the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard(s) applicable to the NAICS code(s) referenced for this solicitation), at the time this offer is submitted and are incorporated in this offer by reference (see FAR 4.1201), except for paragraphs \_\_\_\_\_.

[Offeror to identify the applicable paragraphs at (c) through (v) of this provision that the offeror has completed for the purposes of this solicitation only, if any.

These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted electronically on SAM.]

(c) Offerors must complete the following representations when the resulting contract is for supplies to be delivered or services to be performed in the United States or its outlying areas, or when the contracting officer has applied part 19 in accordance with 19.000(b)(1)(ii). Check all that apply.

(1) Small business concern. The offeror represents as part of its offer that—

(i) It ☐ is, ☐ is not a small business concern; or

(ii) It ☐ is, ☐ is not a small business joint venture that complies with the requirements of 13 CFR 121.103(h) and 13 CFR 125.8(a) and (b). [ The offeror shall enter the name and unique entity identifier of each party to the joint venture: \_\_\_\_.]

(2) Veteran-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that it ☐ is, ☐ is not a veteran-owned small business concern.

(3) Service-disabled veteran-owned small business concern. [ Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.] The offeror represents as part of its offer that—

(i) It ☐ is, ☐ is not a service-disabled veteran-owned small business concern; or

(ii) It ☐ is, ☐ is not a joint venture that complies with the requirements of 13 CFR 125.18(b)(1) and (2). [The offeror shall enter the name and unique entity identifier of each party to the joint venture: \_\_\_\_.] Each service-disabled veteran-owned small business concern participating in the joint venture shall provide representation of its service-disabled veteran-owned small business concern status.

(4) Small disadvantaged business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, that it ☐ is, ☐ is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

(5) Women-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it ☐ is, ☐ is not a women-owned small business concern.

(6) WOSB joint venture eligible under the WOSB Program. The offeror represents that it ☐ is, ☐ is not a joint venture that complies with the requirements of 13 CFR 127.506(a) through (c). [ The offeror shall enter the name and unique entity identifier of each party to the joint venture: \_\_\_\_.]

(7) Economically disadvantaged women-owned small business (EDWOSB) joint venture. The offeror represents that it ☐ is, ☐ is not a joint venture that complies with the requirements of 13 CFR 127.506(a) through (c). [ The offeror shall enter the name and unique entity identifier of each party to the joint venture: \_\_\_\_.]

(8) Women-owned business concern (other than small business concern). [Complete only if the offeror is a women-owned business concern and did not represent itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it ☐ is a women-owned business concern.

(9) Tie bid priority for labor surplus area concerns. If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on account of manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the contract price: \_\_\_\_\_

(10) HUBZone small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, as part of its offer, that—



(i) It ☐ is, ☐ is not a HUBZone small business concern listed, on the date of this representation, as having been certified by SBA as a HUBZone small business concern in the Dynamic Small Business Search and SAM, and will attempt to maintain an employment rate of HUBZone residents of 35 percent of its employees during performance of a HUBZone contract (see 13 CFR 126.200(e)(1)); and

(ii) It ☐ is, ☐ is not a HUBZone joint venture that complies with the requirements of 13 CFR 126.616(a) through (c). [ The offeror shall enter the name and unique entity identifier of each party to the joint venture: \_\_\_\_.] Each HUBZone small business concern participating in the HUBZone joint venture shall provide representation of its HUBZone status.

(d) Representations required to implement provisions of Executive Order 11246-

(1) Previous contracts and compliance. The offeror represents that-

(i) It ☐ has, ☐ has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and

(ii) It ☐ has, ☐ has not filed all required compliance reports.

(2) Affirmative Action Compliance. The offeror represents that-

(i) It ☐ has developed and has on file, ☐ has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR parts 60-1 and 60-2), or

(ii) It ☐ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) Certification Regarding Payments to Influence Federal Transactions (31 <http://uscode.house.gov/> U.S.C. 1352). (Applies only if the contract is expected to exceed \$150,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(f) Buy American Certificate. (Applies only if the clause at Federal Acquisition Regulation (FAR) 52.225-1, Buy American-Supplies, is included in this solicitation.)

(1)

(i) The Offeror certifies that each end product and that each domestic end product listed in paragraph (f)(3) of this provision contains a critical component, except those listed in paragraph (f)(2) of this provision, is a domestic end product.

(ii) The Offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products. For those foreign end products that do not consist wholly or predominantly of iron or steel or a combination of both, the Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content, except for those that are COTS items. If the percentage of the domestic content is unknown, select "no".

(iii) The Offeror shall separately list the line item numbers of domestic end products that contain a critical component (see FAR 25.105).

(iv) The terms "commercially available off-the-shelf (COTS) item," "critical component," "domestic end product," "end product," "foreign end product," and "United States" are defined in the clause of this solicitation entitled "Buy American-Supplies."

(2) Foreign End Products:

|

|


[List as necessary]

(3) Domestic end products containing a critical component:

Line Item No. \_\_\_\_

[List as necessary]

(4) The Government will evaluate offers in accordance with the policies and procedures of FAR part 25.

(g)

(1) Buy American-Free Trade Agreements-Israeli Trade Act Certificate. (Applies only if the clause at FAR 52.225-3, Buy American-Free Trade Agreements-Israeli Trade Act, is included in this solicitation.)

(i)

(A) The Offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (iii) of this provision, is a domestic end product and that each domestic end product listed in paragraph (g)(1)(iv) of this provision contains a critical component.

(B) The terms "Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end product," "commercially available off-the-shelf (COTS) item," "critical component," "domestic end product," "end product," "foreign end product," "Free Trade Agreement country," "Free Trade Agreement country end product," "Israeli end product," and "United States" are defined in the clause of this solicitation entitled "Buy American-Free Trade Agreements-Israeli Trade Act."

(ii) The Offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled "Buy American-Free Trade Agreements-Israeli Trade Act."

Free Trade Agreement Country End Products (Other than Bahrainian, Moroccan, Omani, Panamanian, or Peruvian End Products) or Israeli End Products:


[List as necessary]

(iii) The Offeror shall list those supplies that are foreign end products (other than those listed in paragraph (g)(1)(ii) of this provision) as defined in the clause of this solicitation entitled "Buy American-Free Trade Agreements-Israeli Trade Act." The Offeror shall list as other foreign end products those end products manufactured in the United States that do not

qualify as domestic end products. For those foreign end products that do not consist wholly or predominantly of iron or steel or a combination of both, the Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content, except for those that are COTS items. If the percentage of the domestic content is unknown, select “no”.

Other Foreign End Products:

_____	_____	_____
_____	_____	_____
_____	_____	_____

[List as necessary]

(iv) The Offeror shall list the line item numbers of domestic end products that contain a critical component (see FAR 25.105).

Line Item No. \_\_\_\_

[List as necessary]

(v) The Government will evaluate offers in accordance with the policies and procedures of FAR part 25.

(2) Buy American-Free Trade Agreements-Israeli Trade Act Certificate, Alternate II. If Alternate II to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Israeli end products as defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements—Israeli Trade Act”:

Israeli End Products:

_____
_____
_____

[List as necessary]

(3) Buy American-Free Trade Agreements-Israeli Trade Act Certificate, Alternate III. If Alternate III to the clause at 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled "Buy American-Free Trade Agreements-Israeli Trade Act":

Free Trade Agreement Country End Products (Other than Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian End Products) or Israeli End Products:

_____	_____
_____	_____
_____	_____

[List as necessary]

(4) Trade Agreements Certificate. (Applies only if the clause at FAR 52.225-5, Trade Agreements, is included in this solicitation.)

- (i) The offeror certifies that each end product, except those listed in paragraph (g)(5)(ii) of this provision, is a U.S.-made or designated country end product, as defined in the clause of this solicitation entitled "Trade Agreements."
- (ii) The offeror shall list as other end products those end products that are not U.S.-made or designated country end products.

Other End Products:

_____	_____
_____	_____
_____	_____

[List as necessary]

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR part 25. For line items covered by the WTO GPA, the Government will evaluate offers of U.S.-made or designated country end products without regard to the restrictions of the Buy American statute. The Government will consider for award only offers of U.S.-made or designated country end products unless the Contracting Officer determines that there are

no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

(h) Certification Regarding Responsibility Matters (Executive Order 12689). (Applies only if the contract value is expected to exceed the simplified acquisition threshold.) The offeror certifies, to the best of its knowledge and belief, that the offeror and/or any of its principals—

(1) ☐ Are, ☐ are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(2) ☐ Have, ☐ have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

(3) ☐ Are, ☐ are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses enumerated in paragraph (h)(2) of this clause; and

(4) ☐ Have, ☐ have not, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds the threshold at 9.104-5(a)(2) for which the liability remains unsatisfied.

(i) Taxes are considered delinquent if both of the following criteria apply:

(A) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(B) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(ii) Examples.

(A) The taxpayer has received a statutory notice of deficiency, under I.R.C. §6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(B) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. §6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(C) The taxpayer has entered into an installment agreement pursuant to I.R.C. §6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(D) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. §362 (the Bankruptcy Code).

(i) Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126).

[The Contracting Officer must list in paragraph (i)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at 22.1503(b).]

(1) Listed end products.

(2) Certification. [If the Contracting Officer has identified end products and countries of origin in paragraph (i)(1) of this provision, then the offeror must certify to either (i)(2)(i) or (i)(2)(ii) by checking the appropriate block.]

(i) The offeror will not supply any end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

(ii) The offeror may supply an end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

(j) Place of manufacture. (Does not apply unless the solicitation is predominantly for the acquisition of manufactured end products.) For statistical purposes only, the offeror shall indicate whether the place of manufacture of the end products it expects to provide in response to this solicitation is predominantly-

(1) ☐ In the United States (Check this box if the total anticipated price of offered end products manufactured in the United States exceeds the total anticipated price of offered end products manufactured outside the United States); or

(2) ☐ Outside the United States.

(k) Certificates regarding exemptions from the application of the Service Contract Labor Standards (Certification by the offeror as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services.) [The contracting officer is to check a box to indicate if paragraph (k)(1) or (k)(2) applies.]

(1) Maintenance, calibration, or repair of certain equipment as described in FAR 22.1003-4(c)(1).  
The offeror ☐ does ☐ does not certify that-

(i) The items of equipment to be serviced under this contract are used regularly for other than Governmental purposes and are sold or traded by the offeror (or subcontractor in the case of an exempt subcontract) in substantial quantities to the general public in the course of normal business operations;

(ii) The services will be furnished at prices which are, or are based on, established catalog or market prices (see FAR 22.1003-4(c)(2)(ii)) for the maintenance, calibration, or repair of such equipment; and

(iii) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract will be the same as that used for these employees and equivalent employees servicing the same equipment of commercial customers.

(2) Certain services as described in FAR 22.1003-4(d)(1). The offeror ☐ does ☐ does not certify that-

(i) The services under the contract are offered and sold regularly to non-Governmental customers, and are provided by the offeror (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations;

(ii) The contract services will be furnished at prices that are, or are based on, established catalog or market prices (see FAR 22.1003-4(d)(2)(iii));

(iii) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent

of available hours during the contract period if the contract period is less than a month) servicing the Government contract; and

(iv) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract is the same as that used for these employees and equivalent employees servicing commercial customers.

(3) If paragraph (k)(1) or (k)(2) of this clause applies—

(i) If the offeror does not certify to the conditions in paragraph (k)(1) or (k)(2) and the Contracting Officer did not attach a Service Contract Labor Standards wage determination to the solicitation, the offeror shall notify the Contracting Officer as soon as possible; and

(ii) The Contracting Officer may not make an award to the offeror if the offeror fails to execute the certification in paragraph (k)(1) or (k)(2) of this clause or to contact the Contracting Officer as required in paragraph (k)(3)(i) of this clause.

(l) Taxpayer Identification Number (TIN) ( 26 U.S.C. 6109, 31 U.S.C. 7701). (Not applicable if the offeror is required to provide this information to the SAM to be eligible for award.)

(1) All offerors must submit the information required in paragraphs (l)(3) through (l)(5) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government ( 31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(3) Taxpayer Identification Number (TIN).

TIN: \_\_\_\_\_.

TIN has been applied for.

TIN is not required because:

Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

Offeror is an agency or instrumentality of a foreign government;

Offeror is an agency or instrumentality of the Federal Government.

(4) Type of organization.

Sole proprietorship;

Partnership;

Corporate entity (not tax-exempt);

Corporate entity (tax-exempt);

Government entity (Federal, State, or local);

Foreign government;

International organization per 26 CFR1.6049-4;

Other \_\_\_\_\_.

(5) Common parent.

Offeror is not owned or controlled by a common parent;

Name and TIN of common parent:

Name \_\_\_\_\_.

TIN \_\_\_\_\_.

(m) Restricted business operations in Sudan. By submission of its offer, the offeror certifies that the offeror does not conduct any restricted business operations in Sudan.

(n) Prohibition on Contracting with Inverted Domestic Corporations.

(1) Government agencies are not permitted to use appropriated (or otherwise made available) funds for contracts with either an inverted domestic corporation, or a subsidiary of an inverted domestic corporation, unless the exception at 9.108-2(b) applies or the requirement is waived in accordance with the procedures at 9.108-4.

(2) Representation. The Offeror represents that—

(i) It ☐ is, ☐ is not an inverted domestic corporation; and

(ii) It ☐ is, ☐ is not a subsidiary of an inverted domestic corporation.

(o) Prohibition on contracting with entities engaging in certain activities or transactions relating to Iran.

(1) The offeror shall e-mail questions concerning sensitive technology to the Department of State at CISADA106@state.gov.

(2) Representation and Certifications. Unless a waiver is granted or an exception applies as provided in paragraph (o)(3) of this provision, by submission of its offer, the offeror—

(i) Represents, to the best of its knowledge and belief, that the offeror does not export any sensitive technology to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf or at the direction of, the government of Iran;

(ii) Certifies that the offeror, or any person owned or controlled by the offeror, does not engage in any activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act; and

(iii) Certifies that the offeror, and any person owned or controlled by the offeror, does not knowingly engage in any transaction that exceeds the threshold at FAR 25.703-2(a)(2) with Iran's Revolutionary Guard Corps or any of its officials, agents, or affiliates, the property and interests in property of which are blocked pursuant to the International Emergency Economic Powers Act (et seq.) (see OFAC's Specially Designated Nationals and Blocked Persons List at <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>).

(3) The representation and certification requirements of paragraph (o)(2) of this provision do not apply if—

(i) This solicitation includes a trade agreements certification (e.g., 52.212-3(g) or a comparable agency provision); and

(ii) The offeror has certified that all the offered products to be supplied are designated country end products.

(p) Ownership or Control of Offeror. (Applies in all solicitations when there is a requirement to be registered in SAM or a requirement to have a unique entity identifier in the solicitation).



(1) The Offeror represents that it ☐ has or ☐ does not have an immediate owner. If the Offeror has more than one immediate owner (such as a joint venture), then the Offeror shall respond to paragraph (2) and if applicable, paragraph (3) of this provision for each participant in the joint venture.

(2) If the Offeror indicates "has" in paragraph (p)(1) of this provision, enter the following information:

Immediate owner CAGE code: \_\_\_\_\_.

Immediate owner legal name: \_\_\_\_\_.

(Do not use a "doing business as" name)

Is the immediate owner owned or controlled by another entity: ☐ Yes or ☐ No.

(3) If the Offeror indicates "yes" in paragraph (p)(2) of this provision, indicating that the immediate owner is owned or controlled by another entity, then enter the following information:

Highest-level owner CAGE code: \_\_\_\_\_.

Highest-level owner legal name: \_\_\_\_\_.

(Do not use a "doing business as" name)

(q) Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law.

(1) As required by sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235), and similar provisions, if contained in subsequent appropriations acts, The Government will not enter into a contract with any corporation that—

(i) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless an agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or

(ii) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless an agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

(2) The Offeror represents that—

(i) It is ☐ is not ☐ a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(ii) It is ☐ is not ☐ a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

(r) Predecessor of Offeror. (Applies in all solicitations that include the provision at 52.204-16, Commercial and Government Entity Code Reporting.)

(1) The Offeror represents that it ☐ is or ☐ is not a successor to a predecessor that held a Federal contract or grant within the last three years.

(2) If the Offeror has indicated "is" in paragraph (r)(1) of this provision, enter the following information for all predecessors that held a Federal contract or grant within the last three years (if more than one predecessor, list in reverse chronological order):

Predecessor CAGE code: (or mark "Unknown").

Predecessor legal name:\_\_\_\_\_.

(Do not use a "doing business as" name).

(s) [Reserved].

(t) Public Disclosure of Greenhouse Gas Emissions and Reduction Goals. Applies in all solicitations that require offerors to register in SAM ( 12.301(d)(1)).

(1) This representation shall be completed if the Offeror received \$7.5 million or more in contract awards in the prior Federal fiscal year. The representation is optional if the Offeror received less than \$7.5 million in Federal contract awards in the prior Federal fiscal year.

(2) Representation. [Offeror to check applicable block(s) in paragraph (t)(2)(i) and (ii)].

(i) The Offeror (itself or through its immediate owner or highest-level owner) ☐ does, ☐ does not publicly disclose greenhouse gas emissions, i.e., makes available on a publicly accessible website the results of a greenhouse gas inventory, performed in accordance with an accounting standard with publicly available and consistently applied criteria, such as the Greenhouse Gas Protocol Corporate Standard.

(ii) The Offeror (itself or through its immediate owner or highest-level owner) ☐ does, ☐ does not publicly disclose a quantitative greenhouse gas emissions reduction goal, i.e., make available on a publicly accessible website a target to reduce absolute emissions or emissions intensity by a specific quantity or percentage.

(iii) A publicly accessible website includes the Offeror's own website or a recognized, third-party greenhouse gas emissions reporting program.

(3) If the Offeror checked "does" in paragraphs (t)(2)(i) or (t)(2)(ii) of this provision, respectively, the Offeror shall provide the publicly accessible website(s) where greenhouse gas emissions and/or reduction goals are reported:\_\_\_\_\_.

(u)

(1) In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions), Government agencies are not permitted to use appropriated (or otherwise made available) funds for contracts with an entity that requires employees or subcontractors of such entity seeking to report waste, fraud, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(2) The prohibition in paragraph (u)(1) of this provision does not contravene requirements applicable to Standard Form 312 (Classified Information Nondisclosure Agreement), Form 4414 (Sensitive Compartmented Information Nondisclosure Agreement), or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(3) Representation. By submission of its offer, the Offeror represents that it will not require its employees or subcontractors to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting waste, fraud, or abuse related to the performance of a Government contract to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information (e.g., agency Office of the Inspector General).

(v) Covered Telecommunications Equipment or Services-Representation. Section 889(a)(1)(A) and section 889(a)(1)(B) of Public Law 115-232.

(1) The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for "covered telecommunications equipment or services".

(2) The Offeror represents that—

(i) It ☐ does, ☐ does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.

(ii) After conducting a reasonable inquiry for purposes of this representation, that it ☐ does, ☐ does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services.

(End of Provision)

Alternate I (Oct 2014). As prescribed in 12.301(b)(2), add the following paragraph (c)(11) to the basic provision:

(11) (Complete if the offeror has represented itself as disadvantaged in paragraph (c)(4) of this provision.)

\_\_\_\_ Black American.

\_\_\_\_ Hispanic American.

\_\_\_\_ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

\_\_\_\_ Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, Republic of Palau, Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

\_\_\_\_ Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

\_\_\_\_ Individual/concern, other than one of the preceding.

#### **52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services.**

As prescribed in [12.301](#)(b)(4), insert the following clause:

#### **CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (DEC 2022)**

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(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial products and commercial services:

(1) [52.203-19](#), Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(2) [52.204-23](#), Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (NOV 2021) (Section 1634 of Pub. L. 115-91).

(3) [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (NOV 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).

(4) [52.209-10](#), Prohibition on Contracting with Inverted Domestic Corporations (NOV 2015).

(5) [52.233-3](#), Protest After Award (AUG 1996) ( [31 U.S.C. 3553](#)).

(6) [52.233-4](#), Applicable Law for Breach of Contract Claim (OCT 2004) (Public Laws 108-77 and 108-78 ( [19 U.S.C. 3805 note](#))).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial products and commercial services:

[Contracting Officer check as appropriate.]

☒ (1) [52.203-6](#), Restrictions on Subcontractor Sales to the Government (JUN 2020), with *Alternate I* (NOV 2021) ( [41 U.S.C. 4704](#) and [10 U.S.C. 4655](#)).

☐ (2) [52.203-13](#), Contractor Code of Business Ethics and Conduct (NOV 2021) ( [41 U.S.C. 3509](#))).

☐ (3) [52.203-15](#), Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (JUN 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

☒ (4) [52.204-10](#), Reporting Executive Compensation and First-Tier Subcontract Awards (JUN 2020) (Pub. L. 109-282) ( [31 U.S.C. 6101 note](#)).

☐ (5) [Reserved].

☐ (6) [52.204-14](#), Service Contract Reporting Requirements (OCT 2016) (Pub. L. 111-117, section 743 of Div. C).

☒ (7) [52.204-15](#), Service Contract Reporting Requirements for Indefinite-Delivery Contracts (OCT 2016) (Pub. L. 111-117, section 743 of Div. C).

☒ (8) [52.209-6](#), Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (NOV 2021) ( [31 U.S.C. 6101 note](#)).

☐ (9) [52.209-9](#), Updates of Publicly Available Information Regarding Responsibility Matters (OCT 2018) ( [41 U.S.C. 2313](#)).

☐ (10) [Reserved].

☐ (11) [52.219-3](#), Notice of HUBZone Set-Aside or Sole-Source Award (OCT 2022) ( [15 U.S.C. 657a](#)).

☐ (12) [52.219-4](#), Notice of Price Evaluation Preference for HUBZone Small Business Concerns (OCT 2022) (if the offeror elects to waive the preference, it shall so indicate in its offer) ( [15 U.S.C. 657a](#)).

☐ (13) [Reserved]

- \_\_X\_ (14) (i) [52.219-6](#), Notice of Total Small Business Set-Aside (NOV 2020) ( [15 U.S.C. 644](#)).
- \_\_ (ii) Alternate I (MAR 2020) of [52.219-6](#).
- \_\_ (15) (i) [52.219-7](#), Notice of Partial Small Business Set-Aside (NOV 2020) ( [15 U.S.C. 644](#)).
- \_\_ (ii) Alternate I (MAR 2020) of [52.219-7](#).
- \_\_ (16) [52.219-8](#), Utilization of Small Business Concerns (OCT 2022) ( [15 U.S.C. 637\(d\)\(2\)](#) and (3)).
- \_\_X\_ (17) (i) [52.219-9](#), Small Business Subcontracting Plan (OCT 2022) ( [15 U.S.C. 637\(d\)\(4\)](#)).
- \_\_ (ii) Alternate I (NOV 2016) of [52.219-9](#).
- \_\_ (iii) Alternate II (NOV 2016) of [52.219-9](#).
- \_\_ (iv) Alternate III (JUN 2020) of [52.219-9](#).
- \_\_ (v) Alternate IV (SEP 2021) of [52.219-9](#).
- \_\_ (18) (i) [52.219-13](#), Notice of Set-Aside of Orders (MAR 2020) ( [15 U.S.C. 644\(r\)](#)).
- \_\_ (ii) Alternate I (MAR 2020) of [52.219-13](#).
- \_\_ (19) [52.219-14](#), Limitations on Subcontracting (OCT 2022) ( [15 U.S.C. 637s](#)).
- \_\_ (20) [52.219-16](#), Liquidated Damages—Subcontracting Plan (SEP 2021) ( [15 U.S.C. 637\(d\)\(4\)\(F\)\(i\)](#)).
- \_\_ (21) [52.219-27](#), Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (OCT 2022) ( [15 U.S.C. 657f](#)).
- \_\_ (22) (i) [52.219-28](#), Post Award Small Business Program Rerepresentation (OCT 2022) ( [15 U.S.C. 632\(a\)\(2\)](#)).
- \_\_ (ii) Alternate I (MAR 2020) of [52.219-28](#).
- \_\_ (23) [52.219-29](#), Notice of Set-Aside for, or Sole-Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (OCT 2022) ( [15 U.S.C. 637\(m\)](#)).
- \_\_ (24) [52.219-30](#), Notice of Set-Aside for, or Sole-Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (OCT 2022) ( [15 U.S.C. 637\(m\)](#)).
- \_\_ (25) [52.219-32](#), Orders Issued Directly Under Small Business Reserves (MAR 2020) ( [15 U.S.C. 644\(r\)](#)).
- \_\_ (26) [52.219-33](#), Nonmanufacturer Rule (SEP 2021) ( [15U.S.C. 637\(a\)\(17\)](#)).
- \_\_X\_ (27) [52.222-3](#), Convict Labor (JUN 2003) (E.O.11755).
- \_\_X\_ (28) [52.222-19](#), Child Labor-Cooperation with Authorities and Remedies (DEC 2022) (E.O.13126).
- \_\_ (29) [52.222-21](#), Prohibition of Segregated Facilities (APR 2015).
- \_\_X\_ (30) (i) [52.222-26](#), Equal Opportunity (SEP 2016) (E.O.11246).

- \_\_\_ (ii) Alternate I (FEB 1999) of [52.222-26](#).
- \_\_X\_ (31) (i) [52.222-35](#), Equal Opportunity for Veterans (JUN 2020) ( [38 U.S.C. 4212](#)).
- \_\_\_ (ii) Alternate I (JUL 2014) of [52.222-35](#).
- \_\_X\_ (32) (i) [52.222-36](#), Equal Opportunity for Workers with Disabilities (JUN 2020) ( [29 U.S.C. 793](#)).
- \_\_\_ (ii) Alternate I (JUL 2014) of [52.222-36](#).
- \_\_X\_ (33) [52.222-37](#), Employment Reports on Veterans (JUN 2020) ( [38 U.S.C. 4212](#)).
- \_\_X\_ (34) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496).
- \_\_X\_ (35) (i) [52.222-50](#), Combating Trafficking in Persons (NOV 2021) ( [22 U.S.C. chapter 78](#) and E.O. 13627).
- \_\_\_ (ii) Alternate I (MAR 2015) of [52.222-50](#) ( [22 U.S.C. chapter 78](#) and E.O. 13627).
- \_\_\_ (36) [52.222-54](#), Employment Eligibility Verification (MAY 2022) (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial products or commercial services as prescribed in FAR [22.1803](#).)
- \_\_\_ (37) (i) [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA–Designated Items (May 2008) ( [42 U.S.C. 6962\(c\)\(3\)\(A\)\(ii\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)
- \_\_\_ (ii) Alternate I (MAY 2008) of [52.223-9](#) ( [42 U.S.C. 6962\(i\)\(2\)\(C\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)
- \_\_\_ (38) [52.223-11](#), Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (Jun 2016) (E.O. 13693).
- \_\_\_ (39) [52.223-12](#), Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (JUN 2016) (E.O. 13693).
- \_\_\_ (40) (i) [52.223-13](#), Acquisition of EPEAT®-Registered Imaging Equipment (JUN 2014) (E.O.s 13423 and 13514).
- \_\_\_ (ii) Alternate I (OCT 2015) of [52.223-13](#).
- \_\_\_ (41) (i) [52.223-14](#), Acquisition of EPEAT®-Registered Televisions (JUN 2014) (E.O.s 13423 and 13514).
- \_\_\_ (ii) Alternate I (Jun2014) of [52.223-14](#).
- \_\_\_ (42) [52.223-15](#), Energy Efficiency in Energy-Consuming Products (MAY 2020) ( [42 U.S.C. 8259b](#)).
- \_\_\_ (43) (i) [52.223-16](#), Acquisition of EPEAT®-Registered Personal Computer Products (OCT 2015) (E.O.s 13423 and 13514).
- \_\_\_ (ii) Alternate I (JUN 2014) of [52.223-16](#).
- \_\_X\_ (44) [52.223-18](#), Encouraging Contractor Policies to Ban Text Messaging While Driving (JUN 2020) (E.O. 13513).

- \_\_\_ (45) [52.223-20](#), Aerosols (JUN 2016) (E.O. 13693).
- \_\_\_ (46) [52.223-21](#), Foams (Jun2016) (E.O. 13693).
- \_X\_ (47) (i) [52.224-3](#) Privacy Training (JAN 2017) (5 U.S.C. 552 a).
- \_\_\_ (ii) Alternate I (JAN 2017) of [52.224-3](#).
- \_\_\_ (48) (i) [52.225-1](#), Buy American-Supplies (OCT 2022) ( [41 U.S.C. chapter 83](#)).
- \_\_\_ (ii) Alternate I (OCT 2022) of [52.225-1](#).
- \_\_\_ (49) (i) [52.225-3](#), Buy American-Free Trade Agreements-Israeli Trade Act (DEC 2022) ( [19 U.S.C. 3301 note](#), [19 U.S.C. 2112 note](#), [19 U.S.C. 3805 note](#), [19 U.S.C. 4001 note](#), 19 U.S.C. chapter 29 (sections 4501-4732), Public Law 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43.
- \_\_\_ (ii) Alternate I [Reserved].
- \_\_\_ (iii) Alternate II (DEC 2022) of [52.225-3](#).
- \_\_\_ (iv) Alternate III (JAN 2021) of [52.225-3](#).
- \_\_\_ (v) Alternate IV (Oct 2022) of [52.225-3](#).
- \_\_\_ (50) [52.225-5](#), Trade Agreements (DEC 2022) ( [19 U.S.C. 2501](#), *et seq.*, [19 U.S.C. 3301 note](#)).
- \_X\_ (51) [52.225-13](#), Restrictions on Certain Foreign Purchases (FEB 2021) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).
- \_\_\_ (52) [52.225-26](#), Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. Subtitle A, Part V, Subpart G Note).
- \_\_\_ (53) [52.226-4](#), Notice of Disaster or Emergency Area Set-Aside (Nov 2007) ( [42 U.S.C. 5150](#)).
- \_\_\_ (54) [52.226-5](#), Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov2007) ( [42 U.S.C. 5150](#)).
- \_\_\_ (55) [52.229-12](#), Tax on Certain Foreign Procurements (FEB 2021).
- \_\_\_ (56) [52.232-29](#), Terms for Financing of Purchases of Commercial Products and Commercial Services (NOV 2021) ( [41 U.S.C. 4505](#), [10 U.S.C. 3805](#)).
- \_\_\_ (57) [52.232-30](#), Installment Payments for Commercial Products and Commercial Services (NOV 2021) ( [41 U.S.C. 4505](#), [10 U.S.C. 3805](#)).
- \_X\_ (58) [52.232-33](#), Payment by Electronic Funds Transfer-System for Award Management (OCT2018) ( [31 U.S.C. 3332](#)).
- \_\_\_ (59) [52.232-34](#), Payment by Electronic Funds Transfer-Other than System for Award Management (Jul 2013) ( [31 U.S.C. 3332](#)).
- \_\_\_ (60) [52.232-36](#), Payment by Third Party (MAY 2014) ( [31 U.S.C. 3332](#)).

\_X\_ (61) [52.239-1](#), Privacy or Security Safeguards (AUG 1996) ( [5 U.S.C. 552a](#)).

\_\_ (62) [52.242-5](#), Payments to Small Business Subcontractors (JAN 2017) ( [15 U.S.C. 637\(d\)\(13\)](#)).

\_\_ (63) (i) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (NOV 2021) ( [46 U.S.C. 55305](#) and [10 U.S.C. 2631](#)).

\_\_ (ii) Alternate I (APR 2003) of [52.247-64](#).

\_\_ (iii) Alternate II (NOV 2021) of [52.247-64](#).

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial products and commercial services:

[Contracting Officer check as appropriate.]

\_X\_ (1) [52.222-41](#), Service Contract Labor Standards (AUG 2018) ( [41 U.S.C. chapter 67](#)).

\_\_ (2) [52.222-42](#), Statement of Equivalent Rates for Federal Hires (MAY 2014) ( [29 U.S.C. 206](#) and [41 U.S.C. chapter 67](#)).

\_\_ (3) [52.222-43](#), Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts) (AUG 2018) ( [29 U.S.C. 206](#) and [41 U.S.C. chapter 67](#)).

\_X\_ (4) [52.222-44](#), Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (May 2014) ( [29 U.S.C. 206](#) and [41 U.S.C. chapter 67](#)).

\_\_ (5) [52.222-51](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) ( [41 U.S.C. chapter 67](#)).

\_\_ (6) [52.222-53](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (MAY 2014) ( [41 U.S.C. chapter 67](#)).

\_X\_ (7) [52.222-55](#), Minimum Wages for Contractor Workers Under Executive Order 14026 (JAN 2022).

\_\_ (8) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (JAN 2022) (E.O. 13706).

\_\_ (9) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (Jun 2020) ( [42 U.S.C. 1792](#)).

(d) *Comptroller General Examination of Record*. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, as defined in FAR [2.101](#), on the date of award of this contract, and does not contain the clause at [52.215-2](#), Audit and Records-Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR subpart [4.7](#), Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after



any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)

(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1), in a subcontract for commercial products or commercial services. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause-

(i) [52.203-13](#), Contractor Code of Business Ethics and Conduct (NOV 2021) ( [41 U.S.C. 3509](#)).

(ii) [52.203-19](#), Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(iii) [52.204-23](#), Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (NOV 2021) (Section 1634 of Pub. L. 115-91).

(iv) [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (NOV 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).

(v) [52.219-8](#), Utilization of Small Business Concerns (OCT 2022) ( [15 U.S.C. 637\(d\)\(2\)](#) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds the applicable threshold specified in FAR [19.702\(a\)](#) on the date of subcontract award, the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.

(vi) [52.222-21](#), Prohibition of Segregated Facilities (APR 2015).

(vii) [52.222-26](#), Equal Opportunity (SEP 2015) (E.O.11246).

(viii) [52.222-35](#), Equal Opportunity for Veterans (JUN 2020) ( [38 U.S.C. 4212](#)).

(ix) [52.222-36](#), Equal Opportunity for Workers with Disabilities (JUN 2020) ( [29 U.S.C. 793](#)).

(x) [52.222-37](#), Employment Reports on Veterans (JUN 2020) ( [38 U.S.C. 4212](#)).

(xi) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause [52.222-40](#).

(xii) [52.222-41](#), Service Contract Labor Standards (AUG 2018) ( [41 U.S.C. chapter 67](#)).

(xiii) (A) [52.222-50](#), Combating Trafficking in Persons (NOV 2021) ( [22 U.S.C. chapter 78](#) and E.O 13627).

(B) Alternate I (MAR 2015) of [52.222-50](#) ( [22 U.S.C. chapter 78](#) and E.O. 13627).

(xiv) [52.222-51](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) ( [41 U.S.C. chapter 67](#)).

(xv) [52.222-53](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (MAY 2014) ( [41 U.S.C. chapter 67](#)).

(xvi) [52.222-54](#), Employment Eligibility Verification (MAY 2022) (E.O. 12989).

(xvii) [52.222-55](#), Minimum Wages for Contractor Workers Under Executive Order 14026 (JAN 2022).

(xviii) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (JAN 2022) (E.O. 13706).

(xix) (A) [52.224-3](#), Privacy Training (Jan 2017) ( [5 U.S.C. 552a](#)).

(B) Alternate I (JAN 2017) of [52.224-3](#).

(xx) [52.225-26](#), Contractors Performing Private Security Functions Outside the United States (OCT 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. Subtitle A, Part V, Subpart G Note).

(xxi) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (JUN 2020) ( [42 U.S.C. 1792](#)). Flow down required in accordance with paragraph (e) of FAR clause [52.226-6](#).

(xxii) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (NOV 2021) ( [46 U.S.C. 55305](#) and [10 U.S.C. 2631](#)). Flow down required in accordance with paragraph (d) of FAR clause [52.247-64](#).

(2) While not required, the Contractor may include in its subcontracts for commercial products and commercial services a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

*Alternate I* (FEB 2000). As prescribed in [12.301](#)(b)(4)(i), delete paragraph (d) from the basic clause, redesignate paragraph (e) as paragraph (d), and revise the reference to "paragraphs (a), (b), (c), or (d) of this clause" in the redesignated paragraph (d) to read "paragraphs (a), (b), and (c) of this clause".

*Alternate II* (DEC 2022). As prescribed in [12.301](#)(b)(4)(ii), substitute the following paragraphs (d)(1) and (e)(1) for paragraphs (d)(1) and (e)(1) of the basic clause as follows:

(d)(1) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8 G of the Inspector General Act of 1978 ( [5 U.S.C. App.](#)), or an authorized representative of either of the foregoing officials shall have access to and right to—

(i) Examine any of the Contractor's or any subcontractors' records that pertain to, and involve transactions relating to, this contract; and

(ii) Interview any officer or employee regarding such transactions.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), and (c), of this clause, the Contractor is not required to flow down any FAR clause in a subcontract for commercial products or commercial services, other than—

(i) *Paragraph (d) of this clause*. This paragraph flows down to all subcontracts, except the authority of the Inspector General under paragraph (d)(1)(ii) does not flow down; and

(ii) *Those clauses listed in this paragraph (e)(1)*. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause-

(A) [52.203-13](#), Contractor Code of Business Ethics and Conduct (NOV 2021) ( [41 U.S.C. 3509](#)).

(B) [52.203-15](#), Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (JUN 2010) (Section 1553 of Pub. L. 111-5).

(C) [52.204-23](#), Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (NOV 2021) (Section 1634 of Pub. L. 115-91).

(D) [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (NOV 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).

(E) [52.219-8](#), Utilization of Small Business Concerns (OCT 2022) ( [15 U.S.C. 637\(d\)\(2\) and \(3\)](#)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds the applicable threshold specified in FAR [19.702](#)(a) on the date of subcontract award, the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.

(F) [52.222-21](#), Prohibition of Segregated Facilities (APR 2015).

(G) [52.222-26](#), Equal Opportunity (SEP 2016) (E.O. 11246).

(H) [52.222-35](#), Equal Opportunity for Veterans (JUN 2020) ( [38 U.S.C. 4212](#)).

(I) [52.222-36](#), Equal Opportunity for Workers with Disabilities (JUN 2020) ( [29 U.S.C. 793](#)).

(J) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause [52.222-40](#).

(K) [52.222-41](#), Service Contract Labor Standards (AUG 2018) ( [41 U.S.C. chapter 67](#)).

(L) \_\_\_\_ (1) [52.222-50](#), Combating Trafficking in Persons (NOV 2021) ( [22 U.S.C. chapter 78](#) and E.O. 13627).

\_\_\_\_ (2) Alternate I (MAR 2015) of [52.222-50](#) ( [22 U.S.C. chapter 78](#) and E.O. 13627).

(M) [52.222-51](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) ( [41 U.S.C. chapter 67](#)).

(N) [52.222-53](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (MAY 2014) ( [41 U.S.C. chapter 67](#)).

(O) [52.222-54](#), Employment Eligibility Verification (MAY 2022) (Executive Order 12989).

(P) [52.222-55](#), Minimum Wages for Contractor Workers Under Executive Order 14026 (JAN 2022).

(Q) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (JAN 2022) (E.O. 13706).

(R) (1) [52.224-3](#), Privacy Training (JAN 2017) ( [5 U.S.C. 552a](#)).

(2) Alternate I (JAN 2017) of [52.224-3](#).

(S) [52.225-26](#), Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. Subtitle A, Part V, Subpart G Note).

(T) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations. (JUN 2020) ( [42 U.S.C. 1792](#)). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.

(U) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (NOV 2021) ( [46 U.S.C. 55305](#) and [10 U.S.C. 2631](#)). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

### **52.216-18 Ordering.**

As prescribed in [16.506](#)(a), insert the following clause:

#### **ORDERING (AUG 2020)**

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from Date of Award until end of Period of Performance as spelled out in the contract.

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) A delivery order or task order is considered "issued" when—

(1) If sent by mail (includes transmittal by U.S. mail or private delivery service), the Government deposits the order in the mail;

(2) If sent by fax, the Government transmits the order to the Contractor's fax number; or

(3) If sent electronically, the Government either—

(i) Posts a copy of the delivery order or task order to a Government document access system, and notice is sent to the Contractor; or

(ii) Distributes the delivery order or task order via email to the Contractor's email address.

(d) Orders may be issued by methods other than those enumerated in this clause only if authorized in the contract.

(End of clause)

### **52.216-19 Order Limitations.**

As prescribed in [16.506](#)(b), insert a clause substantially the same as follows:

#### **ORDER LIMITATIONS (OCT 1995)**

(a) *Minimum order.* When the Government requires supplies or services covered by this contract in an amount of less than 0 hours, the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) *Maximum order.* The Contractor is not obligated to honor-

(1) Any order for a single item in excess of 5,000 hours;

(2) Any order for a combination of items in excess of 15,000 hours; or

(3) A series of orders from the same ordering office within 30 days that together call for quantities exceeding the limitation in paragraph (b)(1) or (2) of this section.

(c) If this is a requirements contract (*i.e.*, includes the Requirements clause at subsection [52.216-21](#) of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.

(d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within 7 days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(End of clause)

#### **52.216-22 Indefinite Quantity.**

As prescribed in [16.506](#)(e), insert the following clause:

##### **INDEFINITE QUANTITY (OCT 1995)**

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; *provided*, that the Contractor shall not be required to make any deliveries under this contract after 04/17/2028.

(End of clause)

#### **52.217-9 Option to Extend the Term of the Contract.**

As prescribed in [17.208](#)(g), insert a clause substantially the same as the following:

##### **OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)**

(a) The Government may extend the term of this contract by written notice to the Contractor within 1 day; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 15 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 5 years / 6 months.

(End of clause)

### **52.232-19 Availability of Funds for the Next Fiscal Year.**

As prescribed in [32.706-1\(b\)](#), insert the following clause:

#### **AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR (APR 1984)**

Funds are not presently available for performance under this contract beyond end of 09/30/2023. The Government's obligation for performance of this contract beyond that date is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise for performance under this contract beyond end of POP, until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing by the Contracting Officer.

(End of clause)

### **52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors.**

#### **ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS (OCT 2021) (DEVIATION)**

(a) *Definition.* As used in this clause -

*United States or its outlying areas means—*

- (1) The fifty States;
- (2) The District of Columbia;
- (3) The commonwealths of Puerto Rico and the Northern Mariana Islands;
- (4) The territories of American Samoa, Guam, and the United States Virgin Islands; and
- (5) The minor outlying islands of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Atoll.

(b) *Authority.* This clause implements Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, dated September 9, 2021 (published in the Federal Register on September 14, 2021, 86 FR 50985).

(c) *Compliance.* The Contractor shall comply with all guidance, including guidance conveyed through Frequently Asked Questions, as amended during the performance of this contract, for contractor or subcontractor workplace locations published by the Safer Federal Workforce Task Force (Task Force Guidance) at <https://www.saferfederalworkforce.gov/contractors/>.

(d) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts at any tier that exceed the simplified acquisition threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award, and are for services, including construction, performed in whole or in part within the United States or its outlying areas.

(End of clause)

### **III. Department of HHS Acquisition Regulations (HHSAR) (49 Chapter 3) Clauses**

<b>No.</b>	<b>HHSAR Citation</b>	<b>Clause Title</b>	<b>Clause Date</b>
1.	HHSAR 352.224-70	Privacy Act	December 2015
2.	HHSAR 352.224-71	Confidential Information	December 2015
3.	HHSAR 352.226-1	Indian Preference	December 2015

4.	HHSAR 352.226-2	Indian Preference Program	December 2015
5.	HHSAR 352.232-71	Electronic Submission and Processing of Payment Requests	2022
5.	HHSAR 352.237-70	Pro-Children Act	December 2018
6.	HHSAR 352.237-71	Crime Control Act-Reporting of Child Abuse	December 2015
7.	HHSAR 352.237-72	Crime Control Act-Requirement For Background Checks	December 2015
8.	HHSAR 352.237-73	Indian Child Protection and Family Violence Act	December 2015
9.	HHSAR 352.237-74	Non-Discrimination in Service Delivery	December 2018

### **352.224-70 Privacy Act**

As prescribed in HHSAR [324.105\(a\)](#), the Contracting Officer shall insert the following clause:

#### **Privacy Act (December 18, 2015)**

This contract requires the Contractor to perform one or more of the following: (a) design; (b) develop; or (c) operate a Federal agency system of records to accomplish an agency function in accordance with the Privacy Act of 1974 (Act) (5 U.S.C. 552a(m)(1)) and applicable agency regulations.

The term system of records means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Violations of the Act by the Contractor and/or its employees may result in the imposition of criminal penalties (5 U.S.C. 552a(i)).

The Contractor shall ensure that each of its employees knows the prescribed rules of conduct in 45 CFR part 5b and that each employee is aware that he/she is subject to criminal penalties for violation of the Act to the same extent as Department of Health and Human Services employees. These provisions also apply to all subcontracts the Contractor awards under this contract which require the design, development or operation of the designated system(s) of records (5 U.S.C. 552a(m)(1)). The contract work statement:

(a) Identifies the system(s) of records and the design, development, or operation work the Contractor is to perform; and

(b) Specifies the disposition to be made of such records upon completion of contract performance.

(End of clause)

### **352.224-71 Confidential Information.**

As prescribed in HHSAR 324.105(b), insert the following clause:

#### **Confidential Information (December 18, 2015)**

(a) Confidential Information, as used in this clause, means information or data of a personal nature about an individual, or proprietary information or data submitted by or pertaining to an institution or organization.

(b) Specific information or categories of information that the Government will furnish to the Contractor, or that the Contractor is expected to generate, which are confidential may be identified elsewhere in this contract. The Contracting Officer may modify this contract to identify Confidential Information from time to time during performance.

(c) Confidential Information or records shall not be disclosed by the Contractor until:

(1) Written advance notice of at least 45 days shall be provided to the Contracting Officer of the Contractor's intent to release findings of studies or research, to which an agency response may be appropriate to protect the public interest or that of the agency.

(2) For information provided by or on behalf of the government,



(i) The publication or dissemination of the following types of information are restricted under this contract: [INSERT RESTRICTED TYPES OF INFORMATION. If none, so state.]

(ii) The reason(s) for restricting the types of information identified in subparagraph (i) is/are: [STATE WHY THE PUBLIC OR GOVERNMENT INTEREST REQUIRES THE RESTRICTION OF EACH TYPE OF INFORMATION. ANY BASIS FOR NONDISCLOSURE WHICH WOULD BE VALID UNDER THE FREEDOM OF INFORMATION ACT IS SUFFICIENT UNDER THIS CLAUSE.]

(iii) Written advance notice of at least 45 days shall be provided to the Contracting Officer of the Contractor's intent to disseminate or publish information identified in subparagraph (2)(i). The contractor shall not disseminate or publish such information without the written consent of the Contracting Officer.

(d) Whenever the Contractor is uncertain with regard to the confidentiality of or a property interest in information under this contract, the Contractor should consult with the Contracting Officer prior to any release, disclosure, dissemination, or publication.

### **352.226-1 Indian Preference.**

As prescribed in HHSAR 326.505(a), the Contracting Officer shall insert the following clause:

#### **Indian Preference (December 18, 2015)**

(a) The Contractor agrees to give preference in employment opportunities under this contract to Indians who can perform required work, regardless of age (subject to existing laws and regulations), sex, religion, or tribal affiliation. To the extent feasible and consistent with the efficient performance of this contract, the Contractor further agrees to give preference in employment and training opportunities under this contract to Indians who are not fully qualified to perform regardless of age (subject to existing laws and regulations), sex, religion, or tribal affiliation. The Contractor also agrees to give preference to Indian organizations and Indian-owned economic enterprises in the awarding of any subcontracts to the extent feasible and consistent with the efficient performance of this contract. The Contractor shall maintain the necessary statistical records to demonstrate compliance with this paragraph.

(b) In connection with the Indian employment preference requirements of this clause, the Contractor shall provide reasonable opportunities for training, incident to such employment. Such training shall include on-the—job, classroom, or apprenticeship training designed to increase the vocational effectiveness of an Indian employee.

(c) If the Contractor is unable to fill its employment and training opportunities after giving full consideration to Indians as required by this clause, the Contractor may satisfy those needs by selecting non-Indian persons in accordance with the clause of this contract entitled "Equal Opportunity."

(d) If no Indian organizations or Indian-owned economic enterprises are available under reasonable terms and conditions, including price, for awarding of subcontracts in connection with the work performed under this contract, the Contractor agrees to comply with the provisions of this contract involving utilization of small businesses; HUBZone small businesses; service-disabled, veteran-owned small businesses; 8(a) small businesses; veteran-owned small businesses; women-owned small businesses; or small disadvantaged businesses.

(e) As used in this clause,

(1) Indian means a person who is a member of an Indian tribe. If the Contractor has reason to doubt that a person seeking employment preference is an Indian, the Contractor shall grant the preference but shall require the individual provide evidence within 30 days from the tribe concerned that the person is a member of the tribe.

(2) Indian tribe means an Indian tribe, pueblo, band, nation, or other organized group or community, including Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601) which the United States recognizes as eligible for the special programs and services provided to Indians because of its status as Indians.

(3) Indian organization means the governing body of any Indian Tribe or entity established or recognized by such governing body in accordance with the Indian Financing Act of 1974 (88 Stat. 77; 25 U.S.C. 1451).

(4) Indian-owned economic enterprise means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, provided that such Indian ownership shall constitute not less than 51 percent of the enterprise, and that ownership shall encompass active operation and control of the enterprise.

(f) The Contractor agrees to include the provisions of this clause, including this paragraph (f) of this clause, in each subcontract awarded at any tier under this contract.

(g) In the event of noncompliance with this clause, the Contracting Officer may terminate the contract in whole or in part or may pursue any other remedies authorized by law or by other provisions of the contract.

(End of clause)

### **352.226-2 Indian Preference Program.**

As prescribed in HHSAR 326.505(b), the Contracting Officer shall insert the following clause:



Indian Preference Program (December 18, 2015)

(a) In addition to the requirements of the clause of this contract entitled “Indian Preference,” the Contractor agrees to establish and conduct an Indian preference program which will expand opportunities for Indians to receive preference for employment and training in connection with the work performed under this contract, and which will expand the opportunities for Indian organizations and Indian-owned economic enterprises to receive a preference in the awarding of subcontracts. In this connection, the Contractor shall perform the following:

(1) Designate a liaison officer who will maintain liaison with the Government and the Tribe(s) on Indian preference matters; supervise compliance with the provisions of this clause; and administer the Contractor’s Indian preference program.

(2) Advise its recruitment sources in writing and include a statement in all employment advertisements that Indian applicants receive preference in employment and training incident to such employment.

(3) Not more than 20 calendar days after award of the contract, post a written notice setting forth the Contractor’s employment needs and related training opportunities in the tribal office of any reservations on or near the contract work location. The notice shall include the approximate numbers and types of employees needed; the approximate dates of employment; any experience or special skills required for employment; training opportunities available; and other pertinent information necessary to advise prospective employees of any other employment requirements. The Contractor shall also request the tribe(s) on or near whose reservation(s) the Contractor will perform contract work to provide assistance filling its employment needs and training opportunities. The Contracting Officer will advise the Contractor of the name, location, and phone number of the Tribal officials to contact regarding the posting of notices and requests for Tribal assistance.

(4) Establish and conduct a subcontracting program which gives preference to Indian organizations and Indian-owned economic enterprises as subcontractors (including suppliers) under this contract. The Contractor shall give public notice of existing subcontracting opportunities and, to the extent feasible and consistent with the efficient performance of this contract, shall solicit bids or proposals from Indian organizations or Indian-owned economic enterprises only. The Contractor shall request assistance and information on Indian firms qualified as subcontractors (including suppliers) from the Tribe(s) on or near whose reservation(s) the Contractor will perform contract work. The Contracting Officer will advise the Contractor of the name, location, and phone number of the Tribal officials to contact regarding the request for assistance and information. Public notices and solicitations for existing subcontracting opportunities shall provide an equitable opportunity for Indian firms to submit bids or proposals by including—

(i) A clear description of the supplies or services required, including quantities, specifications, and delivery schedules that facilitate the participation of Indian firms;

(ii) A statement indicating that Indian organizations and Indian-owned economic enterprises will receive preference in accordance with section 7(b) of Pub. L. 93–638; 88 Stat. 2205; 25 U.S.C. 450e(b);

(iii) Definitions for the terms “Indian organization” and “Indian-owned economic enterprise” prescribed under the “Indian Preference” clause of this contract;

(iv) A statement that the bidder or offeror shall complete certifying that it is an Indian organization or Indian-owned economic enterprise; and

(v) A closing date for receipt of bids or proposals which provides sufficient time for preparation and submission of a bid or proposal. If, after soliciting bids or proposals from Indian organizations and Indian-owned economic enterprises, the Contractor receives no responsive bid or acceptable proposal, the Contractor shall comply with the requirements of paragraph (d) of the “Indian Preference” clause of this contract. If the Contractor receives one or more responsive bids or conforming proposals, the Contractor shall award the contract to the low, responsive, responsible bidder or conforming offer from a responsible offeror if the price is reasonable. If the Contractor determines the low responsive bid or conforming proposal’s price is unreasonable, the Contractor shall attempt to negotiate a reasonable price and award a subcontract. If parties cannot agree on a reasonable price, the Contractor shall comply with the requirements of paragraph (d) of the “Indian Preference” clause of this contract.

(5) Maintain written records under this contract which demonstrate—

(i) The numbers of Indians seeking employment for each employment position available under this contract;

(ii) The number and types of positions filled by Indians and non-Indians;

(iii) The total number of Indians employed under this contract;

(iv) For those positions having both Indian and non-Indian applicants, and a non-Indian is selected for employment, the reason(s) why the Contractor did not select the Indian applicant;

(v) Actions taken to give preference to Indian organizations and Indian-owned economic enterprises for subcontracting opportunities which exist under this contract;

(vi) Reasons why Indian subcontractors and or suppliers did not receive preference for each requirement where the Contractor determined that such preference was inconsistent with efficient contract performance; and

(vii) The number of Indian organizations and Indian-owned economic enterprises contacted, and the number receiving subcontract awards under this contract.

(6) Submit to the Contracting Officer for approval a quarterly report summarizing the Contractor's Indian preference program and indicating the number and types of available positions filled by Indians and non-Indians, and the dollar amounts of all subcontracts awarded to Indian organizations and Indian-owned economic enterprises, and to all other firms.

(7) Maintain records pursuant to this clause and keep them available for review by the Government for one year after final payment under this contract, or for such longer period in accordance with requirements of any other clause of this contract or by applicable law or regulation.

(b) For purposes of this clause, the following definitions of terms shall apply:

(1) The terms Indian, Indian tribe, Indian organization, and Indian-owned economic enterprise are defined in the clause of this contract entitled Indian Preference.

(2) Indian reservation includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601 *et seq.*)

(3) On or near an Indian reservation means on a reservation or reservations or within that area surrounding an Indian reservation(s) where a person seeking employment could reasonably expect to commute to and from in the course of a work day.

(c) Nothing in the requirements of this clause shall preclude Indian tribes from independently developing and enforcing their own Indian preference requirements. Such requirements must not conflict with any Federal statutory or regulatory requirement dealing with the award and administration of contracts.

(d) The Contractor agrees to include the provisions of this clause, including this paragraph (d), in each subcontract awarded at any tier under this contract and to notify the Contracting Officer of such subcontracts.

(e) In the event of noncompliance with this clause, the Contracting Officer may terminate the contract in whole or in part or may pursue any other remedies authorized by law or by other provisions of the contract.

(End of clause)

### **352.232-71 Electronic submission of payment requests**

As prescribed in HHSAR 332.7003, use the following clause:

#### **Electronic Submission of Payment Requests**

(a) *Definitions.* As used in this clause -

*Payment request* means a bill, voucher, invoice, or request for contract financing payment with associated supporting documentation. The payment request must comply with the requirements identified in FAR 32.905(b), "Content of Invoices" and the applicable Payment clause included in this contract.

(b) Except as provided in paragraph (c) of this clause, the Contractor shall submit payment requests electronically using the Department of Treasury Invoice Processing Platform (IPP) or successor system. Information regarding IPP, including IPP Customer Support contact information, is available at [www.ipp.gov](http://www.ipp.gov) or any successor site.

(c) The Contractor may submit payment requests using other than IPP only when the Contracting Officer authorizes alternate procedures in writing in accordance with HHS procedures.

(d) If alternate payment procedures are authorized, the Contractor shall include a copy of the Contracting Officer's written authorization with each payment request.

(End of Clause)

### **352.237-70 Pro-Children Act.**

As prescribed in [HHSAR 337.103\(d\)\(1\)](#), the Contracting Officer shall insert the following clause:

#### **Pro-Children Act (December 18, 2015)**

(a) Public Law 103-227, Title X, Part C, also known as the **Pro-Children Act of 1994** (Act), 20 U.S.C. 7183, imposes restrictions on smoking in facilities where certain federally funded children's services are provided. The Act prohibits smoking within any indoor facility (or portion thereof), whether owned, leased, or contracted for, that is used for the routine or regular provision of: (i) kindergarten, elementary, or secondary education or library services or (ii) health or day care services that are provided to children under the age of 18. The statutory prohibition also applies to indoor facilities that are constructed, operated, or maintained with Federal funds.

(b) By acceptance of this contract or order, the Contractor agrees to comply with the requirements of the Act. The Act also applies to all subcontracts awarded under this contract for the specified children's services. Accordingly, the Contractor shall ensure that each of its employees, and any subcontractor staff, is made aware of, understands, and complies with the provisions of the Act. Failure to comply with the Act may result in the imposition of a civil monetary penalty in an amount not to exceed \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. Each day a violation continues constitutes a separate violation.

### **352.237-71 Crime Control Act—Reporting of Child Abuse.**

As prescribed in HHSAR 337.103(d)(2), the Contracting Officer shall insert the following clause:

#### **Crime Control Act of 1990—Reporting of Child Abuse (December 18, 2015)**

(a) Public Law 101-647, also known as the Crime Control Act of 1990 (Act), imposes responsibilities on certain individuals who, while engaged in a professional capacity or activity, as defined in the Act, on Federal land or in a federally-operated (or contracted) facility, learn of facts that give the individual reason to suspect that a child has suffered an incident of child abuse.

(b) The Act designates “covered professionals” as those persons engaged in professions and activities in eight different categories including, but not limited to, teachers, social workers, physicians, dentists, medical residents or interns, hospital personnel and administrators, nurses, health care practitioners, chiropractors, osteopaths, pharmacists, optometrists, podiatrists, emergency medical technicians, ambulance drivers, alcohol or drug treatment personnel, psychologists, psychiatrists, mental health professionals, child care workers and administrators, and commercial film and photo processors. The Act defines the term “child abuse” as the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child.

(c) Accordingly, any person engaged in a covered profession or activity under an HHS contract or subcontract, regardless of the purpose of the contract or subcontract, shall immediately report a suspected child abuse incident in accordance with the provisions of the Act. If a child is suspected of being harmed, the appropriate State Child Abuse Hotline, local child protective services (CPS), or law enforcement agency shall be contacted. For more information about where and how to file a report, the Childhelp USA, National Child Abuse Hotline (1-800-4-A-CHILD) shall be called. Any covered professional failing to make a timely report of such incident shall be guilty of a Class B misdemeanor.

(d) By acceptance of this contract or order, the Contractor agrees to comply with the requirements of the Act. The Act also applies to all applicable subcontracts awarded under this contract. Accordingly, the Contractor shall ensure that each of its employees, and any subcontractor staff, is made aware of, understands, and complies with the provisions of the Act.

(End of clause)

### **352.237-72 Crime Control Act—Requirement for Background Checks.**

As prescribed in HHSAR 337.103(d)(3), the Contracting Officer shall insert the following clause:

#### **Crime Control Act of 1990—Requirement for Background Checks (December 18, 2015)**

(a) Public Law 101-647, also known as the Crime Control Act of 1990 (Act), requires that all individuals involved with the provision of child care services to children under the age of 18 undergo a criminal background check. “Child care services” include, but are not limited to, social services, health and mental health care, child (day) care, education (whether or not directly involved in teaching), and rehabilitative programs. Any conviction for a sex crime, an offense involving a child victim, or a drug felony, may be grounds for denying employment or for dismissal of an employee providing any of the services listed above.

(b) The Contracting Officer will provide the necessary information to the Contractor regarding the process for obtaining the background check. The Contractor may hire a staff person provisionally prior to the completion of a background check, if at all times prior to the receipt of the background check during which children are in the care of the newly-hired person, the person is within the sight and under the supervision of a previously investigated staff person.

(c) By acceptance of this contract or order, the Contractor agrees to comply with the requirements of the Act. The Act also applies to all applicable subcontracts awarded under this contract. Accordingly, the Contractor shall ensure that each of its employees, and any subcontractor staff, is made aware of, understands, and complies with the provisions of the Act.

(End of clause)

**352.237-73 Indian Child Protection and Family Violence Act.**

As prescribed in [HHSAR 337.103\(d\)\(4\)](#) the Contracting Officer shall insert the following clause:

Indian Child Protection and Family Violence Act (December 18, 2015)

(a) This contract is subject to the Indian Child Protection and Family Violence Act, Pub. L. 101-630 (25 U.S.C. 3201 *et seq.*) The duties and responsibilities required by this contract may involve regular contact with or control over Indian children. Pub. L. 101-630 prohibits employment, including Personal Service Contracts, with anyone who has been convicted of any crime of violence. Any such conviction should immediately be brought to the attention of the Contracting Officer. The contractor will be subject to a character investigation, conducted by the Indian Health Service, Office of Human Resources. Until such time as the contractor has been notified of completion of the investigation, the contractor shall have no unsupervised contact with Indian children. In order to initiate this background investigation, the contractor must provide information as required in this contract or as directed by the Contracting Officer.

(b) As a prerequisite to providing services under this contract, the Contractor is required to complete and sign the declaration found in Section J of this contract.

(End of clause)

**352.237-74 Non-Discrimination in Service Delivery.**

As prescribed in [HHSAR 337.103\(e\)](#), the Contracting Officer shall insert the following clause in solicitations and contracts:

Non-Discrimination In Service Delivery (December 18, 2015)

It is the policy of the Department of Health and Human Services that no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of HHS programs and services based on non-merit factors such as race, color, national origin, religion, sex, gender identity, sexual orientation, or disability (physical or mental). By acceptance of this contract, the contractor agrees to comply with this policy in supporting the program and in performing the services called for under this contract. The contractor shall include this clause in all sub-contracts awarded under this contract for supporting or performing the specified program and services. Accordingly, the contractor shall ensure that each of its employees, and any sub-contractor staff, is made aware of, understands, and complies with this policy.

(End of clause)

# **Background Clearance Forms**



To: New Hire and Supervisor of position covered by Public Law  
101-630

Subject: Provisional Authorization- pending favorably adjudicated  
background investigation

This serves as notice to the supervisor and new hire/contractor/volunteer/affiliate that they will be performing work and/or occupying a position that is covered by Public Laws (P.L.) 101-630, Indian Child Protection and Family Violence Prevention Act and 101-647, Crime Control Act. An individual employed/working or being considered for employment (Federal, contractor, volunteer, or affiliate) at the Indian Health Service with duties and responsibilities involving regular contact with or control over Indian children must undergo a background investigation. Prior to the receipt of a favorably adjudicated background investigation, the individual will have provisional status. At all times whenever Indian children are in the care, custody, and/or control of an individual in a provisional status, the individual is required to be under the supervision and in sight of a staff person who has a favorably adjudicated background investigation that includes child care coverage.

The following individual has been granted provisional authorization for the identified position, which has been designated as a position covered by P.L. 101-630:

Name: \_\_\_\_\_ Position title: \_\_\_\_\_

The following conditions must be met for the individual:

- Pre-employment suitability has been favorably adjudicated prior to entrance on duty.
- Continued processing of background investigation – Tier 1 with child care (minimum).
- Provide requested documentation/information as requested from the Personnel Security/HR Office.

Supervisor must ensure that new hires/contractors/affiliates who are in a provisional status and have Indian children in their care, custody, and/or control, are within the sight and supervision of a staff person who has a favorably adjudicated background investigation that includes child care coverage.

Supervisors are required to sign indicating your acceptance, responsibility, and compliance with the above criteria, and will ensure that the above named individual is assigned to appropriate personnel whenever Indian children are in their care, custody, and/or control. Failure to comply with the above criteria can result in disciplinary action, up to and including removal.

\_\_\_\_\_  
Department Supervisor/Designee

\_\_\_\_\_  
Date

The facility/service unit is required to work with the Area Personnel Security/HR Office designee to maintain a list of staff members who have a favorably adjudicated background investigation with child care coverage on file for supervisors to identify and assign personnel to provide coverage to individuals in a provisional status.

I have verified that I have worked with the facility/service unit to ensure that a list of favorably adjudicated staff members is available for the supervisor's use.

\_\_\_\_\_  
Personnel Security Representative/HR Designee

\_\_\_\_\_  
Date

This provisional authorization is in effect until the favorably adjudicated certification of investigation is in place. I am aware that failure to comply with the above criteria could result in disciplinary action, up to and including removal/termination.

\_\_\_\_\_  
Employee/Contractor/Affiliate

\_\_\_\_\_  
Date

**QUESTIONNAIRE FOR NON-SENSITIVE POSITIONS  
UNITED STATES OF AMERICA  
AUTHORIZATION FOR RELEASE OF INFORMATION**

Carefully read this authorization to release information about you, then sign and date it in ink.

**I Authorize** any investigator, special agent, or other duly accredited representative of the authorized Federal agency conducting my background investigation or reinvestigation to obtain any information relating to my activities from individuals, schools, residential management agents, employers, criminal justice agencies, credit bureaus, consumer reporting agencies, collection agencies, retail business establishments, or other sources of information to include publically available electronic information. This information may include, but is not limited to, my academic, residential, achievement, performance, attendance, disciplinary, employment history, and criminal history record information.

I understand that, for some sources of information, a separate specific release will be needed, and I may be contacted for such a release at a later date.

**I Authorize** the Social Security Administration (SSA) to verify my Social Security Number (to match my name, Social Security Number, and date of birth with information in SSA records and provide the results of the match) to the United States Office of Personnel Management (OPM) or other Federal agency requesting or conducting my investigation for the purposes outlined above. I authorize SSA to provide explanatory information to OPM, or to the other Federal agency requesting or conducting my investigation, in the event of a discrepancy.

**I Authorize** custodians of records and other sources of information pertaining to me to release such information upon request of the investigator, special agent, or other duly accredited representative of any Federal agency authorized above regardless of any previous agreement to the contrary.

**I Understand** that the information released by records custodians and sources of information is for official use by the Federal Government only for the purposes provided in this Standard Form 85, and that it may be disclosed by the Government only as authorized by law.

Photocopies of this authorization with my signature are valid. This authorization is valid for two (2) years from the date signed.

Signature ( <i>Sign in ink</i> )	Full name ( <i>Type or print legibly</i> )			Date signed ( <i>mm/dd/yyyy</i> )
Other names used				Social Security Number
Current street address Apt. #	City ( <i>Country</i> )	State	ZIP Code	Home telephone number

# Declaration for Federal Employment\*

(\*This form may also be used to assess fitness for federal contract employment)

Form Approved:  
OMB No. 3206-0182

## Instructions

The information collected on this form is used to determine your acceptability for Federal and Federal contract employment and your enrollment status in the Government's Life Insurance program. You may be asked to complete this form at any time during the hiring process. Follow instructions that the agency provides. If you are selected, before you are appointed you will be asked to update your responses on this form and on other materials submitted during the application process and then to recertify that your answers are true.

All your answers must be truthful and complete. **A false statement on any part of this declaration or attached forms or sheets may be grounds for not hiring you, or for firing you after you begin work. Also, you may be punished by a fine or imprisonment (U.S. Code, title 18, section 1001).**

Either type your responses on this form or print clearly in dark ink. If you need additional space, attach letter-size sheets (8.5" X 11"). Include your name, Social Security Number, and item number on each sheet. We recommend that you keep a photocopy of your completed form for your records.

## Privacy Act Statement

The Office of Personnel Management is authorized to request this information under sections 1302, 3301, 3304, 3328, and 8716 of title 5, U. S. Code. Section 1104 of title 5 allows the Office of Personnel Management to delegate personnel management functions to other Federal agencies. If necessary, and usually in conjunction with another form or forms, this form may be used in conducting an investigation to determine your suitability or your ability to hold a security clearance, and it may be disclosed to authorized officials making similar, subsequent determinations.

Your Social Security Number (SSN) is needed to keep our records accurate, because other people may have the same name and birth date. Public Law 104-134 (April 26, 1996) asks Federal agencies to use this number to help identify individuals in agency records. Giving us your SSN or any other information is voluntary. However, if you do not give us your SSN or any other information requested, we cannot process your application. Incomplete addresses and ZIP Codes may also slow processing.

**ROUTINE USES:** Any disclosure of this record or information in this record is in accordance with routine uses found in System Notice OPM/GOVT-1, General Personnel Records. This system allows disclosure of information to: training facilities; organizations deciding claims for retirement, insurance, unemployment, or health benefits; officials in litigation or administrative proceedings where the Government is a party; law enforcement agencies concerning a violation of law or regulation; Federal agencies for statistical reports and studies; officials of labor organizations recognized by law in connection with representation of employees; Federal agencies or other sources requesting information for Federal agencies in connection with hiring or retaining, security clearance, security or suitability investigations, classifying jobs, contracting, or issuing licenses, grants, or other benefits; public and private organizations, including news media, which grant or publicize employee recognitions and awards; the Merit Systems Protection Board, the Office of Special Counsel, the Equal Employment Opportunity Commission, the Federal Labor Relations Authority, the National Archives and Records Administration, and Congressional offices in connection with their official functions; prospective non-Federal employers concerning tenure of employment, civil service status, length of service, and the date and nature of action for separation as shown on the SF 50 (or authorized exception) of a specifically identified individual; requesting organizations or individuals concerning the home address and other relevant information on those who might have contracted an illness or been exposed to a health hazard; authorized Federal and non-Federal agencies for use in computer matching; spouses or dependent children asking whether the employee has changed from a self-and-family to a self-only health benefits enrollment; individuals working on a contract, service, grant, cooperative agreement, or job for the Federal government; non-agency members of an agency's performance or other panel; and agency-appointed representatives of employees concerning information issued to the employees about fitness-for-duty or agency-filed disability retirement procedures.

## Public Burden Statement

Public burden reporting for this collection of information is estimated to vary from 5 to 30 minutes with an average of 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to the U.S. Office of Personnel Management, Reports and Forms Manager (3206-0182), Washington, DC 20415-7900. The OMB number, 3206-0182, is valid. OPM may not collect this information, and you are not required to respond, unless this number is displayed.



# Declaration for Federal Employment\*

Form Approved:  
OMB No. 3206-0182

(\*This form may also be used to assess fitness for federal contract employment)

## General Information

**1. FULL NAME** (Provide your full name. If you have only initials in your name, provide them and indicate "Initial only". If you do not have a middle name, indicate "No Middle Name". If you are a "Jr.," "Sr.," etc. enter this under Suffix. First, Middle, Last, Suffix)

◆

**2. SOCIAL SECURITY NUMBER**

◆

**3a. PLACE OF BIRTH** (Include city and state or country)

◆

**3b. ARE YOU A U.S. CITIZEN?**

☐ YES ☐ NO (If "NO", provide country of citizenship) ◆

**4. DATE OF BIRTH** (MM / DD / YYYY)

◆

**5. OTHER NAMES EVER USED** (For example, maiden name, nickname, etc.)

◆

◆

**6. PHONE NUMBERS** (Include area codes)

Day ◆

Night ◆

## Selective Service Registration

If you are a male born after December 31, 1959, and are at least 18 years of age, civil service employment law (5 U.S.C. 3328) requires that you must register with the Selective Service System, unless you meet certain exemptions.

7a. Were you born a male after December 31, 1959?

☐ YES

☐ NO (If "NO", proceed to 8.)

7b. Have you registered with the Selective Service System?

☐ YES (If "YES", proceed to 8.)

☐ NO (If "NO", proceed to 7c.)

7c. If "NO," describe your reason(s) in item 16.

## Military Service

8. Have you ever served in the United States military?

☐ YES (If "YES", provide information below) ☐ NO

*If your only active duty was training in the Reserves or National Guard, answer "NO."*

*If you answered "YES," list the branch, dates, and type of discharge for all active duty.*

Branch	From (MM/DD/YYYY)	To (MM/DD/YYYY)	Type of Discharge

## Background Information

**For all questions, provide all additional requested information under item 16 or on attached sheets.** The circumstances of each event you list will be considered. However, in most cases you can still be considered for Federal jobs.

For questions 9,10, and 11, your answers should include convictions resulting from a plea of *nolo contendere* (no contest), but omit (1) traffic fines of \$300 or less, (2) any violation of law committed before your 16th birthday, (3) any violation of law committed before your 18th birthday if finally decided in juvenile court or under a Youth Offender law, (4) any conviction set aside under the Federal Youth Corrections Act or similar state law, and (5) any conviction for which the record was expunged under Federal or state law .

9. During the last 7 years, have you been convicted, been imprisoned, been on probation, or been on parole? (Includes felonies, firearms or explosives violations, misdemeanors, and all other offenses.) *If "YES," use item 16 to provide the date, explanation of the violation, place of occurrence, and the name and address of the police department or court involved.* ☐ YES ☐ NO

10. Have you been convicted by a military court-martial in the past 7 years? *(If no military service, answer "NO.") If "YES," use item 16 to provide the date, explanation of the violation, place of occurrence, and the name and address of the military authority or court involved.* ☐ YES ☐ NO

11. Are you currently under charges for any violation of law? *If "YES," use item 16 to provide the date, explanation of the charges, place of occurrence, and the name and address of the police department or court involved.* ☐ YES ☐ NO

12. During the last 5 years, have you been fired from any job for any reason, did you quit after being told that you would be fired, did you leave any job by mutual agreement because of specific problems, or were you debarred from Federal employment by the Office of Personnel Management or any other Federal agency? *If "YES," use item 16 to provide the date, an explanation of the problem, reason for leaving, and the employer's name and address.* ☐ YES ☐ NO

13. Are you delinquent on any Federal debt? (Includes delinquencies arising from Federal taxes, loans, overpayment of benefits, and other debts to the U.S. Government, plus defaults of Federally guaranteed or insured loans such as student and home mortgage loans.) *If "YES," use item 16 to provide the type, length, and amount of the delinquency or default, and steps that you are taking to correct the error or repay the debt.* ☐ YES ☐ NO

# Declaration for Federal Employment\*

Form Approved:  
OMB No. 3206-0182

(\*This form may also be used to assess fitness for federal contract employment)

## Additional Questions

14. Do any of your relatives work for the agency or government organization to which you are submitting this form? (Include: father, mother, husband, wife, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, and half-sister.) If "YES," use item 16 to provide the relative's name, relationship, and the department, agency, or branch of the Armed Forces for which your relativeworks. ☐ YES ☐ NO
15. Do you receive, or have you ever applied for, retirement pay, pension, or other retired pay based on military, Federal civilian, or District of Columbia Government service? ☐ YES ☐ NO

## Continuation Space / Agency Optional Questions

16. Provide details requested in items 7 through 15 and 18c in the space below or on attached sheets. Be sure to identify attached sheets with your name, Social Security Number, and item number, and to include ZIP Codes in all addresses. If any questions are printed below, please answer as instructed (these questions are specific to your position and your agency is authorized to ask them).

## Certifications / Additional Questions

**APPLICANT:** If you are applying for a position and received a tentative/conditional job offer or have not yet been selected, carefully review your answers on this form and any attached sheets.

**APPOINTEE: If you are being appointed,** carefully review your answers on this form and any attached sheets, including any other application materials that your agency has attached to this form. If any information requires correction to be accurate as of the date you are signing, make changes on this form or the attachments and/or provide updated information on additional sheets, initialing and dating all changes and additions. When this form and all attached materials are accurate, read item 17, complete 17b, read 18, and answer 18a, 18b, and 18c as appropriate.

17. **I certify** that, to the best of my knowledge and belief, all of the information on and attached to this Declaration for Federal Employment, including any attached application materials, is true, correct, complete, and made in good faith. **I understand that a false or fraudulent answer to any question or item on any part of this declaration or its attachments may be grounds for not hiring me, or for firing me after I begin work, and may be punishable by fine or imprisonment.** I understand that any information I give may be investigated for purposes of determining eligibility for Federal employment as allowed by law or Presidential order. **I consent** to the release of information about my ability and fitness for Federal employment by employers, schools, law enforcement agencies, and other individuals and organizations to investigators, personnel specialists, and other authorized employees or representatives of the Federal Government. **I understand** that for financial or lending institutions, medical institutions, hospitals, health care professionals, and some other sources of information, a separate specific release may be needed, and I may be contacted for such a release at a later date.

- 17a. Applicant's Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
(MM / DD / YYYY)
- 17b. Appointee's Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
(MM / DD / YYYY)

### Appointing Officer:

Enter Date of Appointment or Conversion  
MM / DD / YYYY

18. **Appointee (Only respond if you have been employed by the Federal Government before):** Your elections of life insurance during previous Federal employment may affect your eligibility for life insurance during your new appointment. These questions are asked to help your personnel office make a correct determination.

- 18a. When did you leave your last Federal job? \_\_\_\_\_ Date: \_\_\_\_\_  
(MM / DD / YYYY)
- 18b. When you worked for the Federal Government the last time, did you waive Basic Life Insurance or any type of optional life insurance? ☐ YES ☐ NO ☐ DO NOT KNOW
- 18c. If you answered "YES" to item 18b, did you later cancel the waiver(s)? If your answer to item 18c is "NO," use item 16 to identify the type(s) of insurance for which waivers were not canceled. ☐ YES ☐ NO ☐ DO NOT KNOW

**Addendum to Declaration for Federal Employment (OF 306)**  
**Indian Health Service**  
**Child Care & Indian Child Care Worker Positions**

=====

**Item 16. Agency Specific Questions**

**Name:** \_\_\_\_\_ **Social Security Number:** \_\_\_\_\_

(Please print)

**Job Title in Announcement:** \_\_\_\_\_ **Announcement Number:** \_\_\_\_\_

Section 231 of the Crime Control Act of 1990, Public Law (Pub. L.) 101-647, requires employment applications for individuals seeking employment in a position involved with the provision to children under the age of 18 of "child care services," as defined in 42 U.S.C. § 13041(a)(2), contain a question asking whether the individual has ever been arrested for or charged with a crime involving a child and for the disposition of the arrest or charge. Under 42 U.S.C. § 13041(a)(2), the term "child care services" means child protective services (including the investigation of child abuse and neglect reports), social services, health and mental health care, child (day) care, education (whether or not directly involved in teaching), foster care, residential care, recreational or rehabilitative programs, and detention, correctional, or treatment services. Individuals hired for such positions must undergo a criminal history background check.

Section 408 of the Indian Child Protection and Family Violence Prevention Act, Pub. L. 101-630, contains a related requirement for positions in the Department of Health and Human Services that involve regular contact with or control over Indian children. The agency must ensure that persons hired for these positions have not been found guilty of or pleaded nolo contendere or guilty to certain crimes. The law requires the agency conduct an investigation of the character of each individual who is being considered for employment in such a position and prescribe in regulations the "minimum standards of character" that must be met in order for an individual to fill such a position. The regulations specify that "[t]he minimum standards of character shall be considered met only after the individual has been the subject of a satisfactory background investigation," which includes a criminal history background check.

42 C.F.R. § 136.406.

To assure compliance with the above laws, the following questions are added to the Declaration for Federal Employment:

1. Have you ever been arrested for or charged with a crime involving a child?  
YES \_\_\_\_\_ NO \_\_\_\_\_

*[If "YES", provide the date, explanation of the violation, disposition of the arrest or charge, place of occurrence, and the name and address of the police department or court involved.]*

2. Have you ever been found guilty of, or entered a plea of nolo contendere (no contest) or guilty to, any felonious or misdemeanor offense under Federal, State, or tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact or prostitution; or crimes against persons; or offenses committed against children?  
YES \_\_\_\_\_ NO \_\_\_\_\_

*[If “YES”, provide the date, explanation of the violation, disposition of the arrest or charge, place of occurrence, and the name address of the police department or court involved.]*

I certify that (1) my response to these questions is made under penalty of perjury, which is punishable by fine under title 18 of the U.S. Code, or imprisonment of not more than five years, or both; and (2) I have received notice that a criminal check will be conducted. I understand my right to obtain a copy of any criminal history report made available to the Indian Health Service and my right to challenge the accuracy and completeness of any information contained in the report.

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**Applicant’s Signature (sign in ink)**

**Date**

*Public Burden Statement: In accordance with Paperwork Reduction Act [5 CFR § 1320.8 (b)(3)], a Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Respondents must be informed (on the reporting instrument, in instructions, or in a cover letter) the reasons for which the information will be collected; the way the information will be used to further the proper performance of the functions of the agency; whether responses to the collection of the information are voluntary, required to obtain a benefit (citing authority), or mandatory (citing authority); and the nature and extent of confidentiality to be provided, if any (citing authority). Public reporting burden for this collection of information is estimated to average 12 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the necessary data, and completing and reviewing the collection information. Send comments regarding the burden estimate or any other aspect of this collection of information to the IHS Information Collection Clearance Officer, Indian Health Service, Office of Management Services, Division of Regulatory Affairs, 5600 Fishers Lane, Rockville, Mail Stop 09E70, MD 20857. **Please do not send completed data collection instruments to this address.***

## SPECIAL AGREEMENT CHECKS (SAC)

This form can be used to request a number of DCSA's National Agency Checks as Special Agreement Checks (SAC), case type 92. Authorized agency officials, not subjects of investigation, should complete items 1-16, as applicable and the required information for each SAC code requested. Submit this form and any attachments through the NP2 portal to: "(S) e-QIP Attachments (NTC)" or if required to be mailed:

DCSA-FIPC  
PO Box 618  
Boyers, PA 16018

For deliveries requiring a street address use:  
1137 Branchton Road  
Boyers, PA 16018

The requesting agency is expected to have on file, or know that DCSA has on file from a prior investigation, a valid signed release for the individual in which the SAC product is being requested. Please note: By submitting an investigative request using the OFI 86C, the agency is acknowledging that the fees associated with the SAC request have been approved by the agency.

Due to Paperwork Reduction Act (PRA) guidance, contractors are not permitted to respond to this collection at this time.

### PRIVACY ACT STATEMENT

This investigative request is in full compliance with the Privacy Act of 1974 and other laws protecting the civil rights of the individual we are investigating. The information provided will be retained by the Defense Counterintelligence and Security Agency (DCSA) and may be disclosed to the individual being investigated or other federal agencies.

**AUTHORITY:** DCSA is authorized to collect this information based on section 925 of Public Law 115-91; 5 U.S. Code 301; Executive Order 13467, as amended by Executive Order 13869; and, 5 Code of Federal Regulations 736.

**PRINCIPAL PURPOSE:** To obtain records for investigating and determining an individual's initial or continued eligibility for access to classified national security information or assignment to positions with sensitive duties, suitability for enlistment or appointment into military service, suitability for federal employment, fitness for assignment to work under contract for or on behalf of the government, or eligibility for physical or logical access to U.S. Government systems or facilities. DCSA may also conduct other background investigations as authorized by law, designation, rule, regulation, or Executive Order.

**ROUTINE USES:** The information collected may be disclosed to DCSA personnel and shared externally with other authorized government agency personnel as a routine use when necessary and relevant to personnel vetting investigations, determinations, and adjudications; and, for other purposes permitted under subsection (b) of the Privacy Act of 1974, as amended (5 USC §552a). A complete list of the routine uses can be found in the system of records notice for the Department of Defense Personnel Vetting Records System DUSDI 02-DoD at: <https://www.federalregister.gov/documents/2018/10/17/2018-22508/privacy-act-of-1974-system-of-records>.

**DISCLOSURE:** Disclosure is voluntary. However, failure to provide DCSA the requested information may result in our agency's inability to conduct a thorough investigation and may prevent the government from making a determination regarding the qualifications, suitability, eligibility or fitness of the individual being investigated. The information collected will be used to conduct investigative work and may be furnished to other government agencies as warranted, and to the individual investigated upon his or her request unless otherwise exempt.

**CERTIFICATION:** The requesting agency certifies the individual we are investigating has given written consent for this investigative inquiry. The requesting agency is expected to have on file, or know that DCSA has on file from a prior investigation, a valid signed release for the individual in which the SAC product is being requested.

1. Provide subject's full name. If subject has only initials in name, provide them and indicate "Initials only." If subject does not have a middle name, indicate "No Middle Name." If subject is a "Jr.," "Sr.," etc., enter this suffix.
2. Provide the month, day, year of subject's birth. Example: Enter June 7, 1942 as: "06/07/1942".
3. Provide subject's place of birth: Enter full name of city/town under CITY. Provide COUNTY, if born in United States. Provide the abbreviation for the State if born in the U.S. or its territories. Provide country of birth under COUNTRY only if not born in the United States.

**ABBREVIATIONS FOR STATES, DISTRICT OF COLUMBIA, AND U.S. TERRITORIES**

Alabama	AL	Hawaii	HI	Massachusetts	MA	New Mexico	NM	South Dakota	SD
Alaska	AK	Idaho	ID	Michigan	MI	New York	NY	Tennessee	TN
Arizona	AZ	Illinois	IL	Minnesota	MN	North Carolina	NC	Texas	TX
Arkansas	AR	Indiana	IN	Mississippi	MS	North Dakota	ND	Utah	UT
California	CA	Iowa	IA	Missouri	MO	Ohio	OH	Vermont	VT
Colorado	CO	Kansas	KS	Montana	MT	Oklahoma	OK	Virginia	VA
Connecticut	CT	Kentucky	KY	Nebraska	NE	Oregon	OR	Washington	WA
Delaware	DE								
District of Columbia	DC	Louisiana	LA	Nevada	NV	Pennsylvania	PA	West Virginia	WV
Florida	FL	Maine	ME	New Hampshire	NH	Rhode Island	RI	Wisconsin	WI
Georgia	GA	Maryland	MD	New Jersey	NJ	South Carolina	SC	Wyoming	WY

**U.S. TERRITORIES**

American Samoa	AS	Baker Island	FQ	Guam	GU	Howland Island	HQ	Jarvis Island	DQ
Johnston Atoll	JQ	Kingman Reef	KQ	Marshall Islands	MH	Micronesia, Federated States of	FM	Midway Islands	MQ
Navassa Island	BQ	Northern Mariana Islands	MP	Palau	PW	Palmyra Atoll	LQ	Puerto Rico	PR
Virgin Islands, United States	VI	Wake Island	WQ	APO/FPO America	AA	APO/FPO Europe	AE		

4. Provide the subject's Social Security Number.
5. Provide Other Names Used (If additional space is needed, attach an additional sheet to this form).
6. Select the appropriate box to specify sex as MALE or FEMALE.
7. Provide Subject's Email Address (Current).
8. Provide all the Special Agreement codes being requested from the Investigations Reimbursable Billing Rates, Federal Investigations Notice (FIN).
9. Provide subject's Position Title.
10. Provide your Submitting Office Number (SON).
11. Provide your Security Office Identifier (SOI).
12. Provide your agency's Intra-Governmental Payment and Collection-Agency Location Code (IPAC-ALC) number.
13. Provide your agency's Obligating Document Number (ODN).
14. Provide accounting data (Optional).
15. Requesting Official's Name and Title.
16. Provide information required per SAC code being requested.

**DCSA USE ONLY**

DCSA CODES	CASE NUMBER
------------	-------------

**AGENCY USE ONLY (Complete Items 1 through 16)**

1. SUBJECT'S FULL NAME				2. DATE OF BIRTH	
LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	(MM/DD/YYYY)	
3. PLACE OF BIRTH (use 2 letter code for state)				4. SOCIAL SECURITY NUMBER	
CITY	COUNTY	STATE	COUNTRY		
5. OTHER NAMES USED (if additional space is needed, attach an additional sheet to this form)					
LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX		
LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX		
LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX		
LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX		

6. SEX FEMALE                      MALE		7. SUBJECT'S EMAIL ADDRESS (current)		8. SPECIAL AGREEMENT CODES		9. POSITION TITLE	
10. SON	11. SOI	12. IPAC-ALC NUMBER	13. OBLIGATING DOCUMENT NUMBER (ODN)			14. ACCOUNTING DATA	
15. REQUESTING OFFICIAL'S NAME AND TITLE			REQUESTING OFFICIAL'S EMAIL		PHONE NUMBER		DATE
16. Provide information required per SAC code being requested. <b>(CODE A)</b> SECURITY/SUITABILITY INVESTIGATIONS INDEX CHECK (SII). <b>(CODE B)</b> FBI FINGERPRINT CLASSIFICATION CHECK (FBIF/FBFN) (PROVIDE REQUIRED HARDCOPY FINGERPRINT CARD.) <b>(CODE C)</b> FBI INVESTIGATIONS FILES CHECK (FBIN) (PROVIDE ADDRESSES OF THREE MOST RECENT RESIDENCES BELOW.)							
ADDRESS							
1. MONTH/YEAR TO MONTH/YEAR		STREET ADDRESS	APT	CITY		STATE	ZIP
2. MONTH/YEAR TO MONTH/YEAR		STREET ADDRESS	APT	CITY		STATE	ZIP
3. MONTH/YEAR TO MONTH/YEAR		STREET ADDRESS	APT	CITY		STATE	ZIP
<b>(CODE D)</b> DEFENSE CENTRAL INDEX OF INVESTIGATIONS CHECK (DCII) <b>(CODE E)</b> CREDIT RECORD (PROVIDE ADDRESS AND DATES FOR EVERY PLACE LIVED FOR MORE THAN SIX MONTHS IN THE PAST 12 MONTHS. (NOTE: IF ALL RESIDENCES WERE LESS THAN 6 MONTHS, PROVIDE THOSE ADDRESSES AND DATES). IF ADDITIONAL SPACE IS NEEDED, ATTACH A CONTINUATION SHEET TO THIS FORM.)							
ADDRESS							
1. MONTH/YEAR TO MONTH/YEAR		STREET ADDRESS	APT	CITY		STATE	ZIP
2. MONTH/YEAR TO MONTH/YEAR		STREET ADDRESS	APT	CITY		STATE	ZIP
3. MONTH/YEAR TO MONTH/YEAR		STREET ADDRESS	APT	CITY		STATE	ZIP
4. MONTH/YEAR TO MONTH/YEAR		STREET ADDRESS	APT	CITY		STATE	ZIP
<b>(CODE G)</b> MILITARY PERSONNEL RECORDS CHECK (MILR) (PROVIDE BRANCH, STATUS, AND DATES OF MILITARY SERVICE) PROVIDE THE BRANCH OF SERVICE							
PROVIDE THE BRANCH OF SERVICE						PROVIDE SUBJECT'S STATUS	
ARMY		AIR FORCE		COAST GUARD		ACTIVE DUTY	
ARMY NATIONAL GUARD		AIR NATIONAL GUARD				RESERVE DUTY	
NAVY		MARINE CORPS				INACTIVE	
						RESERVE	
PROVIDE SUBJECT'S DATES AND ADDRESSES OF SERVICE							
1. MONTH/YEAR TO MONTH/YEAR		STREET ADDRESS	APT	CITY		STATE	ZIP
2. MONTH/YEAR TO MONTH/YEAR		STREET ADDRESS	APT	CITY		STATE	ZIP
3. MONTH/YEAR TO MONTH/YEAR		STREET ADDRESS	APT	CITY		STATE	ZIP
4. MONTH/YEAR TO MONTH/YEAR		STREET ADDRESS	APT	CITY		STATE	ZIP

<b>(CODE H) INVESTIGATIVE AGENCIES CHECK (INVA) (PROVIDE INVESTIGATING AGENCY.)</b>			
Select the investigating agency:			
U.S. DEPARTMENT OF DEFENSE			
U.S. OFFICE OF PERSONNEL MANAGEMENT			
U.S. DEPARTMENT OF STATE			
FEDERAL BUREAU OF INVESTIGATION			
U.S. DEPARTMENT OF HOMELAND SECURITY (Provide name of bureau)			
U.S. DEPARTMENT OF TREASURY (Provide name of bureau)			
FOREIGN GOVERNMENT (Provide name of government)			
OTHER (Provide explanation)			
<b>(CODE I) CITIZENSHIP AND IMMIGRATION VERIFICATION</b>			
COUNTRY OF CITIZENSHIP		COUNTRY	
PROVIDE COMPLETE INFORMATION BELOW.			
SELECT THE BOX THAT REFLECTS CURRENT CITIZENSHIP STATUS.			
U.S. CITIZEN OR NATIONAL BY BIRTH IN THE U.S. OR U.S. TERRITORY/COMMONWEALTH			
U.S. CITIZEN OR NATIONAL BY BIRTH, BORN TO U.S. PARENT(S), IN A FOREIGN COUNTRY			
NATURALIZED U.S. CITIZEN			
DERIVED U.S. CITIZEN			
NOT A U.S. CITIZEN			
U.S. CITIZEN OR NATIONAL BY BIRTH, BORN TO U.S. PARENT(S), IN A FOREIGN COUNTRY.			
PROVIDE TYPE OF DOCUMENTATION OF U.S. CITIZEN BORN ABROAD.			DOCUMENT NUMBER
FS240      DS1350      FS 545      U.S. PASSPORT (current or most recent passport)			
OTHER (Provide explanation)			
PROVIDE THE NAME IN WHICH THE DOCUMENT WAS ISSUED.			
LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
NATURALIZED OR DERIVED U.S. CITIZEN.			
PROVIDE TYPE OF DOCUMENTATION OF NATURALIZED OR DERIVED U.S. CITIZEN.			DOCUMENT NUMBER
CERTIFICATE OF NATURALIZATION      CERTIFICATE OF CITIZENSHIP      ALIEN REGISTRATION			
U.S. PASSPORT      OTHER (Provide explanation)			
PROVIDE THE NAME IN WHICH THE DOCUMENT WAS ISSUED.			
LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
SUBJECT IS NOT A U.S. CITIZEN.			
PROVIDE TYPE OF DOCUMENT ISSUED			DOCUMENT NUMBER
I-94      U.S. Visa (red foil number)      I-20      DS-2019      I-551      I-766			
FOREIGN PASSPORT (Provide country)			
OTHER (provide explanation)			
LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
FOREIGN PASSPORT COUNTRY	COUNTRY		



<b>(CODE K) FBI FINGERPRINT NAME CHECK (FBN)</b>			
<b>(CODE N) BUREAU OF VITAL STATISTICS (BVS)</b>			
MOTHER'S FULL NAME			
LAST NAME	FIRST NAME	MIDDLE NAME	
MOTHER'S MAIDEN NAME (If Applicable)			
LAST NAME	FIRST NAME	MIDDLE NAME	
SUBJECT'S MAIDEN NAME (If Applicable)			
LAST NAME	FIRST NAME	MIDDLE NAME	
FATHER'S FULL NAME			
LAST NAME	FIRST NAME	MIDDLE NAME	
<b>(CODE R) SAC NATIONAL AGENCY CHECK (SAC NAC) (INCLUDES CODES A, B, C, D, AND H. ENSURE CODES C AND H ARE COMPLETED.)</b>			
<b>(CODE S) SPOUSE OR COHABITANT NACS</b>			
SPOUSE OR COHABITANT'S FULL NAMES (PROVIDE SPOUSE/COHAB FULL NAME. IF THE SPOUSE/COHAB ONLY HAS INITIALS IN HIS/HER NAME, PROVIDE THEM AND INDICATE "INITIALS ONLY". IF SPOUSE/COHAB DOES NOT HAVE A MIDDLE NAME, INDICATE "NO MIDDLE NAME." IF SPOUSE/COHAB IS A "JR.," "SR.," ETC. ENTER THIS UNDER SUFFIX.) Spouse Cohab			
LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
SPOUSE OR COHABITANT'S OTHER FULL NAMES			
LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
DATE OF BIRTH (MM/DD/YYYY)			
PLACE OF BIRTH		SOCIAL SECURITY NUMBER	
CITY	COUNTY	STATE	
COUNTRY OF CITIZENSHIP	COUNTRY		
SELECT THE BOX THAT REFLECTS SPOUSE OR COHABITANT'S CITIZENSHIP STATUS. PROVIDE INFORMATION APPLICABLE TO SPOUSE OR COHABITANT'S CITIZENSHIP STATUS SELECTION. SELECT THE BOX THAT REFLECTS CURRENT CITIZENSHIP STATUS.			
<input type="checkbox"/> U.S. CITIZEN OR NATIONAL BY BIRTH IN THE U.S. OR U.S. TERRITORY/COMMONWEALTH <input type="checkbox"/> U.S. CITIZEN OR NATIONAL BY BIRTH, BORN TO U.S. PARENT(S), IN A FOREIGN COUNTRY <input type="checkbox"/> NATURALIZED U.S. CITIZEN <input type="checkbox"/> DERIVED U.S. CITIZEN <input type="checkbox"/> SPOUSE/COHAB NOT A U.S. CITIZEN			
U.S. CITIZEN OR NATIONAL BY BIRTH, BORN TO U.S. PARENT(S), IN A FOREIGN COUNTRY. PROVIDE TYPE OF DOCUMENTATION OF U.S. CITIZEN BORN ABROAD.			DOCUMENT NUMBER
FS240      DS1350      FS 545      U.S. PASSPORT (current or most recent passport)  OTHER (provide explanation)			
PROVIDE THE NAME IN WHICH THE DOCUMENT WAS ISSUED.			
LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

NATURALIZED OR DERIVED U.S. CITIZEN.					
PROVIDE TYPE OF DOCUMENTATION OF NATURALIZED OR DERIVED U.S. CITIZEN.					DOCUMENT NUMBER
CERTIFICATE OF NATURALIZATION      CERTIFICATE OF CITIZENSHIP      ALIEN REGISTRATION U.S. PASSPORT      OTHER (Provide explanation)					
PROVIDE THE NAME IN WHICH THE DOCUMENT WAS ISSUED.					
LAST NAME		FIRST NAME		MIDDLE NAME	SUFFIX
SPOUSE OR COHABITANT NOT A U.S. CITIZEN.					
PROVIDE TYPE OF DOCUMENT ISSUED					DOCUMENT NUMBER
I-94      U.S. Visa (red foil number)      I-20      DS-2019      I-551      I-766 FOREIGN PASSPORT (Provide country) OTHER (provide explanation)					
LAST NAME		FIRST NAME		MIDDLE NAME	SUFFIX
FOREIGN PASSPORT COUNTRY		COUNTRY			
<b>(CODE X)</b> NATIONAL CRIME INFORMATION CENTER/INTERSTATE IDENTIFICATION INDEX CHECK (NCIC/III) (SIGNED MEMORANDUM OF UNDERSTANDING (MOU) REQUIRED.)					
<b>(CODE 3)</b> CONTINUOUS EVALUATION SPECIAL AGREEMENT CHECK (CE SAC) (SIGNED MEMORANDUM OF UNDERSTANDING (MOU) REQUIRED. PROVIDE ADDRESS AND DATES FOR EVERY PLACE LIVED FOR MORE THAN SIX MONTHS IN THE PAST 12 MONTHS. (NOTE: IF ALL RESIDENCES WERE LESS THAN 6 MONTHS, PROVIDE THOSE ADDRESSES AND DATES.) IF ADDITIONAL SPACE IS NEEDED, ATTACH A CONTINUATION SHEET TO THIS FORM.)					
ADDRESS					
MONTH/YEAR TO MONTH/YEAR	STREET ADDRESS		APT	CITY	STATE      ZIP
MONTH/YEAR TO MONTH/YEAR	STREET ADDRESS		APT	CITY	STATE      ZIP
MONTH/YEAR TO MONTH/YEAR	STREET ADDRESS		APT	CITY	STATE      ZIP
MONTH/YEAR TO MONTH/YEAR	STREET ADDRESS		APT	CITY	STATE      ZIP
<b>(CODE 4)</b> MILITARY DISCHARGE CHECK (MILD)					
<b>(CODE 8B)</b> STATE CRIMINAL HISTORY REPOSITORY CHECK (SCHR) CHILD CARE SEARCHES (IN ADDITION TO THE FINGERPRINT CARD REQUIRED FOR THE FBI CHECK, COMPLETE ADDITIONAL INFORMATION NEEDED FOR THE STATE CRIMINAL HISTORY REPOSITORY (SCHR) CHECKS. PROVIDE SUBJECT'S RESIDENCE ADDRESS FOR EACH STATE OF RESIDENCE THAT A SCHR CHECK IS REQUESTED, BEGINNING WITH THE CURRENT ADDRESS. DOCUMENT SUBMISSION DETAILS FOR THE STATES SHOULD BE REVIEWED BEFORE SUBMITTING THE INVESTIGATION FOR CHILDCARE POSITIONS AND CAN BE FOUND IN THE DCSA CHILDCARE AGENCY GUIDE. THIS GUIDE IS AVAILABLE IN THE NP2 SECURE PORTAL IN A PUBLIC LIBRARY FOLDER LABELED "CHILDCARE INVESTIGATIONS DOCUMENTS". IF ADDITIONAL SPACE IS NEEDED, ATTACH A CONTINUATION SHEET TO THIS FORM.)					
ADDRESS (Current)					
MONTH/YEAR TO MONTH/YEAR	STREET ADDRESS		APT	CITY	STATE      ZIP
MONTH/YEAR TO MONTH/YEAR	STREET ADDRESS		APT	CITY	STATE      ZIP
MONTH/YEAR TO MONTH/YEAR	STREET ADDRESS		APT	CITY	STATE      ZIP
MONTH/YEAR TO MONTH/YEAR	STREET ADDRESS		APT	CITY	STATE      ZIP
MONTH/YEAR TO MONTH/YEAR	STREET ADDRESS		APT	CITY	STATE      ZIP
MONTH/YEAR TO MONTH/YEAR	STREET ADDRESS		APT	CITY	STATE      ZIP
MONTH/YEAR TO MONTH/YEAR	STREET ADDRESS		APT	CITY	STATE      ZIP

**Office of the Attorney General  
Division of Criminal Investigation  
1302 E. Highway 14, Suite 5, Pierre, SD 57501  
(605) 773-3331**

**AUTHORIZATION AND RELEASE**

I, \_\_\_\_\_, hereby authorize the Division of Criminal Investigation for the State of South Dakota to release to \_\_\_\_\_ any information concerning me contained in the criminal history record files of the Division. I understand that the criminal history record files contain records of arrests which may have resulted in a disposition other than a finding of guilty (i.e. dismissed charges, or charges that resulted in a not guilty finding). I further understand that the information may contain listings of charges that resulted in suspended imposition of sentence, even though I successfully completed the conditions of said sentence and was discharged under SDCL 23A-27-17. I acknowledge that this type of information may be released, even though this record is designated as "nonpublic" under the provisions of 23A-27-17.

In consideration for the Division of Criminal Investigation releasing any information concerning me contained within its criminal history record files to \_\_\_\_\_, I, \_\_\_\_\_ on behalf of myself, my spouse, legal representatives, heirs, and assigns, hereby release, waive, discharge and agree to hold harmless the Division of Criminal Investigation, its officers and employees, from all liability for any claim or damages resulting from the release of this information.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

Mail Response To: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## Appendix\_\_: Business Associate Agreement

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### I. Authority:

Pursuant to 45 C.F.R. § 164.502(e), the Indian Health Service (IHS), as a covered entity, is required to enter into an agreement with a “business associate,” as defined by 45 C.F.R. § 160.103, under which the business associate must agree to appropriately safeguard Protected Health Information (PHI) that it will use and disclose when performing functions, activities or services pursuant to its contract with the IHS. By signing Contract No. \_\_\_\_\_ (Contract), \_\_\_\_\_ agrees that it is a Business Associate and will comply with the terms below, in addition to other applicable Contract terms and conditions, and applicable law, relating to the safekeeping, use, and disclosure of PHI. This Appendix comprises the Business Associate Agreement (Agreement).

### II. Definitions:

The following terms shall have the same meaning as those terms in 45 C.F.R. Part 160 and Part 164, which are the federal regulations implementing the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended: Breach, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, PHI, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured PHI, and Use.

- A. Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 C.F.R. § 160.103, and in reference to the party to this Agreement shall mean \_\_\_\_\_.
- B. Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 C.F.R. § 160.103, and in reference to the party to this Agreement, shall mean the IHS.
- C. HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.
- D. Master Patient Index (MPI). The “Master Patient Index” or “MPI” is composed of a unique list of patients and a current list of medical centers where each patient has been seen. This enables the sharing of patient data between operationally and regionally diverse systems. Each record (or index entry) on the MPI contains a small amount of patient data used to identify individual entries.

The mission of the MPI is to uniquely identify a patient and to “link” that patient’s data throughout the IHS facilities using the Integration Control Number (ICN). The MPI is the authoritative source of a patient’s ICN, the enterprise-wide identifier for IHS facilities and the key to accessing a patient’s record. The

## Appendix\_\_: Business Associate Agreement

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accuracy of patient information and patient identification directly affects clinical, administrative, billing, and interdepartmental processes.

### III. Obligations and Activities of Business Associate:

- A. Compliance:** Business Associate agrees not use or disclose PHI other than as authorized by the Agreement or as required by law. Business Associate acknowledges that it is directly liable under the HIPAA Rules and subject to civil and, in some cases, criminal penalties for making uses and disclosures of PHI that are not authorized by the Agreement or required by law. Business Associate agrees that it will require all of its agents, employees, subsidiaries, and affiliates, to whom Business Associate provides PHI, or who create or receive PHI on behalf of Business Associate for Covered Entity, to comply with the HIPAA Rules and to enter into written agreements with Business Associate that provide the same restrictions, terms, and conditions as set forth in the Agreement.
- B. Subcontractors:** In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), which govern relations with subcontractors, Business Associate agrees to ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree to the same restrictions, terms, and conditions that apply to Business Associate with respect to such PHI.
- C. Safeguarding PHI:** Business Associate shall develop and use appropriate procedural, physical, and electronic safeguards to protect against the use or disclosure of PHI in a manner not authorized by this Agreement or required by law. Business Associate will limit any use, disclosure, or request for use or disclosure of PHI to the minimum amount necessary to accomplish the intended purpose of the use, disclosure, or request.
- D. Safeguarding Electronic PHI:** Business Associate agrees to use appropriate safeguards, as set forth in Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI, to prevent use or disclosure of electronic PHI other than as authorized by this Agreement or required by law.
- E. Reporting Use or Disclosures Not Authorized By this Agreement or Required by Law:** Business Associate agrees to report to Covered Entity any use or disclosure of PHI not authorized by this Agreement or required by law within thirty (30) days of discovering the use or disclosure, or any security incident of which it becomes aware. In addition, Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of the use, disclosure, or security incident.
- F. Reporting of Breach:** In accordance with the policy of the Department of Health and Human Services, Business Associate will report, within one hour of discovery, all suspected or confirmed breaches to Covered Entity.

## Appendix\_\_: Business Associate Agreement

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- G. Notification of Breach of Unsecured PHI:** In addition to the above, Business Associate shall notify Covered Entity of a breach, as set forth in 45 C.F.R. § 164.410, of the security of any unsecured PHI that Business Associate received from, or created or received on behalf of, Covered Entity within thirty (30) calendar days after the discovery of the breach by Business Associate, its employees, officers, and/or other agents, unless notification is specifically excepted by 45 C.F.R. § 164.412.
1. Requirements of Notice. Such notice shall include, to the extent possible, the identification of each individual whose unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such breach; a brief description of the circumstances of the breach of security, including the date of the breach and the date of Business Associate's discovery of the breach; and the type of unsecured PHI involved in the breach. Business Associate agrees to provide any other available information that Covered Entity is required to include in notification to the individual under 45 §164.404(c). In the event notification is delayed, evidence demonstrating the necessity of the delay shall accompany the notification.
- H. Individual Access to PHI:** Business Associate shall maintain a designated record set for each individual for whom it maintains PHI. In accordance with an individual's right to access his or her PHI, Business Associate shall make available all PHI in the individual's designated record set to the individual to whom that information pertains, or, upon the request of the individual, to that individual's authorized representative, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.524. Availability to access PHI shall be made within five (5) calendar days of receipt of a valid request.
- I. Accounting of Disclosures:** Business Associate shall maintain records of PHI received from, or created or received on behalf of, Covered Entity and shall document subsequent uses and disclosures of such information by Business Associate. Business Associate shall, within five (5) calendar days after receiving a request from Covered Entity, provide to Covered Entity such information as Covered Entity may require to fulfill its obligations to account for disclosures of PHI pursuant to 45 C.F.R. § 164.528.
- J. Amendment of PHI:** Business Associate shall, within five (5) calendar days of a request by Covered Entity, make PHI available to Covered Entity for Covered Entity to fulfill its obligations under 45 C.F.R. § 164.526 to amend PHI and shall, as directed by Covered Entity, within five (5) calendar days of receipt of such direction, incorporate any amendments into PHI held by Business Associate. In addition, Business Associate shall ensure incorporation of any such amendments into PHI held by its agents or subcontractors within ten (10) days of such direction, and shall notify Covered Entity within five (5) calendar days of when

## Appendix\_\_: Business Associate Agreement

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those agents or subcontractors have completed the incorporation of the amendments. Business Associate shall forward to Covered Entity all requests to amend PHI that it receives directly from individuals within five (5) calendar days of its receipt of a request.

**K. Carrying out Covered Entity's Obligations:** To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, Business Associate agrees to comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).

**L. Disclosures for Verifying Compliance:** Upon request, Business Associate shall permit access by the Secretary and Covered Entity during normal business hours to its facilities, books, records, accounts, and any other sources of information, including PHI and any agreements that it has with subcontractors, vendors, and/or other agents relating to the use and disclosure of PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, for purposes of determining both Business Associate's and Covered Entity's compliance with the HIPAA Rules.

### IV. Permitted Uses and Disclosures by Business Associate:

- A. Business Associate shall not use or disclose PHI except to perform functions, activities, or services on behalf of Covered Entity as provided for in the Contract, this Agreement, the HIPAA Rules, or other applicable law.
- B. Business Associate agrees that it may use or disclose PHI on behalf of Covered Entity only:
  - 1. Upon obtaining the authorization of the individual to whom the PHI pertains;
  - 2. For the purposes of treatment, payment or health care operations unless Covered Entity has agreed to a restriction pursuant to 45 C.F.R. § 164.520(b)(iv)(A) or 45 C.F.R. § 164.522; or
  - 3. Without an authorization or consent, if in accordance with 45 C.F.R. § 164.510, 45 C.F.R. § 164.512, 45 C.F.R. § 164.514(e), 45 C.F.R. § 164.514(f), or 45 C.F.R. § 164.514(g).
- C. Business Associate shall use and disclose PHI in compliance with each applicable requirement of 45 C.F.R. § 164.504(e), which section is fully incorporated herein.
- D. Business Associate agrees to make uses, disclosures, and requests for PHI consistent with Covered Entity's minimum necessary policies and procedures.
- E. It is anticipated that Business Associate will have access to the MPI.

## Appendix\_\_ : Business Associate Agreement

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F. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except for the specific uses and disclosures set forth below.

1. Business Associate may disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

V. Obligations of Covered Entity:

- A. Covered Entity shall provide Business Associate with its Notice of Privacy Practices and any changes to the Notice.
- B. Covered Entity shall notify Business Associate of any limitation(s) in Covered Entity's Notice of Privacy Practices under 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- C. Covered Entity shall notify Business Associate of any change in, or revocation of, the permission by an individual to use or disclose his or her PHI to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- D. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- E. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except as provided in Part IV, Subpart F, Section 1.

VI. Termination:

- A. **Term:** The Term of this Agreement shall be effective as of the date Business Associate signs the underlying Contract and shall terminate when the Contract ends or on the date covered entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.
- B. **Termination for Cause:** Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Business Associate



## Appendix\_\_ : Business Associate Agreement

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has violated a material term of the Agreement and Business Associate has not ended the violation within the time specified by Covered Entity.

C. **Obligations of Business Associate Upon Termination:** Upon termination of this Agreement for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:

1. Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
2. Return to Covered Entity, or, if agreed to by Covered Entity, destroy, the remaining PHI that Business Associate does not need to continue its proper management and administration or to carry out its legal responsibilities;
3. Continue to use appropriate safeguards, in compliance with Subpart C of 45 C.F.R. Part 164, with respect to electronic PHI to prevent use or disclosure of electronic PHI, other than as provided for in this Part, for as long as Business Associate retains the PHI;
4. Not use or disclose PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out above, at Part IV, Subpart F, Section 1 of the Agreement which applied prior to termination;
5. Return to Covered Entity, or, if agreed to by Covered Entity, destroy, the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities; and
6. If Business Associate or its agent or subcontractor destroys any PHI, Business Associate will provide Covered Entity with documentation evidencing such destruction within thirty (30) days of completion of destruction.

D. **Survival:** The obligations of Business Associate under this Part shall survive the termination of this Agreement.

### VII. Indemnification:

In the event Business Associate is investigated and/or becomes a party to a civil or criminal cause of action in any forum relating to its failure to comply with the HIPAA Rules, Business Associate shall reimburse Covered Entity all reasonable costs and expenses Covered Entity may incur relating to such investigation and/or cause of action, and will otherwise hold Covered Entity harmless for any and all reasonable costs and expenses relating to the foregoing.

### VIII. Miscellaneous:

## Appendix\_\_ : Business Associate Agreement

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- A. **Incorporation:** This Agreement is attached to and fully incorporated into the Contract.
- B. **Notices:** All notices under this Agreement shall be provided by certified mailing, and shall require proof of date of receipt.
- C. **Regulatory References:** A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- D. **Amendment:** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.
- E. **Interpretation:** Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.
- F. **Successors and Assigns:** This Agreement shall be binding upon, inure to the benefit of and be enforceable by and against the Parties and their successors and assigns.
- G. **Severability:** If a court of competent jurisdiction deems any provision of this Agreement unenforceable, such provision shall be severed from this Agreement and every other provision of the Agreement shall remain in full force and effect.

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Indian Health Service  
Rockville, Maryland 20857

Refer to: OPHS

INDIAN HEALTH SERVICE CIRCULAR NO. 2016-04

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Effective Date: July 28, 2016

MANDATORY SEASONAL INFLUENZA IMMUNIZATIONS FOR THE CIVILIAN HEALTH  
CARE PERSONNEL

**Sec.**

1. [Purpose](#)
2. [Background](#)
3. [Policy](#)
4. [Definitions](#)
5. [Procedures](#)
6. [Compliance](#)
6. [Supersedure](#)
7. [Effective Date](#)

1. Purpose. This circular establishes the Indian Health Service (IHS) policy requiring mandatory seasonal influenza immunizations for civilian health care personnel working in IHS health care facilities.
2. Background. Influenza vaccination for health care facility staff and licensed independent practitioners is a major patient safety issue in the United States and is an important component of comprehensive infection control programs. Individuals who become infected are contagious at least one day before any signs or symptoms of influenza appear, and therefore these individuals can infect others without knowing they are contagious.
3. Policy. All Civil Service employees, contract staff, temporary employees, students, and volunteers who work in an IHS health care facility, must receive a seasonal influenza vaccination by October 31 of each year or have on file a valid medical or religious exemption. The vaccination deadline may be extended if seasonal influenza vaccine supply is inadequate or sufficiently protracted to preclude timely vaccination. Commissioned Corps Officers of the United States Public Health Service (PHS) are already required to obtain their annual seasonal influenza immunization (per Manual Circular - Commissioned Corps Personnel - PHS No. 377, Subchapter CC26.1 Instruction 8, PHS Readiness Standards).
4. Definitions.
  - A. Health Care Personnel. All Civil Service employees, contract staff, temporary employees, students, and volunteers whose duties and responsibilities require them to work permanently, temporarily or occasionally in an IHS health care facility are considered Health

Care Personnel (HCP) for the purposes of this policy, regardless of their job category or level of patient contact.

B. Health Care Facility. Any Federal IHS hospital, clinic, or health station.

5. Procedures.

A. Documentation. All HCP must provide acceptable documentation substantiating influenza vaccine receipt or request for exemption within 2 calendar weeks following issuance of this circular and by Oct. 31 annually in subsequent years. Personnel routinely charged with infection control and/or employee health responsibilities at the facility are responsible for maintaining records of employee vaccination, medical exemption, or religious exemption as part of the employee health record.

1. Receipt of Influenza Vaccine

- a. Influenza Vaccine Administered Within IHS Facilities. Influenza vaccine will be offered free of charge to all HCP working in IHS health care facilities every influenza season. At the time of vaccination, the following information should be recorded in the employee health record: the date of administration, vaccine formulation (i.e., brand), vaccine manufacturer, dose volume, anatomic site of administration, vaccine lot and expiration date, and name of the provider administering the vaccine. Upon request, employees may be provided written documentation of the influenza vaccination.
- b. Influenza Vaccine Administered Outside IHS Facilities. Any HCP who receive influenza vaccine elsewhere must provide written proof of vaccination that documents the date of vaccination, vaccine formulation (i.e., brand), and name of provider administering the vaccine. This information will be filed along with any additional documentary proof of vaccination as part of the employee health record.

2. Request for Exemption

- a. Medical Exemption from Influenza Vaccination. A request for medical exemption from influenza vaccination may be approved for any person contraindicated to receive influenza vaccine as outlined by Advisory Committee on Immunization Practices (ACIP) recommendations (see link below). (<http://www.cdc.gov/flu/professionals/vaccination/index.htm>) Based on current recommendations, valid medical exemptions for influenza vaccines include a history of severe allergic reaction to any component of the influenza vaccine, including egg protein, or serious allergic reaction to a previous dose of influenza vaccine. History of Guillain-Barré Syndrome (GBS) onset within 6 weeks following a prior influenza vaccine is a precaution for influenza vaccination, and may be considered a valid medical exemption if a medical provider determines the influenza vaccination poses a risk to the patient.
  - i. Procedure for requesting a medical exemption. All HCP requesting medical exemption from influenza vaccination must provide documentation, signed by a licensed, independent health care practitioner, affirming that a valid medical contraindication exists that precludes influenza vaccination. Personnel routinely charged with infection control and/or employee health responsibilities at the facility will be designated to receive, review, approve/deny medical exemption requests in accordance with current ACIP recommendations, and maintain suitable records to document requests and outcomes. Employees whose request for medical exemption is denied will receive written justification for the denial and must receive influenza vaccination within 2 calendar weeks of the denial notification.
  - ii. Renewal. Employees with an approved medical exemption must provide a signed statement by October 31st annually reaffirming that the previously approved medical contraindication continues to

preclude vaccination. Such statements and other supporting documentation (e.g., statement from employee's medical provider) will be retained as part of the employee's health record.

- b. Religious Exemption from Influenza Vaccination. Any HCP who feel their religious beliefs preclude influenza immunization may request an exemption from influenza vaccination.

Procedure for requesting religious exemption. Any HCP who feel their religious beliefs preclude influenza immunization must submit a signed, written statement justifying the request by October 31st annually for review. Personnel routinely charged with infection control and/or employee health responsibilities at the facility will be designated to receive, review, approve/deny requests for religious exemption, and maintain suitable records to document requests and outcomes. Supporting statements and approval of religious exemption requests from influenza vaccination will be maintained as part of the employee health record.

- c. Appeal of denials.

- i. Medical exemption requests. Review and adjudication of appeals will be conducted by the facility Clinical Director or Service Unit Chief Medical officer. Secondary appeals can be made to the Area Chief Medical Officer. Third and final level of appeals can be made to the IHS Chief Medical Officer or their designee.
- ii. Religious exemption requests. Review and adjudication of appeals will be conducted by the facility's Chief Executive Officer. Secondary appeals can be made to the Area Director. Third and final level of appeals can be made to the IHS Chief Medical Officer or their designee.

- 3. Approved Exemption. Unvaccinated HCP with an approved medical or religious exemption must wear an IHS-provided surgical or similar mask when working in patient care areas or other areas frequented by patients in an IHS health care facility during the influenza season. Influenza season is typically defined as November through March, though may include other periods of increased levels of influenza activity as determined by the Centers for Disease Control and Prevention and/or state public health authorities. All HCP with an approved medical or religious exemption are required to receive annual instruction from appropriate infection control staff at the facility on the proper use of masks and other infection control measures relevant for preventing influenza infection.

- 6. Compliance. Health care personnel who refuse to comply with this policy and do not have an approved medical or religious exemption are subject to disciplinary action in accordance with Department of Health and Human Services and/or IHS policy and relevant sections of collective bargaining agreements as applicable. Employee refusal to comply with this policy will be documented and filed as part of the employee health record.
- 7. Superseding. This circular supersedes IHS SGM 2015-03, dated September 3, 2015.
- 8. Effective Date. This circular becomes effective on the date of signature.

/Mary Smith/  
Mary Smith  
Principal Deputy Director  
Indian Health Service

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DEPARTMENT OF HEALTH & HUMAN SERVICES

MEMORANDUM

Aberdeen Area  
Indian Health Service  
Federal Building, Room 309  
115 4<sup>th</sup> Ave. SE  
Aberdeen, SD 57401

AUG - 8 2013

DATE:

TO: All Aberdeen Area Civil Service Employees and Commission Corps Officers  
All Contractors, Volunteers and Other Providers

FROM: Acting Area Director

SUBJECT: Courtesy and Respect in the Workplace Policy

The single most important thing we can offer our patients, customers and coworkers is courtesy and respect in our daily interactions.

No matter what your job title, grade, duties or responsibilities are, your number one job is to perform those duties and responsibilities in a manner that is consistent with the standards of conduct outlined in the Department's Standards of Conduct, Subpart C - Conduct on the Job, 73.735-301 Courtesy and consideration for others. This Subpart reads as follows:

- (a) An employee's conduct on the job is, in all respects, of concern to the Federal Government. Courtesy, consideration, and promptness in dealing with the public must be shown in carrying out official responsibilities, and actions which deny the dignity of individuals or conduct which is disrespectful to others must recognize that inattention to matters of common courtesy can adversely affect the quality of service the Department is responsible for providing.
- (b) Of equal importance is the requirement that courtesy is shown in daily interaction with coworkers. Employees shall be polite to and considerate of other employees and shall respect their needs and concerns in the work environment.

I expect each individual who works for the Aberdeen Area IHS to adhere to these requirements. I expect each supervisor and/or manager to hold their subordinates responsible for meeting this standard and taking appropriate corrective action when individuals violate it. I also expect management to take appropriate corrective action when first line supervisors fail to exercise their supervisory responsibilities.

While I am emphasizing only one of the sections under Subpart C, I expect each supervisor and manager to become familiar with the entire subpart. I also expect each supervisor to assure that anyone over whom they exercise supervisory control is knowledgeable of and adhere to all aspects of the Standards of Conduct. You may access a copy of the HHS Standards of Conduct by following this link: <http://ethics.od.nih.gov/lawreg/hhs-resid-std.htm#301>



I am issuing this policy memorandum to demonstrate my commitment to assuring courtesy, respect and dignity in the work place. Everyone from patients, clients, customers and employees have the right to expect a professional environment when they walk through the doors of any Aberdeen Area IHS facility.

This memorandum is to be distributed "desk to desk" with supervisors assuring that each employee, officer, contractor and/or volunteer has knowledge of it and initials a copy of the memorandum. Chief Executive Officer and Division Directors are to assure that this memorandum is posted in appropriate places in plain sight of anyone entering their work area.

If you have questions or need assistance, you may contact the Regional Human Resource Office, Employee /Labor Relations staff by calling (605) 226-7553.

A handwritten signature in dark ink, appearing to read 'Ron Cornelius', with a long horizontal flourish extending to the right.

Ron Cornelius

## ***HHS Residual Standards of Conduct***

These Standards were published in a booklet entitled "Standards of Conduct" on March 30, 1989 (45 CFR Part 73). Since then the Office for Government Ethics (OGE) published the ethics regulations, [5 C.F.R. Parts 2600 to 2641](#), applicable to all Executive Branch employees in 1992.

The regulations became effective on February 3, 1993. Subsequently, HHS published the Supplemental Standards Of Ethical Conduct For Employees Of The Department Of Health And Human Services (HHS), 5 C.F.R Part [5501](#) And Supplemental Financial Disclosure Requirements For Employees Of HHS, 5 C.F.R Part [5502](#) which supplement the OGE ethics rules and regulations. Therefore, only the following subparts and sections of the HHS Standards of Conduct remain in effect. [Please consult with the Office of General Counsel prior to taking any action based on any of these subpart/sections. Revised by OGC Ethics Division, 5/19/2015.]

### **[§ 73.735-301 -- Courtesy and consideration for others](#)**

### **[§ 73.735-302 -- Support of department programs](#)**

### **[§ 73.735-305 -- Conduct in Federal buildings](#)**

### **[§ 73.735-306 -- Sexual harassment](#)**

### **[§ 73.735-508\(e\) -- Government decisions Outside Official channels](#)**

### **[§ 73.735-805 -- Advice and guidance on conflicts matters](#)**

### **[Subpart F -- Political Activity and USPHS Officers – \(§§ 73.735-601 -- §73.735-603\)](#)**

### **[Subpart L -- Disciplinary Action \(§ 73.735-1201\)](#)**

### **[Subpart M -- Reporting Violations \(§§ 73.735-1301 -- 73.735-1304\)](#)**

### **[Appendix to Part 73 -- List of Some Offenses for Which Disciplinary Action May be Taken](#)**

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#### **§ 73.735-301 Courtesy and consideration for others.**

(a) An employee's conduct on the job is, in all respects, of concern to the Federal government. Courtesy, consideration, and promptness in dealing with the public must be shown in carrying out official responsibilities, and actions which deny the dignity of individuals or conduct which is disrespectful to others must be avoided. Employees must recognize that inattention to matters of common courtesy can adversely affect the quality of service the Department is responsible for providing. Where appropriate, courtesy to the public should be included in the standards for employee performance.

(b) Of equal importance is the requirement that courtesy be shown in day-by-day interaction with co-workers. Employees shall be polite to and considerate of other employees, and shall respect their needs and concerns in the work environment.

#### **§ 73.735-302 Support of department programs.**

(a) When a Department program is based on law, Executive Order or regulation, every employee has a positive obligation to make it function as efficiently and economically as possible and to support it as long as it is a part of recognized public policy. An employee may, therefore, properly make an address explaining and interpreting such a program, citing its achievements, defending it against uninformed or unjust criticism, or soliciting views for improving it.

(b) An employee shall not, either directly or indirectly, use appropriated funds to influence, or attempt to influence, a Member of Congress to favor or oppose legislation. However, when authorized by his or her supervisor, an employee is not prohibited from: (1) Testifying, on request, as a representative of the Department on pending legislation or proposals before Congressional Committees; or (2) Assisting Congressional Committees in drafting bills or reports on



request, when it is clear that the employee is serving solely as a technical expert under the direction of committee leadership.

(c) All employees shall be familiar with regulations and published instructions that relate to their official duties and responsibilities and shall comply with those directives. This includes carrying out proper orders from officials authorized to give them.

(d) Employees are required to assist the Inspector General and other investigative officials in the performance of their duties or functions. This requirement includes the giving of statements or evidence to investigators of the Inspector General's office or other HHS investigators authorized to conduct investigations into potential violations.

#### **§ 73.735-305 Conduct in Federal buildings.**

(a) An employee shall not participate while on Government-owned or leased property or while on duty for the Government, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket.

(b) An employee shall not while in or on Government-owned or leased property or while on duty for the Government solicit alms and contributions, engage in commercial soliciting and vending, display or distribute commercial advertisements, or collect private debts.

(c) The prohibitions in paragraphs (a) and (b) of this section do not preclude: (1) Activities necessitated by an employee's law enforcement duties; (2) Participation in Federally sponsored fund-raising activities conducted pursuant to Executive Order 10927, or similar HHS approved activities; or (3) Buying a lottery ticket at an authorized State lottery outlet for a lottery authorized by State law and conducted by an agency of a State within that State.

(d) General Services Administration regulations on "Conduct on Federal Property" apply to all property under the control of the General Services Administration, and they are also applicable to all buildings and space under the control of this Department. These regulations prohibit, among other things, gambling, being intoxicated, and possession, distribution, or use of narcotic or dangerous drugs on the premises. The GSA regulations are found in Subpart 101-20.3 of the GSA Regulations, 41 CFR 101-20.3.

#### **§ 73.735-306 Sexual harassment.**

Sexual harassment is deliberate unsolicited verbal comments, gestures, or physical contact of a sexual nature which are unwelcome. Sexual harassment is unacceptable conduct and is expressly prohibited. In addition, supervisors and managers are prohibited from taking or promising personnel actions in exchange for sexual favors, or failing to take an action because an employee or applicant for employment, refuses to engage in sexual conduct. This same prohibition applies to relationships between Department personnel who take or recommend action on a grant or contract and the grantee or contractor. Those employees who wish to file a complaint of sexual harassment should contact the Office of Equal Employment Opportunity (EEO) within their respective agencies for guidance. (Time frames for pursuing a charge alleging sexual harassment are the same as for any other complaint based on allegations of sex discrimination.)

#### **§ 73.735-508(e) Other prohibitions.**

Employees shall avoid any action whether or not specifically prohibited by this part, which might result in or create the appearance of:

(e) Making a Government decision outside official channels

#### **§ 73.735-805 Advice and guidance on conflicts matters.**

(a) Whenever an employee has a question about the appropriate course of conduct to be followed in a matter that may involve an actual or apparent conflict of interest, he or she should immediately consult with his or her supervisor or a deputy ethics counselor, or both. If a supervisor who is consulted determines that the matter warrants further

consideration, he or she may, in conjunction with the employee, submit the details of the matter, in writing, to the appropriate deputy ethics counselor. These details should include a description of:

- (1) The activity, relationship, or interest giving rise to the question posed by the employee;
- (2) The duties or official responsibilities of the employee(s) involved;
- (3) The nature of the actual or apparent conflict of interest; and
- (4) Any other information that may be helpful in reviewing the problem.

(b) Upon receiving the submission of an employee or a supervisor, the deputy ethics counselor will develop any additional information about the matter as necessary, and will confer with the Department Ethics Counselor as appropriate. The Department Ethics Counselor and the head of the principal operating component or his or her designee will be informed of any serious violation of the standards of this subpart or any other conflict of interest law. Questions of first impression or other unusual matters shall be brought to the attention of the Department Ethics Counselor and the head of the principal operating component or his or her designee.

(c) On the basis of all information gathered including, where appropriate, the advice of the Department Ethics Counselor, the deputy ethics counselor will:

- (1) Decide that there is no violation or potential violation of the standards of this subpart or any other law and so notify the employee and his or her supervisor in writing; or
- (2) Decide that a violation or potential violation of the standards of this subpart or other law has occurred or may occur, and that the employee involved shall take one or more of the steps set forth in § 731.735-904 to resolve the problem and notify the employee and his or her supervisor in writing; or
- (3) Decide that, although no violation of this subpart or other law has occurred, the nature of the matter is such that the employee should periodically report any additional information that would require reconsideration of the initial submission.

#### **Subpart F -- Political Activity and USPHS Officers – (§§ 73.735-601 -- §73.735-603)**

##### **§73.735-601 Applicability.**

(a) All employees in the Executive Branch of the Federal Government, including non-career employees, are subject to basic political activity restrictions in subchapter III of chapter 73 of title 5, United States Code (the former Hatch Act) and Civil Service Rule IV. Employees are individually responsible for refraining from prohibited political activity. Ignorance of a prohibition does not excuse a violation. This subpart summarizes provisions of law and regulation concerning political activity of employees. The Federal Personnel Manual and other publications of the Office of Personnel Management contain more detailed information on this subject. These may be reviewed in Department personnel offices, or will be made available by the Ethics Counselor, or the deputy counselor for the employee's organizational component.

(b) The Secretary and Under Secretary are exempt from the prohibitions concerning active participation in political management and political campaigns. Also exempt are other officials of the Department, except the Inspector General and Deputy Inspector General, who are appointed by the President by and with the advice and consent of the Senate, and who determine policies to be pursued by the United States in the nationwide administration of Federal laws.

(c) Intermittent employees are subject to the restrictions when in active duty status only and for the entire 24 hours of any day of actual employment.

(d) Employees on leave, on leave without pay, or on furlough even though an employee's resignation has been accepted, are subject to the restrictions. Separated employees who have received a lump-sum payment for annual leave are not subject to the restriction during the period covered by the lump-sum payment or thereafter, provided they do not return to Federal employment during that period. Employees are not permitted to take a leave of absence to work with a political candidate, committee, or organization or to become a candidate for office with the understanding that they will resign their position if nominated or elected.

(e) Employees are accountable for political activity by another person acting as their agent or under the employee's direction or control, if they are thus accomplishing indirectly what they may not lawfully do directly and openly.

(f) Though officers in the Public Health Service Commissioned Corps are not subject to the restrictions in Subchapter III of Chapter 73 of Title 5, United States Code, the provisions of this subpart apply to them.

#### §73.735-602 Permissible activities.

(a) Section 7324 of Title 5, United States Code, provides that employees have the right to vote as they please and to express their opinions on political subjects and candidates. Generally, however, employees are prohibited from taking an active part in political management or political campaigns or using official authority or influence to interfere with an election or affect its results. There are some exemptions from the restrictions of the statute:

(1) Employees may engage in political activity in connection with any question not specifically identified with a national or State political party. They also may engage in political activity in connection with an election, if none of the candidates represents a party any of whose candidates for presidential elector received votes at the last preceding election at which presidential electors were selected.

(2) An exception relates to political campaigns within, or in communities adjacent to, the District of Columbia, or in communities the majority of whose voters are employees of the Federal government. Communities to which the exception applies are specifically designated by the Office of Personnel Management. Information regarding the localities and the conditions under which the exceptions are granted may be obtained from personnel offices or the Department Counselor or deputy counselors.

(b) A covered employee is permitted to:

(1) Register and vote in any election;

(2) Express his or her opinion as an individual citizen privately and publicly on political subjects and candidates;

(3) Display a political picture, sticker, badge or button;

(4) Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization;

(5) Be a member of a political party or other political organization and participate in its activities to the extent consistent with law;

(6) Attend a political convention, rally, fund raising function; or other political gathering;

(7) Sign a political petition as an individual citizen;

(8) Make a financial contribution to a political party organization;

(9) Take an active part, as an independent candidate, or support of an independent candidate, in a partisan election in localities identified as permissible for such activities by the Office of Personnel Management;

(10) Take an active part, as a candidate or in support of a candidate, in a nonpartisan election;

(11) Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance or any other question or issue of a similar character;

(12) Serve as an election judge or clerk, or in a similar position to perform nonpartisan duties as prescribed by State or local law; and

(13) Otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise his or her efficiency or integrity as an employee or the neutrality, efficiency, or integrity of his or her agency.

(c) The head of a principal operating component may prohibit or limit the participation of an employee or class of employees of his or her component in an activity permitted by paragraph (b) of this section, if participation in the activity would interfere with the efficient performance of official duties, or create a conflict or apparent conflict of interest.

#### §73.735-603 Prohibited activities.

(a) The following are prohibited activities:

- (1) Serving as an officer of a political party, a member of a national, State or local committee of a political party, an officer or member of a committee of a partisan political club, or being a candidate for any of these positions;
- (2) Organizing or reorganizing a political party organization or political club;
- (3) Directly or indirectly soliciting, receiving, collecting, handling, disbursing, or accounting for assessments, contributions, or other funds for a partisan political purpose or in connection with a partisan election;
- (4) Organizing, selling tickets to, seeking support for, or actively participating in a fund-raising activity of, a political party or political club;
- (5) Taking an active part in managing the political party campaign of a candidate for public office or political office;
- (6) Being a candidate for, or campaigning for, an elective public office, except as permitted in §73.735-602(b)(9);
- (7) Taking an active part in an organized solicitation of votes in support of or in opposition to a candidate for public office or political party office;
- (8) Acting as recorder, watcher, challenger, or similar officer at the polls on behalf of a political party or candidate in a partisan election;
- (9) Driving voters to the polls on behalf of a political party or a candidate in a partisan election;
- (10) Endorsing or opposing a candidate in a partisan election in a political advertisement, a broadcast, campaign literature, or similar material;
- (11) Serving as a delegate, alternate, or proxy to a political party convention;
- (12) Addressing a State or national convention or caucus, or a rally or similar gathering of a political party, in support of or in opposition to a candidate for public or political party office, or on a partisan political question; and
- (13) Initiating or circulating a nominating petition for a candidate in a partisan election.

(b) In addition, certain political activities are prohibited by Federal criminal law:

- (1) Officers and employees may not directly or indirectly solicit or receive, or be in any way involved in soliciting or receiving, any assessment, subscription or contribution for any political purpose whatever from another officer or employee. This prohibition extends to one who acts as a mere agent or messenger for the purpose of turning the contribution over to a political organization. 18 U.S.C. 602.
- (2) All persons, whether employees or not, are prohibited from soliciting in any manner, or receiving a contribution of, money or a thing of value, in any room or building occupied in the discharge of official duties by any officer or employee of the United States. 18 U.S.C. 603. This prohibition extends to the sending of a letter soliciting political contributions for delivery in a Government building.
- (3) No officer or employee may directly or indirectly give to any other officer, employee or person in the service of the United States, any money or other thing of value to be applied to the promotion of any political objective. 18 U.S.C. 607.
- (4) Discrimination for giving or withholding any contribution for any political purpose and discrimination based on political influence or recommendations is prohibited.

(c) Various other laws prohibit certain activities in connection with political campaigns and elections. They include:

- (1) Intimidating, threatening, or coercing voters in Federal elections (18 U.S.C. 594).
- (2) Using official authority in interfering with a Federal election by a person employed in any administrative position by the United States or by any department, independent establishment, or agency of the United States or by any State, agency, or political subdivision thereof in connection with any activity financed in whole or in part by Federal funds (18 U.S.C. 595).
- (3) Promising Federal employment, compensation, or any benefit from Federal funds, in return for political activity or support (18 U.S.C. 600).
- (4) Depriving anyone of employment, compensation, or any benefit derived from Federal relief or work relief funds on account of race, creed, color, or political activity (18 U.S.C. 601).
- (5) Soliciting, assessing, or receiving subscriptions or contributions for political purpose from anyone on Federal relief or work relief (18 U.S.C. 604).

## **Subpart L -- Disciplinary Action (§ 73.735-1201)**

§ 73.735-1201 General provisions.

(a) Violations of the regulations contained in the Part may be cause for disciplinary action which could be in addition to any penalty prescribed by law. (For a list of some offenses for which disciplinary action may be taken and "The Code of Ethics for Government Service," the violation of which may also result in disciplinary action, see Appendixes A and B of this Part).

(b) The type of disciplinary action to be taken must be determined in relation to the specific violation. Those responsible for recommending and for taking disciplinary action must apply judgment to each case, taking into account the general objectives of meeting any requirements of law, deterring similar offenses by the employee and other employees, and maintaining high standards of employee conduct and public confidence. Some types of disciplinary action which may be considered are:

- (1) Admonishment
- (2) Written reprimand
- (3) Reassignment
- (4) Suspension
- (5) Demotion
- (6) Removal

(c) Suspension, demotion, and removal are adverse actions; and when such actions are taken, applicable laws, regulations, and policies must be followed. [46 FR 7369, Jan. 23, 1981, as amended at 53 FR 4409, Feb. 16, 1988]

## **Subpart M--Reporting Violations**

§ 73.735-1301 Responsibility for reporting possible criminal violations. An employee who has information which he or she reasonably believes indicates a possible offense against the United States by an employee of the Department, or any other individual working on behalf of the Department, shall immediately report such information to his or her supervisor, any management official, or directly to the Office of the Inspector General. Offenses covered by the preceding sentence include, but are not limited to, bribery, fraud, perjury, conflict of interest, misuse of funds, equipment, or facilities, and other conduct by a government officer or employee, grantee, contractor or other person which is prohibited by title 18 of the United States Code. Employees and supervisors should refer to chapter 5-10 of the Department's General Administration Manual for procedures regarding the reporting and handling of such information.

## **APPENDIX A TO PART 73--LIST OF SOME OFFENSES FOR WHICH DISCIPLINARY ACTION MAY BE TAKEN**

Following is a list of some offenses for which disciplinary action may be taken under this Part. When a statute applies specifically to a particular offense, either wholly or in part, the statute is cited. Neither the list of offenses nor the statutory citations are all-inclusive. The "Code of Ethics for Government Service" is not cited because of its general applicability but is published in its entirety in Appendix B.

### **A. Concerning Efficiency of Operations in General.**

1. Engaging in wasteful actions or behavior in the performance of assigned duties; conducting non-Government business during official work hours; or participating in a strike (18 U.S.C. 1918), work stoppage, slowdown, sickout, or other similar action.
2. Absence without leave, failure to adhere to the rules and regulations for requesting and obtaining leave, or improper use of sick leave.
3. Deliberate insubordination or refusal to carry out lawful orders or assignments given.
4. Disruptive behavior, such as:

- a. Inflicting or threatening or attempting to inflict bodily injury on another (except for necessary defense of self or others) while on the job or on Federal premises.
  - b. Discourtesy, disreputable conduct, or use of insulting, abusive or obscene language to or about other individuals while on the job.
- 5. Sexual harassment of employees or members of the public.
- 6. Failure to observe precautions for safety, such as failure to use safety equipment when it is provided or ignoring signs, posted rules or regulations, or written or verbal safety instructions.
- 7. Unauthorized use, possession, or distribution of alcoholic beverages (5 U.S.C. 7352) or controlled substances (e.g., hallucinogens, such as LSD; stimulants, such as cocaine and amphetamines; sedatives, such as barbiturates; narcotics and other drugs or substances, such as hashish and other cannabis substances).
- 8. Unauthorized gambling; or canvassing, soliciting, or peddling on Government premises.
- 9. Failure to carry or show proper identification or credentials as required by competent authority; misuse of identification cards or investigative or identification credentials or badges.
- 10. Failure to disclose (i.e., report) information, when such disclosure is not specifically prohibited by law or Executive Order, that involves (a) violation of law, rule, or regulation, (b) mismanagement or gross waste of funds or abuse of authority, or (c) posing a substantial and specific danger to public health or safety; failure to cooperate in an official Department inquiry.
- 11. Failure to pay just debts, including taxes to and loans from governmental sources.
- 12. Deceit or interference in a Civil Service examination (18 U.S.C. 1917) or in connection with a Government personnel action.
- 13. Fraud or false statements in a Government matter. (18 U.S.C. 1001 through 1003.)
- 14. Supervisory failure to initiate disciplinary or corrective action when the facts are known and disciplinary or corrective action is warranted.
- 15. Employment of a member of an organization that advocates the overthrow of our constitutional form of government. (5 U.S.C. 7311; 50 U.S.C. 784.)

**B. Concerning Government Funds, Property, Documents, and Records.**

- 1. Actual or attempted embezzlement or theft of Government or personal money or property either directly or through use of Government documents, automated equipment, or other means; actual or attempted embezzlement or theft of the money or property of another person in the possession of an employee by reason of his or her employment. (18 U.S.C. 641 and 654.)
- 2. Failure to account for public money. (18 U.S.C. 643.)
- 3. Deliberate falsifying of official time and attendance records; improper use of official travel or forging, counterfeiting, or otherwise falsifying official Government travel records or documents. (18 U.S.C. 508.)
- 4. False record entries or false reports of money or securities. (18 U.S.C. 2073.)
- 5. Loss or misuse of or damage to Government property or endangering persons or Government property through carelessness or by willful malicious conduct.
- 6. Mutilating, destroying, or concealing public records. (18 U.S.C. 2071.)
- 7. Misuse of penalty (postal) privilege. (18 U.S.C. 1719.)

8. Failure to safeguard administratively confidential, financial, and trade secrets information.
9. Unauthorized use of documents presented or used to procure the payment of money from or by the Government. (18 U.S.C. 285.)
10. Unauthorized use of a Government vehicle; serious or repeated violations of traffic regulations while driving a Government vehicle or a vehicle rented or leased for official Government purposes; reckless driving or improper operation of any Government owned, rented, or leased motor vehicle. (31 U.S.C. 1349[b].)
11. Violations of the Privacy Act, including:
  - a. Willful prohibited disclosure of individually identifiable information in violation of 5 U.S.C. 552a.
  - b. Willfully maintaining a system of records without meeting the notice requirements of the Privacy Act as required by 5 U.S.C. 552a.
12. Violation of regulations concerning the release of classified information, confidential, or security and investigative information. (18 U.S.C. 798 and 1905; 21 U.S.C. 331j; and 50 U.S.C. 783.)

C. Concerning Conflicts of Interest and Related Unethical Conduct:

1. Violations of 18 U.S.C. Chapter 11: Bribery, Graft, and Conflicts of Interest, including:
  - a. Having a direct or indirect financial interest (includes employee ownership of stocks, bonds, or partnership interests in an entity or employment of the employee, his or her spouse, or dependent child) that conflicts with one's Government duties because such entity is either regulated by, has or seeks to do business with the agency, or has any other particular matter with or pending before the agency that may give rise to either an actual conflict or the appearance thereof. (18 U.S.C. 208.)
  - b. Bribery of a public official; soliciting or accepting directly or indirectly anything of monetary value, including gifts, gratuities, favors, entertainment, or loans either as compensation for governmental services or from individuals who are seeking contractual or other business or financial relations with the Department, are conducting operations or activities that are regulated by the Department, or have interests that may be substantially affected by the performance or nonperformance of the employee's official duties; receiving salary or any contribution to or supplementation of salary from a private source as compensation for services for the Government. (18 U.S.C. 201 and 209.)
  - c. Acting as the agent of a foreign principal registered under the Foreign Agents Registration Act. (18 U.S.C. 219.)
2. Engaging, directly or indirectly, in a financial transaction as a result of or primarily relying on information that is obtained through one's official duties and would not be available were the employee not an employee of the Federal Government.
3. Soliciting a contribution from another employee for a gift to an official superior, making a donation as a gift to an official superior, or accepting a gift from an employee receiving less pay than oneself. (5 U.S.C. 7351.)
4. Engaging, without required permission, in outside activities that result in or create the appearance of a conflict of interest.
5. Teaching, lecturing, or writing that depends in specific information obtained as a result of one's Government employment when that information is not otherwise available to the public.
6. Failure to obtain required clearance of an official speech or article.
7. Lobbying with appropriated funds. (18 U.S.C. 1913.)

8. Representation before a Federal agency (other than in the proper discharge of one's official duties) as an agent or attorney in a claim against the United States (or receiving any gratuity or share in any such claim in consideration for assistance given) or as an agent or attorney for anyone before any department, agency, court, or otherwise in connection with any proceeding, application, request for a ruling, or claim on any other particular matter in which the United States is a party or has a direct and substantial interest. (18 U.S.C. 205.) (Note: This section notwithstanding, an employee may, if not in-consistent with the performance of his or her official duties, act without compensation as an agent or attorney for another person who is the subject of any disciplinary or other administrative proceeding or as an agent or attorney for one's parent, spouse, child, or any person or estate for whom or which he or she serves as personal fiduciary except in those matters in which the employee has participated personally and substantially.)

#### D. Concerning Prohibited Political and Election Activities.

1. Activities prohibited by 5 U.S.C. Chapter 73, Subchapter III, including:
  - a. Section 7323, "Political contributions; prohibition."
  - b. Section 7324, "Influencing elections; taking part in political campaigns; prohibitions; exceptions."
2. Activities prohibited by 18 U.S.C. Chapter 29, including:
  - a. Section 594, "Intimidation of voters."
  - b. Section 597, "Expenditures to influence voting."
  - c. Section 598, "Coercion by means of relief appropriations."
  - d. Section 600, "Promise of employment or other benefit for political activity."
  - e. Section 601, "Deprivation of employment or other benefit for political contribution."
  - f. Section 602, "Solicitation of political contributions."
  - g. Section 604, "Solicitation from persons on relief."
  - h. Section 606, "Intimidation to secure political contributions."

#### E. Concerning Prohibited Personnel Practices.

1. Commission of a prohibited personnel practice (as defined in 5 U.S.C. 2302[b] [1-11]); that is, any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, commit any of the following practices:
  - a. Discriminate for or against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation.
  - b. Solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of (1) an evaluation of the work performance ability, aptitude, or general qualifications of such individual or (2) an evaluation of the character, loyalty, or suitability of such individual.
  - c. Coerce the political activity of any person (including the providing of any political contribution or service) or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity.
  - d. Deceive or willfully obstruct any person with respect to such person's right to compete for employment.



- e. Influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment.
- f. Grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.
- g. Appoint, employ, promote, advance, or advocate for appointment, employment, pro-motion, or advancement, in or to a civilian position any individual who is a relative (as defined in 5 U.S.C. 3110) when the civilian position is in the Department or under his or her jurisdiction or control.
- h. Take or fail to take a personnel action with respect to any employee or applicant for employment as a reprisal for the lawful disclosure of information.
- i. Take or fail to take any personnel action against an employee or applicant for employment as a reprisal for the exercise of any appeal right granted by any law, rule, or regulation (including HHS Instructions and issuances).
- j. Discriminate for or against any employee or applicant for employment on the basis of conduct that does not adversely affect the performance of the employee or applicant or the performance of others (except criminal conviction in determining suit-ability or fitness).
- k. Take or fail to take any personnel action when the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning the merit system principles (as set forth in 5 U.S.C. 2301).

[53 FR 4410, Feb. 16, 1988]

*Updated: 5/20/15*

## STANDARDS OF ETHICAL CONDUCT

### 2635.101 Basic obligation of public service.

(a) *Public service is a public trust.* Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each employee shall respect and adhere to the principles of ethical conduct set forth in this section, as well as the implementing standards contained in this part and in supplemental agency regulations.

(b) *General principles.* The following general principles apply to every employee and may form the basis for the standards contained in this part. Where a situation is not covered by the standards set forth in this part, employees shall apply the principles set forth in this section in determining whether their conduct is proper.

(1) Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.

(2) Employees shall not hold financial interests that conflict with the conscientious performance of duty.

(3) Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.

(4) An employee shall not, except as permitted by subpart B of this part, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

(5) Employees shall put forth honest effort in the performance of their duties.

(6) Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.

(7) Employees shall not use public office for private gain.

(8) Employees shall act impartially and not give preferential treatment to any private organization or individual.

(9) Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.

(10) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.

(11) Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

(12) Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those such as Federal, State, or local taxes that are imposed by law.

(13) Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.

(14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

(c) *Related statutes.* In addition to the standards of ethical conduct set forth in this part, there are conflict of interest statutes that prohibit certain conduct. Criminal conflict of interest statutes of general applicability to all employees, 18

U.S.C. 201, 203, 205, 208, and 209, are summarized in the appropriate subparts of this part and must be taken into consideration in determining whether conduct is proper. Citations to other generally applicable statutes relating to employee conduct are set forth in subpart I and employees are further cautioned that there may be additional statutory and regulatory restrictions applicable to them generally or as employees of their specific agencies. Because an employee is considered to be on notice of the requirements of any statute, an employee should not rely upon any description or synopsis of a statutory restriction, but should refer to the statute itself and obtain the advice of an agency ethics official as needed.

# CODE OF FEDERAL REGULATIONS

## TITLE 5

### CHAPTER XLV - DEPARTMENT OF HEALTH AND HUMAN SERVICES

#### PART 5501 •• SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

##### Sec.

5501.101 General.

5501.102 Designation of HHS components as separate agencies.

5501.103 Gifts from federally recognized Indian tribes or Alaska Native villages or regional or village corporations.

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5501.107 Teaching, speaking and writing by special Government employees in the Public Health Service.

5501.108 Exception to the prohibition against assisting in the prosecution of claims against, or acting as an agent or attorney before, the Government, applicable only to employees assigned to federally recognized Indian tribes or Alaska Native villages or regional or village corporations pursuant to the Intergovernmental Personnel Act.

5501.109 Prohibited outside activities applicable to employees of the National Institutes of Health.

5501.110 Prohibited financial interests applicable to senior employees of the National Institutes of Health.

5501.111 Awards tendered to employees of the National Institutes of Health.

5501.112 One-year disqualification of employees of the National Institutes of Health from certain matters involving an award donor.

**AUTHORITY:** 5 U.S.C. 301, 7301, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); 25 U.S.C. 450i(f); 42 U.S.C. 216; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.203, 2635.403, 2635.802, 2635.803.

**SOURCE:** 61 FR 39763, July 30, 1996; 70 FR 5543, February 3, 2005; and 70 FR 51559, August 31, 2005; unless otherwise noted.

##### § 5501.101 General.

- (a) *Purpose.* The regulations in this part apply to employees of the Department of Health and Human Services (HHS) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition to 5 CFR part 2635 and this part, employees are required to comply with implementing guidance and procedures issued by HHS components in accordance with 5 CFR 2635.105(c). Employees are also subject to the executive branch-wide financial disclosure regulations at 5 CFR part 2634, the Employee Responsibilities and Conduct regulations at 5 CFR part 735, and the HHS regulations regarding conduct at 45 CFR part 73.
- (b) *Applicability.* The regulations in this part apply to individuals who are "employees" within the meaning of 5 CFR 2635.102(h). The regulations thus apply to special Government employees, except to the extent they are specifically excluded from certain provisions, and to uniformed service officers in the Public Health Service Commissioned Corps on active duty.

- (c) **Definitions.** Unless a term is otherwise defined in this part, the definitions set forth in 5 CFR parts 2635 and 2640 apply to terms in this part. In addition, for purposes of this part:
- (1) *Federally recognized Indian tribe or Alaska Native village or regional or village corporation* means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.*, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.
  - (2) *Significantly regulated organization* means an organization for which the sales of products regulated by the Food and Drug Administration (FDA) constitute ten percent or more of annual gross sales in the organization's previous fiscal year; where an organization does not have a record of sales of FDA-regulated products, it will be deemed to be significantly regulated if its operations are predominately in fields regulated by FDA, or if its research, development, or other business activities are reasonably expected to result in the development of products that are regulated by FDA.

§ 5501.102 Designation of HHS components as separate agencies.

- (a) **Separate agency components of HHS.** Pursuant to 5 CFR 2635.203(a), each of the twelve components of HHS listed below is designated as an agency separate from each of the other eleven listed components and, for employees of that component, as an agency distinct from the remainder of HHS. However, the components listed below are not deemed to be separate agencies for purposes of applying any provision of 5 CFR part 2635 or this part to employees of the remainder of HHS:
- (1) Administration on Aging;
  - (2) Administration for Children and Families;
  - (3) Agency for Healthcare Research and Quality;
  - (4) Agency for Toxic Substances and Disease Registry;
  - (5) Centers for Disease Control and Prevention;
  - (6) Centers for Medicare and Medicaid Services;
  - (7) Food and Drug Administration;
  - (8) Health Resources and Services Administration;
  - (9) Indian Health Service;
  - (10) National Institutes of Health;
  - (11) Program Support Center; and
  - (12) Substance Abuse and Mental Health Services Administration.
- (b) **Definitions-**
- (1) *Employee of a component* includes, in addition to employees actually within a component, an employee of the Office of the General Counsel whose regularly assigned duties and responsibilities principally involve the provision of legal services to the relevant component with respect to substantive programmatic issues.
  - (2) *Remainder of HHS* means employees in the Office of the Secretary and Staff Divisions, employees of the Office of the General Counsel with Department-wide responsibility, and any HHS employee not in one of the 12 components designated as separate agencies in paragraph (a) of this section.
- (c) **Applicability of separate agency designations.** The designations in paragraph (a) of this section identify an employee's "agency" for purposes of:
- (1) Determining when a person is a prohibited source within the meaning of 5 CFR 2635.203(d) for purposes of applying:

- (i) The regulations at subpart B of 5 CFR part 2635 governing gifts from outside sources; and
  - (ii) The regulations at § 5501.106 requiring prior approval of outside employment and other outside activities; and
  - (iii) The regulations at § 5501.111 governing the receipt of awards by employees of the National Institutes of Health; and
- (2) Determining whether teaching, speaking or writing relates to the employee's official duties within the meaning of 5 CFR 2635.807(a)(2)(i).

**§ 5501.103 Gifts from federally recognized Indian tribes or Alaska Native villages or regional or village corporations.**

- (a) ***Tribal or Alaska Native gifts.*** In addition to the gifts which come within the exceptions set forth in 5 CFR 2635.204, and subject to all provisions of 5 CFR 2635.201 through 2635.205, an employee may accept unsolicited gifts of native artwork, crafts, or other items representative of traditional native culture from federally recognized Indian tribes or Alaska Native villages or regional or village corporations, provided that the aggregate market value of individual gifts received from any one tribe or village under the authority of this paragraph shall not exceed \$200 in a calendar year.
- (b) ***Limitations on use of exception.*** If the donor is a tribe or village that has interests that may be substantially affected by the performance or nonperformance of an employee's official duties, the employee may accept the gifts authorized by paragraph (a) of this section only where there is a written finding by the agency designee that acceptance of the gift is in the agency's interest and will not violate any of the limitations on the use of exceptions contained in 5 CFR 2635.202(c).

**§ 5501.104 Prohibited financial interests applicable to employees of the Food and Drug Administration.**

- (a) ***General prohibition.*** Except as permitted by paragraph (b) of this section, no employee or spouse or minor child of an employee, other than a special Government employee or the spouse or minor child of a special Government employee, of the Food and Drug Administration shall have a financial interest in a significantly regulated organization.
- (b) ***Exceptions.*** Notwithstanding the prohibition in paragraph (a) of this section:
  - (1) An employee or spouse or minor child of an employee may have a financial interest, such as a pension or other employee benefit, arising from employment with a significantly regulated organization.

**NOTE TO PARAGRAPH(b)(1):** FDA employees who file public or confidential financial disclosure reports pursuant to 5 CFR part 2634, as opposed to spouses and minor children of such employees, are generally prohibited under § 5501.106(c)(3) from engaging in current employment with a significantly regulated organization.

- (2) An employee who is not required to file a public or confidential financial disclosure report pursuant to 5 CFR part 2634, or the spouse or minor child of such employee, may hold a financial interest in a significantly regulated organization if:
  - (i) The total cost or value, measured at the time of acquisition, of the combined interests of the employee and the employee's spouse and minor children in the regulated organization is equal to or less than the *de minimis* exemption limit for matters involving parties established by 5 CFR 2640.202(a) or \$15,000, whichever is greater (the phrase "time of acquisition" shall mean the date on which the employee actually acquired the financial

interest-or on which the financial interest became imputed to the employee under 18 U.S.C. 208-whether by purchase, gift, bequest, marriage, or otherwise, except that with respect to a financial interest that was acquired prior to the employee's entrance on duty as an employee of the Food and Drug Administration, the "time of acquisition" shall be deemed to be the date on which the employee entered on duty);

- (ii) The holding, if it represents an equity interest, constitutes less than 1 percent of the total outstanding equity of the organization; and
  - (iii) The total holdings in significantly regulated organizations account for less than 50 percent of the total value of the combined investment portfolios of the employee and the employee's spouse and minor children.
- (3) An employee or spouse or minor child of an employee may have an interest in a significantly regulated organization that constitutes any interest in a publicly traded or publicly available investment fund (e.g., a mutual fund), or a widely held pension or similar fund, which, in the literature it distributes to prospective and current investors or participants, does not indicate the objective or practice of concentrating its investments in significantly regulated organizations, if the employee neither exercises control nor has the ability to exercise control over the financial interests held in the fund.
- (4) In cases involving exceptional circumstances, the Commissioner or the Commissioner's designee may grant a written exception to permit an employee, or the spouse or minor child of an employee, to hold a financial interest in a significantly regulated organization based upon a determination that the application of the prohibition in paragraph (a) of this section is not necessary to ensure public confidence in the impartiality or objectivity with which HHS programs are administered or to avoid a violation of part 2635 of this title.

NOTE TO PARAGRAPH (b): With respect to any excepted financial interest, employees are reminded of their obligations under 5 CFR part 2635, and specifically their obligation under subpart D of part 2635 to disqualify themselves from participating in any particular matter in which they, their spouses or minor children have a financial interest arising from publicly traded securities that exceeds the *de minimis* thresholds specified in the regulatory exemption at 5 CFR 2640.202 or from non-publicly traded securities that are not covered by the regulatory exemption. Furthermore, the agency may prohibit or restrict an individual employee from acquiring or holding any financial interest or a class of financial interests based on the agency's determination that the interest creates a substantial conflict with the employee's duties, within the meaning of 5 CFR 2635.403.

- (c) *Reporting and divestiture.* For purposes of determining the divestiture period specified in 5 CFR 2635.403(d), as applied to financial interests prohibited under paragraph (a) of this section, the "date divestiture is first directed" means the date on which the new entrant public or confidential financial disclosure report required by part 2634 of this title or any report required by § 5502.106(c) of this chapter is due.

**§ 5501.105 Exemption for otherwise disqualifying financial interests derived from Indian or Alaska Native birthrights.**

- (a) Under 18 U.S.C. 208(b)(4), an employee who otherwise would be disqualified may participate in a particular matter where the otherwise disqualifying financial interest that would be affected results solely from the interest of the employee, or the employee's spouse or minor child, in birthrights:
- (1) In an Indian tribe, band, nation, or other organized group or community, including any Alaska Native village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

- (2) In an Indian allotment the title to which is held in trust by the United States or which is inalienable by the allottee without the consent of the United States; or
  - (3) In an Indian claims fund held in trust or administered by the United States.
- (b) The exemption described in paragraph (a) of this section applies only if the particular matter does not involve the Indian allotment or claims fund or the Indian tribe, band, nation, organized group or community, or Alaska Native village corporation as a specific party or parties.

**§ 5501.106 Outside employment and other outside activities.**

- (a) **Applicability.** This section does not apply to special Government employees.
- (b) **Definitions.** For purposes of this section:
- (1) **Compensation** has the meaning set forth in 5 CFR 2635.807(a)(2)(iii).
  - (2) **Consultative services** means the provision of personal services by an employee, including the rendering of advice or consultation, which requires advanced knowledge in a field of science or learning customarily acquired by a course of specialized instruction and study in an institution of higher education, hospital, or other similar facility.
  - (3) **Professional services** means the provision of personal services by an employee, including the rendering of advice or consultation, which involves the skills of a profession as defined in 5 CFR 2636.305(b)(1).
- (c) **Prohibited outside employment and activities-**
- (1) **Prohibited assistance in the preparation of grant applications or contract proposals.** An employee shall not provide consultative or professional services, for compensation, to or on behalf of any other person to prepare, or assist in the preparation of, any grant application, contract proposal, program report, or other document intended for submission to HHS.
  - (2) **Prohibited employment in HHS-funded activities.** An employee shall not, for compensation, engage in employment, as defined in 5 CFR 2635.603(a), with respect to a particular activity funded by an HHS grant, contract, cooperative agreement, cooperative research and development agreement, or other funding mechanism authorized by statute.
  - (3) **Prohibited outside activities applicable to employees of the Food and Drug Administration.** An employee of the Food and Drug Administration who is required to file a public or confidential financial disclosure report pursuant to 5 CFR part 2634 shall not:
    - (i) Engage in any self-employed business activity for which the sale or promotion of FDA-regulated products is expected to constitute ten percent or more of annual gross sales or revenues; or
    - (ii) Engage in employment, as defined in 5 CFR 2635.603(a), whether or not for compensation, with a significantly regulated organization, as defined in § 5501.101(c)(2), unless the employment meets either of the following exceptions:
      - (A) The employment consists of the practice of medicine, dentistry, veterinary medicine, pharmacy, nursing, or similar practices, provided that the employment does not involve substantial unrelated non-professional duties, such as personnel management, contracting and purchasing responsibilities (other than normal "out-of-stock" requisitioning), and does not involve employment by a medical product manufacturer in the conduct of biomedical research; or
      - (B) The employment primarily involves manual or unskilled labor or utilizes talents, skills, or interests in areas unrelated to the substantive programmatic activities of the FDA, such as clerical work, retail sales, service industry jobs, building trades, maintenance, or similar services.
  - (4) **Prohibited outside practice of law applicable to attorneys in the Office of the General Counsel.**



- (i) An employee who serves as an attorney in or under the supervision of the Office of the General Counsel or the Office of Counsel to the Inspector General shall not engage in any outside practice of law that might require the attorney to:
    - (A) Assert a legal position that is or appears to be in conflict with the interests of the Department of Health and Human Services, the client to which the attorney owes a professional responsibility; or
    - (B) Interpret any statute, regulation or rule administered or issued by the Department.
  - (ii) **Exceptions.** Nothing in this section prevents an employee from:
    - (A) Acting, with or without compensation, as an agent or attorney for, or otherwise representing, the employee's parents, spouse, child, or any person for whom, or for any estate for which, the employee is serving as guardian, executor, administrator, trustee, or other personal fiduciary to the extent permitted by 18 U.S.C. 203 and 205, or from providing advice or counsel to such persons or estate; or
    - (B) Acting, without compensation, as an agent or attorney for, or otherwise representing, any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings to the extent permitted by 18 U.S.C. 205, or from providing uncompensated advice or counsel to such person; or
    - (C) Giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.
  - (iii) **Specific approval procedures.**
    - (A) The exceptions to 18 U.S.C. 203 and 205 described in paragraph (c)(4)(ii)(A) of this section do not apply unless the employee obtained the approval of the Government official responsible for the appointment of the employee to a Federal position.
    - (B) The exception to 18 U.S.C. 205 described in paragraph (c)(4)(ii)(B) of this section does not apply unless the employee has obtained the approval of a supervisory official who has authority to determine whether the employee's proposed representation of another person in a personnel administration matter is consistent with the faithful performance of the employee's duties.
- (d) **Prior approval for outside employment and other outside activities-**
- (1) **General approval requirement.** Except as provided in paragraph (d)(3) of this section, an employee shall obtain written approval prior to engaging, with or without compensation, in outside employment, including self-employed business activities, or other outside activities in which the employee seeks to:
    - (i) Provide consultative or professional services, including service as an expert witness;
    - (ii) Engage in teaching, speaking, writing, or editing that:
      - (A) Relates to the employee's official duties within the meaning of 5 CFR 2635.807(a)(2)(i)(B) through (E); or
      - (B) Would be undertaken as a result of an invitation to engage in the activity that was extended to the employee by a person or organization that is a prohibited source within the meaning of 5 CFR 2635.203(d), as modified by the separate HHS component agency designations in § 5501.102; or
    - (iii) Provide services to a non-Federal entity as an officer, director, or board member, or as a member of a group, such as a planning commission, advisory council, editorial board, or scientific or technical advisory board or panel, which requires the provision of advice, counsel, or consultation.
  - (2) **Additional approval requirement for employees of the Food and Drug Administration and the National Institutes of Health.** In addition to the general approval requirements set forth in paragraph (d)(1) of this section, an employee of the Food and Drug Administration or the National Institutes of Health shall obtain written approval prior to engaging, with or without compensation, in any outside employment, as defined in 5 CFR 2635.603(a), with, or any self-

employed business activity involving the sale or promotion of products or services of, any person or organization that is a prohibited source of the employee's component agency.

**(3) Exceptions to prior approval requirements.**

(i) Notwithstanding the requirements of paragraphs (d)(1) and (d)(2) of this section, prior approval is not required for participation in the activities of a political, religious, social, fraternal, or recreational organization unless:

- (A) The activity or the position held in the organization requires the provision of professional services within the meaning of paragraph (b)(3) of this section; or
- (B) The activity is performed for compensation other than the reimbursement of expenses.

(ii) Notwithstanding the requirements of paragraphs (d)(1) and (d)(2) of this section, prior approval is not required for participation in an employment or other outside activity that has been exempted under paragraph (d)(7) of this section.

**Submission of requests for approval.**

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(i) An employee seeking to engage in any of the activities for which advance approval is required shall make a written request for approval a reasonable time before beginning the activity. This request shall be directed to the employee's supervisor. The supervisor shall submit the request and a statement addressing the extent to which the employee's duties are related to the proposed outside activity to an agency designee, who shall make a final determination with respect to the request.

(ii) All requests for prior approval shall include the following information:

- (A) The employee's name, contact information, organizational location, occupational title, grade, step, salary, appointment type, and financial disclosure filing status;
- (B) The nature of the proposed outside employment or other outside activity, including a full description of the specific duties or services to be performed;
- (C) A description of the employee's official duties that relate to the proposed activity;
- (D) A description of how the employee's official duties will affect the interests of the person for whom or organization with which the proposed activity will be performed;
- (E) The name and address of the person for whom or organization with which the work or activity will be done, including the location where the services will be performed;
- (F) A statement as to whether travel is involved and, if so, whether the transportation, lodging, meals, or per diem will be at the employee's expense or provided by the person for whom or organization with which the work or activity will be done, and a description of the arrangements and an estimate of the costs of items to be furnished or reimbursed by the outside entity;
- (G) The estimated total time that will be devoted to the activity. If the proposed outside activity is to be performed on a continuing basis, a statement of the estimated number of hours per year; for other employment, a statement of the anticipated beginning and ending date;
- (H) A statement as to whether the work can be performed entirely outside of the employee's regular duty hours and, if not, the estimated number of hours and type of leave that will be required;
- (I) The method or basis of any compensation to be received (e.g., fee, honorarium, retainer, salary, advance, royalty, stock, stock options, non-travel related expenses, or other form of remuneration tendered in cash or in-kind in connection with the proposed activity) from the person for whom or organization with which the work or activity will be done;
- (J) The amount of any compensation to be received from the person for whom or organization with which the work or activity will be done;
- (K) The amount and date of any compensation received, or due for services performed, within the current and previous six calendar years immediately preceding the submission of the request for approval from the person for whom or organization

- with which the work or activity will be done (including any amount received or due from an agent, affiliate, parent, subsidiary, or predecessor of the proposed payor);
  - (L) A statement as to whether the compensation is derived from an HHS grant, contract, cooperative agreement, or other source of HHS funding or attributed to services related to an activity funded by HHS, regardless of the specific source of the compensation;
  - (M) For activities involving the provision of consultative or professional services, a statement indicating whether the client, employer, or other person on whose behalf the services are performed is receiving, or intends to seek, an HHS grant, contract, cooperative agreement, or other funding relationship;
  - (N) For activities involving teaching, speaking, or writing, a syllabus, outline, summary, synopsis, draft or similar description of the content and subject matter involved in the course, speech, or written product (including, if available, a copy of the text of any speech) and the proposed text of any disclaimer required by 5 CFR 2635.807(b)(2) or by the instructions or manual issuances authorized under paragraph (d)(6) of this section; and
  - (O) Such other relevant information that the designated agency ethics official or, with the concurrence of the designated agency ethics official, each of the separate agency components of HHS listed in § 5501.102(a) determines is necessary or appropriate in order to evaluate whether a proposed activity is likely to involve conduct prohibited by statute or Federal regulations, including 5 CFR part 2635 and this part.
- (5) **Standard for approval.** Approval shall be granted only upon a determination that the outside employment or other outside activity is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and this part.

**NOTE:** The granting of approval for an outside activity does not relieve the employee of the obligation to abide by all applicable laws governing employee conduct nor does approval constitute a sanction of any violation. Approval involves an assessment that the general activity as described on the submission does not appear likely to violate any criminal statutes or other ethics rules. Employees are reminded that during the course of an otherwise approvable activity, situations may arise, or actions may be contemplated, that, nevertheless, pose ethical concerns.

*Example 1:* A clerical employee with a degree in library science volunteers to work on the acquisitions committee at a local public library. Serving on a panel that renders advice to a non-Federal entity is subject to prior approval. Because recommending books for the library collection normally would not pose a conflict with the typing duties assigned the employee, the request would be approved.

*Example 2:* While serving on the library acquisitions committee, the clerical employee in the preceding example is asked to help the library business office locate a missing book order. Shipment of the order is delayed because the publisher has declared bankruptcy and its assets, including inventory in the warehouse, have been frozen to satisfy the claims of the Internal Revenue Service and other creditors. The employee may not contact the Federal bankruptcy trustee to seek, on behalf of the public library, the release of the books. Even though the employee's service on the acquisitions committee had been approved, a criminal statute, 18 U.S.C. 205, would preclude any representation by a Federal employee of an outside entity before a Federal court or agency with respect to a matter in which the United States is a party or has a direct and substantial interest.

- (6) **Duration of approval.** Approval shall be effective for a period not to exceed one year from the date of approval. Upon a significant change in the nature of the outside activity or in the employee's official position or duties, the employee shall submit a revised request for approval using the procedure in paragraph (d)(4) of this section. If the outside activity is anticipated to

exceed one year from the date of the most recent approval, the employee shall renew the request for approval no later than thirty days prior to the expiration of the period authorized.

(7) *Responsibilities of the designated agency ethics official and component agencies.*

(i) The designated agency ethics official or, with the concurrence of the designated agency ethics official, each of the separate agency components of HHS listed in § 5501.102 may issue an instruction or manual issuance exempting categories of employment or other outside activities from a requirement of prior written approval based on a determination that the employment or activities within those categories would generally be approved and are not likely to involve conduct prohibited by statute or Federal regulations, including 5 CFR part 2635 and this part.

(ii) HHS components may specify internal procedures governing the submission of prior approval requests and designate appropriate officials to act on such requests. The instructions or manual issuances may include examples of outside employment and other outside activities that are permissible or impermissible consistent with 5 CFR part 2635 and this part. With respect to teaching, speaking, writing, or editing activities, the instructions or manual issuances may specify preclearance procedures and/or require disclaimers indicating that the views expressed do not necessarily represent the views of the agency or the United States.

(iii) The officials within the respective HHS components who are responsible for the administrative aspects of these regulations and the maintenance of records shall make provisions for the filing and retention of requests for approval of outside employment and other outside activities and copies of the notification of approval or disapproval.

(e) *Waivers.* The designated agency ethics official may grant a written waiver, for an individual or class of similarly situated individuals, from any prohibited outside activity provision in this section or in § 5501.109 based on a determination that the waiver is not inconsistent with part 2635 of this title or otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartiality or otherwise to ensure confidence in the impartiality and objectivity with which agency programs are administered. An individual or class waiver under this paragraph may impose appropriate conditions, such as requiring execution of a written disqualification.

§ 5501.107 Teaching, speaking and writing by special Government employees in the Public Health Service.

(a) *Applicability.* This section applies to special Government employees in the Public Health Service who otherwise are prohibited from accepting compensation for teaching, speaking or writing that is related to their official duties, within the meaning of 5 CFR 2635.807(a)(2)(i)(C), because the invitation or the offer of compensation for the activity was extended at a time when the special Government employee was assigned to perform official duties that may substantially affect the interests of the inviter or offeror.

(b) *Permissible compensation.* A special Government employee may accept compensation for teaching, speaking or writing in circumstances described in paragraph (a) of this section only where the special Government employee recuses from the official assignment that may substantially affect the interests of the person who extended the invitation to engage in the activity or the offer of compensation.

§ 5501.108 Exception to the prohibition against assisting in the prosecution of claims against, or acting as an agent or attorney before, the Government, applicable only to employees assigned to federally recognized Indian tribes or Alaska Native villages or regional or village corporations pursuant to the Intergovernmental Personnel Act.

- (a) 18 U.S.C. 205. Section 205 of title 18 of the United States Code prohibits an employee, whether or not for compensation, from acting as an agent or attorney for anyone in a claim against the United States, or from acting in such capacity on behalf of another before any department, agency, or other specified entity, in any particular matter in which the United States is a party or has a direct and substantial interest.
- (b) *Exception applicable only to employees assigned to federally recognized Indian tribes or Alaska Native villages or regional or village corporations pursuant to the Intergovernmental Personnel Act.* Notwithstanding the provisions of 18 U.S.C. 205, the Indian Self-Determination Act (25 U.S.C. 450i(f)) authorizes Federal employees detailed or assigned to Indian tribes or Alaska Native villages or regional or village corporations, pursuant to the Intergovernmental Personnel Act (5 U.S.C. 3372), to act as agents or attorneys for, or appear on behalf of, such tribes or Alaska Native villages or corporations in connection with any matter pending before any department, agency, court, or commission, in which the United States is a party or has a direct and substantial interest. Such employees must advise, in writing, the head of the agency, with which they are dealing on behalf of an Indian tribe or Alaska Native village or corporation, of any personal and substantial involvement they may have had as an officer or employee of the United States in connection with the matter concerned.

§ 5501.109 Prohibited outside activities applicable to employees of the National Institutes of Health.

- (a) *Applicability.* This section does not apply to special Government employees.
- (b) *Definitions.* For purposes of this section:
  - (1) *Compensation* has the meaning set forth in 5 CFR 2635.807(a)(2)(iii).
  - (2) *Continuing professional education* means a course, a program, a series of courses or programs, or other educational activity provided to members of a profession, as defined in 5 CFR 2636.305(b)(1), or academic discipline and designed principally to maintain or advance the skills and competence of practitioners in a field of specialized knowledge and to expand an appreciation and understanding of the professional responsibilities, fiduciary obligations, or ethical aspirations incumbent upon members of the group. For those members of a profession or academic discipline that does not subject its members to licensure or continuing education requirements, the term continuing professional education includes those educational activities that exemplify a purpose and content similar to those offered to or required of members of a licensed profession.
  - (3) *Data and safety monitoring board (DSMB)* means a board, committee, or panel constituted in connection with an ongoing clinical study and comprised of individuals, other than the study sponsors, organizers, and investigators, who possess expertise in relevant specialties and disciplines, such as trial design, biostatistics, and bioethics, and who review accumulating safety and outcome data in order to ensure the continuing safety of the participating human subjects and of those yet to be recruited, and to assess the continuing validity and scientific merit of the investigation.
  - (4) *Educational activity provider* means a supported research institution or a health care provider or insurer that presents Grand Rounds or offers accredited continuing professional education (or, in the case of a profession or academic discipline whose members are not subject to

licensure and which does not have program accreditation requirements, an education program determined by the designated agency ethics official or his designee or, in consultation with the designated agency ethics official or his designee, the NIH Director or the NIH Director's designee to be substantially equivalent to an accredited continuing professional education program), but does not include a substantially affected organization.

- (5) *Employment* has the meaning specified in 5 CFR 2635.603(a).
- (6) *Grand Rounds* means a regularly scheduled, interactive presentation or series of educational seminars that focus on clinical cases, recent biomedical or behavioral research results, or a review of scientific research methods and findings in a specific field, with supporting basic and clinical science information, that are conducted in an accredited medical school or an affiliated teaching hospital setting that provides practicing physicians, faculty, fellows, resident physician trainees, medical students, graduate students, and post-doctoral fellows, as well as allied and associated health professionals, and other staff, an opportunity to evaluate outcomes of patient treatment decisions, a forum to discuss clinical decision making, and a means to impart updates in diagnosis, treatment, therapy, and research as indicated by the context of the cases presented.
- (7) *Grant or scientific review committee* means a board, committee, or panel of qualified experts assembled by an external grant-making entity or other funding institution for the purpose of making a funding decision, the members of which review, evaluate, rate, rank, or otherwise assess a proposed or ongoing project or program for which grant support is sought on the basis of various factors, such as scientific merit, feasibility, significance, approach, and originality (and scientific progress in any previous period of funding), and gauge the ability of the applicant(s), principal and associate investigators, and scientific team members to complete successfully the project or program, and then recommend to the grantor whether to fund or continue to fund a particular proposal or ongoing program.
- (8) *Health care provider or insurer* means a hospital, clinic, skilled nursing facility, rehabilitation facility, durable medical equipment supplier, home health agency, hospice program, health maintenance organization, managed care organization, or other provider of health care items and services as defined in sections 1877(h)(6) or 1903(w)(7) of the Social Security Act (42 U.S.C. 1395nn(h)(6) or 1396b(w)(7)) and any entity organized and licensed as a risk-bearing entity eligible to offer health insurance or health benefits coverage.
- (9) *Scientific peer review* is the evaluation of scientific research findings for competence, significance, and originality by qualified experts who research and submit work for publication in the same field and which provides systematized accountability for adherence to ethical guidelines commonly accepted within the relevant research community for disseminating scientific information.
- (10) *Substantially affected organization* means:
  - (i) A biotechnology or pharmaceutical company; a medical device manufacturer; or a corporation, partnership, or other enterprise or entity significantly involved, directly or through subsidiaries, in the research, development, or manufacture of biotechnological, biostatistical, pharmaceutical, or medical devices, equipment, preparations, treatments, or products;
  - (ii) Any organization a majority of whose members are described in paragraph (b)(10)(i) of this section; and
  - (iii) Any other organization determined by the designated agency ethics official or, in consultation with the designated agency ethics official, by the NIH Director or the NIH Director's designee that is substantially affected by the programs, policies, or operations of the NIH.
- (11) *Supported research institution* means any educational institution or non-profit independent research institute that:
  - (i) Is, or within the last year has been, an applicant for or recipient of an NIH grant, cooperative agreement, or research and development contract;

- (ii) Is or within the last year has been, a proposer of or party to a cooperative research and development agreement (CRADA) with the NIH; or
  - (iii) Any organization a majority of whose members are described in paragraphs (b)(11)(i) or (ii) of this section.
- (12) *Unrestricted educational grant* means funds received by or available to an educational activity provider from another source that are granted without stipulated conditions for their use other than the limitation that the funds shall be used to advance an educational program of the grant recipient. For purposes of this section, an educational grant shall not be considered unrestricted if the funding source for a continuing professional education program directly or indirectly:
- (i) Selects or recommends the moderators, speakers, or presenters at the sponsored event;
  - (ii) Independently provides additional funding to the moderators, speakers, or presenters in connection with the educational activity;
  - (iii) Determines or recommends the audience composition;
  - (iv) Specifies or recommends the topics to be addressed, or
  - (v) Controls or recommends the planning, content, or implementation of the program in a manner inconsistent with guidelines established by a relevant professional association or accrediting organization that are designed to ensure that such activities are accurate, balanced, educational, free from commercial bias, nonpromotional, and independent of the influence of the funding source.
- (13) *Unrestricted financial contribution* means funds received by or available to a publisher, academic press, editorial board, or other entity affiliated with or operated by a supported research institution or a health care provider or insurer from another source that are provided without stipulated conditions for their use other than the limitation that the funds shall be used to advance peer-reviewed writing or editing by the funds recipient. For purposes of this section, a financial contribution shall not be considered unrestricted if the funding source for peer-reviewed writing or editing directly or indirectly:
- (i) Selects or recommends the author, reviewer, referee, or editor;
  - (ii) Independently provides additional funding to the author, reviewer, referee, or editor in connection with the writing or editing activity;
  - (iii) Determines or recommends the targeted audience of the writing or editing activity;
  - (iv) Specifies or recommends the topics to be addressed, or
  - (v) Controls or recommends the planning, content, or distribution of the written or edited product in a manner inconsistent with ethical guidelines commonly accepted within the relevant research community for disseminating scientific information which are designed to ensure that such writing or editing is accurate, unbiased, nonpromotional, transparent with respect to disclosure of potential conflicts, and independent of the influence of the funding source.
- (c) *Prohibitions-*
- (1) *Prohibited outside activities with substantially affected organizations, supported research institutions, and health care providers or insurers.* Except as permitted by paragraph (c)(3) of this section, an employee of the NIH shall not:
- (i) Engage in employment with a substantially affected organization, a supported research institution, or a health care provider or insurer;
  - (ii) Teach, speak, write, or edit for compensation for any substantially affected organization, supported research institution, or health care provider or insurer; or
  - (iii) Engage in any employment or self-employed business activity that involves the sale or promotion of products or services of a substantially affected organization or a health care provider or insurer, except for the purpose of commercializing invention rights obtained by the employee pursuant to Executive Order 10096, 15 U.S.C. 3710d, or implementing regulations.

- (2) *General exception.* Nothing in paragraph (c)(1) of this section prevents an employee from engaging in employment with, or teaching, speaking, writing, or editing for, a political, religious, social, fraternal, or recreational organization.

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) *Specific exceptions.* Notwithstanding the prohibitions in paragraph (c)(1) of this section:

- (i) *Teaching.* An employee may engage in and accept compensation for:
- (A) Teaching a course requiring multiple presentations as permitted under 5 CFR 2635.807(a)(3); or
  - (8) Delivering a class lecture that is unrelated to the employee's official duties within the meaning of 5 CFR 2635.807 if the activity is performed as part of a regularly scheduled course offered under the established curriculum of an institution of higher education as defined at 20 U.S.C. 1001.
- (ii) *Clinical, medical, or health-related professional practice.* An employee may engage in and accept compensation for the outside practice of medicine, dentistry, pharmacy, nursing, or similar health-related professional practice that involves the personal provision of care, treatment, or other health-related professional services to or in connection with individual patients, provided that:
- (A) The provision of health-related professional services to such individuals is not part of any ongoing research project conducted or funded by the NIH;
  - (8) The employee does not establish a private practice relationship with a current or recently discharged NIH patient or subject of an NIH-conducted or NIH-funded clinical trial or protocol;
  - (C) The employee does not personally refer private practice patients to the NIH; and
  - (D) The professional practice does not involve substantial unrelated non-professional duties, such as personnel management, contracting and purchasing responsibilities (other than "out-of-stock" requisitioning), and does not involve employment by a medical product manufacturer in the conduct of biomedical research.
- (iii) *Clerical, retail, service industry, building trades, maintenance, or similar services.* An employee may engage in and accept compensation for any outside employment or self-employed business activity that primarily involves manual or unskilled labor or utilizes talents, skills, or interests in areas unrelated to the health and scientific research activities of the NIH, such as clerical work, retail sales, service industry jobs, building trades, maintenance, or similar services.
- (iv) *Continuing professional education.* An employee may engage in and accept compensation for a teaching, speaking, writing, or editing activity that is unrelated to the employee's official duties within the meaning of 5 CFR 2635.807 if the activity is performed as part of a continuing professional education program conducted by an educational activity provider. If a substantially affected organization provides financial support for a continuing professional education program conducted by an educational activity provider, this exception is inapplicable unless the substantially affected organization is involved only as the funding source for an unrestricted educational grant.
- (v) *Authorship of writings subjected to scientific peer review or a substantially equivalent editorial review process.* An employee may engage in and accept compensation for a writing or editing activity that is unrelated to the employee's official duties within the meaning of 5 CFR 2635.807 if the resulting article, chapter, essay, report, text, or other writing is submitted to a publisher, academic press, editorial board, or other entity affiliated with or operated by a supported research institution or a health care provider or insurer for publication in a scientific journal, textbook, or similar publication that subjects manuscripts to scientific peer review or a substantially equivalent editorial review process. If a substantially affected organization funds the publishing activities of a supported research institution or a health care provider or insurer, this exception is inapplicable unless the substantially affected organization is involved only as an unrestricted financial contributor and exercises no editorial control.



- (vi) **Data and safety monitoring boards.** An employee may serve as a member of a data and safety monitoring board for a clinical study conducted by a supported research institution or health care provider or insurer, provided that:
  - (A) The members of the DSMB are not selected or paid for their service by a substantially affected organization;
  - (B) The clinical study is not funded under a grant, cooperative agreement, or research and development contract from, or conducted pursuant to a cooperative research and development agreement (CRADA) with, or aided under another funding mechanism by, the NIH; and
  - (C) If the service is performed for compensation, the service does not entail prohibited assistance in the preparation of documents intended for submission to HHS within the meaning of § 5501.106(c)(1), and the clinical study is not an HHS-funded activity described in § 5501.106(c)(2).
- (vii) **Grand Rounds.** An employee may engage in and accept compensation for a teaching, speaking, writing, or editing activity that is unrelated to the employee's official duties within the meaning of 5 CFR 2635.807 if the activity is performed as part of a Grand Rounds program conducted by an accredited educational institution offering instruction in the life sciences, such as a medical school or school of public health, or by an affiliated teaching hospital, provided that:
  - (A) The employee's presentation includes an interactive component, such as visiting patients or discussing individual clinical cases, or interacting for educational purposes with undergraduates, graduates, or post-graduate students and fellows, in addition to any lecture;
  - (B) The audience is composed primarily of faculty and students or trainees registered in a biomedical or health-related program of studies; and
  - (C) A substantially affected organization or a speakers' bureau affiliated with a substantially affected organization does not sponsor or underwrite the costs of the Grand Rounds program or the employee's presentation, except pursuant to an unrestricted educational grant.
- (viii) **Grant or scientific review committee.** An employee may serve on a grant or scientific review committee for a supported research institution or a health care provider or insurer, provided that:
  - (A) The members of the grant or scientific review committee are not selected or paid for their service by a substantially affected organization;
  - (B) The grant award or program in relation to which the recommendation of the grant or scientific review committee is sought is not funded under a grant, cooperative agreement, or research and development contract from, conducted pursuant to a cooperative research and development agreement (CRADA) with, or aided under another funding mechanism by, the NIH; and
  - (C) If the service is performed for compensation, the service does not entail prohibited assistance in the preparation of documents intended for submission to HHS within the meaning of § 5501.106(c)(1), and the grant award or program in relation to which the recommendation of the grant or scientific review committee is sought is not an HHS-funded activity described in § 5501.106(c)(2).

**§ 5501.110 Prohibited financial interests applicable to senior employees of the National Institutes of Health.**

- (a) **Applicability.** This section does not apply to special Government employees or the spouse or minor children of a special Government employee.

- (b) **Definitions.** For purposes of this section:
- (1) **Senior employee** means the Director and the Deputy Director of the National Institutes of Health; members of the senior staff within the Office of the Director who report directly to the NIH Director; the Directors, the Deputy Directors, Scientific Directors, and Clinical Directors of each Institute and Center within NIH; Extramural Program Officials who report directly to an Institute or Center Director; and any employee of equivalent levels of decision-making responsibility who is designated as a senior employee by the designated agency ethics official or the NIH Director, in consultation with the designated agency ethics official.
  - (2) **Substantially affected organization** has the meaning set forth in § 5501.109(b)(10).
- (c) **Prohibition applicable to senior employees.** Except as permitted by paragraph (d) of this section, a senior employee or the spouse or minor child of such senior employee shall not have a financial interest in a substantially affected organization.
- (d) **Exceptions for certain financial interests.** Notwithstanding the prohibition in paragraph (c) of this section:
- (1) **Pension or other employee benefit.** A senior employee or spouse or minor child of a senior employee may have a financial interest, such as a pension or other employee benefit, arising from employment with a substantially affected organization.

NOTE TO PARAGRAPH (d)(1): NIH employees, as opposed to spouses and minor children of employees, are generally prohibited under § 5501.109 from engaging in current employment with a substantially affected organization.

- (2) **De minimis holdings.** A senior employee or spouse or minor child of a senior employee may have a financial interest in a substantially affected organization if:
  - (i) The aggregate market value of the combined interests of the senior employee and the senior employee's spouse and minor children in any one substantially affected organization is equal to or less than the *de minimis* exemption limit for matters involving parties established by 5 CFR 2640.202(a) or \$15,000, whichever is greater;
  - (ii) The holding, if it represents an equity interest, constitutes less than 1 percent of the total outstanding equity of the organization; and
  - (iii) The total holdings in substantially affected organizations and sector mutual funds that, in the literature they distribute to prospective and current investors or participants, state the objective or practice of concentrating their investments in the securities of substantially affected organizations account for less than 50 percent of the total value of the combined investment portfolios of the senior employee and the senior employee's spouse and minor children.
- (3) **Diversified mutual funds.** A senior employee or spouse or minor child of a senior employee may have an interest in a substantially affected organization that constitutes any interest in a publicly traded or publicly available investment fund (e.g., a mutual fund), or a widely held pension or similar fund, which, in the literature it distributes to prospective and current investors or participants, does not indicate the objective or practice of concentrating its investments in substantially affected organizations, if the employee neither exercises control nor has the ability to exercise control over the financial interests held in the fund.
- (4) **Exceptional circumstances.** In cases involving exceptional circumstances, the NIH Director or the NIH Director's designee, with the approval of the designated agency ethics official or his designee, may grant a written exception to permit a senior employee, or the spouse or minor child of a senior employee, or a class of such individuals, to hold a financial interest in a substantially affected organization based upon a determination that the application of the prohibition in paragraph (c) of this section is not necessary to ensure public confidence in the

impartiality or objectivity with which HHS programs are administered or to avoid a violation of part 2635 of this title.

- (5) **Technology transfer.** A senior employee may have a financial interest in connection with the development and commercialization of invention rights obtained by the employee pursuant to Executive Order 10096, 15 U.S.C. 3710d, or implementing regulations.
- (6) **Sector mutual funds.**
  - (i) A senior employee or spouse or minor child of a senior employee may have an interest in a substantially affected organization that constitutes any interest in a sector mutual fund that, in the literature it distributes to prospective and current investors or participants, does not indicate the objective or practice of concentrating its investments in the biomedical science, pharmaceutical, medical device, biotechnology, or health industry sectors.
  - (ii) A senior employee or spouse or minor child of a senior employee may have an interest in a substantially affected organization that constitutes any interest in a sector mutual fund that, in the literature it distributes to prospective and current investors or participants, states the objective or practice of concentrating its investments in the securities of substantially affected organizations provided that:
    - (A) The aggregate market value of the combined ownership interests of the senior employee and the senior employee's spouse and minor children in such sector funds is equal to or less than the *de minimis* exemption limit for sector mutual funds established by 5 CFR 2640.201(b)(2)(i) or \$50,000, whichever is greater; and
- (8) The total holdings in substantially affected organizations and in sector mutual funds that, in the literature they distribute to prospective and current investors or participants, state the objective or practice of concentrating their investments in the securities of substantially affected organizations account for less than 50 percent of the total value of the combined investment portfolios of the senior employee and the senior employee's spouse and minor children.

**NOTE TO PARAGRAPH (d):** With respect to any excepted financial interest, employees are reminded of their obligations under 5 CFR part 2635, and specifically their obligation under subpart D to disqualify themselves from participating in any particular matter in which they, their spouses or minor children have a financial interest arising from publicly traded securities that exceeds the *de minimis* thresholds specified in the regulatory exemption at 5 CFR 2640.202 or from non-publicly traded securities that are not covered by the regulatory exemption. Furthermore, the agency may prohibit or restrict an individual employee from acquiring or holding any financial interest or a class of financial interests based on the agency's determination that the interest creates a substantial conflict with the employee's duties, within the meaning of 5 CFR 2635.403.

- (e) **Reporting and divestiture.** For purposes of determining the divestiture period specified in 5 CFR 2635.403(d), as applied to financial interests prohibited under paragraph (c) of this section, the "date divestiture is first directed" means the date on which the new entrant public or confidential financial disclosure report required by part 2634 of this title or any report required by § 5502.107(c) of this chapter is due.

#### § 5501.111 Awards tendered to employees of the National Institutes of Health.

- (a) **Applicability.** This section does not apply to special Government employees.
- (b) **Definitions.** For purposes of this section, *official responsibility* has the meaning set forth in 18 U.S.C. 202(b).

- (c) *Additional limitations on awards to employees of the National Institutes of Health. The following limitations shall apply to the acceptance by an employee of an award pursuant to 5 CFR 2635.204(d):*
- (1) *Limitations applicable to employees with official responsibility for matters affecting an award donor. An employee shall not accept a gift with an aggregate market value of more than \$200, or that is cash or an investment interest, that is an award or incident to an award from a person, organization, or other donor that:*
    - (i) *Is seeking official action from the employee, any subordinate of the employee, or any agency component or subcomponent under the employee's official responsibility;*
    - (ii) *Does business or seeks to do business with any agency component or subcomponent under the employee's official responsibility;*
    - (iii) *Conducts activities substantially affected by the programs, policies, or operations of any agency component or subcomponent under the employee's official responsibility; or*
    - (iv) *Is an organization a majority of whose members are described in paragraphs (c)(1)(i) through (iii) of this section.*
  - (2) *Prior approval of awards.-*
    - (i) *No employee shall accept an award under 5 CFR 2635.204(d) or this section unless the receipt thereof has been approved in writing in advance in accordance with procedures specified by the designated agency ethics official, or with the concurrence of the designated agency ethics official, the NIH Director or the NIH Director's designee.*
    - (ii) *Approval shall be granted only upon a determination that acceptance of the award is not prohibited by statute or Federal regulation, including 5 CFR part 2635 and this part.*

**NOTE TO PARAGRAPH (c):** In some circumstances cash and other things of value provided in connection with the provision of personal services, including speaking or writing, may be compensation, not a gift. Other ethics rules governing outside activities may restrict receipt of such compensation. See, for example, 5 CFR 2635.807.

- (d) *Exception. Notwithstanding the prohibition in paragraph (c)(1) of this section, the NIH Director (or the Secretary, with respect to awards tendered to the NIH Director), with the approval of the designated agency ethics official, may grant a written exception to permit an employee to accept an award otherwise prohibited by this section under the following conditions:*
- (1) *There is a determination by the NIH Director (or the Secretary, with respect to awards tendered to the NIH Director) that acceptance of the gift will further an agency interest because it confers an exceptionally high honor in the fields of medicine or scientific research. The following criteria will be considered in making such a determination:*
    - (i) *The identity of the awarding organization;*
    - (ii) *The longevity of the awards program;*
    - (i) *he source of award funds;*
    - (iv) *The size of the monetary component of the award recognition;*
    - (v) *The identity and credentials of past award recipients;*
    - (vi) *The degree of publicity attendant to receipt of the award; and*
    - (vii) *The impact of the substantive contribution being recognized;*
  - (2) *Absent the prohibition in paragraph (c)(1) of this section, the gift would be permitted under part 2635 of this title; and*
  - (3) *The designated agency ethics official shall have determined that the application of the prohibition in paragraph (c)(1) of this section is not necessary to ensure public confidence in the impartiality or objectivity with which NIH programs are administered or to avoid a violation of part 2635 of this title.*
- (e) *Disposition of improperly accepted awards-*
- (1) *Failure to obtain prior approval. If an employee accepts an award for which approval is required under paragraph (c)(2) of this section without obtaining such approval, the employee may be*

required, in addition to any penalty provided by law and applicable regulations, to forfeit the award by returning it to the donor.

- (2) ***Receipt of prohibited award.*** If an employee accepts an award prohibited by paragraph (c)(1) of this section, the employee shall be required, in addition to any penalty provided by law and applicable regulations, to:
- (i) Reject the award and instruct the donor to strike the honoree's name from any list of award recipients;
  - (ii) Remove the recognition from the employee's resume or curriculum vitae;
  - (iii) Return any tangible indicia of the recognition to the donor; and
  - (iv) Forfeit the award by returning it to the donor.

**§ 5501.112 One-year disqualification of employees of the National Institutes of Health from certain matters involving an award donor.**

An employee, other than a special Government employee, of the National Institutes of Health who has, within the last year, accepted an award permitted under 5 CFR 2635.204(d) or § 5501.111 shall not participate in any particular matter involving specific parties in which the donor is or represents a party unless authorized to do so under 5 CFR 2635.502(d).

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**Special General Memorandum 95-4**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Indian Health Service  
Rockville MD 20857

SGM 95-4

JUN 1, 1995

TO: Indian Health Service Employees  
FROM: Director  
SUBJECT: Workplace Violence

*I am fully committed to ensuring that the work environment for all Indian Health Service (IHS) employees is healthy, safe, and secure from acts or threats of violence. To accomplish this, I am establishing a zero tolerance policy on Workplace Violence (WPV) that applies equally to the behavior of all employees, contractors and others with whom we work.*

*Our work environment must be free from all forms of violence and acts of intimidation, including harassment, threats, altercations, or assault. You are reminded that such conduct by IHS employees will not be tolerated and known incidents should be reported immediately to management officials. I expect all employees to act in a manner that is respectful and courteous to the public, as well as to fellow employees.*

*The IHS is not a high-risk environment for WPV, but this Agency is not immune. Many of us work in environments where the risks for violence may be higher than in the traditional office setting. I have taken this position to heighten awareness and to assist in the prevention of violent incidents at all IHS facilities. To enforce this policy through Agency management officials, staff who commit or threaten violent acts or acts of intimidation in the workplace will be subject to governing policies and procedures for addressing employee misconduct. In addition, if warranted, misconduct will be referred to local police and legal authorities for possible action.*

*Agency collective bargaining officials (CBO) must provide a copy of this memorandum to unions and meet existing bargaining unit obligations before implementing WPV policy. I encourage CBOs to meet with existing bargaining unit representatives to develop a strong labor-management partnership to prevent WPV.*

*I urge you to join me and your co-workers in actively creating and supporting a work environment that is safe, supportive, and free from WPV. These are difficult and stressful times for many of us, so awareness and early intervention are critical steps in the prevention process. If you have any questions or need assistance, please contact your local human resources staff.*

/Michael Trujillo, MD, MPH/  
Michael H. Trujillo, M.D., M.P.H.  
Assistant Surgeon General



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

## Memorandum

Received  
JUN 16 1995

**JUN 12, 1995**

**FROM:** Assistant Secretary for Health  
**SUBJECT:** Violence in the Workplace  
**TO:** PHS Agency Heads  
Acting Surgeon General  
Deputy Assistant Secretaries for Health  
PHS Agency Executive Officers  
PHS Staff Office Directors  
PHS Regional Health Administrators

*The news media remind us almost daily that we live in an environment that is becoming increasingly more violent. Many of our employees have been exposed to violence or threats of violence in their daily lives, and a significant number are concerned about the potential for violence in the workplace. For these reasons, I believe it is important to set forth PHS policy on this subject.*

*Employees shall be protected as fully as possible from assaults, threats, intimidation, and harassment while at the work site. Thus, it is essential that we make clear to all PHS employees that violence, threats of violence, intimidating and otherwise similar disruptive behavior are unacceptable conduct that will not be tolerated. This policy also applies to contractors who are not employees but who work in PHS facilities.*

*In order to minimize the potential for violence in the workplace and to ensure that prompt corrective action can be taken when it does occur, anyone working in PHS facilities, who witnesses or becomes aware of threats or acts of violence from any source must immediately report what he/she has observed or learned to appropriate agency officials, as set forth below, and/or law enforcement authorities. Employees are also expected to cooperate fully in any subsequent investigations. We do not want employees to place themselves at unnecessary personal risk in dangerous situations; however, we expect them to make immediate contact with an agency official who can respond appropriately, such as a supervisor, security officer, EEO or human resource officials.*

*In turn, officials receiving these reports are required to immediately and appropriately act upon them.*

*If anyone observes a violent act or a threat posing imminent danger, his/her immediate response should be to call 911. Immediately thereafter, he/she should inform his/her supervisor and the appropriate security office.*

*Please distribute the attached policy statement to all employees in your organization and ensure that the issue of workplace violence and this policy are discussed in staff meetings so that any questions or concerns about implementation of the policy can be promptly addressed. The implementation of a comprehensive PHS Workplace Violence Prevention Program is a priority for me, and all employees, supervisors and managers are expected to support this initiative on a continuing basis. A PHS task force, comprised of representatives of a variety of disciplines from all PHS agencies, has been convened for this purpose. The task force will develop a plan of action to address this critical issue in detail.*

*Our intention is to make the workplace safe where dignity, respect, and fairness are basic human rights. PHS employees, who commit or threaten to commit violent acts or acts of intimidation against anyone in the workplace, will be disciplined in accordance with governing policies and procedures for addressing employee misconduct and/or referred for action as appropriate under local and state law.*

*Collective Bargaining Officials should provide a copy of the PHS policy statement and this memorandum to recognized unions. Any obligation to negotiate must be satisfied before distributing or implementing the policy within existing bargaining units.*

*/Phillip R. Lee/*

*Phillip R. Lee, M.D.*

*Attachment*

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**U.S. PUBLIC HEALTH SERVICE  
POLICY STATEMENT ON VIOLENCE IN THE WORKPLACE**

*Threatening, intimidating, violent or similar disruptive behavior in the workplace is unacceptable conduct. It is the policy of the Public Health Service (PHS) that there will be zero tolerance for such acts. PHS will take appropriate action necessary to ensure that every employee has a work environment: free from threatening behavior and violence.*

*Date: JUN 12 1995*

*/Phillip R. Lee/  
Phillip R. Lee, M.D.  
Assistant Secretary for Health*

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"REGISTER OF WAGE DETERMINATIONS UNDER THE SERVICE CONTRACT ACT By direction of the Secretary of Labor		U.S. DEPARTMENT OF LABOR EMPLOYMENT STANDARDS ADMINISTRATION WAGE AND HOUR DIVISION WASHINGTON D.C. 20210
Daniel W. Simms Director	Division of Wage Determinations	Wage Determination No.: 2015-5377 Revision No.: 21 Date Of Last Revision: 12/27/2022

Note: Contracts subject to the Service Contract Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658.

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	Executive Order 14026 generally applies to the contract. The contractor must pay all covered workers at least \$16.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2023.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	Executive Order 13658 generally applies to the contract. The contractor must pay all covered workers at least \$12.15 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2023.

The applicable Executive Order minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the Executive Orders is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

State: South Dakota

Area: South Dakota Counties of Bennett, Butte, Corson, Dewey, Fall River, Gregory, Haakon, Harding, Jackson, Jones, Lawrence, Lyman, Mellette, Perkins, Shannon, Stanley, Todd, Tripp, Ziebach

**\*\*Fringe Benefits Required Follow the Occupational Listing\*\***

OCCUPATION CODE - TITLE	FOOTNOTE	RATE
01000 - Administrative Support And Clerical Occupations		
01011 - Accounting Clerk I		14.07***
01012 - Accounting Clerk II		15.80***
01013 - Accounting Clerk III		17.67
01020 - Administrative Assistant		18.63
01035 - Court Reporter		16.08***
01041 - Customer Service Representative I		13.21***
01042 - Customer Service Representative II		14.41***
01043 - Customer Service Representative III		16.17***
01051 - Data Entry Operator I		11.73***
01052 - Data Entry Operator II		12.80***
01060 - Dispatcher, Motor Vehicle		14.98***
01070 - Document Preparation Clerk		12.80***
01090 - Duplicating Machine Operator		12.80***
01111 - General Clerk I		12.91***

01112 - General Clerk II	14.09***
01113 - General Clerk III	15.81***
01120 - Housing Referral Assistant	17.92
01141 - Messenger Courier	10.44***
01191 - Order Clerk I	11.73***
01192 - Order Clerk II	12.80***
01261 - Personnel Assistant (Employment) I	14.49***
01262 - Personnel Assistant (Employment) II	17.00
01263 - Personnel Assistant (Employment) III	18.08
01270 - Production Control Clerk	17.92
01290 - Rental Clerk	13.29***
01300 - Scheduler, Maintenance	14.38***
01311 - Secretary I	14.38***
01312 - Secretary II	16.08***
01313 - Secretary III	17.92
01320 - Service Order Dispatcher	13.40***
01410 - Supply Technician	18.63
01420 - Survey Worker	14.28***
01460 - Switchboard Operator/Receptionist	13.81***
01531 - Travel Clerk I	12.84***
01532 - Travel Clerk II	13.64***
01533 - Travel Clerk III	14.46***
01611 - Word Processor I	12.80***
01612 - Word Processor II	14.38***
01613 - Word Processor III	16.08***
05000 - Automotive Service Occupations	
05005 - Automobile Body Repairer, Fiberglass	22.61
05010 - Automotive Electrician	18.01
05040 - Automotive Glass Installer	17.17
05070 - Automotive Worker	17.17
05110 - Mobile Equipment Servicer	15.41***
05130 - Motor Equipment Metal Mechanic	18.87
05160 - Motor Equipment Metal Worker	17.17
05190 - Motor Vehicle Mechanic	18.87
05220 - Motor Vehicle Mechanic Helper	14.52***
05250 - Motor Vehicle Upholstery Worker	16.29
05280 - Motor Vehicle Wrecker	17.17
05310 - Painter, Automotive	18.01
05340 - Radiator Repair Specialist	17.17
05370 - Tire Repairer	13.72***
05400 - Transmission Repair Specialist	18.87
07000 - Food Preparation And Service Occupations	
07010 - Baker	12.74***
07041 - Cook I	14.27***
07042 - Cook II	16.39
07070 - Dishwasher	11.21***
07130 - Food Service Worker	11.45***
07210 - Meat Cutter	14.44***
07260 - Waiter/Waitress	11.09***
09000 - Furniture Maintenance And Repair Occupations	
09010 - Electrostatic Spray Painter	23.11
09040 - Furniture Handler	15.19***
09080 - Furniture Refinisher	23.11
09090 - Furniture Refinisher Helper	18.07
09110 - Furniture Repairer, Minor	20.96
09130 - Upholsterer	23.11
11000 - General Services And Support Occupations	
11030 - Cleaner, Vehicles	12.35***
11060 - Elevator Operator	13.92***
11090 - Gardener	17.02
11122 - Housekeeping Aide	13.92***
11150 - Janitor	13.92***
11210 - Laborer, Grounds Maintenance	13.22***
11240 - Maid or Houseman	11.26***
11260 - Pruner	11.90***

11270 - Tractor Operator	15.75***
11330 - Trail Maintenance Worker	13.22***
11360 - Window Cleaner	15.47***
12000 - Health Occupations	
12010 - Ambulance Driver	14.42***
12011 - Breath Alcohol Technician	18.23
12012 - Certified Occupational Therapist Assistant	25.01
12015 - Certified Physical Therapist Assistant	23.54
12020 - Dental Assistant	18.21
12025 - Dental Hygienist	36.54
12030 - EKG Technician	27.63
12035 - Electroneurodiagnostic Technologist	27.63
12040 - Emergency Medical Technician	14.42***
12071 - Licensed Practical Nurse I	16.30
12072 - Licensed Practical Nurse II	18.23
12073 - Licensed Practical Nurse III	20.32
12100 - Medical Assistant	15.81***
12130 - Medical Laboratory Technician	25.90
12160 - Medical Record Clerk	20.04
12190 - Medical Record Technician	22.42
12195 - Medical Transcriptionist	17.61
12210 - Nuclear Medicine Technologist	40.06
12221 - Nursing Assistant I	11.38***
12222 - Nursing Assistant II	12.79***
12223 - Nursing Assistant III	13.96***
12224 - Nursing Assistant IV	15.67***
12235 - Optical Dispenser	15.57***
12236 - Optical Technician	16.30
12250 - Pharmacy Technician	17.64
12280 - Phlebotomist	16.30
12305 - Radiologic Technologist	28.44
12311 - Registered Nurse I	24.07
12312 - Registered Nurse II	29.44
12313 - Registered Nurse II, Specialist	29.44
12314 - Registered Nurse III	35.61
12315 - Registered Nurse III, Anesthetist	35.61
12316 - Registered Nurse IV	42.69
12317 - Scheduler (Drug and Alcohol Testing)	22.58
12320 - Substance Abuse Treatment Counselor	20.28
13000 - Information And Arts Occupations	
13011 - Exhibits Specialist I	13.72***
13012 - Exhibits Specialist II	17.00
13013 - Exhibits Specialist III	20.78
13041 - Illustrator I	13.72***
13042 - Illustrator II	17.00
13043 - Illustrator III	20.78
13047 - Librarian	18.82
13050 - Library Aide/Clerk	10.92***
13054 - Library Information Technology Systems Administrator	17.00
13058 - Library Technician	12.29***
13061 - Media Specialist I	13.02***
13062 - Media Specialist II	14.56***
13063 - Media Specialist III	16.24
13071 - Photographer I	12.70***
13072 - Photographer II	14.21***
13073 - Photographer III	17.60
13074 - Photographer IV	21.54
13075 - Photographer V	26.05
13090 - Technical Order Library Clerk	15.49***
13110 - Video Teleconference Technician	12.78***
14000 - Information Technology Occupations	
14041 - Computer Operator I	15.44***
14042 - Computer Operator II	17.27
14043 - Computer Operator III	20.50

14044 - Computer Operator IV	21.52
14045 - Computer Operator V	27.05
14071 - Computer Programmer I (see 1)	19.39
14072 - Computer Programmer II (see 1)	24.01
14073 - Computer Programmer III (see 1)	
14074 - Computer Programmer IV (see 1)	
14101 - Computer Systems Analyst I (see 1)	
14102 - Computer Systems Analyst II (see 1)	
14103 - Computer Systems Analyst III (see 1)	
14150 - Peripheral Equipment Operator	15.44***
14160 - Personal Computer Support Technician	26.10
14170 - System Support Specialist	28.90
15000 - Instructional Occupations	
15010 - Aircrew Training Devices Instructor (Non-Rated)	29.94
15020 - Aircrew Training Devices Instructor (Rated)	36.22
15030 - Air Crew Training Devices Instructor (Pilot)	43.42
15050 - Computer Based Training Specialist / Instructor	29.94
15060 - Educational Technologist	31.16
15070 - Flight Instructor (Pilot)	43.42
15080 - Graphic Artist	17.93
15085 - Maintenance Test Pilot, Fixed, Jet/Prop	43.42
15086 - Maintenance Test Pilot, Rotary Wing	43.42
15088 - Non-Maintenance Test/Co-Pilot	43.42
15090 - Technical Instructor	18.87
15095 - Technical Instructor/Course Developer	23.08
15110 - Test Proctor	15.23***
15120 - Tutor	15.23***
16000 - Laundry, Dry-Cleaning, Pressing And Related Occupations	
16010 - Assembler	10.88***
16030 - Counter Attendant	10.88***
16040 - Dry Cleaner	12.44***
16070 - Finisher, Flatwork, Machine	10.88***
16090 - Presser, Hand	10.88***
16110 - Presser, Machine, Drycleaning	10.88***
16130 - Presser, Machine, Shirts	10.88***
16160 - Presser, Machine, Wearing Apparel, Laundry	10.88***
16190 - Sewing Machine Operator	12.96***
16220 - Tailor	13.48***
16250 - Washer, Machine	11.40***
19000 - Machine Tool Operation And Repair Occupations	
19010 - Machine-Tool Operator (Tool Room)	24.98
19040 - Tool And Die Maker	31.02
21000 - Materials Handling And Packing Occupations	
21020 - Forklift Operator	17.53
21030 - Material Coordinator	20.60
21040 - Material Expediter	20.60
21050 - Material Handling Laborer	13.68***
21071 - Order Filler	12.04***
21080 - Production Line Worker (Food Processing)	17.53
21110 - Shipping Packer	15.86***
21130 - Shipping/Receiving Clerk	15.86***
21140 - Store Worker I	12.60***
21150 - Stock Clerk	17.17
21210 - Tools And Parts Attendant	17.53
21410 - Warehouse Specialist	17.53
23000 - Mechanics And Maintenance And Repair Occupations	
23010 - Aerospace Structural Welder	28.04
23019 - Aircraft Logs and Records Technician	21.91
23021 - Aircraft Mechanic I	26.51
23022 - Aircraft Mechanic II	28.04
23023 - Aircraft Mechanic III	29.56
23040 - Aircraft Mechanic Helper	18.90
23050 - Aircraft, Painter	24.98
23060 - Aircraft Servicer	21.91
23070 - Aircraft Survival Flight Equipment Technician	24.98

23080 - Aircraft Worker	23.45
23091 - Aircrew Life Support Equipment (ALSE) Mechanic I	23.45
23092 - Aircrew Life Support Equipment (ALSE) Mechanic II	26.51
23110 - Appliance Mechanic	24.98
23120 - Bicycle Repairer	18.88
23125 - Cable Splicer	38.48
23130 - Carpenter, Maintenance	17.51
23140 - Carpet Layer	23.45
23160 - Electrician, Maintenance	22.80
23181 - Electronics Technician Maintenance I	23.45
23182 - Electronics Technician Maintenance II	24.98
23183 - Electronics Technician Maintenance III	26.51
23260 - Fabric Worker	21.91
23290 - Fire Alarm System Mechanic	26.51
23310 - Fire Extinguisher Repairer	20.41
23311 - Fuel Distribution System Mechanic	37.49
23312 - Fuel Distribution System Operator	29.28
23370 - General Maintenance Worker	18.70
23380 - Ground Support Equipment Mechanic	26.51
23381 - Ground Support Equipment Servicer	21.91
23382 - Ground Support Equipment Worker	23.45
23391 - Gunsmith I	20.41
23392 - Gunsmith II	23.45
23393 - Gunsmith III	26.51
23410 - Heating, Ventilation And Air-Conditioning Mechanic	22.08
23411 - Heating, Ventilation And Air Contidioning Mechanic (Research Facility)	23.36
23430 - Heavy Equipment Mechanic	26.51
23440 - Heavy Equipment Operator	22.60
23460 - Instrument Mechanic	26.51
23465 - Laboratory/Shelter Mechanic	24.98
23470 - Laborer	13.68***
23510 - Locksmith	24.98
23530 - Machinery Maintenance Mechanic	27.05
23550 - Machinist, Maintenance	24.52
23580 - Maintenance Trades Helper	18.90
23591 - Metrology Technician I	26.51
23592 - Metrology Technician II	28.04
23593 - Metrology Technician III	29.56
23640 - Millwright	26.51
23710 - Office Appliance Repairer	24.98
23760 - Painter, Maintenance	17.78
23790 - Pipefitter, Maintenance	23.50
23810 - Plumber, Maintenance	22.14
23820 - Pneudraulic Systems Mechanic	26.51
23850 - Rigger	26.51
23870 - Scale Mechanic	23.45
23890 - Sheet-Metal Worker, Maintenance	26.51
23910 - Small Engine Mechanic	23.45
23931 - Telecommunications Mechanic I	29.74
23932 - Telecommunications Mechanic II	31.45
23950 - Telephone Lineman	24.81
23960 - Welder, Combination, Maintenance	18.17
23965 - Well Driller	24.52
23970 - Woodcraft Worker	26.51
23980 - Woodworker	20.41
24000 - Personal Needs Occupations	
24550 - Case Manager	14.30***
24570 - Child Care Attendant	10.74***
24580 - Child Care Center Clerk	13.39***
24610 - Chore Aide	13.39***
24620 - Family Readiness And Support Services	14.30***

Coordinator	
24630 - Homemaker	15.00***
25000 - Plant And System Operations Occupations	
25010 - Boiler Tender	26.51
25040 - Sewage Plant Operator	22.34
25070 - Stationary Engineer	26.51
25190 - Ventilation Equipment Tender	18.90
25210 - Water Treatment Plant Operator	22.34
27000 - Protective Service Occupations	
27004 - Alarm Monitor	17.88
27007 - Baggage Inspector	14.50***
27008 - Corrections Officer	18.99
27010 - Court Security Officer	19.90
27030 - Detection Dog Handler	16.22
27040 - Detention Officer	18.99
27070 - Firefighter	20.54
27101 - Guard I	14.50***
27102 - Guard II	16.22
27131 - Police Officer I	20.26
27132 - Police Officer II	22.52
28000 - Recreation Occupations	
28041 - Carnival Equipment Operator	14.44***
28042 - Carnival Equipment Repairer	15.60***
28043 - Carnival Worker	10.91***
28210 - Gate Attendant/Gate Tender	19.00
28310 - Lifeguard	11.34***
28350 - Park Attendant (Aide)	21.25
28510 - Recreation Aide/Health Facility Attendant	15.50***
28515 - Recreation Specialist	26.32
28630 - Sports Official	16.91
28690 - Swimming Pool Operator	17.92
29000 - Stevedoring/Longshoremen Occupational Services	
29010 - Blocker And Bracer	23.45
29020 - Hatch Tender	23.45
29030 - Line Handler	23.45
29041 - Stevedore I	21.91
29042 - Stevedore II	24.98
30000 - Technical Occupations	
30010 - Air Traffic Control Specialist, Center (HFO) (see 2)	41.27
30011 - Air Traffic Control Specialist, Station (HFO) (see 2)	28.46
30012 - Air Traffic Control Specialist, Terminal (HFO) (see 2)	31.33
30021 - Archeological Technician I	15.52***
30022 - Archeological Technician II	17.37
30023 - Archeological Technician III	21.51
30030 - Cartographic Technician	21.51
30040 - Civil Engineering Technician	21.19
30051 - Cryogenic Technician I	23.83
30052 - Cryogenic Technician II	26.32
30061 - Drafter/CAD Operator I	15.52***
30062 - Drafter/CAD Operator II	17.37
30063 - Drafter/CAD Operator III	19.36
30064 - Drafter/CAD Operator IV	23.83
30081 - Engineering Technician I	13.83***
30082 - Engineering Technician II	15.52***
30083 - Engineering Technician III	17.37
30084 - Engineering Technician IV	21.51
30085 - Engineering Technician V	26.32
30086 - Engineering Technician VI	31.84
30090 - Environmental Technician	20.79
30095 - Evidence Control Specialist	21.51
30210 - Laboratory Technician	19.36
30221 - Latent Fingerprint Technician I	23.83
30222 - Latent Fingerprint Technician II	26.32
30240 - Mathematical Technician	21.51
30361 - Paralegal/Legal Assistant I	20.19

30362 - Paralegal/Legal Assistant II	25.01
30363 - Paralegal/Legal Assistant III	30.60
30364 - Paralegal/Legal Assistant IV	37.02
30375 - Petroleum Supply Specialist	26.32
30390 - Photo-Optics Technician	20.20
30395 - Radiation Control Technician	26.32
30461 - Technical Writer I	21.51
30462 - Technical Writer II	26.32
30463 - Technical Writer III	31.84
30491 - Unexploded Ordnance (UXO) Technician I	26.22
30492 - Unexploded Ordnance (UXO) Technician II	31.73
30493 - Unexploded Ordnance (UXO) Technician III	38.03
30494 - Unexploded (UXO) Safety Escort	26.22
30495 - Unexploded (UXO) Sweep Personnel	26.22
30501 - Weather Forecaster I	23.83
30502 - Weather Forecaster II	28.99
30620 - Weather Observer, Combined Upper Air Or	(see 2) 19.36
Surface Programs	
30621 - Weather Observer, Senior	(see 2) 21.51
31000 - Transportation/Mobile Equipment Operation Occupations	
31010 - Airplane Pilot	31.73
31020 - Bus Aide	12.12***
31030 - Bus Driver	16.74
31043 - Driver Courier	16.63
31260 - Parking and Lot Attendant	12.56***
31290 - Shuttle Bus Driver	17.01
31310 - Taxi Driver	14.24***
31361 - Truckdriver, Light	17.96
31362 - Truckdriver, Medium	19.28
31363 - Truckdriver, Heavy	20.93
31364 - Truckdriver, Tractor-Trailer	20.93
99000 - Miscellaneous Occupations	
99020 - Cabin Safety Specialist	15.47***
99030 - Cashier	10.89***
99050 - Desk Clerk	11.31***
99095 - Embalmer	26.22
99130 - Flight Follower	26.22
99251 - Laboratory Animal Caretaker I	13.76***
99252 - Laboratory Animal Caretaker II	14.86***
99260 - Marketing Analyst	25.78
99310 - Mortician	26.22
99410 - Pest Controller	21.65
99510 - Photofinishing Worker	13.78***
99710 - Recycling Laborer	15.78***
99711 - Recycling Specialist	18.80
99730 - Refuse Collector	14.20***
99810 - Sales Clerk	13.90***
99820 - School Crossing Guard	14.11***
99830 - Survey Party Chief	20.67
99831 - Surveying Aide	13.31***
99832 - Surveying Technician	17.31
99840 - Vending Machine Attendant	14.12***
99841 - Vending Machine Repairer	16.94
99842 - Vending Machine Repairer Helper	12.89***

\*\*\*Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$16.20 per hour) or 13658 (\$12.15 per hour). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 and 13658 are not currently being enforced as to contracts or contract-like instruments entered into with the federal government in connection with seasonal recreational services or

seasonal recreational equipment rental for the general public on federal lands.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors, applies to all contracts subject to the Service Contract Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is the victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

ALL OCCUPATIONS LISTED ABOVE RECEIVE THE FOLLOWING BENEFITS:

HEALTH & WELFARE: \$4.80 per hour, up to 40 hours per week, or \$192.00 per week or \$832.00 per month

HEALTH & WELFARE EO 13706: \$4.41 per hour, up to 40 hours per week, or \$176.40 per week, or \$764.40 per month\*

\*This rate is to be used only when compensating employees for performance on an SCA-covered contract also covered by EO 13706, Establishing Paid Sick Leave for Federal Contractors. A contractor may not receive credit toward its SCA obligations for any paid sick leave provided pursuant to EO 13706.

VACATION: 2 weeks paid vacation after 1 year of service with a contractor or successor, 3 weeks after 10 years, and 4 weeks after 15 years. Length of service includes the whole span of continuous service with the present contractor or successor, wherever employed, and with the predecessor contractors in the performance of similar work at the same Federal facility. (See 29 CFR 4.173)

HOLIDAYS: A minimum of eleven paid holidays per year: New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Juneteenth National Independence Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. (A contractor may substitute for any of the named holidays another day off with pay in accordance with a plan communicated to the employees involved.) (See 29 CFR 4.174)

THE OCCUPATIONS WHICH HAVE NUMBERED FOOTNOTES IN PARENTHESES RECEIVE THE FOLLOWING:

1) COMPUTER EMPLOYEES: This wage determination does not apply to any individual employed in a bona fide executive, administrative, or professional capacity, as defined in 29 C.F.R. Part 541. (See 41 C.F.R. 6701(3)). Because most Computer Systems Analysts and Computer Programmers who are paid at least \$27.63 per hour (or at least \$684 per week if paid on a salary or fee basis) likely qualify as exempt computer professionals under 29 U.S.C. 213(a)(1) and 29 U.S.C. 213(a)(17), this wage determination may not include wage rates for all occupations within those job families. In such instances, a conformance will be necessary if there are nonexempt employees in these job families working on the contract.

Job titles vary widely and change quickly in the computer industry, and are not determinative of whether an employee is an exempt computer professional. To be exempt, computer employees who satisfy the compensation requirements must also have a primary duty that consists of:

(1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;



(2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

(3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or

(4) A combination of the aforementioned duties, the performance of which requires the same level of skills. (29 C.F.R. 541.400).

Any computer employee who meets the applicable compensation requirements and the above duties test qualifies as an exempt computer professional under both section 13(a)(1) and section 13(a)(17) of the Fair Labor Standards Act. (Field Assistance Bulletin No. 2006-3 (Dec. 14, 2006)). Accordingly, this wage determination will not apply to any exempt computer employee regardless of which of these two exemptions is utilized.

2) AIR TRAFFIC CONTROLLERS AND WEATHER OBSERVERS - NIGHT PAY & SUNDAY PAY: If you work at night as part of a regular tour of duty, you will earn a night differential and receive an additional 10% of basic pay for any hours worked between 6pm and 6am. If you are a full-time employed (40 hours a week) and Sunday is part of your regularly scheduled workweek, you are paid at your rate of basic pay plus a Sunday premium of 25% of your basic rate for each hour of Sunday work which is not overtime (i.e. occasional work on Sunday outside the normal tour of duty is considered overtime work).

#### \*\* HAZARDOUS PAY DIFFERENTIAL \*\*

An 8 percent differential is applicable to employees employed in a position that represents a high degree of hazard when working with or in close proximity to ordnance, explosives, and incendiary materials. This includes work such as screening, blending, dying, mixing, and pressing of sensitive ordnance, explosives, and pyrotechnic compositions such as lead azide, black powder and photoflash powder. All dry-house activities involving propellants or explosives. Demilitarization, modification, renovation, demolition, and maintenance operations on sensitive ordnance, explosives and incendiary materials. All operations involving re-grading and cleaning of artillery ranges.

A 4 percent differential is applicable to employees employed in a position that represents a low degree of hazard when working with, or in close proximity to ordnance, (or employees possibly adjacent to) explosives and incendiary materials which involves potential injury such as laceration of hands, face, or arms of the employee engaged in the operation, irritation of the skin, minor burns and the like; minimal damage to immediate or adjacent work area or equipment being used. All operations involving, unloading, storage, and hauling of ordnance, explosive, and incendiary ordnance material other than small arms ammunition. These differentials are only applicable to work that has been specifically designated by the agency for ordnance, explosives, and incendiary material differential pay.

#### \*\* UNIFORM ALLOWANCE \*\*

If employees are required to wear uniforms in the performance of this contract (either by the terms of the Government contract, by the employer, by the state or local law, etc.), the cost of furnishing such uniforms and maintaining (by laundering or dry cleaning) such uniforms is an expense that may not be borne by an employee where such cost reduces the hourly rate below that required by the wage determination. The Department of Labor will accept payment in accordance with the following standards as compliance:

The contractor or subcontractor is required to furnish all employees with an adequate number of uniforms without cost or to reimburse employees for the actual cost of the uniforms. In addition, where uniform cleaning and maintenance is made the responsibility of the employee, all contractors and subcontractors subject to this wage determination shall (in the absence of a bona fide collective bargaining

agreement providing for a different amount, or the furnishing of contrary affirmative proof as to the actual cost), reimburse all employees for such cleaning and maintenance at a rate of \$3.35 per week (or \$.67 cents per day). However, in those instances where the uniforms furnished are made of "wash and wear" materials, may be routinely washed and dried with other personal garments, and do not require any special treatment such as dry cleaning, daily washing, or commercial laundering in order to meet the cleanliness or appearance standards set by the terms of the Government contract, by the contractor, by law, or by the nature of the work, there is no requirement that employees be reimbursed for uniform maintenance costs.

**\*\* SERVICE CONTRACT ACT DIRECTORY OF OCCUPATIONS \*\***

The duties of employees under job titles listed are those described in the "Service Contract Act Directory of Occupations", Fifth Edition (Revision 1), dated September 2015, unless otherwise indicated.

**\*\* REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND WAGE RATE, Standard Form 1444 (SF-1444) \*\***

**Conformance Process:**

The contracting officer shall require that any class of service employee which is not listed herein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination (See 29 CFR 4.6(b)(2)(i)). Such conforming procedures shall be initiated by the contractor prior to the performance of contract work by such unlisted class(es) of employees (See 29 CFR 4.6(b)(2)(ii)). The Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be paid to all employees performing in the classification from the first day of work on which contract work is performed by them in the classification. Failure to pay such unlisted employees the compensation agreed upon by the interested parties and/or fully determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract. (See 29 CFR 4.6(b)(2)(v)). When multiple wage determinations are included in a contract, a separate SF-1444 should be prepared for each wage determination to which a class(es) is to be conformed.

The process for preparing a conformance request is as follows:

- 1) When preparing the bid, the contractor identifies the need for a conformed occupation(s) and computes a proposed rate(s).
- 2) After contract award, the contractor prepares a written report listing in order the proposed classification title(s), a Federal grade equivalency (FGE) for each proposed classification(s), job description(s), and rationale for proposed wage rate(s), including information regarding the agreement or disagreement of the authorized representative of the employees involved, or where there is no authorized representative, the employees themselves. This report should be submitted to the contracting officer no later than 30 days after such unlisted class(es) of employees performs any contract work.
- 3) The contracting officer reviews the proposed action and promptly submits a report of the action, together with the agency's recommendations and pertinent information including the position of the contractor and the employees, to the U.S. Department of Labor, Wage and Hour Division, for review (See 29 CFR 4.6(b)(2)(ii)).
- 4) Within 30 days of receipt, the Wage and Hour Division approves, modifies, or disapproves the action via transmittal to the agency contracting officer, or notifies the contracting officer that additional time will be required to process the request.
- 5) The contracting officer transmits the Wage and Hour Division's decision to the

contractor.

6) Each affected employee shall be furnished by the contractor with a written copy of such determination or it shall be posted as a part of the wage determination (See 29 CFR 4.6(b)(2)(iii)).

Information required by the Regulations must be submitted on SF-1444 or bond paper.

When preparing a conformance request, the ""Service Contract Act Directory of Occupations"" should be used to compare job definitions to ensure that duties requested are not performed by a classification already listed in the wage determination. Remember, it is not the job title, but the required tasks that determine whether a class is included in an established wage determination. Conformances may not be used to artificially split, combine, or subdivide classifications listed in the wage determination (See 29 CFR 4.152(c)(1))."