

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
PROCUREMENT
P.O. BOX 30026, LANSING, MI 48909
OR
525 W. ALLEGAN, LANSING, MI 48933

NOTICE OF CONTRACT NO. 472B5500083
between
THE STATE OF MICHIGAN
and

| NAME & ADDRESS OF CONTRACTOR | PRIMARY CONTACT | EMAIL |
|--------------------------------------------------------------------------------|-----------------|--------------------------------------------|
| Private Label Enterprises, Inc. 14037 Vanowen Street Van Nuyes, CA 91405 | John Charchian | pl@privatelabeloptical.com |
| | PHONE | VENDOR TAX ID # (LAST FOUR DIGITS ONLY) |
| | (818) 909-9777 | 4232 |

| STATE CONTACTS | AGENCY | NAME | PHONE | EMAIL |
|------------------------|-------------|----------------|-------------------------------|----------------------|
| PROGRAM MANAGER | Corrections | Matthew Yeager | (517) 265-3900 ext 2653310 | YeagerM@michigan.gov |
| CONTRACT ADMINISTRATOR | Corrections | Cathy Carr | (517-241-2192 | CarrC@michigan.gov |

| CONTRACT SUMMARY | | | | |
|-------------------------------------------------------------------------------------------------------------|----------------|-------------------------|---------------------------------------------------------------------|--|
| DESCRIPTION: Optical Lenses - MSI | | | | |
| INITIAL TERM | EFFECTIVE DATE | INITIAL EXPIRATION DATE | AVAILABLE OPTIONS | |
| Three year | July 6, 2015 | July 5, 2018 | Two - one year | |
| PAYMENT TERMS | F.O.B. | SHIPPED TO | | |
| Net 30 | Destination | Adrian, Michigan | | |
| ALTERNATE PAYMENT OPTIONS | | | EXTENDED PURCHASING | |
| <input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other | | | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |
| MINIMUM DELIVERY REQUIREMENTS: | | | | |
| None | | | | |
| MISCELLANEOUS INFORMATION: | | | | |
| Delivery requirement is 14 days ARO. | | | | |
| ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION: | | \$186,754.00 | | |

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #047215B0003998. Orders for delivery will be issued directly by the Department of Corrections through the issuance of a Purchase Order Form



STATE OF MICHIGAN
Department of Corrections
Procurement

472B5500083
Optical Lenses for Eye Glasses

The Contractor guarantees every lens for accuracy, and each lens is protected by warranty against manufacturer defects. Each lens is also guaranteed to be first quality.

1.6. Incentives

The Contractor may offer seasonal sales or volume discounts.

1.7. Return Policy and Procedure

The State should call 800-423-5426 and let the Contractor Representative know of incorrect or defective lens(es). The Contractor Representative will issue a return authorization number, which will need to be written on the outside of the return envelope. The Contractor will then send a FedEx Ground package label for the return of the lenses. The Contractor will issue a credit for the damaged or incorrect lens upon receipt.

2. Service Levels

2.1. Time Frames

All Contract Activities must be delivered within 14 calendar days from receipt of order. The receipt of order date is pursuant to Section 2, Notices provisions of the Standard Contract.

The Contractor guarantees that every order will be delivered in 14 calendar days or less. If delays due to weather, holidays or other causes are anticipated that would make the order late, the Contractor will expedite the delivery to second day air to ensure on time delivery.

2.2. Delivery

Deliveries will be accepted 9:00 a.m. through 2:30 p.m., Monday through Friday, excluding State of Michigan Holidays. The State will provide the Contractor with a calendar of State holidays upon request. Delivery will be made at:

Michigan Department of Corrections
Optical Factory
Gus Harrison Correctional Facility
2727 E. Beecher St.
Adrian, MI 49221

The Contractor is responsible for delivering the product to the location specified in the Purchase Order. Delivery to any other facility or warehouse will not be accepted, unless approved by the State Contract Administrator prior to delivery. The State reserves the right to require that delivery be made directly to the factory which is located inside a correctional facility.

The Contractor should be aware that there is a possibility of a delay at any of the correctional facilities which prohibits delivery carriers entering the facility at time of arrival. The State will not be responsible for any additional charges which may arise due to delivery delays caused by a mobilization or any other reason.

2.3. Reporting

The Contractor will provide various reports to the Program Manager, or designee, upon request. Examples may include itemized reports of total items purchased by the State, open invoice reports, delivery compliance reports, quality reports and service compliance reports.

2.4. Meetings

The State may request meetings as it deems appropriate.

3. Staffing

3.1. Contractor Representative

The Contractor Representative, specifically assigned to State of Michigan accounts, that will respond to State inquiries regarding the Contract Activities, answering questions related to ordering and delivery, etc. is John Charchian, General Manager. The Contractor Representative is physically located at

Detect and Respond to Prison Rape, effective August 20, 2012 at <http://www.gpo.gov/fdsys/pkg/FR-2012-06-20/pdf/2012-12427.pdf>. See attached PREA standards (Attachment A). If the Contractor does not abide by these standards, it will be considered a breach of Contract.

4. Pricing

4.1. Price Term

Pricing is firm for a 365 day period ("Pricing Period"). The first pricing period begins on the Effective Date of the Contract. Adjustments may be requested, in writing, by either party and will take effect no earlier than the next Pricing Period.

The Contractor must deliver all Contract Activities "F.O.B. Destination, within Government Premises" with transportation charges included in the unit price on all orders that meet the minimum order requirement specified in Section 1.2, Minimum Order. The State will not pay any freight.

4.2. Price Changes

Adjustments will be based on changes in actual Contractor costs. Any request must be supported by written evidence documenting the change in costs. The State may consider sources, such as the Consumer Price Index; Producer Price Index; other pricing indices as needed; economic and industry data; manufacturer or supplier letters noting the increase in pricing; and any other data the State deems relevant.

Following the presentation of supporting documentation, both parties will have 30 days to review the information and prepare a written response. If the review reveals no need for modifications, pricing will remain unchanged unless mutually agreed to by the parties. If the review reveals that changes are needed, both parties will negotiate such changes, for no longer than 30 days, unless extended by mutual agreement.

The Contractor remains responsible for Contract Activities at the current price for all orders received before the mutual execution of a Change Notice indicating the start date of the new Pricing Period.

5. Ordering

5.1. Authorizing Document

The appropriate authorizing document for the Contract will be a purchase order released from the contract. The Contractor is not authorized to begin performance until receipt of a purchase order.

5.2. Order Verification

The Contractor will verify the purchaser is listed as an authorized user by MDOC. The Contractor will contact MDOC/MSI by email or phone to verify the order details of all orders, including lens power, quantities, lens type, a patient name/DOC number (if given), and any other instructions listed on the order.

6. Delivery

6.1. Delivery Programs

The contract Contractor generally ships via FedEx Ground. Delivery service is generally four business days. Orders will ship the same day they are received as long as the order is received by 5:00 PM Eastern time.

6.2. Packaging and Palletizing

Contractor will package lenses in boxes that hold 40 pair of lenses. Boxes will be bundled together by straps, three boxes at a time.

The State prefers to purchase products that do not contain brominated flame retardants (BFRs) whenever possible. The Contractor must disclose whether the products contain BFRs.

The products do not contain brominated flame retardants (BFRs).

9.5. Reserved

| | | | | |
|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|-------|---------|
| 6 | OPTICAL LENS, FINISHED SINGLE VISION, POLYCARBONATE INDUSTRIAL THICKNESS TO ANSI Z87.1 STANDARDS, COMPOUND CYLINDER, POWER RANGE SPHERE +4.00 TO -5.00 WITH 2.00 DIOPTER CYLINDER ALL IN 0.25 DIOPTER INCREMENT COMBINATIONS, 65MM - 80MM SIZES OUTSIDE THIS RANGE WILL NOT BE ACCEPTED, TINTABLE. | PAIR | 2,100 | \$4.08 |
| 7 | OPTICAL LENS, SEMI-FINISHED, POLYCARBONATE, FLAT TOP 28, ALL AVAILABLE BASES, +1.00 - +3.00 ADD, PLANO, 65MM - 80MM SIZES OUTSIDE THIS RANGE WILL NOT BE ACCEPTED. | PAIR | 3,000 | \$6.12 |
| 8 | OPTICAL LENS, SEMI-FINISHED, PLASTIC, FLAT TOP 7X28, ALL AVAILABLE BASES AND ADD POWERS, 65MM - 80MM SIZES OUTSIDE THIS RANGE WILL NOT BE ACCEPTED. | PAIR | 500 | \$4.38 |
| 9 | OPTICAL LENS, SEMI-FINISHED AND FINISHED, PLASTIC, SINGLE VISION, NEXT GENERATION TRANSITIONS, CR-39, 65MM - 80MM SIZES OUTSIDE THIS RANGE WILL NOT BE ACCEPTED | PAIR | 1,000 | \$16.20 |
| 10 | OPTICAL LENS, SEMI-FINISHED, PLASTIC, FLAT TOP 28, NEXT GENERATION TRANSITION ALL AVAILABLE BASES AND ADDS, CR-39, 65MM - 80MM SIZES OUTSIDE THIS RANGE WILL NOT BE ACCEPTED . | PAIR | 1,000 | \$19.80 |
| 11 | OPTICAL LENS, SEMI-FINISHED, PLASTIC, FLAT TOP 7X28, NEXT GENERATION TRANSITIONS ALL AVAILABLE BASES AND ADDS, CR-39, 65MM - 80MM SIZES OUTSIDE THIS RANGE WILL NOT BE ACCEPTED. | PAIR | 500 | \$42.00 |
| 12 | OPTICAL LENS, SEMI-FINISHED, SINGLE VISION, POLYCARBONATE, ALL AVAILABLE BASES, STANDARD THICKNESS, PLANO, 65MM - 80MM SIZES OUTSIDE THIS RANGE WILL NOT BE ACCEPTED | PAIR | 3,000 | \$3.78 |
| 13 | OPTICAL LENS, FINISHED, SINGLE VISION, POLARIZED GRAY A, B AND C, PLASTIC, CR-39, 65MM - 80MM SIZES OUTSIDE THIS RANGE WILL NOT BE ACCEPTED . | PAIR | 100 | \$9.98 |
| 14 | OPTICAL LENS, FINISHED, SINGLE VISION, PLASTIC, POLARIZED LIGHT BROWN, CR-39, 65MM - 80MM SIZES OUTSIDE THIS RANGE WILL NOT BE ACCEPTED. | PAIR | 100 | \$12.50 |

The above quantities are estimates only. The State is not required or obligated to purchase the above estimated quantities.

| | |
|----------------|--|
| (517) 241-2192 | |
|----------------|--|

3. **Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms and conditions of this Contract (each a "Contract Administrator"):

| | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| If to State: Cathy Carr, Buyer Michigan Department of Corrections Grandview Plaza, 5 th Floor PO Box 30003 Lansing, MI 48909 CarrC@michigan.gov (517) 241-2192 | If to Contractor: Rosalina Llamas Private Label Enterprises, Inc. 14037 Vanowen Street Van Nuyes, CA 91405 gov@privatelabeloptical.com (818) 909-9777 Copy to: Copy to: Jason Schloss, The Castle Group (consultants) 70 Pennington Drive, Suite 16-J Bluffton, SC 29910 E-mail: jason@thecastlegroup.us Phone: 843-350-4003 |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

4. **Program Manager.** The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a "Program Manager"):

| | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| If to State: Matt Yeager, Optical Trades Instructor Michigan Department of Corrections MSI Optical Factory Gus Harrison Correctional Facility 2727 E. Beecher St. Adrian, MI 49221 YeagerM@michigan.gov (517) 265-3900 ext 2653307 | If to Contractor: John Charchian Private Label Enterprises, Inc. 14037 Vanowen Street Van Nuyes, CA 91405 pl@privatelabeloptical.com (818) 909-9777 |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

5. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in Exhibit A) if, in the opinion of the State, it will ensure performance of the Contract.
6. **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by an company with an A.M. Best rating of "A" or better and a financial size of VII or better.

| Insurance Type | Additional Requirements |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Commercial General Liability Insurance | |
| <u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations <u>Deductible Maximum:</u> | Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 04; (2) include a |

13. **Assignment.** Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation, provide all necessary documentation and signatures, and continue to perform, with the third party, its obligations under the Contract.
14. **Change of Control.** Contractor will notify, at least 90 calendar days before the effective date, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.

15. **Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in Exhibit A.
16. **Acceptance.** Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("State Review Period"), unless otherwise provided in Exhibit A. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted, but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 23, Termination for Cause.

Within 10 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third party identified by the State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

17. **Delivery.** Contractor must deliver all Contract Activities F.O.B. destination, within the State premises with transportation and handling charges paid by Contractor, unless otherwise specified in Exhibit A. All containers and packaging becomes the State's exclusive property upon acceptance.
18. **Risk of Loss and Title.** Until final acceptance, title and risk of loss or damage to Contract Activities remains with Contractor. Contractor is responsible for filing, processing, and collecting all damage claims. The State will record and report to Contractor any evidence of visible damage. If the State rejects the Contract Activities, Contractor must remove them from the premises within 10 calendar days after notification of rejection. The risk of loss of rejected or non-conforming Contract Activities remains with Contractor. Rejected Contract Activities not removed by Contractor within 10 calendar days will be deemed abandoned by Contractor, and the State will have the right to dispose of it as its own property. Contractor must reimburse the State for costs and expenses incurred in storing or effecting removal or disposition of rejected Contract Activities.
19. **Warranty Period.** The warranty period, if applicable, for Contract Activities is a fixed period commencing on the date specified in Exhibit A. If the Contract Activities do not function as warranted during the warranty period the State may return such non-conforming Contract Activities to the Contractor for a full refund.

25. **Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "Transition Responsibilities"). This Contract will automatically be extended through the end of the transition period.

26. **General Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if the State deems necessary. Contractor will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

27. **Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

28. **Limitation of Liability.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.

29. **Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "Proceeding") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's

- e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any non-State Data Confidential Information is not feasible, such party must destroy the non-State Data Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party.

33. Reserved.

34. Reserved.

35. Reserved

36. **Records Maintenance, Inspection, Examination, and Audit.** The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain, and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 7 years after the latter of termination, expiration, or final payment under this Contract or any extension ("Audit Period"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

37. **Warranties and Representations.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; and (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 23, Termination for Cause.
38. **Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.
39. **Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.

40. Reserved

52. Survival. The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.

53. Entire Contract and Modification. This Contract is the entire agreement and replaces all previous agreements between the parties for the Contract Activities. This Contract may not be amended except by signed agreement between the parties (a "Contract Change Notice").

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§ 115.5 General definitions.

For purposes of this part, the term—

Agency means the unit of a State, local, corporate, or nonprofit authority, or of the Department of Justice, with direct responsibility for the operation of any facility that confines inmates, detainees, or residents, including the implementation of policy as set by the governing, corporate, or nonprofit authority.

Agency head means the principal official of an agency.

Community confinement facility means a community treatment center, halfway house, restitution center, mental health facility, alcohol or drug rehabilitation center, or other community correctional facility (including residential re-entry centers), other than a juvenile facility, in which individuals reside as part of a term of imprisonment or as a condition of pre-trial release or post-release supervision, while participating in gainful employment, employment search efforts, community service, vocational training, treatment, educational programs, or similar facility-approved programs during nonresidential hours.

Contractor means a person who provides services on a recurring basis pursuant to a contractual agreement with the agency.

Detainee means any person detained in a lockup, regardless of adjudication status.

Direct staff supervision means that security staff are in the same room with, and within reasonable hearing distance of, the resident or inmate.

Employee means a person who works directly for the agency or facility.

Exigent circumstances means any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security or institutional order of a facility.

Facility means a place, institution, building (or part thereof), set of buildings, structure, or area (whether or not enclosing a building or set of buildings) that is used by an agency for the confinement of individuals.

Facility head means the principal official of a facility.

Full compliance means compliance with all material requirements of each standard except for *de minimis* violations, or discrete and temporary violations during otherwise sustained periods of compliance.

Gender nonconforming means a person whose appearance or manner does not conform to traditional societal gender expectations.

Inmate means any person incarcerated or detained in a prison or jail.

Intersex means a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development.

Strip search means a search that requires a person to remove or arrange some or all clothing so as to permit a visual inspection of the person's breasts, buttocks, or genitalia.

Transgender means a person whose gender identity (*i.e.*, internal sense of feeling male or female) is different from the person's assigned sex at birth.

Substantiated allegation means an allegation that was investigated and determined to have occurred.

Unfounded allegation means an allegation that was investigated and determined not to have occurred.

Unsubstantiated allegation means an allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.

Volunteer means an individual who donates time and effort on a recurring basis to enhance the activities and programs of the agency.

Youthful inmate means any person under the age of 18 who is under adult court supervision and incarcerated or detained in a prison or jail.

Youthful detainee means any person under the age of 18 who is under adult court supervision and detained in a lockup.

§ 115.6 Definitions related to sexual abuse.

For purposes of this part, the term—

Sexual abuse includes—

- (1) Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident; and
- (2) Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer.

Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:

- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (2) Contact between the mouth and the penis, vulva, or anus;
- (3) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and
- (4) Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer includes any of the following acts, with or without consent of the inmate, detainee, or resident:

- (1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;
- (2) Contact between the mouth and the penis, vulva, or anus;

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| <i>Prevention Planning</i> |
| <i>§ 115.11 Zero tolerance of sexual abuse and sexual harassment; PREA coordinator.</i> |
| (a) An agency shall have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the agency's approach to preventing, detecting, and responding to such conduct. |
| (b) An agency shall employ or designate an upper-level, agency-wide PREA coordinator with sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA standards in all of its facilities. |
| (c) Where an agency operates more than one facility, each facility shall designate a PREA compliance manager with sufficient time and authority to coordinate the facility's efforts to comply with the PREA standards. |
| <i>Prevention Planning</i> |
| <i>§ 115.12 Contracting with other entities for the confinement of inmates.</i> |
| (a) A public agency that contracts for the confinement of its inmates with private agencies or other entities, including other government agencies, shall include in any new contract or contract renewal the entity's obligation to adopt and comply with the PREA standards. |
| (b) Any new contract or contract renewal shall provide for agency contract monitoring to ensure that the contractor is complying with the PREA standards. |
| <i>Prevention Planning</i> |
| <i>§ 115.13 Supervision and monitoring.</i> |
| (a) The agency shall ensure that each facility it operates shall develop, document, and make its best efforts to comply on a regular basis with a staffing plan that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect inmates against sexual abuse. In calculating adequate staffing levels and determining the need for video monitoring, facilities shall take into consideration: <ol style="list-style-type: none"> (1) Generally accepted detention and correctional practices; (2) Any judicial findings of inadequacy; (3) Any findings of inadequacy from Federal investigative agencies; (4) Any findings of inadequacy from internal or external oversight bodies; (5) All components of the facility's physical plant (including "blind-spots" or areas where staff or inmates may be isolated); (6) The composition of the inmate population; (7) The number and placement of supervisory staff; (8) Institution programs occurring on a particular shift; (9) Any applicable State or local laws, regulations, or standards; (10) The prevalence of substantiated and unsubstantiated incidents of sexual abuse; and (11) Any other relevant factors. |
| (b) In circumstances where the staffing plan is not complied with, the facility shall document and justify all deviations from the plan. |
| (c) Whenever necessary, but no less frequently than once each year, for each facility the agency operates, in consultation with the PREA coordinator required by § 115.11, the agency shall assess, determine, and document whether adjustments are needed to: <ol style="list-style-type: none"> (1) The staffing plan established pursuant to paragraph (a) of this section; (2) The facility's deployment of video monitoring systems and other monitoring technologies; and (3) The resources the facility has available to commit to ensure adherence to the staffing plan. |
| (d) Each agency operating a facility shall implement a policy and practice of having intermediate-level or higher-level supervisors conduct and document unannounced rounds to identify and deter staff sexual |

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| <i>Prevention Planning</i> <i>§ 115.14 Youthful inmates.</i> |
| (a) A youthful inmate shall not be placed in a housing unit in which the youthful inmate will have sight, sound, or physical contact with any adult inmate through use of a shared dayroom or other common space, shower area, or sleeping quarters. |
| (b) In areas outside of housing units, agencies shall either: (1) maintain sight and sound separation between youthful inmates and adult inmates, or (2) provide direct staff supervision when youthful inmates and adult inmates have sight, sound, or physical contact. |
| (c) Agencies shall make best efforts to avoid placing youthful inmates in isolation to comply with this provision. Absent exigent circumstances, agencies shall not deny youthful inmates daily large-muscle exercise and any legally required special education services to comply with this provision. Youthful inmates shall also have access to other programs and work opportunities to the extent possible. |
| <i>Prevention Planning</i> <i>§ 115.15 Limits to cross-gender viewing and searches.</i> |
| (a) The facility shall not conduct cross-gender strip searches or cross-gender visual body cavity searches (meaning a search of the anal or genital opening) except in exigent circumstances or when performed by medical practitioners. |
| (b) As of [INSERT DATE 3 YEARS PLUS 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], or [INSERT DATE 5 YEARS PLUS 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] for a facility whose rated capacity does not exceed 50 inmates, the facility shall not permit cross-gender pat-down searches of female inmates, absent exigent circumstances. Facilities shall not restrict female inmates' access to regularly available programming or other out-of-cell opportunities in order to comply with this provision. |
| (c) The facility shall document all cross-gender strip searches and cross-gender visual body cavity searches, and shall document all cross-gender pat-down searches of female inmates. |
| (d) The facility shall implement policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering an inmate housing unit. |
| (e) The facility shall not search or physically examine a transgender or intersex inmate for the sole purpose of determining the inmate's genital status. If the inmate's genital status is unknown, it may be determined during conversations with the inmate, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner. |
| (f) The agency shall train security staff in how to conduct cross-gender pat-down searches, and searches of transgender and intersex inmates, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs. |
| <i>Prevention Planning</i> <i>§ 115.16 Inmates with disabilities and inmates who are limited English proficient.</i> |
| (a) The agency shall take appropriate steps to ensure that inmates with disabilities (including, for example, inmates who are deaf or hard of hearing, those who are blind or have low vision, or those who have intellectual, psychiatric, or speech disabilities), have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment. Such steps shall include, when necessary to ensure effective communication with inmates |

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| employer for whom such employee has applied to work. |
| <i>Prevention Planning</i> <i>§ 115.18 Upgrades to facilities and technologies.</i> |
| (a) When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the agency shall consider the effect of the design, acquisition, expansion, or modification upon the agency's ability to protect inmates from sexual abuse. |
| (b) When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, the agency shall consider how such technology may enhance the agency's ability to protect inmates from sexual abuse. |
| <i>Responsive Planning</i> <i>§ 115.21 Evidence protocol and forensic medical examinations.</i> |
| (a) To the extent the agency is responsible for investigating allegations of sexual abuse, the agency shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions. |
| (b) The protocol shall be developmentally appropriate for youth where applicable, and, as appropriate, shall be adapted from or otherwise based on the most recent edition of the U.S. Department of Justice's Office on Violence Against Women publication, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents," or similarly comprehensive and authoritative protocols developed after 2011. |
| (c) The agency shall offer all victims of sexual abuse access to forensic medical examinations, whether on-site or at an outside facility, without financial cost, where evidentiarily or medically appropriate. Such examinations shall be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. The agency shall document its efforts to provide SAFEs or SANEs. |
| (d) The agency shall attempt to make available to the victim a victim advocate from a rape crisis center. If a rape crisis center is not available to provide victim advocate services, the agency shall make available to provide these services a qualified staff member from a community-based organization, or a qualified agency staff member. Agencies shall document efforts to secure services from rape crisis centers. For the purpose of this standard, a rape crisis center refers to an entity that provides intervention and related assistance, such as the services specified in 42 U.S.C. 14043g(b)(2)(C), to victims of sexual assault of all ages. The agency may utilize a rape crisis center that is part of a governmental unit as long as the center is not part of the criminal justice system (such as a law enforcement agency) and offers a comparable level of confidentiality as a nongovernmental entity that provides similar victim services. |
| (e) As requested by the victim, the victim advocate, qualified agency staff member, or qualified community-based organization staff member shall accompany and support the victim through the forensic medical examination process and investigatory interviews and shall provide emotional support, crisis intervention, information, and referrals. |
| (f) To the extent the agency itself is not responsible for investigating allegations of sexual abuse, the agency shall request that the investigating agency follow the requirements of paragraphs (a) through (e) of this section. |
| (g) The requirements of paragraphs (a) through (f) of this section shall also apply to: (1) Any State entity outside of the agency that is responsible for investigating allegations of sexual abuse in prisons or jails; and (2) Any Department of Justice component that is responsible for investigating allegations of sexual abuse in prisons or jails. |
| (h) For the purposes of this section, a qualified agency staff member or a qualified community-based staff member shall be an individual who has been screened for appropriateness to serve in this role and has |

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| <p>trained on their responsibilities under the agency's sexual abuse and sexual harassment prevention, detection, and response policies and procedures.</p> |
| <p>(b) The level and type of training provided to volunteers and contractors shall be based on the services they provide and level of contact they have with inmates, but all volunteers and contractors who have contact with inmates shall be notified of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and informed how to report such incidents.</p> |
| <p>(c) The agency shall maintain documentation confirming that volunteers and contractors understand the training they have received.</p> |
| <p style="text-align: center;"><i>Training and Education</i> <i>§ 115.33 Inmate education.</i></p> |
| <p>(a) During the intake process, inmates shall receive information explaining the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment.</p> |
| <p>(b) Within 30 days of intake, the agency shall provide comprehensive education to inmates either in person or through video regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and regarding agency policies and procedures for responding to such incidents.</p> |
| <p>(c) Current inmates who have not received such education shall be educated within one year of the effective date of the PREA standards, and shall receive education upon transfer to a different facility to the extent that the policies and procedures of the inmate's new facility differ from those of the previous facility.</p> |
| <p>(d) The agency shall provide inmate education in formats accessible to all inmates, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled, as well as to inmates who have limited reading skills.</p> |
| <p>(e) The agency shall maintain documentation of inmate participation in these education sessions.</p> |
| <p>(f) In addition to providing such education, the agency shall ensure that key information is continuously and readily available or visible to inmates through posters, inmate handbooks, or other written formats.</p> |
| <p style="text-align: center;"><i>Training and Education</i> <i>§ 115.34 Specialized training: Investigations.</i></p> |
| <p>(a) In addition to the general training provided to all employees pursuant to § 115.31, the agency shall ensure that, to the extent the agency itself conducts sexual abuse investigations, its investigators have received training in conducting such investigations in confinement settings.</p> |
| <p>(b) Specialized training shall include techniques for interviewing sexual abuse victims, proper use of Miranda and Garrity warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral.</p> |
| <p>(c) The agency shall maintain documentation that agency investigators have completed the required specialized training in conducting sexual abuse investigations.</p> |
| <p>(d) Any State entity or Department of Justice component that investigates sexual abuse in confinement settings shall provide such training to its agents and investigators who conduct such investigations.</p> |
| <p style="text-align: center;"><i>Training and Education</i> <i>§ 115.35 Specialized training: Medical and mental health care.</i></p> |
| <p>(a) The agency shall ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in:</p> <ol style="list-style-type: none"> (1) How to detect and assess signs of sexual abuse and sexual harassment; (2) How to preserve physical evidence of sexual abuse; (3) How to respond effectively and professionally to victims of sexual abuse and sexual harassment; and (4) How and to whom to report allegations or suspicions of sexual abuse and sexual harassment. |
| <p>(b) If medical staff employed by the agency conduct forensic examinations, such medical staff shall</p> |

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| present management or security problems. |
| (d) Placement and programming assignments for each transgender or intersex inmate shall be reassessed at least twice each year to review any threats to safety experienced by the inmate. |
| (e) A transgender or intersex inmate's own views with respect to his or her own safety shall be given serious consideration. |
| (f) Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates. |
| (g) The agency shall not place lesbian, gay, bisexual, transgender, or intersex inmates in dedicated facilities, units, or wings solely on the basis of such identification or status, unless such placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such inmates. |
| <i>Screening for Risk of Sexual Victimization and Abusiveness</i> <i>§ 115.43 Protective custody.</i> |
| (a) Inmates at high risk for sexual victimization shall not be placed in involuntary segregated housing unless an assessment of all available alternatives has been made, and a determination has been made that there is no available alternative means of separation from likely abusers. If a facility cannot conduct such an assessment immediately, the facility may hold the inmate in involuntary segregated housing for less than 24 hours while completing the assessment. |
| (b) Inmates placed in segregated housing for this purpose shall have access to programs, privileges, education, and work opportunities to the extent possible. If the facility restricts access to programs, privileges, education, or work opportunities, the facility shall document: (1) The opportunities that have been limited; (2) The duration of the limitation; and (3) The reasons for such limitations. |
| (c) The facility shall assign such inmates to involuntary segregated housing only until an alternative means of separation from likely abusers can be arranged, and such an assignment shall not ordinarily exceed a period of 30 days. |
| (d) If an involuntary segregated housing assignment is made pursuant to paragraph (a) of this section, the facility shall clearly document: (1) The basis for the facility's concern for the inmate's safety; and (2) The reason why no alternative means of separation can be arranged. |
| (e) Every 30 days, the facility shall afford each such inmate a review to determine whether there is a continuing need for separation from the general population. |

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| <p>also require the alleged victim to personally pursue any subsequent steps in the administrative remedy process.</p> <p>(3) If the inmate declines to have the request processed on his or her behalf, the agency shall document the inmate's decision.</p> |
| <p>(f)(1) The agency shall establish procedures for the filing of an emergency grievance alleging that an inmate is subject to a substantial risk of imminent sexual abuse.</p> <p>(2) After receiving an emergency grievance alleging an inmate is subject to a substantial risk of imminent sexual abuse, the agency shall immediately forward the grievance (or any portion thereof that alleges the substantial risk of imminent sexual abuse) to a level of review at which immediate corrective action may be taken, shall provide an initial response within 48 hours, and shall issue a final agency decision within 5 calendar days. The initial response and final agency decision shall document the agency's determination whether the inmate is in substantial risk of imminent sexual abuse and the action taken in response to the emergency grievance.</p> |
| <p>(g) The agency may discipline an inmate for filing a grievance related to alleged sexual abuse only where the agency demonstrates that the inmate filed the grievance in bad faith.</p> |
| <p><i>Reporting</i></p> <p><i>§ 115.53 Inmate access to outside confidential support services.</i></p> |
| <p>(a) The facility shall provide inmates with access to outside victim advocates for emotional support services related to sexual abuse by giving inmates mailing addresses and telephone numbers, including toll-free hotline numbers where available, of local, State, or national victim advocacy or rape crisis organizations, and, for persons detained solely for civil immigration purposes, immigrant services agencies. The facility shall enable reasonable communication between inmates and these organizations and agencies, in as confidential a manner as possible.</p> |
| <p>(b) The facility shall inform inmates, prior to giving them access, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws.</p> |
| <p>(c) The agency shall maintain or attempt to enter into memoranda of understanding or other agreements with community service providers that are able to provide inmates with confidential emotional support services related to sexual abuse. The agency shall maintain copies of agreements or documentation showing attempts to enter into such agreements.</p> |
| <p><i>Reporting</i></p> <p><i>§ 115.54 Third-party reporting.</i></p> |
| <p>The agency shall establish a method to receive third-party reports of sexual abuse and sexual harassment and shall distribute publicly information on how to report sexual abuse and sexual harassment on behalf of an inmate.</p> |
| <p><i>Official Response Following an Inmate Report</i></p> <p><i>§ 115.61 Staff and agency reporting duties.</i></p> |
| <p>(a) The agency shall require all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the agency; retaliation against inmates or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.</p> |
| <p>(b) Apart from reporting to designated supervisors or officials, staff shall not reveal any information related to a sexual abuse report to anyone other than to the extent necessary, as specified in agency policy, to make treatment, investigation, and other security and management decisions.</p> |
| <p>(c) Unless otherwise precluded by Federal, State, or local law, medical and mental health practitioners shall be required to report sexual abuse pursuant to paragraph (a) of this section and to inform inmates of the practitioner's duty to report, and the limitations of confidentiality, at the initiation of services.</p> |

(1) The conduct of the disciplinary process, as long as such agreements are not inconsistent with the provisions of §§ 115.72 and 115.76; or

(2) Whether a no-contact assignment that is imposed pending the outcome of an investigation shall be expunged from or retained in the staff member's personnel file following a determination that the allegation of sexual abuse is not substantiated.

*Official Response Following an Inmate Report
§ 115.67 Agency protection against retaliation.*

(a) The agency shall establish a policy to protect all inmates and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other inmates or staff, and shall designate which staff members or departments are charged with monitoring retaliation.

(b) The agency shall employ multiple protection measures, such as housing changes or transfers for inmate victims or abusers, removal of alleged staff or inmate abusers from contact with victims, and emotional support services for inmates or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations.

(c) For at least 90 days following a report of sexual abuse, the agency shall monitor the conduct and treatment of inmates or staff who reported the sexual abuse and of inmates who were reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by inmates or staff, and shall act promptly to remedy any such retaliation. Items the agency should monitor include any inmate disciplinary reports, housing, or program changes, or negative performance reviews or reassignments of staff. The agency shall continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need.

(d) In the case of inmates, such monitoring shall also include periodic status checks.

(e) If any other individual who cooperates with an investigation expresses a fear of retaliation, the agency shall take appropriate measures to protect that individual against retaliation.

(f) An agency's obligation to monitor shall terminate if the agency determines that the allegation is unfounded.

*Official Response Following an Inmate Report
§ 115.68 Post-allegation protective custody.*

Any use of segregated housing to protect an inmate who is alleged to have suffered sexual abuse shall be subject to the requirements of § 115.43.

*Investigations
§ 115.71 Criminal and administrative agency investigations.*

(a) When the agency conducts its own investigations into allegations of sexual abuse and sexual harassment, it shall do so promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reports.

(b) Where sexual abuse is alleged, the agency shall use investigators who have received special training in sexual abuse investigations pursuant to § 115.34.

(c) Investigators shall gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.

(d) When the quality of evidence appears to support criminal prosecution, the agency shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.

(e) The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as inmate or staff. No agency shall require an inmate who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for

§ 115.76 Disciplinary sanctions for staff.

(a) Staff shall be subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies.

(b) Termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual abuse.

(c) Disciplinary sanctions for violations of agency policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) shall be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories.

(d) All terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.

Discipline

§ 115.77 Corrective action for contractors and volunteers.

(a) Any contractor or volunteer who engages in sexual abuse shall be prohibited from contact with inmates and shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies.

(b) The facility shall take appropriate remedial measures, and shall consider whether to prohibit further contact with inmates, in the case of any other violation of agency sexual abuse or sexual harassment policies by a contractor or volunteer.

Discipline

§ 115.78 Disciplinary sanctions for inmates.

(a) Inmates shall be subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative finding that the inmate engaged in inmate-on-inmate sexual abuse or following a criminal finding of guilt for inmate-on-inmate sexual abuse.

(b) Sanctions shall be commensurate with the nature and circumstances of the abuse committed, the inmate's disciplinary history, and the sanctions imposed for comparable offenses by other inmates with similar histories.

(c) The disciplinary process shall consider whether an inmate's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed.

(d) If the facility offers therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for the abuse, the facility shall consider whether to require the offending inmate to participate in such interventions as a condition of access to programming or other benefits.

(e) The agency may discipline an inmate for sexual contact with staff only upon a finding that the staff member did not consent to such contact.

(f) For the purpose of disciplinary action, a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred shall not constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation.

(g) An agency may, in its discretion, prohibit all sexual activity between inmates and may discipline inmates for such activity. An agency may not, however, deem such activity to constitute sexual abuse if it determines that the activity is not coerced.

Medical and Mental Care

§ 115.81 Medical and mental health screenings; history of sexual abuse.

(a) If the screening pursuant to § 115.41 indicates that a prison inmate has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, staff shall ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening.

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| health practitioners. |
| <i>Data Collection and Review</i> <i>§ 115.86 Sexual abuse incident reviews.</i> |
| (a) The facility shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded. |
| (b) Such review shall ordinarily occur within 30 days of the conclusion of the investigation. |
| (c) The review team shall include upper-level management officials, with input from line supervisors, investigators, and medical or mental health practitioners. |
| (d) The review team shall: (1) Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse; (2) Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility; (3) Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse; (4) Assess the adequacy of staffing levels in that area during different shifts; (5) Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and (6) Prepare a report of its findings, including but not necessarily limited to determinations made pursuant to paragraphs (d)(1)-(d)(5) of this section, and any recommendations for improvement and submit such report to the facility head and PREA compliance manager. |
| (e) The facility shall implement the recommendations for improvement, or shall document its reasons for not doing so. |
| <i>Data Collection and Review</i> <i>§ 115.87 Data collection.</i> |
| (a) The agency shall collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions. |
| (b) The agency shall aggregate the incident-based sexual abuse data at least annually. |
| (c) The incident-based data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the Department of Justice. |
| (d) The agency shall maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews. |
| (e) The agency also shall obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its inmates. |
| (f) Upon request, the agency shall provide all such data from the previous calendar year to the Department of Justice no later than June 30. |
| <i>Data Collection and Review</i> <i>§ 115.88 Data review for corrective action.</i> |
| (a) The agency shall review data collected and aggregated pursuant to § 115.87 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including by: (1) Identifying problem areas; (2) Taking corrective action on an ongoing basis; and (3) Preparing an annual report of its findings and corrective actions for each facility, as well as the agency as a whole. |

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| (l) The auditor shall review a sampling of any available videotapes and other electronically available data (e.g., Watchtour) that may be relevant to the provisions being audited. |
| (m) The auditor shall be permitted to conduct private interviews with inmates, residents, and detainees. |
| (n) Inmates, residents, and detainees shall be permitted to send confidential information or correspondence to the auditor in the same manner as if they were communicating with legal counsel. |
| (o) Auditors shall attempt to communicate with community-based or victim advocates who may have insight into relevant conditions in the facility. |

Auditing and Corrective Action

§ 115.405 Audit appeals.

(a) An agency may lodge an appeal with the Department of Justice regarding any specific audit finding that it believes to be incorrect. Such appeal must be lodged within 90 days of the auditor's final determination.

(b) If the Department determines that the agency has stated good cause for a re-evaluation, the agency may commission a re-audit by an auditor mutually agreed upon by the Department and the agency. The agency shall bear the costs of this re-audit.

(c) The findings of the re-audit shall be considered final.

State Compliance

§ 115.501 State determination and certification of full compliance.

(a) In determining pursuant to 42 U.S.C. 15607(c)(2) whether the State is in full compliance with the PREA standards, the Governor shall consider the results of the most recent agency audits.

(b) The Governor's certification shall apply to all facilities in the State under the operational control of the State's executive branch, including facilities operated by private entities on behalf of the State's executive branch.