

## STATE OF NORTH DAKOTA SERVICE CONTRACT

The parties to this contract are the State of North Dakota, acting through its **Department of Corrections & Rehabilitation** (DOCR) and [CONTRACTOR NAME] (CONTRACTOR);

### 1. PURPOSE OF CONTRACT

The Prison Rape Elimination Act (PREA) was passed in 2003 to provide for the analysis of the incidence and effects of prison rape in Federal, State, and local institutions and to provide information, resources, recommendations and funding to protect individuals from prison rape.

- A. PREA and the regulations implementing PREA require that qualifying facilities be audited on a periodic basis to determine compliance with PREA standards; and
- B. The DOCR operates the James River Correctional Center (JRCC) at 2521 Circle Drive Jamestown, ND 58401, and seeks to enter into a contract for PREA Audit Services; and North Dakota State Penitentiary (NDSP) at 3100 Railroad Avenue, Bismarck ND 58506
- C. The Auditor, also known as ("CONTRACTOR"), is certified by the U.S. Department of Justice to conduct PREA audits; and
- D. The DOCR has established a budget and provided for the purchase of such services; and
- E. The parties now desire to enter into a contract for the provision of PREA Auditing Services.

### 2. TERM OF CONTRACT

The term of this contract is for a period, beginning on **April 1, 2015**, and ending on **July 31, 2015**, or upon completion of all task assignments identified in this Contract, whichever is sooner.

### 3. SCOPE OF SERVICE

CONTRACTOR, in exchange for the compensation paid by DOCR under this contract, agrees to provide the following services: **PREA Auditing Services located at JRCC and NDSP**

- A. PREA Auditing Standards. The DOCR and the CONTRACTOR shall comply with the requirements set forth in the PREA auditing standards provided in 28 C.F.R. 115.401-05 (2013), a copy of which is attached hereto and incorporated herein as **Exhibit A**.
- B. Designated Auditor. The CONTRACTOR may employ or partner with other auditors or staff. However, there shall be one designated Auditor [AUDITOR NAME] who shall be the responsible auditor for purposes of this Contract and the PREA Auditing standards.
  - 1) Auditor Staff. In addition to the Auditor, only individuals authorized by the Auditor and the DOCR may be present during the on-site portion of the audit to assist the auditor.
- C. Ex-Parte Communication. The CONTRACTOR shall be permitted to initiate and receive ex parte communication with the community stakeholders, the PREA Resource Center, the Department of Justice, inmates, detainees, and residents, and other interested parties.
- D. Auditor Responsibility and Authority. The Auditor shall have the responsibility and authority to independently observe, assess, review and report on the DOCR's implementation and compliance with the National PREA Standards. In order to accurately assess compliance at the facility, the Auditor shall:
  - 1) Conduct an on-site inspection; observe programs and activities; interview pertinent administrators, professional staff, correctional staff, and Contractors; individually interview a sampling of inmates; review a sampling of videotapes from housing units; and conduct detailed reviews of inmate records and other pertinent documents and reports.
  - 2) The Auditor shall spend a sufficient amount of time at the facility in order to accurately assess day-to-day operations and conditions.
  - 3) The Auditor shall be responsible for independently verifying representation from the DOCR regarding facility compliance.
  - 4) Delivery of Contract to PRC. Upon finalization, the Auditor shall provide a copy of this Contract to the PREA Resource Center for purposes of tracking Auditor activity.
  - 5) Auditing Schedule. The Auditor shall provide the DOCR with a tentative schedule of activities during any on-site visits at least five (5) days prior to arrival at the facility.
  - 6) Public Statements. Except as required or authorized by the PREA auditing standards; federal, state or local

law; judicial order; this Contract; or as permitted by the DOCR, the Auditor shall not make any oral or written public statements – including, but not limited to, statements to the press, conference presentations, lectures or articles – with regard to: the status of the DOCR’s compliance or noncompliance with the PREA standards, or any act or omission of the Agency or its agents, representatives or employees.

- 7) Testimony. Except as required or authorized by the terms of this Contract, or by permission of the DOCR, the Auditor shall not testify in any litigation or proceeding with regard to the status of the DOCR’s compliance or noncompliance with the National PREA Standards; or any act or omission of the DOCR or its agents, representatives or employees, unless otherwise lawfully compelled to do so. If the Auditor is lawfully compelled to provide such information, the Auditor shall promptly notify the DOCR.
  - 8) Conflict of Interest. The Auditor shall not accept employment or provide consulting services that would present a conflict of interest with his or her responsibilities under this contract, with the PREA auditing standards, or with auditor ethical guidance provided by the PREA Resource Center or the Department of Justice, including, but not limited to, being employed or retained by the DOCR for purposes other than PREA auditing during the three year period prior to the audit, or during the three year period subsequent to the audit.
  - 9) Auditor Independence. Neither the DOCR, nor any employee or agent of the DOCR, shall have any supervisory authority over the Auditors activities, reports, findings, or recommendations.
  - 10) Termination of the Auditor. The auditor may be terminated if the agency and the Department of Justice agree and upon good cause shown. Good cause shall include, among other things, any violation of the PREA Standards; or federal, state, or local law, which reasonably calls into question the auditor’s fitness to continue serving as the Auditor.
  - 11) Audit Report Delivery. The Auditor shall provide the audit report to the DOCR head and the facility superintendent within 30 calendar days of the conclusion of the auditor’s on-site visit. If there are no standards requiring corrective action, the audit report shall be considered final.
- E. Corrective Action Process. If the audit report indicates that corrective action is required, the Auditor and the DOCR shall work to promptly and jointly develop a corrective action plan toward achieving compliance with all standards. The corrective action plan shall contain a timeline for specific minimal remedial measures the DOCR shall take to achieve compliance within a 180-day corrective action period. The DOCR shall deliver, and the auditor shall review and comment upon, deliverables provided to the auditor pursuant to the corrective action timeline. Prior to the conclusion of the 180-day corrective action period, the Auditor shall issue his or her final report.
- F. Tentative Audit Timeline. The parties tentatively agree that the initial on-site visit for the audit will occur on the following days: July 13 & 14 at JRCC and July 15 & 16 at NDSP.
- G. DOCR Responsibilities.
- 1) Maintenance of Documentation and Information. Any and all of the documentation (including electronic documentation) required by the National PREA Standards shall be maintained and secured by the DOCR. The Auditor is authorized to request, review, and retain all such documentation prior to, during and after the on-site visit.
  - 2) Auditor Access. The DOCR shall ensure that the Auditor have access to the facility, documentation (including electronically-stored information), personnel, and inmates, consistent with the auditing standards, until the issuance of the final report.
  - 3) Posting of Auditor Contact Information. The DOCR shall ensure that auditor contact information, together with a statement of confidentiality, shall be conspicuously displayed in all inmate housing units of the facility to be audited, for the six-week period prior to the on-site visit.
  - 4) External Advocacy Organizations. The DOCR shall work in good faith to identify and provide the Auditor with contact information for community-based or victim advocates who may have insight into relevant conditions in the facility, in order to permit the Auditor to fulfill his or her obligations under 28 C.F.R. 115.401(0).
  - 5) Access to External Investigative Personnel. The DOCR shall make best efforts to obtain and provide information and personnel from external investigative entities relevant to compliance with the National PREA Standards to the Auditor.
  - 6) Auditor Workspace and Electronics. During any on-site visit, the DOCR shall provide the Auditor with reasonable workspace, and shall permit the Auditor to maintain a laptop computer, access to or be allowed to bring in a scanner and internet access, mobile telephones, and/or a PDA within that workspace.
  - 7) Publication of Audit Report. The DOCR shall publish the final audit reports on the DOCR’s website within 14 days of receipt of reports.
  - 8) Retaliation Safeguards. The DOCR agrees that it shall not retaliate against any person because that person

has provided any information or assistance to the Auditor, has filed, or will file, a complaint, or has participated in any other manner in the conduct of the Audit. The DOCR agrees that it shall timely and thoroughly investigate any allegations of retaliation in violation of National PREA Standards or this Contract and take corrective action identified through such investigations.

- 9) Mandatory and Discretionary Reporting Information. The DOCR shall determine whether, and to what extent, the Auditor is legally a mandatory or discretionary reporter of inmate abuse in the relevant jurisdiction, and the DOCR shall also inform the Auditor contact information for the entity or entities that may legally accept any discretionary or mandatory reporting.
- H. Conflict with PREA Standards. If any provision of this contract is found to be inconsistent with the PREA auditing standards, the auditing standards shall prevail.

#### **4. COMPENSATION**

DOCR will pay for the services provided by CONTRACTOR under this contract in accordance with the Auditor Fees and Expenses identified below. CONTRACTOR shall submit an itemized billing and [SFN 10230 Non-Employee Travel Reimbursement Claim](#) form to the DOCR 15 days upon completion. CONTRACTOR may send statement by mail or electronically, via email, to: Cece Pederson, DOCR Accounts Payable, PO Box 1898, Bismarck, ND 58502-1898, Email: [crpederson@nd.gov](mailto:crpederson@nd.gov). The DOCR shall pay for services provided by CONTRACTOR under this agreement within 15 days of receipt of billing statement.

- A. Auditor Fees. The Auditor shall be compensated for the initial audit and any required corrective action process as follows: per day per auditor (the Designated Auditor and an additional certified PREA Auditor) for the following see **Exhibit B** containing the cost breakout.
- B. Auditor Travel Fees. The auditor will not be paid for travel days.
- C. Prohibition on Additional Compensation. The Auditor shall not accept any compensation for the conduct of the audit not set forth in this Contract.

#### **5. SECURITY REQUIREMENTS**

The CONTRACTOR shall comply with all applicable DOCR rules, regulations, and policies, including rules and regulations relating to safety, security, and confidentiality. DOCR reserves the right to deny admission in DOCR facilities to the CONTRACTOR for violation of any applicable DOCR rule, regulation, or policy. A staff member of DOCR shall review any violations with the CONTRACTOR prior to making a determination of denying the admission of the CONTRACTOR personnel or terminating the contract.

DOCR may require and complete a criminal history background check, including fingerprints for all CONTRACTOR personnel. The CONTRACTOR shall submit the names of personnel who will be on the premises not less than ten (10) workdays prior to the personnel coming on premises. No person convicted of a Class A misdemeanor involving violence, weapons, or controlled substances, or anyone convicted of a Felony may enter any DOCR facility property without prior written authorization of the Facility Administrator or Designee. CONTRACTOR personnel shall attend required security related training before being allowed to enter the facilities without an escort.

The CONTRACTOR shall be aware that DOCR facilities are secure environments. When CONTRACTOR personnel arrive at a DOCR facility, they will be subject to search at any time, they must sign in and out as applicable, and they are responsible for ensuring that all tools and test equipment that are allowed in the facility are accounted for at all times. The CONTRACTOR shall report to the DOCR area supervisor immediately if any tools are lost, misplaced, or stolen.

Tobacco products will be allowed only in the CONTRACTOR'S vehicles, or vehicles belong to CONTRACTOR'S personnel, unless the vehicles will be coming into secured areas, at which point all tobacco products must be turned over to the gate security officer. Cell phones, laptop computers or electronic tablets, cameras and other wireless electronic devices are not allowed in DOCR facilities without prior written approval from the Facility Administrator or Designee. No firearms or alcohol or products containing alcohol are allowed on DOCR property. If the CONTRACTOR requires items that contain alcohol or alcohol related products for performance under the contract, the items must be checked in and out through the facility's area supervisor. The CONTRACTOR shall provide copies of Material Safety Data Sheet (MSDS) of chemical(s) or product(s) used or brought into the DOCR facilities. Possession, distribution or

delivery of alcohol, tobacco, a controlled substance, firearm, or a dangerous weapon is a criminal offense, and will be prosecuted accordingly.

**6. LABOR**

CONTRACTOR, or employee or agency of the CONTRACTOR, may not solicit or hire for personal purposes of any individual receiving services under this contract. CONTRACTOR, or an employee or agent of the CONTRACTOR, may not solicit or receive volunteer labor or services for personal purposes from an individual receiving services under this contract.

**7. TERMINATION OF CONTRACT**

- A. Termination without cause. This contract may be terminated by mutual consent of both parties, or by either party upon 30-days written notice.
- B. Termination for lack of funding or authority. DOCR may terminate this contract effective upon delivery of written notice to CONTRACTOR, or on any later date stated in the notice, under any of the following conditions:
  - 1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term. The contract may be modified by agreement of the parties in writing to accommodate a reduction in funds.
  - 2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract.
  - 3) If any license, permit or certificate required by law or rule, or by the terms of this contract, is for any reason denied, revoked, suspended or not renewed.Termination of this contract under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.
- C. Termination for cause. DOCR by written notice of default to CONTRACTOR may terminate the whole or any part of this contract:
  - 1) If CONTRACTOR fails to provide services required by this contract within the time specified or any extension agreed to by DOCR; or
  - 2) If CONTRACTOR fails to perform any of the other provisions of this contract, or so fail to pursue the work as to endanger performance of this contract in accordance with its terms.

The rights and remedies of DOCR provided in the above clause related to defaults by CONTRACTOR are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

**8. FORCE MAJEURE**

CONTRACTOR will not be held responsible for delay or default caused by fire, flood, riot, acts of God or war if the event is beyond CONTRACTOR'S reasonable control and CONTRACTOR gives notice to DOCR immediately upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default.

**9. RENEWAL**

This contract will not automatically renew. DOCR will provide written notice to CONTRACTOR of its intent to renew this contract at least 30 days before the scheduled termination date. This contract may be renewed upon satisfactory completion of the initial contract term. The DOCR reserves the right to execute up to **TWO** options to renew this contract under the same terms and conditions for a period of **36 MONTHS** each. This contract will not automatically renew. The DOCR will provide written notice to the contractor of its intent to renew this contract at least **30 DAYS** before the scheduled contract expiration date.

**10. SEVERABILITY**

If any term of this contract is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms is unaffected and, if possible, the rights and obligations of the parties are to be construed and enforced as if the contract did not contain that term.

**11. ASSIGNMENT AND SUBCONTRACTS**

CONTRACTOR may not assign or otherwise transfer or delegate any right or duty without DOCR'S express written consent. However, CONTRACTOR may enter into subcontracts provided that any subcontract acknowledges the binding nature of this contract and incorporates this contract, including any attachments. CONTRACTOR is solely responsible for the performance of any subcontractor. CONTRACTOR does not have authority to contract for or incur obligations on behalf of DOCR.

**12. NOTICE**

All notices or other communications required under this contract must be given by email, registered or certified mail and are complete on the date mailed when addressed to the parties at the following addresses:

_____		_____
_____	OR	_____
_____		_____
Phone: _____		Phone: _____
Email: _____		Email: _____

Notice provided under this provision does not meet the notice requirements for monetary claims against the DOCR found at N.D.C.C. § 32-12.2-04.

**13. APPLICABLE LAW AND VENUE**

This contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this contract must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota.

**14. SPOILIATION – NOTICE OF POTENTIAL CLAIMS**

CONTRACTOR shall promptly notify DOCR of all potential claims that arise or result from this contract. CONTRACTOR shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to DOCR the opportunity to review and inspect the evidence, including the scene of an accident.

**15. INDEMNITY**

The State and CONTRACTOR each agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this agreement.

**16. INSURANCE**

CONTRACTOR shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$500,000 per occurrence.

The insurance coverages listed above must meet the following additional requirements:

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the CONTRACTOR. The amount of any deductible or self-retention is subject to approval by the State.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State.
- 3) The CONTRACTOR shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement.

- 4) Failure to provide insurance as required in this agreement is a material breach of contract entitling State to terminate this agreement immediately.
- 5) CONTRACTOR shall provide at least 30 day notice of any cancellation or material change to the policies or endorsements.

**17. ATTORNEY FEES**

In the event a lawsuit is instituted by DOCR to obtain performance due under this contract, and DOCR is the prevailing party, CONTRACTOR shall, except when prohibited by N.D.C.C. § 28-26-04, pay DOCR'S reasonable attorney fees and costs in connection with the lawsuit.

**18. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL**

DOCR does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. DOCR does not waive any right to a jury trial.

**19. CONFIDENTIALITY**

CONTRACTOR shall not use or disclose any information it receives from DOCR under this contract that DOCR has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this contract or as authorized in advance by DOCR. DOCR shall not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that DOCR determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, N.D.C.C. chap. 44-04. The duty of DOCR and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this contract, or any extensions or renewals of it.

**20. COMPLIANCE WITH PUBLIC RECORDS LAW**

CONTRACTOR understands that, except for disclosures prohibited in this contract, DOCR must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records that are obtained or generated by CONTRACTOR under this contract, except for records that are confidential under this contract, may, under certain circumstances, be open to the public upon request under the North Dakota open records law. CONTRACTOR agrees to contact DOCR immediately upon receiving a request for information under the open records law and to comply with DOCR'S instructions on how to respond to the request.

The DOCR, the Attorney General of the State of North Dakota, the Risk Management Division of the Office of Management and Budget, and the federal government and their duly authorized representatives, may have access to the books, documents, papers, and records of CONTRACTOR which are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcripts.

**21. WORK PRODUCT, EQUIPMENT, AND MATERIALS**

All work product, equipment or materials created or purchased under this contract belong to DOCR and must be delivered to DOCR at DOCR'S request upon termination of this contract. CONTRACTOR agrees that all materials prepared under this contract are "works for hire" within the meaning of the copyright laws of the United States and assigns to DOCR all rights and interests CONTRACTOR may have in the materials it prepares under this contract, including any right to derivative use of the material. CONTRACTOR shall execute all necessary documents to enable DOCR to protect its rights under this section.

**22. INDEPENDENT ENTITY**

CONTRACTOR is an independent entity under this contract and is not a state employee for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workers' Compensation Act. CONTRACTOR retains sole and absolute discretion in the manner and means of carrying out CONTRACTOR'S activities and responsibilities under this contract, except to the extent specified in this contract.

**23. NONDISCRIMINATION AND COMPLIANCE WITH LAWS**

CONTRACTOR agrees to comply with all applicable laws, rules, regulations and policies, including those relating to

nondiscrimination, accessibility and civil rights. CONTRACTOR agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes and unemployment compensation, and workers' compensation premiums. CONTRACTOR shall have and keep current at all times during the term of this contract all licenses and permits required by law.

**24. STATE AUDIT**

All records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this contract are subject to examination by the DOCR, the North Dakota State Auditor, or the Auditor's designee. CONTRACTOR will maintain all such records for at least three years following completion of this contract.

**25. PREPAYMENT**

DOCR will not make any advance payments before performance by CONTRACTOR under this contract.

**26. APPROVED VENDOR**

CONTRACTOR must be an approved vendor with the Office of Management and Budget within the state of North Dakota as required by N.D.C.C. § 54-44.4-09.

**27. TAXPAYER ID / PEOPLESOFT VENDOR NUMBER**

CONTRACTOR'S federal employer ID number is: \_\_\_\_\_.  
PeopleSoft Vendor ID number is: \_\_\_\_\_.

**28. PAYMENT OF TAXES BY DOCR**

DOCR is not responsible for and will not pay local, state, or federal taxes. State sales tax exemption number is E-2001, and certificates will be furnished upon request by the purchasing agency.

**29. MERGER AND MODIFICATION**

This contract constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this contract. This contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties.

**30. EFFECTIVENESS OF CONTRACT**

This contract is not effective until fully executed by both parties.

CONTRACTOR

STATE OF NORTH DAKOTA –DOCR  
Department of Corrections & Rehabilitation

Signature: \_\_\_\_\_  
Name (Print): \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## EXHIBIT A

### **§ 115.401 Frequency and scope of audits.**

(a) During the three-year period starting on August 20, 2013, and during each three-year period thereafter, the agency shall ensure that each facility operated by the agency, or by a private organization on behalf of the agency, is audited at least once. (b) During each one-year period starting on August 20, 2013, the agency shall ensure that at least one-third of each facility type operated by the agency, or by a private organization on behalf of the agency, is audited. (c) The Department of Justice may send a recommendation to an agency for an expedited audit if the Department has reason to believe that a particular facility may be experiencing problems relating to sexual abuse. The recommendation may also include referrals to resources that may assist the agency with PREA-related issues. (d) The Department of Justice shall develop and issue an audit instrument that will provide guidance on the conduct of and contents of the audit. (e) The agency shall bear the burden of demonstrating compliance with the standards. (f) The auditor shall review all relevant agency-wide policies, procedures, reports, internal and external audits, and accreditations for each facility type. (g) The audits shall review, at a minimum, a sampling of relevant documents and other records and information for the most recent one-year period. (h) The auditor shall have access to, and shall observe, all areas of the audited facilities. (i) The auditor shall be permitted to request and receive copies of any relevant documents (including electronically stored information). (j) The auditor shall retain and preserve all documentation (including, *e.g.*, video tapes and interview notes) relied upon in making audit determinations. Such documentation shall be provided to the Department of Justice upon request. (k) The auditor shall interview a representative sample of inmates, residents, and detainees, and of staff, supervisors, and administrators. (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.

### **§ 115.402 Auditor qualifications.**

(a) An audit shall be conducted by: (1) A member of a correctional monitoring body that is not part of, or under the authority of, the agency (but may be part of, or authorized by, the relevant State or local government); (2) A member of an auditing entity such as an inspector general's or ombudsperson's office that is external to the agency; or (3) Other outside individuals with relevant experience. (b) All auditors shall be certified by the Department of Justice. The Department of Justice shall develop and issue procedures regarding the certification process, which shall include training requirements. (c) No audit may be conducted by an auditor who has received financial compensation from the agency being audited (except for compensation received for conducting prior PREA audits) within the three years prior to the agency's retention of the auditor. (d) The agency shall not employ, contract with, or otherwise financially compensate the auditor for three years subsequent to the agency's retention of the auditor, with the exception of contracting for subsequent PREA audits.

### **§ 115.403 Audit contents and findings.**

(a) Each audit shall include a certification by the auditor that no conflict of interest exists with respect to his or her ability to conduct an audit of the agency under review. (b) Audit reports shall state whether agency-wide policies and procedures comply with relevant PREA standards. (c) For each PREA standard, the auditor shall determine whether the audited facility reaches one of the following findings: Exceeds Standard (substantially exceeds requirement of standard); Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period); Does Not Meet Standard (requires corrective action). The audit summary shall indicate, among other things, the number of provisions the facility has achieved at each grade level. (d) Audit reports shall describe the methodology, sampling sizes, and basis for the auditor's conclusions with regard to each standard provision for each.

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/ Vol. 77, No. 119 / Wednesday, June 20, 2012 / Rules and Regulations audited facility, and shall include recommendations for any required corrective action. (e) Auditors shall redact any personally identifiable inmate or staff information from their reports, but shall provide such information to the agency upon request, and may provide such

information to the Department of Justice. (f) The agency shall ensure that the auditor's final report is published on the agency's Web site if it has one, or is otherwise made readily available to the public.

**§ 115.404 Audit corrective action plan.**

(a) A finding of "Does Not Meet Standard" with one or more standards shall trigger a 180-day corrective action period. (b) The auditor and the agency shall jointly develop a corrective action plan to achieve compliance. (c) The auditor shall take necessary and appropriate steps to verify implementation of the corrective action plan, such as reviewing updated policies and procedures or re-inspecting portions of a facility. (d) After the 180-day corrective action period ends, the auditor shall issue a final determination as to whether the facility has achieved compliance with those standards requiring corrective action. (e) If the agency does not achieve compliance with each standard, it may (at its discretion and cost) request a subsequent audit once it believes that it has achieved compliance.

**§ 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.